



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: February 11, 2020

Report Number: PWES-2020-11

Subject: Drainage Act, Summary of Proposed Changes and Administrative Comments

Recommendations

It is recommended:

That PWES-2020-11 *Drainage Act*, Summary of Proposed Changes and Administrative Comments, **be received**;

And that PWES-2020-11 **be submitted** to the Ontario Ministry of Agriculture, Food and Rural Affairs as comments from the Town of Tecumseh on the proposed changes to the *Drainage Act*.

Background

The purpose of this report is to provide comments on the proposed *Drainage Act* changes that are relevant to the Town of Tecumseh. Upon approval by Council, this report will be forwarded to the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) as the Town's comments on the proposed changes, in advance of the commenting deadline of February 18, 2020.

On January 22, 2020, OMAFRA released a letter seeking input on a proposal to streamline *Drainage Act* approval processes to address common stakeholder concerns about the Act while maintaining the province's high environmental standards (Attachment 1). The *Drainage Act* Discussion Paper (Attachment 2) describes some of the proposed changes to the *Drainage Act* which are intended to reduce costs and project delays for affected property owners including municipalities. The discussion paper also poses questions for stakeholder feedback which will be considered when the proposed changes are finalized.

On January 31, 2020, OMAFRA hosted a webinar for municipalities and presented three (3) proposals being considered to streamline *Drainage Act* processes. At the time of the webinar, details for these proposals had not been fully developed and participants were encouraged to ask questions and provide feedback for OMAFRA's consideration whilst refining possible legislative amendments to the *Drainage Act*. The webinar slides are appended to this report as Attachment 3. Additional webinars were also held for Conservation Authorities (January 31, 2020), Drainage Industry (February 7, 2020) and General Farm Organizations (February 7, 2020).

Based on the webinar, OMAFRA is considering modification to the *Drainage Act* that would:

- Provide the Minister with legislative authority to develop and sign off on **supporting technical protocols** such as the *Drainage Act and Conservation Authorities Act Protocol* (DART protocol);
- Create a new **streamlined *Drainage Act* approval process** for minor improvements;
- Enable a **simplified administrative process** to update the engineer's report to account for changes to the design made during construction.

The comments in this report address the three principal modifications outlined above and provide questions/comments for the Ministry to consider in refining proposed changes.

Comments

The following are the key areas of proposed changes and the associated Administrative comments:

1. Proposed Change: Supporting Technical Protocols – authority to adopt protocols by reference in regulation

Projects under the *Drainage Act* typically require approvals from multiple agencies such as Conservation Authorities, Department of Fisheries and Oceans (DFO) and Ministry of Natural Resources and Forest (MNRF). When not coordinated, these approvals can result in added cost and/or project delays.

In 2008, the DART protocol was established to streamline approvals under section 28 of the *Conservation Authorities Act* for municipal drain repair and maintenance projects being completed under the provisions of the *Drainage Act*. Based on the observed benefits of the DART protocol, OMAFRA is proposing to amend the *Drainage Act* to enable broader adoption of this collaborative approach by providing the legislative authority for the minister to develop and sign off on other technical protocols. These protocols would be created through collaboration with other provincial ministries, federal agencies and conservation authorities.

Administration Comments:

The Town currently utilizes the DART protocol when a request is received for drain maintenance to meet the requirements of both the *Drainage Act* and *Conservation Authorities Act*. The DART protocol provides standard mitigation measures to be followed when drain maintenance works are undertaken which satisfy Conservation Authority approval requirements. Based on the Town's experience, the DART protocol creates efficiencies for both the Town and the Conservation Authority. Administration agrees that the creation of additional technical protocols with other approval agencies would help to streamline approval processes.

Questions/comments proposed by Administration include:

- Municipal representation is required on Committees responsible for developing new protocols.
- Protocols with DFO and MNRF are recommended.
- Can protocols address federal legislations such as the *Fisheries Act*?
- What sections of the *Drainage Act* would these protocols have authority over?

2. Proposed Change: Streamlining Approvals – creating a new process for minor improvements

The *Drainage Act* lacks a streamlined process to undertake minor improvements to existing drains which have minimal impact on the environment and other properties. Currently these projects must follow a lengthy process that includes all assessed landowners which creates additional cost and may result in delays or avoiding the improvement activities.

OMAFRA is considering a new *Drainage Act* process for minor improvements so these projects can be completed in a less costly and more efficient way.

Administration Comments:

Currently, section 77 of the Drainage Act allows for deepening, widening or extending of a municipal drain without the need of a report to streamline drainage works provided the cost is not more than \$4,500. However, this section lacks clarity in aspects such as the authority to enter lands, how to assess owners, and allowances.

A streamlined process for minor improvements has the potential to increase efficiencies, reduce costs and improve delivery of services to residents. Administration agrees that a streamlined process for minor improvements such as new crossings, extension of an existing crossing, limited bank stabilization, the addition of grass buffers, etc. could be beneficial provided that the eligible works and process are clearly defined.

Questions proposed by Administration include:

- Will public consultation be required? Do other landowners have appeal rights? If so, how will this reduce process time?
- How will minor improvements outside of the current by-law be assessed?

- Who decides what is considered a “minor improvement”?
- Would a minor improvement only be applicable if one property is involved and/or the cost of same is the responsibility of one property owner?
- How is the future maintenance addressed for minor improvements?
- How will OMAFRA grants be applied to minor improvements?

3. Simplifying Administrative Processes – accounting for changes to drain design during construction

Drainage systems constructed under the *Drainage Act* occasionally deviate from the adopted engineer’s plans and profile due to unforeseen conditions or problems found on site during construction. Currently, there is no mechanism to easily include the as-built conditions in the current by-law which can lead to a lack of clarity for municipal drainage superintendents who plan and implement maintenance and repair activity in accordance with the engineer’s report.

OMAFRA is considering amendments to the *Drainage Act* to enable a simplified process to update the engineer’s report to account for any changes made during construction.

Administration Comments:

Currently, section 58(4) is the only mechanism to amend changes encountered during construction. However, this section defines these changes as a “gross error” and states that Council may apply to the Tribunal to correct the error. Otherwise, a new report must be produced to adopt these changes.

Administration is in support of a simplified process to update the engineer’s report to account for any changes made during construction. However, this process must establish clear direction for the approval, implementation and assessment of any additional costs related to the changes.

Questions proposed by Administration include:

- How are additional costs assessed?
- If there are additional costs, are these costs appealable?
- If future maintenance is affected, do affected landowners need to be consulted?

In summary, OMAFRA is currently considering the above noted amendments to the *Drainage Act*, however, specific details regarding these potential changes have not been finalized. Once these amendments and procedures have been fully developed, it is Administration’s understanding that there will be forthcoming opportunities to review the proposals and provide additional comments.

Consultations

Ontario Ministry of Agriculture, Food and Rural Affairs

Financial Implications

There are no financial implications arising from this report.

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 checked="" 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:

Cheryl Curran, BES
Clerk I Administrative Clerk

Reviewed by:

John Henderson, P.Eng.
Manager Engineering Services

Reviewed by:

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

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	Letter dated January 22, 2020 from the Ministry of Agriculture, Food and Rural Affairs
2	Drainage Act Discussion Paper
3	Webinar Presentation held January 31, 2020