

Report to/Rapport au :

**Agriculture and Rural Affairs Committee
Comité de l'agriculture et des affaires rurales**

and Council / et au Conseil

**June 25, 2012
Le 25 juin 2012**

**Submitted by/Soumis par :
Steve Kanellakos, Deputy City Manager / Directeur municipal adjoint
City Operations / Opérations municipales**

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ALTA VISTA (18)

Ref N°: ACS2012-COS-ESD-0015

SUBJECT: SOUTH CYRVILLE MUNICIPAL DRAIN COURT OF REVISION

**OBJET : COMMISSION DE RÉVISION DU DRAIN MUNICIPAL DU SOUTH
CYRVILLE**

REPORT RECOMMENDATIONS

That the members of the Agriculture and Rural Affairs Committee, in their role as members of the Court of Revision, convene for the first sitting of the Court of Revision under Subsection 46(3) of the *Drainage Act* immediately following the meeting of the City's Agriculture and Rural Affairs Committee on June 25, 2012 for the purpose of hearing appeals under Section 52 of the *Drainage Act* of landowners whose lands have been assessed in the Engineer's Report For The Improvement of the South Cyrville Municipal Drain dated February 2012.

RECOMMANDATIONS DU RAPPORT

Que les membres du Comité de l'agriculture et des affaires rurales, conformément à leur rôle en tant que membres de la Commission de révision, se réunissent pour la première séance de la Commission de révision en vertu du paragraphe 46(3) de la *Loi sur le drainage* immédiatement après la réunion du Comité de l'agriculture et des affaires rurales de la Ville le 25 juin 2012, en vue d'examiner les appels en vertu de l'article 52 de la *Loi sur le drainage* déposés

par les propriétaires dont les terrains ont fait l'objet d'une évaluation présentée dans le rapport Engineer's Report For The Improvement of the South Cyrville Municipal Drain (Rapport d'ingénierie sur l'amélioration des installations municipales de drainage de Cyrville-Sud) en date de février 2012.

BACKGROUND

The Engineer's Report dated February 2012 was tabled at ARAC on May 10, 2012 and adopted by Council on May 23, 2012 along with first and second reading of the South Cyrville Municipal Drain By-law, 2012" ("provisional by-law") on May 23, 2012.

The purpose of this report is to advise the Agriculture and Rural Affairs Committee that they must convene as a Court of Revision to hear appeals from assessed landowners, pursuant to Section 52(1) of the *Drainage Act*.

The South Cyrville Municipal Drain is located south of Hwy 417 and east of St. Laurent Blvd. in Alta Vista Ward as shown on the location plan contained in Document 1 and was first constructed in 1946 under By-law No. 22 in the former Township of Gloucester and improved in 1997 under By-law 158 in the City of Gloucester. Under Section 78 of the *Drainage Act*, R.S.O. 1990, a new engineer's report is required to address requested modifications within the subwatershed to accommodate commercial development on the properties at 1410 and 1438 Triole Street. Staff recommended and Council approved, in October 2011, the appointment of John van Gaal, P.Eng. of Stantec Consulting Ltd.

DISCUSSION

The provincial *Drainage Act* states that the City of Ottawa is responsible for municipal drains located within its geographic boundaries. Section 97 of the *Act* states that the Court of Revision shall consist of three or five members appointed by the council of the initiating municipality. According to its Terms of Reference, the Agriculture and Rural Affairs Committee is the Court of Revision for the Purposes of the *Act*. According to Section 52(1) of the *Drainage Act*:

Any owner of land assessed for the drainage works who complains that any land or road has been assessed too high or too low or that any land or road that should have been assessed has not been assessed, or that due consideration has not been given as to type of use of land, may personally, or by agent, appeal to the court of revision by giving notice in writing to the clerk of the initiating municipality setting out the grounds of the appeal, and the appeal shall be heard by the court of revision.

Therefore, the purpose of the Court of Revision for this sitting is to hear appeals from landowners affected by the proposed construction and future maintenance of the South Cyrville Municipal Drain. Those appeals, if any, concern the Engineer's Report, which

was prepared in accordance with the *Act* and which was adopted by Council on May 23, 2012 and after Council gave first and second reading to the “South Cyrville Municipal Drain By-law, 2012” (“provisional by-law”) on May 23, 2012.

The *Statutory Powers Procedure Act, R.S.O. 1990, c.S.22*, also applies to the Court of Revision.

Process and Timelines

The *Drainage Act* prescribes the process and timelines that must be followed for any modification or construction of a municipal drain.

Completed task to date for the South Cyrville Municipal Drain

- Council appointment of the Drainage Engineer (October 2011).
- Conduct an On-site Meeting with affected landowners to review the proposed modifications, (November 3, 2011).
- Submission of full Engineer’s Report (February 2012).
- Conduct a Meeting to Consider – (The meeting of the Agriculture and Rural Affairs Committee to consider the Engineer’s Report and the By-law (Document 2) presented in this report) (May 10, 2012).
- Council approval of the Committee recommendation, May 23, 2012, and first and second reading of the provisional By-law (subject to the outcome of the Meeting to Consider and associated appeals process) (May 23, 2012).

The current step in the process for the South Cyrville Municipal Drain

- Convene a Court of Revision
 - A meeting of the Agriculture and Rural Affairs Committee where landowners may appeal their assessment.
 - Notices to be sent out within 30 days of provisional adoption of the By-law and Court of Revision to be held between 20 and 30 days of notices being sent).
 - Committee may direct the Engineer to revise the assessment contained in the report.
 - All affected landowners must then be advised of any revisions and the *Drainage Act* contains provisions for further appeal by landowners of their assessment within prescribed timeframes;

Next steps for the South Cyrville Municipal Drain

- Third reading of the By-law at Council;
- Construction of the drainage works; and,
- Assessment of the costs to benefiting landowners (2013).

The *Drainage Act* provides some guidance as to how the Court of Revision is to proceed:

- Section 55 states that in any appeal to the Court of Revision, if the engineer is called upon to give evidence as to how an assessment was determined, the engineer must give evidence before the appellant's case is presented.
- Section 53 addresses those cases where the ground of appeal is that lands or roads are assessed too high and the Court of Revision is satisfied that those assessments should be reduced. In such cases, where there is no evidence to indicate that the amount of the reduction should be levied against lands or roads whose owners are parties to the appeal, the court shall adjourn. The clerk must then notify such persons as the appellant may specify, who are shown by the last revised assessment roll to be owners of land affected. The notification must state the date to which the hearing is adjourned. At the renewed date, the Court must dispose of the matter and, where appropriate, redistribute the assessments in such manner as appears just.
- Section 56 states that if the Court of Revision decides to change an assessment, notice of the change must be sent to affected owners and the provisional by-law must be amended accordingly.
- A party to an appeal to the Court of Revision may appeal from the Court to the Ontario Drainage Tribunal (Section 54).
- After the time for appeals to the Court of Revision has expired and there are no appeals, or after the appeals have been decided, Council may give third reading to the provisional by-law, thus authorizing construction of the drainage works. If no notice of intention to bring an application to quash it has been filed with the clerk (Section 58(1)) the work may be commenced ten days after the by-law is passed.

RURAL IMPLICATIONS

There are no rural implications related to this report.

CONSULTATION

The On-site meeting, as required under the *Drainage Act*, was held on November 3, 2011. Affected landowners, agencies and utilities in the watershed were notified in advance of the meeting. As part of the development planning process consultation between the developer, their representatives, City staff and regulatory agencies is ongoing.

COMMENTS BY THE WARD COUNCILLOR(S)

The Councillor for Ward 18 is aware of this report and the proposed drainage works.

LEGAL IMPLICATIONS

There are no legal impediments to the implementation of the recommendation in this report.

RISK MANAGEMENT IMPLICATIONS

There is no risk implication associated with this report.

FINANCIAL IMPLICATIONS

This report has no budget or tax implications. All costs associated with the preparation of the Engineer's Report have been paid for from Internal Order 906194 Municipal Drain Improvements and will be recovered, in its entirety, from the benefiting landowners according to the Report of the Engineer and associated By-law. All costs associated with the construction of the drainage works are to be paid directly by the proponent.

ACCESSIBILITY IMPACTS

There is no accessibility impact associated with this report.

ENVIRONMENTAL IMPLICATIONS

The modifications to the South Cyrville Municipal Drain are associated with a site plan application. There are no provincially significant wetlands affected by this undertaking. Any proposed works will require compliance with City, Provincial and Federal policies, standards, regulations and legislation.

TECHNOLOGY IMPLICATIONS

There are no direct technical implications associated with this report.

TERM OF COUNCIL PRIORITIES

The proposed works to the South Cyrville Municipal Drain will fulfill the Environmental Stewardship Priority ES1 - Improve stormwater management.

SUPPORTING DOCUMENTATION

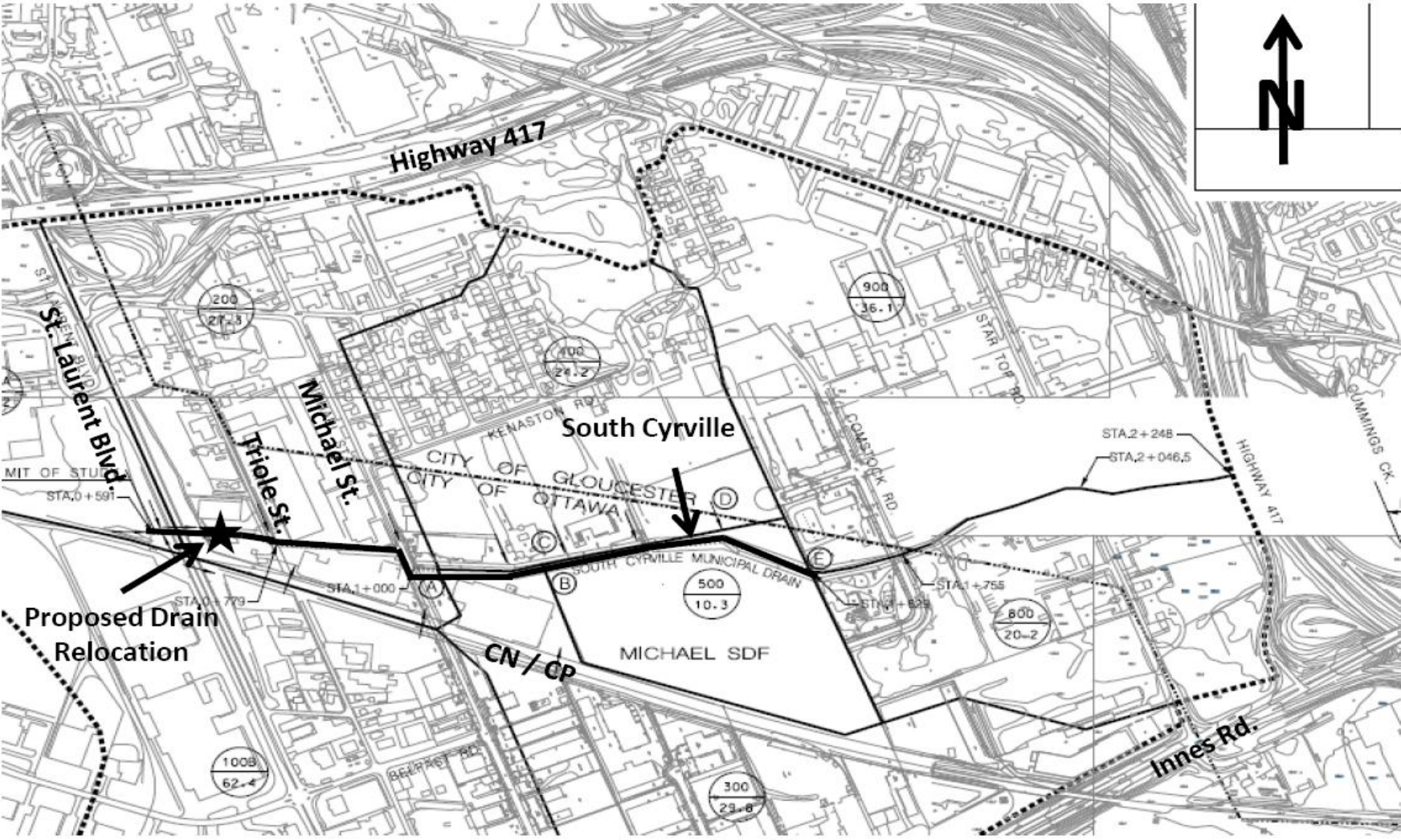
Document 1 – South Cyrville Municipal Drain Location Plan

Document 2 – South Cyrville Municipal Drain Relocation Project By-law

A copy of the Engineer's Report was provided to all Agriculture and Rural Affairs Committee Members prior to the Meeting to Consider on May 10, 2012.

DISPOSITION

Upon approval by Council, the City Drainage Superintendent, Environmental Services Department, will notify all assessed landowners of the decision of the Court of Revision.



Location Plan
South Cyrville Municipal Drain

BY-LAW NO. 2012 -

A by-law of the City of Ottawa to provide for drainage works project changing the course of the existing drainage works known as the South Cyrville Municipal Drain.

WHEREAS the drainage works known as the South Cyrville Municipal Drain were originally constructed under Corporation of the Township of Gloucester By-law no. 22 of 1946;

AND WHEREAS the drainage works were reconstructed under Corporation of the Township of Gloucester By-law no. 158 in accordance with the engineer's report prepared by Robinson Consultants Inc., Consulting Engineers, dated September 1997;

AND WHEREAS a Drainage Engineer, Stantec Consulting Ltd., was appointed on October 28, 2011 by the Council of the City of Ottawa in accordance with the provisions of Section 78 of the *Drainage Act*, R.S.O. 1990, c. D.17 (the "*Drainage Act*") to prepare an engineer's report for a project to change the course of the drainage works in accordance with Subsection 78 (1.1) of the *Drainage Act* with respect to the area requiring drainage, being (i) Part of lots 31, 32 and 47, Plan 63, as in N471655, Ottawa/Gloucester, Property Identifier Number 04263-0037 (LT), municipally known as 1410 Triole Street in the City of Ottawa, and (ii) Part of lots 33 and 48, Plan 63, being Part 1 on Plan 5R10446, Ottawa/Gloucester, Property Identifier Number 04263-0036 (LT), municipally known as 1438 Triole Street in the City of Ottawa;

AND WHEREAS the South Cyrville Municipal Drain upon enactment and passage of this by-law and shall be maintained in accordance with the provisions of the *Drainage Act*;

AND WHEREAS the Council of the City of Ottawa has procured an Engineer's Report pursuant to Section 78 of the *Drainage Act*, R.S.O. 1990, c. D.17 and the report dated February 2012 prepared by Stantec Consulting Ltd., Consulting Engineers is on file with the City Clerk and Solicitor and is attached to this by-law and marked as Schedule "B";

AND WHEREAS the estimated total cost associated with the construction, engineering, contract administration, allowances, report and contingencies of the drainage works is \$397,000.00 as per the Stantec Consulting Ltd., Consulting Engineer's Report dated February 2012;

AND WHEREAS all of the costs associated with the construction of the drainage works that are described the Stantec Consulting Ltd., Consulting Engineer's Report dated February 2012 shall be paid jointly and severally by (i) the owner of Part of

lots 31, 32 and 47, Plan 63, as in N471655, Ottawa/Gloucester, Property Identifier Number 04263-0037 (LT), municipally known as 1410 Triole Street in the City of Ottawa, and (ii) the owner of Part of lots 33 and 48, Plan 63, being Part 1 on Plan 5R10446, Ottawa/Gloucester, Property Identifier Number 04263-0036 (LT), municipally known as 1438 Triole Street in the City of Ottawa;

AND WHEREAS Council of the City of Ottawa gave this by-law 1st and 2nd reading on May 23, 2012 so that it is provisionally adopted pursuant to Section 45 of the *Drainage Act*;

THEREFORE the Council of the City of Ottawa enacts as follows:

1. The report entitled *Engineer's Report for the Improvement of the South Cyrville Municipal Drain*, dated February 2012, filed with the City Clerk and Solicitor, and attached to this by-law as Schedule "B", is hereby adopted and the drainage works as therein indicated and set forth is hereby authorized and shall be completed in accordance therewith.
2. All costs associated with the construction of the drainage works that are described in the Stantec Consulting Ltd., Consulting Engineer's Report dated February 2012 shall be paid jointly and severally by (i) the owner of Part of lots 31, 32 and 47, Plan 63, as in N471655, Ottawa/Gloucester, Property Identifier Number 04263-0037 (LT), municipally known as 1410 Triole Street in the City of Ottawa, and (ii) the owner of Part of lots 33 and 48, Plan 63, being Part 1 on Plan 5R10446, Ottawa/Gloucester, Property Identifier Number 04263-0036 (LT), municipally known as 1438 Triole Street in the City of Ottawa.
3. All costs associated with the future maintenance of the drainage works shall be charged to the landowners in accordance with Schedule B of the engineer's report prepared by Robinson Consultants Inc, September 1997;
4. All costs associated with the future maintenance of the culvert located on (i) Part of lots 31, 32 and 47, Plan 63, as in N471655, Ottawa/Gloucester, Property Identifier Number 04263-0037 (LT), municipally known as 1410 Triole Street in the City of Ottawa, and (ii) Part of lots 33 and 48, Plan 63, being Part 1 on Plan 5R10446, Ottawa/Gloucester, Property Identifier Number 04263-0036 (LT), municipally known as 1438 Triole Street in the City of Ottawa shall be assessed in the same proportion as set out in Schedule B of the engineer's report prepared by Robinson Consultants Inc. Consulting Engineers September 1997, a copy of which is attached to this by-law as Schedule "A".
5. This by-law comes into force on the passing thereof and may be cited as the "South Cyrville Municipal Drain Relocation Project By-law, 2012".

ENACTED AND PASSED this day of , 2012

CITY CLERK

MAYOR

BY-LAW NO. 2012 -

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A by-law of the City of Ottawa to provide for a drainage works project changing the course of the existing drainage works that are known as the South Cyrville Municipal Drain.

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1st Reading.....May 23, 2012
2nd Reading.....May 23, 2012
3rd Reading.....

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Enacted by City Council at its meeting of , 2012.

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LEGAL SERVICES
CLC/ File G04-01 SCYR

COUNCIL AUTHORITY:
The *Drainage Act*, Sections 42, 45, 63, 74, 78 and 84