

Report to/Rapport au:

Court of Revision
Commission de révision

July 4, 2013
4 juillet 2013

Submitted by/Soumis par:

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RIDEAU-GOULBOURN (21)

Ref N°: ACS2013-COS-ESD-0018

SUBJECT: UPPER DOWDALL MUNICIPAL DRAIN – COURT OF REVISION

**OBJET : COMMISSION DE RÉVISION DES INSTALLATIONS MUNICIPALE DU
DRAINAGE UPPER DOWDALL**

REPORT RECOMMENDATIONS

That the Court of Revision:

- 1. Hear any appeals of any assessments as outlined in the Engineer's Report.**

RECOMMANDATIONS DU RAPPORT

Que le tribunal de révision:

- 1. Entendre tout appel les évaluations décrites dans le rapport de l'ingénieur.**

BACKGROUND

The purpose of this report is to convene a Court of Revision to hear appeals from assessed landowners, pursuant to Section 52(1) of the *Drainage Act*.

The proposed Upper Dowdall Municipal Drain has been initiated by petition of the Roads Superintendents of both the City of Ottawa and the Township of Beckwith under Section 4 of the Ontario *Drainage Act*. Ashton Station Road is subject to frequent

flooding and poor drainage of the road bed creates hazardous road conditions and increased road maintenance requirements. This causes concern with regard to access for emergency vehicles, school busses and local residents. Public safety is also a concern for vehicles crossing flood waters, accidents involving deep waters adjacent to the road, or accidents related to the deteriorated road conditions.

As such, the goal of the proposed municipal drain is to provide a cost effective solution that balances environmental protection and public safety by means of reliable safe access, reduced costs and environmental effects of increased road maintenance activities. Several other options, such as raising the road bed have been considered and found not viable due to cost and increased safety concerns (height of the road and steep shoulders above deep waters). Increasing the road bed would also involve expropriating land and covering areas of the Provincially-Significant Wetland (PSW) below the extended road bed. Proposed works within the PSW have been limited to an extent that will achieve the intended goal while minimizing impacts on the wetland feature.

The Engineer's Report dated February 2013 was tabled at ARAC on 6 May 2013 and adopted by Council on 22 May 2013 along with first and second reading of the provisional Upper Dowdall Municipal Drain By-law on 22 May 2013.

The proposed municipal drain is located in the City of Ottawa, Rideau-Goulbourn Ward, as shown on the location plan contained in *Document 1*. The *Drainage Act of Ontario* states that the City of Ottawa is responsible for municipal drains located within its geographic boundaries. The associated costs will be apportioned to the benefiting landowners, including the City of Ottawa as the owner of Upper Dowdall.

DISCUSSION

Section 97 of the Drainage Act states that the Court of Revision shall consist of three or five members appointed by the council of the initiating municipality. According to its Terms of Reference, members of the Agriculture and Rural Affairs Committee sit as the Court of Revision for the Purposes of the *Drainage Act of Ontario*. According to Section 52(1) of the *Drainage Act*:

Any owner of land assessed for the drainage works who complains that any land or road has been assessed too high or too low or that any land or road that should have been assessed has not been assessed, or that due consideration has not been given as to type of use of land, may personally, or by agent, appeal to the court of revision by giving notice in writing to the clerk of the initiating municipality setting out the grounds of the appeal, and the appeal shall be heard by the court of revision

Thus, the purpose of the Court of Revision for this sitting is to hear appeals from landowners affected by the proposed construction and future maintenance of the Upper Dowdall Municipal Drain. Those appeals, if any, concern the Engineer's Report, which was prepared in accordance with the *Act* and which was provisionally adopted after

Council gave first and second reading to the “Upper Dowdall Municipal Drain By-law, 2013” (“provisional by-law”) on 22 May 2013.

The *Drainage Act* prescribes the process and timelines that must be followed in response to a petition for drainage works.

Completed task to date for the Upper Dowdall Municipal Drain

- Council appointment of a Drainage Engineer to prepare a Preliminary Engineer’s Report (25 June 2008);
- On-site meeting with affected landowners and parties (July 2008);
- Meeting with regulatory agencies to review the proposed modifications (25 November 2008);
- Submission of the Preliminary Engineer's Report to the City Clerk (December 2010);
- Conduct a Meeting to Consider – The meeting of the Agriculture and Rural Affairs Committee to consider the Preliminary Engineer’s Report (2 June 2011);
- Council approval of the Committee recommendation to proceed with a final Engineer’s Report (8 June 2011);
- Second on-site meeting with affected landowners and interested parties (19 July 2011);
- Preparation of the Engineer’s Report;
- Submission of the final Engineer's Report; (February 2013)
- Conduct a Meeting to Consider – The meeting of the Agriculture and Rural Affairs Committee to consider the Engineer’s Report (6 May 2013);
- Council approval of the Committee recommendation and first and second reading of the By-law (22 May 2013);

The current step in the process for the Upper Dowdall Municipal Drain

- Convene a Court of Revision – A meeting where landowners may appeal their assessment. Notices to be sent out within 30 days of provisional adoption of the By-law and Court of Revision to be held between 20 and 30 days of notices being sent. Committee may direct the Engineer to revise the assessment contained in the report. All affected landowners must then be advised of any revisions and the *Drainage Act* contains provisions for further appeal by landowners of their assessment within prescribed timeframes;

Next steps for the Upper Dowdall Municipal Drain

- Third reading of the By-law at Council;
- Construction of the drainage works; and,
- Assessment of the costs to benefiting landowners and road authorities (2015).

The *Drainage Act of Ontario* provides some guidance as to how the Court of Revision is to proceed:

- Section 55 states that in any appeal to the Court of Revision, if the engineer is called upon to give evidence as to how an assessment was determined, the engineer must give evidence before the appellant's case is presented.
- Section 53 addresses those cases where the ground of appeal is that lands or roads are assessed too high, and the Court of Revision is satisfied that those assessments should be reduced. In such cases, where there is no evidence to indicate that the amount of the reduction should be levied against lands or roads whose owners are parties to the appeal, the court shall adjourn. The clerk must then notify such persons as the appellant may specify, who are shown by the last revised assessment roll to be owners of land affected. The notification must state the date to which the hearing is adjourned. At the renewed date, the Court must dispose of the matter and, where appropriate, redistribute the assessments in such manner as appears just.
- If the Court of Revision decides to change an assessment, Section 56 states that notice of the change must be sent to affected owners and the provisional by-law must be amended accordingly.
- A party to an appeal to the Court of Revision may appeal from the Court to the Agriculture, Food and Rural Affairs Appeal Tribunal (Section 54).
- After the time for appeals to the Court of Revision has expired and there are no appeals, or after the appeals have been decided, Council may give third reading to the provisional by-law, thus authorizing construction of the drainage works. The work may be commenced ten days after the by-law is passed, if no notice of intention to bring an application to quash it has been filed with the clerk (Section 58(1)).

The *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22 also applies to the Court of Revision. This report requests that the Court of Revision convene as required by the *Drainage Act*.

RURAL IMPLICATIONS

The Upper Dowdall Municipal Drain will continue to provide outlet for surrounding rural roads and lands and its status under the *Drainage Act of Ontario* will allow for the provision of future maintenance, as required, by the municipality. Affected landowners have been consulted and provided with a copy of the provisional By-law and notified of the date, time and location of the Court of Revision, pursuant to the *Drainage Act*.

CONSULTATION

Meetings between representatives of the City of Ottawa, the Township of Beckwith and the Ward 21 Councillor were held on 13 August 2008 and again on March 8, 2013.

The Rideau Valley Conservation Authority has been consulted on the project and provided with a copy of the Engineer's Report and the necessary permits have been received.

Two on-site meetings were held with affected landowners and other interested parties in July 2008 and July 2011.

COMMENTS BY THE WARD COUNCILLOR(S)

The Councillors for Ward 21 is aware of this report and supports the proposed drainage works.

LEGAL IMPLICATIONS

There are no legal impediments to holding the 1st sitting of the Court of Revision.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications.

FINANCIAL IMPLICATIONS

This report has no tax or 2013 budget implications as funding is available in the 2013 approved Rate Supported Capital Budget, internal order 906194 Municipal Drain Improvements, for the initial funding of the costs. Total estimated net costs of \$218,157 will be recovered through assessments to the benefiting landowners, likely in 2015 after completion of the work as per Schedule A of the Engineer's report, including an assessment of \$187,223 to the City. This cost will be identified in the 2015 Public Works Draft Capital Budget estimates.

ACCESSIBILITY IMPACTS

N/A

ENVIRONMENTAL IMPLICATIONS

The Rideau Valley Conservation Authority has been consulted on the project from the outset and has been provided with a copy of the Engineer's Report by the Council-appointed Engineer. RVCA concerns relate primarily to potential impact on Provincially-Significant Wetlands and fish habitat. The required permits have been received.

Some of the lands along Ashton Station Road are designated as Provincially-Significant Wetland and Rural Natural Feature under the Official Plan. The road authorities are seeking permanent legal and sufficient outlet for excess surface water through the *Drainage Act*.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with the recommendations in this report.

TERM OF COUNCIL PRIORITIES

The proposed works meet with several objectives set out in the Council's 2010 – 2014 Strategic Plan. When implemented, the works will improve the performance of Ashton Station Road for residents while lowering maintenance costs for the road and protecting and maximizing use of a key piece of existing infrastructure.

SUPPORTING DOCUMENTATION

- Document 1 – Upper Dowdall Municipal Drain Location Plan
- Document 2 – Upper Dowdall Municipal Drain Work Area Plan
- Document 3 – Upper Dowdall Municipal Drain By-law

DISPOSITION

The City Drainage Superintendent will notify assessed landowners of any changes to assessments resulting from the decision of the Court of Revision, pursuant to the *Drainage Act*.