

**Peter Pickfield and Alex Ciccone**  
9 Norwich St. W  
Guelph, ON N1H 2G8  
Telephone: (519) 837-0500  
Fax: (519) 763-2204  
Emails: [pickfield@garrodpickfield.ca](mailto:pickfield@garrodpickfield.ca)  
[aciccone@garrodpickfield.ca](mailto:aciccone@garrodpickfield.ca)  
**File No. 11651**

**January 30, 2020**

**TO: Joint Municipal Coordinating Committee**  
**FROM: Garrod Pickfield LLP**  
**RE: Southwestern Landfill - Environmental Assessment Process**

## **1. Introduction**

Walker Environmental Group has recently advised that it will soon be releasing its draft environmental assessment and associated supporting studies as part of its application under the *Environmental Assessment Act* for the Walker Environmental Group (“WEG”) Southwestern Landfill proposal (the “WEG Landfill Proposal”). This signals commencement of the most important stage in the work of the Oxford Joint Municipal Coordinating Committee (“JMCC”) in its role of overseeing the independent peer review process of the WEG Landfill Proposal.

The purpose of this memorandum is to provide a resource document to assist JMCC members as it resumes its activities. Specifically the memorandum will provide:

- A refresher/briefing on the landfill approval process pursuant to the *Environmental Assessment Act* as well as other approval requirements (**section 2**);
- A summary description and chronology of the environmental assessment process to date for the WEG proposal including the work that has been carried out under the JMCC peer review process in co-ordination with Oxford Public Health, now Southwestern Public Health, (**section 3 and Appendix 1**); and
- A summary of the next steps to be carried out under the JMCC peer review process (**section 4 and Appendix 2**).

A current list of PRT members and their contact information is also provided for the JMCC’s reference (**Appendix 3**).

## **2. Review of Ontario's Landfill Approval Process**

**Overview:** The Southwestern Landfill proposal cannot proceed without multiple environmental and planning approvals. These includes a critically important “approval in principle” through the extensive study and public consultation process required under the *Environmental Assessment Act*, RSO 1990 c E18 (the “**EA Act**”). This approval decision is made by the Minister of the Environment, Conservation and Parks (the “**Minister**”).

In addition to the approval under the EA Act, approval is required under a number of other statutes including the *Planning Act* and *Environmental Protection Act*. It is important to note that, pursuant to section 12.2(2) of the EA Act, no other required approvals can be issued until approval to proceed under the EA Act is obtained. For this reason, WEG has not yet submitted applications for other required landfill approvals.

Below is a breakdown and summary of the key steps required to obtain landfill approvals in Ontario.

### **2.1. Environmental Assessment Approval Process**

#### **a) Approval Decision under the EAA**

The Act establishes a two-part approval process, with both approval decisions made by the Minister:

- 1) Approval of the Terms of Reference for the Environmental Assessment; and
- 2) Approval of the Application which involves a two-part decision by the Minister: (1) approval of a document called an environmental assessment (the “**EA**”), and (2) approval to proceed with the undertaking itself.

Approval of Terms of Reference: The Terms of Reference is a critically important document that sets the parameters of the environmental assessment study process that the proponent must carry out. This document determines the range of alternatives that must be considered during the EA study process as well as the methodology and approach to assessing the impacts, and advantages and disadvantages of the alternatives and the preferred undertaking. As the JMCC is aware, the Terms of Reference for the WEG Landfill Proposal EA was approved on March 17, 2016. As discussed below, this document will be an important point of reference for both the JMCC peer review and the Minister's decision on the EA.

Approval of the Application: The approval decision on the Application, which, as noted, includes approval of an Environmental Assessment for the proposal and permission to proceed with the undertaking, occurs at the end of the study process for the EA, and following extensive mandatory public consultation and government review. The factors to be considered by the Minister in making this approval decision are discussed below.

### b) Preparing and Submitting the EA

As noted above, the Terms of Reference set out the study requirements of the EA, which typically includes a multidisciplinary review of the draft EA and additional public consultation before the EA is submitted to the Minister. This is the stage that we are about to enter into with respect to the Southwestern Landfill. This stage comprises many steps, outlined in greater detail in Section 4 and Appendix 2 to this letter. WEG currently anticipates releasing its pre-submission draft EA to the JMCC in the first quarter of 2020.

Once any multidisciplinary review and/or public consultation (if either are required by the Terms of Reference) are completed, a draft EA is prepared considering this review and documenting the comments received and the proponent's responses addressing them. The proponent will then submit its EA and must provide public notice<sup>1</sup> that it has submitted the EA to the Ministry of Environment, Conservation and Parks ("MECP") within two weeks.

### c) Formal Ministry and Public Review of EA

The MECP is then tasked with coordinating a review of the document. The MECP consults with government experts, indigenous communities and the public. It should be noted that the proponent may amend or withdraw the EA at any time before the deadline for the MECP review of the EA, but only upon such conditions as the Minister may impose on the withdrawal or amendment.<sup>2</sup>

Public Comment: During this Ministry Review, the public will have 7 weeks to provide comments on the as-submitted EA once public notice has been given that the EA has been submitted.<sup>3</sup>

Ministry Consideration of Comments: Following the conclusion of this 7 week period, the MECP conducts its own review where it reviews all comments from the public, indigenous communities, and government agencies along with the proponent's responses to these comments (the "**Ministry Review**").<sup>4</sup> Additionally, the Ministry Review will include discussion on whether the proponent is in compliance with the approved terms of reference and whether it has met the requirements of the EA Act. The MECP has 5 weeks<sup>5</sup> to draft and publish the Ministry Review from the conclusion of public comments, though the MECP may extend this deadline if there is a compelling reason.<sup>6</sup>

If the MECP notes any deficiencies in the EA, it must notify the proponent of these deficiencies at least 14 days before the deadline for the Ministry Review.<sup>7</sup> In this event, the proponent would have 7 days to remedy these deficiencies.<sup>8</sup>

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<sup>1</sup> EA Act, section 6.3(1)

<sup>2</sup> EA Act, section 6.2(3)

<sup>3</sup> EA Act, section 6.4 and O Reg 616/98, Table Item 3

<sup>4</sup> EA Act, section 7

<sup>5</sup> O Reg 616/98: Deadlines, Table Item 4

<sup>6</sup> EA Act, section 7(3)

<sup>7</sup> EA Act, section 7(4)

<sup>8</sup> EA Act, section 7(5)

Note that the proponent or any other interested persons may request that the Minister refer the matter to mediation.<sup>9</sup> If that request is made, the Minister shall notify prescribed persons of the Minister's decision regarding the request for mediation and provide written reasons for their decision.<sup>10</sup>

The MECP must issue a Notice of Completion when the Ministry Review has been completed

#### **d) Final Public Review Period and Request for Hearing**

Following the Notice of Completion of the Ministry Review, the public, other government agencies, and indigenous communities have a further 5 weeks to provide additional comments to the MECP on the project, the EA or the Ministry Review.<sup>11</sup> During this time anyone can provide written comments to the MECP to identify any outstanding issues and provide suggestions as to how/whether these can be resolved.

Anyone can also request a hearing during this 5 week period - the only period during which a hearing may be requested.<sup>12</sup> If a hearing is requested, the Minister must refer all or part of the application to the Tribunal unless the Minister opines that the request is frivolous, a hearing is unnecessary, or the hearing may cause undue delay.<sup>13</sup> It should be noted that the Minister has "absolute discretion" over this decision.

#### **e) Decision on the Application**

Once this final 5 week period for public comment on the Ministry Review has concluded, the Minister has 13 weeks to decide whether to approve the Application. The Minister's options at this stage are to:

- Approve the Application with or without conditions;
- refuse the EA;<sup>14</sup>
- refer the Application to mediation;<sup>15</sup> or
- refer the decision on the Application, or some part of the Application, to the Environmental Review Tribunal (the "ERT" or "Tribunal") for a hearing on the merits of the Application<sup>16</sup>.

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<sup>9</sup> EA Act, section 8(1)

<sup>10</sup> EA Act, section 8(3)

<sup>11</sup> EA Act, section 7.2(2) and O Reg 616/98: Deadlines, Table Item 5

<sup>12</sup> EA Act, section 7.2(3)

<sup>13</sup> EA Act, section 9.3(2)

<sup>14</sup> EA Act, section 9(1)

<sup>15</sup> EA Act, section 8

<sup>16</sup> EA Act, section 9.1

In deciding on the approval of the Application, the Minister, or if referred to a hearing, the Tribunal, must consider the following factors<sup>17</sup>:

- The purpose of the Act;
- The approved terms of reference;
- The EA;
- The Ministry review of the EA;
- Comments submitted;
- Mediator's report (if the matter was mediated); and
- Any other matters that the Minister considers to be relevant to the application.

#### **f) Review/Reconsideration of Decision on EA Application**

There are no statutory rights of appeal of a decision by the Minister or the Tribunal on an EA Application. There is however the potential for two types of reviews of this decision.

First, if the Minister refers the matter to the Tribunal, the Minister may decide to review and vary any decision of the Tribunal within 28 days of receiving a copy of the decision, which timeframe can be extended by the Minister. Any decision by the Minister to vary a Tribunal decision is subject to the approval of the Lieutenant Governor in Council (Cabinet).<sup>18</sup>

Second, like any statutory decision, the decision to approve or reject the project by the Minister or the Tribunal is subject to review by the courts through an application for judicial review, subject to the procedures of the *Judicial Review Procedure Act*, RSO 1990, c J1. Anyone impacted by the decision of an administrative body, which includes a decision on an EA, can make this application to the courts. Depending on the nature of the decision, the standard of review is either correctness or reasonableness. Generally if the Minister's decision is considered to engage primarily with policy or is otherwise afforded discretion by the authorizing statute, the standard of reasonableness will apply.

Also, the Act provides for the "reconsideration" of an EA Approval in the case where "there is a change in circumstances or new information concerning an application and if the Minister considers it appropriate to do so...". The Minister may also engage the Tribunal in undertaking such reconsideration.<sup>19</sup>

## **2.2. Other Required Approvals**

In addition to the EA Approval, landfill proposals require a number of other municipal and provincial approvals pursuant to other legislation. Key amongst these are approvals under the *Environmental Protection Act*, the *Planning Act*, and the *Ontario Water Resources Act*. Each of these approvals can establish further restrictions and conditions on landfill operations. Each of these three critical approvals carries potential opportunities for further hearings regarding the proposal, though it is also possible that these hearings could be consolidated and heard by a Joint Board pursuant to the *Consolidated Hearings Act*, RSO 1990, c C29.

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<sup>17</sup> EA Act, section 9(3)

<sup>18</sup> EA Act, section 11.2

<sup>19</sup> EA Act, section 11.4

In particular, under the *Planning Act*, there are broad public rights of appeal for decisions to approve or refuse the official plan amendment and zoning by-law amendments that will be required before the landfill can proceed.

Each of these approvals can establish further restrictions and conditions on landfill operations. For example the Waste Site environmental compliance approval will establish a lengthy catalogue of operational requirements including compliance with monitoring and impact standards. These combined with the requirements in the approved EA and the conditions of EA Approval establish the working rules that would govern the landfill.

### **2.3. Community Impact Management and Compensation Requirement**

Landfills of this scale and magnitude typically require proponents to develop and obtain host municipality agreements, community commitment agreements and other impact management programs such as property value protection for neighbouring property owners. These requirements are typically incorporated into the approved EA and the conditions of EA approval.

Host municipality agreements can impose a range of financial and other obligations on landfill operators including: payment of royalties and other benefits to impacted municipalities, commitments to community building and local economic development and employment of local businesses, establishment of a permanent multi-disciplinary peer review team to independently audit and make recommendations on the environmental performance of the landfill.

## **3. Summary of Environmental Assessment Process to Date**

**Overview:** Below is a summary of the key events that have taken place over the past seven years since the announcement by WEG of the commencement of the EA process for the proposed Southwestern Landfill. JMCC Members are also encouraged to review **Appendix 1** to this letter which provides a chronology of key events in tabular form.

### **3.1. Commencement of EA Application Process**

In 2013, Niagara Waste Systems Ltd, now WEG, announced that it was commencing an environmental assessment study process to obtain approval pursuant to the EA Act from the Minister for the “Southwestern Landfill”, a proposed landfill facility to be located at the Carneuse Beachville Quarry.

### **3.2. Municipal Coordination Efforts – Independent Peer Review**

The municipalities that would be potentially impacted by this proposed landfill, the Township of Zora, Town of Ingersoll, Township of Southwest Oxford and the County of Oxford (collectively the “**Municipalities**”) sought to conduct an independent peer review of the Terms of Reference and the EA. In 2013 the Municipalities and WEG entered into a memorandum of understanding that provided for the JMCC to oversee a comprehensive peer review process.

Under the memorandum of understanding, WEG agreed to fund a multidisciplinary team of experts (the “**Peer Review Team**” or “**PRT**”) which is overseen by the JMCC. The JMCC is comprised of a maximum of two representatives from each of the Municipalities, presently composed of the chief administrative officer and mayor of each of the four participating municipalities. The Peer Review Team’s role is to review and provide independent comment on the Terms of Reference and the EA and to report its findings, conclusions and recommendations to the JMCC. The JMCC then reviews these reports and releases them to both the Municipalities and WEG.

The PRT is comprised of experts in distinct fields who peer review documents produced throughout the EA process. A list of all PRT experts and their area of expertise is provided in Appendix 3 to this document.

In addition to the JMCC/PRT review, Oxford Public Health has also independently reviewed and provided comments on the Terms of Reference and the EA process from the perspective of the potential impacts on community public health issues within its mandate. Given that Oxford Public Health has now been amalgamated to become part of Southwestern Public Health, these review responsibilities fall to Southwestern Public Health.

### **3.3. JMCC Involvement in Terms of Reference Approval Process**

The draft Terms of Reference (“**TOR**”) was released May 9, 2013. The draft TOR was extensively reviewed by the JMCC through the PRT, and considered by each of the Councils for the Townships of Zorra and South-West Oxford, the Town of Ingersoll and the County of Oxford.

This review resulted in numerous comments which can be summarized as requesting that WEG provide more detail and consider additional studies, in particular a Health Impact Assessment. WEG eventually agreed to include a less rigorous Human Health Risk Assessment in the TOR.

Before the Ministry could make a decision on the TOR, WEG requested an extension of the decision-making timeline in order to review all comments received and amend its draft TOR further. Following this hiatus, WEG agreed to some of the PRT’s previous recommendations regarding additional studies, consultation and transparency.

On March 17, 2016, the Minister issued the Notice of Approval (“**NOA**”) to WEG for the Terms of Reference, with amendments. The amended Terms of Reference set the parameters for the EA Study process. Notably, in addition to the Health Risk Assessment proposed by WEG, the NOA requires WEG to carry out an additional screening level review of the socio-economic assessment results to determine the potential for related health effects. It should be emphasized that Southwestern Public Health (which comprises the former Oxford Public Health) continues to support a full Human Health Impact Assessment for the project. Depending on the outcomes of these health related studies, the JMCC/PRT may also conclude that a comprehensive Human Health Impact Assessment is required consistent, with the amended Terms of Reference.

### **3.4. JMCC Review of Draft Study Work Plans/EA Methodology Documents**

In accordance with the amended Terms of Reference, WEG prepared more detailed draft work plans for each discipline. The work plans provide for 12 technical studies aimed at identifying any potential impacts.

The JMCC/PRT peer reviewed the work plans and provided recommendations to WEG in May 2017. The JMCC also requested that WEG set up meetings with the PRT to resolve outstanding issues raised by the PRT review. Through this process, WEG agreed to fund an expanded scope of review which would include review of the alternative methods report, stating that the baseline conditions would be an integral part of the draft EA document.

In 2017 and 2018, the JMCC/ PRT provided four other sets of comments related to drafts of key WEG documents that were to govern the EA Study process:

- Alternative Methods Evaluation: In March 2017, the PRT provided comments and recommended changes to a draft report entitled *Alternative Methods Interim Report* (WEG, January 3, 2017) which set out WEG's proposed approach to assessing alternative methods of carrying out landfilling as required under the ToR. WEG accepted some but not all of the PRT's recommended changes to this document.
- Human Health Risk Assessment: In the fall of 2017, as required under the amendments made by the Minister in approving the ToR, WEG consulted the JMCC/PRT, the Oxford Acting Medical Officer of Health and others regarding the WEG-proposed work plans for the Human Health Risk Assessment and supplementary Health Review required by the Minister's ToR approval. Again, this process led to WEG making some but not all of the recommended changes to these workplans as proposed by the PRT and Acting Medical Officer of Health.
- Land Use Planning Forecasts: In February, 2018, the JMCC/PRT provided to WEG peer review comments on the WEG draft *Land Use Planning Forecast* (WEG, October 2017), a key document to be used during the EA study process as the basis for the study of land use impacts of the landfill proposal and its alternatives. WEG provided responses to these comments. In December 2018 the PRT peer reviewer then provided a summary response indicating areas where WEG had not addressed PRT comments or concerns. WEG agreed to some but not all of the PRT comments and recommendations provided with respect to this document.
- Extensive comments were provided by the JMCC/PRT on the draft Air, Noise, Surface Water, Groundwater, and Health workplans prepared by WEG. To address these comments WEG held roundtable discussions with key PRT and MECF experts regarding these key workplans in Fall 2018. Through this process the workplans were finalized in a form generally acceptable to the PRT.
- Areas of Discrepancy in Final WEG Workplans: In March/April 2018, the PRT carried out a brief review of the final technical work plans to confirm that all PRT recommended changes

that had been agreed to by WEG were made. This review identified some specific discrepancies between agreed upon commitments and the final workplans in three areas: archeology, economic impact, and visual impacts. A satisfactory response to PRT comments on the Archaeology Workplan was received. The PRT comments on the Economics and Visual workplans were of a very limited nature and will be addressed in the Draft EA review.

### **3.5. JMCC and Municipal Involvement during EA Study Process**

Overview: The JMCC and its municipal members have had some limited input during the EA study process in two areas as described below.

#### **a. WEG Interview Requests**

In January of 2019, WEG sent a series of letters to the Municipalities to request interviews with municipal staff and elected officials as part of its public consultation and to obtain input into the social and economic impact assessments. The municipal representatives of the JMCC discussed the best approach to responding to these interview requests.

In response to these letters, the Municipalities wrote back to WEG to:

- Request a written list of questions that WEG proposed to ask municipal staff or elected officials,
- State that staff would put together written responses to these questions in order to effectively answer them,
- Suggest that WEG review these responses to determine whether they sufficiently answer WEG's questions or whether WEG still wishes to conduct interviews, and
- Indicate they think it is improper to coordinate interview requests with elected officials. The Municipalities suggested that if WEG wanted to interview elected officials it should contact those individuals directly.

Following receipt of these letters, WEG provided the Municipalities with a list of written questions. This written list included questions directed to elected officials.

The Municipalities provided responses to the majority of these specific questions by WEG. These responses referenced public documents already in existence, as many of the questions posed by WEG could be addressed by referring to these public documents.

The Municipalities were unable to respond to some questions posed by WEG as a meaningful response could not be provided until the municipality has had an opportunity to review the draft EA and associated supporting studies as well as the JMCC peer review of the Draft EA.

In response to those of WEG's questions that were directed to elected officials, given that municipal councils speak only through resolutions and by-laws, the Municipalities again

indicated that it would be inappropriate for staff to facilitate meetings aimed at soliciting the individual views of Council members, and that WEG may wish to contact elected officials directly if it wishes to solicit their opinion as part of their social and economic assessments.

#### **b. JMCC Proposal for Peer Review and Comments on draft EA**

In anticipation of the commencement of the JMCC peer review of the draft EA and its supporting studies, the JMCC directed the PRT to prepare a step-by-step process description and timeline for the JMCC review of the draft EA. This was provided to WEG in April of 2019.

WEG responded by generally agreeing with the process for review, but proposed significantly shorter timelines for review of the draft EA. Specifically, the PRT and JMCC have estimated that the report can be submitted to WEG and released to the public within 150 days, subject to confirmation by the PRT of time requirements following receipt of the EA and supporting documentation. WEG has not agreed to this timeframe and is proposing that the JMCC submit the peer review report within 105 days. The JMCC responded by indicating that the timeframes outlined in its letter of April 25 remain best estimates and that the JMCC has no reason to accept shorter timeframes for review. WEG has recently confirmed that there continues to be a disagreement on this timeframe for the JMCC review.

**Appendix 2** to this memorandum is a table summarizing the key activities and timeline for the JMCC Peer Review Process.

#### **4. Next Steps: JMCC Peer Review Process**

WEG is currently completing its interdisciplinary studies on the landfill proposal and drafting the EA. According to WEG, it expects to release a draft EA in the first quarter of 2020 for public review. Following release of this document, the PRT and JMCC will undertake a peer review of the draft EA. Southwestern Public Health will also have an opportunity to review the draft EA and provide comments. The timeframe for completion of the JMCC review is anticipated to be three to four months.

In summary, here are the key anticipated steps:

- Once the draft EA is provided to the JMCC, the JMCC will work with the PRT to prepare a budget for WEG's approval.
- Following approval of this budget, the PRT will prepare a draft report on the EA. As part of this process, PRT experts will consult with Southwestern Public Health in order to coordinate and synchronize findings. PRT experts may also consult with the WEG experts responsible for preparing the EA documents, if necessary to obtain clarification.
- The PRT will then present the report to the JMCC and be available to address questions and comments.

- Following input from the JMCC, the PRT will amend and submit a final PRT report (the “**final PRT report**”) to the JMCC. The JMCC will approve the final PRT report and release this report to WEG, the public and the JMCC municipal councils.
- Once the final PRT report has been submitted to WEG, the PRT will present the report to Southwestern Public Health for its final review and response.
- The PRT will then present the final PRT report to JMCC municipal councils. The municipal councils will receive, review and respond to the final PRT report along with any comments received on the report.

Here are the key anticipated steps following completion of the JMCC’s pre-submission peer review process for the draft EA:

- WEG will revise the EA document based on comments received and submit its Final EA to the MECP for approval.
- The MECP will commence the Ministry and public review process for the EA as described in section 2 of this memo above, starting with a 7 week window for public comment on the EA, before the Ministry conducts its own review of the EA.

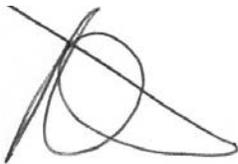
For a detailed summary of the steps required by the JMCC prior to WEG’s submission of its draft EA to the MECP and the timeline for these steps, please see **Appendix 3** to this letter.

It should be noted that an earlier draft of this memorandum was presented to the JMCC at its January 16, 2020 meeting. If you have any further questions regarding the EA process or the JMCC’s role in advance of the release of the pre-submission draft EA, please do not hesitate to contact us.

Yours Truly,

**Garrod Pickfield LLP**

Per:



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Peter C. Pickfield

Cc: Peter Crockett, Chief Administrative Officer, County of Oxford  
Don MacLeod, Chief Administrative Officer, Township of Zorra  
Dr. Joyce Lock, Medical Officer of Health, Southwestern Public Health  
Chris Haussmann, PRT Manager, Haussmann Consulting Inc.