



## 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:** July 13, 2021

**Report Number:** PWES- 2021-34

**Subject:** Request to Reconsider Engineer's Report – CYR Drain

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### Recommendations

It is recommended:

**That** the Reconsidered Drainage Report for the Reassessment of the CYR Drain & Extension (Drain) as prepared by Mark Hernandez, P.Eng., of Dillon Consulting Ltd. (Dillon), dated June 11, 2021 (Drainage Report) **be received**;

**And that** consideration **be given** to the first and second readings of 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, September 14, 2021 at 6:15 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 reconsideration 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 (Motion: RCM-69/19) as follows:

- 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 the Schedule "A" of the Drainage Report.

On February 18, 2021 the Town received a copy of the draft report dated February 17, 2021 and scheduled a 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.

On March 5, virtual discussions with affected landowners resulted in the revision of the current boundary of the watershed to better reflect the overland flow of some farm parcels. The Drainage Superintendent discussed the current cost of the maintenance performed on the drain and the remaining maintenance and cost that 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. 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.

At the June 8, 2021 Public Meeting of Council, after hearing that changes were required to the report as result of land severance in the affected drainage area, Council sent the Report back to the Engineer (Motion: PCM-20/21).

On June 11, 2021, Dillon Consulting Ltd. filed a final report dated June 11, 2021 for the reconsideration of the variation of assessment in accordance with Section 76 of the Act. Notices and a copy of the reconsidered report were sent to all affected landowners and agencies advising that a virtual Public Council Meeting to consider the Drainage Report would be held on July 13, 2021 at 5:45 pm.

## **Comments**

The sections of the Act referenced within this report are included in Schedule A, attached to this Council Report as Attachment 3 entitled PWES-2021-34 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 the ERCA was received by email, and the engineer was appointed by Council after the 30-day requirement under Section 6(1) of the Act. There is no permit required for the adoption of the report to vary the assessment under Section 76. The Town did however apply 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 the 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). 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 (MNR) 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

Based on an assumed project cost of \$15,000, the Town of Tecumseh lands would be assessed \$530 in accordance with the new assessment schedule included in the report. Therefore, the Town's assessment for future works on the Drain would be based on a ratio of \$530 per \$15,000.

Recently the Town has spent approximately \$43,000 on this Drain, which includes approximately \$20,000 in engineering fees related to the preparation of this report as well as approximately \$23,000 for the recently completed maintenance works mentioned above.

In order to complete the required maintenance on the Drain, the Town must still undertake maintenance on the upper portion of the Drain consisting of brushing and excavation. It is anticipated that the estimated cost for this future work may be approximately \$25,000.

This translates to an estimated assessable cost of approximately \$68,000. Based on an assessable cost of \$68,000, the Town's assessment would be approximately \$2,400 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.

The Town will utilize the Lifecycle Reserve to pay for the Town's drainage assessment. The Lifecycle Reserve is included as Attachment 2 entitled PWES 2021-14 Drain Lifecycle Reserve

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 June 11, 2021 as included in Attachment 1 entitled PWES 2021-14 Reconsidered Drainage Report for the Reassessment of the CYR Drain & Extension as prepared by Mark Hernandez, P.Eng. of Dillon Consulting, dated June 11, 2021.

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:

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:

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 2021-34 Reconsidered Drainage Report for the Reassessment of the CYR Drain & Extension as prepared by Mark Hernandez, P.Eng. of Dillon Consulting, dated June 11, 2021. |
| 2                        | PWES-2021-34 Drain Lifecycle Reserve   |
| 3                        | PWES-2021-34 Schedule A – Drainage Act Excerpts  |