

Section 5.2

Municipal Planning Strategy and Land-Use By-law Preparation

This guide is for planners and non-planners.

1. Introduction

This document is a 'how to' guide that describes the basic components of a Municipal Planning Strategy (Strategy) and how a Strategy is linked to a Land-Use By-law (By-law). The contents are designed to assist municipalities in drafting a Strategy and an implementing By-law and their amendments. This document should also be of interest to others in providing a better understanding of what is entailed in preparing a Strategy and a By-law. The approaches described and examples cited in this document are presented as illustrations and should not be considered to be the only approach possible.

These *Guidelines* have evolved from comments and suggestions from municipal planners, from contents of Strategies and By-laws submitted to Service Nova Scotia and Municipal Relations for review, and in light of court decisions and planning appeal decisions rendered by the Nova Scotia Utility and Review Board. The Department intends to update these *Guidelines* as new situations arise or as municipalities propose new solutions to issues.

2. Strategy - General

What is the purpose of a Strategy?

The purpose of a Strategy is to provide statements of policy for the management of the municipality. Its usual focus is on policies to deal with problems and opportunities related to the development of land although a wide variety of other issues may be addressed.

A Strategy is a legal document and is adopted as a by-law of the municipality. Once approved (see *MGA Resource Binder, Information Bulletin #25*), it has the status of a law of the municipality. In keeping with this legal status, a Strategy should not only be capable of being understood by the lay person, but it should also be legally interpretable.

The Municipal Government Act provides the authority for a Strategy.

It is important to emphasize that a municipality cannot act contrary to its Strategy (Section 217 of the *Act*) such as allowing a type of development that the Strategy states will be prohibited. At the same time the policies in a Strategy do not commit a Council to undertake any project (eg. sidewalk construction on certain streets) but they would prevent a Council from carrying out the project in a manner which is inconsistent or at variance with the policies.

2.1 Authority

Section 190 of the *Act* states that: "The purpose of this Part is to: ... (b) enable municipalities to assume the primary authority for planning within their respective jurisdictions...." The actual items that may be addressed in a Strategy are listed in Section 214 of the *Act*. This Section focuses largely on land-use and physical planning elements. A Strategy may, nonetheless, deal with social and economic issues and many Strategies across the province do include these matters. However, the ability of a municipality to implement social and economic policies through a By-law are limited, although most may be accomplished through other means.

2.2 Subject Matter

What is in a Strategy?

The choice and relative importance placed on the subject matter addressed in a Strategy is up to each individual municipality within the framework of the *Municipal Government Act*. It will vary from municipality to municipality depending upon community goals, objectives and planning issues. In addition, the degree of municipal control over certain subject matters varies. Some matters are wholly within a municipality's jurisdiction, while others are partially or totally the responsibility of the other two levels of government (federal and provincial). For example, in many areas regarding environmental protection and standards the authority for setting standards etc. rests with either the provincial or federal government. (i.e. air quality). In such cases policy will normally state that "the municipality will liaise with the appropriate Provincial or Federal agency regarding air quality in the municipality."

2.3 Background Studies

The process of drafting a Strategy will usually result in the preparation of separate background study or studies. This might include such things as:

- a summary of the existing and historical demographic trends in the planning area and what future trends look like;
- a summary of the existing and historical development patterns in the planning area;
- a discussion on opportunities and problems in the municipality;
- service capacities (water and sewer systems); and
- an updated existing land-use inventory

Although the type and detail of studies will vary from situation to situation demographic trends, subdivision, development permit and building permit activities are rarely reviewed.

Separate background studies should be clearly identified and referenced in the Strategy and these documents should be available to the public. As well as a summary or outline of the major findings of these studies are often contained in Strategies. It is suggested that a list of the studies be included as an appendix to the Strategy. (See also Section 3.1.3. of this *Guideline*.)

2.4 Statements of Provincial Interest

The *Act* (Section 193) enables the province to adopt statements of provincial interest that are “necessary to protect the provincial interest in the use and development of land.” There are five statements in effect. They deal with drinking water, flood risk areas, agricultural land, infrastructure and housing. The *Act* (Section 196) requires that provincial activities must be “reasonably consistent with a statement of provincial interest.” It also requires (Section 198) that municipal planning documents be “reasonably consistent with the statements.” Municipal planning documents must specifically address these statements and their applicability with the municipality. (Also see the Guidelines for the Statements of Provincial Interest.)

How does the Statements of Provincial Interest relate to the Strategy?

A municipality can use the Provincial Subdivision Regulations or it can adopt a municipal subdivision by-law.

2.5 Provincial Subdivision Regulations

The *Act* requires the Minister to prescribe *Provincial Subdivision Regulations* (Section 270). These Regulations apply to every municipality and they set out the framework for subdividing land in the provinces.

Over the years most municipalities have adopted a subdivision by-law, consistent with the *Provincial Subdivision Regulations*. But for those municipalities which did not, the *Regulations* were deemed to be their by-law on April 1, 1999, the effective date of the *Act* (Subsection 270(5)). A municipal subdivision by-law applies to the entire municipality, although there may be different requirements for different areas of the municipality.

A municipal subdivision by-law must be consistent with the *Regulations*, however, a municipality may vary or waive the requirements of the *Regulations*:

- if its subdivision by-law sets out requirements that are more stringent than those set out in the *Regulations*; or
- where the requirements being varied or waived are dealt with by policy in a Strategy.

Apart from waiving or varying the *Regulations*, there are a number of items that the *Regulations* do not address that may be included in a municipal subdivision by-law. These items are listed in sections 271(3) and 271(4) of the *Act*. They include such things as:

- standards and requirements for the installation of sewer and water services;
- the transfer of land for open space;
- limiting the number of lots that may be created from an area of land in a calendar year;
- requiring up to 10% open space dedication; and
- regulating the width of streets and private rights-of-way.

Section 274 of the *Act* enables the municipality to require infrastructure charges in a *Subdivision By-law*, provided there is specific supporting policy in its Strategy.

3. Strategies - Background

Municipal planners in Nova Scotia employ a number of document organizational formats and styles. This section provides a general review of the main organizational formats and styles found in the province.

A Strategy may:

- cover the entire geographical area of the municipality;
- cover a specific geographical area such as a watershed area, a village or a polling district in a county or district municipality; or
- address a specific land-use activity in the municipality or in a specific geographical area (eg. fox and mink ranches, fish reduction plants or scrap yards).

Whatever the area or subjects covered, it is important to remember that the document is a working public document and in this context the objective should be to make the document user friendly. It should not be seen as a document that only the planners can understand or use. There are a number of things that can be done to make the document more user friendly. Suggestions include:

- using cross references and/or footnotes;
- listing all the background studies in an appendix;
- setting out in an appendix a brief description of how all pertinent boards or committees relate to Council (this might describe their purpose, their funding responsibilities and their composition and any relevant special legislation might also be cited); and
- including a glossary of terms.

3.1 General Format

When beginning the municipal planning process Council must first decide what type of planning approach it wants to pursue. There are a number of options:

- a comprehensive municipal-wide Strategy;
- a comprehensive area specific Strategy;
- a single issue Strategy; and

What type of format should be used?

- a Secondary Strategy

A comprehensive Strategy covers the whole geographical area of the municipality and all major areas of concern (for example, commercial, residential, industrial, recreational, social and economic areas of concern). This approach is more common to towns. County or district municipalities, alternatively, often adopt comprehensive area specific Strategies. These planning documents cover all the major areas of concern but they only cover one or two districts in the municipality. The other two types of Strategies are described in Section 3.1.1 and 3.1.2.

3.1.1 Single Issue Strategies

A municipality, particularly, a rural municipality may not wish to prepare a comprehensive Strategy (i.e., a Strategy that covers the entire municipality and deals with all land-use concerns). Section 214(1) of the *Act* lists the items that may be addressed in a Strategy. It also indicates that a Strategy may address “any or all” of the items listed. The items that are addressed rests with Council. For example, Strategies have been adopted that focus on the protection of municipal drinking water supply area and on the location of land-uses such as scrapyards, fish reduction plants and fox and mink ranches. These Strategies are called single issue Strategies, and although they cover the entire municipality, they only deal with specific land-use issues.

3.1.2 Secondary Strategies and Strategies That Cover a Portion of A Municipality

A Secondary Strategy approach may be suitable for a municipality, which includes a number of diverse areas each with unique planning issues. It involves Council adopting a general Strategy for the entire municipality and subsequently amending this Strategy by adding:

- more detailed plans (Secondary Strategies) for specific areas of the municipality (eg., a village, an urban fringe area, different inner-city neighbourhoods) and/or
- detailed management strategies for municipal services

Strategy and Secondary Strategies, what is the difference?

such as sewers, water and recreation.

Staff resources may influence Council's decision as to what approach to take as a comprehensive municipal-side Strategy may be beyond municipal resources. Preparing a series of detailed Secondary Strategies over the course of a number of years may be more practical.

A Secondary Strategy should as much as possible be consistent with the policies in the general municipal-wide Strategy. This will eliminate any confusion between the two documents. The policies may differ, to address unique circumstances in the Secondary Strategy area. For example, depending on the area of the municipality a Secondary Strategy may wish to encourage marine related uses or discourage residential development on prime agricultural lands.

In some instances, the policy set out in a Secondary Strategy may necessitate amending the relevant policy in the municipal-wide Strategy. When this occurs the general Strategy policy should be amended at the same time as Council is adopting the Secondary Strategy. This situation might arise if the Secondary Strategy establishes a new zone within the future land-use designation. The general municipal-wide Strategy would need to be amended to incorporate policy establishing this new zone. Furthermore, if supported by policy it may perhaps be necessary to amend the General Strategy to allow the use of this new zone outside the geographical area of the Secondary Strategy.

3.1.3 'Unofficial' Portions of A Strategy

Sometimes a document is written such that only a part of it is intended to be the official Strategy. Background studies prepared for the Strategy and By-law may be used as an introduction. It must be clearly stated, however, that these do not form part of the official Strategy for legal purposes.

If there are aspects which can be expected to change frequently, such as municipality's administrative planning procedures, they should not form part of the Strategy. If they are, every time Council decides to change its internal administrative procedures, an amendment will be required. This amendment process involves

When does a Land-Use By-law have to accompany a Municipal Planning Strategy?

If the Strategy does not deal directly with land-use, a By-law is not required.

substantial work and may take considerable time to complete. Matters such as this should not be included in the official part of the Strategy.

3.2 A Strategy With a By-law

When a Strategy for all or part of a municipality contains statements of policy with respect to the control of land-use and development, it must be accompanied by a Land-use By-law. The By-law is required only to the extent that land-use controls are necessary to implement policies contained in the Strategy. There should be sufficient text, policy and maps in the Strategy to support the provisions in the By-law. (Section 6 of this *Guideline* discusses the interrelationship between a Strategy and a By-law.)

3.3 A Strategy Without a By-law

Planning is often identified as one of a group of activities, such as budgeting and staffing, which together can be called management. On the other hand, the phrase “municipal planning” is often viewed as a specialized activity quite apart from the broader management of a municipality. The traditional “policies for zoning” approach sometimes discourages the use of municipal planning documents as a management tool to deal with change in areas of municipal jurisdiction other than land-use and development.

A Strategy may be used as a “management plan.” A Council may choose to formally state its objectives and policies concerning the future of any municipal program, service or department. Such a planning strategy would provide guidance to staff through standing policies and provide the public with a clear statement of the Council's intentions. Such a “plan” can be adopted under the *Act*.

Some examples of the content of such a Strategy include:

Objective 1:

To provide an increased level of recreational activities and facilities for teenagers and senior citizens.

Policy Content:

Conduct a recreation needs study to determine activities desired by target age groups.

Create a new staff position in the Recreation Department in Year 2.

Renovate the West End Community Centre preferably in Year 3 with suitable reference to capital budgeting.

Objective 2:

To increase the rate of industrial growth in the Community.

Policy Content:

Continue to support the work of the Regional Development Authority and Economic Development (Committee of Council)

Prepare and distribute new promotional literature to potential developers.

Request that the Planning Department conduct a comprehensive review of the municipality's approach to promoting development and submit a report to Council in Year 2.

Objective 3:

To improve long-term capital and public works management.

Policy Content:

Develop and monitor a ten-year maintenance program for the sewer and water systems, streets and sidewalks.

Request all departments to prepare a five year vehicle and equipment replacement forecast.

Establish terms of reference for a Development Forecast Study to determine the areas of land likely to require service extensions in the next decade and the financial impact of these.

Annually review all long term expenditure forecasts in the preparation of the Three Year Capital Budget.

Ideally, these types of management policies would be carefully integrated with the land-use policies to produce a comprehensive planning strategy for the municipality. It is recognized that some Councils may wish to deal primarily with land-use matters in their Strategies while others may wish to deal primarily with non-land-use questions. Non-land-use issues do not require an implementing Land-use By-law.

This management approach to municipal planning should involve all the relevant municipal departments required to achieve the particular policy objective. For example, Objective 3 (To improve long-term capital and public works management), would require the involvement of the Engineering, Public Works, Planning and Finance Departments.

(The Act enables this type of Strategy. To date, however, no municipality has enacted a Management Strategy under the planning provisions of the MGA; consequently, this example is presented as an illustration of what might be included in such a Strategy. See also Section 5.3.1. of this Guideline.)

3.4 A Strategy With a Subdivision By-law

It is possible for a municipality to adopt a Strategy dealing only with subdivision matters that is implemented by a Subdivision By-law rather than a Land-use By-law. The Municipality of West Hants used this approach to deal with the preservation of agricultural lands in a portion of the Municipality. A separate Strategy was adopted for that area of the municipality and the policies dealt solely with limiting the annual rate of subdivision of land in that area in a calendar year. To implement this Strategy, the Municipality amended its Subdivision By-law by adopting a provision limiting the subdivision of land in that area to one lot and a remainder lot or two lots and no remainder lot for any existing parcel of land during a calendar year. *Note: This Strategy dealt only with the subdivision of land; however, the subdivision of land may be dealt within a Strategy along with other subjects identified in Section 214 of the Act.*

What is the best way to organize the Strategy?

4. Strategy s Organization

The overriding aim in drafting a Strategy is to make it understandable, practical and workable from a planning, legal and an administrative point of view. The public and Council both want a document that is understandable to the professional and the public. There are a number of functional approaches to the organization of a Strategy and the choice of approaches rests with the municipality. The following five examples are suggested approaches for organizing a Strategy.

4.1 Functional Classification System

This suggested approach is an attempt to organize planning subject areas into categories that can be related to the functional classification system set up by the Department and used by municipalities in their annual estimates and financial reports. A detailed breakdown of this system can be found by looking at the Department's Municipal Accounting and Reporting Manual. The order or sequence of the categories in a Strategy may be adjusted to fit the individual municipality.

A Strategy organized along these lines might first address the traditional land-use subject areas (residential, commercial, industrial, etc.) and then deal with the various municipal services provided. A possible table of contents for such a Strategy is presented below.

1. Introduction/Preamble
2. Land-use (including a background analysis of each)
 - Residential
 - Commercial
 - Industrial
3. Environmental Health Services
 - sewer
 - water
 - solid waste
4. Environmental Development Services
 - Housing *
 - Natural Resources*
 - Industrial Parks*
 - Tourism*

5. Recreation and Cultural Services
 6. Education
 7. Transportation Services
 8. Public Health and Welfare Services
 9. General Government Services
 10. Protective Services
 11. Implementation
- * where not covered previously in #2 Land-use

4.2 Modified Functional Classification System

A modified alternative to Section 4.1 would be to use the traditional subject areas, beginning with the major land-use classifications followed by the major public services. A separate section could then be added to link Strategy policies with the capital budgeting process. In this instance the table of contents might look like the following.

1. Introduction/Preamble
2. Background
3. Residential Development
4. Commercial Development
5. Industrial Development
6. Institutional Development
7. Open Space and Recreation
8. Transportation Network
9. Water and Sewer Services
10. Health, Education and Library Services
11. Police and Fire Protection
12. Capital Budgeting
13. Implementation

4.3 Geographical Approach

Either combined with the second approach, or separately, the Strategy might be organized around geographical areas such as neighbourhoods, communities, town centres or resource areas. This approach may be more appropriate for Strategy's for rural municipalities or for larger towns and regional municipalities. For example, a Strategy for a rural municipality might be organized around two areas: "rural hamlets" and "those areas outside the hamlets." Then, for each area the various land-use activities would

be reviewed. This approach was used in the Municipalities of Kings County, Yarmouth and Barrington. In a Town, a Strategy might be combined with the second approach, singling out the Town Centre area and the Rural Fringe area for detailed treatment. Again each would be discussed with respect to the various land-use components.

4.4 Planning Process Approach

It may be desirable to organize the Strategy in such a way as to reflect the planning process. This can vary from the traditional process of survey, analysis and plan to the rational decision-making approach. Basically the latter consist of the following steps: (a) the decision to adopt a plan, (b) goal formulation and identification of objectives, (c) generation of possible alternative courses of action, (d) evaluation of alternatives and (e) implementation (including policy formulation) and monitoring.

1. Introduction/Preamble
2. Background Setting (data collection & analysis)
3. Identification of Problems or Issues and Opportunities
4. Goals and Objectives
5. Policies
6. Implementation and Monitoring

4.5 Issues Approach

Still, another approach is to organize the Strategy around the major planning issues. This approach might be used in a Strategy that is being adopted to deal with one or two planning issues. In such a case there should be enough background to explain why the Strategy is needed and why it is so specific. Examples of such issues are the location of fish reduction plants and fox and mink farms and the protection of heritage buildings, agricultural lands and drinking water supply watershed areas. (See also Section 3.1.1 of this *Guideline*.)

Ensure the legal status of the Strategy is fully understood.

5. Strategy s Specific Content

5.1 A preamble

It is suggested that a Strategy begin by explaining the purpose and role of the document. This should include such basic statements as: "the Strategy is a legal document, a policy document and a framework for development, and where land and development issues are dealt within a Strategy, they shall be implemented by the Land-use By-law."

Reference should be made to the authority under which the Strategy is being prepared (the *Act*). There should also be reference to the location of the area covered by the Strategy (e.g., a map). This is particularly important if only a portion of a municipality is being covered.

Finally, the *Act* requires public participation during the preparation of a Strategy. It is recommended that the public participation process together with the overall planning process used to prepare the Strategy be acknowledged and briefly outlined.

5.2 Background

The background information should provide the rationale for the policies.

Each municipality is unique; consequently, policies should reflect the local situation. In order to understand the purpose and suitability of the policies, background information on the municipality is often provided. This can include such things as the physical demographic and historical trends, development trends, level and extent of municipal services, characteristics of the community, identification of the major planning issues in the community, and in some cases, the county or regional setting within which a municipality falls. This information may be outlined in greater detail in separate background studies, but the Strategy should include sufficient information from these studies to support the policy statements.

If the context, scale and level of activities in a municipality are not established in a Strategy, it is difficult to understand the appropriateness of the policies; and to evaluate their effectiveness.

5.3 Policies

The policies should be clear, understandable and defensible.

Policies should be clear and understandable. In addition, the Strategy should contain sufficient text to justify and support the policies. To make the Strategy easier to follow and understand, the policies should be grouped (e.g., from general to specific) and set off from the rest of the text. They should be numbered and indented or in italics or otherwise differentiated from the general text of the Strategy.

Policies should be internally consistent and not in conflict with other policies in the Strategy or extend beyond a municipality's jurisdictional authority. Policies in which Council can only exert indirect influence should be differentiated from those over which Council has direct control. In the case of the former, the policy should identify the body which has the authority. For example:

It shall be the intention of Council to discuss with the Department of Community Services and request that additional moderate income housing units be developed in the Town.

Given that a Strategy is a municipal by-law, policies should appear as legally interpretable statements. Over time these policies may be interpreted in appeals before the Nova Scotia Utility and Review Board or even the courts. Therefore, policies should be clear and precise. If they are difficult to understand, they may well be interpreted differently than Council intended. In addition, they may be difficult for Council to apply.

Policies should strike the right balance between generality and being too specific.

At the same time, Councils' flexibility is reduced when policies in a Strategy are too specific, for example, when they actually spell out standards. In such instances, any change in the standard will require a Strategy amendment. Council may, then, find itself amending the Strategy for minor changes rather than for fundamental shifts in policy. Therefore, specific policies such as "each lot shall be a minimum of one acre" should be avoided except where Council explicitly wants to be very rigid. On the other hand, very general policies such as "Council shall provide for the well being of all citizens" should also be avoided excepting as general goals, because they give Council little decision making direction.

5.3.1 Terminology

The terms used in policies should be consistent with the terms used in the By-law. For example the term “light industry” should be used or described in policies in a manner consistent with the definition of “light industry” given in the land-use by-law. Other terms that are often used inconsistently are “institutional uses” and “low density residential,” “medium density residential,” and “high density residential.”

In writing policies, choose your words carefully.

The wording of policies should reflect an awareness of subtle differences in the meanings of words used. One example is “support” versus “encourage,” where the former means a financial commitment by the Council.

Usually policies that deal with the expenditure of money are written as intentions, not as mandatory prescriptions or regulations so that Council is not committed to the action if the budget does not provide for it. In this context, the word “shall” indicates something is mandatory while the use of the word “may” does not.

Accordingly, it is better to use the phrase, “it shall be the intention of Council to acquire land for a play field next to the elementary school” than to say “Council shall acquire land for a play field....”. In general, it is recommended that all policies employ the former approach and begin with “It shall be intention of Council....”.

5.3.2 Future Land-use Designations and Zones

How do you want the municipality to develop over time?

A Strategy should contain policies describing all the desired future land-use designations and the range of uses that will be permitted in each designation. The areas where these designations will be applied should also be described. The land-use designations must be illustrated on a map. The latter is called the Generalized Future Land-use Map or the Future Land-use Map. (See also Section 7.2.1 of this *Guideline*) The policies should outline the zones that will be established in the By-law and the general range of permitted uses that will be allowed as-of-right within each zone. In essence, when establishing the future land-use designations, policies should indicate how all the lands within these designations will be zoned.

Provide a degree of flexibility in the policies, or an Strategy amendment will be required with every change to the permitted uses.

How do you plan to implement your land-use policies?

5.3.3 Permitted Uses

Policies outlining the range of permitted uses for the various future land-use designations and the land-use zones should provide a degree of flexibility. This can be achieved by using phrases such as “uses similar to but not excluding” or “uses such as.” Employing these phrases would enable a municipality to add some types of permitted uses to the list set out in the By-law without a Strategy amendment. For example, if the policy describing the uses that would be permitted as-of-right in the R-2 zone has some built-in flexibility, it may be possible at a later date to amend the By-law to add “day nurseries” to the list without a Strategy amendment.

5.3.4 Implementation Techniques

Forethought must be given to how a land-use policy will be implemented. Will it require another future land-use designation, another land-use zone, the establishment of special provisions within a zone, a site-plan or a development agreement? It is necessary to have policies to establish these implementation mechanisms in the Strategy.

For example, there might be a policy to limit development on lands designated environmentally sensitive (e.g., an area with an excessive slope or an area of known flooding). By itself such a policy means very little. To make this policy operative, additional policies might indicate Council's intention:

- to create a conservation zone in the by-law with a limited range of permitted uses and then zone the environmentally sensitive areas conservation;
- to allow certain types of development in these areas only by re-zoning; and
- to establish specific criteria to be used by Council when evaluating these re-zoning requests.

Then, the measures, such as the creation of the conservation zone and zoning the hazardous lands for conservation must be carried out in the By-law.

The Strategy is a policy document which indicates the rationale and provides the support for the regulating provisions contained in the By-law. This is in accordance with Section 219 of the *Act* which

requires that a By-law only be adopted to carry out the policies delineated in the Strategy.

5.4 Implementation Section

The implementation section or chapter is one of the most important components of a Strategy because it describes in one place how the Strategy's policies, in general, will be put into effect. Accordingly, it should be complete, precise, and well organized. Frequently, this section consists purely of policy statements. An effort should be made to explain these policies, particularly when they are quite technical.

While the Department recommends the inclusion of a special section or chapter on general implementation of the Municipal Planning Strategy, it is recognized that a Strategy may be organized with specific implementation policies contained within the various other sections or chapters of the Strategy.

The following items are recommended for inclusion in an implementation section.

What should be included in the Implementation Section of the Strategy?

1. Land-Use By-law
 - indicating what it does and how it relates to the Strategy
 - list of all proposed land-use zones to be established
 - describe the types of By-law amendments (text amendments and map amendments)
 - describe the types of development which will be permitted only by amendment (e.g., shopping centres which require a rezoning to a shopping centre zone.)

2. General Criteria for Evaluating Amendments to the Land-Use By-law (e.g., re-zoning) such as:
 - impact upon municipal services
 - cost/revenue implications
 - impact upon schools and other community facilities and adjacent uses
 - development form
 - natural site development potential
 - traffic generation (with respect to increase in volume and location of exits and accesses)

- general land-use compatibility

It should be noted that criteria for amending the land-use by-law may often be more specific than this, especially where they relate to developments such as shopping centres, or amendments in environmental constraint areas. For example, another criterion for shopping centres might be the distance from residential areas and schools.

In such cases, the more specific criteria will, normally, be incorporated into specific policies in the section in the Strategy that deals with that subject.

The purpose of the list above is to cover areas that might have been missed within the Strategy, and to minimize the repetition which would occur if all criteria were listed for every land-use type.

3. Development Agreements and Criteria for Evaluating Development Agreement Proposals.

- explanation of an agreement
- a summary of developments to be handled by development agreements under Section 225(2) of the *Act* (e.g., “Shopping centres” in areas designated commercial (See Policy “XX”).)
- if the developments to be considered have not previously been discussed in detail - sufficient policies should be included here to clearly indicate the types of development and the criteria Council shall have regard to when evaluating a proposal
- list items that may be included in an agreement (this is not a mandatory requirement, but only a suggestion)
- provide a summary of general criteria to have regard to when evaluating all or certain types of development agreement proposals, such as:
 - adequacy of municipal services (this is a criterion for evaluating a proposal; the actual agreement, however, cannot require municipal services)
 - cost/revenue implications
 - environmental impact (as criterion for evaluating a proposal; the agreement, itself, cannot include items concerning issues that there is no legal authority for their inclusion, such as air pollution)

- impact upon schools and other community facilities and adjacent uses
 - development form
 - traffic generation (with respect to increase in volume and location of exits and accesses, traffic flows and parking areas)
 - general land-use compatibility
 - hours of operation for the proposed use
 - proposed buffering and landscaping
4. Site-plan Approval describes such topics as:
- uses subject to site-plan criteria
 - areas under site-plan control
 - matter subject to site-plan control
5. General Flexibility Clause (See Section 6.4 of this Guideline).
6. Subdivision Controls
- describe briefly the basic controls and their purpose
 - list the items which are varied or waived with respect to the Provincial Subdivision Regulations
 - summarize the items enabled as a result of supporting policy (eg. 10% open space dedication and infrastructure charges)
7. Other Municipal By-laws Relevant to the Strategy.
- For example, by-laws such as those dealing with minimum maintenance standards, manufactured housing parks and heritage districts should be referenced in this section.*
8. Capital Improvement Program
- may include a brief discussion of the relationship between the Strategy and the capital work program
 - may also include a concise listing (e.g., of applicable policies) of capital projects identified in the Strategy and a summary of Council's general capital expenditure priorities
9. Guidance for Variances
- describe briefly the variance process
 - list any additional items that may be addressed due to

supporting policy in the Strategy (Sections 235(2) and 242(1) of the *Act*

10. Non-conforming Uses and Structures
- indicate whether or not the *Act* provisions (Sections 238, 239, 240 and 241) are to apply or whether policies are to be adopted pursuant to Section 242 of the *Act* which allows for some relaxation of the *Act's* provisions.

Note: The Act (Section 239) sets out specific provisions with respect to nonconforming structure for residential use. This provision addresses the situation found across the province primarily in older residential neighbourhoods where dwellings pre-date the existing planning regulations. In many instances if an older dwelling is destroyed by fire the owner could rebuild only if the new dwelling conforms to the existing zoning provisions. But, these existing requirements set out a building envelope that is substantial different from the former dwelling and which is not compatible with the existing neighbourhood. Similarly the zoning requirements often restrict or limit renovations or repairs to these dwellings including such things as new front porch steps. Many By-laws deal with this problem through a general zoning provision worded similarly to Section 239 of the Act.

11. Development Officer
- description of duties and statutory authority

12. Strategy Amendments
- for such issues as:
 - changing the Generalized Future Land-use Map;
 - bringing a Strategy into line with Provincial Statements of Interest;
 - changing policy direction; and
 - as a result of further studies outlined in the Strategy (an example of this would be if in preparing and adopting a Secondary Strategy, modifications to policies in the overall Strategy are required.)
 - describe the amendment process including public participation required by the *Act*.

(Note: these might be discussed in the text only rather than formulated as policies because the amendment process is regulated by the Act.)

13. Strategy Review

- The *Act* (Section 214(2)) requires that there should be “policies in the municipal planning strategy on how it intends to review the municipal planning strategy and Land-Use By-law.”

14. Ongoing Planning

The ongoing planning process is seldom given more than a passing acknowledgement in Strategies but it is important. Planning does not stop between the time a Strategy is adopted and a review is required. However, the monitoring process is more administrative in nature, therefore, it may be practical to make these policies more general.

- policies for future secondary planning Strategies
- public information and education programs
- integration of capital budgeting and the Strategy
- role of the Planning Advisory Committee (PAC)
- monitoring process

15. Recovery of Expenses for Amendments to the Land-use By-laws and for variances, site-plans and Development Agreements (*Act* Section 220(4)(1), 221(2), 232(4) and 237(3))

A municipality may establish a fee to cover:

- the cost of advertising (for Land-Use By-law amendments and Development Agreements) and should the advertising cost more than the established fee, then the applicant may be billed for the difference, or if it is less, the difference shall be refunded
- the cost of notifying adjacent land owners
- the cost of posting a sign
- the administrative processing costs

The Strategy provides the future vision for the municipality, the By-law provides the tools to achieve it.

6. Strategies and By-laws - Their Interrelationship

6.1 General

A By-law is the principal mechanism for implementing the land-use policies in the Strategy. It is similar to the Strategy in that it becomes a law of the municipality adopted by Council and subsequently reviewed by the Department in conjunction with the Strategy.

This by-law sets out such things as:

- the land-use zones (including a comprehensive development district)
- permitted uses for these zones
- standards for development
- performance standards
- developments to be considered by development agreement
- developments to be considered by site-plan approval process
- future transportation reserves

It also includes sections on definitions, signs, administration, interpretation and general provisions for all zones. The By-law also includes a map dividing the municipality into use districts or zones as set out in the text of the By-law. The by-law provisions, however, cannot be made retroactive, that is, they cannot affect existing buildings or uses.

The Land-Use By-law can only be adopted or amended to carry out the intent of the Strategy. (See *Act* Section 219(3)). If a Strategy does not have policies respecting a matter contained in the land-use by-law, that portion of the by-law may be held to be invalid. For example, a By-law may contain a provision that neighbourhood convenience stores not exceed 1,500 square feet of commercial floor space in area. If, however, there is no supporting policy in the Strategy for limiting the size of neighbourhood convenience stores, the provision, if challenged, may be declared invalid. If the intent of a land-use policy is not carried into the implementation of By-law, it lacks enforceability. For example, the Strategy must identify those developments which will be permitted only by a development agreement. To become operative, these policies must be carried

forward into the By-law.

In addition Section 220(5) of the Act identifies by-law provisions that require supporting policies. Included are provisions to control such things as access, outdoor storage, location of disposal sites, the alteration of land levels and top soil removal.

Normally, most By-law provisions will be covered by the more general policies in the Strategy. It is, however, useful to set out in detail in the Strategy the rationale for the provisions to be established in the Land-Use By-law, but only to the extent that the Strategy does not go so far as to set the standards themselves. If the detailed standards are incorporated into the Strategy, then it must be remembered that any change in these standards will require a Strategy amendment rather than a By-law amendment. The former is a longer process. Finally, by clearly indicating the rationale for provisions such as yard requirements, the Strategy will serve as a guide to both the development officer and Council in judging minor variances.

6.2 Land-Use By-law

The Model Land-Use By-law outlines some suggestions for format and content for by-laws (see Part V, Section 5.3 of the Local Government Resource Handbook). However, depending on the nature of the municipality (e.g. fishing and agricultural communities, or urban communities) not all suggestions will be appropriate for all communities (particularly with respect to the range of zones; the mix of uses permitted within zones; and development standards, such as: sign provisions, parking standards and minimum lot size requirements).

Above all, it is important that the municipality adopt its *own* standards, zones and permitted uses in accordance with the policies in its Strategy and the local context.

In preparing a By-law, the following listed types of information are often gathered. *Note: Some of the information may not be required for all areas.*

The type of detailed information which may be required for the land-use by-law and zoning map include the following:

What do you need to know to formulate a By-law?

- Existing land-use
- Property mapping and/or ownership information to use as a basis for estimating lot sizes and frontages and determining zone boundaries
- Building characteristics
 - height, bulk, densities
 - setback, yards and coverage
 - sign characteristics
- Municipal boundaries
- Extent of sewer and water services
- Transportation/Road Network (Existing and Proposed)
- Utilities easements
- Potential incompatible land-uses and features
- Natural constraints and potentials
 - vistas, views
 - municipal drinking water supply areas
 - steep slopes, marshes and swamps and flood plains
 - wildlife areas
 - unique forests or vegetation
- Problems which might be overcome by zoning
 - optimum use of services
 - sign problems
 - parking and driveway locations
 - strip development
- Development pressures
 - large land ownerships and assemblies
 - current or proposed public projects
 - current re-zoning and subdivision applications
 - developable land
- Adequacy of existing controls
- Special treatment areas (for example)
 - historic buildings
 - downtown cores
 - resource based villages (fishing, farming, etc.)
 - hazard lands

The definition section ensures that everyone has the same understanding of the word or term as it is used in the By-law.

6.3 Definitions

The definition part of a By-law is usually quite long and often it is not given as much consideration as the other parts of the By-law. Its importance should not be overlooked.

Thought should be given to the definitions included in the By-law. These definitions should reflect the meaning of the term as they are used in the Strategy. Moreover, if a term is not used in the By-law or the Strategy, then perhaps, there is no need for its inclusion. Furthermore, if it is the commonly accepted definition of a word or term found in a dictionary, then there may be no need for its inclusion. A definition can always be added to a by-law by amendment if necessary.

Frequently, definitions used in a By-law for one municipality are incorporated into a By-law for another. This may cause some future problems particularly if the two communities are not alike. For example, in a rural municipality, it may be acceptable to use a very broad definition of home occupations but such a definition would not be acceptable in a large Town. Also, in rural municipalities the definition of commercial and industrial activities may not need to be rigidly defined as they would be for a Regional Municipality or Town.

6.4 General Flexibility Clause

Providing flexibility along the boundaries of the Generalized Future Land-Use Map can minimize future Strategy amendments.

The Generalized Future Land-Use Map in the Strategy shows the desired future land-uses.

Generally, however, it is not possible to anticipate precise boundaries between various land-use types. Therefore, in many areas the Strategy accommodates amendments to the Land-Use By-law (zoning map amendments) one way or the other without the Strategy itself being amended. This is accomplished by including a policy in the Implementation Section of the Strategy which is usually referred to as “the general flexibility clause.” The policy might read as follows:

It shall be the intention of Council to consider a request for a Land-Use By-law amendment to zone any area immediately adjacent to a given future land-use designation on the Generalized Future Land-Use

By-Law amendments are either text or zoning map amendments.

Map to a zone permitted in the adjacent designation without requiring a Strategy amendment, provided that all policies of the Strategy are satisfied.

Where such flexibility is not desirable, (e.g., in areas of serious land-use conflicts or where natural boundaries exist such as major streets or railway lines) a fixed boundary may be preferred. In such situations the specific exceptions should be clearly described in policy and shown on the Future Land-Use Map as not being subject to the “boundary flexibility clause.” (See also Section 7.2.1 of this *Guideline*).

6.5 Land-Use By-law Amendments

There are two types of By-law amendments, text and map amendments. These types of amendments can be undertaken without Strategy amendments providing there is supporting policy. Text amendments involve such things as changes to the lot size requirements in a zone, changes to a definition or adding a use to the list of permitted uses in a zone provided they are enabled by policy in the Strategy. Map amendments are the most frequent and involve what is generally known as “re-zoning,” that is, a change to the Zoning Map. It is the latter, map amendments, that are addressed in this section.

The Strategy must provide guidance through policy for amending the Land-Use By-law. It should indicate that amendments to the Land-Use By-law are a normal procedure in the process of land development.

In addition, the Strategy must set out the criteria that should be used by Council in evaluating a By-law amendment request. The Implementation portion of a Strategy usually includes a policy setting out the general criteria Council shall have regard to when evaluating By-law amendments. When refusing an amendment, Council is required to give reasons for doing so based on the policies in the Strategy.

By-law amendments may also be required to implement a Strategy amendment. In such cases, there is no appeal to the Utility and Review Board.

A Development Agreement provides the development requirements for a specific site.

6.6 Development Agreements

A development agreement is a legal agreement between a Council and a property owner. It runs with the land and is in force until discharged by council. It is a development control tool that overrides the existing zoning provisions.

When a municipality decides to consider certain types of development proposals by development agreement, its Strategy must identify these developments in policy together with the criteria Council will use to evaluate such proposals. In addition, the Land-Use By-law must include a part that identifies those developments that will be considered by development agreements and in what areas they may be located. (See Section 225 of the *Act*.)

6.7 Site-plans

A review of the process involved in site-plans is provided in the *Municipal Government Act Resource Binder*, Interpretation Bulliten #38.

6.8 Metric Conversions

Wherever possible, metric standards should be developed by "hard" conversion (e.g., 60 foot frontage = 18.29 metres but the new standard could be 18.0 metres, or some other suitable round figure with the precise imperial equivalent following in brackets (59.06 feet).

7. Strategy and By-law Maps and Graphics

7.1 General

All maps should be at a scale that allows for easy interpretation but also results in a manageable map. It is suggested where feasible that maps should be bound into the planning documents, with the exception of the Existing Land-Use Map, the Generalized Future Land-Use Map and the Zoning Map. These maps are often at a larger scale and may be amended from time to time. They may be used for display purposes; consequently, they should not be bound into the documents and should preferably be placed in envelopes

For ease of use, attempt to keep the Strategy and By-law as self-contained documents.

which are bound into the documents.

In rural municipalities it is likely that maps will be prepared at a 1:50,000 scale; however, 1:10,000 scale mapping is usually employed for detailed planning of small communities within these municipalities. If this is the case, it is important that the community boundaries be clearly illustrated on both the large scale maps and on the overall base map.

All maps should include a title (and map number if applicable), a date, a legend, a north point and the scale and preferably a bar scale which will remain accurate when reduced.

7.2 Municipal Planning Strategy Maps

The Strategy, when setting policy for the control of land-uses, should contain a map that shows the desired future land-uses for the municipality. This map is usually called “The Future Land-Use Map” or “The Generalized Future Land-Use Map.”

Other maps should be used in the Strategy where appropriate to convey basic information and to explain policies. Three such instances where maps are appropriate to convey information are existing land-uses, existing and future services (roads, sewer and water) and development constraints.

In addition to the required maps, other maps, photographs, charts and line drawings should be included wherever it is useful to clarify or illustrate information or policies. Examples include regional context maps, parks and open space proposals, road and street maps (showing arterials, collectors, local streets, traffic problem areas and any proposed streets), and community facilities.

7.2.1 Generalized Future Land-Use Map

This map reflects the Strategy's policies, guides the zoning in the Land-Use By-law and should be at a scale which can be readily interpreted. It should be at the same scale as the Zoning Map to facilitate comparison.

Designations on them Generalized Future Land-Use Map should concentrate on future intended land-uses, not the existing uses (although in many situations they may be the same). Designations should be drawn as generalized areas. Most boundaries will be flexible and this should be clearly reflected in the graphic style. Conversely, the map should clearly identify any boundaries that are meant to be rigid. The latter require supporting policies. (See also Section 6.4 of this *Guideline*.)

7.2.2 Existing Land-Use Map

This map can be used to convey a great deal of information about such matters as land-use conflicts and development capacity. It should be as up-to-date as possible and in as much detail as possible given the constraints of scale and black and white reproductions. Major street names should be shown and possibly major land marks, problem areas or planning issue areas. The street names should also appear on the Future Land-Use and Zoning Maps and they should be legible.

7.2.3 Services Map

A services map should show the existing sewer and water lines in the municipality, the potential serviceable area (if applicable), the pipe sizes and any planned future extensions to these services. This information visually helps to explain the rationale of zoning provisions and future development policies besides providing basic public information.

7.2.4 Development Constraints Map

Not all Strategies include this map. It should be used to graphically show the rationale for policies that designate land conservation or environmentally hazardous areas. For example, it might show areas of subsidence, flooding and steep slopes.

7.3 Land-Use By-law - Zoning Maps

A map or maps showing the land-use zones must be included as part of the Land-Use By-law. The zoning maps will constitute Schedules

to the Land-Use By-law. They should be at a fairly large scale (eg 1:2,000,1:5,000,1:10,000). Boundaries on the map should be based upon easily definable limits such as property lines, watercourses or roads. These boundaries are intended to be specific; therefore, they should be accurate enough to enable distances to be scaled. There should be a set of rules regarding interpretation of zone boundaries as part of the By-law (refer to Model Land-Use By-law, "interpretations" Section).

Zoning maps tend to be much more complicated than Generalized Future Land-Use Maps. If tones or patterns are used, it becomes difficult to distinguish between the various patterns if more than four are used. Therefore, to make it easier to read, it is suggested that the zone codes (e.g., R1, C1) be used. Where areas are very small, the zoning can be indicated by arrows.

The Zoning Map must be based upon the Generalized Future Land-Use Map, although they will differ in certain ways. For example, Future Land-Use Map designations may be quite general while zones on the Zoning Map will be very specific. Where map discrepancies exist (such as in certain future land-use designated areas where existing uses are zoned according to their use but the area is designated for another type of development in the long term) they should be explained in the Strategy. Similarly, where a future land-use designation permits a number of different zones, the range of possible zones should be identified in the text and policies of the Strategy.