

In the matter of a Review by  
the Natural Resources Conservation Board  
under section 25 of the *Agricultural Operation Practices  
Act*, RSA 2000, c A-7  
to be held orally (virtually) on February 10, 2022  
of a decision by an Approval Officer set out in Decision  
Summary LA21033

**SUBMISSIONS OF  
THE APPROVAL OFFICER AND  
NRCB FIELD SERVICES**

On behalf of the Approval Officer  
and NRCB Field Services:

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Via e-mail to:

Double H Feeders Ltd.  
Lethbridge County  
Town of Coalhurst  
Mr. and Mrs. Art Bedster  
Bryan Clifton  
Mellissa Schmid

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## INTRODUCTION

1. This is two separate submissions on two separate issues, though for convenience, we have assembled the two submissions under the same cover.
2. The first submission (Part A) is from the Approval Officer and touches on the ninth (last) bullet on page 3 of Board Decision RFR 2022-01 (issued January 7, 2022). The second submission (Part B) is from NRCB Field Services and touches on the first bullet on page 3 of the RFR decision.

## PART A – SUBMISSION OF THE APPROVAL OFFICER

3. The Approval Officer takes no position on whether the Board should exercise its authority to approve Application LA21033 notwithstanding inconsistency with the County's MDP land use provisions.

### Clarification relating to documents

4. To assist the Board in its decision, the Approval Officer provides as Appendix "A" to this submission a copy of the written response to the application from Lethbridge County.
  - *Letter dated October 14, 2021 from Lethbridge County (Hilary Janzen) to NRCB (Carina Weisbach) – Appendix "A" to this Submission*
5. The Approval Officer is not providing additional records at this time since
  - a. The concerns set out by Mr. and Mrs. Bedster, Mr. Clifton, and Ms. Schmid in their rebuttals are identical to the concerns they set out in their responses to the application submitted to the approval officer in October 2021; and
  - b. The MDP of the County of Lethbridge, and the IDP between the County of Lethbridge and the Town of Coalhurst, are both publicly available documents posted on the website of the County of Lethbridge.
6. For clarity, when she issued her decision, the Approval Officer did not have before her the letter dated April 8, 2021 from the Town of Coalhurst to Lethbridge County, which appears at PDF page 12 (last page) of the RFR filed by Double H

Feeders (on December 9, 2021). The Approval Officer did not directly notify the Town of Coalhurst of the application as the Town's boundary does not fall within 0.5 miles of the proposed CFO expansion, which was the notification distance for this application.

- See e.g. top of page 2 of *Decision Summary LA21033 (Nov. 25, 2021)*

Clarification relating to concerns from directly affected parties

7. In its RFR decision, the Board referred to concerns raised by directly affected parties. For the most part, the Approval Officer will not comment on those concerns.

8. However, the Board specifically asked the Approval Officer to "provide evidence that will assist the Board in understanding the potential for runoff from the existing and proposed manure storage facilities."

- *RFR decision, page 3, ninth (last) bullet*

9. The two proposed poultry barns would be fully covered. Manure will be stored within the barn during the production cycle and stockpiled off-site after clean-out.

- See *TD LA21033 at page 14/32. Additional information relating to manure storage, as part of a nutrient management plan, is at page 18/32.*

## **PART B – SUBMISSION OF NRCB FIELD SERVICES**

10. NRCB Field Services also takes no position on whether the Board should exercise its authority to approve Application LA21033 notwithstanding inconsistency with the County's MDP land use provisions.

11. This submission is intended to assist the Board in the element set out in the first bullet on page 3 of the RFR decision:

- Whether the board should consider the land use provisions in the IDP, notwithstanding that AOPA directs the Board to municipal development plans. Amendments to the *Municipal Government Act* now provide that

provisions in an IDP prevail in the event of a conflict with a provision in the MDP [section 638 MGA].

#### Proposed framework to analyze MDPs and IDPs

12. Approval officers are governed by the *Agricultural Operation Practices Act* (“AOPA”). Section 20(1) of AOPA requires that an approval officer, in considering an application for an approval, “must consider” whether the application is consistent with the “municipal development plan land use provisions.”
13. A municipal development plan (“MDP”) is a “statutory plan” as defined in Part 17 of the *Municipal Government Act* (“MGA”). Other “statutory plans” include intermunicipal development plans (“IDPs”), area structure plans and area redevelopment plans.
14. On occasion there are statutory plans, in addition to an MDP, whose plan boundaries also cover the land location where CFOs or manure storage facilities are proposed. This application is one such occasion.
15. The land location of the proposed CFO expansion – NE 22-9-22 W4M – is within the plan boundaries of both
  - a. the Municipal Development Plan of Lethbridge County, and
  - b. the Intermunicipal Development Plan between Lethbridge County and the Town of Coalhurst.
16. In Decision Summary LA21033, the Approval Officer referred to NRCB Operational Policy 2016-7: *Approvals* at part 8.2.3.
  - See *Decision Summary LA21033 at page 7, Appendix B*
  - *NRCB Operational Policy 2016-7: Approvals, is accessible at <https://www.nrcb.ca/public/download/files/97525>*
17. Under current NRCB policy, part 8.2.3 states in part [emphasis added]:
 

8.2.3 Relevance of statutory plans and land use bylaws to MDP consistency determinations

Approval officers will consider land use provisions in:

- other planning documents that are “statutory plans” under the *Municipal Government Act*, if the municipal development plan cross-references those other planning documents.
- a municipality’s land use bylaw, if the text of the municipal development plan provides a clear intent to adopt a land use bylaw provision by referring to it as a land use provision. See *Folsom Dairy Ltd.*, NRCB Board Decision 2015-01, pp. 5-6.<sup>1</sup>

18. In other words, an approval officer may consider an applicable IDP when assessing consistency of an application with the MDP, if the MDP “cross-references” that IDP.

19. As the Board has observed in its RFR decision (top of page 3), section 638(3) of the MGA provides essentially that, in the event of a conflict or inconsistency between an MDP and an IDP, the IDP “prevails” to the extent of the conflict or inconsistency. This feature of the MGA came into force in October 2017.<sup>2</sup> The last date on which the NRCB Approvals Policy was revised was in May 2018.

20. In light of its experience with MDPs and IDPs since October 2017, Field Services takes the opportunity of this Review to proffer an updated, and more detailed, framework to analyze MDPs and IDPs. If appropriate, the Board may wish to consider this updated analysis framework in the course of hearing and deciding on this Review. The Director, Field Services – Applications will make himself available to answer questions at the Review hearing.

21. The framework follows.

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<sup>1</sup> Consistency with a land use bylaw is a different, though related, question. A land use bylaw is not a “statutory plan” under the MGA. Note that an approval officer may refer to a land use bylaw when considering matters that would normally be considered if a development permit were being issued (section 20(1)(b)(i)); effects of the application on the economy and community, and the appropriate use of land (section 20(1)(b)(ix)); and terms and conditions for an issued approval (section 20(3)(b)).

<sup>2</sup> Originally this provision appeared as section 638(1), passed as part (section 65) of the *Municipal Government Amendment Act, 2015*, SA 2015, c 8; that portion of the *Municipal Government Amendment Act, 2015* was proclaimed in force on October 26, 2017 by way of OC 340/2017. More recently, the provision was reworked as the current section 638(3), passed as part (section 10(23)) of the *Red Tape Reduction Implementation Act, 2020* (No. 2), SA 2020, c 39.

22. In the case where an application is inconsistent with the MDP land use provisions, the approval officer would deny the application without considering other statutory plans (such as an IDP). This is based on the wording in section 20(1) of AOPA – which was not consequentially amended in any MGA amendment statutes. In the view of Field Services, an approval officer cannot issue a permit for an application that is inconsistent with MDP land use provisions, regardless of what other statutory plans might say.

23. Approval officers would only consider land use provisions in other “statutory plans” (such as IDPs) if:

- a. the application is consistent with the MDP land use provisions,  
and
- b. the MDP specifically cross-references the statutory plan in the relevant agricultural operation section (not merely mentioned in the MDP’s introduction or explanation of the planning hierarchy).

24. If both these conditions are met, and if the approval officer identified an inconsistency between the MDP and the IDP, the approval officer would first seek a way to reconcile the two plans so that there is no inconsistency. As illustration, the approval officer may seek a way that both statutory plans can be complied with; or the approval officer may explore whether the conflicting provisions are both land use provisions. Consulting with the local municipality may be helpful in this regard.

25. However, if there were truly an irreconcilable inconsistency between land use provisions of the MDP and land use provisions of the IDP, the approval officer would assess the application’s consistency solely with the land use provisions of the MDP. There may be an exception if there is clear written evidence from the municipality that the inconsistency of their MDP with the IDP is an oversight, that they plan to correct it, and that the intention of the municipality when enacting the IDP was for the MDP to match the IDP.

Update on runoff concerns and compliance

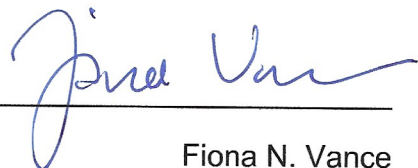
26. Some of the concerns raised by directly affected parties, and identified by the Board in its ninth (last) bullet on page 3 of the RFR decision, could potentially attract attention from the NRCB Compliance and Enforcement Division.

27. The Compliance and Enforcement Division advises that it has responded to complaints filed since the permit decision in LA21033 was issued. In the course of responding to those complaints, NRCB Compliance and Enforcement has worked with Alberta Environment and Parks (AEP) for a gap-free, consistent response on issues that may involve both regulatory mandates. In essence,

- a. issues relating to field drainage pathways and weeping tile runoff will be handled by AEP;
- b. issues relating to odour will be handled by NRCB; and
- c. issues relating to no-till land application of manure and any runoff from this will be handled by NRCB.

28. If the Board wishes further information on this division of tasks, the NRCB's Compliance Manager can make himself available to answer questions.

RESPECTFULLY SUBMITTED THIS 17<sup>th</sup> DAY OF JANUARY, 2022



Fiona N. Vance

Chief Legal Officer – Operations  
Natural Resources Conservation Board





October 14, 2021

Natural Resources Conservation Board  
Agriculture Centre, #100, 5401-1 Avenue S  
Lethbridge, AB T1J 4V6  
Attention: Carina Weisbach

Ms. Weisbach:

RE: Application LA21033  
NE 22-9-22-W4

With regards to the above referral Lethbridge County has the following comments:

- The parcel is located in the Lethbridge County and Town of Coalhurst Intermunicipal Development Plan (IDP) Area. Section 4.1.5 of the IDP states the following:
  - *New confined feeding operations are not permitted to be established within the Intermunicipal Development Plan Confined Feeding Exclusion Area (map 11). Any existing CFO permit holders may be allowed to expand operations thin the designated CFO Exclusion Area if it to upgrade and modernize, demonstrating changes will reduce negative impacts to the rural and urban residents of the area, additional environmental protection will be considered, and comments from both the County and Town are received and considered.*
  - The County has determined that the expansion meets the intent of this policy as long as it would also result in the decommissioning of the existing chicken barns located on Plan 1111584 Block 4 Lot 1 in the NW 22-9-22-W4 (as noted in the application).
- The proposed expansion is within the identified Exclusion Zone as noted in the MDP. The MDP is superseded by the Lethbridge County and Town of Coalhurst Intermunicipal Development Plan as it is a higher-level statutory document as per the Municipal Government Act. The IDP allows for the expansion of existing CFO's as noted above.
- The Rural Urban Fringe District prohibits confined feeding operations, but as the operation is existing the use is grandfathered.
- The lands within 0.5 miles of the proposed area are within the Rural Agriculture, Rural Urban Fringe, and Lethbridge Urban Fringe Districts.
- The proposal, as presented, appears to meet the County's setbacks as identified in the Lethbridge County Land Use Bylaw.



#100, 905 - 4<sup>th</sup> Avenue South, Lethbridge, Alberta T1J 4E4

If the NRCB determines that the application meets the requirements of the Agricultural Operations Practices Act, please ensure that:

- No development, including stockpiles, are permitted within 38.1 metres feet of the centreline of the county road right-of-way, 6.1 metres from the side and rear property lines, or 70 metres of the centreline of the highway (as per the County's Land Use Bylaw 1404).
- That the chicken barns located on Plan 1111584 Block 4 Lot 1 in the NW 22-9-22-W4 be decommissioned.
- The Minimum Distance Separation is adhered to, or the appropriate waivers obtained.

If you have any questions regarding these comments, please contact me at 403-380-1580.

Regards,

Hilary Janzen, RPP, MCIP  
Supervisor of Planning and Development

cc. Ann Mitchell, CAO  
Larry Randle, Director of Community Services