
HALDIMAND COUNTY

Report PDD-43-2019 Official Plan and Zoning By-law Amendment to Permit an Asphalt Storage Facility

For Consideration by Council in Committee on December 10, 2019



OBJECTIVE:

To consider an amendment and site specific provisions to the Official Plan and Zoning By-law NE-1 2000 to facilitate the establishment of an asphalt storage facility.

RECOMMENDATIONS:

1. THAT Report PDD-43-2019 Official Plan and Zoning By-law Amendment to Permit an Asphalt Storage Facility be received;
2. AND THAT application PLOP-HA-2019-164 to amend the Haldimand County Official Plan designation of the subject lands to a site-specific 'Agricultural' designation to facilitate the establishment of an asphalt storage facility, be approved for the reasons outlined in Report PDD-43-2019;
3. AND THAT the By-law attached to Report PDD-43-2019 to adopt the Official Plan Amendment to the Haldimand County Official Plan be presented for enactment;
4. AND THAT application PLZ-HA-2019-165 to amend the City of Nanticoke Zoning By-law NE 1-2000 to add the asphalt storage facility use to the permitted uses on the subject property through a site specific zoning provision be approved subject to a "Holding (H)" provision, for reasons outlined in Report PDD-43-2019;
5. AND THAT the Zoning By-law Amendment attached to Report PDD-43-2019 to amend the City of Nanticoke Zoning By-law NE 1-2000 be presented for enactment;
6. AND THAT the Holding Provision Removal By-law attached to Report PDD-43-2019 be presented for enactment, and the General Manager of Community and Development Services be granted authority to remove the holding provision when all conditions relating to the matter are satisfactorily addressed;
7. AND THAT the subject lands be placed under site plan control for reasons outlined in Report PDD-43-2019 and the Site Plan Control By-law attached to the report be presented for enactment;
8. AND THAT the application is considered to be consistent with the Provincial Policy Statement 2014, Provincial Growth Plan 2019 or other matters of provincial interest.

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Respectfully submitted: Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

A joint Official Plan and Zoning Amendment application has been received from Suit Kote, the proponents of the project, for the subject lands which are located along Walpole Concession 3, without a municipal address (Attachment 1). The applications propose to amend the Haldimand County Official Plan and City of Nanticoke Zoning By-law NE 1-2000 to facilitate the establishment of a liquid asphalt storage facility that is proposed to be comprised of a number of storage tanks, and a spur line connecting into the adjacent rail lines. The entirety of the subject lands are currently vacant, and the proponents have indicated the intention to sever the lands in the future if this set of applications is approved. The area of the property subject to these applications will be used for the purposes outlined in this report, while the balance of the lot will remain in agricultural production. The amount of land that the proponents are intending to utilize for the purposes of this use are approximately 10.3 hectares (25.4 acres) in size. The subject lands have been traditionally used for agricultural purposes.

The proponents have supplied Haldimand County with a planning justification report which describes the ways in which the policy considerations outlined in the 2014 Provincial Policy Statement are addressed. Staff have assessed the proposal relative to the appropriateness of the uses being located on the subject lands, land use compatibility, impacts to agricultural lands and technical matters (servicing, traffic impacts) and have determined the proposal to be supportable. Should the Official Plan and Zoning By-law amendment be approved, a site plan application would also be required to review all detailed design aspects of the proposal, and a severance application will be necessary to create the desired parcel to contain the use. In staff's opinion, the proposal aligns with Provincial Policy and the County Official Plan, and as such, is recommended for approval.

BACKGROUND:

The proponents are requesting an amendment to the Haldimand County Official Plan and the City of Nanticoke Zoning By-law NE 1-2000 to permit the construction and use of an asphalt storage facility. The subject lands are located on the south side of Walpole Concession 3, and are located in the proximity of Imperial Oil and existing rail lines. The lands are designated 'Agriculture', and zoned 'Agricultural (A)'. Currently, the subject lands are vacant from structures and have been used for agricultural purposes. The lands have direct access from Walpole Concession 3, and will be serviced by private on-site water and sanitary services. There is a rural residential use situated to the north of the subject lands, and the balance of the adjacent surrounding properties are vacant and used for agricultural purposes.

Suit Kote is a company that operates primarily in the United States, and receives asphalt products from oil refineries that is then used in the road construction and maintenance industry. Suit Kote has been using the subject property since the land was used as a staging area for green energy projects, approximately 9 years ago. To date the company has been working with Imperial Oil located in Nanticoke, which has been sending asphalt products from the refinery to Suit Kote (at the subject lands) via rail tankers which are then off loaded to truck trailers for shipment elsewhere. In order to increase storage of asphalt, Suit Kote has proposed the subject Official Plan and Zoning By-law Amendments. It is worth noting, that with an increase in available storage for asphalt which is an output of the refinement process, Imperial Oil would be able to increase production at the refinement facility.

The site is projected to have intermittent use, and is anticipated to have infrequent traffic entering or leaving twenty-four hours a day, essentially on an as-needed basis. Tanker trucks would be the main mode of transportation in terms of road traffic, and expansions to the network of rail lines will allow for space to be provided to transfer the product from rail-tankers. The proposed development for the site will result in the construction of four tanks that are 28 metres (90 feet) in diameter and 15 metres (48

feet) tall, these tanks will be designed to meet Fire Code requirements, and will be located in engineered features that will provide containment if a spill was to occur.

ANALYSIS:

The Provincial Policy Statement 2014 (PPS) encourages developing strong communities that promote general wellbeing, while ensuring that development occurs in such a way that health, livability and safety are accounted for, and there is a wide range of land uses that are available to be realized. This includes residential, commercial, industrial and institutional uses. The subject application proposes a new, non-agricultural use to be established on lands that are designated and zoned for agricultural purposes. The proposed development will have access to Walpole Concession 3 and an existing rail line, and will be able to be serviced by private on-site water and wastewater services, thus the development will not require the expansion of the public road network or the water servicing, which satisfies the PPS requirement to intensify development where infrastructure already exists. The use will require wastewater servicing from an on-site septic system to address any washroom facilities associated with the use. Staff is satisfied that there is sufficient area on the property to accommodate this service. The detailed design will be finalized through Site Plan Control.

As stated above the lands identified are designated Agricultural in the Haldimand County Official Plan (HCOP). The PPS outlines specific requirements that need to be met in order to remove lands from the agricultural land base. Given that this proposal is for a use that is not residential in nature, the noted policies apply and there is opportunity to consider the application under PPS subject to a series of criterion being satisfied. The requirements are as follows:

Limited non-residential uses may be supported provided that all of the following are demonstrated:

1. The land does not comprise a specialty crop area;

Planning Comment: The subject lands are classified as Class 3 soils in the Canada Land Inventory (CLI) Land Classification index. While the site does contain soils that are identified as prime agricultural lands, they are not used for the growing of tender fruits, grapes, or other fruit crops or vegetable crops, the lands are not subject to special climactic conditions or any other factors that establish them as being appropriate for specialty crop growth. Also, there are lands in the vicinity of those subject to these applications that are designated 'Industrial' in the HCOP; while designated 'Agricultural' the lands are located within the Industrial Influence Area as identified in the HCOP. This policy test is not offended by permitting the development proposed.

2. The proposed use complies with minimum distance separation formulae;

Planning Comment: There are no livestock farming operations located in the vicinity of the subject lands, thus staff is confident that minimum distance separation (MDS) will not be a factor that leads to any land use compatibility issues for this proposal. Furthermore, the lands surrounding those subject to these applications are designated Industrial, and no livestock operations have been proposed. This policy test is not offended by permitting the expansion of the use onto agricultural lands.

3. There is an identified need within the planning horizon provided for in policy 1.1.2 for additional land to be designated to accommodate the proposed use; and

Planning Comment: The proponents have investigated other locations within the County, but have determined that available sites would not be suitable relative to their market. Further, of potentially available lands, the size of the properties were well in excess of the proponent's requirements. The proponents sought a number of properties within Haldimand County but the list of features that the properties must exhibit was quite exclusive. The land needed to be a suitable size and not excessive, close to rail lines and accessible to major roadways. A number

of properties were presented through the County's pre-consultation process, but any of the other lands were systematically disqualified based on the availability of the required elements. The subject property was the only site that satisfied the fundamental requirements to support the desired operations that are proposed to take place. The proponents have been utilizing the subject property for the last nine years to facilitate their business in a smaller capacity. The attributes of the property lend itself not only for continued use at this scale, but also for the proposed expansion. The rail lines are used by Imperial Oil, which is a well established industrial business located in Haldimand, and this company will benefit from the proposed industrial development (e.g. storage at this site allows for increases in production at Imperial Oil). The expansion to the rail lines will occur on property owned by CN rail, but will be carried out to support the proposed use for the subject lands. The subject lands are unique given their proximity to the industrial designations as shown in the Official Plan, and they are located within the Industrial Influence Area. As such, this property was identified for its proximity to their market, and the fact that there is sufficient size for the use to be established. The proximity to the subject market is also facilitated by the proximity of the subject lands to the rail lines, which will serve to transport product to the site and from the facility to jobsites.

In addition to the above, while locating this type of use within an existing employment lands area would be supported by policy, it does not represent a use that would efficiently utilize investments in services (i.e. it does not require water or sanitary for processing, manufacturing, etc.). Further, the use is not an employment generator of the scale that is typically envisioned for the County's designated employment lands. The proposed use is projected to create 5-10 full time jobs directly associated with the site. Given these characteristics, siting the use on an alternative appropriately located site, is viewed by staff as appropriate.

The proposed use satisfies this need, insofar as it is a relatively low impact use that will not interfere with future development opportunities for the lands to the east and west, and is not anticipated to negatively impact the lands to the north and south. This policy test is not offended by permitting the use on Agricultural lands.

4. Alternative locations have been evaluated, and:
 - a. There are no reasonable alternative locations which avoid prime agricultural areas.
 - b. There are no reasonable alternative locations in prime agricultural areas with lower priority agricultural lands.

Planning Comment: The proponents conducted a review of the surrounding area for lands that are not within the Agricultural area of the County, and were unable to find lands suitable enough to accommodate the use that they wish to establish. This is due to the fact that parcels within other employment areas are not located in proximity to transportation routes as major as the adjacent rail lines, and are typically too large for the use that is proposed. Furthermore, the proposed use will benefit from being able to capitalize on the infrastructure that exists, as well as receive a direct benefit from being located close to Imperial Oil. Imperial Oil itself will also benefit from this use, as the products used for asphalt are a limiting factor in terms of refinery capacity. Finally, the proponents are requesting that the proposed development be subject to a special policy area and special provision that permits the asphalt storage facility in addition to the uses permitted in the Agricultural designation and the A zone. This approach would avoid removing the Agricultural designation and A zone entirely and the proposal will add the desired use to those permitted as of right already.

For these reasons, Planning staff are satisfied that this policy test is not offended by permitting the establishment of the use onto Agricultural lands.

Based on the foregoing, the proposal is considered consistent with the Provincial Policy Statement, and satisfies the Criteria for Removal of Prime Agricultural Lands. The application constitutes removal of minimal agricultural lands for the proposed use.

Growth Plan for the Greater Golden Horseshoe

The Growth Plan for the Greater Golden Horseshoe directs that:

The Growth Plan for the Greater Golden Horseshoe is intended to inform growth in such a way to continue economic prosperity and diversity is possible. Uses such as what is proposed herein, are generally supported for its merits in terms economic growth, by policies within the Growth Plan provided that the use does not negatively impact the surrounding community. Where agricultural uses and non-agricultural uses interface outside of settlement areas, land use compatibility will be achieved by avoiding or where avoidance is not possible, minimizing and mitigating adverse impact on the agricultural system. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, within the area being developed. The lands which are located immediately to the west of those subject to these applications are designated Industrial in the Haldimand County Official Plan, and as such, it would be the long term vision for those lands to contain uses that are industrial in nature. These lands exist as one large holding, and are not currently serviced by municipal water or wastewater supplies. These lands are presently used for agricultural purposes (crop growing) which represents an interim use. The subject proposal does not impact the interim use of agriculture in any fashion nor would it impact on the future potential use of industrial.

Haldimand County Official Plan

The subject lands are designated 'Agriculture' within the Haldimand County Official Plan (OP). Under the 'Agriculture' designation, the land base is to be protected and the use of the lands must be predominately agriculturally oriented, with permitted uses including all forms of farming, as well as land uses compatible with or related to agriculture. The asphalt storage facility is not anticipated to be incompatible with the neighbouring agricultural, residential or broader industrial uses. Additionally, adding policy support for additional permitted uses on the subject lands would not negatively impact the agricultural land base of Haldimand County.

As the intent of the application is to establish the discussed asphalt storage facility, a special policy is requested to be applied to the lands which are identified in Attachment 3.

In terms of the proposed amendment, the removal of lands from the farm and agricultural production is not considered to have a negative impact on a farming operation. There is a significant portion of the lands subject to these amendments that has been used historically as a staging area for the green energy projects that were established in Haldimand County. No additional lands from a neighbouring property or farm are proposed to be transferred or affected.

The subject lands are located within the Industrial Influence Area (IIA). As described in the Haldimand County Official Plan, the IIA is intended to ensure that development in the Industrial designations is continued and protected from incompatible land uses being established nearby. The proposed use is intended to not only be compatible with the established uses, but also support them. The location of the subject proposal within the Industrial Influence Area supports this policy objective, and will allow for future opportunities to expand the industrial sector in this area.

Land Use Compatibility

Where a new use is proposed on lands which abut a sensitive land use, a compatibility review must be undertaken to ensure the appropriateness of the development and potential for mitigation measures. The land uses that surround the subject property are varied in nature. There are residential, agricultural and industrial uses within the vicinity of the subject property. A more detailed description is provided below, and the description is illustrated by Attachment 1, which depicts the larger neighbourhood to

provide a broader context. Section F.1) 1 of the Haldimand County OP contains policies which outline mitigation measures that can be utilized in situations where a new land use is going to be located close to a sensitive land use. The considerations are outlined below:

- Separation of uses by increased setbacks:

Planning Comment: The proposed layout of the site has been configured in such a way that the proposed use will be located as far away as possible from the receptor. As well, the proposed facility is shown to be located as close as is feasible to the rail lines at the rear of the property.

The proponents have indicated that the odour, noise and other air emissions have been considered with respect to the nearby residential structure (over 100 metres away from the proposed facility). The proponents have identified that the use will be considered as Class II in the scale of the D-Series guidelines established by the Ministry of Environment Conservation and Parks. As a Class II facility the operation is required to maintain a minimum 70 metres setback from any sensitive receptors, which it will be based upon the design of the site (i.e. greater than 100 metres). To ensure that odour is mitigated, the proponents are intending to use tanks with lids to seal fumes within. The tanks will be painted in such a way as to blend in with the landscape which will reduce visual impacts that they might have. The tanks themselves are not anticipated to generate noise levels that would impact the sensitive dwelling/receptor, and any other noise or odour generating part of the operation is proposed to be located as far as possible from the dwelling, south of the storage tanks. Landscaped screening is proposed to be installed along the property boundary facing the dwelling which will provide for further noise and odour abatement and visual screening. With respect to the specific uses that are proposed (asphalt storage and additions of polymers or oils), regulation and enforcement is carried out by the Ontario Ministry of the Environment Conservation and Parks. As such, the proponents will be required to be reviewed subject to an Environmental Compliance Approval, which will ensure that the proper standards and design considerations have been utilized. The completion of this process will be required as part of the Holding removal within the proposed zoning (see zoning section below).

The subject lands will be subject to site plan control, which means that the new development on the site, and the final details of design, will be reviewed and any additional mitigation measures can be included as part of the site plan approval process. The review would include the location and orientation of buildings, orientation of use, grading and drainage, landscaping, vehicular movements and parking.

- Screening and buffering such as landscape strips, architectural screenings, fences or berms:

Planning Comment: There is a dwelling that has been constructed within 70 metres (230 feet) to the proposed property boundaries that will house the subject land use. The proposed development of the asphalt facility will be set back approximately 110 metres (361 feet) from this residence. As such, in order to reduce the potential for incompatibility, the proponents have indicated that they will use landscaped screening to provide buffering from the nearby receptor.

Landscape features such as vegetation plantings and fencing have not been finalized at this time, but will be determined where necessary through the site design and site plan approval process to further act as both a visual and sound buffer. The neighbouring dwelling is situated on the opposite side of the property, which will result in a spatial buffer. The business activities that have taken place at the site for the last number of years—transfer of product from rail tankers into transport trucks—has not lead to any conflicts with neighbouring landowners or any complaints to the County or company.

- Location of lighting so that it is deflected away or shielded from adjacent sensitive uses:

Planning Comment: Any lighting installations will be assessed via a photometrics plan and mitigation of light spillage will be reviewed as part of the site plan process. This process, and the ultimate final lighting design, will ensure there is no light spillage onto adjacent properties.

- Proper location of parking, loading and unloading areas, and outside storage:

Planning Comment: The proponents have indicated that truck traffic to and from the property is anticipated to be infrequent but occurring as needed (i.e. dependent upon refinery's needs), in other words there will not be consolidated operating hours but trucks will arrive and depart from the site as necessary at any time. The location of all of these elements will be carefully assessed as part of the site plan approval process. Traffic to the site not anticipated to be of a high volume as the usage is not something that would attract members of the public in general but transport truck traffic is anticipated to increase in intensity. Additional details such as the movement of vehicles and pedestrians within the development will be a component that is reviewed more extensively during Site Plan Control.

- Provision of safe, convenient pedestrian access with minimal interference from vehicular movement:

Planning Comment: Pedestrian traffic is not anticipated to conflict with the usage of the site. The subject lands are not located in an area where people are likely to travel on foot, and users of the site will likely be parking in the spaces provided or near their storage space for loading/unloading of materials.

Water and Wastewater Servicing

The subject property exists outside of urban boundaries as identified in the schedules of the Official Plan. The Official Plan sets out that such lands are to be serviced privately. If necessary, a new private individual wastewater treatment system (septic) will be constructed as part of the proposed development.

Site Plan Control

Site Plan Control is applied to a variety of zones throughout Haldimand County to regulate development and is identified as Attachment 6. Traditionally, the 'Agricultural (A)' zone is not subject to site plan control, however due to the scale of the proposed development staff is recommending that this project be subject to a site plan review.

This review will allow staff to have input into issues such as: stormwater management, ingress/egress, parking layout, site lighting and buffering between land uses. This review is tailored to suit each project, the proponent has recently submitted a complete site plan application package and the review has commenced.

Planning staff acknowledge that there is potential for land-use conflicts to arise between the proposed use and the neighbouring residential use. To ensure that the potential for issues are mitigated, staff will recommend that there be buffering installed on the site between the proposed use and the nearby residence. Lastly, as part of the site plan process, a site plan agreement will be required.

Zoning By-law

The zoning on the subject property is currently zoned 'Agricultural' (A) in the City of Nanticoke Zoning By-law NE 1-2000, and the proponent is seeking to create a special provision that will apply to the subject lands—i.e. Special Provision A.54. This special provision would establish the permissions for the asphalt storage facility for the lands under review. The proponents are not seeking relief for any other zoning provisions relating to lot area, frontage, or yard setbacks and thus are requesting the amendment specific to the uses noted throughout.

The recommendation from staff is to leave the A zone in place for the site, and establish a special provision that would apply to the lands subject to this application. This approach will leave the A zone in place so that, if in the future the development does not occur, the permitted uses in the A zone may be established without needing to submit a Planning application. Furthermore, the lands that do not comprise the area subject to these applications will be left in the agricultural land base and will continue to be used for cropping.

In addition to the above noted amendments to permit the proposed development, staff is recommending that a 'Holding (H)' provision be applied to the subject lands. The H-provision (Attachment 5) will require that the site plan review is completed, a site plan agreement is registered for the subject lands and Ministry approval is obtained for any required Environmental Compliance Approval (ECA). Also, the Holding provision will be removed by the General Manager of Community and Development Services once the noted requirements have been satisfied.

Draft Amendments

Copies of the proposed draft Official Plan amendment (Attachment 3), and a Zoning By-law amendment (Attachment 4) have been prepared and attached to this report. With the approval of the requested Official Plan and Zoning amendment, the proposed development on the subject lands will have a site specific policy added to the site and the Zoning By-law will have a site specific zoning provision added as well. These planning instruments will permit the use, and require that the proponents receive site plan approval prior to beginning construction.

Planning Opinion: Planning Staff has reviewed the proposal in relation to Provincial and County policy frameworks and are of the opinion that the proposed amendments are consistent with and generally maintain the intent and purpose of the Provincial Policy Statement, 2014, the Places to Grow Plan 2019 and the Haldimand County Official Plan. Additionally, the proposed amendment to the Zoning By-law maintains the intent and purpose of the City of Nanticoke Zoning By-law NE 1-2000. Therefore, Planning staff is supportive of the subject applications.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

Ministry of the Environment Conservation and Parks – No objections. Proponents will need to receive Environmental Compliance Approval for proposed operations on the site.

Ministry of Municipal Affairs/Ministry of Housing Ontario – No objections. Municipality must be satisfied that relevant policies requirements within the Provincial Policy Statement are satisfied.

Emergency Services – No objections.

Planning and Development Division (Development and Design) – No comments.

Building & Municipal Enforcement Services – No objections.

Hydro One – No comments.

Six Nations Council – No comments received.

Mississaugas of the Credit First Nation – No comments received.

Road Operations – No objections.

Haldimand-Norfolk Health Unit – No objections.

Municipal Property Assessment Corporation (MPAC) – No objections.

The proponents have consulted with the adjacent property owners in person, on September 10, 2019. No concerns were received as a result of this consultation effort.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Location Map.
2. Owners Sketch.
3. Official Plan Amendment.
4. Zoning By-law Amendment.
5. Removal of Holding By-law.
6. Site Plan Control By-law.