



The Corporation of the Township of Huron-Kinloss

Staff Report

Report Title: Black Creek Municipal Drain Report

Date: Jun. 2, 2025

Report Number: DRA-2025-08

Department: Drains

File Number: C11 DRA 25

Prepared By: Ken McCallum, Drainage Superintendent, Jennifer White, Clerk

Attachments: Black Creek Plan annotated

Recommendation:

THAT the Township of Huron-Kinloss Committee of the Whole hereby receives Report DRA-2025-08 prepared by Ken McCallum, Drainage Superintendent, and Jennifer White, Manager of Legislative Services/Clerk;

AND FURTHER THAT Committee of the Whole provide direction to Staff.

Background:

This report is to provide the committee an update on the Black Creek Drain, the progress on the report for Improvements and constraints of the Drainage Act to expediting the process.

Discussion/Analysis/Overview:

The Black Creek Municipal Drain has a lengthy and complex history which has complicated and delayed throughout the years, maintenance and improvement efforts through this significant wetland area. The wetland area includes several drainage areas created through the now repealed Ditches and Watercourses Act, and design changes resulting from appeals to and orders resulting from Tribunal.

The Watershed which will be impacted by the Section 78 report, includes:

- Approximately 13,000 acres of land
- Approximately 260 private landowners
- Three municipalities.

Environmental Considerations

Much of the proposed drainage work is located within a Provincially Significant Wetland (PSW)—specifically the Greenock Swamp Wetland Complex. The Conservation Authority, the Department of Oceans and Fisheries and other regulatory agencies are required to be consulted and may have additional provisions to include in the design phase.

Brief Historical overview of the Black Creek Municipal Drain

On March 17, 1920

A drainage report was prepared by C.A. Jones, Ontario Land Surveyor, under the direction of the Council of the Township of Culross. The report was completed pursuant to the Ditches and Watercourses Act and addressed the straightening and deepening of Black Creek. The proposed drainage improvements extended from the creek's outlet into the Mud River (now known as the Teeswater River) upstream to Waddle Lake (also known as Clam Lake), situated in Lot J, Concession 25 of Greenock Township.

The project encompassed a total of 336 chains, or 22,176 feet, of open drain construction, servicing approximately 14,000 acres of land.

Historically, Black Creek discharged into the Teeswater River at Lot 21, Concession 15, in the Township of Culross. However, a new outlet was later established through a formal Award, redirecting the creek to discharge into the Teeswater River at Lot 31, Concession 1, S.D.R., in Greenock Township.

Design specifications called for a 10-foot bottom width from Clam Lake downstream to the lot line between Lots 31 and 32 in Culross. From that point to the creek's new outlet, the bottom width increased to 12 feet. The total fall along the course of the drain was 5 feet, resulting in a very gentle gradient of approximately 0.0026 percent. A 25-foot working corridor was established on both sides of the drain.

This project was classified as an Award Drain, indicating that it was established through a formal legal process rather than under a traditional engineer's report. It is important to note that the Township does not possess any engineering plans or profile drawings to supplement this historical report.

By-Law 5-1931 & By-Law 5-1932

This By-law was enacted to adopt the report prepared by Jones & Monteith, dated March 17, 1920. The report brought the regulation of Black Creek under the provisions of the Drainage Act. At the time, a petition had been filed requesting the construction of a drain between Silver Lake and Clam Lake.

A subsequent report from 1988 notes that the original drain, identified as Branch 'Z,' was constructed using horse-drawn scrapers, reflecting the construction methods of the early 20th century.

Appeals related to the drainage works were submitted to the Court of Revision.

It is important to note that there are no engineering plans or profile drawings available to accompany the 1920 report or the associated By-laws. These plans and profile drawings provide the Drainage Superintendent with the jurisdiction and guidance for how work is to be performed to maintain the drain in an as-designed manner.

By-Law 6-1951

This By-law provides for improvements to the McDonald-Bushnell Drain and the Northwest Section of the Black Creek Extension Drains.

The McDonald-Bushnell Drain was originally established under By-law No. 51 of 1885, enacted pursuant to the Ditches and Watercourses Act. Through the enactment of this By-law, the McDonald-Bushnell Drain is now brought under the jurisdiction of the Drainage Act. In addition to re-establishing the legal framework for the McDonald-Bushnell Drain, this By-law addresses drainage improvements in the upstream area of Silver Lake, identified as the Northwest Section of the Black Creek.

Note that no engineering documents—including a report, plans, or profiles—are available to accompany this By-law. Such documents are typically required to support drainage works under the Drainage Act.

By-Law 3-1970

This By-law adopts a report prepared by H.M. Gibson Ltd., which governs the entire southwest section of the Black Creek Municipal Drain. This By-law supersedes By-law No. 5-1932.

The drainage works described in the report consist of a main drain and 19 branch drains, providing an outlet for approximately 3,000 acres of land.

No profile drawings are available to accompany the report for the southwest section of the Black Creek Municipal Drain, which would typically assist in understanding the scope and design of the drainage works.

By-Law 23-1970

This By-Law was provided to govern the northwest section of the Black Creek Municipal Drain upstream of Silver Lake. The drain serves outlet for approximately 2,100 acres of lands. This By-Law still governs the tile portion of the Northwest section.

By-Law 14-1984

This By-law governs the main drain of the Northwest Section of the Black Creek Municipal Drain.

The report associated with this By-law was prepared to address the installation of an improved access culvert within the designed channel. In addition, the report provided an updated maintenance schedule, superseding the provisions outlined in the 1970 report.

Following the adoption of this report, the open ditch was cleaned out as part of routine maintenance activities.

Existing governance By-law

By-Law 4-1988

The proceedings leading to the most recent governing By-law originated with By-law No. 12 of 1985, which provisionally adopted a report prepared by George A. Davis & Associates. The proposed drainage works included:

- 6,500 metres of debris removal from the Main Drain,
- The installation of a weir downstream of Clam Lake, and
- 500 metres of ditch excavation to establish Branch 'A' (Known as Branch 'Z')

Several landowners affected by the proposed works raised objections to aspects of the plan. As a result, the matter was referred to a public hearing, during which the following decisions were rendered:

- The diversion between Clam Lake and Silver Lake was approved.
- The weir, if included as part of the drainage report, was to be constructed at the engineer's recommended elevation.

Subsequent discussions took place among the three involved municipalities: Townships of Kinloss, Greenock, and Culross. It was mutually agreed that each township would be responsible for maintaining their respective sections of the Black Creek Municipal Drain. If any township failed to comply, Kinloss Township would proceed under Section 74 of the Drainage Act to ensure the necessary maintenance was carried out.

Following these discussions, the engineer was requested to revise the report to include only those portions of the drain located within Kinloss Township.

The final report, dated June 1, 1988, was submitted by the engineer and included 500 metres of open ditch excavation, designated as Branch 'Z' of the Black Creek Municipal Drain.

2008 Initiation of Section 78 Report (this project)

A recommendation from the Township Drainage Superintendent to conduct an improvement report and update the assessment schedule under Section 78 of the Drainage Act was accepted by Council in 2008. As a result, Dietrich Engineering Limited was appointed as the engineering consultant.

An initial meeting was held on April 30, 2009, at the Ripley Arena, with several members of the public in attendance, along with representatives from the Saugeen Valley Conservation Authority (SVCA), and municipal representatives from Brockton, South Bruce, and the Township of Huron-Kinloss.

At that time, the engineer summarized that the purpose of the report was to establish governance for the removal of obstructions in the Black Creek Municipal Drain and to provide an updated maintenance cost schedule.

Preliminary Works (2012–2013)

Some preliminary drainage works were undertaken over the following years, to provide for preparation of the report, and temporary relief to landowners. This included the removal of multiple obstructions between Sideroad 25N in the Municipality of South Bruce and upstream to approximately Lots 31 and 32, Concession 15, in Culross Township.

Trapping activities across all involved municipalities have continued through to present day and are contributing to increased maintenance costs, being accrued.

Transfer of Engineering Appointment

In 2021, the engineering appointment was transferred to R.J. Burnside & Associates due to Dietrich Engineering Limited being unable to meet the project's workload requirements and having not yet produced a report. Burnside & Associates was recommended for appointment, as they had since retained staff who were already familiar with the project. The Engineer was directed to continue under the same objectives and scope as the previous consultant.

An onsite meeting was held by the new engineer on April 11, 2023, with several members of the public in attendance to discuss current drainage concerns. Since that time, limited updates have been provided to municipal staff regarding the status of the proposed designs. As noted in previous drainage update reports to Council, the expected timeframe for a meeting of landowners has passed, and Staff have been working with the Engineer to expedite the process and provide firm timing of future required steps.

Next Steps

Staff have met with representatives from the Engineer firm, including the local Senior Vice President, Municipal Services and Structures, who have committed additional resourcing to the project. Based on discussions with the appointed Engineer, the following steps are proposed to advance the project to where a final report is available for consideration by Council:

- CAD Drawings – Plan and Profile
- Watershed Modeling
- Drainage Design, including:
 - Open ditch work
 - Culvert sizing and placement
 - Cost estimates

Following preparation of these items, a meeting will be held (anticipating mid July if not sooner) with landowners along the drain to review of the design. Applications will need to be submitted to applicable environmental agencies for approval and following incorporation of comments from landowners along the drain, the final draft proposal is expected to be shared with the larger watershed area, prior to the report being presented to Council.

Maintenance activities to provide imminent relief to landowners

The Mayors, Drainage Superintendents and other staff from the three municipalities through which the drain flows met recently to review the history, existing governance by-law and maintenance responsibilities determined during the development of By-Law No. 4-1988.

Coordinated maintenance activities are anticipated to take place, within the permitted timing windows, through summer of 2025, along the course of the drain through all three municipalities to provide imminent relief to landowners while the report is being prepared. Impacted landowners will be notified as legislatively required.

Options for Council to consider when a report is not produced in a timely manner

While continuing to work with the Engineering firm to obtain a firm commitment on timelines for the milestones required to bring a finalized report forward for Council consideration, Staff have investigated what mechanisms are available to expedite the necessary report.

The report is required to provide an updated and fair assessment schedule, governance through the watershed for maintenance work to be completed, inclusion of existing award drains to provide access to those properties for the Drainage Superintendent to perform necessary maintenance works, and the setting of updated elevation levels between the lakes.

Staff provide the following for consideration, having looked to other municipalities, Tribunal and Referee decisions, and consultation with the Ministry of Agriculture, Food and Agribusiness (OMAFRA): (note this is not an exhaustive list of all possible options, as the matter is still undergoing review)

1) Emergency Works – N/A

Staff have consulted with the Ministry of Agriculture, Food and Agribusiness (OMAFRA) who indicated that there is no mechanism until there is a final report prepared, for the Township to apply to the Minister for emergency works to take place.

2) Pass a resolution to limit the time within which the Engineer is to provide a report.

Section 39 of the Drainage Act requires that

39 (1) The engineer shall file the report with the clerk of the initiating municipality as soon as it is completed or, in any event, within one year after the appointment of the engineer or within such further time as may be extended before or after the expiry of the one-year period by resolution of the council of the municipality. 2010, c. 16, Sched. 1, s. 2 (7).

Engineer may forfeit compensation

(2) Where, after thirty days notice by council, the engineer neglects to make a report within the time limited by or extended under this section, the engineer shall forfeit all claims for compensation for the work done upon the drainage works, and the council of the local municipality may appoint another engineer. R.S.O. 1990, c. D.17, s. 39 (2).

A resolution could be brought forward at the next meeting of Council establishing a completion date for the report to be filed with the Clerk. The anticipated next steps have been provided within this report, which could assist Council in determining an appropriate timeframe within which the report could be delivered.

In the opinion of staff across municipalities that appointing a new engineer will not result in a timelier report, as it has already been attempted once during this process, and is likely to require additional time for review, for the completion of new surveys and for the transfer of information prior to a design being proposed for consideration.

The Act is unclear as to the mechanism to recoup costs already paid if the engineer's appointment is removed, or what the next steps are anticipated to be if another engineer is not appointed. OMAFAA could not provide a precedent where this had previously occurred through a decision by the Drainage Referee however Township and OMAFAA staff continue to investigate.

- 3) The Drainage Referee through Section 106 (d) can entertain applications for orders directing to be done anything required to be done under the Act.

OMAFAA has not yet provided information on whether this is an available option, and what the application process would entail. Staff to provide additional information as it becomes available.

- 4) Status Quo

This would involve staff from each of the three municipalities undertaking maintenance works to provide imminent relief to most landowners, and Township staff continuing to work closely with the appointed engineer to ensure that the project is appropriately resourced to proceed as outlined in the report. Staff have committed to provide an update as soon as feasible to landowners through the Township's engagement portal Have your Say HK www.haveyoursayhk.ca respecting expected timelines, dates of landowner meetings, etc.

Staff are satisfied that the appointed Engineer has a clear understanding now that the Township desires to see this report finalized and filed for consideration at the earliest opportunity. Therefore staff recommend that the Township proceed with option 4 and continue to work closely with the Engineer to provide information to landowners, and move the process forward.

Reporting Drainage Issues

Constraints in resourcing do not permit the Township's Drainage Superintendent to actively seek areas to maintain. At this time, the Township's levels of service only permit the Superintendent to respond to reported concerns, while working through existing capital and maintenance projects.

Members of Council are reminded that landowners can report drainage issues by phoning Township staff or using the online Report A Problem portal on the Township's website. This will assist the Drainage Superintendent in identifying areas where issues may exist.

Financial Impacts:

The Township of Huron-Kinloss will be responsible for the net assessments related to all maintenance activities and construction associated with the drain for all lands and roads under its ownership.

Due to the extended time frame, the combination of maintenance and capital activities which have occurred, the involvement of multiple engineering firms, and townships and the changeover in staff through this project, staff are still investigating the accumulated costs. More information is expected to be included as this is reviewed.

Performance Measurement:

N/A

Strategic Area:

- | | |
|---|--|
| <input type="checkbox"/> Embrace a thriving rural lifestyle | <input checked="" type="checkbox"/> Enhance Municipal Service Delivery |
| <input type="checkbox"/> Prepare for Inclusive Growth | <input type="checkbox"/> Ensure Financial Stability |

Strategic Goal: Protect, promote and restore our natural environment

Respectfully Submitted By:

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

Report Approved By:

Jodi MacArthur, Chief Administrative Officer