

**THE CORPORATION OF THE TOWNSHIP OF WELLINGTON NORTH
SUPPLEMENTARY AGENDA OF REGULAR COUNCIL MEETING
SEPTEMBER 9, 2024 AT 2:00 P.M.
MUNICIPAL OFFICE COUNCIL CHAMBERS, KENILWORTH
HYBRID MEETING - IN PERSON AND VIA WEB CONFERENCING**

ITEMS FOR CONSIDERATION

4. FINANCE

- a. Report TR 2024-007, 2025 fees and charges by-law updates (various services)

Corrected Recommendation:

THAT the Council of the Corporation of the Township of Wellington North receive Report TR2024-007 being a report on 2025 fees and charges by-law updates (various services);

AND THAT Council direct staff to proceed with the updates to reflect the changes outlined herein for the 2025 calendar year;

AND FURTHER THAT the Mayor and Clerk be authorized to sign the By-law.

7. COUNCIL

- c. John M. Alati, Davies Howe Land Development Advocacy & Litigation, correspondence dated September 3, 2024, regarding written submission of North Arthur Developments Inc. (Cachet), Application No. ZBA 10/24, Clark Brothers Contracting Ltd., 510 Eliza Street, Wellington North

Recommendation:

THAT the Council of the Corporation of the Township of Wellington North receive correspondence from John M. Alati, Davies Howe Land Development Advocacy & Litigation, dated September 3, 2024, regarding written submission of North Arthur Developments Inc. (Cachet), Application No. ZBA 10/24, Clark Brothers Contracting Ltd., 510 Eliza Street, Wellington North

September 3, 2024

By E-Mail to tpringle@wellington-north.com

Tammy Pringle, Development Clerk
Township Wellington North
PO Box 125, 7490 Sideroad 7 West
Kenilworth, ON N0G 2E0

Dear Ms. Pringle:

**Re: Written Submissions of North Arthur Developments Inc. (“Cachet”)
Township of Wellington North Council Meeting (September 9, 2024)
Application No. ZBA 10/24 (the “ZBA Application”)
Clark Brothers Contracting Ltd. (the “Applicant”)
510 Eliza Street, Wellington North (the “Clark Lands”)**

We are counsel to Cachet, the owner of lands directly west and southwest of the Clark Lands in the Township of Wellington North and the County of Wellington (the “**Cachet Lands**”). A map of the Subject Lands is enclosed at **Schedule A**.

The Applicant’s ZBA Application proposes to rezone a portion of the Clark Lands to facilitate the construction of a ready-mix concrete plant, which proposes to include a concrete batch plant, outside storage of aggregate and machinery, an area for washing trucks, concrete blocks and a new private well and septic system on the Clark Lands (the “**Concrete Plant Proposal**”). The rezoning is required, in part, because the Township of Wellington North (the “**Township**”) Zoning By-law prohibits concrete plants throughout the Township unless a rezoning application is approved. The ZBA Application also seeks relief from the minimum front yard requirements.

On behalf of Cachet, we request that the Township refuse the ZBA Application in its current form, or alternatively, to defer the ZBA Application until future studies and approvals are obtained.

Background

In February 2021, our client obtained the authorization of the Applicant to submit a zoning by-law amendment application to the Township and draft plan of subdivision and official plan amendment applications to the County of Wellington (the “**County**”), to permit a residential and mixed-use subdivision on both the Cachet Lands and the Clark Lands (the “**Cachet Applications**”). The Cachet Applications were subsequently revised in June

2023, and ultimately proposed to provide 212 additional residential units on the Cachet Lands and within the Township, as well as the potential for other mixed uses primarily on the Clark Lands. While the Cachet Applications also included submission materials for an official plan amendment and draft plan approval, the submission included a large suite of reports in support of the applications, including a Planning Justification Report, Land Needs Analysis, Land Use Compatibility Study for both air and noise, Transportation Impact Study, Functional Servicing Report and relevant updates to each report for the resubmission.

As the Cachet Applications did not proceed due to changes in provincial legislation, the Applicant requested that the Clark Lands be removed from the Cachet Applications and in May 2024, the Applicant instead submitted the ZBA Application to the Township and a consent application to the County (the “**Consent Application**”) to facilitate the Concrete Plant Proposal on the Clark Lands. In contrast to the Cachet Applications, the Applicant only submitted a Planning Justification Report and a Preliminary Functional Servicing Report. It did not submit any land use compatibility studies, traffic impact studies or a detailed concept plan.

On July 8, 2024, a public meeting was held for the ZBA Application. In advance of the public meeting, County planning staff prepared a report for the Township dated June 28, 2024 (the “**ZBA Staff Report**”). On behalf of Cachet, we submitted written correspondence in advance of the meeting expressing Cachet’s objections to the ZBA Application.

On August 12, 2024, a Township Council meeting was held where Council adopted staff’s recommendation to support the approval of the Consent Application provided that the County imposes certain conditions, including that driveway access for both the severed and retained lands is to the satisfaction of the Township; that prior to constructing a new entrance or modifying an existing entrance, the Owner must obtain an entrance permit; and that the unopened road allowance (Macaulay Street) be opened and extended to the satisfaction of the Township. County staff also issued an information report for the Consent Application which was dated August 2, 2024 (the “**Consent Information Report**”). It is our understanding that the County Land Division Committee will be considering the Consent Application on September 12, 2024.

The Concrete Plant Proposal is Premature

Lack of Studies and Environmental Approvals

The only supporting studies provided to the Township are a Planning Justification Report; a Preliminary Functional Servicing Report; a letter of environmental compliance; a letter outlining additional approvals; and a more recent letter from GM BluePlan Engineering (“**BluePlan**”) entitled D-6 Guideline Discussion. The lack of studies provided and letters “outlining additional approvals” demonstrate that the ZBA Application should not be

considered until additional studies are conducted and additional approvals are obtained. The ZBA Staff Report states that an environmental compliance approval (“**ECA**”) is required for stormwater under the *Ontario Water Resources Act*, that an ECA for air and noise is required from the Ministry of Environment, Conservation and Parks (“**MECP**”) and that if daily water taking exceeds 50,000 L/day, a permit to take water is required from the MECP. According to the province’s “Access Environment” portal which lists detailed information about ECAs and permits to take water, none of these approvals have been granted as of the date of this letter.

Further, in the letter dated August 7, 2024 from BluePlan to Teeswater Concrete, an agent of the Applicant, BluePlan states that the D-6 Guidelines, which assess Compatibility between Industrial Facilities, are “most applicable to scenarios where a change in zoning [...] occurs resulting in incompatible land use issues” and therefore not as relevant here since the requested zoning amendment to include the concrete plant will not change the current land-use of the property. However, this is misleading as the D-6 Guidelines are not specific to changing land use from residential to industrial (or vice versa), but rather, the guidelines apply when any change in land use is proposed, and the intent is to achieve protection from off-site adverse effects. The proposed use of the Clark Lands is a different and heavier industrial use than what exists today. As a result, the D-6 Guidelines apply. A letter prepared by Dillon Consulting further outlining this concern is enclosed with these submissions as **Schedule B** (the “**Compatibility Letter**”).

Deferring Compatibility Concerns to “Future Approvals”

The lack of studies and approvals submitted to the Township and available to the public are particularly concerning since staff note in the ZBA Staff Report that there are existing residential dwellings nearby to the Clark Lands but that noise and dust emissions “will be addressed through required ECA approvals by the province”. Essentially, staff are recommending that Township Council approve the ZBA Application absent any analysis as to whether the Concrete Plant Proposal is compatible with the surrounding sensitive land uses, including Residential to the south and southeast, Recreational to the south and Future Development to the north, south and west. The below excerpt of the County’s Official Plan Schedule B6-2, Arthur Land Use Designations, demonstrates the proximity of the Clark Lands to these sensitive land uses, including the lands north of the Clark Lands, owned by Tribute/Sorbara Arthur Holdings Inc.

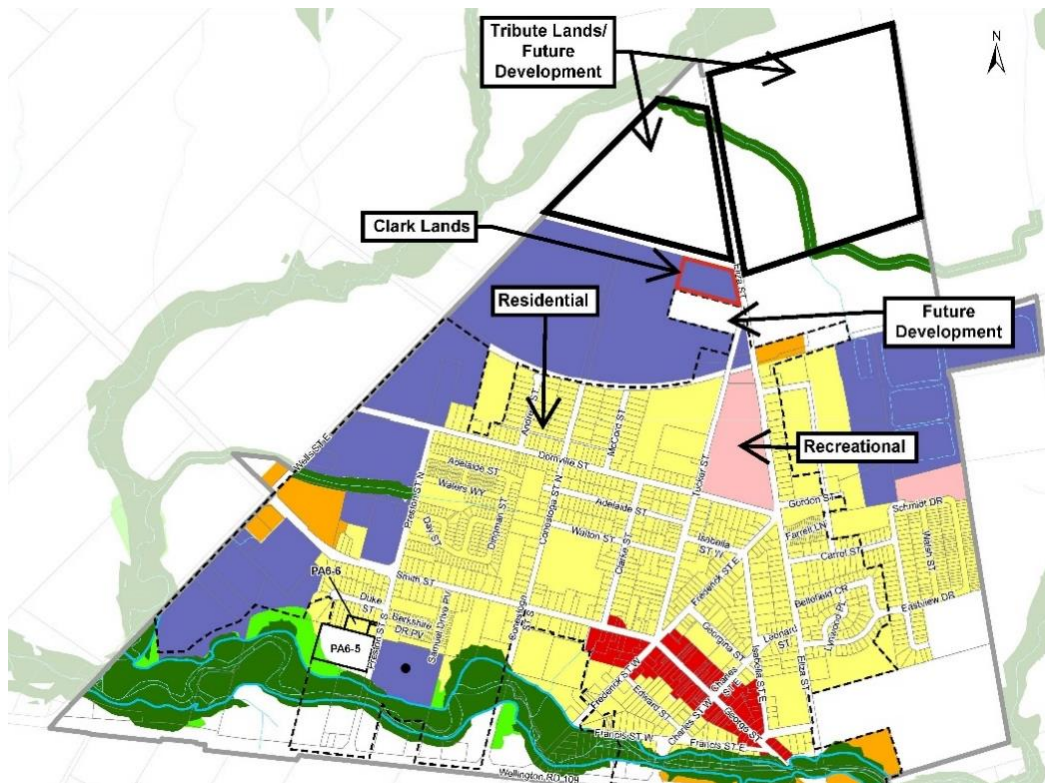


Figure 1: Excerpt of Schedule B6-2 of the County Official Plan, showing the Clark Lands and surrounding existing and planned sensitive uses.

Approving the ZBA Application without any indication that the Concrete Plant Proposal is compatible with the surrounding sensitive land uses is premature and does not represent good planning. Ensuring compatibility is expressly required by policy 1.2.6 of the Provincial Policy Statement, 2020 (the “**PPS**”), policies 2.2.5.7 and 2.2.5.7 of the Growth Plan and policies 7.4.1, 7.4.3 and 7.4.10 of the County’s Official Plan. It will also be required pursuant to policies 3.5.1 and 3.5.2 of the proposed Provincial Planning Statement, 2024 (the “**PPS 2024**”), which becomes effective on October 20, 2024.

Since no compatibility study was submitted with the ZBA Application, the Township and the public do not have the required information to determine whether the Concrete Plant Proposal is compatible with the Primary Urban Centre of Arthur, including information in relation to the hours of operation of the plant, the number and frequency of trucks, the proposed truck routes to the facility, the location of the aggregate stockpiles, the location of the wash pits for the trucks, an on-site circulation plan and whether additional mitigation measures are required, such as requirements to ensure no tailgate slamming, installation of a noise berm and/or fence, a gate to the facility and any other measures to ensure the operation does not result in a nuisance to nearby landowners. In delegating the compatibility analysis to the province, Township Council is not able to make a decision that is consistent with the PPS, conforms to the Growth Plan or conforms to the County’s

Official Plan, particularly when considering its proximity to sensitive land uses. This concern and requirement for a land use compatibility study in advance of obtaining zoning approval is further addressed in the Compatibility Letter, which explains the differences between obtaining MECP approval and zoning approval from a land use compatibility perspective. For example, the MECP does not consider lands zoned “Future Development” when determining whether the Concrete Plant Proposal will impact the surrounding lands. This means that there will be no consideration as to whether those lands can be developed as residential in the future should the Concrete Plant Proposal be approved.

Further, in accordance with section 4.4.6 of the D-6 Guidelines, it is the responsibility of the local municipality to restrict, through zoning or other available means, the types of future industrial uses that can occur, so that they are compatible with the influence area and it is noted in the Guideline that zoning by-laws cannot control the level of emissions produced or technology used, hours of operation or traffic movements. Since a ready-mix concrete plant is not permitted as of right on the Clark Lands, without a land use compatibility study to determine whether the Concrete Plant Proposal is compatible with the surrounding area, it is unclear how the local municipality will restrict or regulate such proposed change in industrial use.

Lack of Consent Application Approval

The Applicant has not obtained approval of the Consent Application. As discussed above, Township staff indicated that they support the Consent Application subject to certain conditions, including that the Township is satisfied with the proposed driveway access and that the unopened road allowance (Macaulay Street) be opened and extended to its satisfaction. The Consent Information Report also indicates that the driveway access and unopened road allowance must be addressed, and that servicing must be provided to the satisfaction of the Township.

Absent a traffic/transportation impact study, the sufficiency of the driveway access and unopened road analysis is unknown, and it is unclear how these conditions can be met. In relation to servicing, the Concrete Plant Proposal proposes to use a private well and septic system; however, both the Applicant and the Township acknowledged that the proposed private well/septic system arrangement is short-term and will be decommissioned once municipal water and sanitary sewage services are available to the Clark Lands. The County conducted a Municipal Comprehensive Review Municipal Servicing Analysis as part of its Official Plan Review dated January 31, 2022, which states that the Township intends to undertake Phase 2 upgrades to the Arthur Wastewater Treatment Plant within the next two to four years (i.e. by 2024-2026). Further, the Township’s Growth Management Action Plan Background Report dated March 2024 (the “**Growth Management Plan**”) indicates in Appendix D that it has allocated funding in its 10-year capital budget to construct the Arthur Water Tower (\$5,953,500), the Arthur Water Supply (\$5,103,000) and to upgrade the Arthur Wastewater Plant (\$13,500,000).

Accordingly, it is premature and an inefficient use of Township resources to approve a proposal with a servicing arrangement that will be decommissioned in the near future.

Considering the ZBA Application in advance of the Consent Application is premature, bifurcates the planning process and does not ensure that planning proceeds in an integrated, comprehensive manner. There is a corollary concern that approving the zoning in advance will be used by the Applicant to argue that the Consent Application is appropriate and should be approved, rather than judging the Consent Application on its own merits. Accordingly, the rezoning application is premature in advance of obtaining a consent.

Road Opening and Traffic Impacts

The Concrete Plant Proposal proposes to open and construct the currently unopened Macaulay Street, which would become a Local Road consisting of 77 m from Eliza Street and ending at the westerly limit of the Clark Lands. The Applicant will use Macaulay Street to provide frontage for the new proposed lot. According to the road allowance, Macaulay Street is proposed to be extended to Wells Street. It is our understanding that its purpose is to decrease the amount of traffic that would otherwise go through downtown Arthur. However, without the development of the Cachet Lands, Macaulay Street will remain a dead-end at the western portion of the Clark Lands, and not fulfil its intent and purpose.

In addition, given the compatibility concerns expressed above, should the ZBA Application be approved as contemplated, it will be substantially more difficult for Cachet to develop its lands in an economically feasible way. As such, the proposed road opening and access should be further studied to determine whether it is appropriate if it does not extend to Wells Street, since this means that any trucks going south will have to proceed through the existing community, including downtown Arthur.

Further, policy 7.4.2 of the County's Official Plan requires that appropriate sighting standards must be met on all roads and road functions maintained. A traffic impact study should be conducted that considers the road opening, access and any other traffic impacts on nearby intersections and roadways that will naturally result from an increase in heavy truck use and the turning movement/sweep path that the trucks require.

Impacts on Future Development

The PPS and the Growth Plan direct municipalities to provide for an appropriate range and mix of housing options; to promote densities for new housing which efficiently use land, resources, infrastructure and public facilities; and to permit and facilitate all housing options required to meet social, health, economic and well-being requirements of current and future residents. This direction is further emphasized in the County's Housing Policy Review dated April 11, 2024 (the "**County Housing Review**"), which was prepared with the stated intent of applying a housing-focused lens to the policies of the Official Plan as

the County goes through its Official Plan Update. The PPS 2024 accentuates this direction by stating that, more than anything, a prosperous Ontario will see the building of more homes, and that the province's goal is to get at least 1.5 million homes built by 2031.

The County's Official Plan designates the Clark Lands as within a Settlement Area and a Primary Urban Centre. The County's Official Plan has clear direction that Primary Urban Centres are to be the central places in Wellington and that they should form complete and compatible communities. Policy 3.3 of the Official Plan states that one of the County's objectives is to promote growth in Primary Urban Centres through intensification and redevelopment where it can be accommodated, taking into account small town scale and historic streetscapes; policy 7.4.1 of the Official Plan states that Primary Urban Centres are expected to provide a full range of land use opportunities; and policy 7.4.3 directs that more detailed planning policies and zoning regulations shall be developed for Primary Urban Centres to ensure that existing and proposed uses are compatible and that adverse impacts are kept to a minimum and that appropriate mitigation is provided where practical.

While we acknowledge and appreciate that industrial uses are permitted in Primary Urban Centres, in this case, the Concrete Plant Proposal, which is a particularly heavy industrial use that is prohibited by the Township's Zoning By-law and has many associated emissions and potential to cause nuisance, will not assist in implementing the County's vision for Primary Urban Centres as it will effectively prohibit and/or dissuade residential development on the lands designated as "Future Development" to the north, northeast and south of the Clark Lands. Policy 7.4.10 of the Urban Centre Policies provides more direction on the County's vision for industrial uses in Urban Centres and states that urban centres shall contribute to the supply of industrial land; however, new industrial areas are required to avoid land use conflicts and be readily serviced. Policy 8.7.1 contemplates that industrial uses form part of Primary Urban Centres; however, section 8.7.4 sets out certain design considerations to create industrial areas that "confer a positive visual image and foster community pride". The Concrete Plant Proposal fails to conform to this design criteria. In particular:

- Design criteria a) requires that industrial traffic be directed away from residential neighbourhoods wherever practical. In this case, heavy trucks/industrial traffic will likely use Eliza Street, passing through multiple existing residential areas.
- Design criteria b) requires that, among other things, appropriate screening and outdoor storage and yard requirements be regulated by the Zoning By-law. While the Planning Justification Report indicates that a berm exists on the southern boundary of the Clark Lands, and that the operator of the concrete plant intends to create stockpiles near the southern boundary for further buffer, the report then states that "matters of this nature can be further addressed at

the Site Plan Agreement stage”. Deferring appropriate screening and storage requirements to site plan for such a heavy industrial use is concerning as it is entirely unclear the types of screening proposed, whether the Applicant will be implementing screening to the north, west and east of the Clark Lands and the extent of the proposed outdoor storage.

- Design criteria e) requires that visual screening such as plantings, fencing or other forms of buffering shall be required where an industrial area abuts a residential or institutional area. Again, it is unclear what, if any, visual screening will be implemented.
- Design criteria f) requires that separation distances be implemented from existing incompatible land uses. As discussed above, while the Concrete Plant Proposal may have some separation from the “yellow” Residential designations, with the exception of the residential dwelling to the south which is only 115 m away, it does not have separation from the “white” Future Development designations and therefore effectively makes residential development of those lands substantially more difficult, if at all possible.

The County Housing Review states that the County is facing increased challenges related to housing. Creating additional difficulties for landowners to propose and provide additional housing to the County will only contribute to this housing challenge. In addition, the Township’s Growth Management Plan identified that the housing supply potential on designated land in the Arthur Urban Centre will have a shortfall of low-density units by 2041, and that the Township would need to consider development the Future Development lands by 2036 “in order to ensure an adequate supply of housing in Arthur”. Should the Concrete Plant Proposal be approved, the lands zoned Future Development to the north and north-east of the Clark Lands will be substantially more difficult to develop with sensitive land uses, including residential, from a compatibility and cost perspective.

Permitting the Concrete Plant Proposal is not only contrary to the County’s Housing Review, Official Plan and the Township’s Growth Management Plan, but it is inconsistent with the prominent provincial direction to build more homes, faster.

Conclusion

For the above noted reasons, we request that the Township refuse the ZBA Application. In the alternative, we request that the Township defer its decision on the ZBA Application until the Applicant has obtained all its environmental approvals and completed the required compatibility and traffic impact studies so that the Township and public can

determine whether the proposal is compatible with and promotes the objectives of the Primary Urban Centre of Arthur.

We thank the Township for taking these submissions into consideration and request notice of any decisions, future meetings, submissions, publication of materials including staff reports, or any appeal with respect to the ZBA Application.

Should you have any questions, please do not hesitate to contact me or my associate, Grace O'Brien at graceo@davieshowe.com.

Yours truly,
DAVIES HOWE LLP



John M. Alati

JMA:GO
encl.: as above

copy: Client
Dillon Consulting Limited

Schedule A



Schedule A – Map of Cachet and Clark Lands

LEGEND

- North Arthur Developments Inc. Lands
- Clark Brothers Contracting Ltd. Lands

LOTS 76, 77, 78, 100, 101, 102 & PART OF MCCORD STREET
 MCCORD'S SECOND SURVEY
 PART PARK LOTS 1 & 2, CROWN SURVEY
 SOUTH SIDE OF MACAULAY STREET
 PART PARK LOT 1, CROWN SURVEY
 NORTH SIDE OF DOMVILLE STREET
 (GEOGRAPHIC VILLAGE OF ARTHUR)
 TOWNSHIP OF WELLINGTON NORTH
 COUNTY OF WELLINGTON



SCALE NTS
 JUNE 27, 2023



Schedule B



September 3, 2024

Township of Wellington North
7490 Sideroad 7 West
Kenilworth, Ontario
N0G 2E0

510 Eliza Street, Arthur, Wellington North Zoning Amendment – Land Use Compatibility

Dillon Consulting Limited (Dillon) was retained by North Arthur Developments Inc. (NAD) to provide support on Land Use Compatibility for a proposed residential development located between Eliza Street and Wells Street East, north of Domville Street in Arthur, Ontario. Dillon has completed an air quality assessment and HGC Engineering has completed a noise and vibration assessment in support of a Zoning By-law Amendment for the proposed residential development.

The purpose of these Assessments was to consider the potential for nuisance impacts resulting from air quality (including odour and dust) emissions and potential noise and vibration impacts from surrounding existing land uses on the proposed residential development.

The lands located directly to the north of the NAD proposed residential development, at 510 Eliza Street, are seeking a Zoning By-Law Amendment to facilitate the construction of a ready-mix concrete plant. It is Dillon's understanding that a Land Use Compatibility study has not been completed in support of the Zoning By-Law Amendment application, and the applicant wishes to assess compatibility as part of the Provincial Approvals process through an Environmental Compliance Approval (ECA).

In a letter dated August 7, 2024 from GM BluePlan Engineering ("BluePlan"), BluePlan states that "the Guideline [D-6] is most applicable to scenarios where a change in zoning (from Residential to Industrial, and vis-versa) occurs resulting in incompatible land use issues". Dillon disagrees with this statement as the D-Series Guidelines are not specific to changing land use from residential to industrial or vice versa. Per D-1, "The guideline is intended to apply only when a change in land use is proposed".

Furthermore, the BluePlan letter discusses that the lands are already zoned for industrial use. The BluePlan letter references Section 4.4.6 of the D-6 Guidelines:

Changing industrial uses (4.4.6)

"Where an influence area has been established based upon existing industrial land uses, it will be the responsibility of the local municipality to restrict, through zoning or

111 Farquhar Street
Suite 301
Guelph, Ontario
Canada
N1H 3N4
Telephone
519.571.9833
Fax
519.571.7424



any other available means, the types of future industrial uses that can occur, so that they are compatible with the influence area used.”

However, the BluePlan letter fails to reference the subsequent paragraph of Section 4.4.6 of the D-6 Guideline:

“Note: Zoning by-laws cannot control the level of emissions produced (related to specific products) or technology used, hours of operation or traffic movements. It is difficult to correlate zoning by-laws with the industrial classifications set out in Appendix A, and therefore site-specific/spot zoning or a requirement for re-zoning by the municipality may be necessary to ensure that the establishment of new industrial uses comply with this guideline. See Section 4.2.2, “Determining Permitted Uses Within Industrial Land Use Designations” also.”

Additionally, Section 2.3.2 of D-1 states:

Compliance with Existing Zoning and Official Plan Designation (2.3.2)

“This guideline does not normally affect a change in land use, an expansion, or new development, for either a facility or a sensitive land use which is in compliance with existing zoning, and the official plan designation, except for plans of subdivision and condominium and/or severances. In these exceptional situations, Ministry staff may require studies(see Guideline D-6, “Compatibility Between Industrial Facilities and Sensitive Land Uses, Sections 4.6, “Studies”and 4.7, “Mitigation”), and the identification of any necessary mitigative measures to prevent or minimize any potential ‘adverse effects’.”

“If a proposed use is permitted in the official plan, but rezoning is required, or if both redesignation and rezoning are required, then this guideline shall apply.”

As a Zoning By-Law Amendment is required to allow the construction of a ready-mix concrete plant, Section 2.3.2 and the entirety of Section 4.4.6 of the D-Series Guidelines are applicable. A detailed Land Use Compatibility Study should be completed prior to the granting of the Zoning By-Law Amendment.

The BluePlan letter states “By definition, there cannot be a compatibility issue based on MECP noise/dust (air) requirements since the ECA is not granted if the base criteria cannot be met. These requirements are more stringent than the current operation and use of the lot as a contractor yard with aggregate storage and management where an ECA is not required.”

The requirements for the level of compatibility (more or less stringent) do not change based on the type of industry. However, the provincial reporting and application



requirements do change based on the type of industry. As a ready-mix concrete plant does require an ECA, this indicates that the proposed operations are more intense than the current operations.

While both an ECA and Land Use Compatibility study require assessment of potential air quality and noise impacts, there are nuances with respect to the requirements of each application. Some sources are exempt from the ECA process (Section 9 of the EPA), but not exempt from the Land Use Compatibility process (Section 14 of the EPA). Furthermore, relying on the MECP and ECA process removes the ability for adjacent property owners to understand the potential impacts from the industrial operations at their lands. The MECP review process may take up to 1 year from the submission of the application for review. As such, potential compatibility issues between the proposed ready-mix concrete plant and the existing nearby sensitive uses may be discovered too late in planning process.

As part of the Provincial Approvals process, the Ministry of the Environment, Conservation and Parks (MECP) will review the application. However, the MECP would not consider the future long-term plans of the municipality including, any potential Future Development outlined in the Official Plan, or the Wellington North Growth Management Action Plan. Therefore, the MECP would not consider these lands as potential sensitive uses.

Once the lands are re-zoned to allow for an intensified industrial application, all proposed developments in the surrounding area would be obligated to consider the worst-case potential air quality and noise impacts from those lands (even if vacant). An amendment to the Zoning By-Law to allow for a ready-mix concrete plant at this time (without a detailed understanding of the potential air quality and noise issues), would make it much more challenging, and potentially impossible, to introduce residential uses in the area.

Delaying the Land Use Compatibility assessment beyond the Zoning By-Law Amendment does not align with the Provincial Policy Statement (PPS) and D-Series Guidelines. The technical studies need to be completed and reviewed prior to the granting of a Zoning By-Law Amendment.

The intent of the MECP D-Series of Guidelines is to minimize or prevent, through the use of buffers and separation of uses, the encroachment of incompatible land uses. Guideline D-6 delegates responsibility to the planning authorities and requires that they be followed where there is potentially encroachment of industrial lands to sensitive land uses and vice versa.



Guideline D-6 prescribes Recommended Minimum Separation Distances and Potential Influence Areas based on three industrial classifications (i.e., Class I, Class II, and Class III). The Potential Influence Area is the area within which adverse effects from an industry may be experienced at a sensitive receptor. It also represents the area between an industry and sensitive receptors within which technical studies should be performed to demonstrate the uses are compatible prior to approval. These studies may include air dispersion and environmental noise modelling to determine the actual influence area, which is defined by Guideline D-6 as the overall range within which an adverse effect would be or is experienced. Should the actual influence area intersect with a sensitive land use, further detailed assessment may be required to assess compatibility and determine mitigative solutions, as required.

The Potential Influence Area and Recommended Minimum Separation Distance for each industry class as defined by the D-Series Guidelines are provided in Table 1. The described distances vary for Class I, II, and III industries due to the frequency and magnitude of potential adverse effects.

Table 1: Industrial Classification Study Distances

Industrial Categorization	Potential Influence Area (m)	Recommended Minimum Separation Distance (m)
Class I	70	20
Class II	300	70
Class III	1000	300

A ready-mix concrete plant would typically be classified as a Class II industry. If crushing operations are proposed, then a Class III industrial categorization would be more appropriate. As there are currently existing sensitive uses within the Potential Influence Area and the Recommended Minimum Separation Distance there is the potential for adverse effects from the proposed industrial operations on the surrounding sensitive uses.

To reiterate, a Zoning By-Law Amendment to allow for a ready-mix concrete plant should not be granted until a detailed Land Use Compatibility study has been completed to understand the potential impacts with respect to air quality, dust, odour, noise, and vibration on the surrounding sensitive uses.

Land Use Compatibility assessment should be completed with consideration of the following Acts, Regulations, and Guidelines:



- The Provincial Policy Statement (PPS), 2020;
- The Ontario Environmental Protection Act (EPA);
- The MECP D-Series of Guidelines for land use compatibility between industrial and sensitive land uses;
- The MECP Environmental Noise Guidelines, NPC-300;
- The MECP Impulse Vibration in Residential Buildings, NPC-207; and
- The MECP local air quality regulation, Ontario Regulation 419/05.

A detailed summary of the above Acts, Regulations, and Guidelines are provided in the attached Appendix A.

Please don't hesitate to contact the undersigned with any questions.

Sincerely,

DILLON CONSULTING LIMITED

Lucas Arnold, P.Eng.
Associate

Appendix A

Summary of Acts, Regulations, and Guidelines

Provincial Policy Statement, 2020

The latest update to the Provincial Policy Statement (PPS) was issued under Section 3 of the Planning Act and came into effect May 1, 2020. The PPS provides policy direction on matters of provincial interest related to land use planning and development. The update to the PPS supports the government's goals related to increasing housing, supporting jobs, and reducing red tape.

The PPS states under Part V Section 1.2.6:

"1.2.6.1 Major facilities and sensitive land uses shall 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, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures.

1.2.6.2 Where avoidance is not possible in accordance with policy 1.2.6.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:

- a. *there is an identified need for the proposed use;*
- b. *alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;*
- c. *adverse effects to the proposed sensitive land use are minimized and mitigated; and*
- d. *potential impacts to industrial, manufacturing or other uses are minimized and mitigated."*

Employment Areas are defined under the PPS as "those areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities."

The PPS states in Section 1.3.2 that in relation to Employment Areas:

"1.3.2.2 At the time of the official plan review or update, planning authorities should assess employment areas identified in local official plans to ensure that this designation is appropriate to the planned function of the employment area.

111 Farquhar Street
Suite 301
Guelph, Ontario
Canada
N1H 3N4
Telephone
519.571.9833
Fax
519.571.7424



Employment areas planned for industrial and manufacturing uses shall provide for separation or mitigation from sensitive land uses to maintain the long-term operational and economic viability of the planned uses and function of these areas.

"1.3.2.3 Within employment areas planned for industrial or manufacturing uses, planning authorities shall prohibit residential uses and prohibit or limit other sensitive land uses that are not ancillary to the primary employment uses in order to maintain land use compatibility.

Employment areas planned for industrial or manufacturing uses should include an appropriate transition to adjacent non-employment areas."

Environmental Protection Act

The Ontario Environmental Protection Act (EPA) provides a framework under which industrial compliance and land use compatibility are assessed. With respect to land use compatibility, the EPA provides direction that:

1. Under Section 9 of the EPA, all regulated industrial and commercial facilities must apply for and obtain approval for any activities that may cause or results in contaminants to be discharged to the natural environment, as described in regulations 419/05 and 1/17;
2. Under Section 14 of the EPA, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect. Adverse effects are defined within the EPA as:

"one or more of,

- a) impairment of the quality of the natural environment for any use that can be made of it,*
- b) injury or damage to property or to plant or animal life,*
- c) harm or material discomfort to any person,*
- d) an adverse effect on the health of any person,*
- e) impairment of the safety of any person,*
- f) rendering any property or plant or animal life unfit for human use,*
- g) loss of enjoyment of normal use of property, and*
- h) interference with the normal conduct of business;"*

The EPA's definition of a contaminant includes but is not limited to: air contaminants, odours, noise, and vibration, and has been determined in past decisions to include



light. Obtaining approval for air and noise requires that a facility demonstrate, through a technical assessment, compliance with the applicable guidelines and regulations such as Ontario Regulation 419/05 and NPC-300.

The adverse effect clause in the EPA is applicable to the assessment of nuisance complaints in a land use compatibility context. Nuisance contaminants, such as dust, odour, noise and vibration, may result in complaints which may be determined to fall under the adverse effects clause.

D-Series Guidelines

The intent of the MECP's D-Series of Guidelines is to minimize or prevent, through the use of buffers and separation of uses, the encroachment of incompatible land uses. Guideline D-6 delegates responsibility to the planning authorities and requires that they be followed where there is potentially encroachment of sensitive land uses to existing industrial lands and vice versa.

With respect to Guideline D-6, sensitive receptors include: residences, senior-citizen homes, schools, day care facilities, hospitals, and churches or similar institutional uses, as well as recreation areas deemed by the planning authority to be sensitive. Certain commercial and institutional uses may be deemed sensitive on a case-by-case basis and based on typical operating hours.

Guideline D-6 prescribes Recommended Minimum Separation Distances and Potential Influence Areas based on three industrial classifications (i.e., Class I, Class II, and Class III). The Potential Influence Area is the area within which adverse effects from an industry may be experienced at a sensitive receptor. It also represents the area between an industry and sensitive receptors within which technical studies should be performed to demonstrate the uses are compatible prior to approval. These studies may include air dispersion modelling to determine the actual influence area, which is defined by Guideline D-6 as the overall range within which an adverse effect would be or is experienced. Should the actual influence area intersect with a sensitive land use, further detailed assessment may be required to assess compatibility and determine mitigative solutions, as required.

The Recommended Minimum Separation Distance from an industry represents the area within which adverse effects to a sensitive land use are likely to occur. For a



proposed industry, if sensitive land uses are located within the Recommended Minimum Separation Distance then detailed technical studies are required to demonstrate land use compatibility. The Recommended Minimum Separation Distance was established based on MECP studies and historical complaint data.

The Potential Influence Area, and Recommended Minimum Separation Distances are based on Industry Class. The Industry Class is based on the categorization criteria presented in Appendix A of Guideline D-6, and provided in Table 1. Note that the examples provided in this table should not be considered a comprehensive list but are to be used to provide examples of each industrial category. Additionally, the examples listed in Table 1 may not apply to all instances of a particular industry type; for example, some electronics manufacturing and repair facilities may meet the definition of a Class II or Class III facility.

Table 1: Industrial Categorization Criteria

Class	Outputs	Scale	Process	Operations/ Intensity	Possible Examples
I	Noise: Sound not audible off property Dust and/or Odour: Infrequent and not intense Vibration: No ground borne vibration on plant property	No outside storage Small scale plant or scale is irrelevant in relation to all other criteria for this Class	Self-contained plant or building which produces/stores a packaged product. Low probability of fugitive emissions	Daytime operations only Infrequent movement of products and/or heavy trucks	Electronics manufacturing and repair Furniture repair and refinishing Beverages bottling Auto parts supply
II	Noise: Sound occasionally audible off property	Outside storage permitted	Open process Periodic outputs of	Shift operations permitted	Magazine printing Paint spray booths



Class	Outputs	Scale	Process	Operations/ Intensity	Possible Examples
	Dust and/or Odour: Frequent and occasionally intense Vibration: Possible groundborne vibration, but cannot be perceived off property	Medium level of production allowed	minor annoyance Low probability of fugitive emissions	Frequent movement of products and/or heavy trucks with the majority of movements during daytime hours	Metal command Electrical production manufacturin g Manufacturin g of dairy products
III	Noise: sound frequently audible off property Dust and/or Odour: Persistent and/or intense Vibration: Ground-borne vibration can frequently be perceived off property	Outside storage of raw and finished products Large production levels	Open process Frequent outputs of major annoyances High probability of fugitive emissions	Continuous movement of products and employees Daily shift operations permitted	Manufacturin g of paint and varnish Organic chemicals manufacturin g Solvent recovery plants Metal manufacturin g

The Potential Influence Area and Recommended Minimum Separation Distance for each industry class as defined by the D-Series Guidelines are provided in Table 2. The described distances vary for Class I, II, and III industries due to the frequency and magnitude of potential adverse effects.



Table 2: Industrial Classification Study Distances

Industrial Categorization	Potential Influence Area (m)	Recommended Minimum Separation Distance (m)
Class I	70	20
Class II	300	70
Class III	1000	300

Environmental Noise Guideline NPC-300

The 2013 Environmental Noise Guideline: Stationary and Transportation Sources (NPC-300) is the primary guideline used in Ontario to assess and control noise emissions.

NPC-300 provides sound level limits for stationary sources, such as industries and businesses, affecting receptors in noise sensitive land uses. These limits apply to existing, future, and/or modified stationary sources and are required to be met for the issuance of ECAs under Part II.1 of the EPA. The noise limits specific to a stationary source are defined using area classifications (not to be confused with the D-6 industrial classifications), which are based on the nearby receptor's existing acoustical environment. NPC-300 area classifications are as follows:

- Class 1 – An area with an acoustical environment typical of a major population centre, where background sound level is dominated by the activities of people, usually road traffic, often referred to as “urban hum”;
- Class 2 – An area with an acoustical environment that has qualities representative of a Class 1 area during daytime hours, and representative of a Class 3 area during evening and night-time hours;
- Class 3 – A rural area with an acoustical environment that is dominated by natural sounds having little or no road traffic; and
- Class 4 – An area or specific site that would otherwise be defined as Class 1 or Class 2 and which:
 - is an area intended for development with new noise sensitive land use(s) that are not yet built; and
 - is in proximity to existing, lawfully established stationary source(s); and has formal confirmation from the land use planning authority with the Class 4 area classification which is determined during the land use planning process.



All industries which operate in compliance with Environmental Permissions will meet the NPC-300 noise guideline limits (with the exception of potential temporary exceedances through a Noise Abatement Action Plan) at all points of reception which are allowed under current zoning. Industries are not required to meet nuisance impact limits for noise at lands which are not zoned for sensitive uses.

Zoning changes to allow for sensitive land uses may impose new obligations for existing industries and can lead to compliance issues. As such, land use compatibility assessments should consider the potential impact on a facility's existing Environmental Permissions. Where zoning changes are proposed, a land use compatibility study should be performed to determine compatibility.

Impulse Vibration in Residential Buildings NPC-207

The MECP publication NPC-207 is titled: Impulse Vibration in Residential Buildings (November, 1983) and it is intended to provide an assessment method for determining vibration levels inside occupied residential building that are caused by operation of stationary sources of vibration at industrial facilities (e.g., stamping presses, forging hammers). The publication also provides vibration limits for frequent and infrequent impulses of vibration. The vibration limits are expressed in terms of peak vibration velocity in mm/s and duration of impulses.

Ontario Regulations 419/05 and 1/17 – Local Air Quality

The MECP's environmental permissions framework includes Environmental Compliance Approvals (ECA) issued under Section 9 of the EPA and following the requirements of Ontario Regulation 419/05 (O.Reg. 419/05), and Environmental Activity and Sector Registry (EASR) approvals issued under Section 9 of the EPA and following the requirements of Ontario Regulation 1/17 (O.Reg. 1/17). The applicability of the two instruments (ECA and EASR) is based on the facility's industrial classification. Both instruments provide the same level of environmental protection; the EASR approach allows less-intensive industries to follow a streamlined review process.

Both approvals mechanisms require the same supporting technical studies and reporting and for the purpose of this report will collectively be referred to as "Environmental Permissions". The Environmental Permissions process provides a



framework under which industries are required to assess the potential impact of their air quality (including dust, and odour), noise, and vibration emissions.

The MECP requires any industry applying for Environmental Permissions to perform an assessment of air emissions as described in O.Reg. 419/05 and associated guidance documents. O.Reg. 419/05 outlines the requirements of the technical assessment and provides contaminant-specific air quality standards to be applied. All contaminants are required to be in compliance with these standards at all points off-site, while nuisance contaminants such as odours are regulated at sensitive receptors such as residences, schools, and places of worship. The implications of O.Reg. 419/05 from a land use compatibility perspective are:

- A proposed industry will require an approval, which would consider the potential for nuisance impacts; and
- This obligation to operate in compliance with an approval would be protective of existing sensitive land uses.