



The Corporation of the Town of Tecumseh

Public Works & Engineering Services

To: Mayor and Members of Council

From: Phil Bartnik, Director Public Works & Engineering Services

Date to Council: November 14, 2023

Report Number: PWES-2023-72

Subject: Request to Appoint a Drainage Engineer – Malden Road East Drain

Recommendations

It is recommended:

That Oliver Moir, P.Eng., of Dillon Consulting Ltd. **be appointed** Drainage Engineer to make an examination of the Malden Road East Drain drainage area as submitted by the landowner (Roll No. 400000024000000) in the “Notice of Request for Drainage Improvement” dated July 23, 2019;

And that a Drainage Report **be prepared** in accordance with Section 78 of the *Drainage Act* (Act), including provisions for future maintenance.

Background

The purpose of this report is to provide a summary of the background and other information to assist Council in appointing an engineer to examine the drainage area on the Malden Road East Drain (Drain).

The Drain is located on the east side of Malden Road with its upper limit located on the south side of South Talbot Road and its outlet into Pike Creek (refer to Attachment 1).

Comments

The “Notice of Request for Drain Improvement” was submitted on July 23, 2019, from the landowner with Roll No. 4000000024000000. N.J. Peralta Engineering Ltd. (Peralta) was

appointed Drainage Engineer at the September 10, 2019, Regular Council meeting to examine the Drain and prepare a drainage report.

The Drainage Superintendent and Peralta have met on-site and examined the condition of the Drain. They concluded that the Drain needed to be cleaned out and brushed, which could be performed under maintenance. Since the last report for the Drain was completed in 1980, it was determined that a new maintenance schedule is required.

Peralta initially recommended preparing an updated maintenance schedule under Section 76 of the Act, along with maintenance to be undertaken under Section 74 of the Act. After further review, however, it was discovered that the 1980 report lacked future maintenance specifications for culvert replacements. Administration concluded that a Section 78 report would be the best path forward to address the outdated maintenance schedule and lack of specifications for culvert replacements.

Peralta is an experienced engineering firm with one of its specialties being municipal drainage. At the present time, however, there is a very small number of engineering firms that work on municipal drainage. As a result, there is limited capacity within the drainage industry and it is not uncommon for drainage reports to take years to complete. Due to staffing changes, Peralta recently notified Administration that they did not have the capacity to complete a Section 78 report in the near future and further advised that they had no objection to the project being appointed to another engineer to allow the drainage needs of the affected lands to be addressed in a timely manner. Following these discussions, Administration contacted Dillon Consulting Ltd. (Dillon) who advised they would accept the appointment.

Legislation

The sections of the Act referenced within this report are included in Schedule A, which is attached to this Council Report as Attachment 2.

Required Approvals

On July 23, 2019, the Town sent notification to the Essex Region Conservation Authority (ERCA) that the Town received a request for the repair and improvement of the Drain.

The Town will be required to conduct a self-assessment with respect to the requirements of the Department of Fisheries and Oceans Canada (DFO) to determine if this project will require a formal review by DFO for issues related to the federal Fisheries Act and/or the federal Species at Risk Act.

The Drain may contain significant species (aquatic species at risk (SAR) as well as plants, animals, habitat, etc.) that are protected under the provincial Endangered Species Act (ESA). As of April 1, 2019, the administration of the ESA transitioned responsibility from the Ministry of Natural Resources and Forestry (MNRF) to the Ministry of Environment, Conservation and Parks (MECP). Though the responsibility has transitioned to the MECP, the Town's Species-At-Risk (SAR) Mitigation plan continues to comply 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. Annual reports may be requested by the MECP.

Appointment of Engineer

It is recommended that Oliver Moir, P.Eng. of Dillon Consulting Ltd. be appointed Drainage Engineer to the Drain to produce an updated report for the Drain that will include the watershed boundary, plans and profiles, and updated future maintenance assessment schedules. Administration has notified Peralta that they would be appointing another Drainage Engineer to which they had no objection.

Dillon is aware of the history of the request and will look to complete their work on the Drain expeditiously. Administration has asked Peralta to submit previous notes and documentation for the Drain for Dillon to refer to.

Consultations

Dillon Consulting Ltd.
N.J. Peralta Engineering Ltd.

Financial Implications

There are no financial implications associated with this report.

The Engineer's Report shall assess for Special Benefit, Benefit and Outlet Liability. A schedule of assessment is to be contained in the report which details in separate columns, the sums assessed for each parcel of land/utility liable for drainage assessments under the Act.

Link to Strategic Priorities

Applicable	2023-2026 Strategic Priorities
<input checked="" type="checkbox"/>	Sustainable Growth: Achieve prosperity and a livable community through sustainable growth.
<input type="checkbox"/>	Community Health and Inclusion: Integrate community health and inclusion into our places and spaces and everything we do.
<input type="checkbox"/>	Service Experience: Enhance the experience of Team Tecumseh and our citizens through responsive and respectful service.

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:

Alessia Mussio, E.I.T.
Drainage Superintendent

Reviewed by:

John Henderson, P.Eng.
Manager Engineering Services

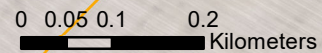
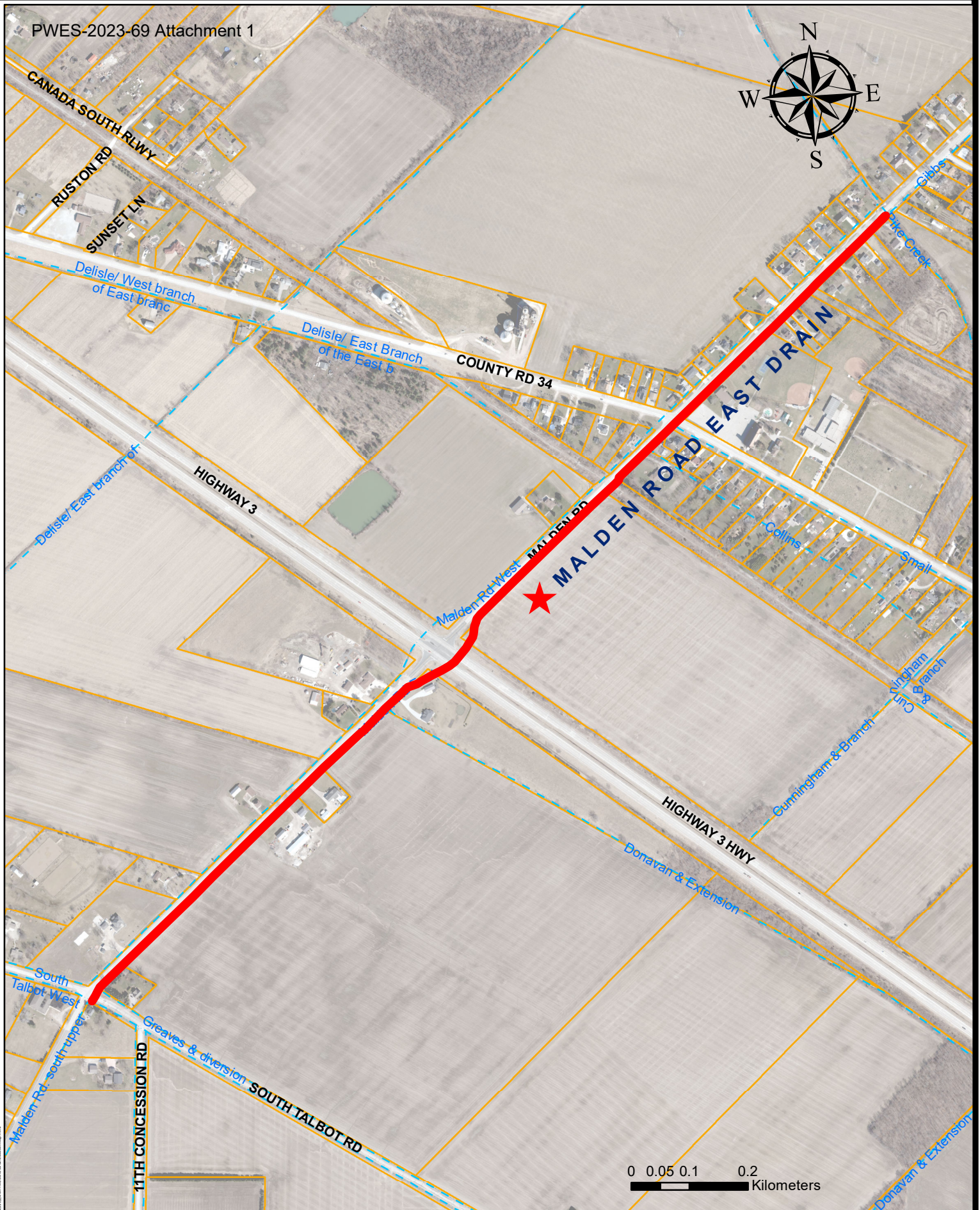
Reviewed by:

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

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	Malden Road East Drain Map
2	Schedule A – Drainage Act Excerpts



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DISCLAIMER
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TOWN OF Tecumseh
ONTARIO - CANADA

Work Done:
Author: Jell
HJK
Date: 2023-09-21
Scale: See Scale

TOWN OF TECUMSEH
LOCATION MAP
MALDEN RD. EAST DRAIN

PROJECT No.
SHEET No.
1 of 1

Legislation

Petition

4 (1) A petition for the drainage by means of a drainage works of an area requiring drainage as described in the petition may be filed with the clerk of the local municipality in which the area is situate by,

- (a) the majority in number of the owners, as shown by the last revised assessment roll of lands in the area, including the owners of any roads in the area;
- (b) the owner or owners, as shown by the last revised assessment roll, of lands in the area representing at least 60 per cent of the hectarage in the area;
- (c) where a drainage works is required for a road or part thereof, the engineer, road superintendent or person having jurisdiction over such road or part, despite subsection 61 (5);
- (d) where a drainage works is required for the drainage of lands used for agricultural purposes, the Director. R.S.O. 1990, c. D.17, s. 4 (1).

Form of petition

(2) A petition under subsection (1) shall be in the form prescribed by the regulations and, where it is filed by an owner or owners under clause (1) (a) or (b), shall be signed by such owner or owners. R.S.O. 1990, c. D.17, s. 4 (2).

Petition where area lies on each side of boundary line

(3) Where it is desired to construct a drainage works for the drainage of an area composed of lands or roads lying on each side of a boundary line between two or more local municipalities, the council of any of them may proceed upon a petition as required by this Act in all respects, including the sending of notices, as if such area were entirely within the limits of the municipality. R.S.O. 1990, c. D.17, s. 4 (3).

Person deemed owner

(4) Where a person who is the owner of land, but does not appear by the last revised assessment roll of the municipality to be the owner, is a petitioner, the person shall be deemed an owner if the person's ownership is proved to the satisfaction of the clerk, and, if the person who appears by the assessment roll to be the owner is a petitioner, the person's name shall be disregarded in determining the sufficiency of the petition. R.S.O. 1990, c. D.17, s. 4 (4).

Persons jointly assessed

(5) Where two or more persons are jointly assessed for a property, in determining the sufficiency of a petition, they shall be deemed to be one owner. R.S.O. 1990, c. D.17, s. 4 (5).

Section 25(1) – Engineer may assess a block, etc.

The council of the local municipality may direct the engineer to assess as a block, a

built-up area designated by the council, and the sum assessed therefor may be levied against all the ratable properties in the designated area proportionately on the basis of the assessed value of the land and buildings.

Section 25(2) – Assessments to be charged against public roads

Where the engineer makes a block assessment under subsection (1), the engineer shall designate the proportion of the assessment to be charged against the public roads in the designated area.

Section 26 – Increased cost, how borne

In addition to all other sums lawfully assessed against the property of a public utility or road authority under this Act, and despite the fact that the public utility or road authority is not otherwise assessable under this Act, the public utility or road authority shall be assessed for and shall pay all the increase of cost of such drainage works caused by the existence of the works of the public utility or road authority.

Section 41(1) – Notice of drainage works

Upon the filing of the engineer's report, the council of the initiating municipality, if it intends to proceed with the drainage works, shall, within thirty days of the filing of the report, cause the clerk of the initiating municipality to send a copy of the report and a notice stating,

- 1) the date of the filing of the report;
- 2) the name or other designation of the drainage works; and
- 3) the date of the council meeting at which the report will be considered, to;
 - a) the owners, in the initiating municipality, as shown by the last revised assessment roll to be the owners of lands and roads assessed for the drainage works or for which compensation or other allowances have been provided in the report;
 - b) the clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situate;
 - c) the secretary-treasurer of each conservation authority that has jurisdiction over any land affected by the report;
 - d) any railway company, public utility or road authority affected by the report, other than by way of assessment;
 - e) the Minister of Natural Resources where land under his or her jurisdiction may be affected by the report; and
 - f) the Director.

Section 41(3) – Copy of report not required

Despite subsections (1) and (2), where a block assessment is made, the notice to the owners of the lands so assessed need not be accompanied by a copy of the report.

Section 41(3.1) – Same

Despite subsections (1) and (2), the council of a local municipality is not required to send a copy of the report to owners of lands and roads assessed for a sum of less than \$100.

Section 42 – Consideration of report

The council of the initiating municipality at the meeting mentioned in section 41 shall consider the report, and, where the drainage works is requested on petition, shall give an opportunity to any person who has signed the petition to withdraw from it by filing a signed withdrawal with the clerk and shall also give those present owning lands within the area requiring drainage who have not signed the petition an opportunity to do so, and should any of the lands or roads owned by the municipality within the area requiring drainage as described in the petition be assessed, the council may by resolution authorize the head of the municipality to sign the petition for the municipality, and such signature counts as that of one person in favour of the petition.

Section 48(1) – Appeal to Tribunal

Any owner of land or any public utility affected by a drainage works, if dissatisfied with the report of the engineer on the ground that,

- (a) The benefits to be derived from the drainage works are not commensurate with the estimated cost thereof;
- (b) The drainage works should be modified on grounds to be stated;
- (c) The compensation or allowances provided by the engineer are inadequate or excessive;
- (d) The engineer has reported that the drainage works is not required, or is impractical, or cannot be constructed, may appeal to the Tribunal, and in every case a notice of appeal shall be served within 40 days after the sending of the notices under Section 40 or subsection 46(2), as the case may be.

Section 54(1) – Appeal to Tribunal

Any party to an appeal before the court of revision may appeal to the Tribunal by giving notice addressed to the clerk of the Tribunal, given to the clerk of the initiating municipality, from the decision of the court of revision or from its omission, neglect or refusal to hear or decide an appeal within twenty-one days of the pronouncement of the decision of the court of revision or of any matter evidencing such omission, neglect or refusal.

Section 57 – Referral back to engineer

The council of the initiating municipality, at any time before passing the by-law, if it appears that there are or may be errors in the report of the engineer or that for any other reason the report should be reconsidered, may refer the report back to the engineer for reconsideration, and the engineer shall thereupon reconsider the report and shall further report to the council, which report has the same effect and shall be dealt with in the same manner and the proceedings thereon shall be the same as upon the original report.

Section 61(1) – Imposition of special assessment

The council of each local municipality that is required to raise the whole or any part of the cost of the drainage works shall by by-law impose upon the land assessed for the drainage works the assessment with which it is chargeable, and the amount so imposed is payable in such instalments as the council may prescribe.

Section 61(2) – Commutation of special assessment

The council of any local municipality may provide that persons whose lands are assessed may commute for a payment in cash the assessments imposed thereon and may prescribe the terms and conditions thereof.

Section 61(3) – Assessments of \$50 or less

Where the assessment against any parcel of land is \$50 or less, the council of the local municipality may that the assessment shall be paid out of the general funds of the municipality or that the assessment shall be paid in the first year in which the assessment is imposed upon the land assessed.

Section 65(1) – Subsequent subdivision of land

If, after the final revision of an engineer's assessment of land for a drainage works, the land is divided by a change in ownership of any part, the clerk of the local municipality in which the land is situate shall instruct an engineer in writing to apportion the assessment among the parts into which the land was divided, taking into account the part of the land affected by the drainage works.

Section 65(2) – Agreement on share of assessment

If the owners of the subdivided land mutually agree on the share of the drainage assessment that each should pay, they may enter into a written agreement and file it with the clerk of the local municipality and, if the agreement is approved by the council by resolution, no engineer need be instructed under subsection (1).

Section 65(3) – Subsequent connection to drainage works, etc.

If an owner of land that is not assessed for a drainage works subsequently connects the land with the drainage works for the purpose of drainage, or if the nature or extent of the use of a drainage works by land assessed for the drainage works is subsequently altered, the clerk of the local municipality in which the land is situate shall instruct an engineer in writing to inspect the land and assess it for a just proportion of the drainage works, taking into account any compensation paid to the owner of the land in respect of the drainage works.

Section 65(4) – Subsequent disconnection from drainage works

If an owner of land that is assessed for a drainage works subsequently disconnects the land from the drainage works, the clerk of the local municipality in which the land is situate shall instruct an engineer in writing to inspect the land and determine the amount by which the assessment of the land should change.

Section 65(5) – Restriction on connection or disconnection

No person shall connect to or disconnect from drainage works without the approval of the council of the municipality.

Section 65(6) – Notice of instructions

The clerk of the local municipality shall send a copy of the instructions mentioned in subsection (1), (3) or (4) to the owners of the affected lands as soon as reasonably possible.

Section 65(7) – Engineer’s assessment

An engineer who prepares an assessment pursuant to instructions received under subsection (1), (3) or (4) shall file the assessment with the clerk of the local municipality.

Section 65(8) – Notice of assessment

The clerk of the local municipality shall attach the engineer’s assessment to the original assessment and send a copy of both to the owners of the affected lands.

Section 65(9) – Assessment binding

Subject to subsection (11), the engineer’s assessment is binding on the assessed land.

Section 65(10) – Costs

The costs of the assessment, including the fees of the engineer, shall be paid by the owners of the lands in the proportion fixed by the engineer or, on appeal, by the Tribunal, and subsection 61(4) applies to these costs.

Section 65(11) – Appeal of assessment

If the engineer’s assessment is for an amount greater than \$500, the owner of the land may appeal to the Tribunal within 40 days after the date the clerk sends a copy of the assessment to the owner.

Section 65(12) – Use of amount collected

Any amount collected under subsection (3) shall be credited to the account of the drainage works and shall be used only for the improvement, maintenance or repair of the whole or any part of the drainage works.

Section 76(1) - Varying original assessments for maintenance

The Council of any local municipality liable for contribution to a drainage works in connection with which conditions have changed or circumstances have arisen such as to justify a variation of the assessment for maintenance and repair of the drainage works may make an application to the Tribunal, of which notice has been given to the head of every other municipality affected by the drainage works, for permission to procure a report of an engineer to vary the assessment, and, in the event of such permission being given, such council may appoint an engineer for such purpose and may adopt the report but, if all the lands and roads assessed or intended to be assessed lie within the limits of one local municipality, the council of that municipality may procure and adopt such report without such permission.

Section 76(2) – Proceedings on report of engineer

The proceedings upon such report, excepting appeals, shall be the same, as nearly as may be, as upon the report for construction of the drainage works.

Section 76(3) – Appeal from report of engineer

Any council served with a copy of such report may, within 45 days of such service, appeal to the Tribunal from the finding of the engineer as to the portion of the cost of the drainage works for which the municipality is liable.

Section 76(4) – Appeal from assessment

Any owner of land assessed for maintenance or repair may appeal from the assessment in the report on the grounds and in the manner provided by Section 52 in the case of the construction of the drainage works.

Section 76(5) – Basis of future assessments

An assessment determined under this section shall thereafter, until it is further varied, form the basis of any assessment for maintenance or repair of the drainage works affected thereby.

Section 78(1) – Improving, upon examination and report of engineer

If a drainage works has been constructed under a by-law passed under this Act or any predecessor of this Act, and the council of the municipality that is responsible for maintaining and repairing the drainage works considers it appropriate to undertake one or more of the major improvement projects listed in subsection (1.1) for the better use, maintenance or repair of the drainage works or of lands or roads, the municipality may undertake and complete the project in accordance with the report of an engineer appointed by it and without the petition required by section 4. 2010, c.16, Sched. 1, s. 2 (27); 2020, c. 18, Sched. 4, s. 9 (1).

Section 78(1.1) – Projects

The projects referred to in subsections (1) are:

- 1) 1. Changing the course of the drainage works.
- 2) 2. Making a new outlet for the whole or any part of the drainage works.
- 3) 3. Constructing a tile drain under the bed of the whole or any part of the drainage works.
- 4) 4. Constructing, reconstructing or extending embankments, walls, dykes, dams, reservoirs, bridges, pumping stations or other protective works in connection with the drainage works.
- 5) 5. Extending the drainage works to an outlet.
- 6) 5.1 Improving or altering the drainage works if the drainage works is located on more than one property.
- 7) 6. Covering all or part of the drainage works.
- 8) 7. Consolidating two or more drainage works.
- 9) 8. Any other activity to improve the drainage works, other than an activity prescribed by the Minister as a minor improvement. 2010, c. 16, Sched. 1, s. 2 (27); 2020, c. 18, Sched. 4, s. 9 (2-4).

Section 78(2) – Notice to conservation authority

2) An engineer shall not be appointed under subsection (1) until 30 days after a notice has been sent to the following persons advising them of the municipality's intent to undertake the major improvement project:

1. The secretary-treasurer of each conservation authority that has jurisdiction over any lands that would be affected by the project.
2. The prescribed persons. 2020, c. 18, Sched. 4, s. 9 (5).

Section 78(3) – Powers and duties of engineer

(3) The engineer has all the powers and shall perform all the duties of an engineer appointed with respect to the construction of a drainage works under this Act. R.S.O. 1990, c. D.17, s. 78 (3).

Section 78(4) – Proceedings

(4) All proceedings, including appeals, under this section shall be the same as on a report for the construction of a drainage works. R.S.O. 1990, c. D.17, s. 78 (4).

Minor improvements to drainage works

(5) Despite subsections (2) to (4), the Minister may prescribe the process for approving minor improvements to a drainage works mentioned in paragraph 8 of subsection (1.1). 2020, c. 18, Sched. 4, s. 9 (6).

AMENDMENTS TO ENGINEER'S REPORT

84.1 (1) This section applies with respect to engineer's reports that are prepared for the purpose of a petition under section 4 or for the purpose of section 78 and that are adopted by a municipal by-law. 2020, c. 18, Sched. 4, s. 10.

Approval process

(2) The Minister may, by regulation, set out the process by which the engineer's report may be amended and the process by which those amendments are to be approved. 2020, c. 18, Sched. 4, s. 10.

Section Amendments with date in force (28/09/2021)