

# Consideration of the Final Engineer's Report for the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, 2024 Section 78 Improvements



## Staff Report DSR-055-24

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To: Mayor, Deputy Mayor, and Members of Council

From: Jeremy Nyenhuis, Drainage Superintendent

Date: May 8, 2024

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### Recommendation:

1. That Staff Report DSR-055-24 regarding Consideration of the Final Engineer's Report for the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, 2024 Section 78 Improvements dated May 8, 2024 be received; and
2. That Council provisionally adopt the Final Engineer's Report for the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, 2024 Section 78 Improvements dated April 15, 2024, by giving first and second reading to By-law 044-24; and
3. That Council give notice as required under Section 46 of *the Drainage Act* and set the date and time for the first sitting of the Court of Revision for Wednesday, June 19, 2024, at 5:30 pm and that no late appeals will be heard; and
4. That Council appoint the following three members to sit as members of the Court of Revision for the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, 2024 Section 78 Improvements Mayor Dollin (Chair), Deputy Mayor Fowler and Councillor Eisses; and
5. That the Clerk be instructed to send a copy of the provisional By-law 044-24 and Notice for the Court of Revision to all landowners under Section 46 of *the Drainage Act*.

### Background:

On March 31, 2022, the Town of Innisfil received a letter along with a Notice of Request for Drainage Improvement from Julie Scruton, Manager, Transportation Construction at the County of Simcoe, for the realignment of part of the Hewitt's Creek Drain and abandonment of the existing closed section, and reconstruction of culverts under Simcoe Road 21 (Innisfil Beach Road) as part of the 2021/2022 Innisfil Beach Road reconstruction project.

On April 13, 2022, Council received Staff Report DSR-051-22 and approved its recommendations which included direction that an Improvement Report be completed under Section 78 of the *Drainage Act* on the existing Hewitt's Creek Drainage Works for the proposed realignment.

On May 11, 2022, Council received Staff Report DSR-074-22 and passed a resolution appointing R.J. Burnside & Associates Limited as the "Engineer" to prepare a Drainage Improvement Report on the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, in accordance with Section 78 of the *Drainage Act*.

The County of Simcoe completed the work under Innisfil Beach Road back in 2022. The remaining realignment of the existing closed portion of the drain with a new open channel is scheduled to be completed in 2024.

On April 17, 2024, Jeff Dickson, P.Eng., Drainage Engineer for R.J. Burnside & Associates Limited, completed the study for the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, Section 78 Improvements and filed the Final Engineer's Report with the Clerk. On April 24, 2024, Council received the Final Engineer's Report and expressed their intention to proceed with the drainage works as per Section 41 of the *Drainage Act*.

**Analysis/Consideration:**

The Engineer has prepared and filed his Final Engineer's Report for the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, Section 78 Improvements dated April 15, 2024, under Section 41 of the *Drainage Act*. The Final Engineer's Report provides the required documentation outlined within the *Drainage Act*, including:

- Allowances payable to owners directly affected by the works;
- Estimated Cost of the Total Work;
- Assessment Schedule; and
- Watershed Plan, Profiles and Specifications of Drainage Works;

It should be noted that the design, sizing, and construction of the drainage improvements have been completed by and paid for by the County of Simcoe. The breakdown of the total estimated costs ONLY consists of the engineering (R.J. Burnside & Associated Limited), administration, and allowances, as indicated in the Engineer's Final Report.

A summary of the estimated costs and cost recovery through property tax assessments for the work are in Table 1 and Table 2, respectively.

<b>Table 1 – Estimated Costs</b>	
<b>Item</b>	<b>Cost</b>
Allowances	\$5,900.00
Engineering – R.J. Burnside & Associates Limited	\$24,000.00
Net H.S.T., Interest and Contingency	\$4,100.00
<b>Total</b>	<b>\$34,000.00</b>

<b>Table 2 – Estimated Cost Recovery</b>	
<b>Item</b>	<b>Cost</b>
County of Simcoe	\$34,000.00
Town of Innisfil	\$0.00
Privately Owned Agricultural Lands	\$0.00
Privately Owned Non-Agricultural Lands	\$0.00
<b>Total</b>	<b>\$34,000.00</b>

It should be noted that the costs shown above and outlined in the Final Engineer's Report are estimates of costs only. It is emphasized that these estimates do not include costs for R.J. Burnside & Associates Limited to defend the drainage report should appeals be filed with the Court of Revision, the Agriculture, Food and Rural Affairs Tribunal and/or the Drainage Referee. Should additional costs be incurred, unless otherwise directed, those would form part of the overall cost of the drainage works and be distributed in a prorated fashion over the assessments contained in the Schedule of Assessments.

### Next Steps:

If Council receives the Engineer's Report on the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, and gives the first and second reading and provisionally adopts the report tonight, Council will be starting a specific timeline for appeals as set out in *the Drainage Act*. *The Drainage Act* provides three appeal bodies to which a property owner may appeal when a drainage works is being proposed or improved. The appeal bodies are:

- the Court of Revision;
- the Agriculture, Food and Rural Affairs Appeal (AFRAA) Tribunal; and
- the Drainage Referee.

Below are the steps, as laid out in *the Drainage Act*, that follow the first and second reading of the By-law:

1. Council must set a Date and Time for the sitting of the **Court of Revision**.
  - a. The sitting of the **Court of Revision** shall be held on a day not earlier than 20 nor later than 30 days from the date of the completion of the sending of the copies of the provisional By-law under Section 46(2).
2. Council must appoint members to sit as the **Court of Revision**.
  - a. The Court is made up of 3 or 5 members.
3. A copy of the Provisional By-law and Notice of the time and place of the sitting of the **Court of Revision** must be sent to each person or body entitled to notice under Section 41 **within 30 days** after the adoption (Section 46(2)).
4. Landowners may appeal the owner's assessment to the **Court of Revision** by a notice given to the Clerk of the Town of Innisfil not later than **10 days before** the sitting of the Court of Revision as per Section 52 of *the Drainage Act*.
  - a. **Notice of Appeal to Court of Revision form** are available online (<http://www.omafra.gov.on.ca>) and at Innisfil's Customer Service counter.
5. Any owner of land or public utility may appeal the decision of the **Court of Revision** to the Ontario Drainage Referee or Drainage Tribunal **within 21 days** of the Court's decision (Section 54(1)).
  - a. **Notice of Appeal to Tribunal from the Court of Revision form** are available online (<http://www.omafra.gov.on.ca>) and at Innisfil's Customer Service counter.
6. Any owner of land or public utility can file an appeal to the **Drainage Referee** on the grounds that the report does not comply with *the Drainage Act*, **within 40 days** of the mailing of the Court of Revision Notice (Section 47(1)).
  - a. In every case, notice of appeal shall be served upon the Council of the initiating municipality.
  - b. Appeals to the Referee are legal or procedural.

7. Any owner of land, public utility or Conservation Authority may file an appeal to the **Drainage Tribunal** on technical grounds, **within 40 days** of the mailing of the Court of Revision Notice (Section 48(1) and Section 49).
  - a. **Notice of Appeal to Tribunal by Owner of Land or Public Utility Re: Engineer's Report form** are available online (<http://www.omafra.gov.on.ca>) and at Innisfil's Customer Service counter.
8. 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 (Section 58(1)).

**Community Strategic Plan Alignment:**

The Hewitt's Creek realignment project is aligned with the Town's Strategic Plan – Priority #2 Sustain; Protect and preserve Innisfil's natural heritage and Lake Simcoe.

**Financial Consideration:**

The cost recovery for this project is itemized in Table 1 and Table 2. The Assessment Schedule spells out the costs for each individual piece of land (residential, farm, road, etc.) and is contained in Appendix C in the Final Engineer's Report. These assessments are based on the estimated costs and the Assessment Schedule will be updated after the completion of the project using the actual costs for assessment purposes.

As indicated above, the design and construction of the drain improvements are being completed by the County or Simcoe and their contractors. The total cost breakdown contained in the Engineer's Final Report ONLY consists of the engineering (R.J. Burnside & Associates Limited), administration, and allowances, as indicated in the Engineer's Final Report.

The total estimated cost of \$34,000 contained within this Section 78 Report have been assessed to the County of Simcoe. Therefore, the Landowner and Town portion of the estimated costs as assessed for both lands and roads will be \$0.00.

**Local Impact:**

The Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment will have a direct effect on 1792 Innisfil Beach Road, 1702 Innisfil Beach Road and Innisfil Beach Road (where Simcoe County is the road authority). An additional 14 properties located on Simcoe Road 21 (Innisfil Beach Road) are within the watershed and have been informed/included in this process.

**Options/Alternatives:**

The legislative responsibility under the *Drainage Act* requires the Town of Innisfil to perform maintenance works and manage our municipal drain network. To do this, an Improvement Report under Section 78 of the *Drainage Act* must be completed for the changes to the existing Hewitt's Creek Drainage Works.

Council indicated its intent to proceed with the drainage improvements through Staff Report DSR-055-24 on April 24, 2024. Currently, there are no other options available for Council.

**Conclusion:**

Jeff Dickson, P.Eng., the Engineer from R.J. Burnside & Associates Limited, has completed the study for the Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, and filed the Final Engineer's Report. It is Staff's recommendation that Council give first and second reading to By-law 044-24, and the report shall be considered adopted and the By-law shall be known as

a Provisional By-law. *The Drainage Act* requires a public appeal process to be undertaken before final reading of the By-law and approval of the construction works.

Staff also recommend that Council instruct the Clerk of the Town of Innisfil to mail out a copy of the provisional by-law and the notice for the first sitting of the Court of Revision as outlined in Section 46 of *the Drainage Act*.

**Prepared By:**

Jeremy Nyenhuis, Drainage Superintendent

**Approved By:**

Nicole Bowman, Director of Operations

**Attachments:**

Attachment 1 – By-law 044-24 – Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, 2024 Section 78 Improvements Provisional By-law

Attachment 2 – Final Engineers Report - Hewitt's Creek Drainage Works, Innisfil Beach Road Realignment, 2024 Section 78 Improvements

**Reference Material:** [Community Strategic Plan](#)