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To: Mayor and Members of Council
From: Ryan Windle, Director, Planning and Development Services
Date: October 18, 2021
File No.: PLN 33.19
Re: **Requirements to Request a Full Environmental Assessment for the Mixed Waste Transfer/Pre-Sort and Anaerobic Digestion Organics Processing Facility**

Background

Clarington's Unwilling Host Declaration and Siting Report comments - April 27, 2020

[PSD-013-20](#) - provided a number of comments to be addressed by the Region on the Mixed Waste Transfer / Pre-Sort and Anaerobic Digestion Organics Processing Facility Siting Report (GHD, March 6, 2020). The comments were provided to the Region and the Ministry of Environment, Conservation and Parks (MECP).

At the same time Clarington declared itself an unwilling host community to the Regional Pre-Sort/AD Facility. Subsequently, the Region and Clarington entered into mediation regarding Clarington's objections to hosting the Pre-sort/AD facility under the process outlined in the Energy from Waste Host Community Agreement.

Request for an Environmental Assessment

Council approved Resolution #GG-244-20- July 6-7, 2020

That Clarington Council advise our Member of Provincial Government, Lindsey Park, of Council's declaration of being an unwilling host to the planned recycling plant and anaerobic digestion proposal on Megawatt Drive;

That Council ask the Provincial Government, and our MPP, to place a 'hold' on the proposed site until a full and proper Environmental Assessment (EA) can be conducted; and

That the Minister of Environment, Conservation and Parks be requested to pass an order prohibiting the Region of Durham from proceeding with the planned recycling plant and anaerobic digestion facility until the EA is completed to the satisfaction of Clarington Council.

Staff followed up with MECP as outlined in **Attachment 1** which is a timeline of correspondence on this issue.

In response to the Minister's letter of Sept 2, 2021, on Sept 27, 2021; Committee approved Resolution #GG-457-21

Clarington provide all necessary information to the MECP in order that they can give due consideration to ordering an Environmental Assessment for the anaerobic digester.

The letter of Sept 2, 2021 (**Attachment 2**) and follow-up meeting (Sept 16, 2021) with the Minister and his staff, was further clarified by the Minister's subsequent letter of October 5, 2021 (**Attachment 3**) and ongoing e-mail communications. It has been made clear that for Clarington to request an EA of the Pre-Sort/AD Facility, Clarington will have to provide clear reasoning as to why an EA is justified. The test that the Ministry has indicated will have to be outlined is reasoning for Cabinet as to why this project requires an EA, when it is not required under the existing *Environmental Assessment Act* regulations. In other words what potential threat and harm to the environment will occur and why are appropriate controls beyond what can be included in the Environmental Compliance Approval (ECA).

Staff continue to follow up with the MECP but have yet to receive the specifics of how to submit a formal EA designation request and the type of supporting information that should accompany the request. To date, the only study available to Staff is the siting study; we do not have any environmental studies that we can point to say whether the Region has or has not planned for potential impacts.

Staff anticipate that to draft a formal EA designation request, the Municipality would retain appropriate expertise to assemble the case for an EA. To retain such expertise the Municipality will have to prepare a terms of reference, identify a budget and carryout a proposal call to retain a consultant or consulting team qualified in the necessary background topics and knowledge for the various topics. The EA request would have to be assembled into a coherent and defensible package as to how the existing information (e.g. studies) and process followed by the Region and its consultants have not addressed the necessary requirements which a full EA would explore (**Attachment 4**).

To address the inquiry by the Minister about the pending ECA process, Clarington would also need to clearly explain why the ECA process would be inadequate for addressing what Council believe are the outstanding concerns.

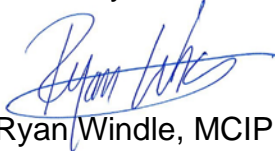
In addition, Clarington would need to demonstrate we have tried to resolve our issues with the Region, but they have been unresponsive or have not provided reasonably satisfactory responses.

Next Steps

When Staff receive additional information from the MECP, an overall request for funding for a consulting study will be submitted to Council.

Staff will continue to follow up on other aspects outlined in the Minister's letter including confidential direction that has been provided to staff.

Sincerely,



Ryan Windle, MCIP, RPP, AICP
Director of Planning and Development Services

cc: June Gallagher, Municipal Clerk
Andy Allison, CAO
Rob Maciver, Director of Legislative Services
Stephen Brake, Director of Public Works

Attachments:

- Attachment 1 – Chronology of correspondence and resolutions
- Attachment 2 – MECP Minister's letter of Sept 2, 2021
- Attachment 3 – MECP Minister's letter of October 5, 2021
- Attachment 4 – Assumed minimum requirements of a Full EA

Chronology of correspondence and resolutions relating to the Region's Pre-Sort / Anaerobic Digestion Facility and Clarington Council's request to the MECP for a full EA to be undertaken:

Prepared by: Amy Burke, Senior Planner, Planning & Development Services
Last updated: October 12, 2021

2020:

Jul. 6-7, 2020 (Council)

Council approved Resolution #GG-244-20.

That Clarington Council advise our Member of Provincial Government, Lindsey Park, of Council's declaration of being an unwilling host to the planned recycling plant and anaerobic digestion proposal on Megawatt Drive;

That Council ask the Provincial Government, and our MPP, to place a 'hold' on the proposed site until a full and proper Environmental Assessment (EA) can be conducted; and

That the Minister of Environment, Conservation and Parks be requested to pass an order prohibiting the Region of Durham from proceeding with the planned recycling plant and anaerobic digestion facility until the EA is completed to the satisfaction of Clarington Council.

Resolution sent to Hon. Jeff Yurek, Minister of Environment, Conservation and Parks, in a letter dated July 9, 2020 from June Gallagher. Region of Durham copied.

Aug. 26, 2020

Amy Burke and Rob Maciver met with (conference call) Gavin Battarino, Ministry of Environment, Conservation and Parks (MECP) to discuss Resolution #GG-244-20 and the process and information requirements for submitting a request for Environmental Assessment designation. A summary of the discussion and comments received from the MECP is provided in Gavin Battarino's supplemental email, dated Sep. 23, 2020, which appeared as correspondence on the Sep. 28, 2020 General Government Committee (GGC) agenda ([item 21.3](#)).

Sep. 14, 2020 (Joint Committee)

Item 10.3 [correspondence from Elaine Baxter-Trahair](#), CAO, Region of Durham, dated July 15, 2020, in response to #GG-244-20.

Item 11.13 [correspondence from Andrew Evers](#), Manager, Environmental Assessment Branch, MECP, dated August 13, 2020, in response to #GG-244-20.

Items 10.3 and 11.13 were both referred to closed session at the end of the meeting. Later in the meeting, these items along with other matters were referred to a Special GGC meeting to be held on Sep. 21, 2020.

Sep. 21, 2020 (Special GGC)

Items 10.3 and 11.13 referred from the Sep. 14 GGC meeting were both referred to consideration during Closed Session of the Sep. 21 Council meeting.

Sep. 21, 2020 (Council)

Following closed session, Council approved Resolution #C-389-20

That correspondence item 14.4 from Andrew Evers, Manager, Environmental Assessment Branch, Ministry of the Environment, Conservation and Parks, regarding the Proposed Recycling and Anaerobic Digestion Facility, be received for information.

According to the Sep. 28, 2020 GGC minutes, the Region of Durham's letter, dated July 15, 2020 was referred from the Sep. 21 Closed Session to the Sep. 28, 2020 GGC meeting.

September 28, 2020 (GGC)

The unfinished business of the Region of Durham's July 15, 2020 letter in response to #GG-244-20 had been referred to this meeting (item 21.2).

Item 10.1 [correspondence from Andrew Evers](#), Manager, Environmental Assessment Branch, MECP, dated September 22, 2020, in response to the Region of Durham's letter of July 15, 2020.

Item 21.3 [correspondence from Gavin Battarino](#), Special Project Officer, MECP, dated September 23, 2020 regarding the Municipality's EA designation request.

With respect to the above, Council referred the Region's correspondence and MECP's response to the Region's correspondence to Closed Session and then to the Oct. 13, 2020 Council meeting.

The correspondence from Gavin Battarino regarding the Municipality's EA designation request was received for information (#GG-335-20).

Oct. 13, 2020 (Council)

The unfinished business of the Region of Durham's July 15, 2020 letter in response to #GG-244-20, which had been combined with the MECP's response to the Region of Durham's letter at the Sep. 28 GGC meeting, was received for information (#C-409-20).

The matter of Mixed Waste Pre-Sort and Anaerobic Digestion Project was then considered during Closed Session and no resolutions were passed.

2021:

Sep. 2, 2021

Letter from Hon. David Piccini, Minister of Environment, Conservation and Parks to Mayor Foster, responding to Clarington Resolution #GG-244-20 and requesting a meeting.

Sep. 13, 2021 (Joint Committee)

Councillor Neal brings forward as New Business ([item 9.4.2](#)) a motion that:

Clarington provide all necessary information to the MECP in order that they can give due consideration to ordering an Environmental Assessment for the anaerobic digester.

The matter was procedurally referred to the Sep. 27, 2021 GGC meeting.

Sep. 16, 2021

Mayor Foster, Ryan Windle, Faye Langmaid and Amy Burke met with (conference call) Minister Piccini, MECP, Deputy Minister Serge Imbrogno, Staff from the Minister's office and MECP Staff in response to Minister Piccini's Sep. 2, 2021 letter. The Minister confirmed that a sufficiently detailed written request for the Region's Pre-Sort / AD Facility to be subject to an EA must be submitted in order for the Minister to give consideration. In addition, the Minister confirmed that an EA is not a requirement for the project, and highlighted the opportunities for issue resolution and additional consultation as part of the Environmental Compliance Approval application process for the Facility. The Minister indicated that it was of the understanding that the proposed project aligned with local zoning. The Minister offered to follow up with additional details on the formal request process and information requirements, and appropriate contacts from the Minister of Municipal Affairs and Housing to further discuss zoning-related matters.

Sep. 27, 2021 (GGC)

Committee approved Resolution #GG-457-21.

That Clarington provide all necessary information to the MECP in order that they can give due consideration to ordering an Environmental Assessment for the anaerobic digester.

Oct. 5, 2021

Letter from Hon. David Piccini, Minister of Environment, Conservation and Parks to Mayor Foster, extending appreciation for the meeting held on Sep. 16, 2021, confirming next steps for submission of a formal request that the Pre-Sort / AD Facility be made subject to an EA, and providing appropriate contacts from the Ministry of Municipal Affairs and Housing to further discussion matters relating to zoning.

Ministry of the Environment,
Conservation and Parks

Ministère de l'Environnement,
de la Protection de la nature et des
Parcs



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357-2021-3034

September 2, 2021

Adrian Foster
Mayor
Municipality of Clarington
Email: mayor@clarington.net

Dear Mayor Foster:

As I settle into my new role as Ontario's Minister of the Environment, Conservation and Parks (MECP), I have taken the time to read previous correspondence from the past number of months. I understand that at a council meeting held on July 6-7, 2020, the Municipality of Clarington passed a council resolution authorizing that a request be made to MECP to require that an individual environmental assessment be completed for Durham Region's proposed Mixed Waste Pre-sort and Anaerobic Digestion Facility.

Subsequent to receiving the council resolution, I understand that my ministry staff liaised with municipal staff to provide clarification on the designation request process, and the supporting rationale and information the ministry would expect to see accompany a formal designation request submitted by the municipality. I am advised that to date, no formal request has been received by my ministry to designate the project as being subject to the *Environmental Assessment Act*. I also understand that in early July 2021, you contacted the ministry's York Durham District Office to discuss this proposal as well as the Durham York Energy Centre.

As you may be aware, the Municipality of Clarington may have tools available, such as zoning bylaws and zoning changes to respond to community concerns with respect to this project at the municipal level, without provincial involvement.

I understand that there has also been significant public concern regarding the potential overall environmental impact and potential increase in activities in the area because of the Durham York Energy Centre and the proposed Mixed Waste Pre-sort and Anaerobic Digestion Facility. I would appreciate an opportunity to meet with you to discuss potential options available to the Municipality and provincial government to thoroughly consider local concerns about the project, including the potential option of requiring Durham Region to complete an environmental assessment for the proposed project.

Mayor Adrian Foster
Page 2.

I look forward to meeting with you about this important matter, my office will be reaching out shortly to schedule a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Piccini', with a stylized flourish at the end.

David Piccini
Minister of the Environment, Conservation and Parks

c: Joe Neal, Regional Councillor Wards 1 and 2
Granville Anderson - Regional Councillor Wards 3 and 4
Janice Jones, Councillor Ward 1
Ron Hooper - Councillor Ward 2
Corinna Traill - Councillor Ward 3
Margaret Zwart - Councillor Ward 4
Andy Allison, CAO
Lindsey Park, MPP, Durham

Ministry of the Environment,
Conservation and Parks

Ministère de l'Environnement,
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October 5, 2021

Adrian Foster
Mayor
Municipality of Clarington
By email to: mayor@clarington.net

Dear Mayor Foster:

Adrian,

It was a pleasure meeting with you on September 16, 2021 to discuss matters of interest to Clarington and local residents, including Durham Region's proposed Mixed Waste Pre-sort and Anaerobic Digestion Facility.

I understand from our meeting that the Municipality is considering submitting a formal request to my ministry asking that Durham Region's proposed project be made subject to the requirements of the *Environmental Assessment Act*. As committed to at our meeting, staff from my ministry will be providing information to municipal staff about the Environmental Assessment (EA) designation request process, including information about how to submit a formal designation request and the type of supporting information that should accompany the request. Should the Municipality decide to submit a formal EA designation request to my ministry, it would be given due consideration.

Finally, if you would like to further discuss zoning-related matters in relation to Durham Region's proposed project site, the Ministry of Municipal Affairs and Housing (MMAH) would be best positioned to assist in this regard. To that end, I would recommend that municipal staff connect with Sean Fraser, Regional Director, Central Municipal Services Office, MMAH, to discuss zoning-related matters. Sean can be reached at 647-282-1171 or Sean.Fraser@ontario.ca.

Thank you again for meeting with me and please accept my best wishes.

Sincerely,

A blue ink signature of David Piccini, consisting of a stylized 'D' and 'P' followed by a horizontal line.

David Piccini
Minister of the Environment, Conservation and Parks

*I thank you for
your time Adrian.
Looking forward to working
with you to address the
concerns of Clarington
residents!*

Assumed Minimum Requirements of a Full EA

Below are the questions proponents have to answer when completing an Environmental Screening Process under the *Environmental Assessment Act*. At a minimum, Staff anticipate Clarington would need to demonstrate in their request to the Ministry that a number of these questions have not been answered in a satisfactory manner by the Region to date, and that the answer to many of them is “no” and it does not appear that mitigation is being planned to address the negative impacts.

The questions to be addressed are:

1. Surface and Ground Water

1. cause negative effects on surface water quality, quantities or flow?
2. cause negative effects on ground water quality, quantity or movement?
3. cause significant sedimentation or soil erosion or shoreline or riverbank erosion on or off site?
4. cause negative effects on surface or ground water from accidental spills or releases (e.g., leachate) to the environment?

2. Land

1. cause negative effects on residential, commercial, institutional or other sensitive land uses within 500 metres from the site boundary?
2. not be consistent with the Provincial Policy Statement, provincial land use or resource management plans?
3. be inconsistent with municipal land use policies, plans, zoning by-laws (including municipal setbacks)?
4. use lands not zoned as industrial, heavy industrial or waste disposal?
5. use hazard lands or unstable lands subject to erosion?
6. cause negative effects related to the remediation of contaminated land?

3. Air and Noise

1. cause negative effects on air quality due to emissions (for parameters such as temperature, thermal treatment exhaust flue gas volume, nitrogen dioxide, sulphur dioxide, residual oxygen, opacity, hydrogen chloride, suspended particulates, or other contaminants)?
2. cause negative effects from the emission of greenhouse gases (e.g., carbon dioxide, carbon monoxide, methane)?
3. cause negative effects from the emission of dust or odour?

4. cause negative effects from the emission of noise?
5. cause light pollution from trucks or other operational activities at the site?

4. Natural Environment

1. cause negative effects on rare (vulnerable), threatened or endangered species of flora or fauna or their habitat?
2. cause negative effects on protected natural areas such as, ANSIs, ESAs or other significant natural areas?
3. cause negative effects on designated wetlands?
4. cause negative effects on wildlife habitat, populations, corridors or movement?
5. cause negative effects on fish or their habitat, spawning, movement or environmental conditions (e.g., water, temperature, turbidity, etc.)?
6. cause negative effects on locally important or valued ecosystems or vegetation?
7. increase bird hazards within the area that could impact surrounding land uses (e.g., airports)?

5. Resources

1. result in practices inconsistent with waste studies and/or waste diversion targets (e.g., result in final disposal of materials subject to diversion programs)?
2. result in generation of energy that cannot be captured and utilized?
3. be located a distance from required infrastructure (such as availability to customers, markets and other factors)?
4. cause negative effects on the use of Canada Land Inventory Class 1-3, specialty crop or locally significant agricultural lands?
5. cause negative effects on existing agricultural production?

6. Socio-economic

1. cause negative effects on neighbourhood or community character?
2. result in aesthetics impacts (e.g., visual and litter impacts)?
3. cause negative effects on local businesses, institutions or public facilities?
4. cause negative effects on recreation, cottaging or tourism?
5. cause negative effects related to increases in the demands on community services and infrastructure?
6. cause negative effects on the economic base of a municipality or community?
7. cause negative effects on local employment and labour supply?
8. cause negative effects related to traffic?

9. be located within 8 km of an aerodrome/airport reference point?
10. interfere with flight paths due to the construction of facilities with height (i.e., stacks)?
11. cause negative effects on public health and safety?

7. Heritage and Culture

1. cause negative effects on heritage buildings, structures or sites, archeological sites or areas of archeological importance, or cultural heritage landscapes?
2. cause negative effects on scenic or aesthetically pleasing landscapes or views?

8. Aboriginal

1. cause negative effects on land, resources, traditional activities or other interests of Aboriginal communities?

9. Other

1. result in the creation of non-hazardous waste materials requiring disposal?
2. result in the creation of hazardous waste materials requiring disposal?
3. cause any other negative environmental effects not covered by the criteria outlined above?

If a response to a question indicates “Yes”, there is potential for negative environmental effects, the proponent must provide additional information and analysis in the Environmental Screening Report to describe those effects, identify impact management measures (including mitigation measures) to prevent or reduce the effects, and assess the significance of any net effects.

[Source: Guide to environmental assessment requirements for waste management projects (MECP, March 2007)]