

Committee of the Whole (Working Session) Report

DATE: Wednesday, May 31, 2023

WARD(S): ALL

TITLE: DRAFT SITE ALTERATION BY-LAW

FROM:

Vince Musacchio, Deputy City Manager, Infrastructure Development

ACTION: FOR INFORMATION

Purpose

This report provides details regarding the development of a draft Site Alteration By-law. The Site Alteration By-law will regulate the removal of topsoil, and the placement of fill that alters the grade of lands within the City of Vaughan. This By-law would repeal and replace By-law 189-96, as amended.

Report Highlights

- The draft Site Alteration By-law and accompanying Applicant Guide will provide a modern regulatory framework to address site alteration and excess soil management in accordance with industry best practices.
- The draft By-law includes enhanced monitoring, inspection, and enforcement authority to address non-compliance, including the creation of Administrative Monetary Penalties and special fines.
- The draft By-law includes new financial measures such as additional inspection fees and security deposit requirements for better cost recovery related to repeated and continued non-compliance.
- Staff will engage in stakeholder consultation to gather comments on the draft Site Alteration By-law and Applicant Guide and report back to Council in Q4 2023.

Recommendation

1. That this report be received for information.

Background

This report outlines the development of a modern regulatory framework to address site alteration and excess soil management across the City of Vaughan. This new framework includes a comprehensive draft Site Alteration By-law (Attachment No. 1) that introduces new permit features, requirements, and processes, as well as enhanced monitoring, inspection, and enforcement authority to address non-compliance.

Site alteration is the placement of fill on land, the removal of topsoil or the alteration of the grade of land. Site alteration is primarily undertaken to improve drainage, create noise berms, stabilize slopes, increase suitability of lands for development, as well as enhance natural features or improve the use of agricultural lands.

Excess soil is soil that is in excess to the requirements of a construction or development project, also known as the source site. The excess soil is not needed on the source site after excavation and must be moved to a new location known as the reuse or receiving site. There may be a need to temporarily store the excess soil at an interim location until final transport to the reuse site.

Excess soil is typically generated by land development including residential, industrial and government infrastructure projects. As cities and regions continue to grow across the province, proper management of excess soil is necessary to protect human health, city infrastructure and the natural environment. The responsible management of excess soil is key to building sustainable communities. Improper management can result in adverse impacts to water quality, natural areas, and agricultural lands, as well as create local nuisance issues including noise, dust, increased truck traffic, road damage, soil erosion, drainage and other social, health and environmental concerns.

With the projected population growth and recent implementation of provincial policies such as Bill 109 and Bill 23, there is an increased focus on urban intensification and brownfield redevelopment to provide housing, recreational amenities, and employment. This growing focus on development will result in an increased generation of excess soils and the related challenges and concerns for municipal governments, developers, and local residents. Municipal governments must support responsible development while addressing concerns over the source and quality of excess soil to protect agricultural land, water, and the natural environment. Municipalities must also contend with illegal dumping, commercial fill operations and illegal land use issues. With the increasing costs and environmental impacts of transporting excess soils, developers are challenged to find appropriate sites for the beneficial reuse of excess soils.

Finally, residents endure nuisances like noise, dust, and increased truck traffic during the site alteration activity.

The new municipal framework to address site alteration was developed for the following reasons:

1. To recognize a landowner's right to alter land to enhance use or prepare for development.
2. To protect the environment, human health, and limit potential adverse impacts to adjacent properties and municipal infrastructure such as local roads and stormwater systems.
3. To ensure that landowners are held responsible to monitor site alteration that includes the installation of erosion and sediment control measures and mitigation of adverse impacts and nuisances.
4. The need for effective monitoring and enforcement tools to address non-compliance and complaints.
5. The need for updated permit requirements and processes that align with new provincial excess soil regulations and industry best practices.
6. To address the growing concern regarding the source and quality of excess soil and potential impacts on the natural environment, human health, and local community.
7. To recognize when site alteration or placement of fill or excess soil on agricultural lands is not part of normal farming practices, and to ensure the municipality has tools to address same.

On-Site and Excess Soil Management Regulation 406/19

In December 2019, provincial government introduced *On-Site and Excess Soil Management Regulation 406/19* (O. Reg 406/19) under the *Environmental Protection Act*.

Key elements of the regulation include:

1. Rules on excess soil reuse and clarity on when excess soil is not considered as waste.
2. Clarity on reuse of excess soil and replacement of waste-related approvals with regulatory rules for low-risk soil management activities.
3. Enhanced reuse of excess soil through improved reuse planning for larger sites that generate more than 2,000 cubic metres. Recent amendments to the regulation would remove the excess soil reuse planning requirements for projects on low-risk sites and provide more flexibility when storing excess soil.

4. Requirements for larger reuse sites that receive over 10,000 cubic metres in excess soil to post on the Environmental Registry and develop procedures to track and inspect every truck load of excess soil received on-site.
5. Restrictions on landfilling clean soil that is suitable for reuse at sensitive sites such as schools and agricultural sites.

Where appropriate, O. Reg 406/19 has been incorporated into the proposed permit requirement and procedures. However, it is important to acknowledge that the site alteration project leader is responsible to ensure compliance with the provincial regulation, which has been recently amended to focus on higher-risk movements of soil.

Previous Reports/Authority.

N/A

Analysis and Options

The proposed draft Site Alteration By-law includes the following changes from the current Fill By-law 189-96, as amended.

Definitions

The current Fill By-law 189-96 list of terms and definitions are limited and do not adequately address current issues related to site alteration.

The new draft By-law includes a comprehensive and expanded list of terms and definitions that better align with provincial regulations, environmental features, and industry best practices.

Authority of the Director

The current Fill By-law 189-96 does not provide the Director of Development Engineering with the necessary authority to address site-specific conditions or community concerns. The new delegated authority included in the draft By-law would allow the Director to:

1. Impose additional requirements for a permit application if there are identified concerns with the proposed site alteration or potential risk of adverse impact to adjacent properties, natural environment, or the local community.
2. Streamline the permit application process for proposed site alteration that poses very low risk to adjacent properties, natural environment, or the local community. Please note that waiving a permit requirement does not exempt the permit holder from having to comply with all other requirements of the permit or By-law.

3. Impose site-specific permit conditions based on an identified or potential risk. These site-specific conditions would provide the City with a greater ability to appropriately respond to operations that pose a greater risk to the natural environment or human health. Site-specific conditions can also support enhanced monitoring of potential nuisances in response to local community concerns.

The new draft By-law would also grant delegated authority for permit administrative purposes. This administrative authority would allow the Director of Development Engineering to:

1. Create an **Applicant Guide to Site Alteration Permits** (Attachment No.2) as a supplementary document to assist applicants understand content and requirements of the By-law. The Applicant Guide will include all permit application requirements, technical review and issuance processes, details on permit fees and security deposits, inspection, enforcement, and complaint resolution procedures.
2. Update the Applicant Guide as required from time to time. By separating the permit technical and administrative details from the draft By-law this will allow for the timely processing of updates without the need to amend the By-law.

Exemptions

This section of the draft By-law includes all activities that are exempt from the authority of the Site Alteration By-law. Staff are recommending the following changes from the current Fill By-law 189-96:

1. Currently site alteration undertaken as part of a subdivision or site plan agreement is exempt from the Fill By-law 189-96. Staff recommend removing this exemption to ensure that the City has consistent authority to monitor, inspect and enforce site alteration whether the work is authorized by a permit or development agreement. Staff further recommend that standard clauses regarding compliance with the Site Alteration By-law and excess soil regulations be included in all development agreement templates.
2. The current Fill By-law is not applicable to areas that are regulated by conservation authorities such as the Toronto and Region Conservation Authority (TRCA). Due to this limitation, City enforcement officers are unable to enforce complaints within areas that fall under TRCA jurisdiction. This has become an issue considering that powers granted to the TRCA under the *Conservation Authorities Act* are not as robust as enforcement powers granted to

municipalities by the *Municipal Act*. Municipal enforcement officers have rights of entry authority along with remedial action powers to bring non-compliant properties into compliance and then adding costs directly to property owner's tax bill. Conservation authorities also have remedial action, however they do not have the ability to recover costs the same way, instead they would be required to recover the costs through court.

Excluding the conservation authority lands exemption from the draft Site Alteration By-law will improve the City's enforcement efforts to address illegal fill dumping and grade alteration on lands within TRCA regulated areas.

The TRCA is in full support of the City moving in this direction and enforcement staff will continue to coordinate with them when dealing with complaints on properties within protected areas.

Requirements for Issuance of a Site Alteration Permit

Current Fill By-law 189-96 includes limited information on permit requirements and application review process. The proposed draft By-law and Applicant Guide include the following changes:

1. The Project Leader must complete an acknowledgement to assume full responsibility to ensure compliance with all applicable legislation, guidelines and other government directives related to the excavation and management of excess soil, including O. Reg 406/19. The Project Leader must also acknowledge that the City will not be held responsible or liable for any loss or damage related to non-compliance of O. Reg 406/19. This new requirement will ensure that the generators of excess soil are held accountable for the management of the excess soil until it is received at the appropriate reuse site.
2. With the current permit review process, it is common for staff to follow up on incomplete or abandoned permit applications. Incomplete applications have missed requirements, unpaid fees or the related development application has not yet received Council approval. Abandoned applications are left pending with unresolved deficiencies. To encourage the timely review and processing of permit applications, staff are recommending that the Director be granted the authority to cancel incomplete or abandoned applications that are left pending for a period of 6 months. Upon cancellation, applicants may request a partial refund of permit fees. To ensure that the city recovers all permit administration costs up to the point of cancellation, the following is a list of proposed permit fee refund percentages:

- 80% if application is cancelled prior the start of technical review process.
 - 60% if application is cancelled after the start of technical review process.
3. Staff also recommend new permit requirements that align with O. Reg 406/19 and industry best practices, including:
- Confirmation of Environmental Registry posting, as required.
 - Advance planning and identification of reuse site, including landowner's authorization.
 - Submission of a Site Alteration Management Plan (SAMP).

Permit Processing and Administration

Staff recommend the implementation of the following new permit application processing and administration features:

1. The implementation of an AMANDA permit portal for the online submission and digital technical review of site alteration permit applications. AMANDA technology also facilitates the online collection permit fees, central repository for all documentation and allows for the creation of enforcement files to monitor matters of non-compliance.
2. Introduction of different permit status categories to address various scenarios, including:
 - **Incomplete or Abandoned Applications:** Authority to cancel permit applications left pending for 6 months.
 - **Expired Permits:** An issued permit is valid for a minimum period of 12 months, unless otherwise determined by the Director based on project scope.
 - **Permit Renewal:** An expired permit may be renewed for an additional 12-month term. Payment of permit renewal fee is required.
 - **Permit Amendment:** An issued permit may be amended at the discretion of the Director. Payment of permit amendment fee is required.
 - **Permit Transfer:** An issued permit may be transferred to the new owner of the subject site. Payment of all applicable fees is required.
 - **Permit Revocation:** The Director has the authority to revoke any issued permit due to non-compliance, administrative issues or to minimize risk to the city.
 - **Permit Closure:** An issued permit will only be closed once all required inspections are completed, permit conditions are fulfilled to the satisfaction of the Director and any non-compliance issues are resolved.

Full details for each permit category are included in the Applicant Guide.

Administrative Monetary Penalties

The current Fill By-law 189-96 allows for charges to be laid under the *Provincial Offences Act*; however, the By-law does not include Administrative Monetary Penalties (AMPS). Staff recommend the introduction of AMPS as an additional tool for Enforcement Officers to address matters of non-compliance. Staff further recommend that an AMP be set at \$1000 for any instance of non-compliance with the draft By-law.

Special Fines

Section 429 (2)(d) of the *Municipal Act, 2001*, grants municipalities the power to establish Special Fines to address offences where there is an economic advantage or gain from the contravention. Therefore, staff are recommending the introduction of a Special Fine as set out in Ontario Soil Regulation Task Force model by-law of \$10 per cubic metre of fill when:

1. The owner deposits significantly more fill than originally permitted, or
2. The owner deposits fill beyond the geographic limits of the approval permit.
3. The owner deposits fill without having obtained a permit.

Furthermore, where the fill contains contaminant levels that exceed Table 2 Standards included in Part XV.1 of the *Environmental Protection Act*, Enforcement Officers may also impose a special fine of \$100 per cubic metre of fill.

Additional Inspection Fee and Security Deposit

The draft By-law includes new financial features for better cost recovery related to repeated and/or continued non-compliance. These new features are an additional inspection fee and the authority to request replenishment of security deposit.

1. The site alteration permit fee includes the administrative processing of the permit application and regular inspections to monitor the site alteration. Any inspection required to address complaints or matters of non-compliance is an added demand on staff time and city resources. Therefore, staff recommend the introduction of an Additional Inspection Fee as a cost recovery mechanism for the extra city resources required to address repeated and/or continued non-compliance. The non-compliant permit holder would be charged for every site inspection required to address non-compliance until the matter is resolved. Staff believe this is an equitable approach since the non-compliant permit holder would bear all additional costs; rather than the city increasing permit fees or drawing from department reserves to fund the necessary staff resources to

respond to repeated or continued non-compliance. Furthermore, any unpaid inspection fees will become a debt owing to the City and may be recovered by either drawing upon the security deposit provided or added to the municipal tax roll of the subject site and collected in the same manner as property taxes.

The additional inspection fee may be used in combination with an administrative monetary penalty to address non-compliance.

2. A security deposit is collected to provide the City with the financial resources to address issues of non-compliance or potential liabilities from having issued a permit for the proposed site alteration. The City may retain professional services and/or contractors to complete any required maintenance, repairs or other works related to permit conditions, notices, or orders. Some examples of financial liability include, but are not limited to:
 - Mud tracking, dust, and noise complaints
 - Erosion and sediment control measures
 - Fencing and site access control
 - Contaminated soil and/or impacts to soil, surface and/or groundwater
 - Closure of the site due to non-compliance or incomplete work
 - Stabilization or restoration of the subject site.

The current Fill By-law 189-96 provides the Director with the necessary authority to draw upon the security deposit to recover the City's costs for undertaking any required work. Staff recommend that the Director be granted additional authority to require the permit holder to replenish the security deposit back to the original amount, upon request. This added authority will help ensure that the City always has the financial resources available to take any necessary action to restore site condition, repair damage to City infrastructure as well as recover costs related to non-compliance. This provision would protect the City and its taxpayers from the potential economic burden of an abandoned liability.

Stakeholder Consultation

Staff plan to initiate stakeholder and community engagement activities to gather feedback and comments on the draft Site Alteration By-law and Applicant Guide. Corporate Communications staff will be engaged to support the delivery of an effective consultation program by leveraging online communication channels and hosting public events.

Financial Impact

It is anticipated that the draft By-law will provide better cost recovery for additional staff resources and incurred expenses when addressing matters of non-compliance and other potential liabilities. There may be a change in administrative processes and workload, but it is not anticipated to affect operational costs.

Operational Impacts

Consultation with internal stakeholders have been ongoing to ensure that the proposed regulatory framework and permit workflows are consistent with their processes and/or regulatory obligations. This collaborative work will continue over the next few months as staff finalize the draft By-law and permit processes.

Collaborative work between Development Engineering and By-law Enforcement staff has been ongoing to develop enforcement procedures for a coordinated response to resident complaints and matters of non-compliance.

Broader Regional Impacts/Considerations

There are no broader regional implications or considerations as a result of the recommendations of this report.

Conclusion

In summary, the proposed new regulatory framework to regulate site alteration and excess soil management in the City of Vaughan directly supports the 2022-2026 Term of Council Service Excellence Strategic Plan for City Building and Environmental Sustainability goals.

Overall, the proposed municipal regulatory framework program has been designed with following principles:

1. That residents should have confidence in the City's ability to monitor and enforce site alteration and excess soil management within the City of Vaughan.
2. That Project Leaders, as the generators of excess soil, be held accountable for the management of excess soil until it is accepted at the appropriate receiving site, as well as assume full responsibility for compliance with provincial regulations.
3. That reuse sites are appropriate locations to ensure that farmland and environmentally sensitive areas that include natural heritage and hydrological

features are protected and;

4. That the Site-Alteration By-law include the appropriate permit requirements, Director authority and enforcement measures that are consistent and fair while leveraging modern regulatory and compliance approaches.

Following stakeholder consultation, staff will bring forward a final Draft Site Alteration Bylaw, Applicant Guide and report to Council for consideration by Q4 2023.

For more information, please contact: Frank Suppa, Director of Development Engineering.

Attachments

1. Draft Site Alteration By-law.
2. Draft Applicant Guide to Site Alteration Permits.

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