



Town of Oakville  
Planning Services Department  
1225 Trafalgar Road  
Oakville, ON  
L6H 0H3

June 22, 2021

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

Dear Sanjay Coelho,

**RE: ERO 019-2785 – Land Use Compatibility Guideline**

Please find the Town of Oakville, Planning Services Department submission to ERO 019-2785, a proposal regarding a new Land Use Compatibility Guideline.

The Town is aware that the ERO posting is concurrent with consultation on a draft Odour Guideline (ERO 019-2768), Compliance Policy (ERO 019-2972), and administrative monetary penalties (no ERO posting). However, the Town focused its efforts to provide comment on the proposed Land Use Compatibility Guideline given the document specifically provides guidance to municipalities on land use compatibility as part of land use planning approvals under the *Planning Act*.

This submission has been circulated to the Town of Oakville Mayor and Members of Council for information. However, Town Council has not approved the comments provided in this submission as the consultation timeframe given by the Ministry, being 60 days, did not provide sufficient time for review and reporting to Council in advance of the due date of July 3, 2021. Town staff would appreciate that on future matters that are as complex and detailed as the Land Use Compatibility Guideline, more time be provided to allow opportunities for collaboration and joint comments to be provided from area municipalities, and approval from Council prior to submission.

## COMMENTS

### ***Magnitude of impact unknown***

The magnitude of impact from the guideline on local planning policies and processes is unknown without further review and detailed study. In that respect, it is difficult to comment on the proposed guideline. While the principles of the guideline have merit and staff are supportive, the practical implementation of the guideline is critical to its success and usability.

It is anticipated that with increased Area of Influence (AOI) and Minimum Separation Distances (MSD), there will be an increased likelihood of requiring compatibility studies as part of a complete application, and will further impact municipally-initiated reviews. This may create more complex and onerous planning considerations and consultations with the public. In situations where additional public consultation events are required, development approval processes typically do not align with approval timelines under the *Planning Act* for OPAs and ZBAs, creating potential for appeals.

### ***AOI & MSD increases may create issues in established urban employment areas***

The Area of Influence and Minimum Separation Distances have generally increased in comparison to the existing D-series guidelines. This could be problematic in established urban employment areas where site redevelopment and intensification is more likely to occur in close proximity to established residential areas where sensitive uses are located. This context should be acknowledged in the proposed guideline, with separate considerations for mitigation measures to address existing contexts.

For example, existing major facilities may potentially be reclassified under the proposed guideline, causing AOIs to double. When considering a major facility such as a chemical product manufacturing facility, under the previous D-series guideline, this would be a Class 3 facility with a potential influence area of 1000 metres. Under the proposed guideline, this would be a Class 5 facility, with an influence area of 2000 metres. In an existing urban employment area such as those found in Oakville, this measurement would extend well into established residential areas, and may create more onerous circumstances for the existing employment use, which continues to be planned for.

### ***Long-term viability of major facilities***

One of the key objectives stated in the guideline is to protect the long-term viability of major facilities. Staff are concerned that, without understanding the classification of major facilities, their associated AOI and MSD, and the application of the guideline to

existing urban employment areas, there may be instances where existing major facilities could become encumbered and not able to adapt or expand their operations on-site.

Ministry staff should be sure that the guideline achieves the stated objective and does not create any unintended consequences.

### ***Additional guidance on what constitutes a sensitive land use***

Section 1.4 provides the definition of a ‘sensitive land use’ as per the PPS, and goes on to state that “planning authorities are expected to identify other similar uses as sensitive uses under the PPS and this guideline” and that other sensitive land uses “could also include various commercial, retail, institutional and office uses” including hotels, community centres and places of worship.

Additional guidance is requested on what constitutes a ‘sensitive land use’. Having a listing of sensitive uses will provide greater clarity and direction to municipalities when conducting reviews and assessing compatibility studies. Without a listing, communities across Ontario will continue to categorize sensitive land uses differently, creating an inconsistent application of the guideline.

### ***Additional guidance on what constitutes a transitional land use***

Section 4.2.2 of the guideline describes transitional land uses as being “compatible with major facilities and sensitive land uses and can be located between the potentially incompatible uses and buffer any impacts between them.”

Additional guidance is requested on what constitutes a ‘transitional land use’. Having a listing of transitional uses will provide greater clarity and direction to municipalities when conducting reviews and assessing compatibility studies.

Many ‘transitional uses’, often considered as light industrial or light employment type uses, are found throughout the town’s employment area, and are permitted throughout the town’s employment land use designations, many of which may also permit major facilities and a range of other uses that may now be considered a sensitive land use (i.e. office uses). This is somewhat concerning as it has the potential to restrict employment opportunities within existing employment areas where a mix and range of employment uses are found.

### ***Information sharing, engagement and consultation***

Section 1.6.3 and other sections of the guideline, state that owners/operators of major facilities are encouraged to share information that may lead to the completion of land

use compatibility studies and other reports that may be needed, provided appropriate privacy considerations are met. Ensuring compatibility studies are based on the best and current information will help to ensure potential compatibility issues are avoided in the future.

Staff note that there will likely be instances where there is reluctance by industry to share information and participate in development application processes, particularly if there is apprehension about the potential for encroaching sensitive land uses. This may be particularly true within redeveloping areas such as MTSAs.

The guideline should provide additional direction for situations where major facilities are not willing or able to share information, and compatibility studies cannot be completed sufficiently, as concluded by a planning authority, in respect of determining land use capability and development approvals, leading to refusals or an inability to proceed.

### ***Roles and Responsibilities***

Additional guidance should be provided about who is responsible for classifying major facilities across municipalities, and in particular within two-tier municipalities. The town suggests that the province can and should assist municipalities with classifying major facilities based on their own data and information, such as ECAs.

### ***Competing Planning Objectives***

- The objectives set out in both A Place to Grow and the Land Use Compatibility Guideline present competing planning objectives in some instances; in particular areas intended for infill and intensification, including MTSAs. This is recognized in the guideline whereby additional flexibility for MTSAs is considered, where an increased reliance on mitigation, rather than avoidance, may be possible. Given the competing objectives identified, additional guidance for how to weigh the planning objectives, and which objectives take priority, is requested, to assist planners when making recommendations.
- The policies in A Place to Grow provide that lands should be suitably zoned to enable redevelopment. However, with the application of the guideline, it is unlikely that pre-zoning lands will be achievable, and holding provisions will have to be applied to ensure compatibility studies can be undertaken. Does this conform with the policies in A Place to Grow?

### ***Consideration for Infill and Intensification Scenarios***

Section 4.2.3 of the guideline states that “within employment areas, keep major facilities separated from other employment uses, and any sensitive land uses should only be permitted mixed with low-impact employment uses and where compatibility can be achieved.”

The classification of major facilities (Class 1 through 5) will capture many employment uses which are already integrated throughout existing employment areas, which are not separated from other employment uses, and which are located in close proximity to established residential areas and sensitive land uses. Staff are concerned that the consideration of intensification or expansion of existing major facilities may be limited based on the guideline, and the objective of the guideline to protect the viability of employment uses over the long-term, may be hindered, in particular in employment areas outside of MTSAs.

### ***ECAs to inform provincial classification of major facilities***

To bring clarity to municipalities and to assist with municipal planning initiatives and consultant led compatibility studies, it would be helpful if the province considered assigning a classification, AOI or MSD, as per the guideline, to major facilities that require and obtain an ECA by the province. This would link the ECA process with the provinces own land use compatibility guidance and create consistency.

### ***Compatibility Studies***

#### ***Role and Responsibility***

For a municipality to determine when and where a compatibility study is needed as part of a complete application, is it the expectation that municipalities will have undertaken detailed assessment of all major facilities across the municipality to classify them, identify where AOIs are located, and in doing so identifying where compatibility studies are required as part of a complete application? This is perhaps the intent as outlined in Table 4 (Official Plan policies), but this should be clarified in the guideline.

If this is the case, asking a proponent of a development application to classify major facilities within their compatibility study area, according to the procedures described in the guideline, may be redundant.

Further, there may be challenges for municipalities to identify and classify major facilities, and assign an AOI, given limited available data on operational aspects of businesses.

#### ***Methodology for classifying major facilities***

If the expectation is that municipalities classify major facilities to determine AOIs, the methodology for classifying major facilities should be consistent and guidance should be provided as to who conducts these assessments for municipalities, in particular within a two-tier government.

### *Existing and planned major facilities*

The guideline speaks to completing compatibility studies and assigning AOIs to existing and planned major facilities. In regard to “planned” major facilities, additional guidance should be provided on what this includes. For example, does this include any land use designation and/or zone that may permit, amongst the range of permitted uses, a major facility? And if so, which major facility or classification would need to be considered on the property; a facility with the potential greatest impact?

### *Qualified individuals and peer review*

Section 2.6 states that compatibility studies should be prepared for the proponent by qualified individuals with experience in preparing technical assessments, and that the planning authority is responsible for reviewing the compatibility studies submitted by the proponent, and must be in agreement with the conclusions of the documents, prior to moving forward through the planning approvals process. If in-house expertise is not available, the planning authority should consider having a peer review of studies at the expense of the proponent.

Section 2.7 provides that there should be “general documentation” required for a compatibility study, which may exist outside of a technical assessment for noise, dust, odour or other contaminants as a stand-alone document.

Additional guidance on who is considered a “qualified individual” to complete a compatibility study is requested. As indicated in the guideline, compatibility studies require numerous professional experts to assess various aspects of compatibility such as noise and vibration, odour, air quality, etc. These studies are technical in nature and are typically carried out separately by engineers who do not necessarily have land use planning expertise. A compatibility study, which should bring all these various technical components together, is often prepared by another individual. Who is “qualified” in this case?

Most municipalities do not have technical experts on-staff and will require peer reviews of submitted compatibility studies. Under the *Planning Act* approval deadlines for OPAs and ZBAs, the requirement for studies to be peer reviewed significantly limits the ability for municipalities to respond to applications within the timeframes, opening up the

potential for appeal. Are options available to municipalities to ensure the timely processing of applications?

### ***Database of Facilities***

Additional guidance about who is responsible for maintaining and updating a database of major facilities over time should be provided. There are limited resources available for local municipalities to collect the necessary information to examine and classify major facilities across the municipality, maintain databases, and monitor and update over time. This is of particular concern to staff if it is the expectation that AOI mapping be included in Official Plan policies, as indicated in Table 4.

It is noted that areas of influence have the potential to fall over multiple jurisdictions.

### ***Timing***

Staff understand that there is no defined date when the new guideline would be finalized. At the June 2, 2021 information session hosted by MECP, it was approximated that the guideline may be finalized and approved by the end of 2021, or early 2022. The finalization of the guideline is of critical importance given the ongoing Halton Region Municipal Comprehensive Review, and the Town of Oakville's ongoing Official Plan Review. A significant amount of work has already been undertaken where the consideration of existing D-series guidelines have been considered and applied as part of developing preferred plans for MTSAs.

### ***Demonstration of Need***

Additional clarity is sought on how a proponent of a development, on a parcel of land that they own, is able to provide appropriate and accurate responses to the questions that are to be addressed in a Demonstration of Need study.

### ***Potential Ontario Land Tribunal (OLT) Appeals***

- The guideline provides that a municipality should recommend against the approval of a sensitive land use within an AOI or MSD that cannot be appropriately mitigated. Additional guidance and resources should be provided to assist planners who have made recommendations in conformity with this guideline, and are required to defend this position at the Ontario Land Tribunal (OLT) (formerly LPAT) in the case of an appeal.
- Is the classification of major facilities in Official Plan policies appealable? The guideline should provide direction on how to manage potential appeals to official



plan policies and zoning regulations should they be integrated into municipal documents.

### ***Mitigation Measures***

In regard to at-source mitigation measures listed in Section 3.1, are impacts from light pollution and light spillage considered in compatibility assessments? If so, light shielding could be considered to reduce light pollution and light spillage onto adjacent properties.

In regard to operational mitigation measures listed in Section 3.2, *Planning Act* tools are limited when trying to control operational considerations, such as limiting operations to day-time hours. These may be more appropriate in legal or other development agreements.

In regard to at-receptor mitigation measures listed in Section 3.3, “locating air intakes well above grade” is listed as an example of at-receptor mitigation. It is noted that this is not always the case, and in some instances air intakes cannot be located in elevated locations depending on the nature of the major facility impacts.

### **Closing**

The Town of Oakville is supportive of the general principles put forward in the Land Use Compatibility Guideline, and appreciate the work that has gone into harmonizing several of the D-series documents. The proposed guideline is much more user friendly and comprehensive. The decision making matrix (Figure 4) is particularly helpful, as is the guiding hierarchy for land use compatibility (Figure 1).

The Town is concerned, however, that an increased onus is placed on Regional and Local municipalities to create and maintain inventories of major facilities, without support from the Province, including maintaining an up-to-date inventory of facilities requiring Provincial approvals, such as ECAs. It is unclear if upper or lower-tier municipalities should be the “keeper” of the inventories, as they evolve over time, and how this may or may not impact Official Plan policy.

The Town of Oakville is also concerned that while the PPS and Growth Plan both have strong language for the protection of major facilities, and ensuring land use compatibility is considered in all decision making, there are many challenging areas, such as in MTSAs, where the province’s objectives and direction are at conflict with one another, and the hierarchy of objectives and priority is unclear.

Thank you for the opportunity to comment.



Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Gabe Charles', with a stylized, cursive script.

**Gabe Charles, MCIP, RPP**  
Director, Planning Services

- c. Diane Childs, MCIP, RPP  
Manager, Policy Planning and Heritage