



TOWN OF INNISFIL STAFF REPORT

Staff Report No.: DSR-018-19
Date: February 13, 2019
To: Mayor, Deputy Mayor and Members of Council
From: Jason Inwood, Strategic Leader, Operations
Jeremy Nyenhuis, Drainage Superintendent
Subject: Filing of the Final Engineer's Report for the
South Innisfil Creek Drain 2019 Improvement

RECOMMENDATION:

That the Final Engineer's Report filed on February 13, 2019 by R.J. Burnside and Associates Limited for the South Innisfil Creek Drain 2019 Improvement be received; and

That Council, under Section 41(1) of *the Drainage Act*, confirm their intention to proceed with the drainage works as per the Ontario Drainage Referee's Order; and

That the Final Engineer's Report for the South Innisfil Creek Drain 2019 Improvement be considered at the Council meeting on February 27, 2019 at 7:00 p.m.; and

That Council instruct the Clerk to send a copy of the Final Engineer's Report for the South Innisfil Creek Drain 2019 Improvement and Notice for the Meeting to Consider the Engineer's Report to all indicated under Section 41(1) & (2) of *the Drainage Act*.

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 Drainage Act* for the repairs to the South Innisfil Creek Drain. Pursuant to the Order, the Town appointed Dillon Consulting Limited as "Engineers" to prepare, complete and file a preliminary report and a final report in accordance to Section 78 of *the Drainage Act* to "improve" the South Innisfil Creek Drain, in particular, to address concerns with flooding in the area know as the "market garden" which is adjacent to the drain.

On February 24, 2006 a preliminary report was submitted by Dillon Consulting Limited to the Town outlining 3 options or solutions as indicated in the Referee's Order. On July 24, 2006 the report was presented to the Ontario Drainage Referee. 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 Limited 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; and
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.

On August 15, 2013 Dillon Consulting Limited filed the Final Engineer's Report with the Town based on the observations and recommendations in the preliminary report. The recommended works also included the Order(s) by the Ontario Drainage Referee contained in Court File No. 04-B7552. Subsequently on September 19, 2013 Clerk's Services send a copy of the Engineer's 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*.

At the Meeting to Consider the Report, Council deferred the Final Engineer's Report and directed staff to commence an application to the Ontario Drainage Referee for reconsideration, clarification and direction.

On November 4, 2014 the Ontario Drainage Referee issued a subsequent Order giving specific direction to the Town that it was no longer bound by the March 31, 2005 Order and that it was to retain the services of an engineer to review the August 15, 2013 Engineer's Report and to suggest alternative to alleviate the flooding.

In May 2015 Council Resolution CR-094-06.15 directed staff to proceed with a two-phase peer review the Dillon Report. Staff obtained the services of R.J. Burnside & Associates Limited to complete the review.

On January 6, 2016 Council received R.J. Burnside & Associates Limited two-phase peer review and directed staff to refer the phase one and phase two peer review reports to Dillon Consulting Limited for consideration in the final report and to provide a proposal to the Town for consideration in making the recommended changes to the final deferred report.

In a response dated January 15, 2016 Dillon Consulting Limited indicated that they currently do not have available qualified staff to commit to this project as a key individual recently involved in this assignment is currently on leave and is not in a position to assist with this undertaking.

Therefore, on April 20, 2016 Council passed resolution CR 083-05.16 appointing R.J. Burnside & Associates Limited as the "Engineer" to prepare a Drainage Improvement Report on the South Innisfil Creek Drain in accordance with Section 78 of *the Drainage Act*.

In accordance to Section 78 of *the Drainage Act*, Jeff Dickson, P.Eng., Drainage Engineer for R.J. Burnside & Associates Limited plans to file, on February 13, 2019, with the Clerk of the Town of Innisfil the Final Engineer's Report for the South Innisfil Creek Drain 2019 Improvement.

This staff report has been prepared to confirm Council's intention to proceed with the drainage works and to implement steps outlined in Section 41 of *the Drainage Act*.

ANALYSIS/CONSIDERATION:

As outlined in Section 41 of the *Drainage Act*;

“41(1) 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,

- a) the date of the filing of the report;
- b) the name or other designation of the drainage works; and
- c) the date of the **council** meeting at which the report will be considered,
to
- d) 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;
- e) 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;
- f) the secretary-treasurer of each **conservation authority** that has jurisdiction over any land affected by the report;
- g) any railway company, public utility or road authority affected by the report, other than by way of assessment;
- h) the **Minister of Natural Resources** where land under his or her jurisdiction may be affected by the report; and
- i) the **Director**.

41(2) 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 shall send within thirty days of the sending of the last notice under subsection (1) a copy of the report and notice to the **owners**, as shown by the last revised assessment roll to be the **owners** of the lands and roads in such municipality assessed for the drainage works, or for which compensation or other allowances has been provided in the report stating,

- a) the date of the filing of the report;
- b) the name or other designation of the drainage works; and
- c) the date of the **council** meeting of the initiating municipality at which the report will be considered.”

As outlined in Section 41(1) of the *Drainage Act*, it is Council’s responsibility to indicate their intent to proceed with the drainage works. Due to the Ontario Drainage Referee’s orders, it is staffs understanding that Council must continue with this process and instruct the Clerk to send out the notice to those indicated in Section 41 of the *Drainage Act*.

In Section 41(2) of *the Drainage Act*, the Clerk of the local municipalities (Town of Bradford West Gwillimbury) shall send the notice to all owners of lands and roads within their municipalities. Recent discussions with the Clerk and Town staff at the Town of Bradford West Gwillimbury concluded that the Clerk from the Town of Innisfil would send out all notices to landowners within both municipalities in order to ensure the dates for all mailings and to streamline the mailing process.

Timeline - Next Steps:

As the Town of Innisfil will be completing all the mailings of the notices for both municipalities, below is a timeline for a drainage works from the filing of the report to the adoption of the report below. The orange boxes are steps/actions required under *the Drainage Act*. The blue boxes outline the required next step for Council/Staff to complete, within the designated timeframe, in *the Drainage Act* process.

1. Report Filed by Engineer	2. Report and Notice of Meeting Sent	3. Meeting to Consider Report	4. Provisional By-law and Notice of COR Sent Out		5. All Appeals Finalized	
Within 30 days, a copy of the report and notice of a meeting to consider the report must be sent out [S. 41(2)]	Meeting must not be less than 10 days after the last mailing [S. 41(4)]	After provisional adoption of the by-law, a copy of the by-law and a notice of the Court of Revision (COR) must be sent out within 30 days [S. 46(2)]	<p>DRAINAGE REFEREE: Any owner of land or public utility can file an appeal to the Drainage Referee on the grounds that the report does not comply with the Act, within 40 days of mailing. [S. 47(1)]</p> <p>COURT OF REVISION: Any owner of land who has assessment complaints can appeal to the COR; appeals must be filed at least 10 days before the COR [S. 52]</p> <p>DRAINAGE TRIBUNAL: Any owner of land, public utility or Conservation Authority may file an appeal to the Drainage Tribunal on technical grounds, within 40 days of mailing. [S. 48(1) and S. 49]</p>	<p>The COR must be held between 20 and 30 days after the notice is sent [S. 46(3)]</p> <p>After the COR decision is given, appellants can appeal this decision to the Tribunal within 21 days [S. 54(1)]</p>	<p>If an appeal is filed, a Referee hearing is held and a decision is made.</p> <p>If an appeal is filed, a Tribunal will hear the appeal and decide.</p> <p>If an appeal is filed, a Tribunal hearing is held and a decision is made.</p>	After all appeals have been heard and dealt with, Council can give third reading to the by-law. [S. 58(1)]
REPORT CONSIDERATION STAGE			APPEALS STAGE		ADOPTION STAGE	

As can be seen, the filing of the report has started a “clock” for procedure that has been laid out in *the Drainage Act*. Landowners within the drainage works will be require to follow the appeal process outlined above at the correct stages of the process. Council’s intention to proceed, under Section 41 of *the Drainage Act*, allows the Clerk to mail out the Final Engineer’s Report.

FINANCIAL CONSIDERATION:

On the night of the Consideration of the Report, staff will present Council with a staff report outlining the financial considerations that go along with the passing of the Provisional By-law for the South Innisfil Creek Drain 2019 Improvement under Section 42 of the *the Drainage Act*.

The costs to print and mail the landowners a copy of the Final Engineer's Report are typically included in the overall cost of the work. Town staff, in consultation with the Ministry of Agriculture, Food and Rural Affairs (OMAFRA), has decided to provide the Final Engineer's Report to all landowners in digital form to keep costs down as the Final Engineer's Report is approximately 1,000 pages in length and the costs to print and mail the report to all 862 landowners within the watershed would have a significant additional cost. However, for landowners wishing to obtain a paper copy, copies are available for pickup at the Town of Innisfil Customers Service desk. This will be indicated on the notice.

CONCLUSION:

Jeff Dickson, P.Eng., the Engineer from R.J. Burnside & Associates Limited, has completed the study for the South Innisfil Creek Drain and filed the Final Engineer's Report. It is staff recommendation that Council pass a resolution showing their intention to proceed with the drainage work and set the date for the Consideration of the Report for February 27, 2019 for the South Innisfil Creek Drain 2019 Improvement. Staff also recommend that Council instruct the Clerk of the Town of Innisfil to mail out all the appropriate notices for the Consideration of the Report including a copy of the Final Engineer's Report to all outlined in Section 41 of *the Drainage Act*.

PREPARED BY:

Jeremy Nyenhuis, Drainage Superintendent

APPROVED BY:

Jason Inwood, Strategic Leader, Operations