



To: Chair and Members
Engineering and Public Works Committee

From: Stephanie Mack
Director, Waste Management and Environmental Services

Elizabeth Reimer
Manager of Planning

Date: June 21, 2021

Subject: Proposed Changes to Land Use Compatibility Guidelines – Ministry of the Environment, Conservation and Parks (Environmental Registry Number 019-2785)

Report: PW-8-2021-2

Recommendation

THAT Report PW-8-2021-2 **be submitted** as The District Municipality of Muskoka's (District's) response to the proposed draft Land Use Compatibility Guideline (Environmental Registry Number 019-2785).

Origin

On May 4, 2021, the Ministry of the Environment, Conservation and Parks (MECP) issued a proposal on the Environmental Registry of Ontario (ERO) to strengthen Ontario's approach to environmental compliance ([ERO 019-3268](#)). The overall proposal contains four separate update initiatives:

1. Land Use Compatibility Guideline (D-Series) ([ERO 019-2785](#))
2. Odour Guideline ([ERO 019-2768](#))
3. Compliance Policy (ERO 019-2972)
4. Administrative monetary penalties (consultation ongoing)

Feedback from municipalities and other stakeholders are requested by July 3, 2021. This report focuses on comments related to changes to the Land Use Compatibility Guideline (specifically changes to the former D-4 Series Guideline), where the most significant potential impacts have been identified for the District. Feedback to the Province on the fourth initiative is being reserved until further information becomes available.

Background

It is the intent of the Province to highlight the protection of human health and the natural environment as the top priority for the MECP. To ensure the industry/public's compliance with environmental laws, four initiatives are being proposed. It is the MECP's stated intent that these initiatives would:

- provide better tools and create clear and consistent guidelines for municipalities that they may use to make land use planning decisions where compatibility with major facilities must be considered;
- propose guidance on how industrial facilities, development proponents and other members of the regulated community can anticipate, prevent, and address compatibility issues;
- update the MECP's environmental compliance policy to prioritize high-risk incidents and better hold polluters accountable; and
- expand administrative monetary penalties to cover approximately 150,000 regulated entities, including individuals, small businesses, and large corporations as well as public entities like municipalities and crown corporations.

Updated Land Use Compatibility Guideline

The draft [Land Use Compatibility Guideline](#) (LUC Guideline) would amalgamate and replace eleven (11) documents that were primarily developed in the mid 1990s (i.e. D-1, D-2, D-4, and D-6 series). The LUC Guideline would apply to land use decisions for:

- a new or expanding sensitive land use proposed near an existing or planned major facility; and
- a new or expanding major facility proposed near an existing or planned sensitive land use.

The objectives of the consolidated and updated LUC Guideline are to:

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

Of particular interest to the District are the potentially significant impacts of the revised D-4 Guideline: Land Use on or Near Landfills and Dumps, which has now been consolidated into the draft LUC Guideline. As background and to understand the potential scale of the LUC Guideline's impact, there are currently 33 municipal and 64 non-municipal operating and non-operating waste sites spread across the District. LUC Guideline changes have the potential to impact development rights and associated development costs for approximately 3,600 properties that surround these sites.

Analysis

Changes to the Former D-4 Guidelines

The proposed changes to the D-4 Guideline are now consolidated in the proposed LUC Guideline and will affect development around current and future operating and non-operating landfills, dumps, and transfer stations with the primary implications being on landfills and dumps. As such, District staff from Planning and Solid Waste Management met with the MECP's Barrie District Office on May 26, 2021 to discuss the implications of the proposal and to better understand the anticipated ramifications for the District, which are summarized in Appendix I.

While the District supports the Province's goal of the protection of human health and the natural environment through enhanced compliance, the proposed LUC Guideline would reverse extensive work completed by the District, in partnership with the MECP's Barrie District Office, on assessing and reducing potential influence areas around municipal waste sites through site-specific technical environmental studies. The proposed LUC Guideline could effectively invalidate the findings of previously undertaken District-led D-4 assessments and negate the utility of future study. This has represented an investment of significant resources, including over \$253K to date, with further planned expenditures of \$117K to address non-municipal sites.

In the proposed LUC Guideline, the Minimum Separation Distance (MSD) and Area of Influence (AOI) would be fixed at 500 metres and the measuring methodology significantly changed (i.e. from property boundary rather than fill area), required studies enhanced, and apparent sterilization of any property adjoining an operating site, regardless of the size of the property and outcome. Potential influence areas around all landfills and dumps in the District would be reset at 500 metres from the site's property boundary without any mechanism to reduce the area of influence or consider the landfill footprint size, location on the property, or age.

These changes could bring additional and unnecessary "red tape" and hardship to Muskoka's taxpayers and unravel important environmental work already undertaken across this municipality. Flexibility to recognize the unique circumstances in the District and continue site-specific work in collaboration with the local MECP office is requested.

Additional Land Use Planning Considerations

While the proposed LUC Guideline does not have a regulatory standing, the MECP is recommending, and in the past the Ministry of Municipal Affairs and Housing (MMAH) was requiring, that municipalities demonstrate how the guidelines are met through incorporation into land use planning documents. Once provisions are included in Planning Act documents (e.g. official plans, zoning by-laws, site plan by-laws, etc.), the ability for discretion and flexibility is limited. Within that context, the two primary impacts of the updated guidelines include a larger number of properties impacted by increasing the baseline size of potential influence areas around waste sites and increased cost for development. Given the work previously undertaken by District EPW, the additional

requirements do not appear to have corresponding environmental or human health benefits but would result in unnecessary barriers for development.

The proposed LUC Guideline carries over and enhances the current study requirements, but appears to remove the ability to waive or scope such assessments or reduce the AOI. The “Demonstration of Need” is an additional study requirement when development is proposed within the AOI that appears to be an unnecessary, expensive process for many property owners wherein a proponent must examine whether there are any other more suitable sites within the municipality for the proposed development. As most proposals in Muskoka proximal to waste sites are redevelopment of existing residential properties, this requirement does not appear to add any value to the decision-making process and given the amount of vacant residential land in the District, may be an unfillable requirement for an applicant.

In addition to increasing the number of properties impacted by the guideline through enlarging the potential influence areas around existing sites, the LUC Guideline would effectively sterilize adjoining lots to operating waste disposal sites. It is estimated that up to 115 privately owned properties would no longer be developable with any sensitive land uses should the LUC Guideline come into effect – and the property owners likely are unaware of this change.

Other Items for Provincial Consideration

While the District is providing scoped feedback on one component of the proposed LUC Guideline, the two-month commenting window to review four related ERO postings, and most notably the 133 page proposed consolidated guideline document, is insufficient for the Area Municipalities to review, analyze and provide insight on any significant impacts at the lower tier level.

Recommendations for the Province

1. Maintain the baseline 500 metre AOI and 20-30 metres MSD, with flexibility to increase or decrease the AOI based on technical assessments, environmental investigations, and/or with discussion with the MECP’s District Offices. This would allow for site-specific evaluation of the landfill/dump itself – size, location of the footprint, age of waste, etc. noting that natural attenuation should be considered when assessing environmental impacts around older, smaller dumps.
2. For non-operating, closed, or historic waste disposal sites, permit the AOI/MSD to be measured from the delineated fill area.
3. Provide the flexibility to either scope or waive the requirement for a demonstration of need and/or the content of technical studies for small-scale development proposed within the AOI of waste sites.
4. Remove the proposed restriction of no development permitted on adjoining properties to operating waste disposal sites regardless of property size, and

replace with existing restriction of no development within 30 metres of a delineated fill area.

5. Extend the commenting period to allow for municipalities to review the proposed guidelines to obtain a thorough understanding of the impacts of the changes.

Financial Considerations

The District has invested over \$253K to date for environmental assessments for 24 municipal landfills related to reducing D-4 requirements and has planned expenditures of approximately \$117K to address non-municipal sites.

The results of the past assessments and the need to complete future investigations would be negated by the proposed guideline. This essentially nullifies the investment in District resources (including staff time) allocated to assessing each landfill/dump on a site-by-site basis.

Communications

District staff have consulted with the local MECP Barrie District Office to review the proposed changes and discuss how the LUC Guideline requirements would affect the work both parties have collaborated on since 2016. The MECP staff confirmed the District's interpretation of the proposed LUC Guideline and encouraged the submission of comments through the ERO.

Strategic Priorities

Click on the icons below to view strategies under each priority area.

				
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Respectfully submitted,

Stephanie Mack, P. Eng., Director, Waste Management and Environmental Services;
Elizabeth Reimer, MCIP, RPP, Manager of Planning;
Fred Jahn, P. Eng., Commissioner of Engineering and Public Works; and
Samantha Hastings, MCIP, RPP, Commissioner of Community and Planning Services

Appendix I to Report PW-8-2021-2
 Summary of Concerns – Proposed D-4 Guideline (now consolidated into the draft Land Use Compatibility Guideline)

Guideline Component	Existing Muskoka Official Plan Policy and/or Technical Requirements	Proposed	Anticipated Impact
Minimum separation distance (MSD) and Area of Influence (AOI)	AOI generally 500 metres, but may be expanded or reduced based on technical studies, MSD generally 30 metres but may be reduced to 20 metres based on technical assessments	AOI and MSD can never be less than 500 metres (Appendix E – Section 7.3)	MDS and AOI previously reduced through technical assessments will expand back to 500 metres resulting in more adjacent properties impacted
Measuring MSD and AOI	From boundary of facility (operating) or waste foot print (non-operating) or if neither are known, from the property boundary	Cannot use the fill area, measurement must either be from the facility (including expansion potential) or the property boundary (Appendix E – Section 7.1)	MDS and AOI previously reduced through technical assessments will expand back to 500 metres as measured from the property or facility boundary rather than the fill area resulting in more adjacent properties impacted
Enhanced studies and demonstration of need	Scoped technical assessment required for new uses or new/enlarged structures in the AOI	More detailed technical requirements, unclear if assessment scoping would be supported, demonstration of need required (Sections 2.7, 2.6 and 2.8, Appendices E and F)	A demonstration of need required for sensitive land uses proposed within AOI/MSD that evaluates alternative locations and need for proposed location, increasing technical review requirements resulting in increasing costs
No new sensitive land uses on properties adjoining operating landfills	No development permitted within 20-30 metres of a fill area a waste disposal site	Planning authorities must not consider Planning Act applications on lands adjoining operating landfills (Appendix E – Section 7.4)	Appears to be no flexibility and would impact adjoining properties regardless of size