



## 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:** June 8, 2021

**Report Number:** PWES-2021-14

**Subject:** Request to Consider Engineer's Report – Cyr Drain

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### Recommendations

It is recommended:

**That** the Report for the Reassessment of the Cyr Drain & Extension (Drain) as prepared by Mark Hernandez, P.Eng., of Dillon Consulting Ltd. (Dillon), dated March 17, 2021 (Drainage Report) **be received**;

**And that** consideration **be given** to the first and second readings of a Provisional By-law No. 2021-41 to adopt the Drainage Report in accordance with Section 42 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, July 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 Section 76 of the Act.

On March 12, 2019 Council accepted the recommendation by the Drainage Superintendent under Public Works & Environmental Services Report No. PWES-2019-11 and passed resolution (RCM-69/19) as follows:

That Dillon Consulting Limited (Dillon) be appointed Drainage Engineer to:

- i. Make a variation of the assessment schedule for maintenance and repair on the drainage works required to maintain the CYR Drain and Extension Outlet Drain; and
- ii. Prepare a Report in accordance with Section 76 of the Drainage Act.

An on-site meeting was held on January 22, 2020. A summary of this meeting is included in Schedule "A" of the Drainage Report.

In order to re-establish flow in the downstream portion of the Drain, located along County Road 22 (CR 22) from approximately Lesperance Road to Manning Road, the Town completed partial drain maintenance in August of 2020. The Town has been holding these costs until such time as a new Schedule of Assessment is adopted by Council in order to appropriately assess the costs to the affected lands.

On February 18, 2021 the Town received a copy of the draft report dated February 17, 2021 and scheduled a Public Information Center (PIC). Notices were sent to landowners for a virtual PIC to be held on March 5, 2021. Although not required under the Act, the Engineer and the Drainage Superintendent elected to conduct the PIC to allow landowners the opportunity to ask questions or present any concerns virtually before bringing the final report to Council for consideration and provisional adoption.

The March 5, 2021 virtual discussions with affected landowners resulted in the revision of the current watershed boundary to better reflect the overland flow of some farm parcels. During this PIC, the Drainage Superintendent discussed the current cost of the maintenance performed on the Drain, and the remaining work and related cost estimate to maintain the upper portion of the Drain, all of which will be assessed to landowners after the completion of the work. This adopted schedule will be used to assess the maintenance costs in the same ratios as depicted in the Schedule of Assessments.

On April 16, 2021, Dillon Consulting Ltd, filed a final report dated March 17, 2021 for the variation of assessment in accordance with Section 76 of the Act. On April 16, 2021, notices and a copy of the final report were sent to all affected landowners and agencies advising that a virtual Public Council Meeting to consider the Engineer's Report would be held on Tuesday, June 8, 2021 at 5:45pm.

The maintenance work completed in August of 2020 along the south side of CR 22 from Lesperance Road to Manning Road is currently being held in the cost center for the CYR Drain. Once adopted, the Town will use the new Schedule of Assessment to recover the costs to produce this report, the cost of the recent maintenance work and any future costs to complete necessary maintenance work on the Drain.

## Comments

The sections of the Act referenced within this report are attached to this Council Report as Attachment No. 3 entitled PWES-2021-14-Schedule A – Drainage Act Excerpts.

## **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 approved 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 for the appointment of an Engineer to vary assessments as well as approvals for the conducted maintenance works on the drain.

A response from ERCA was received by email, and the engineer was appointed by council after the 30-day requirement under Section 6(1) of the Act. The Town also applied for and received a permit for the maintenance work performed on the Drain that began on June 24, 2020.

The Town of Tecumseh conducted a self-assessment with respect to the Federal requirements of Fisheries and Oceans Canada (DFO). It has been determined that this project does not require a formal review by DFO as the Drain should not contain any aquatic species at risk or critical habitat. This does not eliminate the requirements under the Fisheries Act (R.S.O., 1985, c. F-14) to avoid causing the death of fish or harmful alteration, disruption or destruction of fish habitat by following best practices such as preventing the entry of deleterious substances in water, ensuring proper sediment control, and planning in water work respect to timing windows to protect fish. The resulting habitat impacts (if any) must be replaced with equivalent habitat features. If a Biologist is required, the cost of same becomes the responsibility of the proponent.

The Drain however, may contain significant species at risk (SAR) that may include plants, animals, and habitats. These species are protected under the provincial Endangered Species Act, 2007 (ESA). The Town sent notification of drain maintenance on June 17, 2020 and is in compliance through the Ministry of the Environment and Parks (MECP). The Town utilizes our Species at Risk Mitigation Plan registered 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 Ministry of Natural Resources and Forestry (MNRF) to the 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](mailto: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  
Dillon Consulting Ltd.

## **Financial Implications**

The Town of Tecumseh lands have been assessed a ratio of \$524 per \$15,000 estimated and assessed in the engineer's report for the cost to produce the report.

To date, and including the cost to produce this report, the Town has spent approximately \$43,000 which includes, the total estimated Engineering Fee's thus far as well as the 2020 maintenance work mentioned above.

The required maintenance on the Drain still requires the Town to complete maintenance on the upper portion of the drain consisting of brushing and excavation. The estimated cost for this future work may be approximately \$25,000 to \$30,000.

This translates to an estimated assessment to the Town of approximately \$2,375 to \$2,550 for the Outlet and Benefit Liability to Westlake Drive, Sylvestre Drive and the unopened portion of Gouin Street. Once all maintenance works are completed, a Levying By-Law will be presented to Council for the recovery of actual costs according to Section 61(1) of the Act.

Other than costs to administer the project, the cost of constructing the project is 100% recoverable by affected lands and roads including the Town's portion of land mentioned above and detailed in the Assessment Schedule included in the engineer's report dated March 17, 2021 as included in Attachment No. 1 entitled PWES 2021-14-Engineers Report – CYR Drain.

The Town will utilize the Lifecycle Reserve to pay for the Town's drainage assessment of approximately \$2,375 to \$2,550. The Lifecycle Reserve is included as Attachment No. 2 entitled PWES 2021-14-Lifecycle Reserve.

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:

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

Reviewed by:

John Henderson, P.Eng.  
Manager Engineering 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

Reviewed by:

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

Recommended by:

Margaret Misek-Evans, MCIP, RPP  
Chief Administrative Officer

<b>Attachment Number</b>	<b>Attachment Name</b>
1	PWES 2021-14- CYR Drainage Report dated March 17, 2021 by Mark Hernandez, P.Eng., of Dillon Consulting Ltd.
2	PWES 2021-14-Drain Lifecycle Reserve
3	PWES 2021-14- Schedule A – Drainage Act Excerpts