



BOARD DECISION

2022-02 / LA21033

Review of Decision Summary LA21033

Double H Feeders Ltd.

March 17, 2022

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The Board issues this decision under the authority of the *Agricultural Operations Practices Act* (AOPA), following the Board’s review of Decision Summary LA21033 via a virtual hearing held on February 10, 2022.

1. BACKGROUND

Decision Summary LA21033 (Decision Summary), was issued by an NRCB approval officer on November 25, 2021, denying an application by Double H Feeders Ltd. (Double H Feeders) to construct two barns and increase chicken broiler numbers by 65,000 to a total of 120,000. The existing confined feeding operation (CFO) is owned and operated by Double H Feeders, and is located on NE 22-09-22 W4M, approximately 1.8 km northeast of the town of Coalhurst, Alberta (Town) in Lethbridge County (County).

For ease of reference within this document, the CFO site on NW 22-09-22 W4M proposed for **decommissioning** will be identified as the “west site”, and the CFO site on NE 22-09-22 W4M proposed for expansion will be identified as the “east site”.

Note: CFO located on NW 22-09-22 W4M (west site) and capacity confirmation: *The Technical Document lists the one-time capacity of the west site as 50,000 broiler chickens. Given that the east site currently has a one-time capacity of 55,000 broiler chickens (Technical Document p. 2 of 32), the application to decommission the west site and to expand the east site to house a total of 120,000 broiler chickens represents a net capacity increase of 14% or 15,000 broiler chickens.¹*

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of the Decision Summary was filed by Double H Feeders within the 10-day filing deadline of December 16, 2021, established by AOPA. Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (Board) consisting of Peter Woloshyn (chair), Sandi Roberts, L. Page Stuart, and Earl Graham was established to conduct the review.

The Board met on January 5, 2022. In its Decision Report RFR 2022-01 dated January 7, 2022, the Board advised that it had reviewed the RFR, determined that a review hearing was warranted, and that a one-day virtual hearing would be held. On January 10, 2022, a letter with the hearing details was sent to parties, advising that the hearing would use the Zoom platform, and would commence at 9:00 a.m. on February 10, 2022.

¹ The applicant asserted in both the Technical Document [p. 2 of 32] and the hearing [Hearing Transcript p. 83, 16-19] that the proposed expansion to the CFO on NE 22-09-22 W4M would result in a total increase of 5%; however, the Board notes that this calculated increase includes the capacity of a third Double H Feeders’ site that is not a consideration in this application.

The Board identified the core issue for consideration at the hearing:

Whether the Board should exercise its authority to approve the CFO expansion application, notwithstanding an inconsistency with the County’s municipal development plan (MDP).

The Board also identified a number of constituent elements that would contribute to its decision on that core issue (as listed on page 3 of Board Decision RFR 2022-01), and encouraged directly affected parties to consider these matters in their hearing submissions. These elements related to the following general areas:

- understanding municipal planning objectives
- the relevance of the Double H Feeders CFO located on NW 22-09-22 W4
- directly affected party concerns

Hearing submissions were received within the prescribed timelines from the Approval Officer/NRCB Field Services, Town of Coalhurst, Double H Feeders, County of Lethbridge, and Mr. Clifton. An additional filing request was made by Mr. Clifton after the January 27, 2022 hearing submission deadline, and was accepted in a preliminary decision issued by the Board on February 1, 2022. No rebuttals were received.

Parties to the review and their representatives are identified below:

Parties to the Review	Counsel/Representative
NRCB Field Services <ul style="list-style-type: none">• Carina Weisbach, Approval Officer• Andy Cumming, Director, FS-Applications	Fiona Vance, Counsel
Double H Feeders Ltd.	Scott Van’t Land, Operator
Lethbridge County	Hilary Janzen, Supervisor, Planning & Development
Town of Coalhurst	Diane Horvath, Town Planner
Mellissa Schmid	Mellissa Schmid
Mr. and Mrs. Bedster	Art Bedster
Mr. Clifton	Bryan Clifton

Bill Kennedy participated in the hearing as counsel for the Board. Additional staff support was provided by Laura Friend, Manager, Board Reviews; and Sylvia Kaminski and Carolyn Taylor, document management.

2. BOARD JURISDICTION

Where an approval application is appealed through the Board “request for review” process and the Board finds that a review is warranted, the Board’s consideration of municipal development plans (MDPs) is addressed in AOPA section 25(4)(g):

25(4) In conducting a review the Board

(g) must have regard to, but is not bound by, the municipal development plan, . . .

Although this affords clear discretion to the Board with respect to its consideration of MDPs, the Board is conscious of its responsibility to weigh carefully the planning objectives of municipal planning documents in relation to an application to develop or expand a CFO.

The Board has established that the following considerations are reasonable in a determination of whether a permit application is approved notwithstanding an inconsistency with the MDP presented as a CFO exclusion zone:²

- the municipal authority’s rationale for establishing the relevant provision(s) in the municipal development plan,
- whether the relevant provision is reasonable and reflective of good planning,
- whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone, and
- whether the municipal development plan is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

² 2011-04 Zealand Farms Ltd., 2016-01 Peters, 2017-08 Friesen & Warkentin

3. BOARD DELIBERATIONS ON THE MDP AND IDP

3.1 Hierarchy and Consideration of Municipal Statutory Planning Documents

The current *Municipal Government Act* (MGA) (Revised Statutes of Alberta 2000, Chapter M-26, current as of January 1, 2018) includes a clear hierarchy of municipal documents, where intermunicipal development plans (IDPs) prevail over conflicting provisions in municipal development plans (MDPs). In fact, IDPs are at the top of the hierarchy, while all other statutory plans relating to the area that an IDP covers must be consistent with the IDP:

632(4) A municipal development plan must be consistent with any intermunicipal development plan in respect of land that is identified in both the municipal development plan and the intermunicipal development plan.

Nonetheless, the MGA section 638(1) describes the case where a conflict or inconsistency between an IDP and MDP exist:

Plans consistent

638(1) In the event of a conflict or inconsistency between

- (a) an intermunicipal development plan, and
- (b) a municipal development plan, an area structure plan or an area redevelopment plan

in respect of the development of the land to which the intermunicipal development plan and the municipal development plan, the area structure plan or the area redevelopment plan, as the case may be, apply, the intermunicipal development plan prevails to the extent of the conflict or inconsistency.

AOPA section 20(1) provides very specific language directing approval officers to determine whether an application is consistent with the **municipal development plan** land use provisions. AOPA is silent on intermunicipal development plans, and there is no consideration of how to proceed in the case of conflict between municipal planning documents.

Views of Field Services

In its hearing submission, and during questioning at the hearing, Field Services indicated that, based on AOPA, approval officers determine whether an application is consistent with land use provisions solely based on the MDP. It was Field Services' view that it must strictly follow the language in AOPA and, as a consequence, approval officers must determine whether an application is consistent with the MDP and only the MDP. It was the view of Field Services that no other municipal planning documents may be considered.

However, an exception to this practice has developed over time, through Board decisions, that directs approval officers to consider other municipal planning documents if, and only if, "the municipal development plan [strongly] cross-references other planning documents."

In this case, the approval officer evaluated application LA21033 in relation to the County of Lethbridge MDP, and then the County's Land Use Bylaw (LUB), given there was a clear intent in the MDP to adopt provisions from the LUB.

Views of the County of Lethbridge and the Town of Coalhurst

At the request of the Board, both the County of Lethbridge and the Town of Coalhurst provided written submissions in addition to participating in the hearing. Given their consistency of views and that each submission makes multiple references to the other municipality, comments are attributed to either the Town or the County or the "municipalities".

In the case of Double H Feeders, the Board notes the municipalities' comments regarding the "paramountcy of the IDP policies", which County representative Ms. Janzen addressed at the hearing:

"...we follow the Municipal Government Act with regards to the hierarchy of statutory plans. As per the Municipal Government Act, the Intermunicipal Development Plan prevails over the County's Municipal Development Plan...."

...we'd always presumed that the NRCB understood that IDPs prevailed. When we would receive the applications, referral applications, they always asked if there was any other statutory documents that would impact a proposal. And so we include Intermunicipal Development Plans frequently in our comments to the approval officer...."

...[As] the county, we try very hard to ensure that we're planning and working with our adjacent urban municipalities, so Intermunicipal Development Plans are very highly ranked in the county in terms of enforcement, and we rely heavily on them.... we do hope that the NRCB will reconsider how they view those higher-level statutory documents going forward."

When questioned about which statutory document would prevail in a situation like Double H Feeders, where the MDP lists an exclusion zone and the IDP provision is more relaxed, Ms. Janzen agreed that the IDP would prevail, as if the MDP has been amended by that IDP provision [Hearing Transcript p. 165].

Views of the Board

During closing argument, Field Services referenced the Supreme Court of Canada's decision *Rizzo & Rizzo Shoes Ltd.*, 1998 1 S.C.R. 27, as a foundation for the modern approach to statutory interpretation which applies a "textual, contextual and purposive analysis of the statute or [the] provision in question". In consideration of the foregoing principle, the Board turned its mind to the hierarchy between the MDP, the IDP, and municipal land use planning documents.

Given section 638(1) of the MGA, the Board accepts that the IDP prevails over the MDP should an inconsistency between the two documents arise. The Board asserts that following the strict interpretation of AOPA and considering only the land use provisions found in municipal development plans (and not in intermunicipal development plans), has the potential to lead to an absurd outcome in the case where a conflict exists between and MDP and an IDP. Presumably it could also be the case where the MDP and IDP are generally consistent but the IDP provides more (or less) restrictive land use planning provisions related to the siting of CFOs.

Clearly, there is a need for approval officers to determine an application’s consistency with planning provisions in both the MDP and IDP.

In the spirit of widely adopted statutory interpretation and common sense outcomes, the Board encourages Field Services to consider a more purposive approach to the interpretation of AOPA and its intent. It is the Board’s view that AOPA intended approval officers to use what at the time was the highest order municipal planning document, the MDP. Recent changes to the MGA has changed the hierarchy of planning documents, and deference to land use provisions within the hierarchy of the municipal planning framework makes sense and is consistent with a purposive approach to interpreting AOPA. While speculative, presumably this situation exists only because AOPA has not been updated since the *Municipal Government Act* was amended in 2017 to include the revised hierarchy of municipal planning documents.

The Board suggests that in the future Field Services should also provide notice to municipalities identified in relevant IDPs.

3.2 Is the Application Consistent with the MDP?

In AOPA, section 20(1) directs approval officers to consider if an application is consistent with municipal development plan land use provisions, and to deny an approval application if it is found to be inconsistent with those provisions:

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,

(a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, ...

In Decision Summary LA21033, the approval officer noted the following subsections of section 6.6 “Confined Feeding Operations”, 6.6.3 “Policies” in the MDP (emphasis added):

- a) Urban Fringe
 - I. “The County shall exclude the development of CFOs in the Urban Fringe land use districts.”
- d) Natural Resource and Conservation Board (NRCB)
 - IV. CFOs “shall not be approved in the areas shown and designated on Figure 11B as exclusion areas”.
 - VI. The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.

Double H Feeders’ east site CFO is located in the Urban Fringe zoning category identified on Figure 11B of the MDP. The approval officer interpreted the wording “shall exclude the

development of CFOs” as prohibiting both the establishment of new CFOs and the expansion of existing CFOs in the Urban Fringe land use districts.

The approval officer also identified that the east site is located in the special planning Area A referenced in section 6.9.2 “Special Planning Areas” of the MDP:

As the Town of Coalhurst and the City of Lethbridge increase development pressures in Area A, this area will become a distinct development node due to limited access from the trade corridor and existing highway, as such, agricultural pursuits in this region may become financially and operationally challenging. CFO feeding operations will be discouraged in this area given the residential and commercial growth potential in this area.

As discussed earlier in this decision report, the approval officer evaluated application LA21033’s consistency with the MDP and not the IDP. In that determination, the approval officer accepted that MDP sections 6.6.3(a) and (d)(VI) both provide “a clear intent to adopt provisions from the [Land Use Bylaw]”, which identifies that the east site is zoned “Rural Urban Fringe” where CFOs are listed as a prohibited use.

The approval officer noted that the application met AOPA’s technical requirements, but concluded that the application was “not consistent with Lethbridge County’s municipal development plan land use provisions”, denying the application in accordance with AOPA section 20(1).

In this case, the Board accepts the rationale for establishing the CFO exclusion zone in the MDP. As noted, the “Special Planning Areas” subsection 6.9.1 identifies that Special Area A “will become a distinct development node” and that “CFO feeding operations will be discouraged in this area given the residential and commercial growth potential in this area”. The Board acknowledges that this provision is reasonable and reflective of good planning and that, given the proximity to the Town of Coalhurst, the objectives outlining the plan for a “distinct development node” appear to be consistent with County’s listed objectives in the MDP section 6.1.2 to “direct land development to areas that are best suited to the prospective use.”

The Board accepts that the MDP’s CFO exclusion zone is clearly outlined, and that it includes the CFO east site that is proposed for expansion. In any event, the conclusion that the application is inconsistent with the County’s MDP is uncontested.

Given that an IDP between Coalhurst and the County exists, but was not considered by the approval officer, the Board finds it necessary to look to that document for further clarification of relevant land use provisions.

3.3 Is the Application Consistent with the IDP between the County of Lethbridge and the Town of Coalhurst?

The following sections of the IDP address the development of new and existing CFOs in the “Intermunicipal Development Plan Confined Feeding Exclusion Area” (or Plan area), where the CFO west site is located:

Livestock Operations (Confined Feeding Operations and Minor Livestock):

- 4.1.5 New confined feeding operations (CFOs) are not permitted to be established within the Intermunicipal Development Plan Confined Feeding Exclusion Area as illustrated on Map 11. Any existing CFO permit holders may be allowed to expand operations within the designated CFO Exclusion Area if it is to upgrade and modernize (within the requirements of the Agricultural Operation Practices Act and Regulations), demonstrating changes will reduce negative impacts (e.g. odours) 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 by the NRCB.
- 4.1.8 Both councils recognize and acknowledge that existing confined feeding operations located within the Plan area will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operation Practices Act and Regulations.

The Board notes that while it is uncontested that application LA21033 is inconsistent with the land use provisions of the MDP, it is unclear to the Board whether the application is inconsistent with the relevant land use provisions of the IDP.

Views of Field Services

The Lethbridge County-Town of Coalhurst IDP (enacted in 2014 and prior to the most recent revisions of the MDP) was not specifically cross-referenced in the MDP and therefore, as per the guidance of NRCB Approval Policy section 8.2.3, the approval officer did not consider the land use provisions in the IDP.

Under AOPA, approval officers are instructed to disregard any land use provisions respecting “tests or conditions related to the construction of or the site for a confined feeding operation....” The Board heard from Field Services that section 4.1.5 of the IDP may be interpreted as a ‘test or condition’. While Field Services made the reference outside of a permit decision (at the hearing), the Board respectfully disagrees with this interpretation. In this case, section 4.1.5 of the IDP allows for the expansion of a CFO if it is being modernized and will result in a reduction of nuisance impacts. This is not a direct replacement for AOPA standards or regulations; it is clearly a recognition that newer modern facilities are more likely than not to reduce nuisance impacts, and therefore may meet the planning objectives of the IDP. The Board recognizes that the analysis and discretion required by an approval officer to determine consistency with section 4.1.5 is challenging. However, in the Board’s view, to disregard section 4.1.5 because it is a ‘test or condition’ is an overly simplistic interpretation in evaluating the spirit and intent of section 4.1.5 in the IDP.

Views of Double H Feeders

The applicant’s RFR identified that “Double H Feeders Ltd. currently operates two broiler operations in the immediate vicinity of the Town of Coalhurst”. The first site was described as “aging, and becoming obsolete and inefficient” and is located on NW 22-09-22 W4M “in an area designated ‘Potential Grouped Country Residential’ within the current Lethbridge County-Town

of Coalhurst IDP originally enacted in 2014". It is proposed by the applicant to be decommissioned. The second site is on NE 22-09-22 W4M, the location where Double H Feeders is "proposing to consolidate [its] production", "in an area designated 'Primarily Agricultural' within the same IDP", and would "enable [Double H Feeders] to continue production with barns built to accommodate modern practices and standards of efficiency."

The RFR includes a letter written by the applicant to the Town of Coalhurst with a submission date of March 31, 2021, that requests the Town's support. Within this letter, the applicant notes that the site on NE 22-09-22 W4M proposed for expansion "is located on Twp Rd 9-4 close to Hwy 25", and is farther from the Town than the site on NW 22-09-22 W4M, which is accessed via "Rge Rd 22-3, [a road that] has increasingly been used as an alternative access road to Coalhurst and is not ideal for truck traffic". The letter asserts that production "consolidated to a single site" would "[move] the barns further away from Coalhurst, and [remove] the associated truck traffic from Rge Rd 22-2".

During the hearing, Mr. Van't Land confirmed assertions made within his RFR and provided several examples of how the new proposed barns incorporate modern technology and have the potential to reduce nuisance impacts generated from the barns themselves.

Views of the County of Lethbridge and the Town of Coalhurst

The Board notes that both municipalities defer to the IDP's specific land use provisions for Planning Area 2, rather than the MDP's more general CFO exclusion zone identified in the Urban Fringe land use district. The IDP was negotiated between the two municipalities, among other reasons, for the purposes of promoting an "orderly and efficient development pattern within the Plan area that balances the long-range interests of the County and Town." [IDP p.5]. Both CFOs fall within Planning Area 2, with the west site located within sub-planning Area G which has been "identified for the future development of additional country residential uses". This was described as a "land use strategy decision . . . based on the current fragmentation of the lands and the existence of country residential uses in the immediate area". The IDP policies 3.4.5 and 3.4.6 identify the proposed location for expansion (east site) as suited for "agricultural uses", consistent with the "unfragmented, full quarter sections of land located on the periphery" of the plan area.

With respect to the two sites, "the County views the area as a whole" and the "the Town has historically viewed the two barn locations as one entire operation . . . under the control and direction of one landowner".

Within their submissions, the municipalities assessed the expansion of the east site relative to the policy objectives of the IDP (summarized below), and noted their support was contingent on the decommissioning of the current barn on the west site:

- *The Town acknowledges the existence of existing operations within the CFO exclusion area and agreed through the adoption of the IDP that expansions of CFO operations could be supported if the purpose was to upgrade to more modern operating premises and processes.*

- *The long-term development concept promotes the development of residential uses in the location of the existing barn and the discontinuation of a use that is not compatible with additional residential development supports the long term development strategy of both the Town and the County. The existing facility, which is in close proximity to the Town Boundary would be relocated further away from the corporate limits*
- *The IDP policy states that an expansion may be considered if it is to upgrade and modernize, demonstrating changes that will reduce the negative impacts to rural and urban residents of the area. By closing the older, less efficient operation in the NW 22-9-22-W4 and consolidating that operation to the NE22-9-22-W4 they are in the County’s opinion reducing the negative impacts of the operation in the NW 22-9-22W4 on the town and adjacent residential acreages. The consolidation of the operation to the NE quarter allows them to modernize and improve their operations while still meeting the MDS requirements and improving a less than desirable situation next to the Town of Coalhurst. Both the Town of Coalhurst and Lethbridge County who are the parties of the IDP, are in agreement and supportive of the consolidation of the operation to the NE22-9-22-W4.*
- *Consideration was given to the proposed location of the new barn, which was east of the Town, and it was determined that the new location would be less likely to impact urban residences with any noise, odour or dust impacts that might be emitted from the operation as the location is down-wind of the prevailing west and north winds.*
- *The “Primarily Agricultural Land Use” area is regulated by the County’s agricultural policies contained with the MDP and Land Use Bylaw and other policies of the IDP (See policy 3.4.5 of the IDP). Unlike some other areas of the IDP with the Town of Coalhurst, the NE 22-9-22-W4 is not identified for future town growth or country residential development.*

The County commented that “the current Lethbridge County MDP came into effect with the exclusion zones in 2010, and the IDP with the Town of Coalhurst and the applicable CFO policies and exclusion zone affecting the subject land was adopted later in 2014. A planned 2022 MDP revision will bring both statutory plans into conformity.”

Views of the Board

The Board recognizes that municipal land use planning is a process established through the *Municipal Government Act*, and includes the public input of its constituents to establish a long term vision for a municipality. Nonetheless, a key intent of AOPA is to establish common rules across the province for the siting of confined feeding operations. The Board’s assessment of whether to approve an application despite its inconsistency with an MDP is one undertaken with caution. It is with this consideration in mind that the Board assessed both the land use provisions of the MDP and IDP, and the related evidence provided by parties in their written submissions and at the hearing.

In examining the IDP between the Town of Coalhurst and Lethbridge County, the Board first notes Part 4 “General Land Use Policies”, 4.1 “Agricultural Practices” – “Intent” states:

“The County and Town both recognize that it is the jurisdiction of the Natural Resources Conservation Board (NRCB) to grant approvals and regulate confined feeding operations (CFOs). However, both municipalities agree it is desirable to specifically regulate intensive agricultural

operations for the defined Plan area in an attempt to minimize potential nuisance and conflict between land uses, especially residential, and CFOs within the Intermunicipal Development Plan boundary.”

Consistent with the evidence provided by the municipalities, the Board observes that the IDP does address existing confined feeding areas located within the IDP Confined Feeding Exclusion Area (or Plan area), and that existing CFOs “will be allowed to continue to operate”, and “may be allowed to expand operations within the designated CFO Exclusion Area if it is to upgrade and modernize . . .” The Board observes that the municipalities were consistent in their support for expansion of the Double H Feeders east site if it is to “upgrade and modernize”, and if Double H commits to decommission the west site. Further, the Board accepts that the test to satisfy this requirement is found in the language of the IDP section 4.1.5, which includes that a CFO “[demonstrates] changes [that] will reduce negative impacts (e.g., odours) to the rural and urban residents of the area”, and that “additional environmental protection will be considered”.

Mr. Van’t Land described how he believed the consolidation of the two CFOs at the east site would upgrade and modernize the operations and reduce negative impacts to the rural and urban residents, explaining that the primary consideration of Double H Feeders to achieve modernization would be to “[take] the existing double-decker barns and [rebuild] them as a more appropriate model that is used primarily in broiler production today”.

“The primary concern we have there is the proximity to the town of Coalhurst and the number of neighbours that we have in close proximity to those barns... [The east site] is a whole quarter [of land] surrounded by more or less whole quarters [of land], and that’s a more appropriate place for that kind of development [Hearing Transcript p. 210-211] It seems to suit the intent as we see it of the IDP, as far as future development, that the broiler operation [currently on the West Site] be moved further away from the town of Coalhurst [Hearing Transcript p. 215].”

The Board finds that the municipalities’ views are consistent with these assertions, stating that the IDP policies 3.4.5 and 3.4.6 identify the proposed location for expansion (east site) as suited for “agricultural uses”, given the “unfragmented, full quarter sections of land located on the periphery” of the plan area. As well, the intent of Double H Feeders to decommission the west site and expand the east site is consistent with the municipalities’ stated “long-term development concept [that] promotes the development of residential uses in the location of the existing barn and the discontinuation of a use that is not compatible with additional residential development.” Further, the County confirmed that the development of the east site which is designated as “Primarily Agriculture” would not conflict with the highway commercial and light industrial node slated for the area adjacent and northeast of the east site CFO [Hearing Transcript, p. 160].

This is further supported by the municipalities’ assertions that “the proposed location of the new barn . . . would be less likely to impact urban residences with any noise, odour or dust that might be emitted from the operation as the location is down-wind of the prevailing west and north winds”.

With respect to reducing the net nuisance impacts through the consolidation of the barns, Mr. Van't Land described that in addition to the new more modern barn, the fans, vents, lighting, and the computer systems that operate them, will be new. He also identified that his "authorization" from the Alberta Chicken Producers requires him to participate in annual ammonia level audits, including monitoring the ammonia levels in the barn:

"... one of the goals of the ventilation system is to keep that ammonia down to a healthy level for both the birds and the people that are in the barns. So I just wanted to say that that is something that we monitor and keep down deliberately. It's mostly for the health of the birds, but the side effect of that is there is not large amounts of ammonia coming out of the barn" [Hearing Transcript p. 198].

Directly affected party Ms. Schmid asked for clarification regarding the ammonia levels escaping the barn, expressing concerns that increasing ventilation to move air out of the barn could increase ammonia going "into the environment". Mr. Van't Land asserted that ammonia control is achieved by "managing the moisture level", and that the "interaction of the moisture and the manure and the microbes . . . generates the ammonia". He further described that by lowering the density of ammonia in the barn, the air ventilated to the outside would have a lower concentration of ammonia as well.

As described in section 4 "Directly Affected Party Concerns" of this document, the Board appreciates the concerns expressed by the directly affected parties that may experience nuisance impacts. However, AOPA's consideration of impacts is met through the application of required setbacks, as established by minimum separation requirements. As well, the Board accepts the operator's request for neighbours to "let [him] know" if they have concerns and that "if there's something that [Double H Feeders] can do to mitigate [the concern] . . . [it] will definitely do it" [Hearing Transcript p. 216]. As well, the Board accepts the County's assertion that it views the area "as a whole", and further, meets the Board's understanding that if net impacts between the two operations are reduced, the intent of the land use planning objectives have been met:

"... an Intermunicipal Development Plan is not just the county, it is an agreement between the town and the county, we look at what's existing in the area, what are some possible best outcomes in terms of future development and planning. And so with regards to impacts, we're looking at, especially with confined feeding operations, does an existing operation if they want to expand, would it meet the minimum distance separation, which I do believe Mr. Van't Land's application does for the expansion. And then with the decommissioning, it was seen as a net benefit to the Coalhurst area given the country residential and the proximity to the town, and the fact that they would not be necessarily drastically increasing their feedlot numbers but they would have a marked improvement in terms of their – the modernization of the facility from their northwest operation to their northeast. [Hearing Transcript p. 152]"

The Board further agrees with the municipalities' assertions in their written submissions that consolidating the operations to the east site and "closing the older, less efficient operation" moves the impacts from the area slated for country residential development to an area "that is not identified for future town growth or country residential development". The Board also notes that with a denial of an expansion, there is no requirement for Double H Feeders to

abandon the west site, which would maintain the operation of older, outdated CFO facilities on land zoned for country residential.

Given that the land use provisions in the IDP are specific to expansion in the CFO exclusion zone, the Board concludes that the IDP is relevant in its determination. In reaching this conclusion the Board views the Double H Feeders application as generally consistent with IDP section 4.1.5. The Board finds that the net nuisance impacts are likely to be reduced through the decommissioning of the west barn and the expansion of the east barn. The Board notes that the net increased production is 14%; however, the Board finds that it is more likely than not that the reduced net impacts will offset the increased production. While section 4.1.5 leaves room for interpretation and judgement, the Board concludes that the abandonment of the west site in conjunction with the expansion at the east site using current technology, and Board imposed conditions, meets the planning objectives of the IDP. At a minimum, the Board finds that the Double H Feeders application meets the spirit of IDP section 4.1.5, and does not conflict with its overall planning objectives.

4. DIRECTLY AFFECTED PARTY (DAP) CONCERNS

The Board appreciates the thought, time, and effort that directly affected parties invested in their submissions about this application. The comments, hearing submissions, and hearing participation have been very helpful to the Board's understanding of potential effects on the local environment, economy, community and the appropriate use of land. The Board afforded significant deference to DAP concerns that were unrelated to the question of the application's consistency with the MDP or IDP. Deference was given since some DAP concerns could be associated with whether the proposed CFO met the modernization and nuisance mitigation objective in the IDP. Also, the approval officer did not consider DAP concerns, asserting in the decision summary "Because this application will be denied, I need not discuss these concerns any further."

What follows is a summary of the written and oral discussions and views of the Board for each.

4.1 Change to Surface Water Flow

Directly affected neighbours explained that within the past few years a drainage system has been constructed by Double H Feeders at the east site. They believe that the system could cause additional surface runoff and potential flooding of their properties.

In Decision Summary LA21033, the approval officer determined that construction of a surface water drainage system such as this is under Alberta Environment and Parks' (AEP) jurisdiction, and forwarded this concern to AEP for its information. AEP verified that an approval under the *Water Act* was not issued to authorize this activity and is currently under investigation.

Views of the Board

The Board agrees with the approval officer's determination that AEP is the appropriate authority to address this concern and recognizes that it is being managed by AEP through its ongoing compliance investigation. Therefore, the Board will not address this matter further.

4.2 Nutrient Management, Manure Application, and Contaminated Surface Water Runoff

Neighbours questioned whether Double H Feeders has access to enough land for manure application from the proposed expansion. In the Decision Summary, the approval officer commented that the expanded operation would meet AOPA's nutrient management requirements regarding land application of manure with the nutrient management plan provided. The Board notes that the nutrient management plan was verified by a certified crop advisor and is satisfied that this concern has been adequately considered by the approval officer.

Neighbours expressed concern about prolonged odours and contaminated surface runoff from manure, poultry medication residues, and barn cleaning agents. Further, manure is field applied and not incorporated.

Double H Feeders explained that it direct seeds its crops, therefore manure is not worked into the soil after it is field applied, which it believes meets AOPA requirements. It also described that animal based medications are used infrequently, and that barns are cleaned primarily by mechanical means including compressed air, thus the amount of cleaning water is minimal and mostly evaporates from the barn surfaces.

In Appendix C, point 2, of the Decision Summary, the approval officer discussed conditions to be potentially carried forward from Municipal Development Permit 98-189 if the Board decides to grant a permit for this proposal. The second condition of Permit 98-189 focuses on items which are pertinent to the topic of nutrient management and manure application. It consists of several parts:

- the amount of land that must be available for manure utilization,
- manure application on snow and/or frozen ground,
- manure incorporation with 48 hours of land spreading, and
- consideration for neighbouring residences and separation from residences for manure spreading.

The approval officer stated:

- The specific land base required for manure utilization in Permit 98-189 is redundant and should be replaced by AOPA and its regulations or a nutrient management plan.
- Regarding the requirement to not spread manure on snow and/or frozen ground, the approval officer commented that this too is redundant and should be replaced by the updated requirements of AOPA and its regulations.

Views of the Board

The Board is in agreement that land base requirements in Permit 98-189 are redundant, especially as this permit application is for an increase in the number of birds at the site, which will change the volume of manure and nutrients to be managed. The Board is also in agreement that AOPA's regulations make specific references to manure spreading on frozen ground redundant.

The approval officer suggested that the requirement in Permit 98-189 to incorporate manure within 48 hours of land spreading should be carried forward because it is more stringent than AOPA, which allows application of manure on directly seeded crops without incorporation. Double H Feeders stated it was unaware this condition was still in effect as it believes AOPA's present-day requirements are what it must follow. Double H Feeders asked the Board to consider rescinding this condition as it does not fit its current cropping practices. Neighbours asked the Board to retain the permit condition to alleviate their concerns about manure contaminated runoff and prolonged odours from manure application.

Double H Feeders did not include a request to amend its permit to remove the 48 hour manure incorporation condition in its application to expand the east site. Permit amendment applications allow directly affected parties to provide their comments about proposed amendments after receiving advance notice and prior to an approval officer issuing their

decision. No such notice on a permit amendment was given by Double H Feeders; as such the Board will not rule on the matter. Should Double H Feeders wish to continue its current practice of manure spreading on direct seeded land without incorporation, it must apply for and receive a permit amendment.

4.3 Odours, Health Concerns, and Quality of Life

Directly affected neighbours stated that there are occasions when odours from the existing poultry broiler operation at the east site, as well as from other nearby CFOs, affects their quality of life. Concerns were expressed about impacts on the health of the surrounding community due to the odours, and information was requested about CFO air quality monitoring requirements.

Double H Feeders commented it was not aware that neighbours had concerns about odours from their operation as no one has directly complained to it, nor has it been notified by the NRCB that a complaint had been lodged. It requested that neighbours let it know when odours are bothersome and it will endeavour to address the situation.

Views of the Board

AOPA does not mention or require air quality monitoring for CFOs. Instead, it employs a prescriptive regulatory framework, using tools such as minimum distance separation (MDS), in order to achieve a consistent, province-wide approach for siting CFOs. For the Double H Feeders' proposed expansion, the approval officer determined that it meets the required setbacks from all nearby residences. The Board understands that people residing beyond the MDS may intermittently experience odour impacts from the CFO, and that each individual has their own degree of tolerance for certain odours. Therefore, the Board also considers whether the potential impacts are typical of land uses for the area. During the hearing, both Lethbridge County and the Town of Coalhurst indicated that the location of the proposed expansion, on land designated as "primarily agricultural", is an appropriate use of land and meets their planning objectives.

For the above reasons, the Board has determined that odours from the proposed poultry broiler expansion should not unduly impact the health of the surrounding community or neighbours' quality of life. The Board appreciates that Double H Feeders is willing to work with neighbours to try to mitigate odour impacts. Additionally, neighbours can contact the NRCB 24 hour reporting line at 1-866-383-6722 when they believe that odours from the CFO are inappropriate for an agricultural area, and an NRCB inspector will follow up on the concern.

4.4 Impact on DAP Land Values

Directly affected neighbours stated that the proposed CFO expansion may reduce property values of the surrounding area.

Views of the Board

The Board has consistently stated that impact on property values is an issue that resides outside of AOPA legislation.

4.5 General Environmental Concerns and Environmental Impact Assessment (EIA)

Written submissions from neighbours included some general statements of concern relating to environmental impacts on the eco-system from CFOs.

Several references were made by one of the directly affected neighbours about an EIA, including a request from the party that they “would like disclosure from the NRCB regarding the Environmental Impact Assessment [that] outlines the long term impacts on air, water, land, and biodiversity”.

Views of the Board

AOPA’s Standards and Administration Regulation contains construction and operational requirements for livestock facilities that are intended to protect the environment. Before issuing permits, NRCB approval officers must ensure that all applicable requirements are met. NRCB inspectors verify that operators adhere to legislative requirements and permit conditions. If necessary, inspectors can initiate enforcement action in accordance with the [NRCB Compliance and Enforcement Policy](#).

There are a number of EIA references in the *Natural Resources Conservation Board Act* and the Rules of Practice of the Natural Resources Conservation Board Regulation; however, those references all relate to the reviewable projects as identified in the *Natural Resources Conservation Board Act*. The Board has a distinct mandate under the AOPA legislative provisions, which is the relevant mandate to the Double H Feeders application. While AOPA does not require an EIA, the regulations effectively manage environmental risks and nuisance impacts that would be duplicative in an EIA.

5. CONSIDERATION OF PERMIT CONDITIONS

In addition to Board direction regarding permit conditions in the preceding section, the Board requires as conditions of approval the following:

1. In Decision Summary LA21033, Appendix C, the approval officer suggested potential new conditions and permit conditions that should be carried over from previous permits should the Board overturn the denial. The Board directs that the conditions outlined in Decision Summary LA21033, Appendix C, be included in the approval.
2. During the hearing, Double H Feeders stated that moving its operations from NW 22-09-22 W4M to NE 22-09-22 W4M would require a maximum time period of 5 weeks. During this time period, chicken broilers would be at both locations simultaneously. The Board directs that at no time shall the total number of chicken broilers between the two operations (NW 22-09-22 W4M and NE 22-09-22 W4M) exceed a population of 120,000.
3. Approval of the expansion at NE 22-09-22 W4M is contingent on the abandonment and return of the previous Municipal Development Permit 93-164 at NW 22-09-22 W4M. Double H Feeders consented to cancelling the permit associated with NW 22-09-22 should the application for expansion at NE 22-09-22 W4 be approved. Therefore, once the NW 22-09-22 W4M operation is fully depopulated, the CFO permit for NW 22-09-22 W4M is cancelled.
4. The County and the Town agreed that short term manure storage of solid manure on NW 22-09-22 W4M would be acceptable. While the Board is prepared to allow a degree of short term storage on NW 22 09-22 W4M, we believe that it should be more restrictive than the AOPA regulations. As such, the Board directs the approval officer to include a condition that short term storage of solid manure on NW 22-09-22 W4M (sourced only from NE 22-09-22 W4M) is allowed for a maximum cumulative time of 7 months over a 3 year period, regardless of the storage location on NW 22-09-22 W4M.
5. The Board recognizes that Double H Feeders may apply for a permit amendment to remove the existing (municipal permit imposed) 48 hour manure incorporation condition. Regardless, due to the proximity of NW 22-09-22 W4M to the Town, the Board requires that manure spread on this quarter be incorporated within 48 hours and it expects that this condition be upheld.

6. BOARD DECISION

For the reasons set out above, the Board hereby directs the approval officer to issue an approval (including Board imposed conditions) to Double H Feeders Ltd. to construct and operate a confined feeding operation as described in application LA21033.

DATED at EDMONTON, ALBERTA, this 17th day of March, 2022.

Original signed by:

Peter Woloshyn, Chair

Sandi Roberts

L. Page Stuart

Earl Graham