



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: October 12, 2021

Report Number: PWES- 2021-39

Subject: Request to Consider Engineer's Report – McLean-Hergott Drain

Recommendations

It is recommended:

That the Report and Specifications for the McLean-Hergott Drain (Drain) as prepared by Gerard Rood, P.Eng., of Rood Engineering Inc., dated August 25, 2021 (Drainage Report) **be received**;

And that consideration **be given** to first and second readings of Provisional By-law No. 2021-77 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 November 9, 2021 at 6:30pm 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 February 10, 2021, the Town of Tecumseh (Town) signed a "Notice of Request for the Repair and Improvement" for the addition of a fire hydrant access culvert over the Drain.

On May 25, 2021, Council accepted the recommendation by the Drainage Superintendent under Public Works & Environmental Services Report PWES-2021-27 titled "Request for Repair and Improvement to the McLean-Hergott Drain Appointment of Drainage Engineer" and passed resolution RCM 167-21 as follows:

That Rood Engineering Inc. (Rood) be approved Drainage Engineer to:

1. Make an examination of the McLean-Hergott Drain and drainage area as submitted by the Town in the "Notice of Request for Drain Improvement" dated February 10, 2021; and
2. Prepare a Drainage Report in accordance with Section 78 of the Drainage Act, including provisions for future maintenance of the Drain.

On July 9 2021, the Town held a virtual onsite meeting with affected landowners to inform them of the proposed culvert and to obtain their feedback. There were no concerns from the attendees regarding the addition of this culvert.

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

On April 16, 2021 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. The Town received a response from ERCA indicating that they do not expect any extraneous comments or concerns with respect to this project, but that the Engineer must ensure that the proposed works do not result in any adverse impacts to the level of service of the Drain and that no negative impacts upstream or downstream occur as a result of the culvert installation. Prior to undertaking the works, a permit is required.

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 with 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) 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 MNRF to the Ministry of 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

Financial Services
Rood Engineering Inc.

Financial Implications

The Town of Tecumseh does not have any affected lands or roads in this watershed and is not assessed in the current By-law 2016-13 for the Drain. However, the addition of this culvert, which is necessary to access the Town's infrastructure, introduces the Town to the assessment Schedule for this drain for the proposed works as well as future maintenance of same. Accordingly, the Town's Water Division is assessed for the estimated cost of \$37,000 for the engineer's report and the cost to install the culvert. The Engineer has also indicated that the Town is responsible for 98% of the cost of any future maintenance on the culvert with the remaining 2% assessed to all upstream landowners as Outlet Liability.

Other than the costs to administer the project, the cost of constructing the project is 100% assessed to the Town as detailed in the Assessment Schedule included in the engineer's report dated August 25, 2021.

These assessments will be funded from the Watermain Reserve Fund.

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:

Dana Reid
Clerk I Administrative Clerk

Reviewed by:

John Henderson, P.Eng.
Manager Engineering Services

Reviewed by:

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

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	Engineer's Report Prepared by Rood Engineering
2	Schedule A – Drainage Act Excerpts