



INFORMATION REPORT
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February 19, 2015

**INFORMATION REPORT
DEVELOPMENT & INFRASTRUCTURE SERVICES- PLANNING AND BUILDING SERVICES
REPORT – 2015 05**

TO: Mayor Van Bynen
Members of Council
Chief Administrative Officer
SLT

SUBJECT: Lake Simcoe Region Conservation Authority Guidelines for Implementation of Ontario Regulation 179/06

ORIGIN: Planning and Building Services

PURPOSE OF THIS REPORT

The purpose of this report is to advise Council of the proposed Guidelines for the Implementation of Ontario Regulation 179/06 regarding Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulation proposed by the Lake Simcoe Region Conservation Authority. Comments to the Authority are required by February 28, 2015. The Guidelines are proposed to replace the current Lake Simcoe Conservation Authority Watershed Development Policies.

The full Guideline is available on the Authority web site through the following link:

<http://www.lsrca.on.ca/pdf/notices/wd-policy-review-2014.pdf>

The comment letter prepared by staff is attached as Attachment 2.

COMMENTS

In accordance with the Procedure By-law, any Member of Council may request this Information Report be placed on an upcoming Committee of the Whole agenda for discussion.

The changes update the current policies in response to changes to the provincial acts and policy, e.g., Provincial Policy Statement (2014), Lake Simcoe Protection Plan, etc.

The primary changes that impact the Town of Newmarket relate to the proposed changes to the Flooding Hazards Policies which are summarized below:

- Development will not be permitted within areas where flood depths exceed 0.3 m of flooding (formerly 1.0 m or greater)
- Development would be required to be “dry passive flood proofed” to the regulatory flood level, plus 0.3 metres (formerly to the regulatory flood level)
- Prohibit the construction of basements in conjunction with new or existing structures within the floodplain
- New roads and private driveways are not permitted where flooding is greater than 0.3 m in order to provide safe access (formerly 0.3 m on roadways and 0.8 m on private driveways)
- Barriers are required around parking facilities in the flood plain (flood hazard) to ensure vehicles do not float off site and create obstructions to flood waters
- Underground parking will not be permitted in the flood plain (flood hazard)
- Public utilities and infrastructure may be permitted in Provincially Significant Wetlands
- Development may be permitted in non-evaluated wetlands subject to new criteria including if the wetland is less than 2 ha (5 acres).

These changes are summarized in Attachment 1.

Staff has reviewed the document and has made a number of technical comments as provided in Attachment 2.

The attached letter will be provided to the Lake Simcoe Region Conservation Authority (LSRCA) and may be followed by any additional comments as directed by Council if this report is placed on an upcoming agenda, in accordance with the Procedural By-law, identified above.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

This report is linked to the following Business and Strategic Plan provisions:

Living well

- Environmental protection and natural heritage preservation
- Safety and security

Well-respected

- being an integral contributor to regional and provincial affairs
- being a champion of co-operation and collaboration

CONSULTATION

Consultation was carried out with the staff from LSRCA.

HUMAN RESOURCE CONSIDERATIONS

- a) Not applicable to this report.

BUDGET IMPACT

Operating Budget (Current and Future)

a) None

Capital Budget

a) None

CONTACT

For more information on this report, contact Marion Plaunt, Senior Planner, Policy at 905 953-5300 x 2459 or at mplaunt@newmarket.ca.



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Commissioner
Development and Infrastructure Services

Major Changes to LSRCA's Watershed Development Guidelines cont'd

Shoreline Policies (Section 6.1)

	Previous	NEW
General Shoreline Guidelines	The Authority shall strive to maintain shorelines in their natural state. A 15 metre buffer/setback be provided between all buildings and the average annual high water mark of all waterbodies (219.15masl)	Generally no new development will be permitted within the minimum vegetation protection zone of Lake Simcoe as defined by the relevant policies of the LSPP: <ul style="list-style-type: none"> • 100 metres • 30 metres • as determined by the settlement area or existing use policies
Shoreline structures	The authority may require a slope stability, erosion or dynamic beach study for certain development	Boathouses, docks and shoreline protection may be permitted provided that: <ul style="list-style-type: none"> • The ecological function of the shoreline is maintained (may require an EIS if works are considered a significant alteration) • Geotechnical or other studies may be required • The natural flow of water is not impeded • Pervious materials and designs are used where feasible
Boathouses		No habitable space is permitted (e.g. living accommodations, potable water, septic facilities, etc.)
Docks		Docks may be permitted provided that: <ul style="list-style-type: none"> • They do not impede the flow of water • The structure is designed to minimize damages that could occur as a result of coastal processes • Dock is properly anchored
Shore Decks		Generally not permitted Small patios (less than 10 sq. metres may be permitted provided that: <ul style="list-style-type: none"> • The structure does not impact the ecological function of the shoreline • The vegetation protection zone is maintained or enhanced as part of the proposal • There is no significant alteration to the shoreline



Additional Changes:

Section 5.4.4- recognizes agricultural practices

Section 4.1- Activities not requiring written permission by the approval of this document



Major Changes to LSRCA's Watershed Development Guidelines cont'd

Floodplain (Section 5.5)

	Previous	NEW
Flood depths	Development would not be permitted in the floodplain where depths are 1 metre or greater	Development will not be permitted within areas where flood depths exceed 0.3 metres of flooding (riverine system) or 0.8 metres of flooding (lake)
Flood-proofing	Floodproofing shall be to the regulatory flood elevation	Dry-Flood-proofing to the regulatory flood standard plus 0.3 metres allowance
Basements	Basements must be flood-proofed	No basements permitted in the floodplain
Safe Access	No greater than 0.3 metres of flooding on the roadway and no greater than 0.8 metres of flooding on a private driveway	No greater than 0.3 metres of flooding on the road or private driveway
Parking	Parking facility required to meet the low risk definition of the LSRCA	Barriers are required around the parking facility Underground parking not permitted

Wetlands (Section 8.3)

	Previous	NEW
Provincially Significant Wetlands (PSW)	No new development within a PSW The LSRCA will grant approval for development on lots within registered plans of Subdivision	The LSRCA may grant approval for new development within a PSW including public utilities and infrastructure, trails, or conservation and restoration projects provided a number of conditions are met.
Non-Evaluated wetlands	Exceptions may allow new development in non-evaluated wetlands provided that: <ul style="list-style-type: none"> • There is no alternative location • An Environmental Impact Study is can demonstrate no impact on flooding, erosion, conservation of land or pollution 	New development is generally prohibited in all wetlands. Exceptions may allow new development in non-evaluated wetlands provided that: <ul style="list-style-type: none"> • The wetland is less than 2 hectares in size • There is no alternative location • An Environmental Impact Study is can demonstrate no impact on flooding, erosion, conservation of land or pollution





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February 19, 2015

Ashlea Brown
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Lake Simcoe Region Conservation Authority
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Dear Ms Brown:

RE: Lake Simcoe Region Conservation Authority (LSRCA) Guidelines for Implementation of Ontario Regulation 179/06

Thank you for providing the Town of Newmarket with the opportunity to review and comment on the December 2014 Draft Guidelines for Implementation of Ontario Regulation 179/06.

The Guidelines provide excellent policy guidance. Staff provides the following comments that aim to assist in providing further clarity. The comments follow the format of the draft Guideline.

1. Title and Role of the Guidelines

The proposed "Guidelines" are intended to replace the current "Watershed Development Policies." The rationale for changing the document to a "guideline" rather than a "policy" is not clear and may have implementation implications that may warrant legal consideration by the LSRCA.

2. Purpose 1.1 Purpose

- a) With the recent approval of the Source Protection Plan, the Guideline should be reviewed to ensure appropriate cross-references and/or provisions are included.
- b) Consistency with the Provincial Policy Statement (PPS) is required. The document should be scanned with a view to ensuring consistency with the PPS.

3. 5.5 Flood Hazard Guidelines

- a) The uses prohibited in accordance with the PPS within a flood hazard identified in Section 4.0.6 (e.g., institutional uses, essential emergency services, and the disposal, manufacturing treatment and storage of hazardous substances) should be cross-referenced to, or included in Section 5.5 to ensure transparency.
- b) Throughout this section the terms "flood hazard", "flood hazard limit" (5.5.2), "flood plain" (5.5.6) and "susceptible to flooding" (5.5.3) appear to be used interchangeably. The terms should be reviewed to ensure consistent interpretation of the intent.

4. Agriculture

Section 5.5.5 permits barns in the “flood plain” but does not appear to address risk to livestock. Livestock represent significant investment as well and humane considerations. Perhaps an additional criteria should be included that would ensure that livestock lives are not at risk in the event of a flood.

5. Commercial/Industrial Structures

Section 5.5.7 and 5.5.8 do not appear to clearly differentiate when a new commercial/industrial development may be permitted within the flood hazard. Perhaps new construction and additions should be addressed separately. For example Section 5.5.8 appears to deal with additions only under sub a) and b) notwithstanding the preamble which addresses both new buildings and additions. Clarification is required if new commercial/industrial uses are permitted and if permitted how does the provision of “no alternate location” apply e.g., to the subject property or in that portion of the flood hazard?

6. Fencing

Section 5.5.10 refers to fencing in “natural areas.” Since this section is intended to address flood hazards should the term “natural areas” instead be “flood hazards” or both. If both are included “natural areas” should be defined.

7. Residential

Section 5.5.16 a) permits new residential structures where “there is no alternate location for the structure outside the flood hazard”. This provision, as written, would appear to permit residential structures as part of a new plan of subdivision within the flood hazard. If the intent is to **not allow** new residential development (e.g., greenfield subdivisions) to encroach within the flood hazard, the wording requires reconsideration to clarify the intent.

8. Defining Erosion Hazard Limits for River and Stream Valley

Section 7.2 addresses Erosion Hazards, however, Figure 17 nor Figure 19 schematically illustrate the erosion hazard. An additional figure would assist, or the existing figures refined to provide an illustration of the erosion hazard in the context of the confined and unconfined stream valley scenarios.

9. Development and Interference with Wetlands and Other Areas

Section 8.2 refers to “other areas”. Other areas appear to be the same as “adjacent lands” as defined by the PPS. Perhaps the terminology of the Guideline should be harmonized with that of the PPS (e.g., adjacent lands). This comment would similarly apply to Figure 20 and the definitions.

Section 8.3.3 would appear to permit new development in wetlands less than 2 ha (5 acres). This provision appears to be inconsistent with the evaluation methodology of the PPS which relies upon a more detailed site specific analysis to address hydrological and ecological function. Other smaller wetlands can play a significant role. The policy also does not address the issue of wetland complexes. The policy should be harmonized with the provisions of the PPS.

Under the Planning Act, municipalities are required to make decisions that are consistent with the PPS. Policy 8.3.2 c) and 8.3.3 e) should recognize that there may be other approval authorities in addition the conservation authority, e.g. add “and other applicable approval authority.”

10. Mitigation/Compensation for Wetland Loss

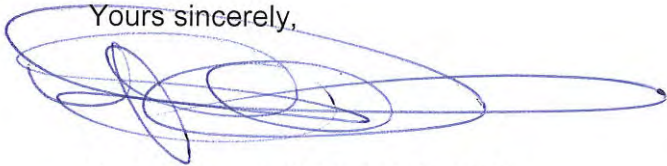
Section 8.5 introduces a “no net loss principle” to the mitigation/compensation of wetlands. The PPS does not apply such a principle. The test under the PPS should be applied – “no negative impacts on the natural features or their ecological function.”

Definitions:

The definition for “wetlands” appears to differ from that of the PPS. According to the definition, to be considered a wetland it is required to have a “connection with a surface watercourse.” This definition would exclude wetlands that contribute to groundwater such as kettle features in the Oak Rides Moraine. Review of this definition warrants reconsideration relative the definition of wetlands in the PPS and the Oak Ridges Moraine Plan, along with the description of the role of wetlands in Section 8.1 (e.g., include role of wetlands to recharge groundwater and the fact that 13.5 % of the watershed is wetlands).

The above comments are provide to be helpful in the future interpretation of the policies, and should you require further clarification regarding the above noted comments, please do not hesitate to contact the undersigned.

Yours sincerely,



Marion Plaunt, MES, MCIP, RPP
Senior Planner – Policy

Cc: policyreview@lsrca.on.ca
Beverly Booth, Manager, Planning, Regulations and Enforcement