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## MANAGEMENT REPORT

**Date:** May 8, 2023  
**To:** Mayor and Council  
**From:** Tatiana Dafoe, City Clerk  
**Report #:** COU22-062  
**Attachments:** 1. Draft Provisional By-law

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**Title:** Kelly Drain Engineering Report Consideration

**Objective:** To adopt the Engineering Report from K. Smart Associates Limited regarding the Kelly Municipal drain improvements. Adoption of the Engineering Report will allow the City of Stratford (City) to proceed with the requirements of the Drainage Act, R.S.O 1990 (Drainage Act).

**Background:** In October 2021, the City received a Notice of Request from a property owner for major drain improvement under Section 78 of the Drainage Act, for the Kelly Municipal drain. Section 78 of the Drainage Act prescribes that:

“if a drainage works has been constructed under a by-law passed under the Act of any predecessor of the Act, and the Council of the municipality that is responsible for maintaining and repairing the drainage works considers it appropriate to undertake one or more of the projects listed in subsection (1.1) for the better use, maintenance or repair of the drainage works or of lands or roads, the municipality may undertake and complete the project in accordance with the report of an engineer appointed by it and without the petition required by Section 4”.

Municipal drains are a less common occurrence within cities than in rural areas as storm sewer infrastructure is typically what services urban areas. However, as Stratford has been expanding, there are a number of existing municipal drains in place from previous annexations and this application represents a new drain to service existing farmland areas on the outskirts of the city limits.

The Kelly Municipal drain is located on Lot 42 concession 2 to Lot 41 Concession 2 within the City and the Township of Perth East. Part of the land that the City annexed in 2015 contained a portion of the drain.

At the November 22, 2021, Regular Council meeting, Council appointed the engineering firm K. Smart Associates Limited to act as the engineer responsible examining the area of the drain and to prepare a report as outlined in Section 8(1) of the Drainage Act. On April 14, 2023, the Engineering Report was filed with the City.

**Analysis:** The Engineering Report recommends the following be completed to address the request for improvement:

#### Main Drain

- 114m of ditch cleanout
- 1,040m of 300mmØ to 450mmØ concrete tile with catchbasins
- 20m of 600mmØ steel pipe bored in place under Road 111
- One (1) – 1400mmØ CSP farm access culvert

#### Branch 1

- 134m of 350mmØ concrete tile and catchbasin

Detailed improvements have been outlined in the Engineering Report which is available upon request from the Clerk's Office. The estimated cost of this project is \$243,000. The watershed served is approximately 64.8 hectares (160.1 acres).

On January 25, 2022, an on-site meeting for the Section 78 appointment was held at the property of the person who requested the drain improvements. In accordance with S. 9(1) of the Drainage Act, notice of the meeting was sent to the landowners most affected by the drain and to applicable road authorities and agencies. The input received is detailed in the Engineering Report.

On August 17, 2022, an information meeting with the landowners was held to provide an update on the project. The Engineer discussed the tile sizing procedure, proposed work items, and presented preliminary assessments. Overall, those present were in general agreement with the proposed work.

Following the preparation of an Engineering Report and once it is filed with the City, Council is required to consider the report and provide notice of the meeting where the report is to be considered. As the Engineering Report is to be considered at the Regular Council meeting on May 8, notice of this meeting was provided in accordance with the Drainage Act.

At the meeting to consider the Engineering Report, if the Engineering Report is formally adopted by Council and the Provisional By-law has been given two readings, this project will be able to move forward under the legislative requirements of the Drainage Act and the appeal procedures under the Drainage Act will become available to the affected land owners. Council should keep in mind that complaints about the assessed amount to a property cannot be dealt with at this meeting to consider the Engineering Report. Appeals about the cost assessed must first be dealt with at a Court of Revision; and

adopting the Engineering Report is a pre-requisite for scheduling a Court of Revision and proceeding with that process.

The Drainage Act requires the following process to be followed should Council adopt the Engineer's report:

- That Council, within 30 days of the adoption of the Engineer's Report send a copy of the By-law and a notice of the time and place of the first sitting of the Court of Revision, to each person entitled to notice under Section 41 of the Act and shall inform each owner that the owner may appeal the owner's assessment to the Court of Revision by a notice given to the clerk not later than 10 days prior to the first sitting of the Court of Revision as per Section 46 of the Act.
- The Court of Revision will hear any appeals commencing June 5, 2023.
- Landowners may appeal from the order of the Court of Revision to the Tribunal only with respect to the calculation of the assessment and allowances.
- After the time for appealing has expired and there are no appeals or after all appeals have been decided, Council may pass the by-law authorizing the construction of the drainage works.
- Construction should not begin until at least 10 days have passed after the by-law has been adopted.

The Provisional By-law for the Kelly Drain 2023 should receive first and second readings at the May 8, 2023, Regular Council meeting. In accordance with Section 46(3) of the Drainage Act the first sitting of the Court of Revision must be held on a day not earlier than twenty (20) nor later than thirty (30) days from the date of completing the mailing of the copies of the Provisional By-law. The intent is to issue the notice of the time and place of the sitting of the Court of Revision and the Provisional by-law by Friday, May 12. The first sitting of the Court of Revision would then be held on Monday, June 5, 2023, inclusive to meet this condition of the Drainage Act.

### Court of Revision

The Drainage Act provides that a court of revision shall consist of three or five members appointed by initiating municipality (section 97(1)). As the assessed lands for this project are in two municipalities, the City and the Township of Perth East, the Drainage Act requires the court of revision to consist of two members appointed by the council of the initiating municipality (being the City) of whom one shall be chair and then one member appointed by the council of each of the neighbouring municipalities (being the Township of Perth East). The court of revision then hears and rules on appeals as if the entire area affected by the drainage works were in one municipality.

For this Court of Revision, staff recommend it consist of three members, two from Stratford and one from the Township of Perth East. For the members from Stratford, staff recommend the Chair and Vice-chair of the Finance and Labour Relations Subcommittee be appointed. The Township of Perth East will then select their representative. The Court of Revision will be held in the City of Stratford and the Clerk for the City will act as the Clerk for the Court.

### Options

Council only has three options at this meeting to consider the Engineering Report as outlined below:

1. Adopt the Engineering Report and continue the process under the Drainage Act, which allows affected parties to file appeals.
2. Not adopt the Engineering Report, in which case the landowners(s) may appeal Council's decision to the Drainage Tribunal.
3. Refer the report back to the Engineer for reconsideration. Section 57 of the Drainage Act allows Council to refer the Engineering Report back to the engineer for reconsideration for any reason, but this option is primarily used if it appears that there are or may be significant errors in the Report.

With respect to the options available, staff has reviewed the Engineering Report and has not identified any issues or reasons to refer the Report back to the engineer. Staff believes that it is in the best interest of the City and the affected landowners to accept the recommendations and proceed with the adoption of the Engineering Report, being Option 1 outlined above.

### **Financial Implications:**

#### **Financial Implications to Current Year Budgets:**

The Drainage Act requires that the total estimated cost be assessed to the affected lands and roads under the categories of Benefit (Section 22), Outlet Liability (Section 23), Injuring Liability (Section 23), and Special Benefit (Section 24). The City will be required to front-end the costs of this project until completed at which time these costs will be recovered by billing the benefitting property owners based on the assessments determined by the Engineering firm. Should amounts be unpaid for whatever reason, they would be added to the tax roll for collection, and subject to interest charges, similarly to unpaid taxes.

The total estimated cost of the improvements to the Kelly Municipal Drain is \$243,000. The City's portion is \$6,981.00. The estimated cost of this project includes allowances to owners, the construction cost, the engineering cost and other costs associated with the project. For administrative purposes, the full costs will be recorded in a capital

project account with recoverable revenues to reflect the apportioned amounts and the City's portion covered from the Storm Reserve Fund.

In accordance with the provisions of Section 85 of the Drainage Act, a grant from Ontario Ministry of Agriculture, Food, and Rural Affairs (OMAFRA) may be available for assessments against privately owned lands parcels of land used for agricultural purposes and eligible for the Farm Property Class Tax rate.

Section 88 of the Drainage Act directs the Municipality to make application for this grant upon completion of the drain. The Municipality will then deduct the grant from the assessments prior to collecting the final assessments.

Municipalities may offer debt financing options to the private property owners share at the time final costs and assessments have been made. Should Council wish to consider offering debt financing, staff would recommend development and Council approval of a Financing of Drainage Construction Policy. The policy would identify the criteria for the City to provide municipal financing to individual property owners for Drainage Construction or Improvement (under the Drainage Act) and to issue internal or external debentures in relation to that financing. Staff are not recommending pursuing this at this time, but should Council be interested in staff reviewing and drafting such a policy, direction would be required.

**Financial impact on future year operating budget:**

Ongoing maintenance costs are usually not applicable until such time as maintenance work is deemed necessary later in the asset's useful life. These are also apportioned similarly, so would become part of the operating budget impact at that time. Given the initial apportionment, these are expected to be nominal.

**Link to asset management plan and strategy:**

The accounting treatment for this transaction will be to establish a municipal asset valued at \$243,000 and with an estimated useful life of 50 years, similar to other municipal drains and storm sewer assets.

**Alignment with Strategic Priorities:**

**Developing our Resources**

Optimizing Stratford's physical assets and digital resources. Planning a sustainable future for Stratford's resources and environment.

**Alignment with One Planet Principles:**

**Not applicable:** This report does not directly relate to one of the One Planet Principles.

**Staff Recommendation: THAT the Engineer’s Report “Engineering Report for Kelly Drain 2023”, dated April 5, 2023, be adopted;**

**THAT the City Clerk be directed to set a date for the first sitting of the Court of Revision and to distribute the Provisional By-law and the Notice of the Court of Revision, in accordance with Sections 46(2) and 46(3) of the Drainage Act, R.S.O. 1990;**

**THAT Council, having adopted the Engineering Report, give the attached Provisional By-law the two readings required by Section 45(1) of the Drainage Act, R.S.O 1990;**

**AND THAT the Chair and Vice-chair of the Finance and Labour Relations Subcommittee be appointed to the Court of Revision.**

**Prepared by:** Tatiana Dafoe, City Clerk  
**Recommended by:** Karmen Krueger, CPA, CA, Director of Corporate Services  
Joan Thomson, Chief Administrative Officer