



TO: Development and Infrastructure Committee
FROM: Capital Works Department
SUBJECT: Report recommending revisions to the Site Alteration By-law

Report Number: E-10-14

Wards Affected: All

File Numbers: 110-04-01, 815-01

Date to Committee: September 8, 2014

Date to Council: September 22, 2014

Recommendation:

Approve the proposed Site Alteration By-law, attached as Appendix B to capital works department report E-10-14, which is to replace current By-law 6-2003, which was established to protect and conserve topsoil and for prohibiting the alteration of property within the City of Burlington; and

Direct the Executive Director of Capital Works to reassess the by-law on an annual basis, for the first 3 years, and report back to the development and infrastructure committee.

Purpose:

City Council issued the following direction to staff on June 10, 2013:

“Direct the Director of Engineering to review and update the City’s Site Alteration By-Law 6-2003 to reflect best practices by September.”

The complexity and sensitive nature of this issue required additional time to finalize the By-law for presentation to Development & Infrastructure Committee.

This proposed By-law is consistent with “Strategic Direction 3: Excellence in Government”, in the City’s Strategic Plan 2011-2014. It provides up-to-date environmental requirements and an improved governance process for site alteration operations.

With approval of this By-law, the City of Burlington will have a very comprehensive Site Alteration By-law, from the environmental and administrative perspectives.

Background:

The current Site Alteration By-Law 6-2003 was approved by Council on January 14, 2003, CDC Report E5/03.

Site Alteration By-law 6-2003 was enacted on March 3, 2003.

The Legal and Finance Departments have reviewed this proposed By-law.

Discussion:

Project Team

The Site Alteration By-law revision Project Team included staff from the Capital Works Department. Other departments consulted during the process included Planning & Building, Legal, Roads & Parks Maintenance and Communications.

Strategy/Process

The primary purpose was to update & improve:

- Environmental due diligence
- Administration of Site Alteration operations
- Control Plan requirements
- Fee structure
- Provisions for enforcement

The Project Team reviewed recently revised Site Alteration By-laws from other municipalities in Southern Ontario with the intent of using those documents as guidelines.

Recent industry documents were also reviewed and used as references:

- MOE: Management of Excess Soil – A Guide for Best Management Practices
- Hatch Mott MacDonald – Best Management Practices for Handling Excess Construction Soils in Ontario

The process included circulation, discussions, and feedback from:

- Town of Oakville, Town of Milton, Town of Halton Hills & Township of Scugog
- Halton Region
- Conservation Halton
- Niagara Escarpment Commission
- MOE
- Burlington Agriculture Committee
- Burlington Sustainable Development Committee

- Building Complete Communities Committee
- Halton Area Engineering Directors' Committee
- HADLAC – Housing and Development Liaison Advisory Committee
- Hand (Hamilton & District Heavy Construction) Association
- Hamilton Halton Home Builders Association
- Rural Burlington Greenbelt Coalition

Additional feedback was provided by various City of Burlington departments, outside legal counsel and an environmental consultant.

Options Considered

Several approaches were considered to deal with the differences between residential, agricultural, industrial, commercial and institutional land uses. The comments received from stakeholders assisted greatly in establishing the preferred approach to separate requirements for “residential”, “agricultural/rural” and “industrial/commercial/institutional” land uses as well as recognizing two different scales of site alteration operations.

The By-law, as presented, provides a practical approach to site alteration that takes into account the general needs and activities inherent in these different land uses. It proposes a format that includes exemptions for typical activities according to land use and recognition of two main categories of site alterations: “less than 5,000 m³” and “greater than 5,000 m³”.

Also recognized are sites with approval or pending approval of Draft Plan of Subdivision, Secondary Plan and Draft Site Plan. Under the proposed By-law, pre-grading can occur subject to a Site Alteration Permit with special conditions and fees. This provides a process which is environmentally responsible and not onerous from an economic perspective.

Highlights related to the Size of Operations

- Exemptions have been provided for typical small site alterations, depending on land use.
- The major changes in the permit requirements are related to the large scale “greater than 5,000 m³” site alterations:
 - a comprehensive Site Alteration Agreement is required and shall be registered “On Title” of the site alteration property.
 - recent environmental best practices added (see Environmental Matters section).
 - additional securities include rehabilitation of site, road clean-up from mud tracking and haul route pavement condition.
- Berms have been limited in height and location.
- “Stop Work Order” provision has been added.

Fee Revisions

The current fee structure recovers less than half of the actual staff time costs required to process and administer the permits. As such, it is recommended that the current fees be increased to provide a more appropriate level of cost recovery.

- Recommended changes to the current fee structure are as follows:
 - Fees for site alterations less than 5,000 m³:
 - § Current
 - Less than 0.2 ha = \$80
 - Greater than 0.2 ha = \$500 + \$25/ha
 - § Proposed
 - \$300 + \$200/ha for first 20 ha and + \$300/ha for over 20 ha
 - Fees for site alterations greater than 5,000 m³:
 - § Current
 - \$500 + \$25/ha
 - § Proposed
 - \$1,000 + \$1m³
 - Fees for sites with approved Draft Plan of Subdivision, Secondary Plan or Draft Site Plan, or pending approval of Draft Plan of Subdivision, Secondary Plan or Draft Site Plan:
 - § Current
 - \$500 + \$25/ha
 - § Proposed
 - \$300 + \$200/ha for first 20 ha and + \$300/ha for over 20 ha
 - Plus:
 - \$0.30/m³ (up to 25,000 m³)
 - \$0.20/m³ (25,000 – 50,000 m³)
 - \$0.10/m³ (over 50,000 m³)
 - It is recommended that the revised fees be effective on the date of approval of the proposed By-law by City Council.
 - These revised recoveries will be incorporated in the 2015 budget.
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Financial Matters:

Total Financial Impact

For the period of 2004-2013, the current permitting fee structure generated average annual revenues of \$5,200.

Based on the new fee structure, annual revenues are anticipated to increase by approximately \$5,000 per year.

Source of Funding

Not applicable

Other Resource Impacts

The additional regulatory requirements included this By-law may result in the need for additional staff resources. It is estimated that an additional 0.5 FTE could be required, depending on the number of large scale site alteration operations in progress.

This potential impact will be reviewed as part of the 2015 Budget process and/or the annual review process. Recommendations regarding staffing resources will be provided, if necessary.

Environmental Matters:

The environmental quality of the soil being transported from property to property is one of the primary concerns of site alteration operations. The proposed By-law follows the most up-to date recommendations of the MOE, in the document titled "Management of Excess Soil – A Guide for Best Management Practices", issued in January 2014.

The applicant is required to retain a "Qualified Person" to prepare and certify the following plans in accordance with the above MOE document:

1. Soil Management Plan for the source site
2. Fill Management Plan for the receiving site
3. Environmental Soil Testing program
4. Traffic and Transportation Plan for hauling of soil

If required by the Executive Director of Capital Works, the applicant shall retain a "Qualified Person" to prepare and certify the following programs:

1. Ground Water Monitoring Program
2. Soil Permeability Testing Program

New restrictions have been proposed stating that site alterations shall not be performed:

1. during a wind warning for the area, issued by Environment Canada.
2. during a smog advisory for the area, issued by the MOE.
3. during or within 24 hours of receiving 15 mm or more of precipitation within a 24 hour period..

New sections recognizing the following have also been added:

1. endangered species concerns
2. natural site lines
3. archaeological significance
4. Appeal process to Council

Public Engagement Matters:

The process to develop a new Site Alteration By-law involved significant consultation and public engagement.

Appendix "A" of capital works department report E-10-14 includes a schedule detailing the consultation process.

Conclusion:

The revision of the By-law has involved intensive research and an extensive consultation process.

The resulting By-law will provide the City with better regulatory abilities, particularly for large scale site alteration operations.

Also, the proposed fee structure will provide more appropriate cost recoveries for the administrative and inspection duties of staff.

Staff will reassess the By-law on an annual basis, for the first 3 years, and report back to committee.

Respectfully submitted,

Cary Clark, Manager of Development & Environmental Engineering

335-7600 ext. 7672

Appendices:

- a. Schedule of Consultation & Public Engagement
- b. Proposed Site Alteration By-law XX-2014

Notifications: (after Council decision)

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Approved by:

Scott Stewart, General Manager of Dev. and Infrastructure
Pat Moyle, Interim City Manager

Reviewed by:

Joan Ford, Director of Finance
Nancy Shea Nicol, City Solicitor and Director of Legal Services

APPENDIX A

Schedule of Consultation & Public Engagement

Tasks	Dates
Engineering Department identifies need to revise Site Alteration By-law	Mar
At the June 10, 2013 Council Meeting, Council passed a motion to: "Direct the Director of Engineering to review and update the City's Site Alteration By-law 6-2003 to reflect best practices by September."	June 10, 2013
Site Alteration By-law Update Project Team: Cary Clark, Arif Shahzad, Teresa Giangregorio, Angelo Capone, Helen Walihura and Karen Hayes. Advisor: Tom Eichenbaum.	Jun
Gather background information	Jun/Jul/Aug
Prepare outline of approach and schedule	Jul/Aug
Review reports from MOE, HMM, Kawartha Conservation	Aug/Sep
Prepare table comparing COB by-law with other municipalities.	Aug/Sep
Meet with Township of Scugog to discuss their By-law	Sep
Review comparison table with Project Team Set up a number of meetings to review.	Sep/Oct/Nov
Present Update report to Committee on September 30 th regarding process to revise the Site Alteration By-law.	Sep 30
First Draft prepared	Nov/Dec
Meet with MOE	Dec
Meet with other government, approval agencies & municipalities to review first draft	Dec/Jan
Consult with environmental consultant and outside legal counsel	Dec-June
MOE finalizes Management of Excess Soils – Guidelines for Best Management Practices	Jan
Additional discussions with Township of Scugog	Jan
First Draft presentation to BCC	Feb
Receive comments back from municipalities, agencies & committees	Feb/Mar
First Draft presentation to Sustainable Development Committee	Mar
First Draft presentation to Burlington Agriculture Committee	Mar
Presentation to Conservation Halton, Milton, Oakville, Halton Hills, NEC	Mar/Apr
Second Draft	Mar
Discuss communications plan for Site Alteration Update. Assistance in organizing Public Meeting.	Mar
Present to Area Engineering Directors Committee	Mar
Presentation from consultant on MOE Best Practices document	Mar
Meeting with Milton, Oakville & Halton Hills	Mar
MOE meeting to review draft	Apr
Presentation to HADLAC Committee	Apr

Finalize edits for second draft.	May
Circulate Site Alteration By-Law Update to Conservation Halton, NEC, MOE, Region of Halton, developers (HADLAC), builders (Hamilton Halton Home Builders Assoc.), contractors (Hand Association), Sustainable Development Committee and Burlington Agricultural Committee, Rural Burlington Greenbelt Coalition	May/June
Post draft on City website	June
Review comments received.	May/June
Discuss comments with CH, NEC, MOE, Region of Halton, developers, committees & residents	May/June
Additional discussions with Township of Scugog	June
Edits for final version	June
Public meeting June 19, 2014. Place ad in Burlington Post (City Update) for 2 consecutive weeks. Powerpoint presentation outlining the various sections and major key points.	June 19, 2014
Receive additional comments from interested parties after Public Meeting	June-July
Post revised final version on City website	Aug
By-law report to D&I Committee	Sep 8
By-law report to Council	Sep 22