



Council Date October 2/13

Item # 9.1

Action Taken

Resolution #

TOWN OF INNISFIL STAFF REPORT

STAFF REPORT NO: DSR-166-13
DATE: October 2, 2013
TO: Mayor, Deputy Mayor and Members of Council
FROM: Andrew Campbell, Director of Infrastructure
SUBJECT: South Innisfil Creek Drain Engineer's Report

RECOMMENDATION:

THAT Council receive the Engineer's Report "Final Drainage Report for the South Innisfil Creek Drain and Branches" dated August 15, 2013; and

THAT Council adopt the Engineer's Report and give notice as required under Section 46 of the *Drainage Act* that the first sitting of the court of revision will take place at the Town Hall on November 13, 2013; and

That Council approves the issuance of ten year debentures for the unpaid portion of the private property owner share of the works with interest rates to be recovered equal to the Town's cost of borrowing at the time of debt issuance; and

That Council approve the \$400,600 in legal costs previously incurred be funded from the capital reserve fund and not be recovered as part of the drainage works costs to be assessed to individual property owners; and

That By-Law 102-13 be adopted to give effect to this recommendation.

BACKGROUND:

On March 31, 2005 an order by the Court of the Drainage Referee of Ontario was issued that the Town appoint an engineer pursuant to Section 78 of the Ontario Drainage Act for the repairs to the South Innisfil Drain. The Town appointed the engineering firm Dillon Consulting Limited as "Engineers" to prepare and complete the study.

A meeting with the landowners was held on August 3, 2005 at the Community Centre in Stroud to discuss the court order and required study.

A preliminary report was submitted to the Drainage Referee on July 24, 2006. On August 31, 2006 the Ontario Superior Court of Justice (Court File No. 04-B7552), in a matter of an appeal before the Drainage Referee, ordered:

1. It is therefore ordered that the Municipality retain the engineering firm of Dillon Consulting to prepare a complete drainage report adopting Option Number 1 and Option Number 3 of the preliminary report, a full assessment schedule and an allowance schedule is to be incorporated therein;
2. That the Municipality conduct a meeting of the Council to consider the report and provide appeals by assessed owners only with respect to assessment and allowances; and
3. With respect to the issue of legal costs the Drainage Referee is prepared to address the issue only after receiving written submissions from legal counsel.

In January 2007 Council received a report with information related to concerns from the Innisfil Resident Advocacy Committee. Council further adopted a second report in January 2008 retaining legal counsel for the file.

On August 15, 2013 Dillon Consulting filed the Engineer's Report with the Town. Subsequently on September 19, 2013 Clerk's Services sent a copy of the report, notification of a Public Information meeting on September 25, 2013 and notification that Council would be considering the Engineer's Report on October 2, 2013 to all parties as required under Section 41 of the Drainage Act.

ANALYSIS/CONSIDERATION:

The Engineer, Dillon Consulting, has prepared its report; "Final Drainage Report for the South Innisfil Creek Drain and Branches" dated August 15, 2013 (see Attachment 1).

The Engineer's report provides the technical design and cost estimates for the drain as well as any culverts or bridges associated with the work. A summary of the construction costs and cost recovery through property tax assessments for the work are in Table 1 and Table 2 respectively.

Table 1 – Estimated Costs

Item	Cost
South Innisfil Main Drain	\$3,628,378
Overflow Area 1	956,160
Overflow Area 3	1,304,910
Hnydczak Outlet Relief Drain	82,330
3 rd Line Branch Drain	363,340
3 rd Line Branch Drain Spur	59,200
10 Sideroad Branch Drain	<u>305,348</u>
Total	\$6,699,666

Table 2 – Estimated Cost Recovery

Group	Cost	Percentage
Town of Innisfil	\$525,175.00	9%
County of Simcoe	753,185.00	11%
Province of Ontario	566,683.00	8%
Agricultural Land Owners *Note 1	3,163,422.50	47%
Non-agricultural Land Owners	1,501,610.50	22%
Section 26 – Non pro-ratable**Note 2	<u>189,590.00</u>	<u>3%</u>
Total	\$6,699,666.00	100%

**Note 1 – These landowners are eligible for 1/3 grant funding from OMAFRA*

***Note 2 – To be paid by the Town of Innisfil*

In addition, the Town has incurred \$400,600 in legal costs that are not included in Tables 1 and 2. Council has the option to increase the assessed costs by this amount and or to fund these legal costs separately, subject to direction from the Drainage Referee. Staff recommend that these costs be funded from the Capital Reserve Fund so as not to increase the assessment to the affected properties.

The Town must undertake the works described in the Engineer's report as previously ordered by the Drainage Referee. The work should be completed in a timely manner to mitigate potential property damage in the event of a storm or runoff event. Completion of this project will not eliminate potential property damage as the design is to handle a 1 in 2-year storm only as required by the Act. Subdivision development is designed for a 1 in 100 year storm event by comparison. Staff propose that the works be started in 2014 and completed in 2015. Some of the construction can only occur in June to October due to the Nottawasaga Valley Conservation Authority requirements.

Staff have reviewed the Engineer's Report and recommend that Council adopt it.

Next Steps:

The Drainage Act and the Court Order require the following as a result of Council adopting the Engineer's report:

- That Council, within 30 days of the adoption of the Engineer's Report send a copy of the By-law and a notice of the time and place of the first sitting of the Court of Revision, to each person entitled to notice under Section 41 of the Act and shall inform each owner that the owner may appeal the owner's assessment to the Court of Revision by a notice given to the clerk not later than 10 days prior to the first sitting of the Court of Revision as per Section 46 of the Act.
- The Court of Revision will hear any appeals commencing November 13, 2013.

- Land owners may appeal from the order of the Court of Revision to the Referee or Tribunal only with respect to the calculation of the assessment and allowances.
- After the time for appealing has expired and there are no appeals or after all appeals have been decided, Council may pass the by-law authorizing the construction of the drainage works.
- Construction should not begin until at least 10 days have passed after the by-law has been adopted.

OPTIONS/ALTERNATIVES:

1. Council could choose to fund a portion of the costs noted in Table 2 that are not directly attributable to the Town's share of the works to reduce the assessments to landowners.
 - If this option was selected the additional transfer of financial costs would be borne by all property tax payers through increased taxation and/or use of reserves set aside from taxation.
2. Council could choose not to debt finance the unpaid portion of the private property owners share and require full payment from them at the time of completion of the works leaving them to secure their own financing if required.
 - This option could result in taxpayers facing undue financial burden as the Town can usually obtain long term debt financing at lower rates than the private property owner can obtain. Additionally, the property owner could be faced with having the entire amount added to their property tax account placing them at a 1.25% monthly charge if they do not obtain their own financing plus adding to cashflow issues for the Town from unpaid taxes.
3. Council could choose to amortize any debt that is required to be issued over a period ranging from 5 to 20 years.
 - Depending on the term chosen, the interest carrying costs for the property owner will increase as longer term rates are higher plus the principal repayment is lower each year. This also impacts the Town's long term debt capacity in that the longer the term, the longer the Town has to wait until that borrowing capacity is available for other uses.
4. Council could choose to provide a reduction to the financing charges component to assist property owners with the carrying costs of the works.
 - This option would result in a cost to the Town that would need to be funded through an increase in property tax rates to offset the debt servicing costs not recovered each year from the respective property owners.

FINANCIAL CONSIDERATION:

The cost and recovery for this project is itemized in Tables 1 and 2. A complete listing of the assessment of costs is contained in Schedules C, C1, C2, C3, C4, C5 and C6 of the Engineer's Report. These assessments are based on the estimated costs and the Schedules will be updated after the completion of the project using the actual construction costs for assessment purposes.

The construction is currently planned to be undertaken in 2014 with completion in 2015. A total of \$5,927,695 has been previously included in the 2012 & 2013 capital budgets with the remaining amount included in the 2014 draft budget.

Debt financing is expected to be required for the unpaid portion of the private property owner's share at the time final costs and assessments have been made excluding those costs attributable to the County of Simcoe and the Province of Ontario as the Town should not be debt financing for senior levels of government. The term of the amortization period for the debt is recommended to be no longer than 10 years to minimize borrowing costs for the property owner as well as ensuring debt capacity is returned to the Town in a reasonable period of time.

The property owner will be responsible for the principal associated with their share of the assessed costs plus interest if they do not pay in full or in part at the time the final assessment is provided to them. Debenture repayment requirements issued for a ten year amortization period would be added to the property tax bill until the debt is fully retired. The amount remains with the property, not the owner, and is automatically transferred should there become a new owner. Since the Town is obligated for the full 10 year term, any payout of individual amounts owing will represent the full balance of principal and interest owing to maturity, no discount for early payment will be provided.

Currently the ten year debenture rate with Infrastructure Ontario is approximately 3.5% but the rate charged to the property owner would be the rate in effect at the time the Town issues the debenture. Subject to any options Council may consider, the debt repayment each year would be offset by an equal charge on the property owner tax bill.

The Town portion of the costs as assessed would be \$714,765 plus the \$400,600 in legal costs, if Council chooses to fund this cost, for a total of \$1,115,365 to be funded from capital reserves. Any additional costs that Council may chose to fund to reduce the assessments to each property owner and/or reductions in interest would need to be quantified and a funding mechanism decided upon (e.g. use reserves if a cost reduction, include in annual budget if an interest reduction).

Assessed land owners who do not pay the assessed amounts would have the costs added to their taxes.

CONCLUSION:

The Engineers, Dillon Consulting, has completed the study for the South Innisfil Drain. The Drainage Act requires a public appeal process to be undertaken before final approval of the construction works. Pending the outcome of this appeal process the Town would undertake the work in 2014 and 2015 to mitigate potential property damage due to storm and runoff events.

PREPARED BY:

Andrew Campbell,
Director of Infrastructure

Reference:

Final Drainage Report for the South Innisfil Creek Drain & Branches, August 15, 2013, prepared by Dillon Consulting Ltd.