



The Corporation of the Town of Tecumseh

Public Works & Environmental Services

To: Mayor and Members of Council

From: Phil Bartnik, Director Public Works & Environmental Services

Date to Council: January 14, 2020

Report Number: PWES-2020-02

Subject: Request for Repair and Improvement to the Merrick Creek Drain
Appointment of Drainage Engineer

Recommendations

It is recommended:

1. **That** N.J. Peralta Engineering Ltd. **be appointed** Drainage Engineer to make an examination of the Merrick Creek Drain drainage area as submitted by the affected landowner in the “Notice of Request for Drain Improvement” dated November 17, 2018;
2. **And that** a Drainage Report **be prepared** in accordance with Section 78 of the *Drainage Act*, including provisions for future maintenance.

Background

The purpose of this report is to provide a summary of the background and other information to assist Council in appointing an engineer to examine the entire drain and drainage area on the Merrick Creek Drain (Drain) as requested by the affected landowner.

Although the “Notice of Request for Drain Improvement” (Request) was received several months ago, the drainage department recently had an opportunity to have the Clerk sign the aforementioned Request and inform the requesting landowner via telephone on October 30, 2019 that a report to Council to appoint a Drainage Engineer can be completed. The Town also provided information regarding the current backlog felt by the drainage practitioners across the Province with respect to completing drainage reports under the *Drainage Act* (Act). The Drainage Superintendent informed the landowner that it could take several years to complete the process due to the current backlog.

The Drain is located in the south portion of Tecumseh with its most upstream location at the west side of the 8th Concession Road approximately 1.6 km north of County Road 8. The Drain traverses westerly through several farm parcels and beneath multiple roads where it meets the Curtis Drain approximately 50 metres north of County Road 8 at Howard Avenue before conveying westerly into the Town of Amherstburg. A topographical map showing the location of the Drain is attached to this report as Attachment No. 2.

Comments

Legislation

The applicable sections of the Act are included in Schedule A, which is attached to this report as Attachment No. 3.

Required approvals

On October 28, 2019, the Town sent notification to the Essex Region Conservation Authority (ERCA) that the Town received a request for the repair and improvement of the Drain.

As outlined in Section 78(2) of the Act, the Engineer shall not be appointed until after the 30-day notification to ERCA, which has jurisdiction (regulations) over lands that will be affected by the works.

A response from that notification is included as Attachment No. 4 to this report and the Town is in line with those comments/provisions. With respect to notification timelines, the aforementioned 30-day period expired on November 28, 2019 and Council can proceed to appoint a Drainage Engineer.

The Drain may contain significant species that are at risk (SAR) which may be aquatic, plants, animals, habitat, etc. These species are protected under the provincial Endangered Species Act (ESA) and the Town utilizes its compliance document with the Ministry of Natural Resources and Forestry (MNRF) under Section 23.9 of Regulation 242/08 for SAR Mitigation Plan for Drainage Works. The Town, along with its contractors, gathers data with respect to information on any encountered species and/or mitigation plans implemented before and during construction for all registered municipal drainage works permitted under Section 23.9 of Ontario Reg. 242/08. Annual reports may be requested by the MNRF.

The Town will also be required to perform a self-assessment through the Department of Fisheries and Oceans (DFO) website to determine if proposed drain improvements could result in the death of fish or the harmful alteration, disruption or destruction of fish habitat (HADD). If it is determined through the self-assessment that the proposed works will not result in the death of fish or a HADD, the works may proceed following best practices such as preventing the entry of deleterious substances in water, ensuring proper sediment and erosion control, and planning in water work with respect to timing windows to protect fish. If it is determined that the works will result in the death of fish or a HADD, a formal authorization may be required from DFO under the provisions of the *Fisheries Act*. If a Biologist is required to assess the impacts to fish and fish habitat, the cost of same becomes the responsibility of the proponent.

Consultations

Financial Services
Corporate Services & Clerk

Financial Implications

The Engineer's Report shall assess for Special Benefit, Benefit, Outlet and Liability. A schedule of assessment is to be contained in the report, which details in separate columns, the sums assessed to each parcel of land.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable ☒

Website ☐ Social Media ☐ News Release ☐ Local Newspaper ☐

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Sam Paglia, P.Eng.
Drainage Superintendent/Engineering Technologist

Reviewed by:

John Henderson, P.Eng.
Manager Engineering Services

Reviewed by:

Phil Bartnik, P.Eng.
Director Public Works & Environmental Services

Reviewed by:

Tom Kitsos, CPA, CMA, BComm
Director Financial Services & Chief Financial Officer

Reviewed by:

Laura Moy, Dipl. M.M., CMMIII HR Professional
Director Corporate Services & Clerk

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	Notice of Request for Drain Improvement
2	Merrick Creek Drain map
3	Schedule A – Drainage Act Excerpts
4	ERCA – Correspondence