

Bill 40 The Planning Amendment Act

Enhancing Community Land Use
Planning for Livestock Operations

Status of Bill 40

- The Bill has had debate on Second Reading.
- The Legislature rose on June 10th.
- Intent is that Bill 40 be referred to Standing Committee and passed in the Fall session.

This will provide opportunity . . .

- To better coordinate related efforts:
 - Revised Provincial Land Use Policy regulation.
 - Proposed manure application regulation under the Pesticides and Fertilizers Control Act.
 - Review of TRC structure and process.
 - New Livestock Manure and Mortalities Management Regulation, and to
 - Develop interpretive guidelines.

Livestock Stewardship Panel Recommendations

- This legislation is a follow-up on the Livestock Stewardship Panel's recommendations to:
- Develop a two-approval process, where
 - Municipalities would address compliance with its land use by-laws, and
 - Province would address environmental impacts, before construction is allowed to begin.
- Preserve local autonomy on land use decisions.

Major Focus of Bill 40

- Municipalities and planning districts to do better “up-front” land use planning, especially for livestock operations.
- Improve the ability of municipalities and planning districts to set their own policies and development standards for livestock operations.

The Manitoba Approach to Land Use Planning for Livestock:

1. Mandatory planning.
2. Livestock Operation policy.
3. Local standards on Siting for livestock operations in Zoning By-law from Provincial guidelines.
4. Standard review process that maintains ability of a council to make a final decision.
5. Clearer municipal and provincial roles in land use and environmental matters.

Many Questions About . . .

- Local powers, authorities and liabilities
- Developing a Livestock Operation Policy
- How review process will work, especially for smaller LOs
- Role of the Technical Review Committee
- Conditions of approval
- Impact on existing operations
- Province enhancing its responsibilities
- Support and assistance

Powers, Authority, Liability

Meaningful Public Participation and Local Control

- Bill 40 will increase meaningful public participation by requiring public meetings on a Development Plan, Zoning By-law and on every application for 300 + AUs.
- Hearings for all 300+ will be required even where there are no planning by-laws.
- The threshold for hearings has been lowered to 300 AUs from 400 AUs - more will have hearings
- Council retains right to make final decision, from which there is no appeal.

Setting Local Standards

- Recognize, because of local circumstances, council may want to increase provincial standards.
- Council may choose to adopt local siting standards that are more stringent than the minimum standards in the guidelines.
- Intent is to ensure zoning by-law requirements are not less than the provincial standards.
- Where there are no zoning standards in place, council will use the PLUP guidelines to make a decision on a livestock operation proposal - must be generally consistent.

Council can refuse application that appears to comply

- The livestock operation policy is a guideline as to where application may be approved.
- On a specific application, council must still conclude the proposal will be “compatible with the general nature of the surrounding area”.
- This general test clause allows councils to consider site specific concerns.
- A council can reject an application, even if the TRC recommends approval.

Should a Council give reasons for its decision?

- A council need not give reasons for a decision and the Bill does not require it.
- A council is a legislative body like Parliament and decisions are made by majority vote.
- Each member may have different reasons for voting as they do on a specific application.
- However, if no reason is given an unsuccessful applicant could allege bad faith.

Livestock Operation Policy

Restricting LOs - All or Nothing?

- Section 24(4) must be read as a whole.
- It sets out a list of items that a livestock operation policy should contain. – areas where LOs may be approved, areas where LOs may be approved to a specified maximum, areas where no LOs will considered.
- Exercising one of these options does not preclude the others.
- Provides council with the ability to set out the entire range of categories.

Livestock Operation Policy not Discriminatory

- A Livestock Operation Policy based on Animal Units.
- Livestock Operation Policy should not be based on ownership but rather size of operation.
- AUs already incorporate the differences among species.
- Policy can allow for expansion of existing livestock operations while limiting new operations.

Review Process

Application of Standard Review Process

- The standard review process will apply everywhere as of a specified date (January 1, 2005) whether or not a municipality has a development plan or zoning by-law.
- Council decision will be guided by their planning by-laws (if they adequately address livestock) or the criteria and siting standards in the PLUP regulation (if they do not have planning by-laws).

Why a hearing process for 300+?

- It was a policy decision to require a public hearing for large livestock operations.
- Public hearing process is needed because of potential impacts of the particular use on the surrounding lands.
- Threshold for a hearing process is lowered to 300 AUs, based on Livestock Stewardship Panel recommendations.

Approval Required for Small LOs

- Small livestock operations have the potential for nuisance and other land use impacts.
- Minimum siting guidelines will be based on the Farm Practices Guidelines which include recommendations for operations as small as 10 AUs.
- Intent is that council be able to regulate all livestock operations regardless of size.
- Council can delegate approval functions and simplify approval process by a delegation and procedures by-law under the Municipal Act.

Exercising power of delegation for Small Livestock Operations

- The by-law must identify the person to whom the power is being delegated (CAO, designated officer).
- Could set a maximum size of operation that may be approved by delegated authority.
- May permit delegation only to approve, not to reject.
- Limit the types of conditions delegated authority could impose.

“Deemed Approval” for Small Livestock Operations

- By-law should detail procedure around exercise of delegated authority.
- “Deemed Approved” without formal process, for small livestock operations can be achieved by a properly drafted by-law.
- The parameters as to when it can apply will have to be expressly set out.
- Municipalities should seek legal advice in preparing a Delegation and Procedures By-law.

Can a Council hold a Public Hearing for under 300 AUs?

- Yes. Council can establish procedures to be followed in the Zoning By-law and may wish to include a public hearing.
- Bill 40 does not prescribe a review process for under 300 AUs.
- Interpretive guidelines will be developed for staff to advise council on best alternatives for their circumstances.

Representation Before Imposing Conditions

- Under 300 AUs there is no requirement for a public hearing.
- In this circumstance the applicant has opportunity to make representation to council before council imposes conditions. [54.4(5)]
- In the event a council requires a hearing for under 300 AUs, this requirement, to make representation before council, is satisfied by the public hearing. The zoning by-law or procedure by-law should make this clear.

Technical Review Committee

Role of TRC

- Role of TRC does not changed – no more or less “power” than before.
- The TRC has no decision-making authority.
- TRC is advisory to local council/Council makes decision.
- They provides a preliminary assessment and makes recommendations based on existing available information.
- Report is made public and TRC members are available to answer questions at the public hearing.

Conditions of Approval

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- As a result of adopting a livestock operation policy in a development plan and siting standards in a zoning by-law, Council will likely only be considering applications that appear to comply with their by-laws – all others need not apply.
- Council can impose conditions that are relevant and reasonable:
 - to ensure conformity with the development plan or zoning by-law;
 - implement recommendations of the TRC, and
 - require means to reduce odour such as lagoon cover and shelter belts.

Can Council require conditions regarding manure application?

- No. Manure management is a provincial responsibility and the Province is enhancing its role in this area.
- It is anticipated that the Pesticides and Fertilizers Control Act regulation will establish setback requirements for manure application, based on the Farm Practices Guidelines.
- Recently adopted regulations Livestock Manure and Mortalities regulations have been strengthened.

Can a Council require a Performance Bond?

- A performance bond is not a condition that would normally be found in a development plan or zoning by-law.
- A development agreement may include a guarantee of performance of an obligation.
- However, the performance bond must be tied to the matters that can be addressed in the development agreement.
- [see 59.2(6)]

Impact on Existing Operations

Non-Conforming Uses

- A livestock operation lawfully in existence before the enactment of a zoning by-law is a legal non-conforming use.
- Non-conforming uses can continue to operate as long as they do not discontinue
- Change in ownership does not affect non-conforming use.
- Non-conformities may be allowed to make structural alterations, increase in size or intensity of use, or rebuilding if destroyed more than 50% by variation order.

Related Activities

Revised Provincial Land Use Policy Regulation (Policy #2)

- PLUP Policy #2 – Agriculture will be revised to:
 - Provide guidance on developing a Livestock Operation Policy
 - Provide criteria for deciding on a Livestock Operation where there is no adopted development plan.
 - Introduce minimum siting and setback standards for Livestock Operations based on the Farm Practices Guidelines.

Review TRC Process

- Commitment to review the current TRC structure and process.
- To address a number of issues raised.
- To make it more responsive to local circumstances.
- Explore options to incorporate local technical expertise.
- Initial Interdepartmental meeting held in May

Livestock Manure & Mortalities Management Regulation

- Lowers regulatory threshold to 300 AUs from 400 AUs.
- Prohibition of winter spreading of manure.
- Mandatory registration of manure management plans.
- Reduced rates of application on sensitive soils.
- Manure storage facilities without permits must register by certain dates.
- Requirements for decommissioning of unused manure storage facilities.
- Easily damaged liners no longer approved for use.
- Regulation of manure application on basis of phosphorous to be reviewed.

Pesticides & Fertilizers Control Act

- A new regulation will be introduced under this Act to manage the application of manure to address both environmental and nuisance odour issues.
- Setback requirements for manure application to property lines, residences and designated residential areas will be introduced.
- The setback requirements will vary with the method of manure application, including injection.
- The setbacks will be based on the Farm Practices Guidelines.

Support and Assistance

Community Planning Assistance Program

- Funding available to municipalities and planning districts for new planning by-laws or revising existing planning by-laws.
- Funding formula's will remain the same as under the previous program:
 - Up to \$3000 - 50/50 cost sharing for review of existing by-laws.
 - Up \$10,000 - 50/50 cost sharing for new municipal by-laws.
 - Up to \$40,000 – 60/40 cost sharing for planning districts.