



TOWN OF INNISFIL STAFF REPORT

Staff Report No.: DSR-020-19
Date: February 27, 2019
To: Mayor, Deputy Mayor and Members of Council
From: Jason Inwood, Strategic Leader, Operations
Jeremy Nyenhuis, Drainage Superintendent
Subject: Consideration of the Final Engineer's Report for the South Innisfil Creek Drain 2019 Improvement

RECOMMENDATION:

That Staff Report DSR-020-10 – Consideration of the Final Engineer's Report for the South Innisfil Creek Drain 2019 Improvement, dated February 27, 2019 be received; and

That Council provisionally adopt the Final Engineer's Report for the South Innisfil Creek Drain 2019 Improvement dated February 13, 2019 by giving first and second reading to By-law 010-19; and

That Council give notice as required under Section 46 of *the Drainage Act*, and sets the date and time for the first sitting of the Court of Revision for _____, _____, 2019 and will take place at the Town Hall; and

That as per Section 52(2) of *the Drainage Act*, appeals must be filed with the Town Clerk 10 days before the first sitting of the Court of Revision (_____, _____, 2019) and that no late appeals will be heard; and

That four members be appointed to sit as members of the Court of Revision for the South Innisfil Creek Drain 2019 Improvement; and

That the Clerk be instructed to send a copy of the provisional By-law 010-19 and Notice for the Court of Revision to all landowners under Section 46 of *the Drainage Act*; and

That the recommendation to complete the ultimate replacement option for the Reive Boulevard crossing, as outlined in the Final Engineer's Report, be approved and the detailed design and construction of the replacement crossing undertaken with funding provided from the capital reserve fund.

BACKGROUND:

On March 31, 2005 an order by the Court of the Ontario Drainage Referee 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 the 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.

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.

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 Drainage Referee ordered:

1. 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 sent 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 of 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's 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 suggested that the Town "consider the appointment of a different Drainage Engineer to undertake" the project at that time, due to staffing issues highlighted in their letter.

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 August 2018 Council received a presentation and draft Engineer's Report on the South Innisfil Creek Drain by R.J. Burnside & Associates Limited. This presentation and draft report were for information purposes only and contained a draft watershed plan, profiles, cross section, general specifications, allowances and an estimate for the total cost of the work.

On February 13, 2019, Jeff Dickson, P.Eng., the Engineer from R.J. Burnside & Associates Limited, completed the study for the South Innisfil Creek Drain and filed the Final Engineer's Report with the Clerk. On February 13, 2019, Council received the Final Engineer's Report and expressed their intention to proceed with the drainage works as per Section 41 of *the Drainage Act*.

ANALYSIS/CONSIDERATION:

The Engineer has prepared and filed his report for the "Final Engineer's Report for the South Innisfil Creek Drain 2019 Improvement" dated February 13, 2019 under Section 41 of *the Drainage Act*. The Final Engineer's Report provides the necessary documentation required that is outlined within *the Drainage Act*. The final report has provided the following:

- Watershed Plan, Profiles and Specifications of Drainage Works;
- Estimated Cost of the Total Work;
- Allowances payable to owners directly affected by the works;
- Estimates of the additional costs to be included from the previous procedure;
- Construction Assessment Schedule; and
- Maintenance Assessment Schedules.

A summary of the estimated costs and cost recovery through property tax assessments for the work are in Table 1 and Table 2 respectively.

Item	Cost
South Innisfil Creek Main Drain	\$1,940,300.00
Branch 'A'	\$26,730.00
10 Sideroad Branch Drain	\$149,750.00
3 rd Line Branch Drain	\$56,990.00
3 rd Line Branch Drain Spur	\$25,080.00
Contingency's	\$407,500.00
Allowances	\$675,710.00
Engineering – R.J. Burnside & Associates Limited	\$742,000.00
Administration and Financing & Net H.S.T.	\$215,853.00

Engineering – Dillon Consulting Limited	\$1,025,087.00
Total	\$5,265,000.00

Table 2 – Estimated Cost Recovery	
Item	Cost
Province of Ontario	\$104,597.00
County of Simcoe	\$192,488.00
Town of Innisfil	\$1,170,953.00
TOI - Agricultural Lands Owners *Note 1	\$2,111,367.00
TOI - Non-agricultural Land Owners	\$791,834.00
Town of Bradford West Gwillimbury	\$1,493.00
BWG - Agricultural Lands Owners *Note 1	\$8,809.00
BWG - Non-agricultural Land Owners	\$6,869.00
Section 26 – Non-Pro-Ratable – Town of Innisfil	\$820,590.00
Section 26 – Non-Pro-Ratable – Province of Ontario	\$56,000.00
Total	\$5,265,000.00

**Note 1 – These landowners are eligible for 1/3 grant funding from Ministry of Agriculture, Food and Rural Affairs (OMAFRA)*

It should be noted that the costs shown above and outlined in the Final Engineer's Report are estimates of costs only. It is emphasized that these estimates do not include costs for R.J. Burnside & Associates Limited to defend the drainage report should appeals be filed with the Court of Revision, the Agriculture, Food and Rural Affairs Tribunal and/or the Drainage Referee. Should additional costs be incurred, unless otherwise directed, those would form part of the overall cost of the drainage works and be distributed in a prorated fashion over the assessments contained in the Schedule of Assessments.

As indicated in the Final Engineer's Report, both the Highway 400 and Reive Boulevard crossings have ultimately been recommended for replacement to facilitate the improvements to the South Innisfil Creek Drain. These replacements will require a detailed engineering design to confirm dimensions of the new structures. The substantial costs associated to design, staging and construction of these crossing improvements have not been included in this report. Road crossings costs are the responsibility of the road authority and typically dealt with through Section 26 of *the Drainage Act*.

An interim solution has been provided for both the Highway 400 crossing and the Reive Boulevard crossing as Ministry of Transportation staff have indicated that the full replacement at this time is not possible. This interim solution for both the Highway 400 crossing and the Reive Boulevard crossing will accommodate the municipal drain design (required capacity at the design gradeline). However, staff recommend that Council approve the detailed engineering design of the ultimate solution for Reive Boulevard be undertaken in 2019 to ensure that the construction of the new crossing be complete in 2020.

In discussions with the MTO, they have indicated that the interim solution will be undertaken. However, detailed design will not be started until the by-law is given final reading. Once the report has been adopted, the MTO will start the detailed design and construction of the interim solution, until such a time that they complete the overall improvements of the Highway 400 when the ultimate solution will be installed.

The Town must undertake the works described in the Engineer's Report as previously ordered by the Ontario 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. It is highlighted that recommended works on both Highway 400 and Reive Boulevard (whether ultimate or interim) are critical to be completed along with the improvements to ensure that the design functions accordingly.

Guidelines for the design and construction criteria for municipal drains are outlined in the Design and Construction Guidelines for Work Under the Drainage Act (prepared by the Government of Ontario) and in the Drainage Guide for Ontario (prepared by the Ministry of Agriculture, Food and Rural Affairs). Under these guidelines, the recommended design criteria for an open drain is the 2-year return period storm. (This means a magnitude of storm that will come once every two years.)

Next Steps:

If Council receives the Engineer's Report on the South Innisfil Creek Drain 2019 Improvement and gives the first and second reading and provisionally adopts the report tonight, Council will be starting a specific timeline for appeals as set out in *the Drainage Act*. *The Drainage Act* provides three appeal bodies to which a property owner may appeal when a drainage works is being proposed or improved. The appeal bodies are:

- the Court of Revision;
- the Agriculture, Food and Rural Affairs Appeal (AFRAA) Tribunal; and
- the Drainage Referee.

Below is the following step as laid out in *the Drainage Act* following the first and second reading of the By-law:

1. Council must set a Date and Time for the first sitting of the **Court of Revision**.
 - a. The first sitting of the **Court of Revision** shall be held on a day not earlier than 20 nor later than 30 days from the date of the completion of the sending of the copies of the provisional By-law under Section 46(2).
2. Council must appoint members to sit as the **Court of Revision**.
 - a. The Court is made up of 3 or 5 members
 - b. Since lands and roads from the Town of Bradford West Gwillimbury are located within the watershed, they will have to appoint 1 member and the Town of Innisfil will have to appoint 2 or 4 members.
3. A copy of the Provisional By-law and Notice of the time and place of the first sitting of the Court of Revision must be sent to the Town of Bradford West Gwillimbury **within 5 days** after the adoption. Section 46(1).

4. A copy of the Provisional By-law and Notice of the time and place of the first sitting of the **Court of Revision** must be sent to each person or body entitled to notice under Section 41 **within 30 days** after the adoption. Section 46(2).
5. Landowners may appeal the owner's assessment to the **Court of Revision** by a notice given to the Clerk of the Town of Innisfil not later than **10 days prior** to the first sitting of the Court of Revision as per Section 52 of *the Drainage Act*.
 - a. **Notice of Appeal to Court of Revision form** are available online (<http://www.omafra.gov.on.ca>) and at the Customer Service Desk.
6. Any owner of land or public utility may appeal the decision of the **Court of Revision** to the Ontario Drainage Referee or Drainage Tribunal **within 21 days** of the Court's decision (Section 54(1)).
 - a. **Notice of Appeal to Tribunal from the Court of Revision form** are available online (<http://www.omafra.gov.on.ca>) and at the Customer Service Desk.
7. 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 Drainage Act, **within 40 days** of the mailing of the Court of Revision Notice (Section 47(1)).
 - a. In every case, notice of appeal shall be served upon the Council of the initiating municipality.
 - b. Appeals to the Referee are legal or procedural.
8. Any owner of land, public utility or Conservation Authority may file an appeal to the **Drainage Tribunal** on technical grounds, **within 40 days** of the mailing of the Court of Revision Notice (Section 48(1) and Section 49).
 - a. **Notice of Appeal to Tribunal by Owner of Land or Public Utility Re: Engineer's Report form** are available online (<http://www.omafra.gov.on.ca>) and at the Customer Service Desk.
9. 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 (Section 58(1)).

OPTIONS/ALTERNATIVES:

Costs

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 the landowners.
 - If this option was selected the additional transfer of financial costs would be borne by all property tax payers throughout 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 tax account placing them at a 1.25% monthly charge if they do not obtain their own financing plus adding to cashflows issues from the Town from unpaid taxes.
3. Council could choose to amortize any debt that is required to be issues over a period ranging from 5 to 20 years.
 - Depending on the term chosen, the interest carrying costs from 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 recovery for this project is itemized in Table 1 and Table 2. The Construction Assessment Schedule splits out the costs for each individual piece of land (residential, farm, road, etc.) and is contained in Appendix A and B in the Final Engineer's Report. These assessments are based on the estimated costs and the Construction Assessment Schedule will be updated after the completion of the project using the actual construction costs for assessment purposes.

The construction is currently planned for to be completed once By-law 010-19 has been given final reading. A total of \$6,950,371.00 has been included in the previous capital budgets or through amending motions.

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. Debt financing for the property owner share has previously been approved and staff have factored into debt capacity calculations accordingly.

The property owner will be responsible for the principal associated with their share of the assessment 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 10-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 a full 10-year term, any payout of individual amount owing will represent the full balance of principal and interest owing to maturity, no discount for early payment will be provided.

Currently the 10-year debenture rate with Infrastructure Ontario is approximately 3.1% but the rate charged to the property owner would be the rate in effect at the time the Town issued 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 costs for Dillon Consulting Limited in the amount of \$1,025,087.03 have been included in the overall cost of the project. As per Council's resolution from August 8, 2018, Burnside was able to use some of Dillon's previous work, the value of which has been determined as \$190,000.00, which can be levied to the lands and roads within the watershed. The balance of \$835,097.03 has been levied against the Town's portion of the costs.

The total Town portion of the estimated costs as assessed for both lands and roads as indicated in the Final Engineer's Report would be \$1,991,543.00. The costs for the detailed engineering design and construction of the new Reive Boulevard crossing, that R.J. Burnside & Associates Limited have estimated to be \$1,400,000.00, would be added to the Town's portion. Costs for the replacement of Reive Boulevard would need to be fully funded from capital reserve fund as the costs must be borne by the road authority.

The total estimate of \$3,391,543.00 would be funded from capital reserves for the Town portion of the South Innisfil Creek Drain 2019 Improvement. Any additional costs that Council may choose to fund 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 landowners who do not opt for the 10-year payment plan and do not pay the assessed amount would have the full costs added to their tax account and be subject to interest charges at the rate of 1.25% per month until paid.

CONCLUSION:

The Engineer, 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 give first and second reading to By-law 010-19, the report shall be considered adopted and the By-law shall be known as a Provisional By-law. *The Drainage Act* requires a public appeal process to be undertaken before final reading of the By-law and approval of the construction works.

Staff also recommend that Council instruct the Clerk of the Town of Innisfil to mail out a copy of the provisional by-law and the notice for the first sitting of the Court of Revision as outlined in Section 46 of *the Drainage Act*.

Staff recommend that Council approve the detailed engineering design of the ultimate solution for Reive Boulevard be undertaken in 2019 to ensure that the construction of the new crossing be complete in 2020.

PREPARED BY:

Jeremy Nyenhuis, Drainage Superintendent

APPROVED BY:

Jason Inwood, Strategic Leader, Operations

ATTACHMENTS:

By-law 010-19 - South Innisfil Creek Drain 2019 Improvements Provisional By-law