



Committee Report

To:	Warden Hicks and Members of Grey County Council
Committee Date:	June 24, 2021
Subject / Report No:	Proposed Updates to Land Use Compatibility Guidelines / PDR-CW-16-21
Title:	Grey County Comments on Updates to the Ministry of the Environment Conservation and Parks Land Use Compatibility Guidelines
Prepared by:	Grey County Staff
Reviewed by:	Kim Wingrove
Lower Tier(s) Affected:	All Municipalities within Grey County
Status:	Adopted as amended by removing conservation authorities and adding Agricultural Advisory Committee by Committee of the Whole through Resolution CW101-21; Endorsed by County Council CC53-21

Recommendation

1. That Report PDR-CW-16-21 regarding an overview of the '*Land Use Compatibility Guideline*' be received; and
2. That Report PDR-CW-16-21 be forwarded onto the Province of Ontario as the County of Grey's comments on the proposed changes regarding Environmental Registry posting # 019-2785; and
3. That the Report be shared with member municipalities and conservation authorities having jurisdiction within Grey County; and
4. That staff be authorized to proceed prior to County Council approval as per Section 25.6 (b) of Procedural By-law 5003-18, as amended.

Executive Summary

The Province has recently released proposed updates to the Land Use Compatibility Guidelines on the Environmental Registry for review and commenting. The proposed Guidelines would replace earlier Ministry of the Environment Conservation and Parks (MECP) D-Series Guidelines which provide separation distance guidance between sensitive lands uses (e.g. residential, institutional, etc.) and more noxious uses (e.g. industrial, landfills, major infrastructure facilities, etc.). County staff have reviewed the draft Guidelines and see potential

positive and negative impacts on the County and development within the Grey. This report will provide a review of the proposed Guidelines as well as recommended comments to be shared with the Province for their consideration prior to finalizing the Guidelines.

Background and Discussion

On May 4, 2021 the Province posted new draft Land Use Compatibility Guidelines (hereafter referred to as the 'Guidelines') on the Environmental Registry. A link to the Guidelines and Environmental Registry posted can be found [here](#). Broadly speaking, the Guidelines would replace a number of the previous Ministry of the Environment Conservation and Parks (MECP) D-Series Guidelines, including the following:

- *D-1 Land Use Compatibility,*
- *D-2 Compatibility between Sewage Treatment and Sensitive Land Use,*
- *D-4 Land Use On or Near Landfills and Dumps, and*
- *D-6 Compatibility between Industrial Facilities.*

Guidelines *D-3 Environmental Considerations for Gas or Oil Pipelines and Facilities* and *D-5 Planning for Sewage and Water Services* are not proposed to be replaced at this time.

Overall, the purpose for the current D-Series Guidelines and the proposed Guidelines is to guide planning authorities in separating industrial and major infrastructure facilities from more sensitive uses such as residential or institutional uses.

The Guidelines are not applicable law, but aid in the implementation of the Provincial Policy Statement (PPS). The PPS contains two key definitions that are instrumental to interpreting the proposed Guidelines.

“Major facilities: means 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.

Sensitive land uses: means 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.”

There are corresponding policies in the PPS which speak to the need to separate major facilities from sensitive land uses. Municipalities must then be consistent with the PPS in making decisions on development applications, or in passing new planning documents such as official plans or zoning by-laws.

The Guidelines then contain two further definitions which guide their interpretation and allow for both the required separation distances as well as outlining study areas (i.e. areas of influence).

“Area of Influence (AOI): an 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. Within AOIs, compatibility studies are required for proponents of proposed major facilities or proposed sensitive land uses as part of the supporting documentation for a planning application.

Minimum Separation Distance (MSD): a recommended minimum distance from a major facility within which adverse effects to a sensitive land use are highly likely to occur. Planning authorities should not allow sensitive land uses within the MSD. Where a sensitive land use is proposed within the MSD, a demonstration of need is required.”

Figure 1 on the following page, taken from the Guidelines, gives an illustration of how AOIs and MSDs work, with the dotted yellow line being the AOI boundary and the dotted red line being the MSD boundary. MSDs represent the minimum setback required between a major facility and a sensitive land use. AOIs are the area where a compatibility study would be required to determine if a new sensitive land use would be negatively impacted by an existing major facility. Compatibility studies may include assessments on noise, odour, dust, or other contaminants (e.g. methane or leachate from a landfill). The Guidelines also generally work in a reciprocal manner whereby a proposed major facility would be required to assess compatibility to existing sensitive land uses that are located within the AOI. There is one key area where the Guidelines would not be reciprocal. If a new sensitive land use is proposed in the AOI of a major facility it needs to complete a compatibility study as well as a demonstration of need study. However, if a new major facility is proposed in the AOI of a sensitive land use, it only needs to complete the compatibility study and not the demonstration of need study. Figure 2 shows the decision-making process in the Guidelines, starting with avoidance; if avoidance is not possible moving onto assessing and mitigating any impacts.

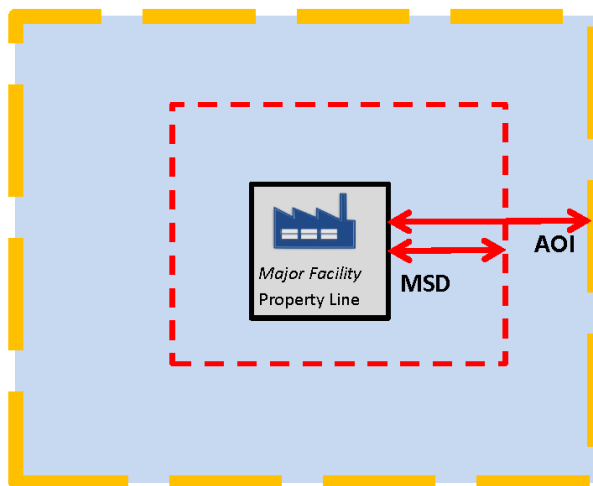


Figure 1: Diagram Showing MOIs and AOIs



Figure 2: Decision Making Flowchart

The Guidelines also contain a table which has AOIs and MSDs listed for a number of different major facilities (see Table 1 below).

Select Major Facility	Description of Major Facility	AOI & Class	Minimum Separation Distance
Aggregate Operations	Aggregate extraction, Resource extraction, Other mineral quarries	1,000 m Class 3*	500 m*
Asphalt Manufacturing	Asphalt mixture and block manufacturing, Asphalt shingle and coating manufacturing	1,000 m Class 3	300 m
Cannabis production and processing facilities	Indoor cannabis production facilities that are located in a <i>settlement area</i> on lands that are zoned for industrial uses; and all cannabis processing facilities	2,000 m Class 5	500 m

Select Major Facility	Description of Major Facility	AOI & Class	Minimum Separation Distance
Cement Manufacturing	Cement manufacturing and distribution	2,000 m Class 5	500 m
Chemical Product Manufacturing	Inorganic chemical manufacturing, Household cleaning and miscellaneous product manufacturing	2,000 m Class 5	500 m
Composting facilities	Composting facilities	1,500 m Class 4	500 m
Concrete (Ready-mix)	Ready-mix and concrete product manufacturing facilities	250 m Class 1	100 m
Industrial Anaerobic Digesters	Anaerobic digesters that are not agricultural uses	1,000 m Class 3	500 m
Food Manufacturing	General industrial manufacturing of food products	500 m Class 1	200 m
Industrial Food Mills (non-agricultural)	Wet corn or flour mill	750 m Class 2	300 m
Landfills and Dumps	Operating and non-operating sites	Case-by-case Class 5	500 m
Meat and Meat Product Processes	Slaughterhouses and rendering facilities, Meat by-product processing, Production of foods using fats or oils, Cooking oil production	1,500 m Class 4	500 m
Metal and Glass Parts Manufacturing	Manufacturing steel parts, Foundries, Metal stamping, Manufacturing glass or fiber glass auto parts	600 m Class 2	300 m
Oil Refinery	Refinery for oil and oil products	2,000 m Class 5	500 m

Select Major Facility	Description of Major Facility	AOI & Class	Minimum Separation Distance
Painting/Coating	Application of paint, solvent, lacquer or other coating/ Includes paint spray booths, electroplating, tanneries	400 m Class 1	100 m
Paper Manufacturing	Paper, newsprint and paperboard mills	1,000 m Class 3	400 m
Plastics Manufacturing	Manufacturing plastic or rubber products	500 m Class 1	100 m
Recycling Facilities – General	The sorting, processing, storage and transfer of recycled material (except auto parts)	900 m Class 3	200 m
Recycling Facilities – End-of-Life Vehicles	The sorting, processing, storage and transfer of motor vehicles	2,000 m Class 5	300 m
Scrap Yards	Scrap metal recyclers, auto recyclers, auto wreckers	1,500 m Class 4	300 m
Steel Mills	Iron and steel manufacturing	2,000 m Class 5	500 m
Waste Transfer Stations	The sorting, processing and transfer of waste	400 m Class 1	100 m
Sewage Lagoons	Sewage treatment lagoons	500 m Class 1	200 m
Municipal and private communal wastewater facilities (small)	Facilities with a rated capacity less than 25,000 cubic metres per day	300 m Class 1	100 m
Municipal and private communal wastewater facilities (large)	Facilities with a rated capacity more than 25,000 cubic metres per day	1,250 m Class 4	500 m

Table 1: AOI and MSD for Select Major Facilities

* AOI and MSD only applies to new or expanding sensitive land use proposals near major facility aggregate operations.

The Guideline also divide major facilities into five classes, with class 1 being the least noxious and class 5 the most noxious. The current D-Series Guidelines take a similar approach but only have three classes.

For major facilities that are not listed above, municipalities are responsible for determining the appropriate class of major facility (i.e. Class 1 – 5). From there, sample MSD and AOI distances are provided in the guideline with MDSs ranging from 200 metres to 500 metres, and AOIs ranging from 500 metres to 2,000 metres.

The Province has clarified that this Guideline does not apply to agricultural uses and does not replace the Minimum Distance Separation (MDS) formulae, which is used to determine separation distances to livestock facilities.

Municipalities are responsible for updating their planning documents such as official plans and zoning by-laws to ensure compliance with the Guidelines (should the new Guidelines be approved). Compatibility studies or demonstration of need studies are triggered by *Planning Act* applications such as site plan control, consents, minor variances, zoning/official plan amendments, and plans or subdivision or condominium. The requirement to complete compatibility or demonstration of need studies will fall on proponents of new major facility or sensitive use developments. Municipalities will be responsible for reviewing the compatibility studies related to noise, odour, and dust. If needed, municipalities may need to conduct peer reviews, if they do not have in-house staff to review said studies.

County staff had the opportunity to take part in a MECP webinar on June 2nd to learn more about the Guidelines and to ask questions. Staff have also discussed the Guidelines with Municipal planning staff on June 4th and Bruce County planning staff on May 31st. Comments are due on the proposed Guidelines by July 3rd, 2021.

Staff Response and Comments

Staff are thankful that the MECP is updating the Guidelines. The MECP has been speaking about proposed updates for a number of years now, so it is nice to have a draft document for review and comment. Staff are also appreciative of the webinar hosted by the Province with the ability to learn further and ask questions. Guidelines such as these are useful in (a) implementing the PPS and (b) working to avoid land use compatibility issues in our own communities.

Staff see great merit in having the proposed Guidelines, but do have some questions and concerns with the draft documents as proposed. A summary of the concerns and questions is as follows.

1. The wording of the Guidelines appears to be very rigid and leaves little room for site specific interpretation, or consideration of existing circumstances. For example, where one already has a major facility surrounded by sensitive uses, there would appear to be little consideration given to the fact that those uses may already be

peacefully co-existing. If a new sensitive use were proposed within the MSD then it would not be permitted, or if it were proposed within the AOI then compatibility studies may be needed which may serve little purpose. Consideration should be given to either exemptions or factoring in circumstances such as existing development patterns in proximity to the proposed use. The Provincial MDS formulae has some consideration of such circumstances in this regard (e.g. where there is already a series of houses in between the livestock facility and the proposed new house, which is further away from the barn than the other houses, MDS does not need to be applied).

2. Within smaller communities we see potential for these MSDs and AOIs to potentially 'freeze', or severely impact existing zoned development lands. The Province has noted that the Guidelines should not result in lands being rendered undevelopable i.e. the land in between an industrial use and a residential use could be used as commercial to provide a buffer between the major facility and the sensitive use. While County staff see that as a reasonable option in some circumstances, it may not be viable in all cases, leaving the in between lands difficult to use efficiently or develop.
3. The Guidelines give lots of examples of industrial facilities and the associated MSDs and AOIs with said uses. Additional clarification would be helpful on some of the other major facilities such as transportation corridors or airports.
4. Further guidance should be provided for landfills (or dumps) which are closed and no longer in operation. Appendix E to the Guidelines has details on land uses near landfills and dumps. It notes that the Guidelines apply to public/private sites, operating/non-operating sites, and would also apply when looking to site a new landfill. Staff believe the intent of the Guidelines works well here, but further criteria needs to be established for non-operating sites. The current read of Table 1 is that AOIs for landfills are established on a case-by-case basis, but that the MSD is 500 metres. In the previous D-4 Guideline, that 500 metre distance served as an AOI of sorts, whereby further study was needed within 500 metres. However, the 500 metres was not applied to be a 'hard setback' to non-operating sites i.e. if a proponent was able to demonstrate that their lands were free from leachate and methane gas migration within 500 metres of the former landfill or dump, then development could still be permitted. Having a 500 metre MSD setback to non-operating sites would have a significant impact on Grey's settlement areas and rural areas, and negate the findings of many former D-4 studies which have already been completed.
5. Staff see the need to protect our industrial parks across the County from neighbouring incompatible uses. Similarly new residential or institutional development should be protected from new industry being sited 'next door'. That said, there are a number of smaller scale industrial uses (e.g. home industries), or on-farm diversified uses across the countryside, that may not warrant a full 'major facility' label and associated MDS and AOI setback and compatibility study requirements. Staff recommend that the Province consider a major facility designation for some industrial uses and a minor facility designation for others which do not have the same level of impact and therefore do not need to meet the stringent tests outlined in the Guidelines.
6. The Guidelines provide criteria for demonstration of need studies. Although the criteria are a good start, staff see these studies as still being somewhat subjective in nature and will be difficult to evaluate. The test to look for other sites elsewhere could be difficult to definitively pass or fail in many circumstances.

7. Clear transition provisions will be needed when the Guidelines are passed. Consideration of existing developments or applications in process should be taken into account, as well as existing zoning provisions that may / may not be negated by the requirements of the Guidelines. Flexibility should be permitted here, as municipalities work to update their own planning documents and make landowners aware of the new requirements.
8. The proposed Guidelines apply to aggregate extraction operations (i.e. pits and quarries) which are already covered by the *Aggregate Resources Act* and associated provincial standards. The Guidelines would require setbacks and compatibility studies for new or expanding sensitive uses in proximity to an aggregate operation, but the Guidelines do not apply to new or expanding aggregate operations. County staff see high potential for public concerns here with the Guidelines not being applied reciprocally in this regard. Staff certainly see the need for new and expanded aggregate operations, but acknowledge that the impacts must also be considered in a balanced manner.
9. The Province should also likely consider further distinguishing between different types of aggregate operations i.e. the impacts of a small gravel pit are much different than the impacts of a large quarry. Similarly a new sensitive use proposed in proximity to a small pit versus a large quarry would also need to duly reflect that in their compatibility study.
10. Considerations should be given to the minor expansion of existing uses without the need for significant study i.e. adding a deck to a house which triggers a minor variance should not trigger the need for a compatibility study. Similar considerations should likely also be applied to development on vacant lots that are already zoned for development, but which may require a planning application such as a minor variance or site plan control.
11. Staff see great merit in compatibility studies being needed in certain circumstances. However, in other cases it could add cost and time to the development process, which may prove to be a hurdle to smaller developments, infill projects, or affordable housing. The need for municipalities to review and/or peer review such studies could also prove to be a barrier in the case of smaller municipalities who do not have on-staff expertise. Staff also worry about the availability of qualified individuals to complete such studies, particularly in rural or more remote areas of the province (e.g. odour study experts may not be available in all communities).
12. In completing compatibility studies for new sensitive uses, proponents are encouraged to get information from the neighbouring major facility use. In instances where the major facility is unwilling to share, or where there are vacant industrial lands, it may prove much more difficult to complete such studies. In these instances, assuming a worst-case scenario may be necessary to complete the study to avoid land use incompatibility. However, using that worst-case scenario may also be over-planning and result in an inefficient use of land in settlement areas.
13. The ability to site new municipal facilities, such as wastewater treatment plants or transportation depots, could become significantly more difficult under the proposed Guidelines.
14. The Guidelines are clear that they do not apply to agricultural uses, but it would appear they do still apply to agriculture-related uses such as grain elevators or grain

drying operations. Clarification on the rules which apply to such agriculture-related uses should be provided in future drafts of the document.

15. On a Grey County specific level, the Guidelines could have the ability to impact planned County projects such as potentially the Rockwood Terrace redevelopment project in Durham. Further setbacks may be required, or additional compatibility studies or demonstration of need assessments could also be triggered. This could impact both the costs and the overall development plans for the County lands in Durham even though the gravel pit to the south is a low volume pit (approximately 10,000 tonnes removed on average per year), there is no crushing, no blasting, and no asphalt or redi-mix plants on site and therefore the potential impacts from this pit are quite minimal. In speaking with municipal staff in Grey, they also identified some municipal projects that could be similarly impacted as well.

Legal and Legislated Requirements

Under the *Planning Act* the Province has the ability to issue policy statements, which it does through the Provincial Policy Statement. There are policies in the PPS which require sensitive land uses to be separated from major facilities. Planning decisions must be consistent with the PPS, which occurs at both the development application stage and the policy development stage (e.g. official plans). Should new Land Use Compatibility Guidelines be passed they will not be 'applicable law', but counties and municipalities are expected to implement them in their official plans and zoning by-laws. Zoning by-laws are then applicable law which must be considered before new building permits can be issued.

Financial and Resource Implications

At this stage there are no immediate financial or resource implications to the proposed Guidelines. Grey County and member municipalities, as well as landowners or developers do have the potential to be impacted by the Guidelines in a negative manner (e.g. costs, inefficient use of land, etc.). County staff have identified some County projects, such as our long term care redevelopment which would be potentially negatively impacted by these Guidelines.

Staff will continue to monitor the Land Use Compatibility Guidelines and keep County Council up-to-date.

Relevant Consultation

Internal: Planning

External: Bruce County Planning staff and Member Municipalities within Grey

Appendices and Attachments