

To: Development Services Committee

From: Warren Munro, HBA, RPP, Commissioner,
Development Services Department

Report Number: DS-19-130

Date of Report: June 18, 2019

Date of Meeting: June 24, 2019

Subject: Fill Imported from Other Municipalities

File: A-2312-0001

1.0 Purpose

The purpose of this report is to respond to the following April 8, 2019 Council direction:

“Whereby neighbouring municipalities currently have no fill imported from other municipalities by-laws, that staff investigate and report back before the summer recess on the dumping of fill or alteration of grades on individual properties in Oshawa.”

Attachment 1 is a summary table of the survey results that staff received from the local area municipalities within Durham Region concerning whether they allow imported fill from other municipalities in accordance with their site alteration by-laws.

Attachment 2 is a copy of the City of Oshawa’s Site Alteration By-law 85-2006.

2.0 Recommendation

That the Development Services Committee recommend to City Council:

That Report DS-19-130 dated June 18, 2019, concerning fill imported from other municipalities, be received for information.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

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

- Legal Services
- Region of Durham
- Central Lake Ontario Conservation Authority (C.L.O.C.A.)
- Local area Durham municipalities

5.0 Analysis

5.1 General

For the purpose of this report, the imported fill activities are defined as those activities where the excess fill originates off-site in another municipality and is brought to a new site within the City of Oshawa.

Excess fill is a result of construction activities normally associated with infrastructure projects and site development, and it cannot be reused at the source site where the fill is excavated and must be moved off to another site.

It is estimated that the excess construction fill generated across Ontario is about 25 million cubic meters every year. This is estimated to be enough to fill the equivalent of 16 Rogers Centres with the roof closed.

With development activity within Ontario continuing to grow, it is logical to anticipate that there will be continued demand for fill placement sites.

With a large number of infrastructure projects ongoing such as Highway 407 East expansion, Metrolinx Transit expansion, Greater Toronto Area (G.T.A.) housing and non-residential developments, it is expected that the movement of excess fill in Ontario will continue. Fill material will be shipped from its source site to fill sites, including sites within the Durham Region and local area municipalities.

5.2 Municipal Survey

In accordance with the April 8, 2019 Council direction, staff has contacted other local area municipalities within Durham Region to inquire about their best practices and experience in dealing with excess fill activities within their respective jurisdictions.

Responses were received from Towns of Ajax and Whitby, Townships of Brock, Uxbridge and Scugog, City of Pickering, and Municipality of Clarington. The results are summarized in Attachment 1 to this report.

The following highlights the findings of the survey:

- All local area municipalities within the Region have a Site Alteration By-law to regulate the placement of fill, removal of topsoil and alteration of grades within their respective jurisdictions.

- Only Clarington has a restriction in its Site Alteration By-law to prohibit fill from being brought into the municipality from outside the municipal limits.
- Most municipalities, including Clarington, are planning to review and update their by-law after the Provincial Excess Soil Regulations are finalized.
- The majority of the excess fill activity is occurring in rural areas.

Staff of the Region and C.L.O.C.A. were also consulted. They have confirmed that the excess fill activities within the Region have been concentrated in rural areas for years.

However, C.L.O.C.A. noted that large fill illegal dumping activities have decreased in recent years. This may be due to people becoming more knowledgeable about the environmental consequences of fill activities, specifically if the fill involved is potentially contaminated.

The reduction in illegal fill activity may also be a result of having Site Alteration By-laws in place coupled with the municipalities' initiative to enforce their by-law as appropriate.

5.3 Clarington Input on Imported Fill

Clarington is currently the only lower tier municipality in Durham Region that has a restriction on importing fill from outside its municipal limits.

Clarington's restriction on the importing of fill came into effect in 2008 to address ongoing issues with potentially contaminated fill being brought into the municipality. The restriction limited fill activities to those that included fill that originated within the municipality.

Clarington staff have further advised that:

- The review of its by-law after the Province's new Excess Soil regulations are in place will include a review whether the restriction on fill from outside the municipality is still appropriate.
- The by-law permits exemptions to the ban on imported fill limited to municipal projects.
- They attempt to balance fill at the design stage for larger projects. When a balance cannot be achieved, staff will request a Soil Management Report, which includes identifying haulage routes, and may require testing of fill on-site and the provision of securities.
- Maintain a database of active sites and assist in finding locations for fill as appropriate.

5.4 City of Oshawa Site Alteration By-law 85-2006

The City of Oshawa relies on its current Site Alteration By-law to help regulate the placement of fill, removal of topsoil and alteration of grades within the City (see Attachment 2).

Site Alteration By-law 85-2006 is similar in structure to that of other local area municipalities with variations to account for local needs.

With regard to the City's Site Alteration By-law, it is staff's opinion that it has served the City well since 2006.

The City has consistently received approximately 100 Site Alteration By-law permit applications annually over the last 12 years. There has been a slight increase in the number of applications in the past few years keeping pace with the growth and development in the City.

5.5 Staff Comments

On balance, staff do not believe that the City's Site Alteration By-law needs to be amended to prohibit imported fill for the following key reasons:

- Enforcement of such a ban would be difficult to achieve in practical terms, as it would require significant staff resources for monitoring.
- Oshawa residents and farmers currently import clean fill for use on their own private property, which is considered a reasonable approach.
- Clarington is the only local area municipality that has a ban on imported fill but permits an exemption for local municipal projects.
- Staff have the opportunity to advance the protection of the Natural Heritage System (i.e. creeks, valleys) through the review of proposals with the assistance of the Central Lake Ontario Conservation Authority.
- The current By-law 85-2006 (Attachment 2) contains several provisions that represent "checks and balances" to advance environmental responsibility, fiscal responsibility and engineering responsibility notwithstanding the origin of the fill including:
 - Article 5.2(c): Fill Control Plan
 - Article 5.2(e): Geotechnical Reports
 - Article 5.2(f): Certificate confirming no contamination
 - Article 5.2(h): Security for Work
 - Article 5.3: Ability to draw on security
 - Article 5.4: Requires owner to get all other approvals
 - Article 6.1: Agreement required
 - Article 6.2: Indemnification certifying that the fill is not contaminated

6.0 Financial Implications

There are no financial implications associated with the Recommendation in this Report.

7.0 Relationship to the Oshawa Strategic Plan

This Report advances the Accountable Leadership and Environmental Responsibility goals of the Oshawa Strategic Plan.



Anthony Ambra, P.Eng, Director,
Engineering Services



Warren Munro, HBA, RPP, Commissioner,
Development Services Department

Survey Results

Municipality	Site Alteration By-law	Source site restriction
Oshawa	Yes	No
Ajax	Yes	No
Brock	Yes	No response
Clarington	Yes	Yes
Pickering	Yes	No
Scugog	Yes	No
Whitby	Yes	No
Uxbridge	Yes	No



**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