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# HALDIMAND COUNTY

## Report ENG-28-2023 Harrop Municipal Drain Variation of Assessment for Maintenance and Repair – Engineer’s Report

For Consideration by Council in Committee on December 12, 2023

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### OBJECTIVE:

To adopt the Harrop Municipal Drain Variation of Assessment for Maintenance and Repair Engineer’s Report and continue the process outlined in the Drainage Act.

### RECOMMENDATIONS:

1. THAT Report ENG-28-2023 Harrop Municipal Drain Variation of Assessment for Maintenance and Repair – Engineer’s Report be received;
2. AND THAT the Harrop Municipal Drain Variation of Assessment for Maintenance and Repair Engineer’s Report be adopted by provisional by-law as per Section 45 (1) of the Drainage Act, R.S.O. 1990 c.D.17.;
3. AND THAT the first sitting for the Court of Revision be held on a date to be determined by the Court of Revision, between 20 and 30 days from the date of mailing of the Provisional By-law;
4. AND THAT the Clerk be directed to send a copy of the Provisional By-law and a notice of first sitting of the Court of Revision to the required landowners;
5. AND THAT the revised budget as outlined in Report ENG-28-2023 be approved;

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**Reviewed by:** Kristopher R. Franklin, Manager, Engineering Services

**Respectfully submitted:** Tyson Haedrich, M. Eng., P. Eng., General Manager of Engineering & Capital Works

**Approved:** Cathy Case, Chief Administrative Officer

### EXECUTIVE SUMMARY:

In accordance with Report ENG-13-2019 Appointment of a Drainage Engineer for a New Assessment Schedule for the Harrop Municipal Drain, Haldimand County appointed GM BluePlan Engineering Ltd. (GMBP) to complete a new assessment schedule for maintenance and repair for the Harrop Municipal Drain under Section 76 of the *Drainage Act*, R.S.O. 1990, c. D.17. The County initiated this appointment to comply with the Drainage Referee’s November 5, 2018 order, as part of their decision on a landowner appeal based on assessments from 2015 maintenance work.

The new assessment schedule outlines the cost sharing for all future maintenance activity on the drain. All lands and roads within the drainage area of the Harrop Municipal Drain will be assessed a portion of the total project costs.

Based on a review of the Harrop Municipal Drain Variation of Assessment for Maintenance and Repair (Section 76) Engineer's Report, staff confirm that the report is sufficient and Council can now proceed to adopt the Engineer's Report to continue the process outlined in the Drainage Act.

## **BACKGROUND:**

The Harrop Municipal Drain is located in the former Walpole Township in Haldimand County (see Attachment 1). The Harrop Drain is nearly 7 km in length and services a watershed area of approximately 1,025 hectares from King Street West in Hagersville to just south of Lot 11, Concession 9. The catchment area contains 575 parcels which includes roads and other municipally owned land.

The Harrop Drain was established through an Engineer's Report dated December 5, 1957, in response to a Petition received by the Township of Walpole Council in 1952. After adoption of the 1957 Engineer's Report, some residents were opposed to the Harrop Drain when they were informed they would be assessed costs for its maintenance. Several area landowners appealed their assessments to a County Court Judge and two won their appeals case, Ivan Parkinson (Lot 13, Concession 10) and Harold Wilson (Lot 10, Concession 11), claiming they had no drainage issues and did not benefit from the drain improvements. Another landowner, Rex Phibbs, had his assessment reduced slightly.

In 1996, the City of Nanticoke initiated a review of the Harrop Drain and updates to the assessment schedule and plan, completed under Section 65 of the Drainage Act were authorized by the City's By-law 47-98. In June 1998, the City sent out notice to all Harrop Drain properties that they would be assessed for the maintenance work done in 1992 and many complaints were received from landowners, some of whom were unaware they were served by a Municipal Drain. As the maintenance work was completed on the drain more than five years previous, the City decided to write off the cost of the maintenance work, instead of assessing the maintenance work costs to all properties.

The Harrop Drain was last maintained by Haldimand County in 2015 and the costs were assessed based on the 1996 assessment schedule. Following the assessment of costs, the current owners of the lands that had originally appealed their assessments in the 1957 Engineer's Report appealed to the Drainage Referee that the original 1957 assessment schedule should stand as the 1996 process was flawed and they did not have their statutory right to appeal.

On November 5, 2018 the Ontario Superior Court of Justice in the Court of the Drainage Referee rendered the decision on the appeal and as outlined in the ruling, the Court ordered the County to complete a new engineer's report for the Harrop Drain under Section 76 of the Drainage Act. The Court also adjusted the assessments of three properties (Beischlag, Wilson and Phibbs) based on a 1958 County Court Judge ruling and assessed these costs to the County. The Drainage Referee's decision was summarized for Council in Memo ES-M01-2018 Harrop Drain - Drainage Referees Decision (link provided below).

It should be noted that the Drainage Referee's order stated that the 1957 assessment schedule from the Engineer's Report, as amended on appeal, is not consistent with existing conditions and current assessment practices and that Judges who now have authority on assessments would assess these landowners for outlet liability because their lands contribute water to, and therefore use, the Harrop Drain.

To comply with the Drainage Referee's order, the County appointed GM BluePlan Engineering Ltd. to complete a new assessment schedule for maintenance and repair for the Harrop Municipal Drain under Section 76 of the *Drainage Act*, R.S.O. 1990, c. D.17 and was the subject of Report ENG-13-2019 Appointment of a Drainage Engineer for a New Assessment Schedule.

A new assessment schedule outlines the cost sharing for all future maintenance activity on the drain. All lands and roads within the drainage area of the Harrop Municipal Drain will be assessed a portion of the total project costs.

Since the award of the contract, the Engineer has followed the process outlined in the Drainage Act, holding public meetings to discuss concerns and requests of landowners, as well as examinations of the drain and drain watersheds. This process culminated in the final Harrop Municipal Drain variation of Assessment for Maintenance and Repair (Section 76) Engineer's Report dated August 16, 2023 (see Attachment 3).

## **ANALYSIS:**

Based on a review of the Harrop Municipal Drain Variation of Assessment for Maintenance and Repair (Section 76) Report, staff confirm that the report is sufficient. Council can now proceed to adopt the Engineer's Report by giving two readings to the by-law. The adopted by-law will be provisional until sufficient time has been allowed for the conclusion of the required appeal process.

Once the by-law is formally adopted by the third reading and following the appeal period, Council is committed to the adoption of the report. Should Council not proceed with the adoption of the by-law, any landowner within the drain may appeal to the appropriate appeal body.

Within 30 days of the adoption of the report, a copy of the by-law and notice of the time and date of the first sitting of the Court of Revision must be sent to any landowner receiving allowances, compensation or assessments. The date of the first sitting must be between 20 and 30 days of the mailing of the last notice.

The jurisdiction of the Court of Revision is limited to three types of appeals. Any landowner assessed for the drainage works can appeal to the Court on the following grounds:

- That land or road has been assessed too high or too low.
- That land or road should have been assessed, but has not been assessed.
- Due consideration has not been given to the type of use of the land.

The Court of Revision has no authority to change the Engineer's Report in any way other than to alter the schedule of assessments. If one assessment is reduced, others must be increased.

Following the adoption of the final Engineer's Report, the future maintenance of the Harrop Drain, may proceed once all Court of Revision appeals (if any) are resolved.

## **FINANCIAL/LEGAL IMPLICATIONS:**

The Engineer's Report outlines an updated assessment schedule for all future maintenance activity on the drain. All lands and roads within the drainage area of the Harrop Municipal Drain will be assessed a portion of the total project costs for the Engineer's Report and any future maintenance activities will be assessed to landowners based on this schedule.

At this time, only the cost for the Engineer's report will be assessed to landowners and future costs for maintenance will be assessed with regularly scheduled maintenance of the Harrop Drain. The actual billing of the costs to provide the report will be the subject of subsequent drain billing reports to Council.

The Harrop Municipal Drain Variation of Assessment for Maintenance and Repair (Section 76) Report project currently has a budget of \$60,000. The active project currently has expenditures totalling just under \$60,000 (including the non-rebateable portion of HST) relating to engineering costs, mailings and public consultation. It is expected that the total estimated cost of the project will be approximately

\$90,000 once the appeals phase of the project has concluded. The total costs exceed the current project budget and the following budget amendment is required:

<b>Project Expenditures</b>	<b>Current Approved Budget</b>	<b>Change</b>	<b>Proposed Revised Budget</b>
<b>379009 – Harrop Updated Engineer’s Report</b>	\$60,000	\$30,000	\$90,000
<b>Total Capital Expenditures</b>	<b>\$60,000</b>	<b>\$30,000</b>	<b>\$90,000</b>
<b><u>Financing:</u></b>			
<b><u>261100- CRR Roads Infrastructure</u></b>	\$60,000	(\$60,000)	\$0
<b>241800 - Drainage Recoveries</b>	\$0	\$57,400	\$57,400
<b>298300 – Transfers from Municipal Drain Fund</b>	\$0	\$ 32,600	\$32,600
<b>Total Financing</b>	<b>\$60,000</b>	<b>\$30,000</b>	<b>\$90,000</b>

Once all costs have been incurred and grants have been received, the total cost to complete the updated assessment schedule will be assessed to landowners according to the Schedule of Assessment found in Appendix ‘A’ of the Engineer’s Report. The Schedule of Net Assessment (see Attachment 2) indicates the estimated actual assessment that landowners will receive once all applicable grants are accounted for.

An estimated breakdown of the costs of this report by land use and the County’s assessed share is shown in the following table.

<b>Land Use</b>	<b>Percentage of Assessment</b>	<b>Total Assessment</b>	<b>Estimated Eligible Grant</b>	<b>Estimated Net Assessment</b>
Agricultural	41.44%	\$37,289.79	\$12,429.93	\$24,859.86
Non-Agricultural	20.55%	\$18,496.89	\$0	\$18,496.89
Haldimand County- Lands	0.70%	\$632.61	\$0	\$632.61
Haldimand County- Roads	6.33%	\$5,696.19	\$0	\$5,696.19
Hagersville WWTP	29.20%	\$26,283.96	\$0	\$26,283.96
MTO- Highway #6	1.78%	\$1,600.56	\$0	\$1,600.56
<b>Total</b>	<b>100%</b>	<b>\$90,000.00</b>	<b>\$12,429.93</b>	<b>\$77,570.07</b>

Once the Drainage Act process is completed, the Harrop Drain will be maintained as part of the annual Haldimand County Municipal Drain Maintenance Program, where all municipal drains are maintained on a ten year cycle. Costs of future maintenance will be assessed to the watershed according to the updated assessment schedule.

## **STAKEHOLDER IMPACTS:**

### **Lands and Roads within the Harrop Drain Watershed**

The Drainage Act process is a public process involving all landowners within the Harrop Drain watershed. All lands and roads within the watershed of the Harrop Drain are assessed a portion of the cost of constructing and maintaining the drain and landowner input is key to the effectiveness of the design of the drain.

Public meetings were held throughout the process, including prior to the meeting to consider the report. During the meetings, both the Engineer and Haldimand County staff were available to answer questions.

All landowners have the ability to appeal their assessment through the Court of Revision as described in the Analysis section.

### **Finance Division**

Due to the number of landowners in the assessment area, there is an impact to the Finance Division related to the number of properties that will have the final assessment amount added to the tax-roll, once the final cost of the construction is known and provincial grants have been received.

## **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: Yes

Policy: No

## **REFERENCES:**

1. [The Drainage Act, R.S.O 1990, c. D. 17](#)
2. [ES-M01-2018 Harrop Drain - Drainage Referees Decision](#)
3. [ENG 13-2019 Appointment of a Drainage Engineer for a New Assessment Schedule for the Harrop Municipal Drain](#)

## **ATTACHMENTS:**

1. Map of the Harrop Drain watershed
2. Schedule of Net Assessment (including OMAFRA Grant)
3. Engineer's Report
4. By-Law