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# C1: Staff Report

**Re: Proposed Land Use Compatibility Guideline**

 **Environmental Registry Posting 019-2785**

## Recommendation: That the Niagara Escarpment Commission (NEC) endorse the draft letter attached as Appendix 1 to this Staff Report and direct staff to submit the comments to the Ministry of Environment, Conservation and Parks (MECP) before the Environmental Registry deadline on July 2, 2021.

## Background:

The MECP has posted a proposed Land Use Compatibility Guideline (LUCG) on the Environmental Registry. The LUCG would replace the current D-Series Guidelines which assist agencies and municipalities in implementing the Provincial Policy Statement and evaluating industrial activities which may cause adverse effects for sensitive land uses such as residential land uses. As set out in the posting:

The Guideline specifies that the desired result is for major facilities and sensitive land uses to be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants and to minimize and mitigate any potential impacts to industrial, manufacturing or other uses

Although not all types of major facilities are permitted uses in all NEP designations, some of these types of uses are Existing Uses in the Niagara Escarpment Plan (NEP). NEC staff do receive Development Permit applications for expansions of them or new ones and must take into consideration NEP policy, the PPS, other Provincial guidance material as well as municipal official plan policy when making recommendations on applications. As such, the LUCG could have applicability to the NEP Area.

The LUCG as written however is only intended to apply to municipal planning authorities in their evaluation of a proposal for a new sensitive land use near a major facility or vice versa and to provide a land use compatibility tool to determine if mitigation measures are necessary to ensure compatibility between the two types of uses.

## Discussion:

### Current Guidelines

Appendix 1 explains why it would be beneficial for the LUCG to have applicability to planning decisions under the NEPDA as it does under the current D-6 guideline. NEC staff support ensuring that land use compatibility be considered as part of the review of planning applications under our legislation. It would support a harmonized approach to the review of planning applications under the NEPDA and the *Planning Act* between the NEC and the municipalities in considering land use compatibility and the types of supporting information that could be requested for applications involving industrial type development near sensitive land uses.

### Provincial Policy Statement 2020 (PPS)

The NEP is to be read in conjunction with the PPS but takes precedence over the PPS to the extent of any conflict. Where the NEP is silent on policies in the PPS, then the PPS applies where relevant. The NEP has limited policies on land use compatibility, but the NEC must take PPS policy, such as land use compatibility, into consideration when evaluating planning applications.

The PPS contains policies in Part 1.2 regarding land use compatibility to address possible adverse effects from major facilities on sensitive land uses. The LUCG, however, applies to encroachment of sensitive land uses on a major facility.[[1]](#footnote-1)

### NEP 2017

As set out in the attached letter (Appendix 1), the Purpose of the NEP is to ensure that only development compatible with the natural environment is permitted. The Development Criteria has a general objective “to permit reasonable enjoyment by the owners of all lots that can sustain development”. It is therefore a consideration for the NEC as a planning authority to balance new development, such as infrastructure or mineral aggregate operations, against its impact on other sensitive land uses and natural heritage features. Being able to request the types of studies outlined in the proposed LUCG as part of a complete application and as part of pre-consultation, where necessary, would be of assistance to NEC staff in evaluating possible adverse effects.

## Conclusion:

NEC staff is of the opinion that the proposed LUCG also apply under the NEPDA and NEC staff should be able to require a compatibility study to assess industrial land uses, in addition to municipalities being able to require them. The NEC is a planning approval authority and must make decisions on Development Permit Applications prior to municipal planning decisions on lands within the NEP Area.

If the proposed LUCG recognizes this, then NEC staff could incorporate a compatibility study in the proposed NEC technical criteria for complete applications and apply the appropriate analysis for applications which involve new or expanding industrial uses near sensitive land uses. NEC staff recommend that the NEC endorse the draft letter in Appendix 1 so that we can submit the comments before the July 2 deadline.

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Director

**Appendix 1** – draft comments on ER Posting 019-2785

1. Major facility is defined in the PPS to include uses such as: airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, sewage treatment facilities, pipelines and resource extraction activities. [↑](#footnote-ref-1)