



Report to Council

Department: Infrastructure Services
Division: Drainage
Date: April 19, 2022
Prepared by: Lindsay Dean, Drainage Superintendent
Report Number: Drainage-2022-02
Subject: Brush Drain Report Reconsideration
Number of Pages: 4

Recommendation(s)

That Drainage-2022-02 entitled Brush Drain Report Consideration prepared by Lindsay Dean, Drainage Superintendent dated April 19, 2022 be received, and

That pursuant to Section 57 of the Drainage Act the report for the Brush Drain dated December 23, 2021 be referred back to Rood Engineering Inc. for reconsideration, and

That by-law 2131 that has been provisionally adopted be repealed.

Purpose

To refer the Brush Drain report back to the engineer to make modifications to the scope of the project to align with the requests of the benefiting landowners.

Background and Discussion

In August of 2020, Rood Engineering was appointed to review the Brush Drain and provide a new report recommending the necessary repair and improvements to the drain based on the findings of their review thereof including the sink hole issues brought forward by various landowners. An on-site meeting was held with the landowners on January 26, 2021 to discuss the scope of this project.

A report dated December 23, 2021 was provided by Rood Engineering and was considered by the Drainage Board on February 3, 2022. At that meeting no issues were raised by landowners other than the significant cost of the project and the assessments to fund the project cost. However following that meeting two landowners had expressed concern about the assessment to their property for the proposed work associated with their crossings/lawn enclosures and asked if either the assessment could be adjusted, or the scope of work changed. It was reiterated that requests for scope changes should have occurred at the Consideration Meeting, but that the Court of Revision meeting had been scheduled for March 22, 2022 and appeals could be submitted by the landowners pertaining to their assessments. At the Court of Revision meeting, the members heard the appeals submitted by the concerned parties and their appeals were denied based on the information presented at the meeting. Following that meeting, the landowners submitted appeals to the Drainage Tribunal (pursuant to Section 48(1) of the Drainage Act) to request that the drainage works should be modified. The appeals were received within the legislated timeframe to be submitted to the Drainage Tribunal.

Upon further investigation into the options to resolve this issue on a reasonable and expeditious basis and without having to incur the time and expense of proceeding to the Drainage Tribunal formal appeal process, it would seem that a reasonable option might be to enact Section 57 of the Drainage Act to send the report back for reconsideration as to a review of the request to modify the scope of work pertaining to the crossings owned by these landowners. Section 57 of the Drainage Act does provide Council with the authority (for any reason) to refer the report back to the engineer for reconsideration at any time before final passing of the by-law. A reconsideration of the report would then be dealt with and the proceedings would then be the same as upon the original report meaning that a subsequent

reconsideration meeting and Court of Revision hearing would be convened together with Council's future consideration of the applicable by-law arising from the reconsidered report.

The landowners that have submitted appeals are in support of withdrawing their appeals at this time if Council decides to proceed with the recommendation to reconsider the report as described herein. If Council decides to continue the process with the existing report, the Clerk will proceed with submitting the appeals to the Drainage Tribunal and commencing the appeal process.

Financial Impact

There is cost to the Brush Drain watershed to have the drainage engineer modify the report and go through the mandated process again, however, the cost to go through a Drainage Tribunal can be quite significant and can be quite lengthy. It is expected that the cost to address the issues through reconsideration of the report would be much less than going through a Drainage Tribunal.

Consultations

Robert Auger, Town Solicitor/Clerk

Link to Strategic Priorities

- ☒ Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- ☐ Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- ☐ Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- ☐ Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- ☒ Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- ☐ Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

Document Title:	Brush Drain Reconsideration Drainage-2022-02.docx
Attachments:	
Final Approval Date:	Apr 13, 2022

This report and all of its attachments were approved and signed as outlined below:

Norm Nussio, Manager Operations and Drainage - Apr 13, 2022 - 10:45 AM

No Signature - Task assigned to Kevin Girard, Director, Infrastructure Services was completed by workflow administrator Robert Auger, Town Solicitor, Legal and Legislative Services/Clerk

Kevin Girard, Director, Infrastructure Services - Apr 13, 2022 - 2:18 PM

A handwritten signature in black ink, appearing to read "Doug Sweet", with a stylized flourish extending from the end.

Doug Sweet, Chief Administrative Officer - Apr 13, 2022 - 2:25 PM