

STRIKING A BALANCE BETWEEN MAJOR FACILITY AND SENSITIVE LAND USE DEVELOPMENTS: A DISCUSSION OF ONTARIO'S NEW LAND USE COMPATIBILITY GUIDELINE

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UPDATE (11/01/21): On October 13, 2021, the Environmental Registry of Ontario (“ERO”) posted its decision on the proposed updates to the Province’s Land Use Compatibility Guidelines ([ERO 019-2785](#)). Following 94 days of consultation which ended on August 6, 2021, the Ministry of the Environment decided not to proceed with the [proposed amendments](#), based on feedback received. As such, the [current “D-Series”](#) Environmental Land Use Compatibility Guidelines will remain in place. Per the ERO, the Ministry is continuing to review the D-Series guidelines in light of the feedback and, should they decide to update the D-Series, will post any future potential update to the ERO for consultation.

On May 4, 2021, the Ontario Ministry of the Environment, Conservation and Parks (the “**MECP**”) opened a sixty-day consultation period for the [Land Use Compatibility Guideline](#) (the “**Guideline**”). The Guideline replaces and consolidates a number of existing MECP guidelines that have been in place and relied upon by planning authorities for decades, including the former [D01 Land Use and Compatibility Guideline](#).

Intended to support planning authorities’ implementation of the land use compatibility policies established in the Provincial Policy Statement, 2020 (the “**PPS**”) and related provincial policy under the [Planning Act](#),^[1] the new Guideline will be of interest to owners and operators of “major facilities”^[2] (i.e. industrial uses) as well as to proponents seeking to develop major facilities or properties with “sensitive land uses”^[3] (i.e. residential and institutional uses).

The Guideline will be applied when an approval under the *Planning Act* is required for a new or expanding sensitive land use proposed near an existing or planned major facility (and vice versa) to achieve and maintain land use compatibility between such major facilities and sensitive land uses. There are three parts to the Guideline:

- **Part A:** Creates a guiding hierarchy for land use compatibility as a decision-making framework;
- **Part B:** Establishes tools to assess land use compatibility; and
- **Part C:** Provides information on how planning authorities may incorporate land use compatibility policies

and approaches into existing tools and approvals under the *Planning Act* and other legislation.

This Bulletin discusses the three parts of the Guideline and how it will be used in the development planning process in Ontario going forward, if approved.

Part A: Overview and Policy Context

Part A of the Guideline establishes the following land use compatibility objectives:

- a. Protect employment areas designated for future major facilities from incompatible uses and encroachment by sensitive land uses;
- b. Protect existing or planned major facilities from potential impacts from new sensitive land uses; and
- c. Prevent adverse effects to existing or planned sensitive land uses from new and/or expanding major facilities.

With respect to the hierarchy for land use compatibility, the Guideline creates the following decision-making framework:

1. Avoid incompatible land uses, in particular by locating sensitive land uses outside the area of influence (“**AOI**”) of major facilities;
2. Where avoidance by locating a sensitive use outside a major facility’s AOI is not possible, assess impacts through the undertaking of compatibility studies to consider the impact and magnitude of adverse effects to help determine a specific separation distance for the subject proposal that would avoid adverse effects;
3. Where the separation distance is not possible, identify through the compatibility study mitigation measures to ensure no adverse effects will remain post-mitigation; and
4. Where avoidance and minimization/mitigation of impacts is not possible, do not permit the proposed incompatible land use.

The Guideline does not apply to existing incompatible uses where no Planning Act approval is triggered^[4] or to activities associated with major facilities that do not require land use approval under the *Planning Act*.^[5]

Part A also considers the roles and responsibilities of planning authorities, proponents and other governmental authorities when studying and assessing land use compatibility, including policy considerations.

Part B: Assessing Land Use Compatibility

Part B of the Guideline establishes an approach for assessing land use compatibility to inform land use planning decisions. The approach is focused on the identification of the AOI for major facilities and creation of

minimum separation distances (“**MSD**”). An AOI is the area surrounding the property boundary of an existing or planned major facility where adverse effects on surrounding sensitive land uses have a moderate likelihood of occurring. A MSD is the recommended minimum separation distance that is smaller than the AOI and is the distance within which adverse effects and compatibility issues are highly likely to occur.

Table 1 of the Guideline establishes AOIs and MSDs for selected classes of major facilities. The stipulated AOI and MSD for a major facility may only be altered for specific major facilities or employment areas when justified by supporting studies in accordance with the Guideline. The Guideline also provides instructions on how to classify a major facility not listed in Table 1 and determine the corresponding AOI and MSD based on the applicable class (being Classes 1 through 5) and how the AOI and MSD should be measured.

Building upon the decision-making framework established in Part A, Part B of the Guideline provides for the undertaking of compatibility studies where a proposed development will be located within the established AOI or MSD, including details of the technical components and documentation that should form part of any such study.

In addition to compatibility studies, the Guideline requires proponents of sensitive land uses to provide a “demonstration of need” when:

- a new sensitive land use is proposed within a major facility’s AOI and mitigation measures would be needed to ensure no adverse effects or potential impacts; or
- a new sensitive land use is proposed within a major facility’s MSD (regardless of whether mitigation measures are assessed to be needed or not).

A demonstration of need is an assessment that determines whether there is an identified need for the proposed use in the proposed location and evaluates alternative locations for the proposed use if avoidance is not possible.^[6]

Planning authorities are encouraged not to approve development of a sensitive use unless “they are satisfied that there is an identified need and sound planning rationale for the proposed use in that location, and that alternative locations or areas for the proposed use have been evaluated and there are no reasonable alternative locations or areas”.^[7] The Guideline thus places the onus on the proponents of developments for sensitive uses to justify their proximity to any existing major facilities.

Finally, consistent with the decision-making framework established in Part A, Part B of the Guideline considers different options for mitigation of potential adverse impacts, including:

- At-Source Mitigation: mitigation used at a major facility to decrease adverse effects from its operation;^[8]
- Operational Mitigation: a type of at-source mitigation that involves changes made to a major facility’s

existing operations to reduce adverse effects ;[9]

- At-Receptor Mitigation: mitigation located at the sensitive land use to minimize and mitigate adverse effects at the receptor;[10]
- Buffers: a mitigation measure involves use of a barrier to prevent or minimize the adverse effects of incompatible land uses;[11] and
- Phasing: the phasing or sequencing of development may be able to mitigate adverse effects between users.[12]

Mitigation measures are case specific and must be properly designed to ensure the normal function of the two incompatible land uses without conflict.[13]

Part C: Incorporating Land Use Compatibility Into Planning Tools

Part C of the Guideline considers the various planning tools under the Planning Act and provides guidance on how such tools may be used by planning authorities to address land use compatibility. Recommendations include:

- Establishing clear Official Plan policies to protect major facilities and prohibit sensitive land uses adjacent to existing major facilities if adverse effects cannot be mitigated;
- Use of zoning by-laws to impose property-specific zoning to require on-site buffers (or other mitigation measures) identified by a compatibility study;
- Use of holding by-Laws to place a hold on development until compatibility studies and mitigation (as may be needed) are completed;
- Use of conditions to site plan approval to require mitigation measures (e.g. noise attenuation walls, enhanced fencing for amenity areas, berms, enhanced landscaping and triple-glazed windows);
- Requiring completion of a compatibility study (when needed in accordance with this Guideline) as part of a complete application for plan of subdivision approval or condominium approval; and
- Use of conditions of approval for severances/consents to require mitigation that can be registered on title.

Concluding Comments

In summary, the Guideline establishes amended policies that will impact land use planning policy and the assessment of all planning applications involving land use compatibility issues between major facilities and sensitive land uses. Given that the former guidelines being replaced were last updated in 1995, it is reasonable to expect that, once approved, the new Guideline will be with us for some time.

Proponents are thus encouraged to review the new Guideline and submit any comments to the MECP. The

sixty-day consultation period ends on July 3, 2021 at 11:59pm and interested parties can comment [here](#).

[1] Ontario Ministry of the Environment, Conservation and Parks, “[DRAFT Land Use Compatibility Guideline](#)” (March 2021) at 5, online (pdf) [*Land Use Compatibility Guideline*]. *Planning Act*, RSO 1990, c 9 13.

[2] Major facilities are “facilities which may require separation from *sensitive land uses*, including but not limited to: airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, *waste management systems*, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities”: *Land Use Compatibility Guideline*, *supra* note 1 at s 1.4, p 6.

[3] Sensitive land uses are “buildings, *amenity areas*, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more *adverse effects* from *contaminant discharges* generated by a nearby *major facility*. *Sensitive land uses* may be a part of the natural or built environment. Examples may include, but are not limited to residences, day care centres, and educational and health facilities”: *Ibid* at s 1.4, p 6.

[4] *Land Use Compatibility Guideline*, *supra* note 1 at s 1.5.3, p 10.

[5] *Ibid* at Appendix K, p 121.

[6] *Land Use Compatibility Guideline*, *supra* note 1 at s 2.8, p 34.

[7] *Ibid*.

[8] *Ibid* at s 3.1, p 38.

[9] *Ibid* at s 3.2, p 38.

[10] *Ibid* at s 3.3, p 39.

[11] *Ibid* at s 3.4, p 40.

[12] *Ibid* at s 3.5, p 40.

[13] *Ibid* at s 3.6, p 40.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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