

The Corporation of the City of Kawartha Lakes

Agenda

Drainage Board Meeting

DB2020-02

Thursday, August 13, 2020

Electronic Participation - Meeting Begins at 7:00pm

Council Chambers

City Hall

26 Francis Street, Lindsay, Ontario K9V 5R8

Members:

Councillor Ron Ashmore

Councillor Andrew Veale

Charles Clarke

Jim Oriotis

Mike Verbik

Accessible formats and communication supports are available upon request. The City of Kawartha Lakes is committed to accessibility for persons with disabilities. Please contact AgendaItems@kawarthalakes.ca if you have an accessible accommodation request.

Meeting will be livestreamed on the City's YouTube page: www.youtube.com/c/CityofKawarthaLakes
Any deputation requests must be received by Tuesday August 11th, at 12:00pm. Deputations will be conducted by Zoom video conferencing.

1.	Call to Order	
2.	Administrative Business	
2.1	Adoption of Agenda	
2.2	Declaration of Pecuniary Interest	
2.3	Adoption of Minutes from Previous Meeting	3 - 9
	February 5, 2020 Drainage Board Meeting Minutes	
3.	Deputations	
4.	New Business	
4.1	Memorandum	10 - 30
	Direction of Engineer to Proceed with Drainage Report	
	MacEachern Brown Municipal Drain	
	Lucas Feitler, Drainage Superintendent	
5.	Other Business	
5.1	Verbal Update on Waite Drain	
5.2	Verbal Update on Webster Drain	
5.3	Verbal Update on 2020 Municipal Drainage Maintenance Work	
5.4	Amendments to the Drainage Act	31 - 33
6.	Adjournment	

The Corporation of the City of Kawartha Lakes
Minutes
Drainage Board Meeting

DB2020-01
Wednesday, February 5, 2020
7:00 P.M.
Victoria Room
City Hall
26 Francis Street, Lindsay, Ontario K9V 5R8

Members:
Councillor Ron Ashmore
Councillor Andrew Veale
Charles Clarke
Jim Oriotis
Mike Verbik

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1. Call to Order

Deputy Clerk and Recording Secretary J. Watts called the meeting to order at 6:59 p.m. Drainage Board members Councillor Veale and Ashmore, and C. Clarke, J. Oriotis, and M. Verbik were in attendance.

Supervisor of Technical Services M. Farquhar and Drainage Superintendent L. Feitler were also in attendance.

1.1 Appointment of Chair & Vice-Chair

Deputy Clerk Watts called for the nominations for the position of Chair.

Councillor Veale was nominated.

Deputy Clerk Watts called a second time for nominations for the position of Chair.

Deputy Clerk Watts called for a third and final time for nominations for the position of Chair.

Deputy Clerk Watts declared nominations for the position of Chair for the Drainage Board closed.

Deputy Clerk Watts asked Councillor Veale if he wished to let his name stand for Chair of the Drainage Board. He consented to the nomination.

Deputy Clerk Watts declared Councillor Veale as Chairperson of the Drainage Board.

Councillor Veale assumed his position as Chairperson of the committee.

Chair Veale called for the nominations for the position of Vice-Chair

Councillor Ashmore was nominated.

Chair Veale called a second time for nominations for the position of Vice-Chair.

Chair Veale called for a third and final time for nominations for the position of Vice-Chair.

Chair Veale declared nominations for the position of Vice-Chair for the Drainage Board closed.

Chair Veale asked Councillor Ashmore if they wished to let their name stand for Vice-Chair of the Board. Councillor Ashmore declined the nomination.

Chair Veale reopened nominations for Vice-Chair of the Drainage Board and called for nominations a first time.

J. Oriotis was nominated

Chair Veale called a second time for nominations for the position of Vice-Chair.

Chair Veale called for a third and final time for nominations for the position of Vice-Chair.

Chair Veale declared nominations for the position of Vice-Chair for the Drainage Board closed.

Chair Veale asked J. Oriotis if they wished to let their name stand for Vice-Chair of the Board. J. Oriotis consented to the nomination.

Chair Veale declared J. Oriotis as Vice-Chair of the Drainage Board.

The Chair thanked the members of the committee for the appointment as Chairperson of the Drainage Board.

2. Administrative Business

2.1 Adoption of Agenda

DB2020-001

Moved By C. Clarke

Seconded By J. Oriotis

That the agenda be adopted as amended and as circulated.

Carried

2.2 Declaration of Pecuniary Interest

There were no declarations of pecuniary interest disclosed.

2.3 Adoption of Minutes from Previous Meeting

October 23, 2019 Drainage Board Meeting Minutes

DB2020-002

Moved By C. Clarke

Seconded By M. Verbik

That the minutes of the Drainage Board meeting held on October 23, 2019, be adopted as circulated.

Carried

3. Deputations

4. New Business

4.1 Drainage Act Discussion Paper

Ernie Hardeman, Minister of Agriculture, Food, & Rural Affairs

Mr. Farquhar presented an overview of the proposed changes to the Drainage Act which has not seen a significant update since 1975. The Ministry of Agriculture, Food and Rural Affairs 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.

He noted that the consultation process regarding the amendments would be open until February 18, 2020, and that the City would be providing a response. He encouraged members of the Board to submit comments to Engineering Staff by February 17 for them to compile and forward to the Ministry.

DB2020-003

Moved By C. Clarke

Seconded By J. Oriotis

That the January 22, 2020 Drainage Act Discussion Paper from the Ministry of Agriculture, Food, and Rural Affairs , be received.

Carried

4.2 Memorandum

Subsequent Connection to Drainage Works - Rich Municipal Drain
Lucas Feitler, Drainage Superintendent

Mr. Feitler presented an overview of his memorandum. He explained the options available to the Drainage Board based on the request from Craig McGill from MFDrainage.

DB2020-004

Moved By C. Clarke

Seconded By J. Oriotis

Recommend that the memorandum from L. Feitler, Drainage Superintendent - Engineering and Corporate Assets, dated February 5, 2020, regarding the section 65(3) subsequent connection to drainage works be received;

That the Engineering and Corporate Assets Department initiates proceedings under the provisions of Section 65(3) of the Drainage Act, R.S.O. 1990, c. D.17;

That the City Clerk be instructed to advise an engineer in writing to inspect the land and assess it for a just proportion of the drainage works, taking into account any compensation paid to the owner of the land in respect of the drainage works as per section 65(3) of the Drainage Act, R.S.O. 1990, c. D.17.

Carried

4.3 Memorandum

Error in the Original Drainage Report - Robertson Drain (Verulam)
Lucas Feitler, Drainage Superintendent

Mr. Feitler presented an overview of his memorandum. He explained the options available to the Drainage Board based on the discovery of the error in the original Engineer's Report.

DB2020-005

Moved By Councillor Ashmore

Seconded By C. Clarke

Recommend that the memorandum from L. Feitler, Drainage Superintendent - Engineering and Corporate Assets, dated February 5, 2020, regarding the section 65(3) error in original drainage report be received;

That the Engineering and Corporate Assets Department initiates proceedings under the provisions of Section 65(3) of the Drainage Act, R.S.O. 1990, c. D.17; and

That the City Clerk be instructed to advise an engineer in writing to inspect the land and assess it for a just proportion of the drainage works, taking into account any compensation paid to the owner of the land in respect of the drainage works as per section 65(3) of the Drainage Act, R.S.O. 1990, c. D.17.

Carried

5. Other Business

5.1 Update on New Municipal Drains

Webster Municipal Drain

Waite Municipal Drain

MacEachern Brown Municipal Drain

Mr. Farquhar and Mr. Feitler provided updates to the Board on the three new Municipal Drains which are at various states of approval. They noted the following:

- Quotes for the Webster Drain construction were reviewed and were in compliance with the Engineer's estimates.
- Hydrology reports were submitted to the MTO for the Waite Drain. MTO will review them to ensure culvert crossing meets design standards.
- MacEachern Brown Drain will be surveyed in the spring following the snow melt.

DB2020-006

Moved By J. Oriotis

Seconded By M. Verbik

That the update on new Municipal Drains be received.

Carried

5.2 Update on Maintenance Work

2019 Maintenance Work Review

2020 Maintenance Work Plan

Mr. Feitler provided an update on his 2019 work plan as detailed in previous Drainage Board Minutes, and noted that work from 2019 is now complete. Regarding his 2020 work plan, he stated cleanout requests have been provided to him for the Corneil 1998 and the Keivall Creek Municipal Drains, and that he was beginning to start the maintenance process. He responded to questions from Board members regarding other potential issues on the Ops 5 Municipal Drain, and other areas susceptible to flooding on Kenhill Beach Road.

DB2020-007

Moved By C. Clarke

Seconded By Councillor Ashmore

That the update regarding maintenance work, be received.

Carried

6. Adjournment

DB2020-008

Moved By C. Clarke

Seconded By M. Verbik

That the Drainage Board Meeting adjourn at 7:56 p.m.

Carried



**The Corporation of the
City of Kawartha Lakes**
322 Kent Street West P.O. Box 9000
Lindsay, ON K9V 5R8
Phone: 705-324-9411, Ext. 1167
Fax: 705-324-2982

Memorandum

Date: August 6, 2020
To: Drainage Board
From: Lucas Feitler, Drainage Superintendent – Engineering & Corporate Assets
Re: Direction of Engineer to Proceed with Drainage Report
MacEachern Brown Municipal Drain
CC: Juan Rojas Director of Engineering and Corporate Assets
Mike Farquhar, Supervisor of Technical Services.

Recommendation:

Recommend that the memorandum from L. Feitler, Drainage Superintendent - Engineering and Corporate Assets, dated July 14, 2020, regarding the direction of Engineer to proceed with drainage report be received;

That the Drainage Board directs the appointed Engineering Firm D. M. Wills to proceed with an Engineer's Report under the provisions of the *Drainage Act, R.S.O. 1990, c. D.17*;

Background:

The City of Kawartha Lakes received a petition for drainage works on September 3rd, 2019. A drainage board meeting was held to discuss the petition on September 17th, 2019 and subsequently a Council meeting was held on October 22, 2019 where the following resolution was passed:

MacEachern / Brown Petition Drain

Mike Farquhar, Supervisor, Technical Services

CR2019-585

That Report ENG2019-023, **MacEachern / Brown Petition Drain**, be received;

That Council proceeds with the petition submitted by D.S. & B. Farms Inc., Robert MacEachern and Lynda MacEachern for drainage works by owners for Lot 17 Con 3, Lot 16 Con 3 and Lot 16 Con 2 in the Former Eldon twp., and instruct the City Clerk to proceed with the notices required under Section 5 of the Drainage Act; and

That Council appoints and retains, D.M. Wills and Associates Limited, in accordance with the Drainage Act, as the Engineer of Record for the petition and to proceed with the requirements of a petition drain.

There were delays to the on-site meeting due to both weather and health and safety. The on-site meeting was tentatively planned for the spring when existing conditions of the land could be observed. The Corona Virus also delayed the on-site meeting until the gathering limit imposed by the provincial government was lifted to 10 people.

The section 9 on-site meeting was held on July 7th, 2020. Both petitioners as well as land owners in the projected watershed were invited to attend. Following the meeting, the Engineer determined the petition is valid under Section 4(1)(b) of the *Drainage Act, R.S.O. 1990, c. D.17*.

Section 4 of the *Drainage Act, R.S.O. 1990, c. D.17* states:

Petition Drains

Petition

4 (1) A petition for the drainage by means of a drainage works of an area requiring drainage as described in the petition may be filed with the clerk of the local municipality in which the area is situate by,

(a) the majority in number of the owners, as shown by the last revised assessment roll of lands in the area, including the owners of any roads in the area;

(b) the owner or owners, as shown by the last revised assessment roll, of lands in the area representing at least 60 per cent of the hectarage in the area;

(c) where a drainage works is required for a road or part thereof, the engineer, road superintendent or person having jurisdiction over such road or part, despite subsection 61 (5);

(d) where a drainage works is required for the drainage of lands used for agricultural purposes, the Director. *R.S.O. 1990, c. D.17, s. 4 (1)*

Alternatives:

1. Proceed with a Preliminary Report containing a sketched plan and an estimate of the cost of the drainage works.

Recommendation for appointment of a Drainage Engineer:

Following a competitive procurement process and Council resolution, D.M. Wills has already been retained as the appointed Engineering firm for the MacEachern-Brown Municipal Drain under Section 8 of the provisions of the *Drainage Act, R.S.O. 1990, c. D.17*;

Attachments:

Appendix A - Section 9 on-site meeting minutes.

Appendix B - Petition for the MacEachern Brown municipal drain.

Appendix C - Letter from Engineering Firm D. M. Wills validating petition.

Appendix D - Site drawing from Engineering Firm D. M. Wills.

Appendix E - Memo to drainage board from Lucas Feitler, Drainage Superintendent dated September 11, 2019.

Appendix F – Emails regarding petition from landowners in estimated watershed.

Meeting Minutes

Project Name:	MacEachern Brown Municipal Drain
Project No.:	19-5377
Type of Meeting	On-Site Meeting
Meeting Date:	July 7, 2020
Meeting Time:	11:00 a.m.
Report Date:	July 13, 2020
Recorder:	Mark Hoar for Ken Smith
Meeting Location:	1963 County Road 46, Woodville, Ontario

Requested Attendees:

Name	Title	Company
• Lucas Feitler	Drainage Superintendent	City of Kawartha Lakes (CKL)
• Mike Farquhar	Supervisor, Tech. Service	CKL
• Ken Smith	Project Manager	D.M. Wills Associates Limited (Wills)
• Mark Hoar	Project Engineer	Wills

Local Residents:

- Robert MacEachern
- John Mackintosh
- Karen Buck-Mackintosh
- Bill Perry
- Scott Brown
- Christena Mitchell
- Kevin Mitchell
- Garry Hopkins
- Christine Halbot
- Dave Brown

Purpose of Meeting:

To satisfy Section 9(1) and 9(2) of the Drainage Act for the MacEachern Brown Municipal Drain project.



Item	Description	Action By
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1. Health and Safety

- Due to Covid-19 health concerns the meeting started with Health and Safety protocols.
 - Protective masks were offered, social distancing was maintained and hand sanitizer / disinfectant was offered for sign-in.
 - Meeting was relocated to Palestine Road, just west of County Road 46, to reduce exposure to traffic hazards.

2. Introduction

- Introductions
 - Ken Smith – Project Manager
 - Mark Hoar – Project Engineer
 - Mike Farquhar – Supervisor, Tech. Service
 - Lucas Feitler – On Site Supervision
 - Local Residents
- The local residents who attended the meeting were asked to identify their properties prior to the distribution of the private maps.

3. Project History / Background / Goals and Objectives

- A quick overview of the Drainage Act and was provided.
 - The overall goal is to provide a legal means to facilitate drainage for a property or properties that require drainage.
 - Obtain input to help define the Area Requiring Drainage.
 - The Area Requiring Drainage will need to be conveyed to a sufficient outlet.
 - Once the Area Requiring Drainage is confirmed by the engineer, an engineers report will be prepared for the detailed design of the proposed municipal drain.
- City of Kawartha Lakes indicated that if local residents require additional information on the Municipal Drain Process, the City of Kawartha Lakes Website and the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) website are excellent resources.
- There is an existing Agreement for the drain, which was established in 1904. There was a legal requirement for property owners to maintain their portion of the existing award drain. If property owners do not clean out their portions of the award drain, civil court is required to resolve conflicts. Establishing a Municipal drain in place of the award drain puts the onus on the municipality to maintain the drain.
- Two (2) landowners, MacEachern and Brown, are signed on to this petition to date.



Item	Description	Action By
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- OMAFRA grants may be available to help offset the cost of the municipal drain.

4. Description of the Area Requiring Drainage

- A portion of the existing award drain was recently enclosed with a pipe by a riparian landowner (Browns Property). As a result, some flooding was reported on upstream lands (MacEachern Property). This impact has become the foundation for the petition under consideration. In addition, the drainage course south of Palestine Road has not been maintained causing potential flooding on upstream landowner (Browns Property).
- Wills requested input from residents on the catchment area provided at the meeting, along with a request for residents to contact Wills if the boundary is not shown to be correct.
- Robert MacEachern emphasized that he would like to see flooding conditions return to what they were prior to the construction of the 0.3 m diameter pipe on the Browns Property.
- Scott Brown emphasized that he would like to see the drainage channel downstream of Palestine Road be cleaned out to ensure his property has adequate drainage.

5. Input from Property Owners Outside of Area Requiring Drainage

- A recommendation from John Mackintosh, property owner two (2) lots south of Palestine Road,
 - Suggested the straightening the existing channel on their property to allow a seamless connection into White's creek.
 - White's creek would appear to be a sufficient outlet as it is a watercourse with defined bed and banks.
 - The existing channel is terminated in a low lying area without a defined outlet. Beavers in the area have been known to be a problem and are exasperating flooding concerns.
- High ground water and high bedrock were mentioned as a possibility by local residents.

6. Questions Asked During the Meeting

- Who will pay for the construction of the Municipal Drain?
 - CKL and Wills provided an overview of the schedule of assessment is and how costs and rebates are distributed throughout the catchment and how those assessments are proportional to land use and land area.
 - Wills shall prepare the Assessment Schedule and there will be ample time through the court of revision for property owners



Item	Description	Action By
	within the catchment to challenge the findings of the engineers report.	
	<ul style="list-style-type: none">• What is the Time Line for completion of the project?<ul style="list-style-type: none">- The times lines are laid out in accordance with the Drainage Act. The timeline cannot be easily identified due to the number of regulatory processes and appeals processes that may be required.- Once the Area Requiring Drainage is defined by the engineer, the completion of the Engineers report will take up to six (6) months, with regulatory review, appeals processes, tendering and construction taking up to two (2) additional years.	

The above represents the writer's understanding of the discussion and actions derived from the meeting. If there are any revisions required or omissions in the above, please advise our office as early as possible. The minutes shall be deemed complete and accurate if no response is received within five (5) days of distribution.

Submitted by: Ken Smith, P.Eng.

MJH/KS/kr

Petition for Drainage Works by Owners Form 1

Drainage Act, R.S.O. 1990, c. D.17, clause 4(1)(a) or (b)

This form is to be used to petition municipal council for a new drainage works under the *Drainage Act*. It is not to be used to request the improvement or modification of an existing drainage works under the *Drainage Act*.

To: The Council of the Corporation of the City of Kawartha Lakes

The area of land described below requires drainage (provide a description of the properties or the portions of properties that require drainage improvements)

Lot 17 Con. 3, Lot 16 Con. 3 & Lot 16 Con 2 require converting of the Budd & Hopkins Award Drains to a Municipal Drain.

RECEIVED
SEP 03 2019
OFFICE OF THE CITY CLERK
KAWARTHA LAKES

In accordance with section 9(2) of the *Drainage Act*, the description of the area requiring drainage will be confirmed or modified by an engineer at the on-site meeting.

As owners of land within the above described area requiring drainage, we hereby petition council under subsection 4(1) of the *Drainage Act* for a drainage works. In accordance with sections 10(4), 43 and 59(1) of the *Drainage Act*, if names are withdrawn from the petition to the point that it is no longer a valid petition, we acknowledge responsibility for costs.

Purpose of the Petition (To be completed by one of the petitioners. Please type/print)

Contact Person (Last Name)	(First Name)	Telephone Number
Brown	Scott	705 328-8123 ext.
Address		
Road/Street Number	Road/Street Name	
C1510	Thorah Concession Road 1	

Location of Project

Lot	Concession	Municipality	Former Municipality (if applicable)
16	2	<u>Eldon - Kawartha Lakes</u>	<u>Eldon</u>

What work do you require? (Check all appropriate boxes)

- ☐ Construction of new open channel
- ☐ Construction of new tile drain
- ☒ Deepening or widening of existing watercourse (not currently a municipal drain)
- ☒ Enclosure of existing watercourse (not currently a municipal drain)
- ☒ Other (provide description ▼)

Budd & Hopkins Award Drains

Name of watercourse (if known)

12000 Feet

Estimated length of project

Simcoe clay and Smithfield clay loam

General description of soils in the area

Convert Award Drains to Municipal Drains

What is the purpose of the proposed work? (Check appropriate box)

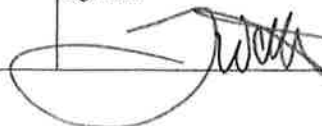
- ☐ Tile drainage only ☐ Surface water drainage only ☒ Both

Petition filed this 3RD day of September, 20 19

Name of Clerk (Last, first name)

WATTS, JOEL

Signature



Property Owners Signing The PetitionPage **2** of **2**

- Your municipal property tax bill will provide the property description and parcel roll number.
- In rural areas, the property description should be in the form of (part) lot and concession and civic address.
- In urban areas, the property description should be in the form of street address and lot and plan number if available.
- If you have more than two properties, please take copy(ies) of this page and continue to list them all.

Number	Property Description Pt Lot 16, Con. 2
Ward or Geographic Township Eldon	Parcel Roll Number 165116001010102

I hereby petition for drainage for the land described and acknowledge my financial obligations.

Ownership☐ Sole Ownership

Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
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☐ Partnership (Each partner in the ownership of the property must sign the petition form)

Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
--	-----------	-------------------

☒ Corporation (The individual with authority to bind the corporation must sign the petition)

Name of Signing Officer (Last, First Name) (Type/Print) <i>Brown Scott</i>	Signature <i>Scott Brown</i>
Name of Corporation <i>D. S. + B. Farms Inc.</i>	I have the authority to bind the Corporation.
Position Title <i>Vice President owner</i>	Date (yyyy/mm/dd) <i>2019/08/22</i>

Number	Property Description Pt Lot 16, Con. 3
Ward or Geographic Township Eldon	Parcel Roll Number 165116001014100

I hereby petition for drainage for the land described and acknowledge my financial obligations.

Ownership☐ Sole Ownership

Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
--	-----------	-------------------

☒ Partnership (Each partner in the ownership of the property must sign the petition form)

Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
<i>Robert MacEachern</i>	<i>Robert MacEachern</i>	<i>2019/08/29</i>
<i>MacEachern Robert</i>		
<i>MacEachern Lynda</i>	<i>Lynda MacEachern</i>	<i>2019/08/29</i>

☐ Corporation (The individual with authority to bind the corporation must sign the petition)

Name of Signing Officer (Last, First Name) (Type/Print)	Signature
Name of Corporation	I have the authority to bind the Corporation.
Position Title	Date (yyyy/mm/dd)

☐ Check here if additional sheets are attachedClerk initial *JW***Petitioners become financially responsible as soon as they sign a petition.**

- Once the petition is accepted by council, an engineer is appointed to respond to the petition. *Drainage Act*, R.S.O. 1990, c. D. 17 subs. 8(1).
- After the meeting to consider the preliminary report, if the petition does not comply with section 4, the project is terminated and the original petitioners are responsible in equal shares for the costs. *Drainage Act*, R.S.O. 1990, c. D. 17 subs. 10(4).
- After the meeting to consider the final report, if the petition does not comply with section 4, the project is terminated and the original petitioners are responsible for the costs in shares proportional to their assessment in the engineer's report. *Drainage Act*, R.S.O. 1990, c. D. 17 s. 43.
- If the project proceeds to completion, a share of the cost of the project will be assessed to the involved properties in relation to the assessment schedule in the engineer's report, as amended on appeal. *Drainage Act*, R.S.O. 1990, c. D. 17 s. 61.

Notice of Collection of Personal Information

Any personal information collected on this form is collected under the authority of the *Drainage Act*, R.S.O. 1990, c. D. 17 and will be used for the purposes of administering the Act. Questions concerning the collection of personal information should be directed to: where the form is addressed to a municipality (*municipality to complete*)

and where the form is addressed to a territory without municipal organization, the Drainage Coordinator, Ministry of Agriculture, Food and Rural Affairs, 1 Stone Rd W, Guelph ON N1G 4Y2, 519 826-3552.



PARTNERS IN
ENGINEERING, PLANNING &
ENVIRONMENTAL SERVICES

July 13, 2020

The Corporation of the City of Kawartha Lakes
12 Peel Street
P.O. Box 9000
Lindsay, ON
K9V 5R8

Attention: Lucas Feitler, Drainage Superintendent

Dear Mr. Feitler:

**Re: Petition for Municipal Drainage MacEachern - Brown Petition
Validity of Petition
D.M. Wills Associates Project No. 19-5377**

To satisfy Section 9(1) and 9(2) of the Drainage Act for the MacEachern Brown Municipal Drain project, the On-Site Meeting was carried out on July 7, 2020. The purpose of the On-Site Meeting was to determine the Area Requiring Drainage and confirm the Validity of the Petition.

In order to satisfy Section 4 (1) of the Drainage Act, the engineer must evaluate the Validity of the Petition, based on four (4) criteria. The petition is determined to be valid if any of one (1) of the following criteria are satisfied:

- a) the majority in number of the owners, as shown by the last revised assessment roll of lands in the area, including the owners of any roads in the area;
- b) the owner or owners, as shown by the last revised assessment roll, of lands in the area representing at least 60 per cent of the hectarage in the area;
- c) where a drainage works is required for a road or part thereof, the engineer, road superintendent or person having jurisdiction over such road or part, despite subsection 61 (5); or
- d) where a drainage works is required for the drainage of lands used for agricultural purposes, the Director. R.S.O. 1990, c. D.17, s. 4 (1).

Based on the results of the On-Site Meeting, D.M. Wills estimated the Area Requiring Drainage, which is highlighted on the attached figure drawing.

Section 4(1)(a) – Evaluation of the percentage of land owners. A petition is valid when the percentage of number of petitions exceeds 50% of the total number of properties. Within the Area Requiring Drainage, there are



Lucas Feitler
Page 2 of 2
July 13, 2020

four (4) land owners and only two (2) signed petitioners, or 50%. Therefore, section 4(1)(a) is Not satisfied.

Section 4(1)(b) – Evaluation of the percentage of land area. A petition is valid when the percentage of area of the signed petitioners exceeds 60% of the total area. The Area Requiring Drainage was estimated at 34.14 ha in size. The area of the two (2) signed petitioners was estimated at 31.98 ha, or 94%. Therefore, Section 4(1)(b) is satisfied.

With Section 4(1)(b) satisfied, a review of Section 4(1)(c) and Section 4(1)(d) is not required.

With Section 4(1)(b) of the Drainage Act satisfied, the petition for the MacEachern Brown Municipal Drain is a valid petition.

If you have any questions or concerns, please don't hesitate to contact the undersigned.

Regards

A handwritten signature in black ink, appearing to read 'Mark Hoar'.

Mark Hoar, P.Eng.
Senior Water Resources Engineer

MJH/kr

Enclosure

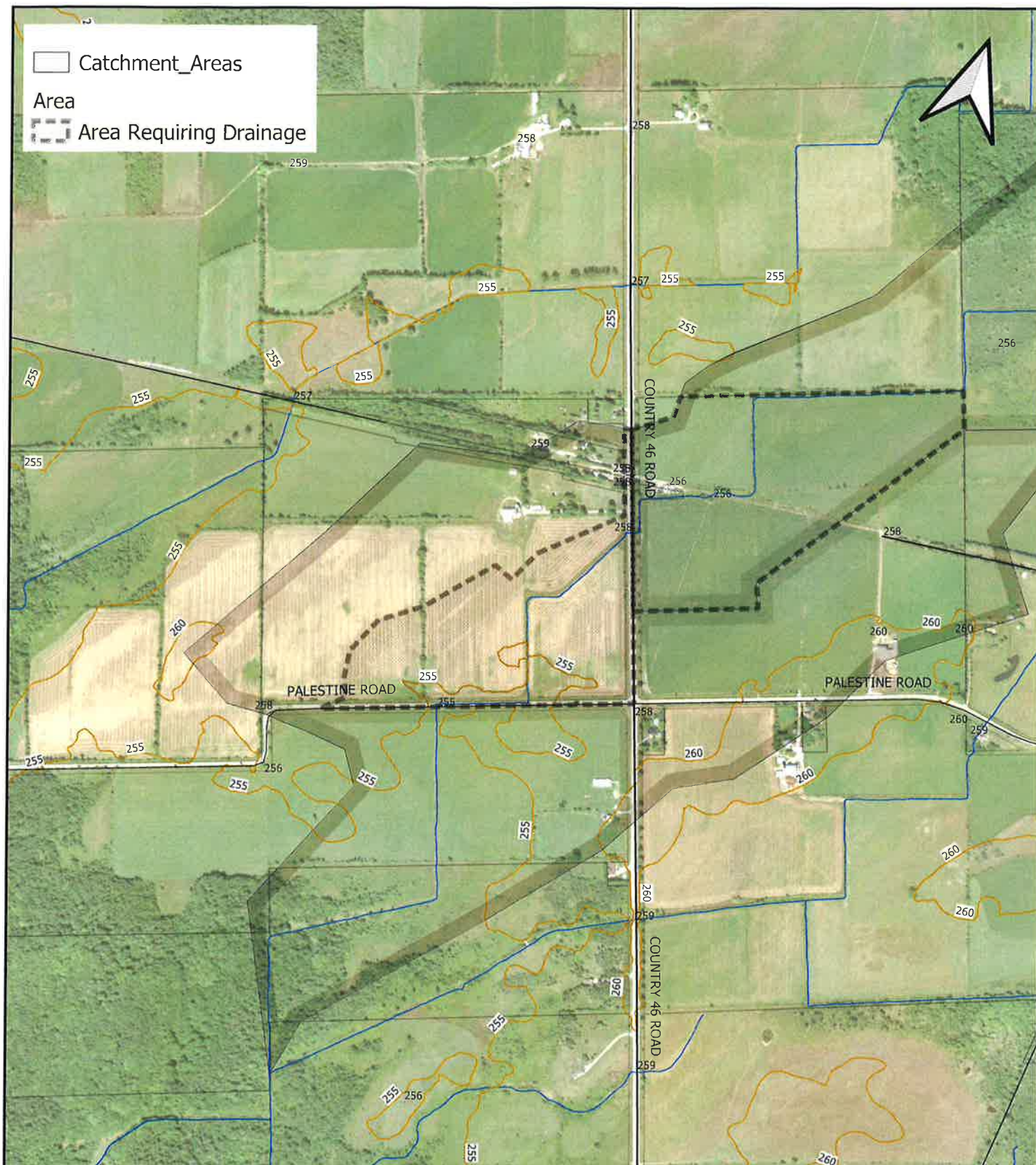


Figure
Area Requireing Drainage



D.M. Wills Associates
Limited
150 Jameson Drive
Peterborough, Ontario
K9J 0B9

P. 705.742.2297
F. 705.741.3568
E. wills@dmwills.com

Drawn by:	MJH	Scale (Horz):
Chercked by:	KS	1:10000
Engineer.	MJH	Map Date:
Project No.	19-5377	July 13, 2020
		Map File No.
		1 of 1



**The Corporation of the
City of Kawartha Lakes**
12 Peel Street P.O. Box 9000
Lindsay, ON K9V 5R8
Phone: 705-324-9411, Ext. 1156
Fax: 705-324-2982

MEMO

Date: September 11, 2019
To: Drainage Board
From: Lucas Feitler, Drainage Superintendent – Engineering & Corporate Assets
Re: Petition for Municipal Drainage
MacEachern - Brown petition
CC: Juan Rojas Director of Engineering and Corporate Assets
Mike Farquhar, Supervisor of Technical Services.

Recommendation:

That the memorandum from the Drainage Superintendent - Engineering and Corporate Assets L. Feiter, dated September 17, 2019, regarding the petition for drainage works by owners of Concession 2, Part Lot 16, Geographic Township of Eldon (being Scott Brown of D.S. & B. Farms Inc.), and Concession 3, Part Lot 16, Geographic Township of Eldon (being Robert and Lynda MacEachern), be received;

That Council proceed with the petition submitted by D. S. & B. Farms Inc. and Robert and Lynda MacEachern for drainage works for Concession 2, Part Lot 16, and Concession 3 Part Lot 16 Geographic Township of Eldon to be known as the “MacEachern-Brown Drain” and instruct the City Clerk to proceed with the notices required under Section 5 of the *Drainage Act*;

That Staff concurrently continue to pursue with the petitioners options for a mutual drain agreement as per the City Policy; and

That pursuant to Section 8(1) of the *Drainage Act, R.S.O. 1990, Chapter D. 17*, staff recommend to Council a Drainage Engineer for the examination of the area requiring drainage and proceed with the requirements of the proposed MacEachern-Brown Drain.



**The Corporation of the
City of Kawartha Lakes**
12 Peel Street P.O. Box 9000
Lindsay, ON K9V 5R8
Phone: 705-324-9411, Ext. 1156
Fax: 705-324-2982

Background:

The subject area/ land is bounded by Palestine Road to the South, and is separated by Kawartha Lakes Road 46 (refer to Appendix A). There are no existing Municipal Drains within the vicinity. The area of the land identified in the petition is approximately 200 acres in size.

The property is within the Simcoe County Conservation Authority jurisdiction as defined under the Ontario Conservation Act and has an identified watercourse on the property (see appendix B). This existing watercourse has been identified as the Eli Budd Award Drain, awarded construction in 1904.

On September 3, 2019 the City of Kawartha Lakes Clerks department received a petition for Drainage works within the subject area (Appendix C).

The Drainage Superintendent was called to site after a neighbor was concerned that a drainage ditch had been replaced with a covered pipe. A records request was completed and it was determined that the ditch was an existing Award drain. A meeting was held with landowners where legislation governing Award drains was discussed. The following was explained to land owners:

Section 3(18) of the Drainage Act states:

Drainage works constructed on requisition

3 (1)-(17) Repealed: 2010, c. 16, Sched. 1, s. 2 (1).

Existing ditches

(18) Every ditch constructed under *The Ditches and Watercourses Act*, being chapter 109 of the Revised Statutes of Ontario, 1960, shall be maintained in accordance with the award of the engineer providing for such maintenance until such ditch is brought under the provisions of this Act by petition under section 4. 2010, c. 16, Sched. 1, s. 2 (2).

Therefore, the drain must be maintained as per the latest engineer's report until it is petitioned for a municipal drain.

The first step to initiating maintenance is to send notice to the owner who is not maintaining their section of drain. This notice was served which initiated a site meeting between the land owner in contravention and owner serving notice. If the drain is still not maintained as per the engineer's report then there are three options for the landowner serving notice;

- Initiate a civil lawsuit based on non-compliance with an agreement.
- Initiate an appeal to the drainage referee under subsections 3(18) and paragraph 106(1)(c) of the Drainage Act.
- Petition under section 4 of the drainage act to have the award drain made into a municipal drain.



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It is up to the land owner to initiate the appeal to the drainage referee and the procedure to follow for appeal is Ontario regulation 232/15 Rules of Practice and Procedure in Proceedings Before the Referee. Recommendation was made that all land owners to seek their own legal advice for clarify and next steps.

Subsequent meetings where held with the applicants representative and City staff on site to review options for a mutual drain, municipal drain or alterations to the award drain. This situation was also discussed with the current Drainage Coordinator for OMAFRA. It was of the opinion that upon appeal, the Drainage Referee would change the Award to a Municipal drain and therefore the petitioning process initiated as per Section 4(1) of the Ontario Drainage Act. It was determined to be too costly and time consuming to pursue the appeal process and a petition was submitted to the Clerk's office on September 3rd, 2019.

Alternatives:

As an option for required drainage the City firstly promotes the use of a Mutual agreement through the City's policy for Agricultural Tile discharge to roadside ditches prior to pursuing a petition for a Municipal drain under the Ontario Drainage Act. At this point in time the Drainage Superintendent has currently presented this option to the petitioners and explained its avenues in comparison to petitioning for a Municipal Drain under the Drainage Act. At this current time the petitioners wish to carry on with the process under the Drainage Act for the petition. Staff will leave the door open for pursuing a mutual agreement up until the prescribed time the petitioner has under the Drainage Act for removing their names and abandoning the petition.

Recommendation for appointment of a Drainage Engineer:

Currently the City has a pool of Drainage Engineers which list in the following.

Burnside Engineering
Tulloch Engineering
K-Smart Engineering
R. D. Dobbin Engineering
DM Wills Engineering.

Attachments:

Lucas Feitler

From: Lucas Feitler
Sent: Monday, July 20, 2020 3:00 PM
To: [REDACTED]
Cc: Mike Farquhar
Subject: RE: Drainage Act information

Hi Karen,

You're welcome, please see my answers below. I have also tried to include the Drainage Act sections that correspond with my answers.

is this project already approved to go ahead?

The simple answer, Yes.

A petition has been submitted to council which initiates the procedures of the Drainage Act. The City of Kawartha Lakes has a Drainage Board that can also make decisions on City Council's behalf. The Drainage Board and City Council elected to proceed and accept the petition. If a municipality decides to accept a petition, it must appoint an engineer to determine the validity of said petition (section 8). So far the Engineer has conducted the on-site meeting and determined the petition is valid. Under section 9(5)) of the Drainage Act, the Drainage Board must now instruct the engineer to proceed with a report or preliminary report.

The Municipality must follow the procedure as it is laid out in the Drainage Act.

We are currently arranging this Drainage Board meeting. Please let me know if you would like to view or participate as this meeting can be livestreamed.

who is paying for D.M. Wills engineering company?

Throughout the design and construction phase, and until the drainage costs can be levied to assessed owners, the fees are paid by the Municipality. Once all construction and appeal periods have expired, costs are assessed to land owners. If requested by the land owner, the fees can be debentured over a period of 10 years. The engineering fees form part of the drainage works and are therefore paid by the watershed (section 70)

who is responsible to contact the Lake Simcoe Conservation Authority, the Planning and Development Environmental Regulations and related Watershed departments, and the Planning and Regulations dept.? And, at what point in the process are they involved?

It is the Municipalities' responsibility to notify the local Conservation Authority when a petition is submitted to Council (Section 5(1)(b)). This notification was sent to the General Manager of Planning and Development on November 1st, 2019.

In addition, the same Section 9 'On-Site' meeting invitation, that was sent to yourself, was sent to the General Manager of Planning and Development.

Once the design is completed, Lake Simcoe Conservation Authority will have to review. They must approve and issue a permit to complete the work. No construction will begin without approval from the Lake Simcoe Conservation Authority.

Thank you,

Lucas Feitler

Senior Engineering Technician, Municipal Drainage Superintendent
Engineering and Corporate Assets, City of Kawartha Lakes
705-324-9411 ext. 1167 www.kawarthalakes.ca



From: karen buckmackintosh [REDACTED]
Sent: Friday, July 17, 2020 1:27 PM
To: Lucas Feitler <lfeitler@kawarthalakes.ca>
Subject: Re: Drainage Act information

Lucas

Thank you for this information.

Can you please clarify a couple of things.

- is this project already approved to go ahead?
- who is paying for D.M. Wills engineering company?
- who is responsible to contact the Lake Simcoe Conservation Authority, the Planning and Development Environmental Regulations and related Watershed departments, and the Planning and Regulations dept.? And, at what point in the process are they involved?

Sincerely,
Karen Buck-Mackintosh

On Wed, Jul 15, 2020 at 3:29 PM Lucas Feitler <lfeitler@kawarthalakes.ca> wrote:

Hello Karen Buck-Mackintosh,

Thank you for attending last week's on-site meeting for the MacEachern-Brown municipal drain.

The *Drainage Act, R.S.O. 1990, c. D.17* contains a detailed and specific procedure for land owners to obtain a legal outlet for their water. As discussed on site, I wanted to reach out and provide some additional informational sheets regarding municipal drains.

I have attached two factsheets from the Ontario Ministry and Agriculture, Food and Rural Affairs (OMAFRA) to this email. For a better understanding of the Drainage Act, I recommend that you read

through these, as well as visit OMAFRA's website at <http://www.omafra.gov.on.ca/english/landuse/drain-pub.htm>. This website is a great resource for drainage information and legislation. I highlight and recommend reading over the following additional factsheets from OMAFRA's website; Drainage Act Appeals, Duties of the Landowner Under the Drainage Act, and Municipal Drains and the Land Owner.

Should you have any general questions related to the *Drainage Act, R.S.O. 1990, c. D.17* please do not hesitate to contact me. If you have specific questions or requests related to the MacEachern-Brown drain, please direct them to Ken Smith at D. M. Wills Associates Limited. He can be reached by calling their office at (705) 742-2297 or alternatively by emailing ksmith@dmwills.com.

Thank you,

Lucas Feitler
Municipal Drainage Superintendent
Engineering and Corporate Assets, City of Kawartha Lakes
705-324-9411 ext. 1167 www.kawarthalakes.ca



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Lucas Feitler

From: [REDACTED]
Sent: Wednesday, July 15, 2020 5:11 PM
To: Lucas Feitler
Subject: Re: Drainage Act information

Hello Lucas,

Thank you for coming out to the site to explain all the particulars to myself and all the neighbours.

"Climate Change" has not been factored into the equation, this will be the 5th drought in 8 years on record. Will this drain be the bane of the whole area's crops being burned off in the scorching heat and lack of rain? And who will be responsible for this catastrophe?

Mr. Brown voluntarily filled in his portion of an awarded ditch and caused all the trouble with Mr. MacEachern, this is a litigation matter rather than shared expense on neighbouring farms that clearly don't want this drain and cannot afford this extravagant expense, people have been bankrupted for less.

We clearly do not want our lands drained into a desert during these times of climate insecurity. We do not want any type of ditching system that renders our crops without the moisture to grow. Over a 33 year period we have carefully nurtured a 55 ac. ecological reserve on lot 17, conc.3 to hold back any runoff and sequester the water for a slow release over severe drought years. This proposed municipal drain will devastate the whole area in a dry year.

Please feel free to forward on this email to council, neighbour's or anyone else involved in this case.

Thank you for your consideration in this matter and have a good day.

Yours very truly,

Christine Halbot & Fraser Currie

On 2020-07-15 15:41, Lucas Feitler wrote:

Hello Christine Halbot,

Thank you for attending last week's on-site meeting for the MacEachern-Brown municipal drain.

The *Drainage Act, R.S.O. 1990, c. D.17* contains a detailed and specific procedure for land owners to obtain a legal outlet for their water. As discussed on site, I wanted to reach out and provide some additional informational sheets regarding municipal drains.

I have attached two factsheets from the Ontario Ministry and Agriculture, Food and Rural Affairs (OMAFRA) to this email. For a better understanding of the Drainage Act, I recommend that you read

through these, as well as visit OMAFRA's website at <http://www.omafra.gov.on.ca/english/landuse/drain-pub.htm>. This website is a great resource for drainage information and legislation. I highlight and recommend reading over the following additional factsheets from OMAFRA's website; Drainage Act Appeals, Duties of the Landowner Under the Drainage Act, and Municipal Drains and the Land Owner.

Should you have any general questions related to the *Drainage Act, R.S.O. 1990, c. D.17* please do not hesitate to contact me. If you have specific questions or requests related to the MacEachern-Brown drain, please direct them to Ken Smith at D. M. Wills Associates Limited. He can be reached by calling their office at (705) 742-2297 or alternatively by emailing ksmith@dmwills.com.

Thank you,

Lucas Feitler
Municipal Drainage Superintendent
Engineering and Corporate Assets, City of Kawartha Lakes
705-324-9411 ext. 1167 www.kawarthalakes.ca



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Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

1ST SESSION, 42ND LEGISLATURE, ONTARIO
69 ELIZABETH II, 2020

Bill 197

(Chapter 18 of the Statutes of Ontario, 2020)

An Act to amend various statutes in response to COVID-19 and to enact, amend and repeal various statutes

The Hon. S. Clark

Minister of Municipal Affairs and Housing

1st Reading	July 8, 2020
2nd Reading	July 21, 2020
3rd Reading	July 21, 2020
Royal Assent	July 21, 2020



SCHEDULE 4 DRAINAGE ACT

1 (1) The definition of “Minister” in section 1 of the *Drainage Act* is repealed and the following substituted:

“Minister” means the Minister of Agriculture, Food and Rural Affairs or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

(2) Section 1 of the Act is amended by adding the following definitions:

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

2 Clause 5 (1) (b) of the Act is repealed and the following substituted:

(b) if it decides to proceed with the drainage works, send notice of the petition and of its decision to the prescribed persons.

3 Subsection 6 (1) of the Act is repealed and the following substituted:

Notice that environmental appraisal is required

(1) A person who is prescribed by the regulations and who has received notice of the petition under clause 5 (1) (b) may, within 30 days after receiving the notice, send to the council of the initiating municipality a notice that an environmental appraisal of the effects of the drainage works on the area is required.

Cost

(1.1) The cost of an environmental appraisal required under subsection (1) shall be paid by the person who sends the notice requiring it.

4 Clause 8 (1) (e) of the Act is amended by adding “prescribed or” before “provided”.

5 (1) Subsection 10 (2) of the Act is repealed and the following substituted:

Consideration of report

(2) Upon the filing of the preliminary report, the council of the initiating municipality shall cause the clerk to send the prescribed persons a copy of the preliminary report and a notice of the date of the council meeting at which the preliminary report will be considered.

(2) Subsection 10 (7) of the Act is amended by striking out “clause (2) (a), (b) or (c)” and substituting “subsection (2)”.

(3) Subsection 10 (8) of the Act is repealed and the following substituted:

Referral to Tribunal

(8) The following persons may refer the environmental appraisal to the Tribunal:

1. If lands used for agricultural purposes are included in the area to be drained, the Minister.
2. In any other case, the prescribed persons.

6 Subsection 41 (1) of the Act is repealed and the following substituted:

Notice of drainage works

(1) Upon the filing of the engineer’s report, the council of the initiating municipality, if it intends to proceed with the drainage works, shall, within 30 days after the filing of the report, cause the clerk of the initiating municipality to send the prescribed persons a copy of the report and a notice stating,

- (a) the date on which the report was filed;
- (b) the name or other designation of the drainage works; and
- (c) the date of the council meeting at which the report will be considered.

7 Subsection 58 (4) of the Act is repealed.

8 Section 77 of the Act is repealed.

9 (1) Subsection 78 (1) of the Act is amended by striking out “projects listed in subsection (1.1)” and substituting “major improvement projects listed in subsection (1.1)”.

(2) Subsection 78 (1.1) of the Act is amended by striking out “projects” in the portion before paragraph 1 and substituting “major improvement projects”.

(3) Paragraph 5 of subsection 78 (1.1) of the Act is repealed and the following substituted:

5. Extending the drainage works to an outlet.

5.1 Improving or altering the drainage works if the drainage works is located on more than one property.

(4) Subsection 78 (1.1) of the Act is amended by adding the following paragraph:

8. Any other activity to improve the drainage works, other than an activity prescribed by the Minister as a minor improvement.

(5) Subsection 78 (2) of the Act is repealed and the following substituted:

Notice

(2) An engineer shall not be appointed under subsection (1) until 30 days after a notice has been sent to the following persons advising them of the municipality's intent to undertake the major improvement project:

1. The secretary-treasurer of each conservation authority that has jurisdiction over any lands that would be affected by the project.
2. The prescribed persons.

(6) Section 78 of the Act is amended by adding the following subsection:

Minor improvements to drainage works

(5) Despite subsections (2) to (4), the Minister may prescribe the process for approving minor improvements to a drainage works mentioned in paragraph 8 of subsection (1.1).

10 The Act is amended by adding the following section:

AMENDMENTS TO ENGINEER'S REPORT

Amendments to engineer's report

84.1 (1) This section applies with respect to engineer's reports that are prepared for the purpose of a petition under section 4 or for the purpose of section 78 and that are adopted by a municipal by-law.

Approval process

(2) The Minister may, by regulation, set out the process by which the engineer's report may be amended and the process by which those amendments are to be approved.

11 Section 105 of the Act is amended by striking out "constables".

12 (1) Section 125 of the Act is amended by adding the following clause:

- (c) prescribing any matter this Act describes as being prescribed or dealt with in the regulations.

(2) Section 125 of the Act is amended by adding the following subsections:

Adoption of guidelines, etc.

(2) A regulation may adopt by reference, in whole or in part, with the changes that the Minister considers necessary, any guideline, protocol or procedure, including a guideline, protocol or procedure established by the Minister, and may require compliance with any guideline, protocol or procedure so adopted.

Amendments to guidelines, etc.

(3) The power to adopt by reference and require compliance with a guideline, protocol or procedure in subsection (2) includes the power to adopt a guideline, protocol or procedure as it may be amended from time to time.

When effective

(4) The adoption of an amendment to a guideline, protocol or procedure that has been adopted by reference comes into effect upon the Ministry publishing notice of the amendment in *The Ontario Gazette* or in the registry under the *Environmental Bill of Rights, 1993*.

Commencement

13 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.