



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 26, 2021

Report Number: PWES-2021-02

Subject: Drainage Act Regulatory Proposal and Administrative Comments

Recommendations

It is recommended:

That report PWES-2021-02, Drainage Act Regulatory Proposal and Administrative Comments, **be received;**

And that report PWES-2021-02 **be submitted** to the Food Safety and Environmental Policy Branch as comments from the Town of Tecumseh regarding the Drainage Act Regulatory Proposal as specified on the Environmental Registry of Ontario.

Executive Summary

The purpose of this report is to provide comments on the Drainage Act Regulatory Proposal that are relevant to the Town of Tecumseh. Upon approval by Council, this report will be submitted to the Food Safety and Environmental Policy Branch as the Town's comments on the proposed regulation, in advance of the commenting deadline of February 7, 2021.

Background

On January 22, 2020, the Ontario Ministry of Agriculture, Food, and Rural Affairs (OMAFRA) released a letter seeking input on a proposal to streamline *Drainage Act* approval processes. The proposed changes to the *Drainage Act* are intended to reduce costs and project delays for affected property owners, including municipalities. The original discussion paper supplied by the OMAFRA posed questions for stakeholder feedback that were to be considered when the proposed changes were finalized.

At the February 11, 2020 Regular Meeting of Council, Council received report PWES-2020-11 “Drainage Act, Summary of Proposed Changes and Administrative Comments” and authorized that the report, including the Town’s concerns and questions on the proposed changes to the *Drainage Act*, be submitted to the OMAFRA (Motion: RCM-46/20). This report provided a summary of the proposed changes to the Act in addition to comments and questions brought by Administration that were relevant to the Town of Tecumseh.

On July 21, 2020, the *COVID-19 Economic Recovery Act, 2020* (formerly Bill 197), which featured amendments to the *Drainage Act*, received Royal Assent. Subsequently, on December 9, 2020, the OMAFRA posted notice of the Drainage Act Regulatory Proposal on the Environmental Registry of Ontario (ERO No. 019-2814). Supporting material included in this notice are: Drainage Act Regulatory Proposal Discussion Paper (Attachment 1); Appendix A Proposed Minor Improvement Process (Attachment 2); Appendix B Proposed Minor Improvement Process Flowchart (Attachment 3); Appendix C Proposed Engineer’s Report Process (Attachment 4); Appendix D Proposed Engineer’s Report Process Flowchart (Attachment 5).

These amendments enabled development of a new Minister’s Regulation that would:

- Provide a simplified process for minor improvements to municipal drains;
- Simplify the process for approving updates to engineer’s reports for changes to the design made during construction; and
- Adopt the *Drainage Act* and *Conservation Authorities Act* Protocol (DART Protocol) by reference.

The OMAFRA is accepting comments on the proposed new Minister’s Regulation to implement the amendments under the *COVID-19 Economic Recovery Act, 2020* until February 7, 2021.

Comments

Similar to the call for public feedback on the proposed amendments to the *Drainage Act* in early 2020, OMAFRA is seeking feedback on the regulatory proposal for a new Minister’s Regulation. This Regulation includes the following four key components.

1. Minor Improvement Process

Currently, the process to complete drainage works is complex and lengthy for even straightforward drain improvement projects that have minimal impact on other properties. The new regulation plans to establish a streamlined process to reduce costs and time to complete projects while maintaining environmental protections.

The regulation plans to establish the criteria necessary to qualify drainage works for this streamlined process. Once a project has been designated as a minor improvement project, it will follow the streamlined process (Attachments 2 & 3).

Discussion Questions & Comments

The discussion questions supplied in the Drainage Act Regulatory Proposal Discussion Paper (Attachment 1) which relate to the above are:

Q: Do you agree with the proposed minor improvement criteria?

- Town of Tecumseh Administration is in agreement with the bulk of the criteria, however, concerns have been raised in the comments below.

Q: What types of improvements do you foresee fitting under the minor improvement process?

- Culvert improvements and repairs that differ from the by-law
- All types of bank stabilization or repairs
- Wash-in erosion repairs
- Improvements and repairs to outlets from private drains

Q: What potential pre-approved designs do you foresee for being possible under a protocol for minor improvements?

- Installation of new culverts that are initially borne by the requesting landowner but become legal and pro-rateable in the future.

Q: Are there other opportunities to further reduce burden for minor improvements?

- “Consent” be defined in applications where neighbouring property approvals are required.
- Content of report should be clearly specified as to what is required.
- An abandonment process for this type of improvement inclusive of how to assess out costs to date in event that the improvement is rejected or abandoned.
- Adjustment of 90-day period to be more realistic with meeting scheduling and Drainage Engineer shortages.

2. Process to Update an Engineer’s Report

Drainage systems constructed under the *Drainage Act* occasionally deviate from the adopted engineer’s plans and profile due to unforeseen conditions or problems encountered in the field. The sole method previously available to legalize these changes as shown in the engineer’s report was to apply to the Tribunal for a gross error found in the report (Section 58(4)).

The proposed new Minister’s Regulation plans to include a new process to easily reflect changes to a drain design in an engineer’s report. This regulation will establish the eligibility criteria of changes warranted due to construction. If these criteria are met, the streamlined process can be utilized (Attachments 4 & 5).

Discussion Question & Comment

The discussion question supplied in the Drainage Act Regulatory Proposal Discussion Paper (Attachment 1) which relates to the above is:

Q: Are the proposed criteria for updating an engineer's report appropriate?

- The criteria for the timeline in which the engineer would submit the design changes to the municipality would benefit from an extension greater than 30 days. An increased timeline would allow for a streamlined approach to both amend the final costs and drawings at the same time. Consolidating both of these allows for an easy method to display As-Constructed Drawings which best represent the actual construction of the work.

3. Protocols

Projects under the *Drainage Act* require approvals from multiple agencies adding costs and project delays. The proposed new regulation would enable a more collaborative approach by incorporating the Drainage Act and Conservation Authorities Act Protocol (DART Protocol) which will allow for approvals to be issued more efficiently from other agencies.

OMAFRA plans to build on the success of the DART Protocol by developing an additional protocol related to pre-approved engineered designs for minor improvement through collaboration with other ministries, agencies, municipalities, and organizations.

Discussion Question & Comment

The discussion question supplied in the Drainage Act Regulatory Proposal Discussion Paper (Attachment 1) which relates to the above is:

Q: What new protocols would you prioritize?

- Protocol with Department of Fisheries and Oceans for issues related to the *Fisheries Act*.
- Protocol with Ministry of the Environment, Conservation and Parks for issues related to the *Endangered Species Act*.
- Protocols would be beneficial for the following minor improvements
 - Culvert requests for improvements or repairs
 - Wash-in erosion repairs
 - All types of bank stabilization works

4. Prescribed Persons

Amendments to the *Drainage Act* allow for the new regulation to prescribe persons that must be notified under sections 5(1)(b), 6(1), 10(2), 10(8), 41(1) of the *Drainage Act*. It is proposed that prescribed persons in the regulation would remain as the list of persons to be notified with exception to the Ministry of Natural Resources, which will be replaced by the current Ministry of

Natural Resources and Forestry in each relevant section. This regulation will allow for an easier method to update the list in the future.

Discussion Question & Comment

There are no Discussion Questions related to this proposed Amendment. Town of Tecumseh Administration is in support of this Drainage Act Regulatory Proposal for amendments to the *Drainage Act* but requests to be notified of any changes to the list in the regulation.

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:

Cameron Hedges, E.I.T.
Assistant Drainage Superintendent

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	Drainage Act Regulatory Proposal Discussion Paper
2	Appendix A – Proposed Minor Improvement Process
3	Appendix B – Proposed Minor Improvement Process Flowchart
4	Appendix C – Proposed Engineer's Report Process
5	Appendix D – Proposed Engineer's Report Process Flowchart