

February 18, 2020

Agriculture, Food and Rural Affairs  
1 Stone Road West  
2nd Floor NW  
Guelph, Ontario  
N1G 4Y2

To Agriculture, Food and Rural Affairs,

Re: Drainage Act Amendment Proposal  
Stakeholder Consultation  
ERO Number: 019-1187

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The OSPE Land Drainage Committee (LDC) is a committee representing practitioners providing engineering services under the Drainage Act. Based on the information provided within the Drainage Act Discussion Paper, together with the dialogue through the webinar for key stakeholders, the LDC would like to provide our comments and recommendations towards streamlining the process and reducing burden. Please find below our submission to the above noted Drainage Act Amendment Proposal, based on the “Questions for Consultation” outlined within the discussion paper.

## **1.0 Beyond the DART Protocol, what additional protocols could be established to help streamline approvals?**

- 1.1 Currently, the DART protocol applies to Maintenance activities through the provisions of the Drainage Act. The LDC would like to see the DART protocol extended to include Engineer’s Reports, that are prepared under Section 4 and Section 78 of the Drainage Act. This would allow a consistent approach to both maintenance and new construction while streamlining the environmental approvals required under other legislation and agencies such as the Conservation Authority, Ministry of Natural Resources, Ministry of Environment, Conservation and Parks, and the Department of Fisheries and Oceans. This approach is expected to bring a quicker and more consistent approach to obtaining approvals for similar activities.
- 1.2 The application of environmental legislation (both federal and provincial) is a vital component for works conducted under the provisions of the Drainage Act. By way of Section 6 of the Drainage Act, an Environmental Appraisal can be initiated with provisions for authorizations, cost allocations and appeals. However, with the Environmental Appraisal being specific to the Drainage Act, many agencies are circumventing the intent of this provision by requesting the same information but using an alternative process. With no means to recoup these costs, the landowners within the watershed are bearing these increased costs. In order to streamline and amalgamate the various environmental requirements, a protocol for requesting an Environmental Appraisal under the Drainage Act should coincide with Environmental demands for other pieces of legislation.
- 1.3 Section 78 of the Drainage Act currently does not provide direction on how the cost to-date for a report is to be assessed if landowners request and/or Council decides to terminate the report process prior to adopting a report by bylaw. A protocol could be prepared to address this issue. (Also see Item 4.3)

- 1.4 We would propose a protocol to address crossings of the Ministry of Transportation (MTO) and railway (federally and locally owned) right-of-ways as well as dealing with other common utilities (Hydro, Bell, Cable TV, Natural Gas, Pipelines). The protocol would provide a consistent approach for both the Drainage Engineer and the Public Utility across the province. With clear expectations, early consultation and participation, a quicker more efficient design, approval and permit would be attainable.
- 1.5 In certain circumstances, indigenous communities may be a potential stakeholder within a Municipal Drain project. Through legislation and/or treaty, there is an understanding that there is a requirement to engage in consultation with these indigenous communities. An Indigenous Consultation Protocol could assist Drainage Superintendents and Engineers with their duty to consult.
- 1.6 We would propose a protocol to address the additional requirements for completing drainage works through lands owned by MECP as well as conservation lands. Typically additional permitting is required with the cost for obtaining these permits and meeting their requirement being pushed upon the neighbouring lands. This is applicable to section 78 reports as well as maintenance projects.
- 1.7 Municipalities have developed procurement policies that function well for many different types of projects where very clear and detailed scopes have been determined. Projects initiated under the Drainage Act require the appointed engineer to determine the scope of work, and therefore cannot rely on typical municipal procurement policies. Unproductive time and money are spent by municipalities in preparing and awarding lean Requests for Proposals (RFPs). These costs are ultimately passed on to the ratepayer. The LDC supports the development of a 'protocol for appointing an engineer' that acknowledges the unique nature of projects under the Drainage Act; that offers a simplistic and efficient procedure for municipalities to follow; ultimately results in an efficient use of time and money in selecting a practitioner to prepare a report under the Drainage Act.
- 1.8 The flexibility granted to landowners who wish to appeal is accommodating, as it should be. In some circumstances the lack of rigour required to appeal results in needless time and expense which is then passed on to other landowners who hold no responsibility for unsubstantiated appeals. Parties who exercise their right to appeal must be responsible for preparing a proper appeal. A protocol that assists the Appellant in preparing a clear and unambiguous appeal would reduce hearing time and legal costs, and in many cases will eliminate petty appeals entirely. Item 4.2 of this letter discusses potential modifications to the Drainage Act which could be considered along with a Protocol for filing a proper and complete appeal.

## **2.0 What projects should be included in the definition of minor improvements? What else would you like a minor process to achieve?**

- 2.1 The LDC is supportive of the initiative proposed by OMAFRA with regards to streamlining the process for minor improvements. Although some details were discussed in our webinar conference calls, the LDC would appreciate the opportunity to comment further once a detailed process and project list is developed. The LDC would anticipate that the criteria for a "minor improvement" be clearly defined within the proposed changes and looks forward to the opportunity of commenting on further publications.

### 3.0 Do you have any specific concerns with any of the items discussed in the paper?

The LDC is seeking clarification on the process for implementing the items in the discussion paper. Will the process make changes to the text of the current statute or is the process to be accomplished by the Minister approving Regulations under the Drainage Act.

### 4.0 Do you have any additional suggestions to reduce burden or contribute to additional opportunities for your business?

- 4.1 There have been on-going concerns identified by MPAC that have made a significant impact on acquiring parcel information and the preparation of an Engineer's Report through the provisions of the Drainage Act. Based on the information provided by MPAC, the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) does not allow Municipalities to share property information, such as Owner Names, Roll Information and Parcel Identification (area, frontage, etc.), and such information should not be combined in Engineers Reports. As such, some Municipalities are under the assumption that they are in breach of their Contract with MPAC and are refraining from sharing and allowing this information to be included in their By-laws. This information is vital to the Drainage Act process and the exclusion of this information would cause considerable confusion and burden. The DSAO, OSPE LDC and OMAFRA have been working towards a resolution to address this matter. From our understanding and correspondence with Sid Vander Veen (prior to his retirement), OMAFRA was to put forward an "Open for Business Bill Proposal" to amend the Drainage Act that would allow this data to be shared with Engineers and further allow this information to be included within Engineer's Reports. The following is the verbiage that was presented to the LDC and was intended to be included as a new subsection 8(5) of the Drainage Act, (as part of the Open For Business Bill Proposal): **"Upon the council's appointment of an engineer under this or any other section of this Act, the clerk of the initiating municipality and any involved local municipality shall provide to the engineer the property data (define the exact data, if required?) and the use of this information in the report of the engineer shall not be restricted by the Municipal Freedom of Information and Protection of Privacy Act."** The LDC feels that it is imperative that this matter continues to be a priority to OMAFRA and/or be incorporated as part of the proposed Drainage Act Amendments.
- 4.2 To improve the process of passing the by-law while in the absence of appeals, the LDC would suggest that changes to the Court of Revision and other appeal processes be considered. Eliminating verbal appeals to the Court, eliminating the sitting of the Court of Revision if no appeals are received and offering landowners the ability to formally waive their appeal rights to remove the mandatory timelines could further streamline the process to allow it to be completed sooner, with fewer costs to landowners. Many projects and landowners would save time and money from an accelerated process for passing the by-law. This could be set out in a protocol and a standard waiver form created for use by landowners/municipalities.
- 4.3 There has been some confusion with the interpretation of Section 78 and how to apply the Drainage Act once the process has started. Clarity with regards to the use of Section 10, 40 and other sections of the Act when applying it to Section 78 reports

could allow for a clearer direction to provide completion of reports sooner. This clarity would also provide landowners with a clearer direction about being provided with a preliminary report and determine if completion of the final report is warranted. As noted previously Section 78 does not address the issue of the cost to-date if an Engineer's Report is terminated prior to adopting the report by bylaw. Clarity on the use of Section 10 and Section 40 may help deal with this latter issue.

- 4.4 The meeting to consider contract price through Section 59(1) and 59(2) are specific instructions to Council to address matters under Section 4 petitions. The provisions outlined within this section of the Act are commonly used for similar circumstances under Section 78 improvements. However, the instructions under these provisions do not have a direct relationship, as these works are not petitioned for. The LDC would like clarification of/or a protocol to address the Meeting to consider contract price for projects initiated through Section 78 of the Act.
- 4.5 Conservation Authorities through Regulations under the Conservation Authorities Act now require a permit for all work under the Drainage Act. If the Conservation Authority conditions for a permit cannot be addressed by the Engineer or the Conservation Authority denies a permit there is no clearly defined appeal process. The appeal process under the Conservation Authority Act is not well defined and appeals to the Drainage Tribunal are usually considered outside the jurisdiction of the Tribunal. A defined appeal process involving both the Drainage Act and the Conservation Authority Act would help to expedite the approval process under both statutes.
- 4.6 With the recent changes to the Fisheries Act, there has been an additional burden with the industry in obtaining an Authorization from DFO and the corresponding requirement of a Letter of Credit. Since the Drainage Act requires a Municipal Drain to be constructed under a local by-law, the purpose of ensuring compliance to an Authorization from DFO through a Letter of Credit is redundant. The LDC would like the federal and provincial governments to address this unnecessary step between different levels of government, reducing barriers and allow the report and approvals to be obtained more effectively.
- 4.7 In order to avoid unnecessary overlap of construction work, the varying of original assessments for maintenance through Section 76 is a very useful and functional part of the Drainage Act. Per Section 76(2), and upon the submission of a Section 76 Report, the proceedings shall be the same for the construction of the drainage works. However, a Section 76 Report specifically deals with matters pertaining to the varying of assessment, and construction works do not form part of this report. With no technical merits to these types of projects, should a Section 76 Report need to proceed with a Consideration Meeting? By removing the Consideration Meeting, the approval process of a Section 76 Report could streamline the overall process.
- 4.8 Many municipal drainage systems exist with outdated or unfair maintenance schedules. When these drains require regular maintenance, landowners often request a full-scale Section 78 report to conduct the maintenance work and to correct the unfair maintenance schedule. If Section 85 of the Drainage Act were modified to include a grant for reports prepared under Section 76, then landowners would be incentivized to request a new maintenance schedule under Section 76 (a much simpler report than what is required by Section 78), and then conduct maintenance in accordance with Section 74, as intended. The potential savings (in addition to

time savings) include eliminating a detailed survey, drafting, design, cost estimates, preparation of assessments for capital works, and the processing of a full-scale report under Section 78. The grant saved from filing a report under Section 78 is expected to outweigh the new grant approved for a report under Section 76.

We, the LDC, agree that certain aspects of the Drainage Act require amendments to help streamline the process and to reduce burden. We feel that this proposal is warranted and we support the initiative. The LDC appreciates the opportunity to participate in the Stakeholder Consultation and we look forward to participating in the next steps of this process.

Sincerely

Antonio (Tony) Peralta, P.Eng.  
Chair of the LDC

LDC members:        Brandon Widner, P.Eng. (Vice-Chair)  
                              Stephen Brickman, P.Eng. (Secretary)  
                              Gerard Rood, P.Eng.  
                              John Kuntze, P.Eng.  
                              Jeremy Taylor, P.Eng.