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To: **Committee of the Whole**

Agenda Section: Corporate Services  
Division: Engineering, Planning and Environment  
Department: Solid Waste Management

Item Number: **CCW - 2021-075**

Meeting Date: March 9, 2021

Subject: Environmental Resource Recovery Centre – Project Update

### **Recommendation**

That Item CCW 2021-075, dated March 9, 2021, regarding the Environmental Resource Recovery Centre – Project Update, be received.

### **Executive Summary**

Since 2012, the County of Simcoe has been working on the Environmental Resource Recovery Centre (ERRC) to ensure that we have the necessary waste management infrastructure in place, and to support the Province's long-term waste goals. The ERRC is an important project that provides certainty for organics processing costs and capacity for the next 30 years, protects taxpayers from escalating costs, will allow us to meet the provisions of the Provincial Food and Organics Waste Policy Statement and creates more than 100 direct and indirect local jobs.

The purpose of this item is to provide an update on the recent legal developments and the Local Planning Approvals Tribunal (LPAT) Process with respect to the County Official Plan Amendment (OPA 2), Township Official Plan and Zoning By-law Amendments.

An LPAT Case Management Conference has been held for both OPA 2 and the Township of Springwater Official Plan and Zoning By-law Amendment LPAT appeals. LPAT has agreed to consolidate these proceedings, but in a phased approach, with the OPA 2 appeal being heard first.

The Judicial Review Hearing on the Minister's decision to exempt OPA 2 from the Growth Plan Natural Heritage System policies is scheduled for April 2021. The LPAT hearings for OPA 2 and the Township OPA and ZBA will be held as soon as possible following the decision from the Divisional Court proceedings.

## **Background/Analysis/Options**

There have been a number of recent developments with respect to the ERRC and the pathway to approval for the County Official Plan Amendment (“OPA 2”) and the Township Official Plan Amendment (“OPA”) and Zoning Bylaw Amendments. These include the following:

### County OPA2

The LPAT issued a decision on the disputed Issues List for the OPA 2 hearing. The LPAT ruled that issues with respect to the ERRC’s conformity with Growth Plan Natural Heritage Sections, including Sections 4.2, 4.3 and 4.4, were inadmissible due to the transition regulation under the Places to Grow Act that the Minister issued in September 2019 which exempted the ERRC from these sections. A request was subsequently filed by one of the appellants to review this decision about the Issues List. The LPAT refused this request and the decision remains in effect.

### Judicial Review

Concurrently, the Friends of Simcoe Forest (“FOSF”), being one of the appellants to OPA 2, filed an application for Judicial Review, not of the LPAT decision (which requires leave of the Divisional Court before it can be argued) but of the decision by the Minister to exempt the OPA 2 from the Natural Heritage sections of the Growth Plan. It is worth noting that while the exemption granted by the Minister to the Growth Plan Natural Heritage sections is important, particularly since it will shorten the amount of evidence required to be heard, we are confident that even if the Divisional Court orders those exempted sections back into the hearing, the County has good evidence to deal with the issues that may be raised in that regard.

An appeal of a Ministerial decision like this brings into the picture a further branch of the Attorney General’s office, the Crown Law Office, Civil. This is a serious matter for FOSF since the threshold for overturning a Minister’s decision is very high. However, until the Court makes a decision, it slows down the process at LPAT. We have now had a “scheduling” motion with the Divisional Court. Various dates for filing documents have been set. The motion itself has been set for two days, on April 26 and 27, 2021.

### Local OPA and ZBA

Concurrently, the County’s LPAT appeal of the “non-decision” by Township of Springwater Council on our request for a Township OPA and Zoning Bylaw Amendment for the ERRC has proceeded. On January 21, 2021 LPAT held a Case Management Conference (“CMC”) to set various dates for that hearing. All of the parties have consented to an order that the hearings for OPA 2, and the Township OPA and ZBA appeals be held together but be “phased”. Particularly since the Township, through their lawyer, indicated that they would not take an “active” role in the OPA 2 hearing, but wanted to be more involved in the Township matters (which deals more specifically with the implementation matters). At this point the County is waiting for the LPAT to give us start dates for Phase One and Phase Two of the hearing. These dates are dependant on when a decision might issue from the

Divisional Court on the Judicial Review, and when the Phase One decision from LPAT would be delivered following that. The County intends on stressing the importance of a timely decision from the Divisional Court so as to not delay the LPAT proceedings longer than necessary.

A further LPAT CMC is set for May 27, 2021 where the suggested dates for Phase One (September 13 – 24, 2021) and Phase 2 (November 1 – 12, 2021) will be set.

This latest move by the FOSF has caused a significant delay in what we thought would be our schedule for the County and Township hearings. However, we do have considerable cooperation in getting the matters to a hearing.

### **Financial and Resource Implications**

Proceeding through the LPAT process has already delayed the project and will continue to do so. At the November CIF Committee meeting, a progress report was provided on the County's ERRC project. County staff have noted that due to the uncertainty of the provincial approvals process, the County will not be able to meet the timeframe obligations for the grant. The CIF grant requires the MMF of the ERRC to be operational by December 2023.

CIF staff will be recommending to the CIF Committee in March that the CIF grant for the MMF portion of the ERRC be terminated effective April 30, 2021. This is a loss of approx. \$1.9 million for the MMF. County staff will be submitting a new grant application requesting CIF to financially support a portion of the transfer facility at the Oro Waste Management Facility.

Previous budgets have been approved by Council to carry out the next phase of the project including development of the detailed design and OPF procurement documents. Anticipated expenses for 2021 include:

- Detailed design for the site and foundation works for the ERRC - \$467,000
- Organics processing facility procurement preparation; including request for expression of interest and request for proposals - \$124,000

### **Reference Documents**

Item CCW 2020-064 – ERRC MZO Request – now public

Item CCW 2019-052 - ERRC Update

Item CCW 2019-058 – Notice of Appeal Regarding County of Simcoe Official Plan Amendment No. 2 (ERRC) (February 12, 2019)

Item CCW 2018-320 – Request for Adoption – County of Simcoe Official Plan Amendment No. 2 (June 12, 2018)

Previous staff reports, consultants' technical reports, communication material from public information and consultation sessions, and minutes of Community Engagement Committee meetings can be found at [www.simcoe.ca/errc](http://www.simcoe.ca/errc).

**Prepared By** Jen Slykhuis, Special Projects Supervisor

**Approvals**

**Date**

Rob McCullough, Director, Solid Waste Management	February 18, 2021
Rob Elliott, General Manager, Engineering, Planning and Environment	February 19, 2021
Trevor Wilcox, General Manager, Corporate Performance	March 2, 2021
Mark Aitken, Chief Administrative Officer	March 2, 2021