

To: Development Services Committee

From: Paul D. Ralph, BES, RPP, MCIP, Commissioner,  
Development Services Department

Report Number: DS-18-127

Date of Report: June 14, 2018

Date of Meeting: June 18, 2018

Subject: Dust Control Related to New Development

File: D-1000

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## **1.0 Purpose**

The purpose of this report is to respond to the following April 16, 2018 direction of the Development Services Committee (DS-18-81) that was referred to staff for a report:

“Whereas residents have complained to staff about the process to implement dust control on the construction of new housing and construction builds, and

That staff investigate the present process and advise as to the impacts of dust etc. especially in the area of Grandview Street North and if the dust control process can be enhanced to provide protection for the nearby residents and report back to Committee and Council”.

Attachment 1 is a copy of the City of Oshawa Site Alteration By-law 85-2006.

Attachment 2 is a copy of Appendix 13, titled Mud Control Policy, of the City of Oshawa’s Engineering Design Criteria Manual.

Attachment 3 is a copy of Town of Ajax’s Fouling of Roads By-law 69-2002.

Attachment 4 is a map of the Grandview Street North area showing the location of the subdivision developments along the west side of Grandview Street North south of Conlin Road East.

Attachment 5 is a copy of the Town of Leamington By-law 333-13 that addresses dust as a nuisance.

## **2.0 Recommendation**

That the Development Services Committee recommend to City Council:

1. That, pursuant to Report DS-18-127 dated June 14, 2018, Corporate Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law under the Municipal Act to control nuisance dust and report back to the Corporate Services Committee.
2. That, pursuant to Report DS-18-127 dated June 14, 2018, Community Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law to address fouling of roads and report back to the Community Services Committee.

## **3.0 Executive Summary**

Not applicable.

## **4.0 Input From Other Sources**

### **4.1 Other Departments**

The following have been consulted in the preparation of this report:

- Commissioner of Community Services
- Commissioner of Corporate Services
- Legal Services

### **4.2 Other Municipalities**

Staff surveyed several Durham lakeshore municipalities (Clarington, Whitby and Ajax), and reviewed the following information: Engineering Design Criteria, Site Alteration By-laws and any other By-laws relating to dust control.

In addition, municipal nuisance by-laws that related to dust were reviewed such as the Town of Leamington.

## **5.0 Analysis**

### **5.1 Background**

Dust and mud are primarily caused by site alteration in new development areas, beginning with the stripping or filling of the development site. Stripping consists of removing the top layer fill (i.e. vegetated layer, native soil or top soil) whereas, filling is bringing material onto the site to get to the required development elevation. Once a development site is stripped or filled there is greater opportunity for the generation and movement of dust as there is no longer any vegetation to keep soil from migrating off site. Dust does affect the air quality.

Site stripping or filling is followed by installation of services and roads and the construction of the development. The development can take on different forms such as; homes for a residential development or a new commercial building in a plaza. New residential construction is currently the largest type of development across the City and is a contributor of dust after the site is stripped or filled due to the uncontrolled equipment circulating through the site and roads. As the equipment navigates through the construction site, mud, dust and debris are then tracked onto the road. These activities continue to pollute the roads and cause further migration into the existing developed areas adjacent to the development site. Site development is also a contributor of dust because large areas of land are now subject to wind.

All of the above-mentioned activities follow an approval process within the Development Services Department. Dust control is one of many matters addressed through the development approval process and is generally managed through staff's implementation of the Site Alteration By-law and Engineering Design Criteria during the subdivision approval, site plan approval and building permit processes.

Dust can also be created through other ways such as new landscaping (e.g. cutting stones for the installation of new walkways, patios, etc.) and demolition of buildings.

## **5.2 Engineering Design Criteria**

Engineering Design Criteria provides standards, criteria and policies to be used as a guideline for the preparation and processing of all engineering submissions presented to the approving City or Municipality.

Staff completed a survey of Engineering Design Criteria from Clarington, Whitby and Oshawa. The purpose of the survey was to review how their Engineering Design Criteria Manual addressed dust and mud control.

### **5.2.1 City of Oshawa Engineering Design Criteria**

Of all the Engineering Design Criteria reviewed in the Region of Durham, Oshawa's was the most detailed around mud and dust controls as there is a specific Appendix in the Oshawa Engineering Design Criteria Manual (see Attachment 2).

Appendix 13, titled Mud Control Policy, defines a procedure for the cleaning of streets where a development activity has resulted in the deposition of mud and dust. The Policy clearly defines the procedure for cleaning the streets and for associated penalties issued by the City in the event a developer, builder or contractor fails to maintain the minimum levels of service.

### **5.2.2 Durham Lakeshore Municipalities Engineering Design Criteria**

The Municipality of Clarington's Engineering Design Criteria manual leaves mud and dust mitigation to the Developer and/or Consulting Engineer to monitor and ensure conformance.

The Town of Whitby's Engineering Design Criteria includes the following:

“The applicant shall be responsible for removing mud and other debris that accumulates on the public streets during construction. If the applicant does not comply with the Town of Whitby's notification to clean the affected streets within twenty-four (24) hours, then the Public Works Department shall have the right to clean the affected streets at the sole expense of this applicant by use of a corresponding portion of the aforementioned financial security”.

The Town of Ajax's Engineering Design Criteria does not mention mud and dust control, but they do have a specific by-law that addresses the issue: By-law 69-2002 – Fouling of Roads (see Attachment 3). This by-law outlines what is considered fouling roads (i.e. building materials, materials from construction, waste, earth and soil in the form of dust, dirt and mud) along with an enforcement policy.

### **5.3 Site Alteration By-laws**

Staff completed a survey of the Site Alteration By-laws from Clarington, Oshawa, Whitby and Ajax.

#### **5.3.1 City of Oshawa Site Alteration By-law**

The City of Oshawa's Site Alteration By-law (see Attachment 1) controls dust and mud generation by having the applicant submit the documents that cover the following:

- “the location, dimensions, design details and design calculations of all construction site erosion control measures that may be necessary to minimize the impact of the proposal”
- “provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required”

Additionally, under section 6.4 of the by-law, the Director of Engineering Services, “may require an Applicant to install such site remediation measures, including Topsoil, seeding, sodding and installation of berms and landscaping, as are necessary to minimize the visual impact of Fill or Grade alterations”.

The By-law also includes possible significant monetary penalties (see Section 10: Remedies and Penalties in the By-law).

### **5.3.2 Durham Lakeshore Municipalities Site Alteration By-law**

The Municipality of Clarington has a very similar By-law to the City of Oshawa's Site Alteration By-law related to dust and mud control. The Town of Whitby and Town of Ajax's By-laws use different language, but are written and focused around the same core requirements with regards to mud and dust. Consistent among all municipalities listed above, is the requirement to satisfy the following conditions prior to the issuance of a Site Alteration permit:

1. Provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
2. If the site remains dormant at any time for more than 365 days, the owner shall seed, mulch and designate a contact person directly for such program;
3. Maintain all roads in the same or better condition, and;
4. The permit holder may be required to install site remediation measures including topsoil, seeding, sodding and the installation of berms and landscaping, as necessary, to minimize the visual impact of fill or grade alteration works and to provide for stabilization of altered grades

Finally, Clarington has the following enforcement clause:

"The Director may, without notice, have such mud or dust controlled by Municipal forces or a third party contractor and such costs, including a 30% management and administration charge, shall be paid by the applicant upon invoicing."

## **5.4 Dust Complaint Resolution Process**

### **5.4.1 Site Alteration through Site Plan Approval and Building Permit for Infill Development Processes**

When a dust related complaint is received during the Site Alteration process, outside new subdivision agreements, the complaint is forwarded to Engineering Services where one of two Engineering Technologist staff will review the complaint and then visit the site to review the conditions. If the complaint is deemed to be valid, the Engineering Technologist will contact the developer and or the owner/developer's consultant with suggested remediation measures. These measures typically involve a combination of sweeping, flushing and scraping of the roads. In the event the developer is not compliant with the request, Municipal Law Enforcement and Licensing Services (M.L.E.L.S.) is notified so a Site Alteration By-law infraction can be investigated and an order issued, as appropriate.

The process for building permits such as infill residential development and site plan approvals is the same as Site Alteration. The City's Site Plan Agreement makes reference to the requirement to comply with the Site Alteration By-law 85-2006 (see Attachment 1).

#### **5.4.2 Subdivision Development**

When a dust related complaint is received for new subdivision developments the complaint would be passed along to Engineering Services. The City's Construction Supervisor would review the complaint and visit the site to review the conditions. If the complaint is deemed to be valid, the Construction Supervisor will contact the developer and or the developer's consultant with suggested remediation measures. These measures consist of sweeping, flushing and scraping of the roads.

The Site Alteration By-law 85-2006 does not apply to subdivision agreements for new subdivision developments as the dust and mud policies and procedures are outlined in the City's Engineering Design Criteria Manual. If the developer elects not to comply with the requirements, Engineering staff have the ability to engage City Operations staff to perform the work at the developers cost. In the event the developer doesn't pay the invoice for the work, after 45 days, the developer's letter of credit will be drawn down to cover any unpaid amount.

Pre-servicing requests for new subdivisions prior to the execution of a subdivision agreement are governed by the Site Alteration By-law and pre-servicing conditions approved by the Director of Engineering Services.

#### **5.5 Grandview St North Dust Control Process**

Staff have received a number of complaints from residents on the east side of Grandview Street North between Salmers Drive and Conlin Road East on the north limit, with regards to dust and mud being generated by the adjacent subdivision developments on the west side of Grandview Street North by Metrontario/Tribute Communities, Delpark Homes and Upperview Homes (see Attachment 4). Currently there are five subdivision phases underway. The two newest phases are just south of Conlin Road East and working under a Site Alteration permit, whereas the other three phases are being governed by Subdivision Agreements.

The prevailing wind from the west has also contributed to dust going into residential area on the east side of Grandview Street North.

There was a unique opportunity to deal with the mud and dust for the development in this area as all five phases are all being inspected by the same consultant for the developers. Engineering Services staff met with the consultant to discuss how to address the ongoing mud and dust control complaints. At the meeting it was agreed to do the following:

- As a reactive approach, all driveway aprons (i.e. between the sidewalk and the travelled portion of the road) along Grandview Street North between Conlin Road East and Salmers Drive will be thoroughly cleaned, this includes sweeping and power-washing of the driveway aprons and raking of the boulevards to address the deposit of dirt on the grass.
- As a proactive approach, it was agreed that a daily sweeping of Grandview Street North is to be put into place to ensure accumulations do not become excessive and a flushing at the end of the week (weather conditions permitting). The limits of

Grandview Street North cleaning are from Conlin Road East to Salmers Drive including all curb gutters and the first 50 metres (164 ft.) of each side street off Grandview Street North within the north/south limits. Streets internal to the new subdivision developments are to be cleaned as per the City's mud control policy.

All developers share the costs to implement both the reactive and proactive program and alternate weeks for the responsibility of the street flushing.

This agreement has been in place since April 30, 2018 and improvements in the area have been noticed since this program took effect.

Any program will not totally (i.e. 100%) prevent dust from going onto public streets or private properties adjacent to new developments. City staff do the best we can to control mud and dust on City streets and within new developments. In cases where dust migrates onto adjacent privately owned properties staff try to connect the developer to the private property owner making the complaint to hopefully resolve the issue. In this case, it is a private matter between the developer and private property owner.

## **5.6 Summary of Analysis and Opportunities for Enhancements**

The approach the City uses to control dust and mud as defined in the Engineering Design Criteria appears to be more comprehensive than the surveyed municipalities. With regards to Site Alteration, the approach used is consistent with the surveyed municipalities as the wording for all surveyed municipalities was very similar.

There are two potential opportunities that could be reviewed to better address dust and mud control and related complaints:

1. The City could consider passing a by-law similar to the intent of the Town of Ajax's Fouling of Roads By-law (see Attachment 3) or amending the City's Road Occupancy By-law which does make one reference to fouling of roads.
2. The City could also consider passing a by-law to address nuisance dust similar to the Town of Leamington's By-law (see Attachment 5).

The possible use of administrative monetary penalties related to the above should also be investigated.

The above by-laws could provide the City with additional tools that could assist to address mud and dust complaints.

As part of the review process City staff should consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to get input before any decision is made on any new by-law or by-law amendment. The consultation on the fouling of roads, the nuisance and dust matters can occur at the same time, if approved, and coordinated by both Community Services and Corporate Service staff.

## 6.0 Financial Implications

There are no financial implications associated with the recommendation in this report.

## 7.0 Relationship to the Oshawa Strategic Plan

The Recommendation advances Accountable Leadership and Environmental Responsibility goals of the Oshawa Strategic Plan.



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Engineering Services



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Development Services Department



**By-Law 85-2006  
of The Corporation of the City of Oshawa**

being a by-law to control the dumping of fill, removal of topsoil and alteration of grades.

WHEREAS s. 142 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to prohibit or regulate the dumping of fill, removal of topsoil and alteration of grades;

NOW THEREFORE the Council of The Corporation of the City of Oshawa hereby enacts as follows:

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**1. Interpretation**

- 1.1. “Applicant” means each Person who seeks or obtains a Permit.
- 1.2. “City” means The Corporation of the City of Oshawa and includes all areas within its territorial limits.
- 1.3. “Dumping” means the movement and depositing of Fill from one location to a different location and includes the movement and depositing of Fill from one location on a property to another location on the same property and “Dump” and “Dumped” in relation to Fill have the same meaning.
- 1.4. “Fill” means any type of material deposited or Placed on lands and includes Soil, stone, concrete, construction materials, asphalt, sod or turf either singly or in combination.
- 1.5. “Director” means the City’s Director of Engineering Services.
- 1.6. “Grade” means the elevation of a ground surface and includes:
  - (a) “Existing Grade”, meaning the elevation of an existing ground surface, except that where the Placing or Dumping of Fill or the alteration of the ground surface has occurred in contravention of this By-law, “Existing Grade” shall mean the Grade as it existed prior to the Placing or Dumping of Fill or alteration of the Grade;
  - (b) “Finished Grade”, meaning the elevation of the ground surface of land upon which Fill has been Placed or Dumped or after alteration of the Grade has occurred; and

- (c) “Proposed Grade”, meaning the proposed elevation of the ground surface of land upon which any Fill is proposed to be Placed.
- 1.7. “Inspector” means any of the Director, the City’s Development and Water Resources Manager, the City’s Manager, Water Resources, the City’s Design Supervisor, Water Resources, the City’s Engineering Technologist, Water Resources, and such municipal law enforcement officers as may be appointed by the City from time to time.
- 1.8. “Normal Agricultural Practice” includes sod-farming, greenhouse operations and nurseries for horticultural products but does not include the sale, exchange or other disposition of Topsoil.
- 1.9. “Owner” means each registered owner of land
- (a) for which a Permit is sought or obtained; or
  - (b) in respect of which there is or may be contravention of
    - i) this By-law;
    - ii) an order made pursuant to subsection 144(5) of the Municipal Act, 2001; or
    - iii) a court order made pursuant to subsection 144(18) of the Municipal Act, 2001.
- 1.10. “Permit” means a permit issued by the Director pursuant to the provisions of this By-law.
- 1.11. “Person” includes a natural individual and their heirs, executors, administrators or other legally appointed representatives, a corporation, partnership or other form of business association.
- 1.12. “Placing” means the distribution of Fill on lands to establish a Finished Grade higher or lower than the Existing Grade and “Place” and “Placed” in relation to Fill have the same meaning.
- 1.13. “Ponding” means the accumulation of surface water in an area not having drainage therefrom where the lack of drainage is caused by the Placing or Dumping of Fill or the alteration of the Grade.
- 1.14. “Retaining Wall” means a wall designed to contain and support Fill which has a Finished Grade higher than that of adjacent lands.
- 1.15. “Soil” means material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel or any combination thereof.
- 1.16. “Swale” means a shallow depression in the ground sloping to a place for disposal for the purpose of providing a method of drainage of surface water.
- 1.17. “Topsoil” means those horizons in a Soil profile, commonly known as the “O” and the “A” horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat.
- 1.18. “Zoning By-law” means a City by-law passed pursuant to s. 34 of the Planning Act and includes the City’s Zoning By-law 60-94, as amended or superseded.

## 2. General Prohibitions

- 2.1. No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped in the City except in accordance with this By-law.
- 2.2. No Person may remove Topsoil or cause or permit the removal of Topsoil except in accordance with this By-law.
- 2.3. No Person may alter the Grade or cause or permit the Grade of any land in the City to be altered except in accordance with this By-law.
- 2.4. Where a Permit has been issued, no Person may, except in accordance with the provisions of that Permit,
  - (a) Place or Dump Fill or cause or permit Fill to be Placed or Dumped;
  - (b) remove Topsoil or cause or permit the removal of Topsoil; or
  - (c) alter the Grade of any land or cause or permit the Grade of any land in the City to be altered.

## 3. Exceptions

- 3.1. The provisions of this By-law do not apply to the extent that the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land is:
  - (a) undertaken by a municipality or a local board of a municipality;
  - (b) imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53, respectively, of the Planning Act or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
  - (c) imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the Planning Act or as a requirement of an agreement entered into under that regulation;
  - (d) undertaken by a transmitter or distributor, as those terms are defined in section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
  - (e) undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act;
  - (f) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
    - i) that has not been designated under the Aggregate Resources Act or a predecessor of that Act, and
    - ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the Planning Act; or
  - (g) undertaken as an incidental part of drain construction under the Drainage Act or the Tile Drainage Act.
  - (h) undertaken in accordance with a licence or permission obtained under applicable provincial or federal legislation;

- (i) undertaken in accordance with a permit issued by the City's Chief Building Official pursuant to the Building Code Act, 1992, for the erection or demolition of a building or structure, provided the Director and the Chief Building Official are satisfied that the permit application provides sufficient information to determine compliance with the provisions of this By-law; or
- (j) undertaken in accordance with an order issued pursuant to the City's Property Standards By-law as from time to time amended.

- 3.2. The provisions of this By-law do not apply to the extent that Fill is Placed on lands zoned for residential use within the meaning of the Zoning By-law for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:
- (a) the elevation of the land within 0.6 metre of the property line is not changed;
  - (b) there is no change in the location, direction or elevation of any natural or artificial watercourse, open channel, Swale or ditch used to drain land;
  - (c) the functionality of any drainage infrastructure is not impeded; and
  - (d) the volume of such Fill does not exceed 20 cubic metres.
- 3.3. The provisions of this By-law do not apply to the extent that Topsoil is removed as an incidental part of a Normal Agricultural Practice.
- 3.4. The provisions of this By-law do not apply in an area to the extent of any conflict with a regulation made under section 28 of the Conservation Authorities Act respecting the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land in such area.

#### **4. Specific Prohibitions and Regulations**

- 4.1. No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped and no Person may remove Topsoil or cause or permit the removal of Topsoil and no Person may alter the Grade of any land or cause or permit the Grade of any land to be altered within the City in the following circumstances:
- (a) where the Owner has not consented in writing to the Placing or Dumping of Fill or to the removal of Topsoil or to alteration of the Grade;
  - (b) where the Fill is Placed or Dumped or the Grade is altered for storage purposes and such storage is not permitted pursuant to the Zoning By-law;
  - (c) where the Placing or Dumping of Fill or alteration of the Grade will result in changing any Grade established by a grading and drainage plan approved by the City including, without limitation, a grading and drainage plan approved by the City in relation to any subdivision, re-zoning, site plan or building permit approval, and such Placing or Dumping of Fill or alteration occurs without a Permit;
  - (d) where the Fill includes material from the demolition of any structure or includes "refuse" as that term is defined within the meaning of the City's By-law 60-79, as amended or includes toxic or hazardous materials, glass or sewage;
  - (e) where the Placing or Dumping of Fill or alteration of the Grade would result in Soil erosion or Soil pollution, blockage or siltation of any watercourse, pollution of any

watercourse, flooding or Ponding on any land or detrimental effect on any environmentally significant area or wetland complex;

- (f) where the Placing or Dumping of Fill or alteration of the Grade does not accord with City design standards;
- (g) where the Placing or Dumping of Fill or alteration of the Grade is on any land zoned within any of the Open Space zoning designations pursuant to the Zoning By-law, unless approval therefor has been issued by the Central Lake Ontario Conservation Authority or a Permit has been issued pursuant to this By-law.

4.2. No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped and no Person may alter the Grade of any land or cause or permit the Grade of any land to be altered in the City without a Permit where the volume of the Fill being Placed or Dumped or the volume of Fill involved in the alteration exceeds 50 cubic metres.

## **5. Issuance of a Permit**

5.1. The Director is hereby authorized and directed to issue a Permit where an Applicant has satisfied the requirements of this By-law.

5.2. An Applicant shall submit the following to the Director:

- (a) a completed application in the form prescribed from time to time by the Director in accordance with the information required in this By-law;
- (b) the Permit fee prescribed by the City's General Fees and Charges By-law as from time to time amended;
- (c) when required by the Director in order to assess the impact of the Fill or alteration on the environment affected, a Fill-control plan, which shall include any or all of the following as shall be specified by the Director and to the Director's satisfaction:
  - i) a key map showing the location of each lot, including the nearest major intersection and north arrow;
  - ii) the lot boundaries and area (expressed in hectares) of each lot;
  - iii) the existing and proposed use of the land and the location and use of the buildings and other structures adjacent to each lot;
  - iv) the location, dimensions and use of any building and other structures existing or proposed to be erected on each lot;
  - v) the location of lakes, streams, wetlands, channels, ditches, other watercourses and other bodies of water on and within a minimum of 30 metres beyond each lot boundary;
  - vi) the location of all Regulatory Flood Lines and Conservation Authority Fill Regulation lines;
  - vii) the location and identification of the predominant existing Soil types;
  - viii) the species, Grade at base and size of all trees greater than 250 millimetres in caliper, all shrubs, trees and hedges within three (3) metre(s) of the property line and driveways on each lot and all easements and rights-of-way over, under, across or through each lot;

- ix) the location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within a minimum of 30 metres beyond each lot boundary;
  - x) the location and dimensions of utilities, structures, roads, highways and paving located within a minimum of 30 metres beyond each lot boundary;
  - xi) the existing topography on each lot and extending a minimum of 30 metres beyond each lot boundary;
  - xii) the Proposed Grades of each lot;
  - xiii) the location and dimensions of all proposed land disturbance activities, including construction of access roads;
  - xiv) the location and dimensions of all temporary Soil, dirt or Fill stockpiles;
  - xv) the location, dimensions, design details and design calculations of all construction site erosion control measures that may be necessary to minimize the impact of the proposal;
  - xvi) a schedule of the anticipated starting and completion dates of each land disturbance or land development activity;
  - xvii) provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
  - xviii) the scale of drawing, ranging from 1:250 to 1:1000 as deemed appropriate (each drawing control plan to be in metres);
  - xix) an indication on the drawing of directions of overland water flow and overland flow route;
- (d) Proposed Grades and drainage system to be used upon completion of the filling operation;
  - (e) a description of the proposed Fill, including a list of the sources and geotechnical reports as to content and quality, prepared by qualified experts in that regard;
  - (f) a certificate of the Owner, Applicant and each qualified expert referenced in paragraph (e) certifying that the Fill contains no contaminants as defined in the Environmental Protection Act, R.S.O. 1990, c. E.19;
  - (g) a plan showing the design details to proper scale of any Retaining Wall that may be required and the dimensions of any materials to be used in construction of such Retaining Wall; and
  - (h) security in a form and amount to be determined by the Director to secure performance of the work for which the Permit is being applied.

5.3. The Director may draw upon the security posted pursuant to paragraph 5.2(h) to recover the cost of the City performing any required work which the Owner or the Applicant has failed to perform.

5.4. The issuance of a Permit does not relieve the Owner or the Applicant from the obligation to secure all other applicable approvals.

## **6. Permit Requirements**

- 6.1. The Director may, prior to the issuance of a Permit, require the Owner or Applicant or both to enter into an agreement which may be registered on title to the subject lands containing such requirements of this By-law as the Director considers necessary to ensure that the Placing or Dumping or removal of Fill is done in accordance with the prevailing City design standards and proper engineering principles.
- 6.2. Requirements contained in an agreement may include the Owner or Applicant releasing and indemnifying the City, certifying that the Fill contains no contaminants as defined in the Environmental Protection Act, posting with the City the required security and where, in the opinion of the Director, extensive activities are proposed, certification by a geotechnical engineer or other similarly qualified Person, both prior to the issuance of a Permit and upon completion of the work. All such certification shall state that the Owner or Applicant can and has complied with all of the obligations and conditions contained in the applied for and issued Permit.
- 6.3. The Director may, from time to time and at the Applicant's expense, require the testing of any Fill by a qualified expert retained by the City.
- 6.4. The Director may require an Applicant to install such site remediation measures, including Topsoil, seeding, sodding and installation berms and landscaping, as are necessary to minimize the visual impact of Fill or Grade alteration proposals.
- 6.5. For the purpose of this section 6, the Director and the City Clerk may execute on the City's behalf the agreement in a form acceptable to the Director and to the City's Director, Legal Services.

## **7. Permit Expiry**

- 7.1. A Permit shall expire on the earliest of the following dates:
  - (a) the expiry date as specified on the Permit by the Director;
  - (b) the date which is twelve (12) months following the date on which the Permit was issued; and
  - (c) the date on which an Owner at the time of issuance of the Permit ceases to be an Owner.
- 7.2. A Permit which expires pursuant to section 7.1 of this By-law may be renewed within a two (2) month period from the date of expiry by making of written application to the Director accompanied by a payment of 50% of the original Permit fee, provided that the proposed work has not been revised.

## **8. Permit Revocation**

- 8.1. It is a condition of each Permit that the Permit may be revoked by the Director under the following circumstances:
  - (a) if it was obtained on mistaken, false or incorrect information;
  - (b) if it was issued in error;
  - (c) if the Owner or Applicant requests in writing that it be revoked;

- (d) if the terms of an agreement under this By-law have not been complied with; or
- (e) if an Owner or an Applicant fails to comply with the provisions of this By-law or with an order requiring work to be done to correct contraventions of this By-law.

## **9. Enforcement**

- 9.1. Inspectors are hereby authorized to carry out inspections in relation to this By-law and are delegated such powers as are within the jurisdiction of the City in order to administer and enforce this By-law including, without limitation, the power to make orders requiring the discontinuance of activities and requiring work to be done to correct contraventions of this By-law.

## **10. Remedies and Penalties**

- 10.1. Each Person who Places or Dumps Fill or who causes or permits Fill to be Placed or Dumped contrary to this By-law or to a Permit shall forthwith remove such Fill and restore the Existing Grade of the land.
- 10.2. Each Person who removes Topsoil contrary to this By-law or to a Permit shall forthwith rehabilitate the land from which the Topsoil was removed including the replacement on the land of Topsoil and the restoration of the Existing Grade of the land.
- 10.3. Each Person who alters the Grade of land or who causes or permits the alteration of the Grade of land contrary to this By-law or to a Permit shall forthwith restore the land to its original condition including the Existing Grade of the land.
- 10.4. Where an Owner fails to do any work required in an order issued pursuant to this By-law within the period specified, the Director may cause the work to be done at the Owner's expense and, for this purpose, the Director, Inspectors and the City's employees and agents may enter on the Owner's land at any reasonable time.
- 10.5. Each Person who contravenes any provision of this By-law or an order under subsections 144(4) or 144(5) of the Municipal Act, 2001, is guilty of an offence and is liable
- (a) on a first conviction, to a fine of not more than \$10,000; and
  - (b) on any subsequent conviction, to a fine of not more than \$25,000.
- 10.6. Despite subsection 10.5, where the Person convicted is a corporation, the maximum fines in paragraphs 10.5(a) and 10.5(b) are \$50,000 and \$100,000, respectively.

## **11. General Provisions**

- 11.1. The provisions of this By-law shall apply to all lands and premises within the City.
- 11.2. All references to legislation in this By-law are references to legislation of the Province of Ontario as amended from time to time, including successor legislation, whether enacted prior to or subsequent to the enactment of this By-law.
- 11.3. Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed as being severed from this By-law and the remainder of this By-law shall continue in full force and effect.

11.4. The short title of this By-law shall be the "Site Alteration By-law".

11.5. This By-law shall be administered by the Director.

11.6. The provisions of this By-law shall come into force and effect on the date of its passing.

By-law approved this twelfth day of June, 2006.

Mayor

Acting City Clerk

**DEPARTMENT OF DEVELOPMENT SERVICES**

**POLICY & PROCEDURE No. 3.2.2-009**

DIVISION: <b>ENGINEERING SERVICES</b>	DATE: April 30, 2001
SECTION: <b>INSPECTION</b>	ESTABLISHED: April 17, 2001
PAGE NO.: <b>1 OF 2</b>	APPROVED BY:
REVISION NO.:	DATE:

**TITLE: MUD CONTROL POLICY**

**PURPOSE**

To establish a policy and procedure for the cleaning of streets required as a result of the deposition of mud and dust due to development activities.

**Definitions**

- 1) 'Clean' means to sweep and/ or flush streets with a mechanical street-cleaning piece of equipment.
- 2) 'Improved Street' means any street fully maintained by and under the jurisdiction of the City of Oshawa and the Region of Durham.
- 3) 'Inspector' means an employee of the City of Oshawa.
- 4) 'Scrape' means to remove mud and dirt from the road by either hand operation or a machine using a bucket or blade.
- 5) 'Stage 1 Subdivision Street' means any subdivision street having first stage curb and gutter and base asphalt only.
- 6) 'Stage 2 Subdivision Street' means any subdivision street having second stage curb and gutter and final asphalt.
- 7) 'Subdivision Street' means any street, the construction of which is included in a development agreement with the City of Oshawa, and has not yet been assumed by the City.

**SOURCE**

City Council, April 17, 2001.

**POLICY**

Where land disturbance as a result of building or construction creates mud or dust on streets, the developer of the lands shall ensure their builder(s), contractor(s) or themselves clean the streets in accordance with the following minimum levels of service:

**Improved Street and Stage 2 Subdivision Street**

Where required:

- Shall be scraped at least once per day, but with a higher frequency as required.
- Shall be cleaned at least once per week on Friday, but with a higher frequency as required.

### **Stage 1 Subdivision Street**

Where required:

- Shall be scraped at least once per day once house occupancies commence.
- Shall be cleaned (swept) once per week on Friday once occupancies on the street are 25% or more.

Use of calcium as a dust control measure may be considered on asphalt surfaces provided that application rates do not create a slippery surface.

### **PROCEDURE**

It is intended that the above minimum levels of service shall be initiated by the developer and their builders or contractors without formal request from the City.

1. Inspection of improved streets will be carried out by the City on a regular basis to ensure the minimum level of service is provided.
2. Inspection of subdivision streets will be initiated upon receipt of a complaint or in an area with a history of complaints. Follow-up action with the developer, builder or contractor will occur where the above minimum levels of service are not consistently met.
3. The developer, builder or contractor shall carry out scraping requested by the City inspector within 24 hours.
4. Cleaning requested by the City inspector shall be carried out within 24 hours.
5. Where a developer, builder or contractor does not have a regular program established to maintain the minimum levels of service and does not react to the City inspector's request within the required time frames, the City will perform the work at the developer's cost. The developer will be invoiced for all City costs including administration. Where any invoice is unpaid after 45 days, the developer's letter of credit will be drawn down to cover any unpaid amount.

**THE CORPORATION OF THE TOWN OF AJAX**

**BY-LAW NUMBER 69-2002**

Being a By-law to regulate the fouling of Roads.

WHEREAS the Council of the Corporation of the Town of Ajax is authorized to pass a By-law pursuant to the Municipal Act, R.S.O. 1990 to prohibit or regulate the obstruction, encumbering, injuring or fouling of roads and bridges, for prohibiting the throwing, placing or depositing of dirt, refuse or any other debris on any road or bridge.

AND WHEREAS the Council of the Corporation of the Town of Ajax deems it expedient to pass a By-law to ensure safe passage along all roads, and to reduce the inconvenience and nuisance to all residents or the general traveling public.

NOW THEREFORE the Council of the Corporation of the Town of Ajax hereby enacts as follows:

**1. DEFINITIONS**

In this By-law,

- 1.2 “Clean” means to sweep and/or flush the roads with a mechanical street cleaning vehicle. Clean shall not include flushing during times when safety could be compromised due to freezing or near freezing temperatures;
- 1.2 “Debris” means refuse, rubbish, junk, or disused material of any kind whatsoever and without limiting the generality of the foregoing includes building materials, material from construction or demolition projects, waste, earth and soil in the form of dust, dirt and mud;
- 1.3 “Expense” means the cost of carrying out work to be done pursuant to Section 4.1 and Section 4.4 plus an additional 25% administrative charge;
- 1.4 “Exterior Road” means a road exterior to the property on which the Land Disturbance is occurring;
- 1.5 “Foul” means to throw, place or deposit Debris on a Road; including the generation of air borne dust caused by the deposition of debris on a Road;
- 1.6 “Inspector” means a person appointed as an inspector by the Town;
- 1.7 “Interior Road” means a road within a property on which the Land Disturbance is occurring;
- 1.8 “Land Disturbance” means any man-made change to the land surface through construction activities including removal of trees, vegetation, excavating, trenching, filling, grading and sodding or landscaping;
- 1.9 “Mud Mat” means an area of 100 millimeter diameter clear crushed stone, 6 metres in width minimum, 20 metres in length minimum and 150 millimetres in depth minimum, designed to strip mud off truck tires prior to leaving the property on which the Land Disturbance is occurring and entering onto a Road;
- 1.10 “Notice” means a Notice issued under Section 4 of this Bylaw and may be delivered by personal service, by posting on the Property, by mail or by facsimile transmission to an Owner;
- 1.11 “Owner” includes the Person for the time being managing or receiving the rent of land or premise, a designated representative, or a Person carrying out or causing to be carried out a Land Disturbance including any contractor or subcontractor retained by the Owner;
- 1.12 “Person” includes an individual, firm, corporation, association, or partnership
- 1.13 “Property” means any grounds, yard or vacant lot;

- 1.14 “Road” includes the entire right of way of a common and public highway, street, avenue, bikeway, parkway, driveway, square, place and bridge designed and intended for, or used by, the general public for passage of vehicles or pedestrian traffic whether assumed by the Town or not;
- 1.15 “Scrape” means to remove mud, dirt and debris from a Road by either hand operation or by common earth moving or construction equipment; and,
- 1.16 “Town” means the Corporation of the Town of Ajax.

### **GENERAL PROVISIONS**

- 2.1 No Person shall Foul, or cause or permit to be Fouled, a Road within the Town.
- 2.2 An Owner, carrying out or causing to be carried out any Land Disturbance, shall keep all Roads free of Debris and Dust emanating from the Land Disturbance.
- 2.3 An Owner shall comply with a Notice.
- 2.4 Prior to carrying out any Land Disturbance on a Property, an Owner shall construct a Mud Mat, or take alternate measures as approved by the Town.

### **MAINTENANCE STANDARDS**

- 3.1 During Land Disturbance on a Property, the Owner shall:
- (a) Scrape all Interior Roads that have been Fouled at least once per day, or as necessary to maintain safe passage.
  - (b) Clean all Interior Roads at least once per week or more frequently as required by the Town if occupancy of buildings on the Road has taken place.
  - (c) Scrape all Exterior Roads that have been Fouled as often as required to keep the road surface free of Debris.
  - (d) Clean all Exterior Roads at least once per week or more frequently as required by the Town.
  - (e) Take action to eliminate dust from blowing on to an Exterior Road from any construction activity on the property.
  - (f) Ensure that the Mud Mat is used by all trucks or other construction vehicles leaving the Property.
- 3.2 An Owner shall keep a Mud Mat free of mud or dirt which would prevent the proper stripping of mud from tires.
- 3.3 The Owner shall not permit Debris to be deposited, flushed or washed into any sewer or catchbasin. The Owner will be required to clean any sewer or catchbasin that is fouled by Debris from the Property of the Owner.

### **ENFORCEMENT**

- 4.1 In the event of a contravention of this Bylaw, an Inspector may:
- (a) Cause the Debris to be removed or Cause the Road to be Scraped or Cleaned at the Owner’s Expense if the Fouling is deemed by the Inspector to be an immediate danger to health and safety of any person;
  - (b) Deliver a Notice requiring an Owner to remove the Debris or to Scrape or Clean the Road;
  - (c) Deliver a Notice requiring the Owner to cease any operation causing Fouling of a Road; or

- (d) Deliver A Notice requiring the Owner to cease any operation causing dust to blow on to an Exterior Road from the Land Disturbance site.
- 4.2 If a Mud Mat requires renewal, an Inspector may Deliver a Notice requiring an Owner to repair or replace the Mud Mat.
- 4.3 A Notice shall contain the particulars of the contravention, the remedial measures to be taken and the time permitted to comply with the measures set forth in the Notice. In the event measures were taken by the Town pursuant to Section 4.1 (a) the Notice shall set out the measures taken by the Town and providing details of the amount expended in taking the measures.
- 4.4 If an Owner fails to comply with a Notice, the Town may carry out the work required by the Notice at the Owner's Expense.
- 4.5 The Town may recover an Expense by:
  - (a) Presenting an invoice to an Owner;
  - (b) Recovering the Expense in the like manner as municipal taxes; or,
  - (c) Recovering the Expense from any securities held for performance and maintenance guarantee.
- 4.6 This By-law shall be administered by Planning and Development Services or Operations and Environmental Services and enforced by a Municipal Law Enforcement Officer.
- 4.7 If a Court of competent jurisdiction should declare any section or part of a section of this By-law invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-law and it is hereby declared that the remainder of the By-law shall be valid and shall remain in force.
- 4.8 Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine or penalty for each offence, exclusive of costs as prescribed in the Provincial Offences Act, R. S. O. 1990.
- 5. That By-law Number 16-2000 be repealed.

READ a first and second time this Tenth day of June, 2002.

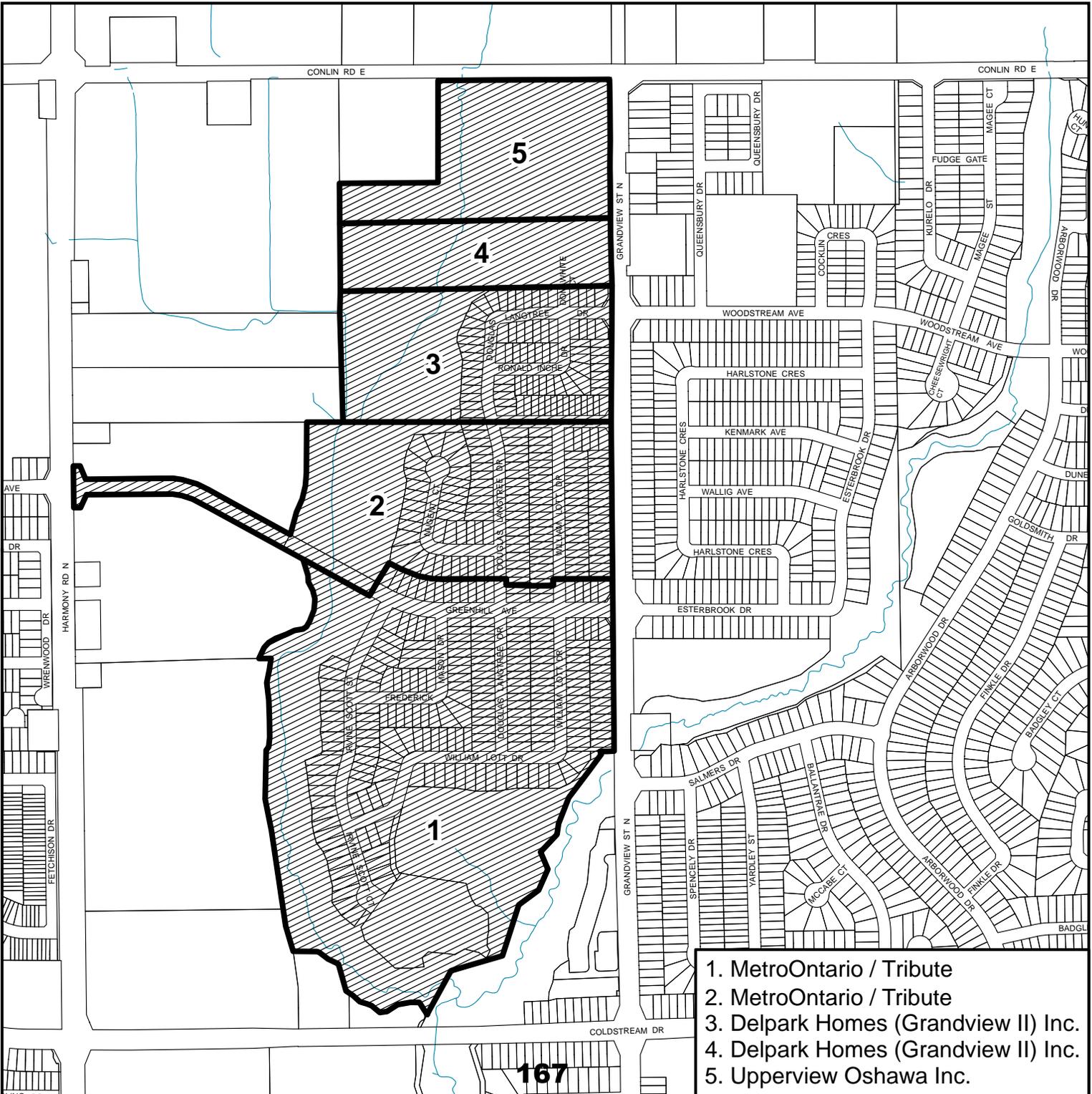
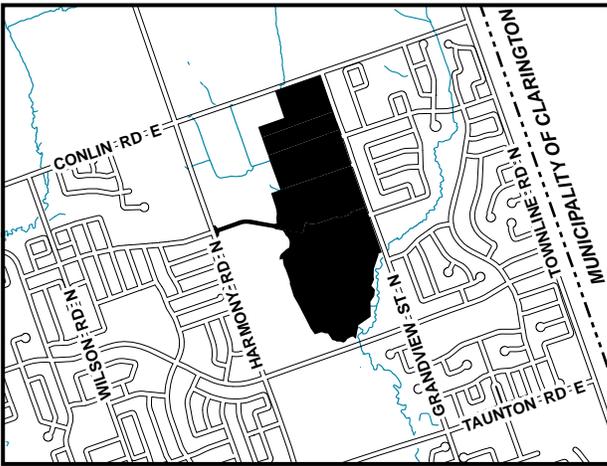
READ a third time and finally passed this Tenth day of June, 2002.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

Subject: Dust Control Related to New Development  
Address: Grandview Street North Area  
File: D-1000

Subject Sites 



- 1. MetroOntario / Tribute
- 2. MetroOntario / Tribute
- 3. Delpark Homes (Grandview II) Inc.
- 4. Delpark Homes (Grandview II) Inc.
- 5. Upperview Oshawa Inc.

# The Corporation of the Municipality of Leamington

## By-law 333-13

Being a by-law to control nuisance dust

**Whereas** Section 129 of the Municipal Act, 2001, S.O. 2001, c.25 provides that the councils of local municipalities may pass a by-law for regulating dust.

**Now therefore**, the Council of The Corporation of the Municipality of Leamington hereby enacts as follows:

### 1. Interpretation

In this by-law,

- (a) “Council” means the Council of The Corporation of the Municipality of Leamington;
- (b) “dust” means any airborne particulate matter;
- (c) “Municipality” means the land within the geographic limit of the Municipality of Leamington;
- (d) “nuisance caused by dust” means any dust that is of such persistence or volume that it has a detrimental impact on the use and enjoyment of property;
- (e) “person” means an individual, business, firm, corporation, association, partnership, or any combination thereof.

### 2. Scope

This by-law shall apply to the entire Municipality.

### 3. General Prohibitions

No person shall create or permit a nuisance caused by dust.

**4. Exemptions**

Section 3 (1) of the By-law does not apply to a nuisance created by the following activities:

- (a) Emergency measures undertaken for the immediate health, safety, or welfare of inhabitants or for the preservation or restoration of property; unless such dust is clearly more of a nuisance than is reasonably necessary for the accomplishment of such activity;
- (b) Any normal farm practice as determined pursuant to the Farming and Food Production Act, 1998 S.O. Chap. 1, or
- (c) An activity carried on by the municipality or any other level of government.

**5. Grant of Exemption by Council**

**(1) Application to Council**

Notwithstanding anything contained in this By-law, any person may make an application to Council to be granted an exemption from any of the provisions of this By-law with respect to any source of dust for which the person might be prosecuted and Council, by resolution, may grant or refuse to grant the exemption applied for and any exemption granted shall specify the time period during which the exemption is effective and may contain such terms and conditions as Council deems appropriate.

**(2) Decision**

In deciding whether to grant the exemption, Council shall give the applicant and any person opposed to the application an opportunity to be heard and may consider such other matters as Council deems appropriate.

**(3) Breach**

A breach of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.

**6. Severability**

If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

**7. Penalty**

Every person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is subject to a fine pursuant to the Provincial Offences Act, R.S.O. c. P.33, as amended.

**8. Continuing Offence**

Each calendar day a violation of Section 3 continues is deemed to a separate offence.

**9. Short Title**

This By-law may be referred to as the dust control by-law.

**10. Effect**

This By-law will take effect and come into force upon its enactment.

Read a first, second and third time and finally enacted this 28<sup>th</sup> day of October, 2013.

Signature on file

John Paterson, Mayor

Signature on file

Brian R. Sweet, Clerk

**ONTARIO COURT OF JUSTICE**

**PROVINCIAL OFFENCES ACT**

**PART I**

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 333-13, of the Municipality of Leamington, attached hereto are the set fines for those offences. This Order is to take effect November 21, 2013.

Dated at London this 21<sup>st</sup> day of November 2013.

A handwritten signature in black ink, appearing to read 'Wayne G. Rabley', written in a cursive style.

Wayne G. Rabley  
Acting Regional Senior Justice  
West Region

**Set Fine Schedule**

Schedule "B" to Report CL/32/13

**The Corporation of the Municipality of Leamington  
Part 1 Provincial Offences Act**

**By-law 333-13**     A by-law to Control nuisance dust

<b>Item</b>	<b>Column 1 Short Form Wording</b>	<b>Column 2 Offense Creating Provision</b>	<b>Column 3 Set Fine</b>
1	Creating or permitting a nuisance caused by dust	Section 3	\$150.00

Penalty Provision for the offences indicated above is Section 7 of By-law 333-13 a certified copy of which has been filed.