



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: March 9, 2020

Report Number: PWES-2021-11

Subject: Request to Consider Engineer's Report – Curtis Drain

Recommendations

It is recommended:

That the Report and Specifications for the Curtis Drain (Drain) as prepared by Josh Warner, P.Eng., of R. Dobbin Engineering Inc. (Dobbin), dated June 1, 2020 (Drainage Report) **be received;**

And that consideration **be given** to first and second readings of Provisional By-law No. 2021-14 to adopt the Drainage Report in accordance with Section 45 of the Drainage Act (Act);

And further that notice **be given** to all affected landowners of the Court of Revision to be held on Tuesday, April 13, 2021 at 5:45 pm in accordance with Section 46(1) of the Act, subject to the adoption of the provisional by-law.

Background

The purpose of this report is to provide a summary of the background and other information in order to assist Council in giving consideration to the Drainage Report in accordance with the Act.

On September, 25, 2018, the Town of Tecumseh (Town) signed a "Notice of Request for the Repair and Improvement" for the Drain to address landowner inquiries and complaints regarding the performance of the Drain.

On March 26, 2019 Council accepted the recommendation by the Drainage Superintendent under Public Works & Environmental Services Report No. PWES-2019-14 Curtis Drain – Appointment of Drainage Engineer and passed resolution RCM-82/19 as follows:

That R. Dobbin Engineering Inc. (Dobbin) be appointed Drainage Engineer to:

1. Make an examination of the Curtis Drain and drainage area as submitted by the Town in the "Notice of Request for Drain Improvement" dated September 25, 2018; and
2. Prepare a Drainage Report in accordance with Section 78 of the Drainage Act, including provisions for future maintenance of the Drain.

An on-site meeting was held on May 1, 2019. A summary of this meeting is included on page 3 of the Drainage Report (Attachment No. 1).

The Town received a draft Drainage Report dated February 13, 2020, for discussion at a Public Information Centre (PIC). The report recommends the repair and improvement to the Curtis Drain, including but not limited to; the removal of brush, phragmites, and trees along the open channel of the drain; the excavation of a new grade line; and the replacement and flushing of access culverts throughout the length of the Drain. Invitations were sent to landowners and a PIC was held on Wednesday, March 4, 2020 at Tecumseh Fire Station #2 to discuss the contents of the draft report.

On June 1, 2020, Josh Warner, P.Eng., filed a report dated June 1, 2020 for the repair and improvement to the Drain in accordance with Section 41 of the Act. On February 17, 2021, invitations were sent to all affected landowners and agencies that the Public Council Meeting to consider the Engineer's Report would be held on Tuesday, March 9, 2021 at 5:45 pm.

Comments

The sections of the Act referenced within this report are included in Schedule A which is attached to this Council Report as Attachment No. 2.

Consideration by Council

Subject to the discretion of Council, the Drainage Report may be:

- a. Referred back to the Drainage Engineer for reconsideration if it appears that there are, or may be errors in the report or for any other reason the report should be reconsidered; or
- b. Provisionally approve by giving first and second readings to a Provisional By-law.

Following provisional adoption of the By-law, a meeting of the Court of Revision shall be scheduled to allow any affected owner of land assessed for the drainage works to appeal their assessed costs subject to the following:

- a. Any land or road has been assessed too high or too low; or

- b. Any land or road that should have been assessed has not been assessed; or
- c. Due consideration has not been given as to type of land use.

Approvals

The Town made initial submissions to the Essex Region Conservation Authority (ERCA) regarding their requirements for approval under Section 28 of the Conservation Authorities Act. A response from the ERCA was received by email on October 2, 2018 indicating that the Town must perform a self-assessment through the Department of Fisheries and Oceans (DFO) website, apply for a permit, and follow standard measures to protect fish and fish habitat.

The Consultant conducted a self-assessment with respect to the Federal requirements of the DFO. It was determined that this project requires a formal review by the DFO as the Curtis Drain outlets into Merrick Creek, which is classified as a Class 'C' Drain. Accordingly, a request for review was submitted to DFO. On April 28, 2020, a response from the DFO was received indicating that, if their recommended measures are implemented, the project is not likely to result in contraventions with the *Fisheries Act*.

DFO's recommended measures to avoid and mitigate the potential for prohibited effects to fish and fish habitat include completing the works outside of the spring restricted activity timing window (March 15 to July 15), completing the proposed works in the dry, and developing and implementing an erosion and sediment control plan. This approval does not eliminate the 'Duty to Notify' DFO should any death of fish by means other than fishing and/or harmful alteration, disruption, or destruction of fish habitat occur or are about to occur.

The Drain may contain significant species that are at risk (SAR) which includes aquatics, plants, animals, and habitats. These species are protected under the provincial Endangered Species Act, 2007 (ESA) which the Town has previously been complying with through the utilization of a Species at Risk Mitigation Plan with the Ministry of Natural Resources and Forestry (MNRF) under Section 23.9 of Regulation 242/08 for Drainage Works.

As of April 1, 2019, the administration of the ESA transitioned responsibility from the MNRF to the Ministry of the Environment, Conservation and Parks (MECP). Though the responsibility has transitioned to the MECP, the Town's SAR Mitigation plan continues to be in compliance with the ESA. As such, 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.

As directed by the MECP, administration continues to send notification to the MECP through the SAROntario@ontario.ca submission mailbox. To date, the Town has not received any further inquiry from MECP staff relating to this project. Administration will continue to include MECP in notifications, inclusive of the sending of any reports, as set out in the Drainage Act.

Consultations

Corporate Services & Clerk
Financial Services

R. Dobbin Engineering Inc.

Financial Implications

The Town of Tecumseh does not have any affected lands or roads in this watershed. Accordingly, the Town has no financial implications for these works.

Other than costs to administer the project, the cost of constructing the project is 100% recoverable by affected lands as detailed in the Assessment Schedule included in the engineer's report dated June 1, 2020.

For assessments in excess of \$5,000 the Town offers landowners the option of paying the balance plus interest over a five (5) year period; the annual payments are added as a special charge on their taxes.

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:

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

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	Drainage Report dated June 1, 2020 by Josh Warner, P.Eng., of R. Dobbins Engineering Inc.
2	Schedule A – Drainage Act Excerpts