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2 November 2021

Tyler Schulz, PhD
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Office of the Auditor General of Ontario
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By email: Tyler.Schulz@Auditor.on.ca

Re: EBR Application for Investigation of the Corporation of the Town of Erin
Heron and Belfountain Community and Planning Organization
EBRO File No. 21EBR005.1 and AGO File I2018003

Dear Mr. Schulz:

The Belfountain Community and Planning Organization and Linda Heron are writing in response to the enclosed decision letter dated 12 October 2021, by Sarah Paul, Assistant Deputy Minister, Environmental Assessment and Permissions Division, of the Ministry of Environment, Conservation and Parks (MECP) in response to our Application for Investigation of the Corporation of the Town of Erin, filed under Part V of the *Environmental Bill of Rights, 1993* (EBR).

We were very disappointed in Ms. Paul's decision to deny our Application for Investigation; however, we were also not surprised. This provincial government has systematically dismantled much of Ontario's environmental policy and legislation with an ambitious goal of "cutting red tape", and "modernizing". They have successfully carried out their mission through specious explanations that mislead the public and deflect concern over important Environmental Registry postings and massive omnibus Bills. This method has allowed them to proceed with sweeping cuts to numerous pieces of important legislation without much public fuss - all during their declared COVID Emergency. The decision on our Application for Investigation is simply another example of bypassing key legislation to facilitate a Project that has strong community opposition.

It is absolutely essential for the public to have confidence in the integrity of government officials if we are to trust in the environmental sustainability of project proposals. However, when that trust has been breached, those responsible must be held accountable.

Misapprehension of the Municipal Class EA:

The Decision Summary claimed that "*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*"¹; however, it was obviously also a misapprehension on the part of the Town of Erin in the 14 May 2018 final Environmental Study Report (ESR), which twice committed to issuing an Addendum to the ESR:

“In carrying forward two recommended alternatives for the WWTP site through to the final ESR, it is recognized that the municipality will need to prepare an Addendum to this ESR to make a final site selection. The addendum will need to provide details of the events that have occurred and the rationale for making the final location decision.”^{2,3}

And again, on 18 August 2020, the site was officially chosen at a Town of Erin Council Meeting, after returning from a closed session and reported out: Resolution #20-135 stating,

“With respect to the matters exempt under the Municipal Act s. 239 (2). c: Be it resolved that Site 1 as described in the Environmental Study Report prepared by Ainley Group and published in May 2018, be selected as the site for the new Town Wastewater Treatment Plant, and a corresponding Addendum to the Environmental Study Report be completed, as required; And that the CAO be authorized to execute an agreement of purchase and sale with National Properties Inc. on the Township’s behalf generally on the basis of the draft agreement attached to the Confidential Report from Loopstra Nixon LLP, dated August 11, 2020, as Attachment No. 1, with such revisions and amendments as determined appropriate by the CAO and Town Solicitor. With respect to the matters exempt under the Municipal Act s. 239 (2). h: Nothing to report. With respect to the matters exempt under the Municipal Act s. 239 (2). b: Be it resolved that Rhowan Hubbert be appointed to the Let’s Get Hillsburgh Growing Committee. Carried.”⁴

The Solmar Site was set out in the ESR as the “*preferred site for the WWTP*”, however, the ESR also stated that site 2B had the highest score, and that “*if aggregate extraction takes place prior to the Town requiring the site for the project then it is recommended that Site 2B (HCS) be carried forward as the preferred site for the WWTP. The results of the evaluation process following aggregate extraction, indicate that Site 2B has the highest score and is preferred over sites 1 [Solmar land], 2A or 2C*”.⁵

Therefore, there was no certainty of which preferred site would end up being the Project site”, and it took over a year after the ESR was approved by Minister Yurek for the Town of Erin to finally decide on the Solmar land.

Additional Studies:

Regarding the additional bird and bat studies, the ESR also stated that “*Once the exact location is known we propose conducting additional bird surveys in the affected habitat to document whether any species at risk and sensitive species are present (such as Eastern Meadowlark, Bobolink, Savannah Sparrow) and formulate potential mitigation plans should they be required*”⁴. Additionally, the ESR stated that “*An arborist report of all affected areas will be prepared as part of an overall Environmental Management Plan for the project during the design stage*”, and that, “*SAR Bat habitat will be assessed per requirements in Significant Wildlife Habitat Criteria Schedules for Ecoregion 6E (MNR 2015¹⁰) in the final Natural Environment Report*”.⁶

Instead, it was well understood and clearly set out in the ESR that once the final site was selected an Addendum to the ESR would be issued, and additional bird and bat studies would be undertaken. The ESR is a commitment to the Minister of MECP, as well as to stakeholders, that there would be an Addendum to the ESR. This would have also meant additional public and Indigenous consultation.

We submit that there was no misapprehension of the Municipal Class EA which states:

“Any significant modification to the project or change in the environmental setting for the project which occurs after the filing of the ESR shall be reviewed by the proponent and an addendum to the ESR shall be written. The addendum shall describe the circumstances necessitating the change, the environmental implications of the change, and what, if anything can and will be done to mitigate any negative environmental impacts. The addendum shall be filed with the ESR and Notice of Filing of Addendum (see Sample Notice, Appendix 6) shall be given immediately to all potentially affected members of the public and review agencies as well as those who were notified in the preparation of the original ESR. It should be made clear to review agencies and the public that when an Addendum to an ESR is issued, only the items in the addendum (i.e. the changes) are open for review, i.e. only the proposed changes to the recommended undertaking are open for review...”

A period of 30 days following the issue of the Notice of Filing of Addendum shall be allowed for review and response by affected parties... During the 30-day addendum review period, no work shall be undertaken that will adversely affect the matter under review. Furthermore, where implementation of a project has already commenced, those portions of the project which are the subject of the addendum, or have the potential to be directly affected by the proposed change, shall cease and shall not be reactivated until the termination of the review period.”⁷

The final ESR was posted for comments on 14 May 2018, and it wasn't until August of 2020, twenty-seven months later, that the final site was chosen. Consequently, there was no certainty of which site would be chosen, and that is why the bird, bat, arborist and archaeological studies were not completed, and not committed to being done until the project site was finally chosen.

Environmental Harm:

The Decision Summary states, “*the alleged contravention is not serious enough to warrant an investigation, nor is it likely to cause harm to the environment*”⁸. Damage to the environment has already been done to a huge area surrounding the Project site. Therefore, it is too late in 2021 to undertake any meaningful arborist report or bird and bat studies because the land surrounding the selected site had already been stripped of many of its large trees, including trees all along a Provincially Significant West Credit River Wetland Complex, Species at Risk Woodlands and Greenbelt Natural Heritage System. Much of this forested area was clear-cut, brush burned, larger trees pulled out by the roots, and a coldwater Brook Trout nursery and tributary to the West Credit River was severely damaged by heavy machinery in December of 2020 and on into the spring of 2021 – Addendum 1.

Conclusion:

The MECP decision had nothing to do with misapprehension of the Municipal Class EA, but everything to do with facilitating the project through the approvals process and removing any perceived roadblocks.

Minister Yurek's 29 August 2019 decision letter to the Town of Erin contained only one condition. “*The Town 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. Lastly, I would like to ensure that the Town understands that failure to comply with the Act, the provisions of the Municipal Class Environmental Assessment, 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.”⁵

The local residents and community at large took those commitments made in the ESR seriously and fully expected an Addendum to the ESR to be issued. We were counting on an opportunity to comment on an environmentally significant project that will have a major impact on one of the few remaining native brook trout populations in southern Ontario.

“The EBR Act’s purpose is to better protect the environment by enabling all Ontarians to participate in – and hold the government accountable for – important decisions that affect air, water, lands and resources, plant and animal life, ecological systems and community well being. To that end, the EBR act provides rights for the Ontario public and obligations for Ontario government ministries that are intended to work together to improve environmental protection.”⁹

In addition, the MECP’s Statement of Environmental Values (SEV) clearly states *“The Ministry of the Environment and Climate Change believes that public consultation is vital to sound environmental decision-making. The Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment.”¹⁰* The Ministry’s SEV also pledges, *“The Ministry will encourage increased transparency, timely reporting and enhanced ongoing engagement with the public as part of the environmental decision making”¹¹*

We draw your attention to the Application for Investigation’s timeline of our multiple attempts to get answers to whether an Addendum to the ESR and additional studies would be forthcoming; however, we were continually met with complete stonewalling. Multiple letters were sent to Mayor Alls, Town of Erin, as well as Joan Del Villar Cuicas, MECP, and even Minister Piccini, setting out our concerns over the damage done to the land by Solmar, and whether they would meet their commitments, with no response. It wasn’t until the Coalition’s 13 July 2021 meeting with Mayor Alls and Nick Colucci that we were informed that an Addendum to the ESR would not be issued, and that the MECP had informed him that it wasn’t necessary.¹²

In particular, the MECP made decisions that were not consistent with the purposes of the EBR Act, were not transparent, and undermined public confidence in the government’s environmentally significant decision to deprive the public and Indigenous communities of an opportunity to have meaningful input into why the Town of Erin chose to purchase 5 Hectares of prime real estate from a contractor for just \$2.00, when the land was valued at over \$200,000. It is also essential to know what the trade-offs were for a developer with a reputation that is worrisome.

Significant damage has already been done to the land surrounding the chosen Project site (see Addendum 1), the Addendum and studies committed to in the ESR were not done, and this undermines any confidence we may have had that those other commitments made to protect the public, brook trout and the environment will be upheld.

We respectfully request that you do what you can to hold the Town of Erin and the Ministry of Environment, Conservation and Parks accountable to their commitments. Thank you for your attention to this matter.

Respectfully,



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¹ MECP Decision Summary, c) Unresolved commitment respecting an addendum to the ESR P-5/6.

² ESR, Volume 1 of 3, 13.4.3 Results of the Wastewater Treatment Plant Site Alternative Evaluation, P-139/526.

³ ESR, Volume 3 of 3, Part 2, Ainley Consulting Engineers Planners, 6.0 Conclusion and Recommendations, P-89/384.

⁴ 18 August 2020 Town of Erin Council Meeting, 3.2, Resolution # 20-135, P-4/76

⁵ ESR, Volume 3 of 3, Part 2, Ainley Consulting Engineers Planners, 6.0 Conclusion and Recommendations, P-89/384.

⁶ ESR, Volume 2 of 3, Part 2, Hutchinson 11 April 2018 Response to Tara McKenna, Species at Risk, Comment #11, P-234/341.

⁷ Municipal Class Environmental Assessment, Section A.4.3, Revisions and Addenda to Environmental Study Report, Filing of an Addendum, Change in Project or Environment.

⁸ MECP Decision Summary, Unresolved commitments related to the EMP, Arborist Report and SAR Bat Habitat, P-6/6.

⁹ Operation of the Environmental Bill of Rights, P-3/73.

¹⁰ Statement of Environmental Values: Ministry of the Environment and Climate Change, 6. Consultation.

¹¹ Statement of Environmental Values: Ministry of the Environment and Climate Change, 3. Application of the SEV.

¹² 2021-08-09-EBR Application for Investigation – EWWTP, 2.1 – Attempts to Get Answers to our Questions and Concerns.