

Ministry of the Environment,  
Conservation and Parks

Environmental Assessment and  
Permissions Division

135 St. Clair Avenue West  
14th Floor  
Toronto ON M4V 1P5

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

Division des évaluations et des permissions  
environnementales

135, avenue St. Clair Ouest  
14<sup>e</sup> étage  
Toronto ON M4V 1P5



## By email

October 12, 2021

Judy Mabee, President  
Belfountain Community and Planning Organization  
760 Forks of The Credit  
Belfountain, ON L7K 0E5  
[judy.mabee@gmail.com](mailto:judy.mabee@gmail.com)

AND

Linda Heron  
379 Ronka Road  
Worthington, ON POM 2H0  
[lindah@ontarioriversalliance.ca](mailto:lindah@ontarioriversalliance.ca)

Dear Judy Mabee and Linda Heron:

**RE: EBRO File No. 21EBR005.I**  
**Application for Investigation into allegations of contraventions of section 38 of the *Environmental Assessment Act* by the Corporation of the Town of Erin**

Thank you for your Application for Investigation (Application) submitted under Part V of the *Environmental Bill of Rights, 1993* (EBR), which was received by the Ministry of the Environment, Conservation and Parks (Ministry) on August 10, 2021.

In accordance with section 117 of the EBR, the consideration of and the decision on your Application has been delegated by the Minister of the Environment, Conservation and Parks to me as the Assistant Deputy Minister of the Ministry's Environmental Assessment and Permissions Division.

In your Application, you requested an investigation into alleged contraventions of section 38 of the *Environmental Assessment Act* (Act) by the Corporation of the Town of Erin.

The Ministry regards the Application provisions of the EBR to be an important means by which residents of Ontario may raise matters of concern to protect the environment. Your Application and the supporting documentation have been carefully assessed.

The Ministry has completed its review of your Application and I have concluded that an investigation is not warranted. The full rationale for my decision is detailed in the attached Decision Summary.

There is no requirement for the Town of Erin to prepare an addendum to the Environmental Study Report (ESR) for the wastewater servicing and treatment plant (project). Section A.4.3 of the Municipal Class environmental assessment (Class EA) sets out the circumstances in which an addendum must be prepared by a proponent. The ministry understands that the Solmar Site was assessed, selected, and identified as the preferred site for the project in the ESR. The ESR identified two potential sites for the project, however the Solmar Site is continually referred to as the preferred site in the ESR. The ESR also documents the environmental assessment (EA) of both potential sites, meeting the requirements of the Class EA process and the Act. As no significant modification to the project, as set out in the ESR, is required and there is no change in the environmental setting for project, the Town of Erin is not required to prepare an addendum.

Further, the additional studies noted in the ESR (i.e., Environmental Management Plan, Arborist Report and Species at Risk (SAR) Bat Habitat survey) are only required to be completed prior to the implementation of the project and are not necessarily captured in the ESR itself. The Town of Erin has submitted a SAR Report to the Ministry that addresses bird and tree SAR and the Ministry is reviewing the report. The Ministry continues to be engaged with the Town of Erin to ensure that the necessary bird studies have been/are being completed and relevant protocols followed. It has been confirmed that no SAR trees have been identified within the study area and therefore an Arborist Report is not required.

The Ministry's EA and approvals processes are intended to be robust as they include stringent requirements for proponents to follow.

In addition to the completion of an EA process where required, the Ministry uses conditions such as (but not limited to) monitoring and reporting in other regulatory instruments (i.e., in Environmental Compliance Approvals (ECAs) and regular compliance inspections) to ensure adequate environmental protection.

The Town of Erin will require an ECA for the project prior to beginning construction and operation. The Town has submitted an ECA application to the Ministry, and it will undergo a detailed technical review to ensure that the design and operation of the facility meets the stringent regulatory requirements in place to ensure the ongoing protection of the natural environment.

We appreciate the time and effort you have invested in this matter and we thank you for your Application. The Ministry understands and acknowledges your concerns and I would like to assure you that in addition to the Town of Erin's requirement for an ECA, there is also a strong compliance framework in place to ensure the Town constructs and operates the new facility according to the conditions of their ECA to ensure ongoing protection of the environment.

If you have any questions about the EBR process, please contact Mr. Scott Shaw, Policy Advisor of the Ministry's Environmental Bill of Rights Office at 647-632-1470 or by e-mail: [scott.shaw@ontario.ca](mailto:scott.shaw@ontario.ca).

In the event that you have any questions regarding your Application or the Ministry's ongoing involvement in this matter, please contact Nick Colella, Manager, Environmental Assessment Program Support at 416-358-9934 or by e-mail: [nick.colella@ontario.ca](mailto:nick.colella@ontario.ca).

Yours truly,



Sarah Paul  
Assistant Deputy Minister  
Environmental Assessment and Permissions Division

Attachment

c: Tyler Schulz, Acting Assistant Auditor General/Commissioner of the Environment  
(File I2018003)  
Scott Shaw, MECP Environmental Bill of Rights Office

## EBR Application for Investigation

### Allegations of contraventions of section 38 of the *Environmental Assessment Act* by the Corporation of the Town of Erin

#### Decision Summary

EBRO File No.: 21EBR005.I

**Issue:** The Ministry of the Environment, Conservation and Parks (Ministry) has received an Application for Investigation (Application) pursuant to the *Environmental Bill of Rights, 1993* (EBR) alleging that:

- “The Town Urban Centre Wastewater Servicing Class Environmental Assessment Study Report (ESR) committed to issuing an Addendum to the ESR once a final project site was chosen; however, Site 1 (the Solmar land) was not officially chosen by the Town until a Council Meeting held on 18 August 2020, more than 2 years after the Notice of Completion was issued (on 14 May 2018). The approved resolution included the announcement that a corresponding Addendum to the ESR would be completed.
- To date, no Addendum to the ESR has been issued and, in a meeting on 13 July 2021, between [redacted], Mark Heaton, Nick Colucci, Director of Infrastructure Services, and Mayor Allan Alls, Mr. Colucci and Mayor Alls confirmed that the Town would not be issuing an Addendum to the ESR.
- The ESR also committed to an Environmental Management Plan (EMP), an Arborist Report for all affected areas, and additional bird surveys (additional commitments); however, we are not aware of these additional commitments being completed at this time.
- Failing to issue an Addendum to the ESR deprives stakeholders, the public, and Indigenous communities from the opportunity to be consulted and provide input into a highly controversial Project”.

all of which is contrary to section 38 of the *Environmental Assessment Act* (Act).

The Applicants also cite the following as issues and provide the following background information:

1. Rationale for the Application for Investigation:
  - a. Attempts to Get Answers to our Questions and Concerns
2. Background Information:
  - a. Designation Request - Follow-up Considerations
  - b. *Freedom of Information and Protection of Privacy Act* (FIPPA) Stonewalling

c. \$2 Deal for 5 Hectares of Prime Real Estate

These issues and background information do not provide evidence of an alleged contravention of the Act and were therefore not considered as part of the Application.

## **Review Decision**

The Ministry has completed its assessment of the Application. After careful consideration of the information provided in the Application and available in Ministry files, and the requirements of the EBR, the Assistant Deputy Minister of Environmental Assessment and Permissions Division (as an authorized delegate of the Minister) has decided that an investigation under section 77 of the EBR is not required.

## **Ministry's Assessment of the Application**

### **Summary of the Applicants' Request**

The applicants allege that on May 14, 2018, the final ESR committed, twice, to issuing an Addendum to the ESR that would provide the rationale for making the final site location decision, and that on August 18, 2020, the site was officially chosen at a Town Council Meeting, after Council returned from a closed session. However, to date, no Addendum has been issued.

The applicants also allege that the Town committed to preparing an Arborist Report of all affected areas as part of an overall EMP for the Project during the design stage. Further, Minister Yurek's August 29, 2019 decision letter notes that an EMP will be prepared prior to construction that will further define inspections and monitoring and provide contingency planning.

The applicants further assert there is no evidence in the ESR that additional bird surveys, the EMP, a Species at Risk (SAR) bat habitat, or any other studies were ever done, and it is unknown whether they were ever completed after Site 1, the Solmar land, was chosen.

Finally, the applicants allege that it has come to their attention that a Stage 2 Archaeological Study was completed and that this should warrant public review of the study and report.

### **Background**

The Town of Erin (Erin) is located northeast of Guelph in Wellington County. The main urban centres within Erin are Erin Village and Hillsburgh. Currently, almost all of the properties in these two communities are serviced by individual private septic systems.

In 2014, Erin completed a Servicing and Settlement Master Plan (SSMP) to address servicing, planning, and environmental issues within Erin and to establish a recommended approach for wastewater management for both of the urban communities in order to address the wastewater issues within the communities and to facilitate growth, which is limited by the lack of wastewater servicing.

The study area for the SSMP included Erin Village and Hillsburgh and a portion of the surrounding lands within the community boundaries. The SSMP concluded that a wastewater collection system conveying all wastewater flows to a single wastewater treatment plant

(WWTP) was the preferred solution to meet the existing community's wastewater servicing needs and support future population growth. The SSMP further recommended that the WWTP be situated southeast of Erin Village, with treated WWTP effluent being discharged to the West Credit River between 10th Line and Winston Churchill Boulevard.

In 2016, Erin initiated the Urban Centre Wastewater Servicing Class Environmental Assessment (UCWS EA), which had the objective of completing the Class Environmental Assessment (Class EA) process for wastewater servicing (the "Project") within Erin Village and Hillsburgh based on the general alternative solution developed during the SSMP. The UCWS EA followed the Municipal Class EA process.

The notice of completion was published in the Erin Advocate and Wellington Advisor on May 1 and May 8, 2018 and also sent by email to all interested parties and review agencies. The 30-day public review process commenced on May 14 and ended on June 12, 2018.

Between June 13 and June 26, 2018, the Ministry received three Part II Order requests asking that Erin be required to prepare an Individual Environmental Assessment (EA) for the proposed Project.

On August 29, 2019, the Minister of the Environment, Conservation and Parks informed Erin that an Individual EA is not required. In his letter, the Minister informed Erin that it "must ensure the project is implemented in the manner it was developed and designed, as set out in the project documentation, and inclusive of all mitigating measures, commitments and environmental and other provisions therein".

The letter also informed Erin that "failure to comply with the Act, the provisions of the Municipal Class EA, and failure to implement the project in the manner described in the planning documents, are contraventions of the Act and may result in prosecution under section 38 of the Act".

On February 25, 2021, a coalition of organizations sent a request to the federal Minister of Environment and Climate Change asking that the Project be designated as requiring a federal impact assessment under the *Impact Assessment Act* (IAA) as it may cause adverse effects upon matters within federal jurisdiction. The concerns raised focus on potential adverse effects on the West Credit River.

On May 26, 2021, the federal Minister of Environment and Climate Change made a decision not to designate the Project under the IAA.

The Minister reached the decision that the designation of the Project is unwarranted for the following reasons:

- the potential adverse effects within federal jurisdiction would be limited through project design and the application of standard mitigation measures;
- the regulatory processes that currently apply to, or have been undertaken for the Project and any related consultations provide a framework to address the potential adverse aforementioned effects, public concerns raised in relation to those effects, and potential impacts to Aboriginal and treaty rights. These include:
  - a Municipal Class EA completed pursuant to the Act;

- provincial permits and approvals that may be required for the Project pursuant to the Ontario *Water Resources Act*, *Public Lands Act*, *Ontario Heritage Act*, and Ontario's *Environmental Protection Act*;
- authorizations and approvals, if required for the Project, pursuant to the *Fisheries Act* and the *Canadian Navigable Waters Act*; and
- the Project must comply with relevant provisions of the above listed Acts as well as the Wastewater Systems Effluent Regulations pursuant to the *Fisheries Act*, the *Species at Risk Act*, the *Migratory Birds Convention Act, 1994*, Ontario's *Endangered Species Act* and the *Conservation Authorities Act*.

## Applicable Legislation

Section 38 of the Act:

### Offence

**38.** Every person, whether as principal or agent, or an employee of either of them, who contravenes any provision of this Act or the regulations or fails to comply with an order or a term or condition of an approval issued or given under this Act is guilty of an offence and on conviction is liable on a first conviction to a fine of not more than \$10,000 and on a subsequent conviction to a fine of not more than \$25,000 for every day or part thereof upon which the offence occurs or continues. R.S.O. 1990, c. E.18, s. 38.

## Decision Summary

The Ministry's assessment was based on the evidence in the Application and information relevant to the Application available to the Ministry.

In determining whether an investigation is warranted in relation to the alleged contravention of section 38 of the Act, the following matters as identified in subsection 77(2) of the EBR were considered:

### **a) *The application is frivolous or vexatious***

The Ministry does not find that this Application is frivolous or vexatious.

### **b) *The alleged contravention is not serious enough to warrant an investigation***

Whenever an allegation is made that a proponent has failed to comply with the law, it is a serious allegation. However, for the reasons outlined below, the Ministry is of the view that the allegations do not warrant an investigation.

***c) The alleged contravention is not likely to cause harm to the environment***

The Ministry's EA and approvals processes are intended to be robust as they include stringent requirements for proponents to follow. In addition to the completion of an EA process where required, the Ministry uses conditions such as (but not limited to) monitoring and reporting in other regulatory instruments (such as Environmental Compliance Approvals (ECAs) and regular compliance inspections) to ensure adequate environmental protection.

Unresolved commitment respecting an addendum to the ESR

Based on the Ministry's review of the relevant statements from the applicants, there was a misapprehension as to the requirements of the Municipal Class EA. From the Ministry's review of the ESR and discussion with Erin, it is the Ministry's understanding that the Solmar Site (Site 1) was assessed, selected, and identified as the preferred site for the WWTP in the ESR. The ESR identified two potential sites for the Project, however the Solmar Site is continually referred to as the preferred site in the ESR. The ESR also documents the EA of both sites, meeting the requirements of the Municipal Class EA process and the Act.

The ESR notes that an addendum will be required for the final site selection. Section A.4.3 of the Municipal Class EA sets out the circumstances in which an addendum must be prepared by a proponent. As no significant modification to the Project, as set out in the ESR, is required and there is no change in the environmental setting for Project, Erin is not required to prepare an addendum.

This allegation is not serious enough to warrant an investigation, nor is it likely to cause harm to the environment.

Unresolved commitments related to the EMP, Arborist Report and SAR Bat Habitat

The EMP is to encompass the necessary studies and mitigations that need to be completed prior to implementation of the Project. This can include the required regulatory approvals and permits, as well as the reports and information regarding the Project implementation, natural heritage existing conditions and environmental protection and mitigation plans. The additional studies noted in the ESR are only required to be completed prior to Project implementation and are not necessarily captured in the ESR itself.

The Ministry is reviewing Erin's SAR Report that addresses bird and tree SAR. From the Ministry's preliminary review, it has been confirmed that no SAR trees have been identified within the study area and therefore an Arborist Report is not required. As such, the alleged contravention is not serious enough to warrant an investigation, nor is it likely to cause harm to the environment.

Unresolved commitment related to additional bird studies

Erin has submitted a SAR Report to the Ministry that addresses bird and tree SAR. The Ministry is reviewing the report. The Ministry continues to be engaged with Erin to ensure that the necessary bird studies have been/are being completed and relevant protocols followed.

The SAR Report is one that encompasses the EMP and is to be completed prior to implementation of the Project. This report is not necessarily captured in the ESR itself. As

such, the alleged contravention is not serious enough to warrant an investigation, nor is it likely to cause harm to the environment.

#### Unresolved commitment related to archaeological studies

The Ministry has confirmed that a Stage 1 Archaeological Assessment (AA) has been completed for the outfall location and a Stage 2 AA has been completed for the Project. The AA Report was submitted to the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) on January 21, 2021 for their review.

However, this report is not a requirement of the Municipal Class EA ESR process. As such, it is not a contravention that can be investigated.

#### **Conclusion**

The Ministry has completed its assessment of this Application in accordance with Part V of the EBR. After careful consideration of the Application and other information as described above, the Ministry has concluded that the requested investigation is not warranted.

Erin has demonstrated to the Ministry's satisfaction that it has complied with the Municipal Class EA process followed for the Project and completed in 2018. The Ministry is satisfied that any outstanding environmental concerns will be addressed through any additional permits or approvals that may be required, including the ECA. The applicants' allegations of contravention from the Act are not serious enough to warrant an investigation or cause harm to the environment.