



Staff Report

Report Title: Bruce Beach Drainage Project Phase One Update

Prepared By: Ken McCallum, Drainage Superintendent

Department: Drainage/ Legislative Services

Date: Dec. 18, 2023

Report Number: CLK-2023-12-71

File Number: C11 CLK 23

Attachments: None

Recommendation:

THAT the Township of Huron-Kinloss Council receive for information Report CLK-2023-12-71, prepared by Ken McCallum Drainage Superintendent and Jennifer White, Manager of Legislative Services/Clerk;

AND FURTHER THAT Council authorize entering into an agreement with Birnam Excavating Ltd. to pay \$57,644.41 +HST of the repair costs associated with the slope repair;

AND FURTHER THAT the Mayor and Clerk be authorized to execute on behalf of Council any documents as required for such agreement.

Background:

An unexpected slope failure occurred during construction of the Bruce Beach Municipal Drain Phase 1. Work has been completed to restore the slope failure. The Township and the contractor are not in agreement with respect to who is responsible for the cost of this work. The contractor will not complete outstanding deficiency work on the drainage project until the costs associated with the repair for slope failure have been resolved.

Staff recommend that an agreement be reached with Birnam to cover a portion of the costs for the repair.

Previous Reports: [DRAIN 2022-06-10](#), [DRAIN 2022-07-11](#), [DRAIN 2022-08-14](#), [DRAIN 2022-09-17](#), [DRAIN 2022-10-18](#) provide information to Council on the slope failure.

Discussion:

Council passed By-law No. 2021-85 to provide for the construction of Drainage Works known as Bruce Beach Municipal Drain Phase 1. The project was awarded by tender to Birnam Excavating Ltd. through By-law No. 2021-95. Despite appeals being filed, the project received emergency designation under Section 24 of the *Drainage Act, 1990* to permit the construction to proceed without risk of procedural violations under the Act.

Subsequently the appeals were dismissed. Construction continued over the following winter and spring months.

As part of the project, a slope repair was required due to deficient work, which manifested as a slope failure. Council received several reports through the summer of 2022 regarding this event. Materials placed by the contractor slumped down the Lake Range Drive Slope. Necessary repairs have been made to the slope.

As part of the repairs, a new subdrain system was authorized and installed along with other mitigating measures. Throughout the project, the engineers have approved approximately \$48,500 in additional work, including removing unsuitable materials from the construction site, flow mitigation measures and installation of additional rip-rap chutes. These types of additions are not unexpected in this type of large construction project and can occur when weather is unsuitable or unforeseen issues develop.

Birnam Excavating Ltd. Submitted their requested payment for the additional work to repair the slope totalling \$96, 481.47. The Township's expectation for the total costs was \$45,500. The Township and the contractor are not in agreement as to which party bears responsibility for the slope failure. Since that time, the Township has been working through the project's engineering firm Headway Engineering to resolve the matter.

Rather than delay construction completion further, and incur additional legal costs, to resolve the matter, the Project Engineer and Township staff recommend entering into an agreement with Birnam Excavating Ltd. to pay \$57,644.41 +HST of the repair costs. This amount reflects approximately 66% of the hard costs that Birnam has associated with the slope repair.

After an agreement is reached and signed, Birnam have indicated that all outstanding work will be completed in a timely manner and in accordance with the engineer's report. Remaining deficiencies in the project generally include fine grading, hydroseeding, rip-rap adjustment, and some structure adjustments.

The Township has retained approximately 3% of the contract amount as a maintenance holdback. To release this holdback, the Township's designated representative must verify the satisfactory completion of all remaining deficient work.

Financial Impacts

Financial Impacts:

The *Drainage Act, R.S.O. 1990, c. D.17* provides for how assessment costs are allocated between affected landowners and the municipality. The assessments included in the Engineer's Report include prorated costs (those shared among affected landowners) and other costs which are borne by the municipality.

The tendered contract price was below the estimated construction costs. The additional work noted as authorized in the report was within the construction contingency estimates. Payment from this agreement would increase the total construction costs beyond those estimated in the engineers report.

In consultation with the Project Engineer, Staff are not anticipating that this agreement will impact the estimated assessments of the landowners. The costs would reflect in the Township's portion of the assessment.

There are expected to be additional costs for the project associated with the legal and administrative costs of the appeal. As per Section 73(1) of the Act, and per the tribunal decision, the costs of the appeal forms part of the cost of the drainage works.

Strategic Alignment / Link

N/A

Respectfully Submitted By:

Ken McCallum, Drainage Superintendent and Jennifer White, Manager of Legislative Services/Clerk

Report Approved By:

Mary Rose Walden, Chief Administrative Officer