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File: Z-8718
Planner: L. Maitland

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: THE CORPORATION OF THE CITY OF LONDON – REVIEW OF MINIMUM DISTANCE SEPARATION REGULATIONS PUBLIC PARTICIPATION MEETING ON FEBRUARY 6, 2017

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken with respect to the application of City of London relating to the OMAFRA Minimum Distance Separation formulae and guidelines:

- (a) the proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on February 14, 2017 to amend Zoning By-law No. Z.-1, in conformity with the Official Plan, to:
 - i) Amend the Section Number 4.32 of the General Provisions to provide new regulations to reference the updated MDS guidelines;
 - ii) Amend Section Number 45.1 of the Agricultural (AG) Zone to reference the updated MDS guidelines; and,
 - iii) Amend Section Number 45.3 of the Agricultural (AG) Zone to reference the updated MDS guidelines and remove Schedules 'C' and 'D'.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None

PURPOSE AND EFFECT OF RECOMMENDED ACTION

The purpose and effect of the proposed Zoning By-law amendment is provide the regulations necessary to enact the new Minimum Distance Separation (MDS) formulae outlined within Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) Publication 853.

RATIONALE

- The Provincial Policy Statement (PPS) 2014 direct municipalities to use Minimum Distance Separation (MDS) to address manure impacts.
- Both the 1989 Official Plan and The London Plan provide policies on implementing MDS within the City of London, and the proposed amendment is in conformity with those policies.
- The Zoning By-law Z.-1 currently contains regulations which apply to a version of the MDS formulae which is no longer supported by Provincial or Municipal policy.
- The proposed amendments would ensure that MDS is applied in London in accordance with the most recent MDS formulae and guidelines.

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SIGNIFICANT DEPARTMENT/AGENCY COMMENTS

Wastewater and Drainage Engineering: No comment.

PUBLIC LIAISON:	Notice of Application was published in the <i>Public Notices and Bidding Opportunities</i> section of <i>The Londoner</i> on December 22, 2016.	0 replies were received
<p>Nature of Liaison: Z-8718 Minimum Distance Separation Review – The purpose and effect of this zoning review is to amend regulations of Zoning By-law Z.-1 to ensure the Zoning By-law is in conformity with the new Minimum Distance Separation formulae and guidelines provided by the Ontario Ministry of Agriculture, Food and Rural Affairs in publication 853. Possible include amendments to: Section 2 – Definitions, Section 4.32 Minimum Distance Separation – General Provisions, Section 45 - Agricultural (AG) Zone including schedules C and D, Section 46 - Agricultural Commercial (AGC) Zone, Section 47 - Rural Settlement Commercial Uses (RRC) Zone, and Section 49 - Urban Reserve (UR) Zone. File: Z-8718 Planner: L. Maitland.</p>		
<p>Responses: None</p>		

ANALYSIS

Provincial Policy

The *Planning Act, 1990*, requires that decisions on land use planning matters shall be consistent with the Provincial Policy Statement (PPS) 2014 including any supporting guidelines documents. Effective March 1, 2017, Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) Publication 853 is the applicable guideline document for Minimum Distance Separation (MDS). The proposed amendments are intended to bring Zoning By-law Z.-1 into compliance with the PPS as supported by OMAFRA Publication 853.

The PPS sets out policies for prime agricultural areas which are intended to protect these areas for long-term use for agriculture. The minimum distance separation formulae apply to ensure odour producing agricultural activities such as livestock facilities, manure storages and anaerobic digesters can continue and contribute to the rural economy. The MDS formulae establish setbacks to mitigate possible impacts on sensitive land uses (residential and community uses). MDS applies to prime agricultural areas which include all of the City of London’s lands outside the urban growth boundary. PPS policies 1.1.5.9 and 2.3.3.3 require: “New land uses, including the creation of lots, and new or expanding livestock facilities shall comply with the minimum distance separation formulae.” Likewise, PPS policy 2.3.6.1 (b) states that planning authorities may only permit limited non-residential uses in prime agricultural areas provided that, among other things: “the proposed use complies with the Minimum Distance Separation Formulae.”

Changes to MDS through OMAFRA Publication 853

Changes to the MDS formulae are primarily minor and technical in nature. Operationally the largest change, which is not reflected specifically in the proposed amendments, is the introduction of a new Agrisuite™ software. The changes “help to align the document with the updated PPS and clarify or elaborate on existing MDS guidelines and provisions through improved language and text.” Changes of note include:

- Definitions were updated in order to align with the PPS, 2014, and the *Nutrient Management Act, 2002*.

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- Clarifying that MDS setbacks are applied to both livestock facilities and anaerobic digesters, and harmonizing MDS setbacks for anaerobic digesters located on farms, with or without livestock, to match those specific under the *Nutrient Management Act, 2002*.
- Providing clarification on what portions of the MDS Formulae and Guidance should be incorporated by municipalities into their local planning documents, and which portions of the document are provided for information or training purposes.
- Expanding the exemption from MDS setbacks for building reconstruction due to catastrophes to include reconstruction for other reasons.
- Clarifying that MDS setbacks for agriculture-related uses and on-farm diversified uses are applied at the discretion of a municipality. If a municipality wishes to apply MDS setbacks for agriculture-related uses and on-farm diversified uses, it should provide clear direction through its local planning documents (e.g. comprehensive zoning by-laws).
- Providing clarification regarding when municipalities can reduce MDS setbacks (e.g. minor variance applications) for reasons other than an environmental concern (e.g. public health and safety issues).
- Updating various factors in MDS to align with current livestock production (e.g. new housing systems, adding livestock types, allowing a broader range of manure system options).
- Clarifying the application of MDS setbacks for various types of lot creation (e.g. residence surplus to a farm operation).
- Clarifying that MDS I is applied to development (e.g. building permits) on existing lots of record, unless the municipality has adopted clear direction in their zoning by-law to exempt this requirement.
- Clarifying that MDS I is not applied when an existing building is being renovated or added to.
- Revised MDS II setbacks between livestock barns, manure storages and anaerobic digesters by capping the setback required from a road allowance.

The bulk of the changes to the MDS are minor and/or clarifications. Although some changes modify the application or the calculation of MDS formulae, none provide for new forms of development or entirely exempt previous categories of development from MDS consideration.

1989 Official Plan

The 1989 Official Plan was updated to reflect the MDS review conducted by OMAFRA in 2006. The policies in place in the 1989 Official Plan indicate established municipal preferences for MDS application and rely on the Zoning By-law Z.-1 to implement the formulae. Specific policies in the current Official Plan (9.2.10 and 9.2.11) address the application of MDS I for existing lots of record; surplus farm dwelling severances; and, post-catastrophe. Policy is also provided for cemeteries, building permits for livestock, and the application of MDS II during both the expansion of the Rural Settlement designation and within settlement areas. An additional policy was provided to indicate that MDS formulae apply within the Rural Settlement Designation. This policy framework effectively enact the MDS system and can through the proposed amendments provide the necessary direction for implementing the updated MDS guidelines and formulae.

The London Plan

The London Plan has been drafted to be consistent with these recent changes and MDS requirements. MDS is referenced in policies 1191, 1213, 1215, and 1251 within the Future Growth, Farmland and Rural Neighbourhood place types. Policy 1191 ensures MDS is applied at the time of a zoning by-law amendment and prior to the issuance of a building permit for existing

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lots of record. Policy 1213 ensures that livestock operations that wish to expand will be limited through the application of MDS II. Policy 1215 provide direction for the application of MDS I in locating singled detached dwellings on farm parcels.

Policies 1773 through 1777 provide the broader framework for the application of both MDS I and MDS II formulae. Given the recent review by Provincial ministries including OMAFRA, in the development of The London Plan, the policies are consistent with the revised MDS guidelines. The proposed zoning by-law amendment to reflect the updated MDS formulae and guidelines implements the policies of the London Plan. The policies ensure all development outside the urban growth boundary are subject to MDS formulae. The London Plan policies rely on MDS I to direct new development in the farmland and rural neighbourhood pace types. Compliance with MDS I is not required for surplus farm dwelling severances otherwise in conformity with The London Plan; reconstruction of dwellings no closer to odour sources than the original dwelling; secondary farm dwelling units; and, agriculture-related and on-farm diversified uses. The policies rely on the application of MDS II for new livestock facilities with exemptions for reconstruction of livestock facilities (provided the animal-type and number remain the same) and for agriculture-related and on-farm diversified uses.

Current Zoning By-law Z.-1 Regulations

The current regulations in Zoning By-law Z.-1 for Minimum Distance Separation refer to the MDS formulae provided in 1995. Details including the calculation and tables used in establishing factor values have been provided as schedules to Section 45 (the Agricultural Zone) of the zoning by-law. The general provisions portion of the by-law indicates that MDS are to apply to lands outside the Agricultural (AG) Zone affected by odorous uses. Specific regulations however are limited to the AG Zone.

Proposed Amendments

The proposed amendments would ensure that all development is subject to the appropriate and current MDS formula. It is proposed that previous versions of the MDS formulae and all references to them, be removed.

The first proposed amendment is to the General Provisions of the Zoning By-law Z.-1. This amendment provides new language to direct the application of the updated MDS formula for development potentially affected by an agriculturally produced odour. The current language makes specific reference to both “the MDS1 calculation in Schedule C,” and the “calculation in Schedule D”. These schedules contain a previous version (the 1995 version) of the MDS formulae, with both formulae and base tables which are now out of date and no longer supported by provincial or London Plan policy. The proposed amendment addresses this by applying the updated MDS formulae. The new text is to read:

4.32 MINIMUM DISTANCE SEPARATION (MDS)

The Minimum Distance Separation regulations are provided by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). The regulations provide formulas which are used to calculate and establish separation distances between odour producing uses (livestock facilities, manure storages and anaerobic digestors) and urban and sensitive land uses. The regulations are applied in the Agricultural (AG) Zone, and in other zones such as Rural Settlement Commercial (RRC), Agricultural Commercial (AGC) or Urban Reserve (UR) where there is the potential for agriculturally generate odour impacts. Lands to be rezoned from an Agricultural (AG) or Urban Reserve (UR) Zone to any other zone to permit a residential, facility, commercial, industrial or recreational use will comply with the MDS I formula.

Expansions to existing livestock facilities will need to comply with setbacks calculated under the MDS II formula when they are located close to zones

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permitting residential, commercial, or other urban and sensitive land uses.

The setbacks calculated under the MDS I formula will apply to development proposed through building permit on existing lots of record only in the following Zone variations: Agricultural (AG) Zone, Rural Settlement Commercial (RRC) zone or Urban Reserve (UR) Zone. The MDS II regulations shall apply to all lots of record.

The second proposed amendment is to the preamble in the Agricultural (AG) Zone. The preamble, as with the general provisions language, currently references the no longer supported, 1995 MDS guidelines and makes reference to Schedules 'C' and 'D' for the calculation of MDS setbacks. Direction to apply the 1995 version of MDS which is no longer in effect is not in keeping with provincial policy or The London Plan, the proposed new second paragraph of the preamble addresses these issues and reads:

The Minimum Distance Separation (MDS) regulations, provided by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), are used to determine an appropriate setback distance between a livestock facility, manure storage or anaerobic digester and sensitive land uses. The objective is to prevent land use conflicts and minimize nuisance complaints from odour. The MDS I formula is to be used for development which expands the potential for sensitive land uses. The MDS II formula is to be used for development of new or expanding odour sources including, livestock facilities, manure storage and anaerobic digestors. The setbacks are to be calculated in accordance with the regulations in place at the time an application is made.

The third proposed amendment is to the regulations portion of the Agricultural (AG) Zone. The regulations at present make reference to Schedules 'C' and 'D' for the calculation of MDS setbacks using the 1995 version of the formulae. In order to bring the regulations in line with provincial policy and The London Plan the proposed new regulation will reference the OMAFRA guidelines specifically and read:

8) MINIMUM DISTANCE SEPARATION (MDS)

All new agricultural and non-agricultural uses shall comply with the appropriate Minimum Distance Separation formulae as determined by the Ontario Ministry of Agriculture, Food and Rural Affairs regulations.

Finally it is recommended that both Schedule C (MDS I) and Schedule D (MDS II) be deleted in their entirety. Both schedules contain the 1995 version of the MDS formulae. The previous regulations which refer to the schedules are to be amended to ensure that reference is made to the current MDS formulae provided by OMAFRA and that references to Schedule C and D are deleted. Deleting the schedules and referring directly to the OMAFRA guidelines will ensure that future amendments or any subsequent changes by OMAFRA to the MDS guidelines will not require a future zoning by-law amendment to implement those changes.

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CONCLUSION

The Ontario Ministry of Agriculture, Food and Rural Affairs have produced and published updated Minimum Distance Separation guidelines to be effective March 1, 2017. The Official Plan and The London Plan policies account for the new guidelines through policy but regulatory changes to Zoning By-law Z.-1 are required. The proposed amendments ensure that all applicable development is subjected to the appropriate MDS formula and that the formulae referenced are the current and applicable ones.

PREPARED BY:	SUBMITTED BY:
LEIF MAITLAND, PLANNER I, LONG RANGE PLANNING AND RESEARCH	GREGG BARRETT, AICP MANAGER, LONG RANGE PLANNING AND RESEARCH
RECOMMENDED BY:	
JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

January 24, 2017

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Attached: Appendix 'A' Zoning By-law amendment

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Appendix "A"

Bill No. (number to be inserted by Clerk's Office)
2017

By-law No. Z.-1-17_____

A by-law to amend By-law No. Z.-1 to amend regulations for Minimum Distance Separation.

WHEREAS The Corporation of the City of London has applied to amend regulations for Minimum Distance Separation;

AND WHEREAS this rezoning conforms to the Official Plan;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

- 1) Section Number 4.32 of the General Provisions is amended by deleting 4.32 MINIMUM DISTANCE SEPARATION (MDS) and replacing it with the following

4.32 MINIMUM DISTANCE SEPARATION (MDS)

The Minimum Distance Separation regulations are provided by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). The regulations provide formulas which are used to calculate and establish separation distances between odour producing uses (livestock facilities, manure storages and anaerobic digestors) and urban and sensitive land uses. The regulations are applied in the Agricultural (AG) Zone, and in other zones such as Rural Settlement Commercial (RRC), Agricultural Commercial (AGC) or Urban Reserve (UR) where there is the potential for agriculturally generate odour impacts. Lands to be rezoned from an Agricultural (AG) or Urban Reserve (UR) Zone to any other zone to permit a residential, facility, commercial, industrial or recreational use will comply with the MDS I formula.

Expansions to existing livestock facilities will need to comply with setbacks calculated under the MDS II formula when they are located close to zones permitting residential, commercial, or other urban and sensitive land uses.

The setbacks calculated under the MDS I formula will apply to development proposed through building permit on existing lots of record only in the following Zone variations: Agricultural (AG) Zone, Rural Settlement Commercial (RRC) zone or Urban Reserve (UR) Zone. The MDS II regulations shall apply to all lots of record.

- 2) Section Number 45.1 of the Agricultural (AG) Zone is amended by deleting the second paragraph and replacing it with the following:

The Minimum Distance Separation (MDS) regulations, provided by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), are used to determine an appropriate setback distance between a livestock facility, manure storage or anaerobic digester and sensitive land uses. The objective is to prevent land use conflicts and minimize nuisance complaints from odour. The MDS I formula is to be used for development which expands the potential for sensitive land uses. The MDS II formula is be used for development of new or expanding odour sources including, livestock facilities, manure storage and anaerobic digestors. The setbacks are to be calculated in accordance with the regulations in place at the time an application is made.

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- 3) Section Number 45.3 of the Agricultural (AG) Zone is amended by deleting 8) MINIMUM DISTANCE SEPARATION (MDS) and replacing it with:

8) MINIMUM DISTANCE SEPARATION (MDS)

All new agricultural and non-agricultural uses shall comply with the appropriate Minimum Distance Separation formulae as determined by the Ontario Ministry of Agriculture, Food and Rural Affairs regulations.

- 4) Section Number 45.3 of the Agricultural (AG) Zone is amended by deleting *Schedule "C" Minimum Distance Separation I (MDS I)* and associated tables in their entirety.
- 5) Section Number 45.3 of the Agricultural (AG) Zone is amended by deleting *SCHEDULE "D" MINIMUM DISTANCE SEPARATION II (MDS II)* and associated tables in their entirety.

This By-law shall come into force and be deemed to come into force in accordance with Section 34 of the *Planning Act, R.S.O. 1990, c. P13*, either upon the date of the passage of this by-law or as otherwise provided by the said section.

PASSED in Open Council on February 14, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading - February 14, 2017
Second Reading - February 14, 2017
Third Reading - February 14, 2017