

Drainage Act Discussion Paper

Question 1 - Beyond the DART Protocol, what additional protocols could be established to help streamline approvals?

- 1) OMAFRA should look to develop protocols like the Dart protocol for Ontario Species at Risk with the Ministry of Environment, Conservation and Parks, and provide MOECP with the funds and staff to administer the programs mandated to them.
- 2) OMAFRA should look develop protocols like the Dart protocol to deal with drainage issues the involve the Ontario Ministry of Transportation to reduce consultation delays with regards to new drain design and construction, the issuing of permits and authorizations for maintenance and construction
- 3) OMAFRA should look to further develop relationships and protocols with the Canadian Department of Fisheries and Oceans to streamline the Authorization process. This could include the development of more Drainage Act specific forms. An example would be the Request for Review that is periodically required for the installation of simple industry standard erosion control structures in open drains, farm access culverts and drain improvements under section 78
- 4) Establish a one window concept that would reduce needless paper work and multiple signing authorities to pass threw before any work get's done. Example , there must be a trust agreement made between the commenting agencies that would allow for maintenance work to be completed without all the check's and balance's having to be approved by a various number of individuals acting on behalf of the commenting agencies that require their signature's before work can be completed. For instance, ' a tile blowout ' should be fixed as soon as possible. Everyone should be in an agreement to this since this will stop soil from being discharged at the outlet to creek's, stream's river's and lake's. **This is common sense!** It should be understood, the Drainage report dictate's how this should be treated as a time sensitive occurrence.
- 5) Maintenance in general should be able to move forward in a timely fashion and not stalled by multiple requirement's set by other sources when waiting for a signature for permission to complete the repair. In fact all the check's and balances that have been implemented over the last several years due to consultation over the DART protocol have been taken into account by the Drainage Engineer in writing the maintenance clause for most new and revised Drainage Reports over the last 30 year's. They have incorporated the concern's brought forward by other agencies. As such should have reduced the prolonged endless check's and balances but despite those efforts the process still creates endless paperwork before any repairs can take place.

- 6) Construction of new drain's needs to be streamlined back to what the Drainage Act state's as the identified agencies for comments. (i.e. the Conservation Authority or Ministry of Natural Resources if in an area not represented by a Conservation Authority). I know this is old fashion but look over the past years since the Federal Fisheries Agency have in the past forced their comment's to be recognised resulting in years of extra time and loads of paper work to be completed which stalled construction of any drain from taking place in a timely fashion. As predicted, due to federal cuts they have somewhat fallen to the way side but unfortunately the results linger on. A new approach should be established such as a "**trust agreement**". After all I believe Drainage Superintendent's have been able to adjust and do understand the geography of the municipality they work for more than anyone else!!
- 7) While the development and implementation of protocols has the potential to improve and streamline the approval process for Drainage Act projects, the success of a protocol is dependent on the ability of the protocol to bind everyone involved. Will the legislative authority for the Minister to adopt protocols provide sufficient authority to bind the various approval agencies (e.g. conservation authorities, Ministry of Environment, Conservation and Parks (MECP), etc.)? If they will only provide authority to bind the municipalities and engineering firms, then the value of the protocol may be very limited.
- 8) A protocol involving conservation authorities (CA's) for developing new drainage systems. Currently, requirements for these projects vary significantly between CA's across the province due to inconsistencies. This protocol should address work around wetlands. Burnside is very supportive of the protection of existing wetlands; however, occasionally wetlands can expand and encroach onto adjoining lands and roads. This expansion and encroachment of wetlands may need to be managed through a drainage system constructed under the Drainage Act. Consideration should be given to extending the current "Protocol for Municipalities and Conservation Authorities in Drain Maintenance and Repair Activities" to projects authorized under S. 4 and 78 of the Drainage Act and to the minor improvement process that is being proposed.
- 9) If this process can be applied to federal legislation, the Fisheries Act procedures developed by Fisheries and Oceans Canada (DFO) through their Drains Action Working Group (DAWG) should be recognized by protocol.
- 10) While the protection of endangered species is very important, it is also very important that municipalities be allowed to perform their statutory duties under the Drainage Act. Many endangered species have co-existed for decades in and around municipal drainage systems constructed under the Drainage Act in rural Ontario. Therefore, the MECP should develop a list of mitigation measures for

every endangered species that may be located in or adjacent to these drains and a protocol should be developed that allows municipalities to perform their statutory duties on municipal drains, provided they adhere to the mitigation measures or best management practices. They should not be required to undertake expensive individual studies and/or prepare extensive and costly reports based on those studies for every occurrence of a potential endangered species.

- 11) A protocol that clearly establishes the policies in the Agricultural Drainage Infrastructure Program (ADIP) for the provision of grants under Drainage Act.
- 12) Working with MECP, a protocol that provides direction on the application of Section 53(6) of the Ontario Water Resources Act to projects under the Drainage Act.
- 13) Section 270(1) of the Municipal Act, 2001 requires municipalities to adopt and maintain policies for the procurement of goods and services. While a competitive process for procuring goods and services can generally reduce costs, it can have the opposite effect for the procurement of engineering services provided under the Drainage Act. This is because the scope of an engineering project is not well defined at the on-set of the Drainage Act process. In some cases, the scope of the project is not fully known until well into the project and prior to the preparing of the engineer's report. As a result, proposals for engineering services under the Drainage Act will be conservative which will likely increase the cost of the project.
- 14) S. 6 of the Drainage Act allows some parties to request an environmental appraisal and specifies that the requesting party must pay for the appraisal. Some regulatory agencies have avoided this financial responsibility by requesting studies under their regulatory legislation. A protocol should be developed that clearly defines the legislative and financial relationship between environmental appraisals and environmental assessments under the Environmental Assessments Act and environmental impact studies under the Conservation Authorities Act and regulations.
- 15) Reports have been prepared under the Drainage since the 1800's and all through that time, the engineer has identified the properties boundaries and ownership within the watershed of the drain. It is an expectation for property owners involved in these projects. The Municipal Property Assessment Corporation (MPAC) has recently indicated that their property ownership data cannot be shown on plans or in the engineer's report. A protocol should be developed with MPAC that addresses this issue.

Question 2 - What projects should be included in the definition of minor improvements? What else would you like a minor process to achieve?

- 1) Where not previously specified in a drainage report, allow for a mechanism for the installation of green initiatives such as engineered rock shoots, buffer strips and other erosion control structures to repair eroded banks and ditches, and that they be eligible for Grant if they meet ADIP policies. Possibly create a policy for assessing the construction cost and future maintenance of the added structure and green initiatives.
- 2) When requested by a landowner, allow for the installation of additional catch basins on a municipal drain on private property at the landowner's expense with the approval of an engineer. For future maintenance, the catch basins if approved would become part of the drain for assessment purposes
- 3) Those projects that provide an improvement to an existing drains function should be included in this definition. Example, water control structures, wetland rehabilitation or creation, fish ladders, new crossing provisions such as culvert's or bridges for access, buffer strips, stream design concepts such as pools and riffles. In an urban environment, low impact development projects that help to resolve flood control, pollution issues and capacity problems.

Question 3 - Do you have any specific concerns with any of the items discussed in the paper?

- 1) I have a concern in regard to the Summary of Proposal which states" Through collaboration between private landowners, it has helped address broader societal benefits such as flood control within Ontario's rural communities". This is true **"but"** how about the multiple of drains established over the years under the Drainage Act the have been beneficial for flood control that serve Ontario's **Urban** communities as well? The identity that the Drainage Act is simply for use in Rural Ontario is completely wrong proven by past reports that service both and have resolved drainage issues simply related to urban area's as well. As stated earlier, the Drainage Act is a provincial legislation for all of Ontario residence to use no matter whether they live in an urban or rural environment. I fully believe it is time that this fact be recognised, identified and advertised as such. By doing so there will become an understanding within urban centre's that the Drainage Act legislation is a cost-effective method that can resolve flooding situation's that are now extremely costly to the general tax levy and should not be ignored.
- 2) "As Built" drawings: It is important to have the authority to recognize and make legal those minor changes in drain design that are sometimes necessary during construction. Therefore, in principle, Burnside supports this addition to the Drainage Act. However, there must be limitations to this authority to ensure that it is not used to make substantive changes to a drain, even if approved by the

engineer that wrote the report. If this is allowed, it would be contrary to the consultative nature of the Drainage Act procedures.

Question 4 - Do you have any additional suggestions to reduce burden or contribute to additional opportunities for your business?

- 1) Required (possibly legislated) timely response from all Ontario government agencies with regards to municipal drain design, construction and maintenance. This would include but is not exclusive to MTO, MOECP, MNRF, the projects should be reviewed and if involvement is not required from these agencies, we should also receive a response stating that as well (in a timely manner)
- 2) That OMAFRA be given the funds and staff to be able to administer the Drainage program in a timely proactive manner. Reduce the wait times from the submission of a grant application to review, processing and paying municipalities. (Wait times in some instances have been in excess of 12 months from time of submission)
- 3) Provide the clerk of the municipality the legal ability to do simple reapportionments of assessment when only 2 or 3 properties are involved, and the value of the change is under a specified value per property. If it is deemed advisable provide for a policy that could be used for the clerk driven reapportionment process and provide for the same property owner appeal rights already given in section 65(11) of the Drainage Act
- 4) Allow for a streamlined process for when a tile drain is required to be relocated for development purposes completely on the developers lands and at the developer's expense. Require that the Municipal Drainage Engineer be appointed to either design or reviews the design of the developers Engineer. This is to ensure determined that the change does not negatively affect upstream or downstream lands. Look at methods to reduce legislated time periods for a project that is developer driven with respects to the adoption and final passing of the bylaw. This would be contingent on the engineer determining that the proposed changes do not negatively affect upstream or downstream lands, not affecting the current maintenance schedule, and all permits and approvals have been obtained.
- 5) Look at the reasoning and need behind section 78(2) specifically if section 78(4) of the Drainage Act specifies that "*All proceedings, including appeals under this section shall be the same as on a report for the construction of a drainage works.*"
- 6) Confirm that notices, reports and other documentation required to be sent under the Drainage Act can be sent electronically by email when requested.

- 7) iv) Further discussions should take place regarding not only "**financial**" support for what I refer to as an "**Urban Drainage Superintendent**" but written acknowledgement be approved and documented in the Drainage Act Legislation for such a position being recognised by urban centre's. This concept has been an important part of my casual employment with the Credit Valley Conservation Authority (CVC).. This work included a presentation last fall in support of the use of the Drainage Act in urban environment's that could use LID projects developed on private properties to reduce effluent's and help to control erosion issue's downstream of storm sewer outlet's placed years ago. In fact, by establishing the use of the Drainage Act legislation to support this concept is a cost-effective way to resolve the dilemma facing most urban areas. As such, having to deal with the rising costs associated with existing and the creation of storm water retention ponds, poses a huge problem. The solution being the use of the Drainage Act Legislation in an urban environment. More importantly the Drainage Report itself provides the mechanism to access private property. This provision to access any L.I.D. works completed under the Drainage Act for maintenance purposes is extremely important to less costly resolution to the problems facing cities. Even upgrading later becomes an easy task.

Further to this point, there are existing Drainage Superintendent's that dealt with implementing the use of the Drainage Act in urban areas. It is a matter now of recognising the use of the Drainage Act in cities with assistance being provided for an "**Urban Drainage Superintendent**".

The following are some suggestions that can reduce burden or improve efficiencies:

- 1) Municipal drains are vital infrastructure for rural Ontario and municipalities are tasked with the management of these systems. However, the enforcement tools provided under the Drainage Act are seriously lacking. Specifically:
 - a. Sections 12(2), 63(2) and 96 – interfering with or obstructing the engineer, contractor, drainage superintendent or commissioner
 - b. Section 13(2) - interfering with a benchmark or permanent level
 - c. Section 65(5) - unauthorized connection or disconnection to a drainage works
 - d. Section 80 - obstructing a drainage works
 - e. Section 82 - damaging a drainage worksImproving the enforcement authority in the Drainage Act will provide municipalities with better tools to manage their drainage systems.
- 2) The fines under Sections 12(2), 13(2), 63(2), 82(2) and 96 of the Drainage Act have not been updated since 1975. Further, there are no fines for connecting to a drainage works without municipal permission (S. 65(5)). As they currently exist, they are not a deterrent to those who damage or block drains, destroy benchmarks or interfere with the duties of the engineer or the drainage superintendent and need to be significantly increased.

- 3) As the development and management of municipal drains becomes increasingly complex, the availability of good data becomes more important. Light Detecting and Ranging (LiDAR) data has been extremely useful in this regard. However, LiDAR data is only available in some parts of the Province. The efficiency in the development and management of drains will be significantly increased when the Province makes LiDAR data available all across Ontario.
- 4) To reduce frivolous appeals, the Drainage Act should be amended to require potential appellants to pay a fee to appeal to the Agriculture, Food and Rural Affairs Tribunal (AFRAAT) and the Drainage Referee.
- 5) Amend the Drainage Act to clarify the responsibility for the cost of a S. 78 report that does not proceed.
- 6) Make municipal property roll and parcel shape file data available to all providing services and authoring reports under the Drainage Act. This would reduce the amount of coordination required between the engineering firm and the county/municipality.
- 7) Amend the Drainage Act to clarify that all subset activities (e.g. environmental appraisal, benefit cost statement, preliminary report, Section 40 report, etc.) within the process for the construction of a new drainage works are also available for drain improvement projects undertaken under Section 78 of the Drainage Act. For reference, see the 2019 AFRAAT decision on the Steenstra Water Control Project in the Municipality of Central Huron.
- 8) The notice period for all meetings (S. 9(1), S. 10(2), S. 41(4)) should be modified to a consistent 14 days.
- 9) Approvals for drain construction or improvement projects are increasingly complex. For this reason, the time for filing the report with the municipal clerk identified in S. 39(1) should be increased to 2 years. Also, for efficiency, instead of council extending the time period or taking action, we recommend that this authority be transferred to the clerk of the municipality.
- 10) For many years, the provincial appeal bodies under the Drainage Act have acknowledged that there is no functional difference between outlet liability assessments (S. 23(1)) and injuring liability assessments (S. 23(2)). To avoid property owner confusion on the difference between these terms, the injuring liability assessment should be eliminated from the Drainage Act.
- 11) Sections 60, 64 and 88(2) all refer to a date when the engineer certifies that the project is complete, but different terms are used to describe the date. A similar term should be used in all three sections and this term should be included and defined in Section 1 of the Drainage Act.

- 12) Currently the Drainage Act requires a Court of Revision to be held for all drain construction or improvement projects, even if no appeals have been filed. This can add both administrative and engineering costs to the project. Consider amending the Drainage Act to allow the sitting of the Court of Revision to be cancelled if no appeals have been filed in advance.
- 13) An effective Court of Revision can reduce project costs by resolving local issues on drainage projects and potentially reducing more expensive appeals. However, too often there is a lack of knowledge among individuals appointed to serve on this municipally run appeal body. Costs to the Government of Ontario, municipalities and property owners would be reduced if the Province developed and made available on-line training for members of the Court of Revision. This recommendation would not require legislative changes.
- 14) Similarly, provide on-line training opportunities for individuals planning to appeal to the Court of Revision or AFRAAT. The training should include information on the appeal body, the appeal process and preparation for the appeal. Similar to #13, this initiative would not require legislative changes but would potentially save money for all involved.

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General Comment #1

As a retired member of the Drainage Superintendents Association of Ontario (D.S.A.O.), formerly holding the Drainage Superintendent's position for The Township of Norfolk followed by being the Senior Drainage Superintendent for Norfolk County , I wish to provide a response to the question's for your consideration. I am providing this mainly due to my past and present experience related to specific drainage projects. Many of these projects incorporated environmental issues and were completed in what would be considered within a "**reasonable timely fashion**". These projects also allowed for construction to take place due to obtaining special funding from other sources prior to the 1/3 grant being applied accordingly.

Such unique projects, along with simple drainage projects, are now hindered "**time wise**" respecting their completion due to the multiple requirements sourced from other agencies. These requirements have produced an enormous amount of paperwork which leads to delays. In fact, these delays, "**when identifying and receiving special funding from other sources that require the completion of work within a time frame**" , quite often interferes with this opportunity and the 1/3 grant offered to agricultural lands identified in the Drainage Report. Such delays have definitely interfered with the ability to take advantage of special funding opportunities. This issue should be addressed and open for discussion under this process.

Finally, I wish to point out that there is a great misunderstanding in regard to the use of Drainage Act Legislation being identified only with rural Ontario. In fact, there are many Drainage Reports that have an urban component and with this so-called expanded scope of work has proven the Drainage Act Legislation has always been for rural and urban land in Ontario. The only difference is that there is no 1/3 grant offered which should not be an issue. It should be noted that completing drainage works under the Drainage Act Legislation in an urban situation is quite affordable. This needs to be identified in the text of the Drainage Act legislation which is extremely beneficial to understand the Drainage Act Legislation is for Ontario as a whole.

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General Comment #2

Please find below the City of Ottawa comments on the suggested amendments to the Drainage Act. We will also be submitting these comments directly to the EBR for consideration.

- Section 6 – CA and MNRF are getting around the term “environmental appraisal” and asking for many studies / permits / approvals which increase the cost of the project and cause unnecessary delays. This section needs to be reworded to that CA/MNRF pay for these increased costs.
- Section 9 – add a subsection that allows the municipality to not invite landowners within a block assessment. Example: a village within an existing watershed will not be assessed. Why have hundreds of landowners at a meeting when they do not have information to provide to the Engineer and they will not be assessed for the work.
- Section 77 – the new streamlined process will have to outline many items in order to be effective. What need to be in the Eng. Report; design; cost; agency approvals; role of Council; by-law; appeals
- Simplified process to account for changes during construction. Who decides if the changes are required during construction? Do the D.S., Engineer and agencies all have to agree? Who pays for the cost of updating the report, plan and profile and by-law?
- Appeal to tribunal – fee for each appeal submitted or specific dollar value of assessment required. This would help minimize frivolous appeals from landowners.
- All monetary values in Drainage Act should be updated to today’s dollar figures. Example: Sect. 65(11) increased amount to \$2,000; Sect. 77 – increase amount to \$50,000

- New protocols not only need to ensure environmental protections are maintained but also take into account the rights of the landowners who request this work and pay for it
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General Comment #3

The Drainage Act is a very effective tool at achieving communal solutions to rural drainage problems. It's public input process, cost sharing provisions, appeal mechanisms and grant programs were generally well designed and implemented. While the basic structure of the Act remains very effective, there are opportunities to make improvements. For this reason, Burnside is supportive of the changes to the Drainage Act proposed in the Discussion Paper posted by the Ministry of Agriculture, Food and Rural Affairs (OMAFRA). Burnside commends the Province and OMAFRA for initiating this process to find cost efficiencies for the development and management of infrastructure that is vitally important to rural Ontario.