



The Corporation of the Town of Tecumseh

Public Works & Environmental Services

To: Mayor and Members of Council

From: Phil Bartnik, Director Public Works & Environmental Services

Date to Council: February 11, 2020

Report Number: PWES-2020-11

Subject: Drainage Act, Summary of Proposed Changes and Administrative Comments

Recommendations

It is recommended:

That PWES-2020-11 *Drainage Act*, Summary of Proposed Changes and Administrative Comments, **be received**;

And that PWES-2020-11 **be submitted** to the Ontario Ministry of Agriculture, Food and Rural Affairs as comments from the Town of Tecumseh on the proposed changes to the *Drainage Act*.

Background

The purpose of this report is to provide comments on the proposed *Drainage Act* changes that are relevant to the Town of Tecumseh. Upon approval by Council, this report will be forwarded to the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) as the Town's comments on the proposed changes, in advance of the commenting deadline of February 18, 2020.

On January 22, 2020, OMAFRA released a letter seeking input on a proposal to streamline *Drainage Act* approval processes to address common stakeholder concerns about the Act while maintaining the province's high environmental standards (Attachment 1). The *Drainage Act* Discussion Paper (Attachment 2) describes some of the proposed changes to the *Drainage Act* which are intended to reduce costs and project delays for affected property owners including municipalities. The discussion paper also poses questions for stakeholder feedback which will be considered when the proposed changes are finalized.

On January 31, 2020, OMAFRA hosted a webinar for municipalities and presented three (3) proposals being considered to streamline *Drainage Act* processes. At the time of the webinar, details for these proposals had not been fully developed and participants were encouraged to ask questions and provide feedback for OMAFRA's consideration whilst refining possible legislative amendments to the *Drainage Act*. The webinar slides are appended to this report as Attachment 3. Additional webinars were also held for Conservation Authorities (January 31, 2020), Drainage Industry (February 7, 2020) and General Farm Organizations (February 7, 2020).

Based on the webinar, OMAFRA is considering modification to the *Drainage Act* that would:

- Provide the Minister with legislative authority to develop and sign off on **supporting technical protocols** such as the *Drainage Act and Conservation Authorities Act Protocol* (DART protocol);
- Create a new **streamlined *Drainage Act* approval process** for minor improvements;
- Enable a **simplified administrative process** to update the engineer's report to account for changes to the design made during construction.

The comments in this report address the three principal modifications outlined above and provide questions/comments for the Ministry to consider in refining proposed changes.

Comments

The following are the key areas of proposed changes and the associated Administrative comments:

1. Proposed Change: Supporting Technical Protocols – authority to adopt protocols by reference in regulation

Projects under the *Drainage Act* typically require approvals from multiple agencies such as Conservation Authorities, Department of Fisheries and Oceans (DFO) and Ministry of Natural Resources and Forest (MNRF). When not coordinated, these approvals can result in added cost and/or project delays.

In 2008, the DART protocol was established to streamline approvals under section 28 of the *Conservation Authorities Act* for municipal drain repair and maintenance projects being completed under the provisions of the *Drainage Act*. Based on the observed benefits of the DART protocol, OMAFRA is proposing to amend the *Drainage Act* to enable broader adoption of this collaborative approach by providing the legislative authority for the minister to develop and sign off on other technical protocols. These protocols would be created through collaboration with other provincial ministries, federal agencies and conservation authorities.

Administration Comments:

The Town currently utilizes the DART protocol when a request is received for drain maintenance to meet the requirements of both the *Drainage Act* and *Conservation Authorities Act*. The DART protocol provides standard mitigation measures to be followed when drain maintenance works are undertaken which satisfy Conservation Authority approval requirements. Based on the Town's experience, the DART protocol creates efficiencies for both the Town and the Conservation Authority. Administration agrees that the creation of additional technical protocols with other approval agencies would help to streamline approval processes.

Questions/comments proposed by Administration include:

- Municipal representation is required on Committees responsible for developing new protocols.
- Protocols with DFO and MNRF are recommended.
- Can protocols address federal legislations such as the *Fisheries Act*?
- What sections of the *Drainage Act* would these protocols have authority over?

2. Proposed Change: Streamlining Approvals – creating a new process for minor improvements

The *Drainage Act* lacks a streamlined process to undertake minor improvements to existing drains which have minimal impact on the environment and other properties. Currently these projects must follow a lengthy process that includes all assessed landowners which creates additional cost and may result in delays or avoiding the improvement activities.

OMAFRA is considering a new *Drainage Act* process for minor improvements so these projects can be completed in a less costly and more efficient way.

Administration Comments:

Currently, section 77 of the Drainage Act allows for deepening, widening or extending of a municipal drain without the need of a report to streamline drainage works provided the cost is not more than \$4,500. However, this section lacks clarity in aspects such as the authority to enter lands, how to assess owners, and allowances.

A streamlined process for minor improvements has the potential to increase efficiencies, reduce costs and improve delivery of services to residents. Administration agrees that a streamlined process for minor improvements such as new crossings, extension of an existing crossing, limited bank stabilization, the addition of grass buffers, etc. could be beneficial provided that the eligible works and process are clearly defined.

Questions proposed by Administration include:

- Will public consultation be required? Do other landowners have appeal rights? If so, how will this reduce process time?
- How will minor improvements outside of the current by-law be assessed?

- Who decides what is considered a “minor improvement”?
- Would a minor improvement only be applicable if one property is involved and/or the cost of same is the responsibility of one property owner?
- How is the future maintenance addressed for minor improvements?
- How will OMAFRA grants be applied to minor improvements?

3. Simplifying Administrative Processes – accounting for changes to drain design during construction

Drainage systems constructed under the *Drainage Act* occasionally deviate from the adopted engineer’s plans and profile due to unforeseen conditions or problems found on site during construction. Currently, there is no mechanism to easily include the as-built conditions in the current by-law which can lead to a lack of clarity for municipal drainage superintendents who plan and implement maintenance and repair activity in accordance with the engineer’s report.

OMAFRA is considering amendments to the *Drainage Act* to enable a simplified process to update the engineer’s report to account for any changes made during construction.

Administration Comments:

Currently, section 58(4) is the only mechanism to amend changes encountered during construction. However, this section defines these changes as a “gross error” and states that Council may apply to the Tribunal to correct the error. Otherwise, a new report must be produced to adopt these changes.

Administration is in support of a simplified process to update the engineer’s report to account for any changes made during construction. However, this process must establish clear direction for the approval, implementation and assessment of any additional costs related to the changes.

Questions proposed by Administration include:

- How are additional costs assessed?
- If there are additional costs, are these costs appealable?
- If future maintenance is affected, do affected landowners need to be consulted?

In summary, OMAFRA is currently considering the above noted amendments to the *Drainage Act*, however, specific details regarding these potential changes have not been finalized. Once these amendments and procedures have been fully developed, it is Administration’s understanding that there will be forthcoming opportunities to review the proposals and provide additional comments.

Consultations

Ontario Ministry of Agriculture, Food and Rural Affairs

Financial Implications

There are no financial implications arising from this report.

Link to Strategic Priorities

| Applicable | 2019-22 Strategic Priorities |
|-------------------------------------|---|
| <input type="checkbox"/> | Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers. |
| <input checked="" type="checkbox"/> | Ensure that Tecumseh’s current and future growth is built upon the principles of sustainability and strategic decision-making. |
| <input type="checkbox"/> | Integrate the principles of health and wellness into all of Tecumseh’s plans and priorities. |
| <input checked="" type="checkbox"/> | Steward the Town’s “continuous improvement” approach to municipal service delivery to residents and businesses. |
| <input checked="" type="checkbox"/> | Demonstrate the Town’s leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals. |

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:

Cheryl Curran, BES
Clerk I Administrative Clerk

Reviewed by:

John Henderson, P.Eng.
Manager Engineering Services

Reviewed by:

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

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

| Attachment Number | Attachment Name |
|--------------------------|--|
| 1 | Letter dated January 22, 2020 from the Ministry of Agriculture, Food and Rural Affairs |
| 2 | Drainage Act Discussion Paper |
| 3 | Webinar Presentation held January 31, 2020 |

**Ministry of Agriculture,
Food and Rural Affairs**

Office of the Minister

77 Grenville Street, 11th Floor
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www.ontario.ca/OMAFRA

**Ministère de l'Agriculture, de
l'Alimentation et des Affaires rurales**

Bureau du ministre

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January 22, 2020

Marg Misek-Evans
CAO
Town of Tecumseh
mevans@tecumseh.ca

Dear Ms. Misek-Evans:

The Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) is seeking input on a proposal to streamline Drainage Act approval processes that would address common stakeholder concerns about the act while maintaining our province's high environmental standards. This is part of our government's broader initiative to reduce regulatory burden in consultation with the farm and agri-food sector while preserving rules that keep Ontarians safe and healthy.

The Drainage Act Discussion Paper is posted on the province's Environmental Registry at ero.ontario.ca/notice/019-1187. It describes some of the proposed changes which would reduce costs and project delays for farmers and other rural landowners and municipalities. The paper also poses questions for your feedback.

OMAFRA will be hosting webinars for key stakeholders who play an important role in the Drainage Act. The webinars are scheduled for:

| | | |
|--------------|--------------------|----------------------------|
| January 31st | 10:00 - 11:00 a.m. | Municipalities |
| January 31st | 1:00 - 2:00 p.m. | Conservation Authorities |
| February 7th | 10:00 - 11:00 a.m. | Drainage Industry |
| February 7th | 1:00 - 2:00 p.m. | General Farm Organizations |

To register, please contact the Agricultural Information Contact Centre (AICC) by email to ag.info.omafra@ontario.ca or call 1-877-424-1300. Although the webinars are targeted to specific audiences, you are very welcome to enroll at a time or date that better suits your schedule.

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Good things grow in Ontario
À bonne terre, bons produits

Ministry Headquarters: 1 Stone Road West, Guelph, Ontario N1G 4Y2
Bureau principal du ministère: 1 Stone Road West, Guelph (Ontario) N1G 4Y2

Printed copies of the French Discussion Paper are also available from the AICC on request.

Our Ministry is committed to relieving the red tape burden that will ensure drainage continues to deliver critical economic and environmental benefits that will help rural communities, agricultural landowners and drainage contractors save money and/or time. We are confident the proposed changes will assist in making this a reality.

I look forward to your input.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernie Hardeman". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

Ernie Hardeman
Minister of Agriculture, Food and Rural Affairs

Drainage Act Discussion Paper

Summary of Proposal

Ontario's agri-food sector is an important component of the provincial economy, contributing \$39.5 billion in Gross Domestic Product (GDP) and employing nearly 822,500 people in 2017. Primary agriculture accounted for roughly 11 per cent of the sector's GDP (\$4.4 billion), generating \$13.1 billion in farm cash receipts and employing 68,500 people in 2017 while producing a diverse range of over 200 different commodities.

Drainage is critical for supporting agricultural productivity and the production of food. It also enables sector growth by delivering environmental and economic benefits such as improved crop productivity, nutrient loss reduction, reduced soil erosion, habitat protection and flood control. Though mostly unnoticed, it is an essential part of the rural Ontario landscape with more than 45,000 kilometers of municipal drains servicing approximately 1.75 million hectares of cropland.

It also positively impacts the economy as over \$100M is privately invested in drainage annually which has created 800-900 jobs and supports over 100 independent businesses.

To permit the construction and maintenance of municipal drains and private agricultural drainage systems, the agricultural sector has relied on drainage legislation for over 150 years. OMAFRA administers three pieces of agricultural drainage legislation: the *Drainage Act*, the *Tile Drainage Act* and the *Agricultural Tile Drainage Installation Act*.

The *Drainage Act* is unique in many ways. It establishes a process for resolving property right disputes involving water flow and drainage. It is premised on a user pay system where costs are fairly assessed to the property owners within the watershed. A drainage engineers report provides the design and allocation of project costs for a municipal drain that involves multiple private properties. Through collaboration between private landowners, it has helped address broader societal benefits such as flood control within Ontario's rural communities.

The *Drainage Act* is one of the Province's oldest pieces of legislation. Passed in 1859, there have not been any significant changes to the legislation since 1975. This has led to stakeholders requesting changes to the Act. For example, some stakeholders have indicated there are too many steps and agencies involved for drainage construction, maintenance and improvements to be approved in a timely and less costly way. Others have suggested that additional protocols (such as the *Drainage Act and Conservation Authorities Act Protocol*) could help with streamlining approvals for low risk activities.

To address some of these stakeholder concerns and reduce burden (e.g. project delays and projects costs) while maintaining environmental standards, OMAFRA is considering changes to the *Drainage Act*. This is part of the Ontario Government's broader approach to cutting red tape and reducing regulatory burden for all businesses, to lower business operating costs and improve Ontario's competitiveness.

OMAFRA is proposing changes to the Drainage Act that would, if passed:

- Create a new streamlined *Drainage Act* process for minor improvements to drainage systems;
- Enable a simplified process to update the engineer's report to account for changes to the design made during construction; and
- Provide the minister with legislative authority to adopt technical protocols such as the DART Protocol by reference in regulation.

1. Supporting Technical Protocols

Authority to adopt protocols by reference in regulation

Currently, projects under the *Drainage Act* typically require approvals from multiple agencies (e.g. conservation authorities, Department of Fisheries and Oceans, Ministry of Natural Resources and Forestry) to address protection of endangered species, water management and flood risks and other environmental considerations. When not coordinated, these additional approvals can add cost and project delays.

Protocols (such as the *Drainage Act and Conservation Authorities Act Protocol*) when adopted, have been demonstrated to reduce project delays and project costs while maintaining environmental protections. OMAFRA is proposing to amend the *Drainage Act* to enable broader adoption of this collaborative approach by providing legislative authority for the minister to develop and sign off on technical protocols.

Similar to the DART Protocol that originated from a multi-agency Drainage Act and Regulations Team (DART), OMAFRA would work in collaboration with other ministries, regulatory agencies, conservation authorities, municipalities, farming organizations, indigenous organizations and others on the development of any new protocols.

The DART Protocol was established in 2008 to streamline approvals for municipal drain repair and maintenance projects that meet *Conservation Authorities Act* permitting requirements in order to support compliance with *Drainage Act* requirements. For example, specific drainage maintenance and repair that follows environmental mitigation measures recommended in the

DART Protocol are provided with a streamlined approval under section 28 of the *Conservation Authorities Act* where conservation authorities have adopted the Protocol.

Numerous stakeholders contributed to the development of the DART protocol including the Ministry of Natural Resources and Forestry, Conservation Ontario, conservation authorities, the Drainage Superintendents Association of Ontario, the Society of Professional Engineers Land Drainage Committee, Ontario Federation of Agriculture, Ontario Farm Environmental Coalition and the Rural Ontario Municipal Association.

2. Streamlining Approvals

Creating a new process for minor improvements

The *Drainage Act* establishes a process for resolving issues involving water flow and drainage. However, it doesn't enable a streamlined process for simple drain improvement projects that have minimal impact on the environment and other properties. This leads to a very lengthy and involved process that involves all assessed landowners, creating additional cost and burden, and can result in delaying or avoiding improvement activities.

OMAFRA is considering a new *Drainage Act* process for minor improvements so projects could be completed in a less costly and more efficient way. Examples of minor improvements could include: creating or widening a crossing, relocating a drain on an individual property or the addition of a feature with environmental benefits (e.g. buffer, water retention area). It would also allow for easier adoption of some green infrastructure technologies that have multiple benefits.

It is estimated that a streamlined minor improvement process could reduce the approval process by half; from 9 months to possibly 4-5 months. Less process and fewer meetings could result in an estimated 10 per cent savings a year for minor improvement project costs. The reduced process and costs would be especially important in facilitating environmental improvements to drains.

Moving the requirements into a new regulation would define minor improvement projects and describe a process to implement them in a streamlined way.

3. Simplifying Administrative Processes

Accounting for changes to drain design during construction

An engineer's report is prepared at the beginning of a drainage project to assess water drainage needs, affected landowners, system design and costs. It is common for drainage systems built under the *Drainage Act* to deviate from the design plans in the engineer's report because of unforeseen site conditions in the field. These changes are currently not identified in the engineer's report since there is no authority or defined process in the Act to follow to amend the report with new information. This can lead to a lack of clarity for municipal drainage superintendents who plan and implement maintenance and repair activity in accordance with the engineer's report.

OMAFRA is considering amendments to the *Drainage Act* to enable a simplified process to update the engineer's report to account for any changes made during construction. This would recognize and align with existing engineering practices.

It would also ensure the municipality has the authority to maintain the drain "as built" which would ensure that landowners are fairly assessed for the costs of maintaining and repairing the drain. By providing clarity to municipalities on the content of the engineer's report (accounting for changes made to the design during construction), cost savings could also be expected for municipalities while increasing certainty for landowners.

Summary

Changes to the *Drainage Act* are proposed that would, if passed, enable a streamlined process for drainage projects to meet the requirements of property owners, municipalities and a cross section of government agencies. Additional housekeeping amendments may be considered.

The ministry is seeking your feedback on potential amendments to the *Drainage Act* and related programs. Your feedback will be considered during the development of possible legislative amendments.

We are also committed to consulting further on more specific changes to be included in a regulatory proposal for minor drain improvements.

Questions for Consultation

- i. Beyond the DART Protocol, what additional protocols could be established to help streamline approvals?*
- ii. What projects should be included in the definition of minor improvements? What else would you like a minor process to achieve?*
- iii. Do you have any specific concerns with any of the items discussed in the paper?*
- iv. Do you have any additional suggestions to reduce burden or contribute to additional opportunities for your business?*

Email

OMAFRA: sara.peckford@ontario.ca

Address

Ontario Ministry of Agriculture, Food and Rural Affairs
Food Safety and Environmental Policy Branch
1 Stone Road West, 2nd Floor SW
Guelph, ON N1G 4Y2
c/o Sara Peckford

Drainage Act Amendment Proposal

Stakeholder Consultation

January 31 and February 7, 2020

Agenda

- Welcome and Introductions
- Background
- Proposed Changes
 - Discussion & Feedback
- Next Steps and Closing Remarks



Background

- Three Acts regulate drainage in rural communities: *Drainage Act*, *Agricultural Tile Drainage Installation Act*, *Tile Drainage Act*. The *Drainage Act* is a long established piece of legislation that has not been significantly updated since 1975.
- Over the past several years, opportunities for burden reduction have been identified by stakeholders and through internal review.
- The Ministry is proposing enabling amendments to the *Drainage Act* that would, if passed:
 - Create a new streamlined *Drainage Act* process for minor improvements to drainage systems;
 - Enable a simplified process to update the engineer's report to account for changes to the design made during construction; and
 - Provide the minister with legislative authority to adopt technical protocols such as the DART Protocol by reference in regulation.
- These proposals are expected to reduce administrative burden, streamline approvals and address stakeholder concerns while maintaining environmental standards.
- This is the beginning of a consultation process. Further consultation would occur on the proposed regulation which would include details on the minor improvement process and the process to update the engineer's report.



Streamlining Approvals

Creating a New Process for Minor Improvements

Current

The *Drainage Act* doesn't enable a streamlined process for simple drain improvement projects that have a minimal impact on the environment and other properties.

Why Consider a Change

The current process involves all landowners assessed during the original development of the entire municipal drain, creating unnecessary cost and burden, and can result in delaying or avoiding improvement activities on an individual property.

Proposal

Create a new *Drainage Act* process for minor improvements so projects can be completed in a less costly and more efficient way while maintaining environmental protections. A new regulation would be developed to define minor improvements and describe the process.

- Examples of minor improvements could include: creating or widening a crossing, relocating a drain on an individual property, or the addition of a feature with environmental benefits (e.g. buffer, water retention area).

Simplifying Administrative Processes

Accounting for Changes to Drain Design during Construction

Current

Drainage systems built under the *Drainage Act* sometimes deviate from the design plans because of unforeseen site conditions in the field. These changes are not recognized in the engineer's report since there is no authority or defined process to do so under the Act.

Why Consider a Change

Without a process to recognize changes in the engineer's report, the municipality doesn't have the authority to maintain the drain "as built". This can lead to a lack of clarity for municipal superintendents who plan and implement maintenance and repair activity in accordance with the engineer's report.

Proposal

Amend the *Drainage Act* to enable a simplified process to update the engineer's report to account for any changes made during construction. A new regulation would be developed to outline the process.

Supporting Technical Protocols

Authority to Adopt Protocols by Reference in Regulation

Current

There is one technical protocol for drain maintenance and repair activities (*Drainage Act and Conservation Authorities Act Protocol* (DART Protocol)) which is currently implemented voluntarily. The Protocol includes general and activity specific environmental mitigation requirements.

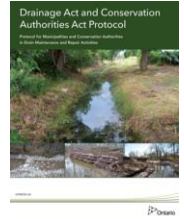
The Ministry of Natural Resources and Forestry (MNRF) proposed changes to development permit regulations under the *Conservation Authorities Act* in April 2019. These proposed changes included exempting, across all CAs, certain drain repair and maintenance activities that are undertaken in accordance with the DART Protocol.

Why Consider a Change

Stakeholders such as the Ontario Federation of Agriculture and the Land Drainage Committee have suggested new protocols, which could be developed collaboratively by the DART team.

Proposal

Amend the *Drainage Act* to enable the incorporation of technical protocols by reference in regulation. Any new Protocols would need to ensure that environmental protections are maintained.



Proposal Recap

Proposals

Streamlining Approvals

Create a new process for minor improvements

Simplifying Administrative Processes

Enable a simplified process to update the engineer's report and to account for changes to drain design during construction

Supporting Technical Proposals

Incorporation of protocols by reference in a regulation

Intended Benefits

The proposed amendments have the intended benefits of:

- Supporting economic competitiveness by making it easier and more cost effective to ensure existing drains perform well
- Increasing opportunity for collaboration in the development of protocols to ensure environmental protections are maintained
- Enhancing climate resiliency by encouraging the uptake of new technologies and approaches

Discussion and Feedback

Discussion Paper Questions

1. Beyond the DART Protocol, what additional protocols could be established to help streamline approvals?
2. What projects should be included in the definition of minor improvements? What else would you like a minor process to achieve?
3. Do you have any specific concerns with any of the items discussed in the paper?
4. Do you have any additional suggestions to reduce burden or contribute to additional opportunities for your business?

Next Steps

- Access the full proposal at www.ero.Ontario.ca
- Provide your comments by February 18, 2020.
- Feedback gathered will be used in finalizing the proposed changes.
- To implement the proposed *Drainage Act* amendments, OMAFRA will be developing a regulatory proposal. We will consult separately on this proposal.

Contact Information

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**Thank you for your
participation**