

Staff Report

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Report To:	General Government Committee		
Date of Meeting:	April 8, 2024	Report Number:	LGS-016-24
Submitted By:	Rob Maciver, Deputy CAO/Solicitor		
Reviewed By:	Mary-Anne Dempster, CAO	Resolution#:	GG-185-23
Authored by:	Rob Maciver, Deputy CAO/Solicitor		
File Number:	L1000-11	By-law Number:	2008-114
Report Subject:	Site Alteration By-law Update		

Recommendations:

1. That Report LGS-016-24, and any related delegations or communication items, be received;
2. That the Site Alteration By-law included as Attachment 2 to Report LGS-016-24, be enacted; and
3. That all interested parties listed in Report LGS-016-24, and any delegations, be advised of Council's decision.

Report Overview

Following a period of public consultation, and in response to a variety of factors, including changes to provincial regulation, enforcement challenges, and administrative obsolescence, this report recommends the enactment of a new Site Alteration By-law.

1. Background

Council Direction

1.1 Report LGS-031-23 explained that, due to a variety of factors, including changes to Provincial regulation, enforcement challenges, and administrative obsolescence, the [Clarington Site Alteration By-law 2008-114](#) requires updating.

1.2 Accordingly, at the November 6, 2023 General Government Committee meeting, Resolution #GG-185-23 was passed:

That [Report LGS-031-23](#), and any related delegations or communication items, be received;

That Staff in the Legislative Services and Planning and Infrastructure Services Departments conduct a public consultation on proposed changes to the Clarington Site Alteration By-law, and report back to Council with a new draft by-law to replace the existing by-law; and

That all interested parties listed in Report LGS-031-23, and any delegations be advised of Council's decision.

Legislative Authority and Changes

- 1.3 The legislative authority for the Municipality to regulate site alteration is found in section 142 of the Municipal Act, 2001, which provides that a municipality may:
- (a) prohibit or regulate the placing or dumping of fill;
 - (b) prohibit or regulate the removal of topsoil;
 - (c) prohibit or regulate the alteration of the grade of the land;
 - (d) require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land; and
 - (e) impose conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site.
- 1.4 On January 1, 2023, the On-Site and Excess Soil Management regulation came into effect. The regulation establishes standards for soil quality imported or exported from a site, and also enables municipalities to incorporate these standards into their regulatory by-laws.

Existing By-law

- 1.5 By-law 2008-114 was approved arising out of [Report EGD-022-08](#) and [Report EGD-030-08](#). At the time, there was concerns for materials being placed on properties, concentrated heavy traffic, volume of fill, environmentally protected areas, and agricultural areas.
- 1.6 The intent of the original by-law was to “to control significant excavation and/or filling of property by requiring that a Permit be applied for which outlines and identifies information which, in turn, will allow the Director to “assess the impact of the fill or alteration on the area affected.” The by-law provides for a comprehensive list of exceptions to the by-law provisions.
- 1.7 The 2008 by-law has been amended once, through [By-law 2012-022](#), arising out of [Report EGD-010-12](#), in order to add sections related to public meetings, permit fees, permit time limits, restrictions on source sites, new definitions, and a reduction in hours of operation.

2. Consultation Process

2.1 In December 2023, Clarington initiated a public consultation process regarding proposed changes to the Site Alteration By-law. This process entailed the following activities:

- notice published on the Clarington website on both a [dedicated page](#) and on the [site alteration information page](#);
- Public Information Centre on January 25, 2024;
- a social media campaign;
- notice in the [Orono Weekly Times](#); and
- inclusion on online [Durham Region News](#).

2.2 The input received from the consultation process has been summarised in the Public Consultation Comment Matrix included as Attachment 1 to this Report.

2.3 Some of the recurrent themes of the input received are also summarized in the section below.

3. Public Input

Public Input

- 3.1 Concerns were expressed that tracking and monitoring of site alteration across the Municipality must be closely followed and that material outside of Clarington should not be permitted.
- 3.2 Input was provided to request that tipping fees associated with site alteration in Clarington should be consistent with adjacent municipalities.
- 3.3 Oral and written comments were submitted on the theme of appropriate monetary fine amounts, and that these fine amounts should be clearly identified in the By-law.
- 3.4 Some commentators emphasized the importance of the role of the Qualified Person and the need for this person to provide unbiased advice that includes a thorough analysis of concerns as well as detailed instructions and records about soil testing.
- 3.5 Fears were expressed that applicants would not abide by approved haul routes and schedules. There is a need for diligence in the approval and monitoring of these details,

and consequences for any infractions. Also, that limits should be imposed on the number of trucks per day, as well as start and end times.

- 3.6 Comments were received that applicants should be required to use mitigation measures to reduce unwanted noise, dust, and other negative impacts.

Local Landscaping and Excavation Business Input

- 3.7 Requests were submitted that the By-law should be carefully tailored to eliminate the potential for unforeseen and unintended application of exemptions.
- 3.8 Additional comments were provided to suggest that at the completion of the site alteration work, the source site should receive a final inspection to confirm compliance with the approved Grading Plan provided with the permit.

Other Input

- 3.9 Regulation of site alteration commonly involves cooperation with the conservation authority, especially when the area affected is also regulated under the Conservation Authorities Act. Staff have therefore consulted with and received input from CLOCA to ensure that their specific concerns are addressed.

4. Proposed By-law Changes

- 4.1 The objectives of the proposed By-law are:

- to protect the environment;
- to recognize the Municipality's responsibility to support responsible development;
- to recognize a landowner's right to alter land to prepare it for development;
- to protect the natural environment and human health;
- to align Municipal requirements with the Provincial excess soil regulations and industry best practices;
- to limit adverse impacts to the local community and to Municipal infrastructure; and
- to effectively monitor and enforce its provisions and to achieved high levels of compliance.

- 4.2 Below is a summary of the key proposed changes to the By-law, based on the needs identified by Staff, together with the input received during the consultation process.
- 4.3 The Ontario government introduced Ontario Regulation 406/19 On-Site and Excess Soil Management to reduce the amount of soil going into landfills and to further regulate excess soil management. The regulation includes new requirements for documentation and soil tracking. Consistent with the regulation, the proposed By-law requires that a Qualified Professional certify the application to confirm that it meets all conditions set forth in the regulation for on-site and excess soil management.
- 4.4 Another key provision is the elimination of the blanket exemption from the permit requirement for site alteration in connection with the issuance of a building permit. The proposed By-law provides for a much more scoped opportunity for exemption at the discretion of the Deputy CAO/Planning and Infrastructure Services, which will curtail any opportunity for abuse.
- 4.5 The blanket exemption for contractor's yards has also been eliminated in favour of a more tailored approach.
- 4.6 The proposed By-law introduces additional limits on temporary stockpiles of fill to ensure that they do not become excessive.
- 4.7 Much more detail has been included in the proposed By-law to enhance and clarify the permit application requirements and owners' responsibilities. This will provide for much greater control and certainty about permitted site alteration activities, including more fulsome background information, and avoidance of disturbances to the surrounding community.
- 4.8 The proposed By-law would introduce a limited ability to permit the importation of topsoil or fill from source sites outside of Clarington in circumstances where a local source is not available. All imported material would be subject to stringent screening requirements.
- 4.9 The proposed By-law provides for increased permit fees and tipping fees to provide a measure of cost recovery for Staff time involved in the permitting and enforcement aspects of the regulation.

5. Enhancements to Enforcement

- 5.1 An important component of the effectiveness of regulation is an appropriate financial deterrent in the form of fines.

- 5.2 Important concerns were expressed by members of the public that the fine amounts in the current by-law may not adequately reflect the severity of some of the more serious offences.
- 5.3 To reassure Council and residents that the fine amounts will be proportionate, Staff can indicate that the new by-law has been updated to include the maximum permissible fine amounts under the Provincial Offences Act. While every offence will warrant the maximum penalty, it is important that the Municipality have this option available for the worst offenders.
- 5.4 Issuance of fines can be a cumbersome task, which in some cases requires Court approval. As a result, enforcement can sometimes be delayed due to these requirements. To curb the effect of delays, Staff have also included a provision for set fines in the new by-law. Set fines are pre-determined fine amounts that are authorized in advance by the Ministry of the Attorney General. The introduction of set fines will simplify the process for Municipal Law Enforcement Officers to issue notices of offence, and Staff are optimistic that this will create a greater deterrence against illegal activity.

6. Public Awareness

- 6.1 During the public consultation process, the Municipality received valuable input on the need for publicity surrounding the new by-law.
- 6.2 Staff routinely discuss site alteration regulations with the Agricultural Advisory Committee, but further efforts may be needed to raise awareness outside of the agricultural community.
- 6.3 To enhance this awareness, Staff are proposing to include messages about site alteration in the Municipal Law Enforcement communications plan that is currently under development.
- 6.4 It is further proposed that as part of our communications, Staff would advertise a “tip line” that residents can call to report suspicious activity related to the importation or removal of fill material. In this way we would hope to encourage residents to contact the Municipality when they witness unusual activity, and to simplify the process for doing so.

7. Financial Considerations

The revenue implications of the proposed By-law have been discussed with Financial Services Staff who are supportive of the changes. Additional accounting updates have been made to enhance reporting ability on site alteration activities in the Municipality.

8. Concurrence

This report has been reviewed by the Director of Planning and Infrastructure Services who concurs with the recommendations.

9. Conclusion

It is respectfully recommended that Council approve the proposed new Site Alteration By-law attached to this report, to better position the Municipality to effectively respond to the growing challenges associated with the regulation of site alteration.

Staff Contact: Rob Maciver, Deputy CAO/Solicitor, 905-623-3379 or rmaciver@clarington.net.

Attachments:

Attachment 1 – Public Consultation Comment Matrix

Attachment 2 – Draft Site Alteration By-law

Interested Parties:

The following interested parties will be notified of Council's decision:

List of Interested Parties available from Department.