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# Hamilton

July 3, 2021

Sanjay Coelho  
Ministry of the Environment, Conservation and Parks - Environmental Policy Branch  
40 St Clair Avenue West, Floor 10  
Toronto, ON M4V1M2

Dear Sir,

**Re: Comments from the City of Hamilton: ERO posting 019-2785 “Land Use Compatibility Guideline”**

Thank you for the opportunity to provide comments on ERO posting 019-27853 “Land Use Compatibility Guideline”. Please find comments from the City of Hamilton below on the proposed Guideline. Please note that additional comments may be forthcoming following the meeting of Hamilton City Council on July 9, 2021.

**1. Timing of the Release and the Implementation of the proposed Land Use Compatibility Guideline**

Based on a provincial directive, municipalities are required to submit their Municipal Comprehensive Review (MCR) Official Plan Amendments to the Province by July 2022 and in draft form by the end of the year. These Official Plan Amendments are termed as ‘conformity exercises’ whereby municipalities update their Official Plans to conform with Provincial Plans and to be consistent with the PPS.

The new requirements imposed by the proposed Land Use Compatibility Guideline and the implementation policy directives into the MCR Official Plan Amendment will have a direct impact and a potential to delay the City of Hamilton’s submission of the draft MCR Urban Hamilton Official Plan Amendment (OPA) by the end of 2021 or early 2022. The ERO Posting for the draft Land Use Compatibility Guideline closes on July 3, 2021. The Province will require time to review ERO submissions and make any necessary revisions to the document prior to releasing a final version of the Guideline. As the City is aiming to submit a draft MCR OPA for provincial review in Fall of 2021, the timing of the release of the final Land Use Compatibility Guideline has the potential to delay the City’s conformity process because of the potential to affect the implementation of the City’s Employment Land Conversion review, residential intensification opportunities, and may warrant the redesignation of lands to remove existing sensitive land use planning permissions.

## 2. Change from a Guideline to OP Policy Directive

The proposed Guideline has changed from a 'guideline' to be used by municipalities in assessing land use compatibility, based on their own judgement of local circumstances, to a direction that municipalities must follow in the assessment of land use compatibility. Implementation of these guidelines is proposed through Official Plan Amendments and Zoning By-laws. The Guideline directs that, amongst other matters, Official Plans shall identify Minimum Separation Distances (MSD) and Areas of Influence (AOI) within the policy framework, as well as identify the requirement for Demonstration of Need Studies, where required. These two areas of concern are expanded on below.

Previously, the Province's D-Series Guidelines were used as best practices by the City in the formulation of Official Plan policies and associated regulations of Zoning By-law No. 05-200. The proposed change from a guideline document to a policy directive has the effect of creating additional hurdles in the City's goals to protect employment areas while at the same time balancing the need for additional housing within the City to meet its intensification and density targets.

## 3. Significant increase in the minimum separation distances (MSD) and area of influence (AOI) distances

There has been a significant increase in the proposed area of influence (AOI) distances and some increases in the minimum separation distances (MSD) required between sensitive land uses and major facility types in the proposed Guideline from the previous D-Series Guidelines.

Table 1: Current MSD and AOI Guidelines (D-Series Guidelines)

<b>Class</b>	<b>MSD</b>	<b>AOI</b>
Class 1 (e.g. beverage bottling, auto parts supplier)	20 m	70 m
Class 2 (e.g. some food manufacturing, electrical production, paint/coating)	70 m	300 m
Class 3 (e.g. chemical plants, steel mills, breweries)	300 m	1000 m

Table 2: Proposed MSD and AOI Requirements in new Guideline

<b>Class</b>	<b>MSD</b> (depends on specific use)	<b>AOI</b> (depends on specific use)
<i>Class 1</i> (e.g. food manufacturing, paint coating, plastics manufacturing, sewage lagoons, small municipal wastewater facilities)	100-200 m	300 m-500 m
<i>Class 2</i> (e.g. industrial food mills, metal and glass manufacturing)	300 m	600-750 m
Class 3 (recycling facilities, anaerobic digesters, asphalt manufacturing)	200-500 m	1000 m

<b>Class</b>	<b>MSD</b> (depends on specific use)	<b>AOI</b> (depends on specific use)
(New) Class 4 (large municipal wastewater facilities, scrap yards, composting facilities)	300-500 m	1,250-1500 m
(New) Class 5 (e.g. cannabis production and processing facilities – urban area only, chemical product manufacturing, cement manufacturing, steel mills)	500 m	2,000 m

Appendices "A" and "B" identify the proposed expanded AOI distances measured from the City's existing Industrial Zones. Appendix "A" identifies the AOI distance ranging from 1,000 m to 2,000 m from the General Industrial (M5) Zone. The M5 Zone is the zone that permits uses that would be classified in the Class 3 and 5 categories in Table 2 above. Included within the 2,000 m AOI measured from the M5 Zone is 685 ha of land within a residential zone, or 8.7% of the City's total residentially-zoned land area. Further, 100 ha of lands zoned within a commercial / mixed use zone are within the 2,000 m AOI of the M5 Zone, which accounts for 12% of the City's total commercial / mixed use zoned lands.

Appendix "B" identifies the AOI distance of 500 m to 1,000 m measured from the Prestige Business Park (M3) Zone, Light industrial (M6) Zone, Airport Light Industrial (M10) Zone and Airport Prestige Business (M11) Zone. The M3, M6, M10 and M11 Zones permit uses that would be classified in the Class 1 and 2 categories of Table 2 above. Included within the 1,000 m AOI measured from the M3, M6, M10 and M11 Zones is 1,890 ha of land within a residential zone, or 24% of the City's total residentially-zoned land area. Further, 325 ha of lands zoned within a commercial / mixed use zone are within the 1,000 m AOI of the M3, M6, M10 and M11 Zones, which accounts for 39% of the City's total commercial / mixed use zoned lands.

The impact of the increased AOI and MSD is explained in the sections below.

The proposed Land Use Compatibility Guideline allows municipalities to establish a site specific AOI for an individual major facility. Municipalities may determine an alternate AOI, which may be smaller or larger than the AOI outlined in the Province's Guideline, if supporting studies are completed to justify this alternate AOI. An alternate AOI may be smaller, for example in locations with a planning objective of increasing intensification (e.g. Major Transit Station Areas, Nodes and Corridors) as well as avoiding conflicts.

The development of an alternate AOI, with supporting justification studies, is a voluntary activity undertaken by the municipality and should be developed during the Official Plan Review process or in the current case, the Municipal Comprehensive Review. The introduction of this provision at the current point in the City's MCR process creates uncertainty with the GRIDS 2 / MCR process and the ability of the City to meet the provincial conformity timeline.

**4. Submission of Land Use Compatibility Studies and Demonstration of Need Studies as part of Planning Act applications**

While a Land Use Compatibility study is not a new requirement, the increase in the AOI has the effect of requiring far more studies to be completed for *Planning Act* applications, including locations where sensitive land uses or industrial uses are already permitted through zoning. As part of the current *Planning Act* process, staff have requested specific land use compatibility studies (i.e. noise, odour, dust, etc.) based on a separation distance of up to 400 m from a heavy industrial use or for lands adjacent to an arterial road and highways for sensitive land uses. Under the proposed Guideline, the requirement for a Land Use Compatibility study would be identified at the Formal Consultation stage for any proposed development of a sensitive land use in the AOI of an existing or planned major facility, or the development of a major facility with an AOI that includes existing sensitive land uses.

Appendices "A" and "B" illustrate the impact of the updated Guidelines and the requirement for a Land Use Compatibility Study. Within Hamilton Zoning By-law 05-200, the land uses identified as Classes 3 to 5 in Table 2 above, which requires an AOI of 1,000 to 2,000 m, are generally located in the General Industrial (M5) Zone and the Shipping and Navigation Port Lands (M13) Zone. Appendix "A" illustrates the extent of a 1,000 to 2,000m separation distance from the General Industrial (M5) Zone. A Land Use Compatibility Study would be required for a proposed sensitive land use as part of a *Planning Act* application within this area.

Similarly, the land uses identified in Classes 1 and 2 in Table 2 above, which requires an AOI of 300 m to 1,000 m depending on use, are generally located in the Prestige Business Park (M3) Zone, Light Industrial (M6) Zone, Airport Light Industrial (M10) Zone and Airport Prestige Business (M11) Zone. Appendix "B" illustrates the extent of a 500 m and 1,000 m separation distance from the M3, M6, M10 and M11 Zones. A Land Use Compatibility Study would be required for a proposed sensitive land use as part of a *Planning Act* application within the AOI from these zones, regardless if the current zoning already permits some form of sensitive land use.

As noted above, 685 ha of lands zoned residential (8.7% of total) and 100 ha of lands zoned commercial / mixed use (12% of total) are located within the AOI of the General Industrial (M5) Zone. In addition, 1,890 ha of lands zoned residential (24% of total) and 325 ha of lands zoned commercial / mixed use (39% of total) are located within the AOI of the M3, M6, M10 and M11 Zones. Any proposed sensitive land use within these AOI areas will be required to submit a Land Use Compatibility Study as part of the *Planning Act* application.

If the Land Use Compatibility study identifies any potential adverse impacts, whether or not they can be mitigated, an applicant is required to undertake a Demonstration of Need study.

This Demonstration of Need study must identify if there is a need for the use and to investigate at least two alternative locations for that use outside of the major facility's AOI. The need for the use must assess applicable Official Plan policies, consider

demographics, land supply, growth targets, and how the use would support the community, to name a few requirements.

In addition, the study must:

- Identify other locations in the municipality that have been designated and zoned specifically for the proposed sensitive use and explain why they have not been chosen for the proposed use;
- Provide a list of at least two alternative locations, regardless of ownership, that have been considered outside of the major facility's AOI and for each, discuss whether they would be appropriate for the proposed use as compared to the preferred location; and,
- Identify other potential uses for the subject site that would be compatible and explain why they have not been chosen for the proposed location.

Based on the historical pattern of development across the City, there is significant number of areas that either abut or are within the proposed 2,000 m AOI of the General Industrial (M5) zone (Appendix "A"). Many of the areas within this 2,000 m radius have the potential to increase the City's housing supply through intensification. The requirement for these studies, especially the Demonstration of Need study, are complex undertakings that will have significant impacts on the timing and potential for additional residential development and may impact the potential for the City to meet the intensification targets of the Growth Plan. There are areas within the proposed 2,000 m AOI that are designated for residential and mixed uses and have existing residential or mixed uses on the lands. While the City currently requires noise, vibration, odour or dust studies for redevelopment of lands for sensitive land uses in close proximity to an industrial use, it would not require a proponent to consider all uses within 2,000 m.

The requirement for such as study will be onerous and costly for proponents of development applications and will also impact staff time and the processing of development applications. It is not clear who will be qualified to review and sign off on the Demonstration of Need Study and what criteria will be used to determine if a demonstrated need has been met.

Staff recommend that the proposed requirement for the Demonstration of Need study be eliminated from the final version of the Province's Land Use Compatibility Guidelines as the City has determined where sensitive land uses, in particular residential land uses, are appropriate and are permitted.

In addition, staff recommend that the Province provide a generic Terms of Reference that proponents of development applications and municipalities can refer to in the preparation and review of Land Use Compatibility Studies. The proposed Guideline has increased the requirements and the triggers for when such Studies will be needed. Currently there is a lack of guidance on what should be included in these Studies and who is qualified to prepare the Studies. The preparation of a Terms of Reference by the

Province would provide clarity and increase efficiency in the preparation and review of the Land Use Compatibility Studies.

**5. Addition of Cannabis Growing and Harvesting Facilities and Cannabis Processing Plants as a Class 5 use (urban area only)**

Cannabis Growing and Harvesting facilities have the potential to create significant odour and light impacts. These impacts are created by the growing of the plants; not the drying or processing of cannabis into other forms, such as oils. Given the 500 m requirement for the Minimum Separation Distance, this use will be restricted to only one zone (General Industrial (M5) Zone) in the City. This regulation has the effect of pushing more of these uses into the rural area since there are no similar restrictions.

Cannabis processing facilities are not likely to have the same impacts as the growing of cannabis, therefore it seems unreasonable to establish the processing as a Class 5 use. More significantly, the City does not allow manufacturing of cannabis products in the rural area. These restrictions will further create pressure to allow cannabis products manufacturing in the rural area.

Staff recommend that cannabis manufacturing facilities be classed similarly to food manufacturing as cannabis products and outputs are for human consumption and similar to other food products (e.g. beverages, confectionary)

**6. Summary and Recommendations:**

Based on the concerns summarized above, staff recommend that the City convey to the Province of Ontario that the timing of the proposed Land Use Compatibility Guideline and subsequent implementation of the Guideline through revisions to Official Plan policies will have the potential to delay the City's submission of the Municipal Comprehensive Review Urban Hamilton Official Plan Amendment by the end of 2021 or early 2022.

In addition, staff recommend that the City convey to the Province that it supports the proposed Land Use Compatibility Guideline provided the following changes are made:

- a) The Areas of Influence (AOI) and the Minimum Separation Distance (MSD) remain as guidelines and not be required to be included as part of the Official Plan;
- b) The requirement for the Demonstration of Need study be eliminated as the City has already determined through Official Plan policies and Zoning regulations where sensitive land uses, in particular residential land uses, are appropriate and are permitted; and,
- c) Cannabis manufacturing facilities be classed similarly to food manufacturing.

Further, staff recommend the Province provide a Terms of Reference to outline the requirements to be included in a Land Use Compatibility Study, which will assist both

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proponents of development applications and municipalities with the preparation and review of these studies.

Please accept these comments to meet the July 3, 2021 Provincial deadline for the submission of comments on ERO Posting 019-2785: Land Use Compatibility Guideline. If you have any questions, please feel free to contact Heather Travis at (905) 546-2424, ext. 4168, or by email at [Heather.Travis@hamilton.ca](mailto:Heather.Travis@hamilton.ca).

Yours truly,

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HT: