

	Refusal or neglect of County of Simcoe to make a decision
Existing Zoning:	Agriculture (A1)
Proposed Zoning:	Waste Disposal (WD)
Purpose:	To permit waste management facilities
Property Address/Description:	2976 Horseshoe Valley Road
Municipality:	Township of Springwater
Municipality File No.:	2016-021
OLT Case No.:	PL190461
OLT File No.:	PL190462

Heard: September 14-28, November 2-5, November 15, 2021.

APPEARANCES:

Parties

Counsel

Friends of Simcoe Forests Inc.	Ramani Nadarajah, Jacqueline Wilson
Nicholyn Farms Inc and Lynda and Nicholas Van Casteren	David White
The Corporation of the County of Simcoe	Marshall Green
Ministry of Municipal Affairs and Housing	Ugljesa Popadic, Alexandra Robertson
Township of Springwater	Bruce Engell

DECISION DELIVERED BY SHARYN VINCENT AND INTERIM ORDER OF THE TRIBUNAL

[1] Friends of Simcoe Forests Inc. (“Friends”), and Nicholyn Farms Inc. and Lynda and Nicholas Van Casteren (“Nicholyn”) have appealed County Official Plan Amendment 2 (“OPA 2”) which was approved by the Minister, as modified, on November 30, 2018, and would have the effect of amending the County Official Plan to permit an Environmental Resource Recovery Centre (“ERRC”), a waste management

processing and transfer facility having a 4.5 hectare (“ha”) footprint within the existing Freele Tract located at 2976 Horseshoe Valley Road which is part of the County owned and managed forest located within the Township of Springwater.

[2] The appeals are heard together with the County’s appeal of the failure of the Council of the Township of Springwater to make decisions with respect to applications to amend the Township’s Official Plan and Zoning By-law to permit the proposed ERRC at the subject location.

[3] Given the nexus of the matters under appeal, the Friends and Nicholyn were granted Party status to the County’s appeals of the requests before the Township for consideration and the matters were therefore scheduled to be consolidated and heard over fifteen days.

[4] At the onset of the hearing, the Tribunal was advised that the County and Township had reached an agreement on how to resolve the outstanding matters between them which involved only site plan details (which were not before the Tribunal), and that the Township was therefore appearing in support of OPA 2, together with the instruments to give effect to the applications to amend the Township Official Plan and Zoning By-law.

[5] Counsel on behalf of the Ministry of Municipal Affairs and Housing appeared in support of OPA 2, as both the approval authority and in their capacity as representing all commenting provincial ministries consulted through the approval process of Official Plan amendments, including the Ministries of Environment, Conservation and Parks (“MOECP”), Northern Development, Mines, Natural Resources and Forestry (“MNR”), and Heritage, Sport, Tourism and Culture Industries, being the most relevant, amongst others.

[6] The Tribunal was also advised that Edward and Scarlett Krajcir had withdrawn their appeal.

[7] One participant statement was received from Bev Agar and has been considered together with all of the oral and written evidence put before the Tribunal in the rendering of this decision.

BACKGROUND

[8] In 2014, the County of Simcoe retained consulting expertise to assist in the process of determining an appropriate location for a solid waste management facility ultimately combining organics processing and materials management, a facility which became the primary focus of the County's 20 year Solid Waste Management Strategy initially approved in 2010. The combined operations are described in the witness statement of lead consulting planner for the County as follows:

the organic processing facility will provide a location where green bin material and (potentially materials such as leaf and yard waste, pet waste, and diapers) are processed and converted onto other valuable products, such as compost or fertilizer. The material management facility will provide a location for consolidation and transfer of waste and recycling from multiple collection vehicles for more economical shipment to other disposal or processing locations. Collectively these facilities are referred to as the Environmental Resource Recovery Centre (ERRC).

[9] A facility to handle materials to be diverted from landfills is required to enable the County to autonomously meet the needs and projected growth based demand in the 16 local municipalities which make up the County, in accordance with the directives of the provincial government that the responsible level of government meet diversion requirements of 70% by 2023. This direction is established in the Food and Organic Waste Policy Statement ("FOWPS"), the first policy statement passed under the *Resource Recovery and Circular Economy Act, 2016*, (which replaced the *Waste Diversion Act, 2002*) and is deemed to be a policy statement for the purpose of s. 3(1) of the *Planning Act*.

[10] The Tribunal was advised that it is anticipated that the last landfill site in the County will be closed in 2029 and that the processing of food and organic waste is currently being exported by trucks to a contracted facility in Elmira.

[11] The recommended site requires land use permissions under the *Planning Act* which are the subject of the OPA 2 and the related appeals of applications for amendments to both the Township of Springwater official plan and zoning by-law, all of which are before the Tribunal.

[12] It was the determination of the Tribunal, differently constituted during the preliminary proceedings on the appeals, that the Tribunal had no role in adjudicating findings with respect to the selection process. The matter before the Tribunal for determinations lies squarely within whether the evidence supports the proposed use at the proposed site when tested against sections 2, 2.(2) and 3 of the *Planning Act*, the policies of *Provincial Policy Statement* (“PPS”), the Growth Plan for the Greater Golden Horseshoe (“GP”), the County Official Plan (“OP”), and the Official Plan and Zoning By-law of the Township of Springwater.

THE KEY ISSUES

[13] There is no dispute between the Parties as to the merit and benefits to be realized by such a facility as that proposed to address all of the provincial interests germane to the considerations, and most importantly, the reduction of greenhouse gas emissions, the most commonly acknowledged byproduct of waste collection and disposal operations. The disagreement is centred on whether:

(i) the chosen location in a significant woodland is consistent with the Natural Heritage policies of the PPS and conforms with the s. 4 policies of the GP which do not permit any *development or site alteration* within the *Natural Heritage System* unless it can be demonstrated that there will be ‘*no negative impacts on the key natural features or their ecological functions*’,

(ii) whether the ERRC qualifies as one of the seven types of activity specifically contemplated in s. 4.2.3.1. of the GP to be exempt from the *development or site alteration* prohibition otherwise applicable within the *Natural Heritage System*, more specifically, whether the ERRC is permitted under s. c) “activities that create or maintain *infrastructure* authorized under an environmental assessment process.” and

(iii) whether the proposed amendment conforms to the County Official Plan (OP), which largely adopts the language of the provincial policies.

[14] *Negative impact* is a defined term in both the PPS and GP:

c) In regard to other *natural heritage features and areas*, degradation that threatens the health and integrity of the natural features or *ecological functions* for which an area is identified due to single, multiple or successive *development* or *site alterations* activities. [all italicized words are defined terms]

Section. 4.2.3.1 of the GP reads:

Outside of settlement areas, *development* or *site alteration* is not permitted in key *natural heritage features* that are part of the *Natural Heritage System for the Growth Plan* [...], except for:

c) activities that create or maintain *infrastructure* [which is defined and includes waste management systems] authorized under an environmental assessment process.

[15] The Friends take, and Nicholyn adopts the position that s. 4.2.3.1 c) can only be interpreted to require that formal approval of an Individual Environmental Assessment under the *Environmental Assessment Act* (“EA Act”) be obtained as a threshold and a prerequisite for an infrastructure proposal to be ‘authorized under an environmental process’ and thereby qualify for consideration as to conformity with the test of the GP, namely having no negative impacts, as defined.

[16] The County, the Township and the Ministry all take the position that Regulation 101/07 enacted in 2007, which addresses the hierarchy of approvals necessary pursuant to the *EA Act* for specific activities, including waste management systems, exempts the ERRC from being designated under the *EA Act* due to its small scale and predictable impacts. The projected annual volume of 130 tonnes of waste per day falls significantly short of the annual threshold of 1,000 tonnes of waste, which is the operative standard for determining whether a waste disposal site becomes considered an undertaking subject to the *EA Act*. The Tribunal was advised that the ERRC would however be subject to Environmental Compliance Approvals (“ECA”) prior to establishment and on an ongoing basis under the *Environmental Protection Act* which are overseen and enforced by the MOECP.

[17] The Friends and Nicholyn do not challenge the exemption status pursuant to Reg. 101/07 but argue that exemption does not equate to *de facto* authorization under an environmental assessment process. The Appellants further assert that that the County could have requested the Minister to designate the proposed facility as an undertaking in order to meet the interpretation central to their position and explained in paragraph [15] of this decision

[18] Counsel for the Ministry making submissions on behalf of the Province, the County and the Township on this argument, in their dual capacity as approval authority and representing all of the partner Ministries, counter asserts that the uncapitalized and undefined wording in the phrase ‘authorized under an environmental assessment process’ which initially came into effect in 2017, purposefully makes no reference to the *Environmental Assessment Act*, which is specifically referenced elsewhere in the GP. By way of illustration, the Ministry referred the Tribunal to s. 3.2.6.3(b)iii which speaks to the extension of water and wastewater systems requiring the municipality to complete “the applicable environmental assessment process in accordance with the **Ontario Environmental Assessment Act.**” [emphasis added]. Similarly, the definition of Planned Corridors refers to “preferred alignment(s) determined through the **Environmental Assessment Act** process.” [emphasis added]. Section. 4.2.3.1 c) makes no reference to the *Environmental Assessment Act* and employs an indefinite, as opposed to definite article.

[19] This issue will be addressed later in the decision by the Tribunal. The decision is initially focused on whether a determination of no negative impact is supported by the evidence because both the PPS and the GP clearly contemplate that the natural heritage system will of practical necessity be impacted by existing and new or extended infrastructure by its very nature and function even if approved under the EA Act process. The determinative question to be adjudicated is whether in this instance the proposal can be accommodated and satisfy the test of having no negative impacts, or whether in the alternative, when weighing any residual negative impact, a positive

finding would better meet the larger public interest underlying the potentially competing matters of provincial interest, including the mitigation of green house gases.

THE EVIDENCE

[20] Over the course of the hearing, the Tribunal heard oral testimony from eight witnesses on behalf of the County, Ministry and Township, who were qualified to give opinion evidence as detailed below; three lay witnesses and three witnesses qualified to give opinion evidence on behalf of Friends of Simcoe Forests; the Owner/appellant on behalf of Nicholyn; and was in receipt of one participant statement opposed to the proposed amendments.

[21] Witnesses presenting evidence in support of the proposed location: Maryann Hunt, Senior Policy Advisor, County of Simcoe, qualified to give opinion evidence in matters of land use planning and the instruments before the Tribunal; Rob McCullough, Director of Solid Waste Management for the County, spoke to the operational side of the County's waste management responsibilities; Bair Shoniker, the lead consulting planner with GHD, the firm retained by the County in 2014 to lead the process, was qualified to give opinion evidence on waste management systems and the related approvals regime; Laura Lawlor, an ecologist with the GHD project team, was qualified to give opinion evidence with respect to the characterization of the natural features and environmental impacts of the proposed siting of the ERRC; Tej Gidda, also with the GHD project team, was qualified as an engineer to give opinion evidence on the nature of diversion infrastructure operations and existing examples; Brian Dermody, environmental engineer and project manager for GHD on this retainer, elaborated on the Environmental Compliance Approvals which would be required for the proposed facility and his engineering opinion, as qualified, with respect to the assessment of odour, noise and light impacts. Peter Yu, a consulting transportation engineer with WSP Inc, was qualified to give opinion with respect to the traffic impact studies undertaken in connection with the proposed operation and location; and Dr. Paul Van

der Werf was qualified to give opinion evidence with respect to waste management, waste diversion and green house gases.

[22] Witnesses proffered by the Friends of Simcoe Forest: Jennifer Lawrence was qualified to give opinion evidence in areas of environmental planning; and a panel of Karl Konze and Mary Ann Young who were respectively qualified to give opinion evidence as a senior wildlife ecologist, specializing in assessing impacts on habitats, and an horticulturist specializing in botany, ecological classification and restoration.

[23] Three lay witnesses spoke in support of the position of the Friends: Mary Wagner, President of the Friends and owner of the lands immediately abutting the Freele Tract to the east; Suzanne Stenoff, Member of Friends; and Margaret Prophet, Executive Director of the Simcoe County Greenbelt Coalition.

[24] The Friends did not directly address the issue of climate change or green house gases in their evidence.

[25] Linda Van Casteren, one of the owners of Nicholyn Farms and the retirement lot located immediately to the west of the Freele Tract made submissions in connection with impacts to both the retirement lot and the Nicholyn Farms retail operations.

THE APPROVAL OF OPA 2

Determining Environmental Impacts

[26] The *Planning Act* process to amend the County Official Plan to permit the ERRC at the selected site was initiated in the late fall of 2016. Witnesses for the County advised that 13 supporting studies were circulated to all agencies, indigenous communities, local and neighbouring municipalities, provincial ministries, internal departments and the Nottawasaga Valley Conservation Authority (“NVCA”). In response to comments arising from the circulation, 6 amended studies were circulated in February of 2018 after receiving both agency and public input at a statutory public meeting May 9, 2017. The County adopted OPA 2 on June 26, 2018, and subject to a modification by the Minister, dated November 30, 2018, the amendment was approved by MMAH, and notice of Decision provided January 2, 2019. The Appellants in this proceeding participated throughout the process which followed the upwards of 28 open houses and meetings conducted for public information and input throughout the selection process.

[27] In this and most instances, perhaps the most germane information for an approval authority when making determinations with respect to the PPS and GP test of no negative impact are the Environmental Impact Studies (“EIS”). The Tribunal was advised that the field data collection, observations and analysis were undertaken in this instance by GDH in consultation with the County, NVCA and MNRF, including the development of the terms of reference, obtaining secondary source data, defining the scale, scope and protocols for site surveys, review of survey results and discussions on reaching agreement with respect to appropriate mitigation.

[28] The final Amended EIS, which was put before Council of the County in support of the recommendation of OPA 2 to permit a 5.5 ha footprint, including access road, to accommodate an ERRC at the subject site, was the product of what the Tribunal understands to be a normal, iterative process derived through the oversight of regulatory agencies, mandated ministries or local approval authorities, and both lay and

professional critique from members of the interested public or advisors or consultants retained on their behalf. The consulting team on behalf of the Friends conducted peer reviews and submitted their comments in response to both the initial reported findings, being the Scoped EIS and to the Amended EIS to MMAH acting in their capacity as the conduit in the one window approach of the province, the County and the Township of Springwater, and made submissions at the statutory public meeting before County Council. The study area encompassed the 84 ha. Freele Tract which is a county owned portion of a larger contiguous woodland area of 533 ha including the tract and running north and east of the Freele Tract which fronts onto Horseshoe Valley Road, and is part of the larger County Greenlands, totalling more than 12,000 ha.

[29] The evidence before the Tribunal is that the two-year process of data collection, consultation, peer review and analysis resulted in the identification of the following significant features and existing or potential functions:

Significant Woodlands (“SW”)

[30] The 84 ha tract meets the criteria for significance based on the size of contiguous woodland area in accordance with the Natural Heritage Reference Manual (“NHRM”), the 2010 edition of the guideline manual which came into evidence and was relied upon by all parties. The manual was developed and initially published by the province in 2005 to assist in the interpretation and implementation of the PPS natural heritage policies. With respect to the determination of significance, the guideline in the manual captures woodlands 50 ha in size or larger; where the woodlands cover 30-60% of the land cover; the Greenland policies of the County Official Plan capture patches of 10 ha or greater; and the Township of Springwater Official Plan policies capture a contiguous wooded area greater than 30 ha in size. The manual stipulates that property lines play no role in the determination of contiguous woodland.

Significant Wildlife Habitat (“SWH”)

[31] The study area meets the definition for multiple forms of Significant Wildlife Habitat including Amphibian Breeding Habitat (“Woodland”), Woodland Area-Sensitive Bird Breeding Habitat, Bat Maternity Colonies.

Amphibian Breeding Habitat (Woodland)

[32] Breeding habitat, through the documented presence of spotted salamander eggs was confirmed in the north-east and south-east wetland areas within the larger study area.

Woodland Area-Sensitive Bird Breeding Habitat

[33] Through surveys and observations, 11 species were identified within the study area.

Habitats of Species of Conservation Concern

[34] The Eastern wood Pee-Wee and the Wood Thrush and associated possible breeding activities were observed in the study area (outside of, and in different vegetative area than that found in the proposed facility footprint).

[35] With respect to the determination as to whether the proposal would impact Significant Habitat of Endangered or Threatened Species, the study concluded that while there was likely roosting of two bat species, the habitat located within the proposed 4.5 ha footprint was comparable to that of the balance of the Study area, and therefore the removal would not threaten the availability of significant habitat. With respect to other endangered species, the Jefferson salamander and the Easter whip-poor-will, the Tribunal was advised that the study team, including MNRF indicated that the study area was unlikely habitat for either. Dedicated surveys to confirm absence

based on screening and habitat assessment were not conducted, given that pursuant to the Endangered Species Act the MNRF is the authority for review and determination of significance with respect to these species.

[36] As stated in the affidavit and witness statement of the consulting ecologist, Ms. Lawlor, the field work, consultation and analysis therefore yielded the following potential impacts to the functions of the various key natural features identified in the Freele Tract. The proposed facility footprint overlaps with identified Significant Woodlands, Species at Risk (“SAR”) Bat Habitat, Significant Wildlife Habitat for Woodland Area-Sensitive Breeding Birds, Bat Maternity Roosts, Habitats for species of Conservation Concern, and intercepts the woodland buffers for Amphibian Breeding Habitat.

[37] With a series of recommended mitigation actions as recognized by the manual as being acceptable tools to alleviate any impact, it was the opinion of, Ms Lawlor that the proposed ERRC on a 4.5 ha footprint sited in a specific area of the study area distant from the significant habitats, would satisfy the tests of the PPS and GP that there would be no degradation caused which would threaten the health and integrity of the features and ecological functions, and therefore no negative impacts.

[38] With respect to the permanent removal of the 5.5 ha of woodland and the associated interior forest loss of 27.8 ha, a function of establishing a new forest edge, it was the shared opinion of the County’s planning and environmental witnesses that there was nothing unique to the vegetative class of the footprint, including the access drive, that was not found elsewhere in the study area, and therefore the removal did not represent any threat to loss of species or biodiversity.

[39] The evidence of the County is that with the permanent removal there would be no negative impact to the significant woodlands or the avian SWH as the footprint represents only 1 percent of the 533 ha of contiguous woodland, with in excess of 500 ha remaining intact, retaining 231.9 ha of core interior forest habitat for Woodland Area-Sensitive Breeding Bird SWH, well over the 90 ha of core interior habitat being the

minimum required. This calculation with respect to interior forest is premised upon the opinion that Rainbow Valley Road, which forms the northern limit of the study area and the Freele Tract, is a very low volume, gravel rural sideroad providing access to a very limited number of properties, and does not constitute a break in the contiguous forest function as the existing limited noise, and lights would will not be changed by the proposal and do not impact avian species.

[40] Despite the opinion evidence that the removal does not ‘threaten the health or integrity of the feature or ecological function for which the area is identified,’ the County does however acknowledge the permanent loss by proposing recompense or compensation through off site afforestation, enhancement projects in two other areas of the County managed forest system which also form part of the regional natural heritage system. Preliminary work on a Compensation Plan, required by OPA 2 to be approved prior to site plan approval, was characterized by County Counsel as not being required or proffered in satisfaction of the no negative impact test of the PPS or GP, but rather to further the continuity and function of the network elsewhere in the provincially mapped natural heritage system falling within the County, and to at a ratio of 3:1, offset the carbon sink benefit of the existing vegetation to be removed.

The Disputed Conclusions

[41] The witnesses on behalf of the Friends challenge the conclusions of no negative impacts as follows:

- i) The Friends do not accept that the loss of the woodlands in the footprint and access road areas or of the habitat in the interior forest, represent no negative impact, in part because Mr. Konze in particular was of the opinion that Rainbow Valley Road scaled to be 20 m in portions and, relying upon the NHFM, did, in his interpretation represent a break in the woodland. Mr. Konze therefore assessed the impact against the extent of the 84 ha Freele

Tract, and not the 533 ha of contiguous woodland and interior forest contained therein.

ii) The Friends maintain that, in their opinion, the significant loss of the woodlands, and associated habitat, are negative impacts which must be mitigated to result in a determination of no negative impact. They are of the opinion that the Compensation Plan, because it involves off site afforestation of species, albeit suitable for those respective locations and desired ecological functions as habitat, do not replicate the species and related habitat being impacted, are not physically connected to the forest patch incurring the removal, and therefore do not constitute appropriate mitigation.

iii) The Friends assert, based on a single recording of a whip-poor-will call by Mrs. Wagner from her property abutting the Freele track to the east, recorded in May of this year, that determination of no negative impact on the potential habitat of this endangered species cannot be made without further investigation.

iv) The Friends, question the rigour of aspects of the field work, and raise apprehensions about the best practices of the field work and the best practices cited for mitigation of potential disturbances if the ERRC were to become operative.

v) Overall, the witnesses for the Friends maintain that the amended EIS does not address their key concerns and therefore the conclusion of no negative impact is unfounded.

ANALYSIS AND FINDINGS WITH RESPECT TO THE APPEAL BY THE FRIENDS

[42] In considering all of the evidence, the Tribunal notes that at no time do the witnesses on behalf of the Friends, including Ms Lawrence, the environmental planner, give weight to the involvement of the various agencies and Ministries responsible for assessing all aspects of the consulting work, including the demonstrated involvement of MNRF in the selection of the afforestation sites, the Ministerial approval of the Ministerially modified OPA 2, or the participation of the MMAH as representative of the Province and approval authority of OPA 2 throughout the hearing.

[43] Section 2.1 of the *Planning Act* requires the Tribunal to have regard to (a) any decision that is made under this act by a municipal council or by an approval authority and relates to the same planning matter; and (b) any information and material that the municipal council or approval authority considered in making the decision described in clause (a). The Tribunal therefore has given weight to the roles, responsibilities and involvement of the various ministries and the decisions of elected Councils in prior decisions leading up to these appeals.

[44] While the evidence and prior peer reviews critiqued many aspects of the field work, conclusions drawn, and recommendations made by GDH, the witnesses for the Friends failed to introduce compelling evidence that the permanent removal of a portion of the woodland would in fact result in degradation which would threaten the health and integrity of woodland feature or the SWH function for the Woodland Area-sensitive birds.

[45] There is no doubt that even if the ERRC does not proceed at this location, the woodlands, left to natural succession and/or best practices of forestry management will be subject to change and impact. The test however, or threshold, for determination is whether the impact will result in “degradation that threatens the health and integrity of the natural features or ecological functions for which the area is identified.”

[46] Mr. Konze provided the Tribunal with a percentage loss of interior forest. He expressed that the potential loss would be ‘significant’. Despite the fact that the Tribunal questions his rationale for ascribing the loss to a percentage of the Freele Tract given the larger contiguous woodland located to the east and northeast partially captured on his own exhibit, Mr. Konze failed to speak to how the health and integrity would be qualitatively threatened other than the apprehensions about the potential for incurrence of invasive species, which he shared with his colleague, Ms. Young. An opinion based on apprehensions or a percentage loss, if not translated into expected impact, provides little assistance to the Tribunal.

[47] Ms. Lawlor by contrast advised the Tribunal that there were no unique species within the footprint area that were not found elsewhere in the study area, and therefore the creation of the foot print would not result in a loss of biodiversity or related negative impact, as defined, to either the woodland feature or the SWH found within. Also given the practice and pattern of harvesting this managed forest, the stands within the proposed footprint area are younger than the species found elsewhere on site. Neither Mr. Konze or his co-panelist, Ms. Young, offered evidence to rebut this statement and related conclusion by Lawlor. The Tribunal was also persuaded by Ms. Lawlor’s more thoughtful analysis and characterization of the operational nature of Rainbow Valley Road, independent of its scaled width, as a very low traffic unimproved rural route, serving principally only the daily or weekly trips of those very limited number of properties having frontage. The NHRM specifically suggests that potential impacts should be assessed against factors including spatial extent, magnitude, frequency and duration of the impacts, and Ms. Lawlor’s opinion more thoroughly applies all contextual aspects which should be considered.

[48] Regardless of whether there is a break in the forest, the contiguous woodland extends unbroken beyond the 84 ha Freele Tract, sufficient to meet the area suggested in the NHRM as determined by Ms. Lawlor.

[49] The Tribunal therefore is satisfied that the significant woodland feature and SWH for Woodland area-sensitive birds will not be negatively impacted by the introduction of the 4.5 ha footprint and associated access driveway, and no direct mitigation is required to support the finding of no negative impact, other than the recommended relocation of regionally rare false sunflower plants, which was not challenged by either Mr. Konze or Ms. Young.

[50] The much contested, proposed off-site combination of reforestation and afforestation, or enhancement through compensation, has by Ministerial modification been acknowledged, and required as a pre-site plan approval requirement. Through the approvals of the MNRF and NVCA, the proposed planting will result in “ecological enhancement to the contiguous woodland feature” of the County. The two programmes under consideration in collaboration with MNRF as was borne out by the minutes of co-ordination meetings included in the evidence of Ms. Lawlor, represent opportunities to create new, native infill consisting of 6.3 ha of afforestation and 9.3 ha of reforestation enhancement, to compensate for and exceed the removal of 5.5 ha of otherwise contextually common or unremarkable woodland when assessing for impact on biodiversity or connectivity.

[51] The Tribunal finds this requirement of OPA 2 to be in keeping with recognizing the regional perspective of the natural heritage system as a dynamic system of natural features, areas and linkages, which can be enhanced through appropriately curated forestry management practices.

[52] The evidence does not support the assertions proffered by the apprehensions of the Friends that the significant woodlands will be threatened, and the proposed enhancement responds to the loss of the vegetation in a net positive way when taking into account linkages, connectivity and value in the overall equation of directly combatting or offsetting green house emissions.

[53] With respect to all other conclusions of no negative impacts and associated mitigation recommendations, the Tribunal heard no compelling evidence to shake or question the merit or efficacy of the proposed programmes and mitigation works to address any potential impacts on the bat habitat, bat maternity colonies, the woodland area-sensitive breeding birds, or the habitats of the eastern wood pewee and wood thrush.

[54] On the subject of the amphibian woodland habitat, Mr. Konze relied upon a graphic illustration of the overlap of the SWH radius of 230m and 120m radius of adjacent lands taken from the wetlands, with the proposed footprint for the facility. The proposed footprint lies to the west of the existing access road which is used by both forestry management staff and recreational vehicles (snow mobiles etc.) to traverse the site from Horseshoe Valley Road to Rainbow Valley Road along a well beaten swath through the woodlands. This intervention into the potential SWH exists today, and has for some time, thereby allowing a reasonable conclusion that appropriate adaptation has likely already occurred. Where the alignment is to be altered at the south end at the intersection with Horseshoe Valley Road, or extended for emergency access, the recommended mitigation measures to address impacts were not challenged by Mr. Konze.

[55] Very limited evidence in the form of a single evening recording of a call, to the potential presence of whip-poor-will within the Freele Tract was entered by the Friends, and elaborated upon by Mrs. Wagner, a lay witness, President of the Friends, and immediate, and long time neighbour to the Freele Tract. The recording was taken by Mrs. Wagner in May of 2021. Mrs. Wagner in her testimony indicated that when she can, she uses the woodlands of the Freele Tract almost on a daily basis, and in furtherance of the recent recording, advised the Tribunal of a sighting of a nesting whip-poor-will when walking in the south westerly portion of her property approximately nine years ago. Mrs. Wagner did not indicate that she had heard the bird again since the evening of the recording in May. Neither Ms. Lawlor or any of her technical team, nor

Mr. Konze, all of whom had been on the site at various times for various periods, shared the experiences of Mrs. Wagner.

[56] The whip-poor-will is a threatened species and as such enjoys protection under both provincial and federal legislation. Section 4.2.1 of the NHRM clearly stipulates that the determination of its habitat falls squarely within the authority of the MNRF. Accordingly, Mr. Konze advised, that upon receipt from Mrs. Wagner, the recording and related information was submitted by his office to the MNRF, and receipt was acknowledged. He confirmed under cross-examination that the single recording fell far short of the threshold criteria used by MNRF in their published Recovery Strategy to confirm possible breeding grounds. Mr. Konze also confirmed under cross examination that the mapping component of the Recovery Strategy did not identify any areas even proximate to the Freele Tract as confirmed habitat, and that the interior forest characterizing the proposed footprint area does not constitute typical habitat for the whip-poor-will. The matter rests with the proper authority, MNRF.

[57] Mrs. Wagner also submitted a series of photographs depicting various features existing in the Freele Tract to reinforce the experience of the site visit conducted by the Panel on day nine of the hearing in the company of Counsel of all Parties one senior member of the County forestry staff, and a member of the Friends. She related her experience with being the beneficiary of having access to the natural environment to both her physical and mental health, and promoted the educational benefits of the resource. These benefits were echoed by Ms. Stenoff who's family are avid snowmobilers and walkers, using the forest for exercise, educational opportunities and general de-stressing. She expressed concerns about the loss of forest for passive uses, the potential impact on wildlife, potential air and noise pollution, increased traffic volumes along Horseshoe Valley Road and potential impacts on the drinking water drawn from private wells. Margaret Prophet, the Executive Director of Simcoe County Greenbelt Coalition, a not for profit environmental organization striving to grow the greenbelt to ward off climate change, also voiced concerns about the suitability of losing woodlands to accommodate an otherwise desirable facility and initiative. In her words,

“a good idea, wrong place.” She also expressed concern about increased traffic volumes along this popular route for cottagers.

[58] The Tribunal heard evidence addressing the traffic volume and safety issues from Peter Yu, whose firm was responsible for carrying out the traffic impact statement based on projections up to the year 2031 horizon. The work was peer reviewed by consultants retained by the Township of Springwater. The study reviewed four components: (1) existing conditions; (2) future background volumes; (3) forecasting the generation by the site; and (4) adding the future generation by the site to the future background for a total. The findings also took into consideration Friday PM peaks to account for cottage traffic, despite the intention to operate the ERRC only Monday-Thursday, except for weeks where a statutory holiday would require otherwise to provide full service.

[59] The analysis as confirmed by the peer review, demonstrates that the facility will have a negligible effect on the capacity or level of service of Horseshoe Valley Road. Helpful, but not necessary improvements are recommended and include the introduction of dedicated turn lanes into the newly located driveway, and the introduction of a climbing lane for westbound exiting trucks which extends beyond the current driveway to Nicholyn Farms, which should realize improved turning movements as a result. The Tribunal heard no compelling evidence to challenge this peer reviewed body of work.

[60] The evidence of Brian Dermody spoke to the concerns of pollution in the form of noise, air quality and light, all of which were tested through accepted modelling exercises designed to demonstrate proof of concept. Noise and air quality were modelled drawing from the worse case scenarios developed on the projected volumes (based on projected tonnage). If the facility is permitted, all of these aspects will be subject to further review through the local site plan approval process and subject to the Environmental Compliance Approval (“ECA”) process at the provincial level. The Tribunal was further advised that site grading and drainage, as well as storm water

management are also all matters which must be addressed through site plan approval and subject of subsequent approval processes not currently before the Tribunal. In addition, various witnesses remarked upon the proposed location of the footprint as it is in and of itself, interior to the site and buffered from both the easterly and westerly neighbours by the balance of the Freele Tract woodlands and not likely visible from Horseshoe Valley Road.

[61] With respect to the loss to passive users of this particular piece of the natural heritage system, the Tribunal heard evidence that the opportunity will be recreated in the Freele Tract with the relocation of the existing snowmobile and walking track to the westerly portion of the site. It was also the evidence of Blair Shoniker that the education programme which had been part of the consultation and information houses will resume at the facility if established, where it is expected that educational tours and sessions will be hosted in the future to continue to inform the consuming public of the value of the inputs and outputs of recycling and organic processing in keeping with the thrust of a circular economy.

[62] None of the lay witnesses, including Ms. Prophet, had heard the evidence with respect to the proposed off site reforestation and afforestation enhancements and therefore could offer no opinion to the Tribunal on this aspect of the OPA before the Tribunal. Witnesses for the County had however provided the following additional information to contextualize the loss of the 5.5 ha, independent of the afforestation and reforestation plan. The County currently owns approximately 13,350 ha (33,000 acres) of forest which ranks as one of the largest municipally owned forest in Canada. The Township of Springwater has 37 forest tracts and the largest forested area at 4,056 hectares (10,037 acres) or 32% of the total County forest system. From 2007 to 2016, approximately 580 hectares (1,433 acres) of land were added to the Simcoe County Forests in the Township of Springwater.

Evidence on behalf of Nicholyn Farms and the Van Casterens.

[63] Linda Van Casteren advised the Tribunal that her family owns two properties located to the west of the Freele Tract, a retirement lot and Nicholyn Farms, the frontage of which is dedicated to the a highly successful, destination food retail operation which currently employs 29 employees, all of who live within 3 km of the property. All of the products from the 95 operators currently sold at the store reflect the buy local and organic philosophy which have made the operation award winning, an industry leader and an integral part of the rural economy. Mrs. Van Casteren is a member of the Friends and supports their efforts, but also has concerns which directly effect her livelihood and the viability of the retirement lot for the planned residential use. Mrs. Van Casteren raised questions similar to the other lay witnesses about traffic, noise, odours and whether the County was appropriately fulfilling its stewardship mandate. It was the additional opinion of Mrs. Van Casteren, given her lay experience with working with the policies of GP and Official Plan, as they have impacted her operations and aspirations, that the proposed facility would be better aligned with those policies if located in an industrial or strategic employment area. In support of this contention, Mrs. Van Casteren drew the attention of the Tribunal to the qualified language of the Permitted Rural Uses in the Official Pan which when citing infrastructure, uses the language of “may be permitted”.

[64] The Tribunal acknowledges this insight by Mrs. Van Casteren as the OP, in conforming to the provincial policies, does in fact establish conditions which must be addressed when considering such an undertaking, and that is the task of this Tribunal in this appeal.

CONCLUSIONS

[65] Having considered all of the submissions and evidence, the Tribunal is satisfied that the concerns of Nicholyn, the Van Casterens and the Friends, including the lay witnesses of the Friends, have been considered and addressed, including those

expressed in the Participant Statement file by Bev Agar which raises concerns related to impacts on human health attributable to truck emissions. In this particular regard, the Tribunal was advised, specifically through the evidence of Dr. Van der Werf that the creation of the ERRC at this location, will result in the avoidance of 250,000-261,000 km/year from trucks which currently travel to Elmira with the waste from the County.

[66] OPA 2, as approved, requires further and on-going evaluation of the detailed site plan and operational aspects of the ERRC, which will involve oversight and approvals from three levels of government, all respectively charged with making decisions involving public environmental assessment processes. The text of the amendment specifically requires that an Environmental Management Plan and Wildlife Management Plan be prepared prior to site plan approval, and that the plans be developed in consultation with, and to the satisfaction of the Ministry of Natural Resources and Forestry and the Nottawasaga Valley Conservation Authority.

[67] The Tribunal for the reasons set out earlier in this decision prefers the evidence of the County, the Ministry, and the Township with respect to addressing the requirements of the PPS, GP and OPs on the test of demonstrating that there will be no negative impacts arising from the site alterations which would be permitted by OPA 2. It is the finding of the Tribunal that the Friends and Nicholyn have not persuaded the Tribunal as to the alleged insufficiency of the environmental assessment underlying the approval of OPA 2, or misinterpretations of the policy framework which supports OPA 2 and the related instruments amending the Township OP and zoning by-law, including the requirement of the GP that the infrastructure be authorized under an environmental assessment process.

[68] In making this determination, the Tribunal, in addition to considering all of the evidence and submissions, in part relies upon the involvement of the various ministries in exercising the burden of their respective jurisdictions as approval authorities, and as authors of provincial policy and legislation on behalf of the people of the province.

[69] The role of the ministries aside, the language of s. 4.2.3.1 does not employ the terminology of the *Environmental Assessment Act*, which deals with the approval of undertakings. Rather, the wording includes an indefinite article, and deals with activities which are authorized. The Tribunal is directed by that where intended to apply, the GP specifically, in, for example, s. 3.2.6.3(b) iii refers to the “completing the applicable environmental assessment process in accordance with the Ontario Environmental *Assessment Act*. No such specificity exists in the wording of s. 4.2.3.1.

[70] The Tribunal as a creature of statute relies upon the GP as being in force and effect as the product of a process wherein both the drafters and the legislators sufficiently put their respective minds to the intended breadth of the phrase “authorized under an environmental assessment process”. To interpret as the Friends have urged would severely limit, perhaps remove, the Tribunal's authority, when clearly, the Tribunal is charged with making a determination exercising its responsibility to the public interest while considering all matters of provincial interest. Understanding the full spectrum of approvals required, including those under the *Planning Act* and the Environmental Protection Act, enable the planning authority, and in this instance, the Tribunal, to weigh the positive and the negative aspects of the proposal and make an informed decision.

[71] The position of the Friends to interpret s. 4.2.3.1 other than as they assert, would in their view fundamentally undermine the protection otherwise to be afforded to natural heritage systems. The position however does not give appropriate weight to the concomitant, and more onerous task put to the Tribunal, of a determination of no negative impact.

[72] In addition, it is the uncontested evidence that the ERRC cannot proceed without the requisite Environmental Compliance Approvals and therefore, for all of the reasons set out above, it is the finding of the Tribunal that the proposed infrastructure and related site alterations fall within the meaning of s. 4.2.3.1 c).

[73] Amendments to both the Official Plan and zoning by-law of the Township of Springwater are also required in order to permit the ERRC, and in order to ensure the necessary conformity with the upper tier official plan, as amended. Marilyn Hunt spoke to the two draft instruments and demonstrated how like, and for all of the same reasons as OPA 2, the proposed amendments are consistent with and conform with provincial policy.

[74] Section 20, and specifically s. 20.2.6 of the Township OP set out planning criteria for the consideration when establishing new waste management sites:

- avoid high quality agricultural lands;
- select locations removed from proposed or existing build up areas;
- ensure suitable road access;
- select locations generally not exposed to public view with capability to adequately buffer to preserve the scenic beauty and amenity in the area;
- assess compatibility of use with character of surrounding area, and
- assess potential negative effect to the environment including ground and surface water, soils and air subject to the proposed control and mitigation of such effects.

[75] With respect to the last criteria, the Natural Heritage policies of the Township OP specifically require:

that development in lands delineated Natural Heritage may be permitted if it can be demonstrated, to the satisfaction of the municipality in consultation with the applicable commenting agencies and approving authorities, that negative impacts on the ecological features or functions of the components of the Natural Heritage System of the Township will not occur. The anticipated impact of development

may be demonstrated by a proponent of development through the completion of an E.I.A (Environmental Impact Assessment).

[76] The Tribunal has found that the Scoped EIS and Amended EIS conducted by GDH and reviewed by MOECP, MNRF and MMAH, and relied upon by the County as the basis of OPA 2, have satisfied this requirement. The other criteria have similarly all been addressed in the evidence supporting OPA 2 including the traffic impact, the screening and buffering afforded by the interior location of the footprint within the Freele Tract which at its narrowest is 100 metres in width, and the modelling evidence with respect to air quality, odour, noise and light contamination prepared to determine the compatibility with sensitive receptors.

Evidence with respect to other matters of Provincial interest

[77] The Tribunal has also heard considerable evidence speaking to other matters of provincial interest beyond those concerned with protecting the natural environment. Although not addressed by the Appellants, the Tribunal is required to find that OPA 2, and the proposed OP and zoning amendments, are consistent with and conform with the PPS and GP.

[78] Intertwined with the evidence supporting the proposed location, the Tribunal, heard and accepts the evidence that the EERC will fulfill a pivotal role to the County addressing a number of the matters of provincial interest, specifically:

(e) the supply an efficient use and conservation of energy, as it relates to waste haulage;

(f) adequate provision and efficient use of [sic] waste management systems;

(g) minimization of waste;

(h) orderly development, through minimizing adverse impacts particularly on sensitive receptors:

(n) resolution of planning conflicts involving public and private interests, through public consultation and educational and information centres;

(o) protection of public health and safety, as it relates to appropriately buffering the facility from nearby sensitive uses; and

(s) mitigation of greenhouse gas emissions and adaptation to climate change.

[79] By eliminating the dependency of the County on external processing facilities, the County can significantly reduce truck emissions associated with long distance hauling and will operate a facility to support the initiatives of local households to meet their respective waste reduction objectives, while creating by-products to be redeployed locally as fertilizer to the surrounding rural community. In doing so, the County and its residents will become participants in the circular economy envisioned by the Province.

[80] The central, rural location and natural screening afforded to the site has been characterized as buffering to minimize exposure or impacts on sensitive receptors, thereby addressing public health and safety on the localized scale, while providing a service to the benefit of the broader community with respect to the mitigation of greenhouse emissions and the associated impacts on public health.

[81] The Tribunal, having made the determination that the ERRC can be accommodated with no negative impacts, finds that OPA 2 and the proposed amendments to the official plan and zoning amendments for the Township of Springwater, are consistent with the PPS, conform with the GP, and generally conform to the policies of the County OP, including the policies in s. 3.3.6 which permits infrastructure to be located in any designation, and specifically within the Greenlands designation, where authorized under an environmental assessment process.

The Draft Instruments before the Tribunal.

[82] There are three instruments before the Tribunal in support of, and to permit, the proposed ERRC: OPA 2, as approved by the Minister, as modified, November 30, 2018, and draft instruments in support of the County's appeals of their requests to amend the Official Plan and zoning by-law of the Township of Springwater.

[83] During the course of evidence, it was suggested that the draft instruments amending the Township OP and zoning by-law could be clarified in such a way to inform the reader that any expansion of the ERRC beyond the 4.5 ha parcel, would require an amendments to both the official plan and zoning by-law. The Tribunal agrees.

ORDER

[84] **THE TRIBUNAL ORDERS** that the appeals against Official Plan Amendment 2 are dismissed and that Official Plan Amendment 2 of the County of Simcoe is hereby approved as modified by the Minister.

[85] **THE TRIBUNAL FURTHER ORDERS** that the appeals of the County to amend the Official Plan and zoning by-law of the Township of Springwater to permit the ERRC on a portion of the lands known as 2976 Horseshoe Valley Road, is granted in part. The Tribunal will with hold its final order on these appeals until it is in receipt of the required revised official plan and zoning by-law amendments, in final form, as directed in this decision.

“Sharyn Vincent”

SHARYN VINCENT
VICE CHAIR

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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