South Innisfil Creek Drain 2019 Improvement Final Cost and Levying By-law

Staff Report DSR-109-26

To: Mayor, Deputy Mayor, and Members of Council

From: Jeremy Nyenhuis, Drainage Superintendent

Date: August 12, 2026

Executive Summary

- As per the requirements of the *Drainage Act*, on November 27, 2019, Council gave third and final reading, approving Provisional By-law 010-19 for the South Innisfil Creek Drain 2019 Improvement, thereby authorizing the proposed improvement work.
- Construction commenced in January 2021 on the improvements and has now been completed.
- Now that the construction of the improvements has been completed, the final costs of the project can be tallied and levied in accordance with the Construction Assessment Schedule contained in the Engineer's report, as amended by the Agriculture, Food and Rural Affairs Appeal Tribunal.

Recommendation:

1. **That Staff Report DSR-109-26 regarding South Innisfil Creek Drain Improvement, Final Cost and Levying By-law dated August 12, 2026 be received; and**

2. **That Staff be authorized to take the appropriate actions to proceed with the recovery of the Section 78 Improvement project for the South Innisfil Creek Drain final cost and grant application; and**

3. **That By-law 076-26 dated August 12, 2026, a By-law to recover the cost of improvement work completed for the South Innisfil Creek Drain Improvement, be adopted.**

Background:

On March 31, 2005 an order was issued by the Court of the Drainage Referee of Ontario (Referee) in Barrie, that the Town of Innisfil forthwith appoint an engineer pursuant to Section 78 of the *Drainage Act*. As a result of the Order, on May 9, 2005, the Town appointed Dillon Consulting Limited (Dillon) as the Engineer to prepare, complete, and file a preliminary report and a final report in accordance with Section 78 of the *Drainage Act* to "improve" the South Innisfil Creek Drain and, in particular, to address concerns with flooding in the area known as the "Market Garden" which is adjacent to the drain primarily in Concession 2.

A Final Report dated August 15, 2013, prepared by Tom H. Marentette, P.Eng., of Dillon, was filed with the Town based on the observations and recommendations in the Preliminary Report. The recommendations in the report were the result of: detailed analysis and geotechnical investigations referenced in the Appendices; a review of the hydraulic model provided by the Nottawasaga Valley Conservation Authority (NVCA); the topographic survey carried out for the

Preliminary Report; and the recommended works included in the Order(s) by the Referee contained in Court File No. 04-B7552.

At the Meeting to Consider the Report on October 2, 2013, the Council deferred acceptance of the Final Report and directed Staff to commence an application to the Referee for reconsideration, clarification, and direction.

On November 4, 2014, the Referee issued a subsequent Order giving specific direction to the Town that it was no longer bound by the March 31, 2005 Order and that it was to retain the services of an Engineer to review the August 15, 2013 Dillon report and to suggest an alternative design to alleviate the flooding.

In response to the Referee's Order issued on November 4, 2014, the Town requested R.J. Burnside and Associates Limited (Burnside) to undertake a peer review of the Dillon Report and the proposed work, as well as the comments received by the Town from various stakeholders. The peer review was completed in two phases: with Phase 1 Report being issued on August 7, 2015; and Phase 2 Reports being issued on November 17, 2015. The reports provided a summary of the Burnside findings and recommendations.

The Town subsequently requested Dillon to undertake a revised design and to prepare a new Report which incorporated the recommendations derived from the Burnside peer review; however, correspondence of January 15, 2016, stated that Dillon was not in a position to undertake this work.

Burnside was requested by the Town to submit a proposal to undertake a revised design and to prepare a new Report; Burnside ultimately received an appointment in accordance with Section 78 of the *Drainage Act* as Drainage Engineer for the South Innisfil Creek Drain on June 1, 2016.

On February 13, 2019, Jeff Dickson, P. Eng., the Engineer, and the team from Burnside completed their study for the South Innisfil Creek Drain Improvement and filed the Final Engineer's Report with the Clerk under Section 78 of the *Drainage Act*. On February 13, 2019, Council received the Final Engineer's Report and expressed its intention to proceed with the drainage works as per Section 41 of *the Drainage Act.*

On March 21, 2019, the first sitting of the Court of Revision took place in the Council Chambers. The Court received twenty-four (24) appeals in total filed on the grounds that: 1. any land or road has been assessed an amount that is too high or too low; and/or 2. any land or road that should have been assessed has not been assessed; and/or 3. due consideration has not been given to the use being made of the land. The Court's Decision ordered the adjustment of costs for five (5) appeals. The remaining nineteen (19) appeals filed were dismissed as the properties had been assessed fairly.

On July 23 and 24, 2019, the Agricultural, Food and Rural Affairs Appeal Tribunal held a hearing in the Council Chambers. The Tribunal considered three (3) appeals filed under Section 54 of the *Drainage Act*, which appealed the decision made by the Court of Revision. The Tribunal also considered four (4) appeals filed under Section 48 of the *Drainage Act*: one (1) appeal regarding whether the compensation or allowances provided by the engineer were inadequate or excessive; two (2) appeals regarding whether the benefit derived from the drainage works was commensurate with the estimated cost; and one (1) appeal raising major concerns about the Highway 400 crossing and project timelines.

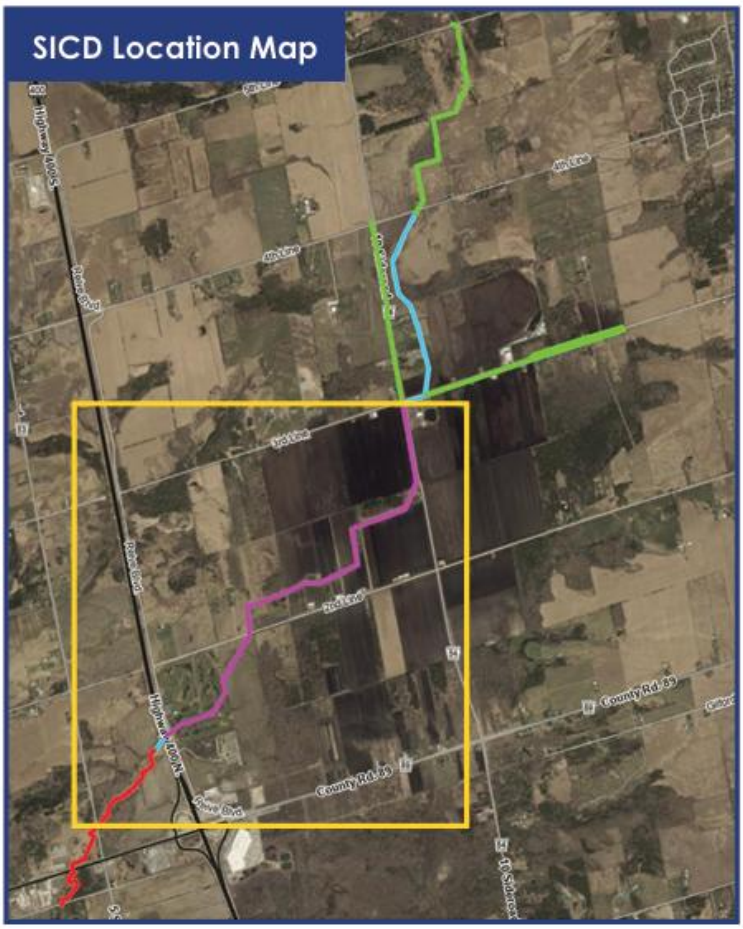
The Tribunal published its Decision dated October 22, 2019, regarding all of the appeals heard. The Tribunal's Decision ordered the increase of allowance for loss of access for one (1) appeal and the remaining six (6) appeals were dismissed. These changes, along with the changes made in the Decision of the Court of Revision, have been completed by the Engineer and have been incorporated into the Amended Final Engineer's Report. As required by Section 56 of the *Drainage Act*, By-law 010-19 has been amended in order to incorporate these changes to allow for the third and final reading of the By-law.

On November 27, 2019, Council gave a third reading and approved Provisional By-law 010-19, as amended, thereby authorizing the construction of the South Innisfil Creek Drain 2019 Improvement.

Analysis/Consideration:

Prior to commencing the construction of Phase I, and as per the ultimate solution in the amended Engineer's Report, the existing triple barrel crossing under Reive Boulevard (directly upstream of Highway 400) was removed and replaced in 2020 with a new twenty (20) metre clear-span bridge.

The project was originally divided into three (3) Phases, scheduled for completion between January 2021 and November 2023. In late November 2020, R&D Excavating Limited was awarded the improvement contract, as outlined in the Amended Engineer's Report. Construction began in 2021 and proceeded in accordance with the amended construction schedule shown in the SICD Location Map below.





Due to the scope of work and the timing of the Ministry of Transportation's Highway 400 Crossing Improvements, an additional Phase 4 was added and completed over two years, commencing in August 2024 and concluding at the end of September 2025. The majority of the construction work for the South Innisfil Creek Drain Improvement, including deepening and widening of the main drain, was completed on September 30, 2025. Provisional work, including the low-flow cleanout from 3rd Line downstream to 5 Sideroad on the main drain, as shown in the yellow box, was completed earlier this year in accordance with Fisheries and Oceans Canada timing windows.

Throughout this multi-year construction project, Staff provided regular updates to Council and landowners through Staff Reports DSR-007-22, DSR-037-23, DSR-161-23, DSR-005-25, and DSR-017-26. These staff reports were also posted on the Town's website to help keep stakeholders informed.

In preparation for project completion, Burnside and Town Staff met with Tim Brook, Lead Engineer, Drainage Program, with the Ontario Ministry of Agriculture, Food and Agribusiness (OMAFA), to discuss the need to update the Construction Assessment Schedule before levying the final project cost. An update to the Construction Assessment Schedule was required because nearly seven (7) years had passed since the Amended Engineer's Report was adopted and numerous properties had been severed or consolidated within the watershed.

As a result of discussions with Tim Brook and in accordance with Section 65 of the *Drainage Act*, the Town Clerk retained Burnside on April 27, 2026, to update the Construction Assessment Schedule. On June 6, 2026, a Section 65 reapportionment letter was provided to each landowner whose property had been severed or consolidated since the filing of the 2019 Engineer's Report, as per the *Drainage Act*.

With the work now complete and final project cost confirmed, the Town may proceed with levying that cost in accordance with Section 61(1) of the *Drainage Act*.

> Imposition of special assessment
>
> **"61(1)** The **council** of each local municipality that is required to raise the whole or any part of the cost of the drainage works shall by by-law impose upon the land assessed for the drainage works the assessment with which it is chargeable, and the amount so imposed is payable in such instalments as the **council** may prescribe."

Community Strategic Plan Alignment:

The South Innisfil Creek Drain 2019 Improvement 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 breakdown of the cost recovery for this project, as amended, was contained in Staff Report DSR-173-19. The Assessment Schedule identifies the costs for each property (residential,

farm, road, etc.) and is contained in Appendix B of the Final Amended Engineer's Report. These assessments are based on the estimated cost.

Final Cost Recovery:
The total estimated cost for this improvement project was $5,360,900.00 after the amendments by the Court of Revision and the Agricultural, Food and Rural Affairs Appeal Tribunal. A summary of the estimated cost, final cost and cost recovery through property tax assessments for the work is provided in Table 1 and Table 2, respectively.

Table 1 – Costs

Item	Estimated Cost	Final Cost
Construction	$2,606,350.00	$2,947,684.29
Engineering (Burnside)	$742,000.00	$1,272,465.63
Engineering (Dillon)	$1,025,087.00	$1,025,087.00
Interest	$117,200.00	$0.00
Allowances	$771,610.00	$771,610.00
HST	$59,000.00	$76,310.40
Other Fees	$39,653.00	$115,668.54
Total	**$5,360,900.00**	**$6,208,825.86**

Table 2 – Estimated Cost Recovery

Item	Cost
Province of Ontario	$119,994.27
County of Simcoe	$239,090.86
Town of Innisfil	$1,251,613.34
TOI - Agricultural Lands Owners	$2,778,929.74
TOI – Non-Agricultural Land Owners	$961,473.51
Town of Bradford West Gwillimbury	$1,605.41
BWG - Agricultural Lands Owners	$7,886.92
BWG – Non-Agricultural Lands Owners	$13,178.87
Section 26 - Non-Pro-Ratable – Town of Innisfil	$751,704.21
Section 26 - Non-Pro-Ratable – Province of Ontario	$83,354.73
Total	**$6,208,825.86**

The increase in Engineering (Burnside) reflects defending the Engineer's Report before the Court of Revision and the Agriculture, Food and Rural Affairs Appeal Tribunal, communication and meetings with MTO (and its consultant) during the work on the Highway 400 Crossing Improvements in the summer of 2024 including a significant flood event in July 2024, as well as the additional years of construction inspection and monitoring required. The increase in Other Fees reflects legal costs before the Drainage Referee, Court of Revision and Tribunal, as well as costs for holding a Letter of Credit for *Fisheries Act* Authorization.

Now that the final costs have been tabulated, Staff will be applying to the Ministry of Agriculture, Food and Agribusiness (OMAFA) for the one-third agricultural grant on behalf of the eligible

assessed landowners in the amount of $928,938.22. By-law 076-26, is required to recover the balance of $5,279,887.64 ($6,208,825.86 less $928,932.22) for the South Innisfil Creek Drain Improvement.

Now that the final project cost is confirmed, a payment options letter will be issued to affected property owners. A sample letter has been provided in Appendix 2. Property owners will have the following payment options:

1. Pay the full assessment by November 30, 2026.
2. Make a partial payment by November 30, 2026, with the remaining balance financed and collected through the property tax account.
3. Finance the full assessment, with the full amount collected through the property tax account.

After November 30th, remaining balances will be added to the property tax account and collected over five to ten years depending on the outstanding balance, as follows:

Amount Owing	**Repayment term**
$0-$5,000	5 years
Over $5,000	10 years

Interest will be charged at the bank prime rate of 4.45% per annum. Property owners who choose to finance their assessment through the property tax account may pay the outstanding balance in full at any time, without premium or penalty. Interest will be calculated only to the date the payment is received.

The Town share of the final project costs, as assessed for both lands and roads in the Final Engineer's Report, is $2,003,317.55. The Town has also incurred approximately $15,000 in internal staff time and other miscellaneous administration costs that are not recoverable under the *Drainage Act*. Both the Town's assessed share and these non-recoverable administrative costs have been budgeted for under capital project RDS169 – South Innisfil Drain.

Local Impact:

The South Innisfil Creek Drain Improvement directly affected 54 properties and 10 roads, including Town, County, and Provincial roads, where improvement works were completed on or through an affected property. An additional 863 properties and 19 roads are located within the watershed, including lands and roads in the Town of Bradford West Gwillimbury.

With the improvement to the South Innisfil Creek Drain now complete, including the Highway 400 improvements, landowners upstream of Highway 400 should experience increased flow capacity during storm events. This added capacity will allow flows to pass under the highway more efficiently, reducing the potential for water levels in the drain to rise as they did before 2024. Landowners are expected to benefit from improved drainage and fewer flooding events.

Options/Alternatives:

There are no options or alternatives proposed in this report.

Conclusion:

The South Innisfil Creek Drain Improvement is now complete, including the deepening and widening of the main drain and related works. With the final project cost confirmed, the Town

may proceed with cost recovery in accordance with the *Drainage Act* through the proposed Levying By-law.

Staff recommend that Council adopt By-law 076-26 to recover the final cost of the South Innisfil Creek Drain Improvement and authorize Staff to proceed with the related grant application and billing process. The Town's share of the drain costs, including the special assessment allowance, is approximately $2,018,317.55.

Prepared By:
Jeremy Nyenhuis, Drainage Superintendent
Audrey Webb, Treasurer

Approved By:
Nicole Bowman, Director of Operations

Attachments:

Attachment 1 – By-law 076-26 – South Innisfil Creek Drain Improvement Levying By-law

Attachment 2 – Example Payment Option Letter

Reference Material:

List here. Links
Community Strategic Plan