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Council Meeting – October 28, 2025

Subject: Drainage Act Report Closures
Report Number: PW-25-008
Division: Environmental and Infrastructure Services
Department: Environmental Services
Ward: All Wards
Purpose: For Decision

Recommendation(s):

That staff report PW-25-008, *Drainage Act* Report Closures, be received as information; and

That Council accept the *Drainage Act* section 40 report for the Bucholtz Municipal Drain Petition and drainage superintendent be authorized to proceed with the necessary notifications and process to close the project; and

That Council accept the *Drainage Act* section 40 report for the James Berry Municipal Drain Extension and drainage superintendent be authorized to proceed with the necessary notifications and process to close the project; and

That Council accept the *Drainage Act* section 40 report for the Kwasnik Petition and drainage superintendent be authorized to proceed with the necessary notifications and process to close the project; and

That Council accept the *Drainage Act* section 40 report for the Norfolk-Oxford Municipal Drain and drainage superintendent be authorized to proceed with the necessary notifications and process to close the project; and

That \$4,376 of the County's assessment be funded by the Drainage Construction Reserve;

Further that \$12,840 be applied against the Drain Allowance.

Executive Summary:

The purpose of this report is to inform Mayor and Council that Norfolk County is in receipt of four (4) *Drainage Act*, section 40 reports which conclude that the projects are no longer required or impractical.

In accordance with the *Drainage Act*, a Section 40 report may be prepared by a drainage engineer to conclude a project that is deemed impractical, cannot be constructed under the Act, or is no longer required. Of the four (4) Section 40 reports attached to this report, three (3) were initiated by owner petitions, while the fourth was initiated by Norfolk County Council. In each case, the engineer has outlined the work completed to date, provided justification for closing out the project, and detailed the costs incurred to date that are to be assessed.

To proceed, Council can accept the engineer's reports, or they may refer the reports back to the engineer for changes, although staff are not recommending this option due to increased costs.

Based on the attached Section 40 reports, staff recommend that Council accept the reports and authorize the Drainage Superintendent to proceed with the required processes and notifications to formally close the projects.

The adoption of this report will result in the use of \$4,376 from the Drain Construction Reserve, and the use of \$12,840 of the previously set aside Drain Allowance. The Drains Construction Reserve and Drain Allowance have sufficient funds to support the financial recommendations.

Discussions:

Drainage staff have been working with engineers to bring various *Drainage Act* projects to conclusion.

A drainage engineer may prepare a *Drainage Act*, section 40 report to conclude a project where the drainage improvement is no longer required or impractical or cannot be constructed under the *Drainage Act*. In each report attached the engineer has identified what work has been done, why the project should be concluded and how the costs to date should be assessed. Once Council accepts these reports, this concludes the authority for the engineer to complete any further work on these projects. Upon Council acceptance, staff are required to notify the affected owners. Upon conclusion of a regulated appeal period the County may recover costs in accordance with the reports, if applicable.

The following projects are recommended for completion under the relative *Drainage Act* Section 40 reports as received:

1. Bucholtz Municipal Drain Petition – Section 40 Report (Refer to Attachment 1) Engineer Appointment – Dietrich Engineering Ltd. – June 2009

Discussion – This *Drainage Act* appointment was initiated by owner petition relating to drainage issues in Gilbertville and with the Bucholtz Drain. A final design and cost was presented to the affected owners in February 2011. The estimated cost at that time was \$62,300. The owners expressed concern over

the projected costs and after extensive discussion, they were offered an opportunity to resolve the matter privately. To date a private solution has not been initiated and drainage issues remain. From discussions with the engineer, without owner interest or a petition from the County to address additional work required, the anticipated increase in construction cost, additional engineering required, and the engineers limited ability to complete the project, the engineer has concluded that it is not practical nor responsible to move forward with the project.

2. James Berry Municipal Drain Extension – Section 40 Report (Refer to Attachment 2)

Engineer Appointment – Dietrich Engineering Ltd. – June 2009

Discussion – This *Drainage Act* appointment was initiated by owner petition to extend the James Berry Drain upstream to service an additional property. Design options were prepared with estimates and presented to the affected owner. Based on discussions with the engineer, the petition remains valid. However, there is limited interest from the petitioners and the County in proceeding with the proposed work. Additionally, further engineering would be required. It was determined by the engineer that it is not financially practical to continue with this project.

3. Kwasnik Petition – Section 40 Report (Refer to Attachment 3)

Engineer Appointment – K. Smart Associates Ltd. – March 2023

Discussion – This *Drainage Act* appointment was initiated by owner petition to address a private property drainage issue at Forestry Farm Road and Charlotteville Road 5. Through engineering design and discussion with staff a solution was determined within the County right-of-way. The engineer completed a design and construction was completed by staff using funds from the Drain Improvements Initiative.

The *Drainage Act* Section 40 report concludes the authority and requirement for the engineer to prepare a report under the *Drainage Act*.

All costs have been recovered through the Drain Improvement Initiative Project and there are no costs to be assessed.

4. Norfolk-Oxford Municipal Drain – Section 40 Report (Refer to Attachment 4)

Engineer Appointment – K. Smart Associates Ltd. – March 2013

Discussion – This *Drainage Act* appointment was initiated by Norfolk County Council to address the outlet of the Norfolk-Oxford Drain within the Town of Tillsonburg. The Town of Tillsonburg had replaced the municipal drain with a storm sewer but had not connected the drain nor accounted for runoff from lands and roads in Norfolk County. The drain has since been connected into the Town of Tillsonburg storm sewer. Staff have met with the Town of Tillsonburg and

formulated an informal agreement that the Town of Tillsonburg would maintain outlet for the Norfolk-Oxford Drain through their storm system.

Staff met with the Town of Tillsonburg and determined that, instead of completing a full *Drainage Act* report, this informal agreement could be included in the next update to the municipal boundary agreement.

This has resulted in the engineer determining that a *Drainage Act* report is no longer required for this project. The *Drainage Act* Section 40 report concludes the authority and requirement for the engineer to prepare a report under the *Drainage Act*.

Because the Town of Tillsonburg completed the physical work to address the drain issue and the balance of the work was administrative the engineer has assessed 100% of the cost to Norfolk County.

Any owner dissatisfied with these engineering reports may appeal to the Drainage Tribunal or Drainage Referee within 40 days of receiving notice. Upon completion of the appeals, the County may assess the lands for the portion of cost according to the reports.

Conclusion of these projects does not prevent the County or an owner from restarting a Drainage Act project in the future if drainage issues persist or their interests change.

Finance Comments:

The table below provides a summary of each drain being closed within this report, showing the current project balance and funding sources recommended to fund the project balances.

Drain	Current Balance	Funding Source
Bucholtz Municipal Drain Petition	0	Not applicable
James Berry Municipal Drain Extension	\$12,839.82	Drain Allowance
Kwasnik Petition	0	Not applicable
Norfolk-Oxford Municipal Drain	\$4,375.68	Drain Construction Reserve

Specific comments and rationales have been provided in the section below.

Bucholtz Municipal Drain Petition

In 2022, a comprehensive review of drain construction projects was completed. During this review, it was determined that work on the Bucholtz Drain Petition was unlikely to continue (based on the situation with landowners being unsatisfied with the drainage solution and estimated costs associated, coupled with issues with receiving timely work from the drainage engineer). As a result, it was decided the project should no longer

proceed, and the project was written off (\$13,332.42 written off). No costs have been incurred on this project since this date.

As the project is at a balance of \$0, staff are not recommending proceeding with collections as outlined in the Section 40 report. The presentation of the engineer's report is being viewed as the formal notification for project closure under the *Drainage Act*.

James Berry Municipal Drain Extension

As a result of the comprehensive drain construction project review completed in 2022, a drain allowance was established for drain construction projects considered at risk for ultimate collection. The allowance included the costs related to the James Berry Municipal Drain Extension, as the drainage engineer had not made recent progress on the project, and significant engineering work needed to be completed to move this project forward.

The current costs related to this project are \$12,839.82, and the allowance set aside is sufficient to cover the costs to date. As the landowner has changed from the original petitioner, and the County desires to end the project due to untimely work being received from the engineer, staff are recommending to apply the allowance against the project costs to date, resulting in no costs to be assessed to landowners. The presentation of the engineer's report is viewed as the formal notification for project closure under the *Drainage Act*.

Kwasnik Petition

The Kwasnik petition was received, however, the project was completed within the operating budget and did not follow the *Drainage Act* process for completion. The drain project is at a balance of \$0, and as a result there are no costs to be collected for this project. The presentation of the engineer's report is being viewed as the formal notification for project closure under the *Drainage Act*.

Norfolk-Oxford Municipal Drain

The costs incurred by the County for the Norfolk-Oxford Drain are \$4,375.68, which have been assessed by the engineer to be 100% to Norfolk County. It is recommended that these costs be funded through the Drain Construction Reserve.

As shown in the table below, the projected 2025 uncommitted balance of the Drains Construction Reserve is expected to be \$2,513,853, including the impacts of this report.

Drains Construction Reserve	Amount (\$)
Audited 2025 Opening Balance	6,456,286
Contributions	500,000
Projected Commitments*	4,438,057
Impacts of this Report	4,376
Projected 2025 Uncommitted Balance	\$2,513,853

*Note: including commitment outlined in report PW-25-009

Interdepartmental Implications:

Not applicable.

Consultation(s):

Finance was consulted in the preparation of this Report.

Strategic Plan Linkage:

Serving Norfolk - ensuring a fiscally responsible organization with engaged employees who value excellent service

Attachment(s):

- Attachment 1 – Bucholtz Municipal Drain Petition - Section 40 Report
- Attachment 2 – James Berry Municipal Drain Extension – Section 40 Report
- Attachment 3 – Kwasnik Petition – Section 40 Report.
- Attachment 4 – Norfolk Oxford Municipal Drain - Section 40 Report

Approval:

Approved By:
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Reviewed By:
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