

**RURAL MUNICIPALITY OF HEADINGLEY**

**BY-LAW NO. 37/95**

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF  
HEADINGLEY to authorize a DRAINAGE BY-LAW

WHEREAS The Municipal Act, being R.S.M. 1988, c. M225 provides in part as follows:

**Powers of municipalities generally**

**4(3)** Every municipality, including The City of Winnipeg, created or continued as mentioned in subsection (1) has, subject to subsection (8), all the rights, and is subject to all the liabilities, of a corporation and, without restricting the generality of the foregoing,

(a) .....

(f) it may enter into any contract or agreement with any person for the purpose of the development of land and in the provision of municipal services;

(g) .....

**Power to pass drainage by-laws.**

**278(1)** Subject to section 282 and to the Water Rights Act, the council of any municipality may pass by-laws,

(a) for constructing, opening, making, improving, deepening, contracting, widening, altering, diverting, straightening, discontinuing, or stopping up any drain or natural watercourse or surface watercourse, or for providing outlets therefor or preventing surface water flooding into or within the municipality, and for acquiring by expropriation or otherwise, any land in or adjacent to the municipality in any way necessary or desirable, in the opinion of the council, for any such purpose;

(b) for maintaining, cleaning, repairing, or flushing, any drain or natural watercourse or surface watercourse, and for entering upon, acquiring, taking or using any land in or adjacent to the municipality for carrying out thereon any such purpose;

(c) for compelling the owners of lands through which any open drain or natural watercourse or surface watercourse passes to erect and keep up water gates where fences cross the drain or watercourse;

(d) for determining the course of, and regulating, drainage or natural watercourses or surface watercourses in the municipality, for preventing the obstruction thereof in any manner, and for protecting them from encroachment and injury;

(e) for damming drains or natural watercourses or surface watercourses in the municipality, and for requiring the erection of stop logs in any dam so erected and protecting them from molestation or injury;

but subject, in all cases to which clauses (a) to (e) apply, to liability for compensation as provided by this Act to persons who suffer injury therefrom.

**Interference with municipal drains.**

**278(2)** Every person who, without previously having written authority from the municipality to do so, deepens, widens, alters, diverts, or stops up, or in any way interferes with, any drain, culvert, natural watercourse, or surface watercourse constructed, opened, made, improved, deepened, or widened, wholly or partially by, or at the expense of, the municipality, is guilty of an offence and is liable to a fine not exceeding \$100 and in default of payment to imprisonment for a term not exceeding one month.

**Removal of refuse in drains.**

**278(3)** Where any person, without previously having written authority from the municipality so to do, deposits or puts into any drain, culvert, natural watercourse or surface watercourse any soil, stones, refuse, waste, brush, trees or other matter, the municipality may, in writing, require that person to remove the soil, stones, refuse, waste, brush, trees or other matter; and, in default of it being so done, the municipality, at the expense of the

person in default, may remove the soil, stones, refuse, waste, brush, trees or other matter and recover the expense thereof by levying the amount against the property of the person who is in default, and may recover the amount in like manner as taxes in arrear.

**Filing by-laws in L.T.O.**

**278(4)** Every by-law passed by a municipality under subsection (1) for constructing, opening or making a new drain or for widening, altering, diverting or straightening an existing drain in such a way that additional land is required therefore, shall approve a plan certified by a Manitoba land surveyor showing the location and site of the land affected by the by-law, and shall be registered in the land titles office of the land titles district in which the land affect is situated accompanied by or affixed to a certified copy of the plan.

**Where plan deemed approved.**

**278(5)** Where a by-law is passed by a municipality under subsection (1) for the purposes mentioned in subsection (4) or was at any time passed for similar purposes, any plan accompanying it or attached thereto shall be deemed to be approved by the by-law.

**Municipality to keep drains open**

**283(1)** Each municipality shall keep every drain within its boundaries properly cleaned out and in repair.

**Duty to maintain**

**283(2)** Where a municipality has constructed a drain under subsection 278(1), it shall at all times maintain it and keep it in good repairs; and it is liable for payment of damage caused by, or resulting from its failure to do so.

**Penalty**

**283(3)** Any person who fills up or partially fills up a drain is guilty of an offence and is liable to a fine of not more than \$100., and, in default of payment , to imprisonment for not more than one month.

**Continuing offence**

**283(4)** Where the contravention of subsection (3) continues for more than one day, the person contravening subsection (3) is guilty of a separate offence for each day that the offence continues.

**Municipality not liable for damage**

**284(1)** A municipality is not liable for damages caused to any person by any neglect or failure on its part to maintain or keep in repair any such drain or drainage work, or any part thereof, unless the person complaining of the damage alleged serves on the clerk of the municipality, by registered mail, a notice in writing setting forth details of, or a clear description of, the damaged alleged; and the municipality shall, within three months of the receipt of the notice, notify that person, by registered mail, whether or not it proposes to undertake the work or maintenance required to make good the alleged failure and, if so, the time when it will commence that work.

**Reasonable excuse for lack of notice**

**284(2)** A person who fails to serve notice on a clerk, as required under subsection (1), is not barred from taking court action if the court before which the action is taken determines that

- (a) there is a reasonable excuse for the person failing to serve notice; and
- (b) the municipality is not prejudiced in its defence by the land of notice.

**Conditions arising from natural causes**

**285** Conditions arising from snow or ice or from rainfall that, in the opinion of the court, is, on the evidence, excessive shall not be deemed to be caused by any lace of maintenance, protection, or repair of drains or drainage works.

WHEREAS the Council of the Rural Municipality of Headingley deems it expedient and in the public interest to pass a Drainage By-law to permit the Municipality to carry out certain drainage works within the limits of the Municipality and to ensure that drains within the limits of the Municipality are maintained in a reasonable condition;

NOW THEREFORE, the Council of the Rural Municipality of Headingley enacts as follows:

TITLE

1. This By-law shall be referred to as "The Drainage By-Law".

DEFINITIONS

2. "**Municipal Drain**" means any drain, drainage ditch, floodway, or dike either owned by the Municipality or for which the Municipality has obtained an Easement Agreement, notice of which has been registered by way of Caveat, and includes those Municipal Drains shown on the sketch attached hereto as Schedule "A" and described by "Drain Number" and "Location" on Schedule "B", which Schedules may be amended from time to time by Resolution of Council of the Municipality;

"**drain**" means any drain, drainage ditch, floodway, or dike, but does not include a provincial waterway;

"**drainage works**" includes:

- (a) constructing, opening, making, improving, deepening, contracting, widening, altering, diverting, straightening, discontinuing, or stopping up any drain or natural watercourse or surface watercourse, providing outlets therefor, preventing surface water flooding into or within the Municipality;
- (b) maintaining, cleaning, repairing, or flushing, any drain or natural watercourse or surface watercourse;
- (c) determining the course of, and regulating, drainage or natural water-courses or surface watercourses in the Municipality, preventing the obstruction thereof in any manner, and protecting them from encroachment and injury;
- (d) damming drains or natural watercourses or surface watercourses in the Municipality, and requiring the erection of stop logs in any dam so erected and protecting them from molestation or injury;

"**provincial waterway**" means a water control work, a natural water channel or lake that has been designated as a provincial waterway under The Water Resources Administration Act.

RESPONSIBILITY

3. Subject to Section 284 and 285 of The Municipal Act:
  - (a) the Municipality shall be responsible for keeping every Municipal Drain within its boundaries properly cleaned out and in repair;
  - (b) where the Municipality has constructed a Municipal Drain, it shall maintain that drain and keep it in good repair.

AUTHORITY TO ESTABLISH MUNICIPAL DRAINS

4. Where, in the opinion of the Council of the Municipality, it is necessary or desirable, the Municipality shall construct, open, make, improve, deepen, contract, widen, alter, divert, straighten, discontinue, or stop up any drain or natural watercourse or surface watercourse, or shall provide outlets therefor or prevent surface water flooding into or within the Municipality, and shall acquire by expropriation or otherwise, any land in or adjacent to the Municipality.

MAINTENANCE OF MUNICIPAL DRAINS

5. The Municipality may maintain, clean, repair, or flush, any drain or natural watercourse or surface watercourse, and shall enter upon, acquire, take or use any land in or adjacent to the Municipality for carrying out thereon any such purpose.

OWNERS ERECT AND MAINTAIN WATER GATES

6. The Municipality may compel the owners of lands through which any open drain or natural watercourse or surface watercourse passes to erect and keep up water gates where fences cross the drain or watercourse.

MUNICIPAL TO DETERMINE WATER COURSE, DAM DRAINS

7. The Municipality may determine the course of, and regulate, drainage or natural watercourses or surface watercourses in the municipality, prevent the obstruction thereof in any manner, and protect them from encroachment and injury;
8. The Municipality may dam drains or natural watercourses or surface watercourses in the municipality, and require the erection of stop logs in any dam so erected and protect them from molestation or injury;

AGREEMENTS WITH LANDOWNERS

9. Where, in the opinion of the Council of the Municipality, it is necessary or desirable, the Municipality may enter into agreements with landowners to permit the Municipality to carry out any Drainage Works and in that respect to obtain an easement over the landowner's lands in favour of the Municipality.

REGISTER BY-LAW WITH WINNIPEG LAND TITLES OFFICE

10. Where additional land is required for constructing, opening or making a new drain or for widening, altering, diverting or straightening an existing drain and a by-law is passed by the Council of the Municipality therefor, the Council shall approve a plan certified by a Manitoba land surveyor showing the location and site of the land affected by the by-law, and such by-law shall be registered in the Winnipeg Land Titles Office accompanied by or affixed to a certified copy of the plan.

REMOVAL OF OBSTRUCTION

11. Where any person, without previously having written authority from the Municipality so to do, deposits or puts into any drain, culvert, natural watercourse or surface watercourse any soil, stones, refuse, waste, brush, trees or other matter, the Municipality may, in writing, require that person to remove the soil, stones, refuse, waste, brush, trees or other matter; and, in default of it being so done, the Municipality, at the expense of the person in default, may remove the soil, stones, refuse, waste, brush, trees or other matter and recover the expense thereof by levying the amount against the property of the person who is in default, and may recover the amount in like manner as taxes in arrear.

OFFENSES

- 12. Every person who, without previously having written authority from the Municipality to do so, deepens, widens, alters, diverts, or stops up, or in any way interferes with, any drain, culvert, natural watercourse, or surface watercourse constructed, opened, made, improved, deepened, or widened, wholly or partially by, or at the expense of, the Municipality, is guilty of an offence and is liable to a fine not exceeding \$100 and in default of payment to imprisonment for a term not exceeding one month.
- 13. Any person who fills up or partially fills up a drain is guilty of an offence and is liable to a fine of not more than \$100., and, in default of payment, to imprisonment for not more than one month.
- 14. Where the contravention of section 13 continues for more than one day, the person contravening section 13 is guilty of a separate offence for each day that the offence continues.

DONE AND PASSED by the Council of the Rural Municipality of Headingley, assembled at Headingley, in the Province of Manitoba this            day of            , 1996.

RURAL MUNICIPALITY OF HEADINGLEY

\_\_\_\_\_  
Reeve

\_\_\_\_\_  
Municipal Administrator

Read the First time this            day of            , 1995

Read the Second time this            day of            , 1996

Read the Third time this            day of            , 1996

**Drainage Description of Existing Waterways  
Rural Municipality of Headingley**

**Drain 2A:** starts at the south west corner of the municipality and north of Four Mile Road. The drain is located within river lot 27 and lies on the west limits of the Manitoba Hydro Transmission lines right-of-way (Plan 9214). Drain 2A (Plan 3366) flows north under Wilkes Ave. and also under C.N.R. (Main Lines). The drain continues to head north to the abandon railway line; this section of the drain is registered as Plan 24,010. Drain 2A continues north of the abandon railway line to a distance of approximately 2770 feet under Plan 3366, then runs north west for an approximate distance of 575 feet until it reaches the existing natural waterway that flows north west towards the Assiniboine River.

**Drain 2B:** starts approximately 1600 feet south of the abandon railway line, on the west limits of Wescana Street. The drain flows north west through river lots 23/24/25/26 towards the south limit of the abandon railway line, then west through the Manitoba Hydro Transmission lines and into drain 2A.

**Drain 2D:** starts approximately 2300 feet west of Drain 2A which lies on the north limit of the abandon railway line right-of-way and flows east into Drain 2A.

**Drain 3A:** starts north of Wilkes Ave. (P.R. 427) which run north along the east limits of Hall Road: under Roblin Blvd. (P.R. 241), and into the Assiniboine River.

**Drain 3B:** starts north of Wilkes Ave. (P.R. 427) which travels north between river lots 7/8 for approximately 600 feet; angles 45 degrees north west to the west limit of river lot 9 then continues north for approximately 1300 feet where the drainage flows north east through river lots 1/2/3/4/5/6/7/8/9 and finally into drain 3A.

**Drain 3C:** starts south of Wilkes Ave (P.R. 427) approximately 200 feet along the east limits of Hogue Road. The drain flows south east through river lots 10/11/12/13/14, then angles north east through river lots 7/8/9 to the west limit of river lot 6 and straight north towards Wilkes Ave. (P.R. 427).

**Drain 3D:** starts north of Four Miles Road approximately 1600 feet within river lot 13 travels east to the west limit of river lot 12, the straight north until it intersects drain 3C.

**Drain 3E:** starts in lot C-14,689 approximately 300 feet north of the abandon railway line and flows south west towards the abandon railway line crossing through the Manitoba Hydro Transmission lines right-of-ways and into drain 3A.

**Drain 3F:** starts north of Wilkes Ave. approximately 3000 feet within river lot 13; the drain flows east through river lots 10/11/12/13 and into drain 3B.

**Drain 3G:** starts south of Roblin Ave. (P.R. 241) within Breezy Bend Golf Course along the west limit of river lot 7. The drain flows south/east east through river lots 1/2/3/4/5/6 under Hall Road then into drain 3A.

**Drain 4A:** starts south of Roblin Blvd. (P.R. 241) along the east limit of the Canadian Pacific Railway line (Glenboro). The drain travels east south/east towards Hogue Road (P.R. 334), then under Hogue Road north east towards Roblin Blvd. to the Assiniboine River.

**Drain 4B:** starts at the south east corner of Rodney Street, within the north limit of the abandon railway line which travels east until it intersects at the Canadian Pacific Railway line (Glenboro). The drain then runs north into drain 4A.

**Drain 4C:** starts along the east limit of the Canadian Pacific Railway line travels south to the south limit of the abandon railway line then east towards Hogue Road (P.R. 334).

**Drain 7A:** starts north of the abandon railway line within river lot 79 and travels north east through river lots 71/72/73/74/75/76/77/78, then towards the Perimeter Hwy.

**Drain 8A:** starts north of Saskatchewan Ave. (P.R. 425) at the north west boundary limit (R.M. of St. Francois-Xavier) travels east within river lot 32 then south east through river lots 33/34/35/36; at river lot 37 the drain heads straight south past Saskatchewan Ave. (P.R. 425) continues to travel south/south east towards Portage Ave. The drain passes under Portage Ave. and heads south east through the Manitoba Hydro Transmission line right-of-way and also through River lots 39/40/41/42/43/44 and drains into the Assiniboine River.

**Drain 8B:** starts north of Portage Ave. at the west boundary limit of (R.M. of St. Francois-Xavier) forms a half moon and re-enters the R.M. of St. Francois-Xavier within river lot 32. The drain then travels south/south east in front of the Headingley Correctional Institution through parcels 8-12,359 and parcels 1-12,359 into Drain 8A.

**Drain 9A:** starts north of Portage Ave. and east of the Manitoba Hydro Transmission lines right-of-way, the drain travels south east through river lots 39/40/41/42/43/45, parcel 10-1414 continues south east through river lots 47/48/49/50/51 then travels along Portage Ave. north ditch, crosses Portage Ave. and heads south towards the Assiniboine River following the new Bridge Road (P.R. 334) drainage ditches.

**Drain 10A:** starts south of Portage Ave. and on the east side of Bresaylor Road within our 50 foot right-of-way. The first part of drain 10A heads straight south past the Holy Trinity Anglican Cemetery then angles at approximately 135 degrees towards the Assiniboine River. The second branch of drain 10A is a natural waterway which starts at the north east corner of the cemetery and travels south east through river lots 55/56/57/58/59 and drains into the Assiniboine River.

**Drain 10B:** (Plan 4359) starts south of Portage Ave. between river lots 56/57 and travels south into drain 10A "natural waterway". Drain 10B (Plan 4359) is approximately 53 feet in width.

**Drain 10C:** (Plan 4360) starts south of Portage Ave. between river lots 60/61 and travels south into the Assiniboine River. Drain 10C (Plan 4360) is approximately 45 feet in width.

**Drain 11A:** starts south of Saskatchewan Ave. (P.R. 425) within river lot 57 and travels south/south east through river lots 58/59/60 (Plan 7840) towards the Canadian Pacific Railways (Glenboro Line). The drain travels under the C.P.R line and heads south/south east through river lots 60/61/62/63/64. The drain is diverted around the east limits of the Fedoruk's Used Car Sales property south towards Portage Ave. Drain 11A passes under Portage Ave. through the John Blumberg Golf Course and into the Assiniboine River.

**Drain 11B:** starts in the north west corner of the municipality along the east limits of the Manitoba Hydro Transmission lines right-of-way within river lot 39. The drain travels south south/east through river lots 39/40/41/42/43/44/45 and lots 12/13-1415 then passes underneath Bobiche Street (P.R. 334), then south along the west ditch of Bobiche Street. The drain travels south south/east through river lots 47/48/49/50/51/52/53/: under Lyons Street also cuts through lot 1 block 4 plan 1786. The drain continues to travel under Saskatchewan Ave. then feeds into Drain 11A.

**Drain 12A:** (Plan 4361) starts south of Portage Ave. which runs south along the east limits of the Manitoba Hydro Transmission lines right-of-way into the Assiniboine River. The mouth of this drain is cone shaped at the Assiniboine River. The width of this drain is approximately 49 feet until it reaches the cone shaped area.

**Drain 13A:** starts north of Saskatchewan Ave. (P.R. 425) in river lot 66 which travels north north/east toward a road allowance along the west limit of the St. Charles Rifle Range. The drain enters the south west corner of the St. Charles Rifle Range and angles 45 degrees north east for an approximate distance of 800 meters. The drain then turns east north/east through the St. Charles Rifle Range.

Drain 13A passes north east through the Manitoba Hydro Transmission lines right-of-way, river lots 90/91/92/93/94, then under Paddock Road, under the Perimeter Highway and drains into Sturgeon Creek.

**Drain 13B:** starts in river lot 63 approximately 200 meters north of Saskatchewan Ave. which runs south east through river lots 64/65/66/67 and into drain 13A.