

Council demands more clarity on HCA

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Clarington Council is giving the Region an ultimatum regarding the proposed York/Durham incinerator slated for Courtice.

In December, councillors requested the municipal solicitor produce a report analyzing all the implications of the host community agreement (HCA). The HCA is the package of incentives the Region will provide the municipality for hosting their garbage incinerator. The package was negotiated with Regional staff and Clarington's Chief Administrative Officer, Frank Wu, in 2009. Council approved the HCA last term and then requested its contracted lawyer, Dennis Hefferon, draw up a report outlining some concerns he had with the agreement. When the Hefferon's report was complete, four of the seven councillors voted not to hear his concerns.

Since then, on the recommendation of Wu, Council opted to dispense with the services of Hefferon and hire a staff lawyer who reports directly to Wu. Hefferon reported directly to Council.

The staff lawyer, Andy Allison, presented his report to council members last Monday, in a three-hour closed meeting. In December when council requested Allison's report, it also voted to dispense with protocol and have the report by-pass Wu, and be presented directly to council members.

Councillors went behind closed doors again at this Monday's council meeting to further discuss the solicitor's report on the HCA. When they came out, Councillor Joe Neal presented a resolution, requesting the Region amend the HCA by clarifying the meaning of a number of sections in the agreement.

There is a number of provisions in the HCA that, according to Neal, a lawyer, are not clear as to their intent. "There may be language in the agreement that may obligate us to bargain away our legal powers to enact bylaws that deal with the health, safety and welfare of our residents," Neal stated.

If the Municipality and Region have not reached an agreement in principle respecting the three items of clarification Neal requested in his motion, by February 14, staff are directed to commence a mediation process.

In addition to seeking clarification from the Region on three items, Neal's motion also directs staff to commence a court application for a determination on three other sections of the HCA.

One of these sections is the clause in the HCA where the Municipality agreed that it shall not oppose the development or operation of the EFW facility. "What if for example the facility is built and there is a problem with it not living up to the criteria established in the environmental assessment or the HCA?" Neal asked. The way the agreement reads, Clarington would be prevented from doing anything about it, which according to Neal is contrary to public policy. As an elected representative of the citizens of Ward 1, Neal says he cannot act contrary to public policy.

Neal's motion also seeks for judicial clarification on whether the proposed EFW is a "public use" facility for the purposes of the Zoning by-law, or whether the Clarington Official Plan will need to be amended. It would also determine whether any provision of the HCA which is contrary to the Minister's approval of the environmental assessment is to be severed from the Agreement or amended to conform to the approval.

Councillors Ron Hooper, Wendy Partner, Corinna Traill and Willie Woo supported Neal's motion. Mayor Adrian Foster and Councillor Mary Novak did not support it. Foster told the Times following the meeting that, while he did support the spirit of the motion, he could not endorse it for reasons he could not express due to their legal nature.

Novak stated during the meeting it was her opinion the motion would expose the Municipality to great legal risk. "I will support the residents of Clarington to make sure they do not have that exposure," she stated.