

The Corporation of the City of Kawartha Lakes

Committee of the Whole Report

Report Number MLE2019-004

Date: June 4, 2019
Time: 1:00 p.m.
Place: **Bobcaygeon Service Centre**

Ward Community Identifier: All

Title: **Agricultural Development Advisory Committee comments about the Removal of Soil, Topsoil, Placement of Fill, and Alteration of Grade By-law 2018-214**

Author and Title: **Juan Rojas – Director**
Aaron Sloan – Manager

Recommendations:

That Report MLE2019-004, Agricultural Development Advisory Committee recommendations about the Removal of Soil, Topsoil, Placement of Fill, Alteration of Grade By-law 2018-214, be received;

That the recommendations of the Agricultural Development Advisory Committee be received;

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting; and

That By-law 2018-214 being a By-law Regulating the Removal of Topsoil, Placement of Fill, and the Alteration of Grades be repealed and replaced by Appendix “C” and brought forward at the next Regular Council Meeting.

Department Head: _____

Chief Administrative Officer: _____

Background:

On September 25, 2018 Council received report MLE2018-007 and passed by-law 2018-214 being a by-law to regulate the Removal of Soil, Placement of Fill, and the Alteration of Grades;

By-law 2018-214 also served to repeal By-law 2012-200 a by-law to regulating the Removal of Topsoil, Placement of Fill, and the Alteration of Grades.

CR2018-587

That Report MLE2018-007, Removal of Soil, Placement of Fill, Alteration of Grade By-Law, be received;

That a by-law Regulating the Removal of Soil, Placement of Fill, Alteration of Grade attached as Schedule B to this Report MLE2018-007, be forwarded to Council for adoption with the following amendments to Sections 3.1 and 3.3:

3.1 The provisions of this By-law do not apply to the removal of Soil, as an incidental part of a Normal Agricultural Practice as defined by the Farming and Food Production Protection Act, S.O. 1998, C. 1, as amended, on Agricultural Lands as part of an Agricultural Operation;

3.3. The removal of Topsoil on Agricultural Lands incidental to a Normal Agricultural Practice including but not limited to removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products or other agricultural activities as per the Farming and Food Production Protection Act, S.O. 1998, C. 1, as amended. This exception does not include the removal of Topsoil for sale, exchange or other disposition; and,

That By-law 2012-200 a By-law Regulating the Removal of Topsoil, Placement of Fill and the Alteration of Grades be repealed.

Recorded (Voted)	For	Against	Absent
Mayor Letham	X		
Councillor Breadner	X		
Councillor Dunn	X		
Councillor Elmslie	X		
Councillor James	X		
Councillor Jilesen	X		
Councillor Junkin	X		
Councillor Macklem	X		
Councillor Martin	X		
Councillor Miller	X		
Councillor O'Reilly	X		

Councillor Pollard	X		
Councillor Seymour-Fagan	X		
Councillor Stauble	X		
Councillor Strangway	X		
Councillor Veale	X		
Councillor Yeo	X		
Results	17	0	0

A recorded vote was requested by Councillor Stauble.

Carried

CR2018-588

That the revised by-law Regulating the Removal of Soil, Placement of Fill, Alteration of Grade attached as Schedule “A” to this Report MLE2018-007, as amended, be referred to the Agricultural Development Advisory Committee for comment with a report back to Council in Q1 2019.

Carried

This report addresses that direction.

Rationale:

On September 25, 2018 Council passed by-law 2018-214 being a by-law to regulate the Removal of Soil, Placement of Fill, and the Alteration of Grades (hereafter referred to as The Site Alteration By-law) and attached as **Appendix “A”**. The passing of the by-law was done after a comprehensive review found that the previous by-law and process contained a number of deficiencies and the by-law did not adequately address large fill operations, permitting processes and environmental concerns.

The City of Kawartha Lakes contains vast amounts of land classed as urban, rural, villages, towns, land that is agricultural, open spaces, environmentally significant and protected. We as a municipality have a duty to protect this land from environmental contamination that is often the leftover result from the illegal or uncontrolled placement of soil, fill, and the alteration of grades.

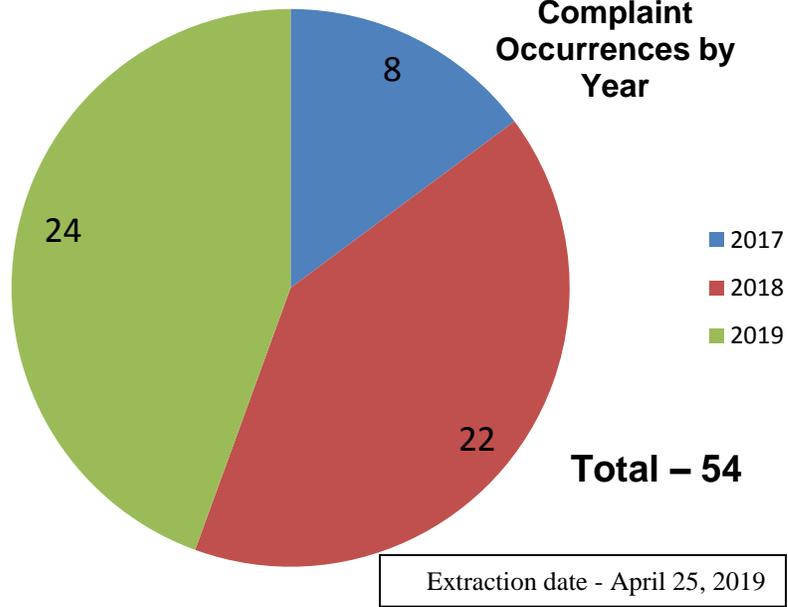
The primary purpose of the by-law is to protect all land within our City boundaries from environmental issues particularly resulting from large fill operations where soil may be coming from a contaminated site, and as clearly stated in the recitals as follows:

Council considers it in the public interest to enact a by-law regulating the removal of Topsoil, Soil, Placement of Fill, and the Alteration of the Grade of land within the City in order to ensure that:

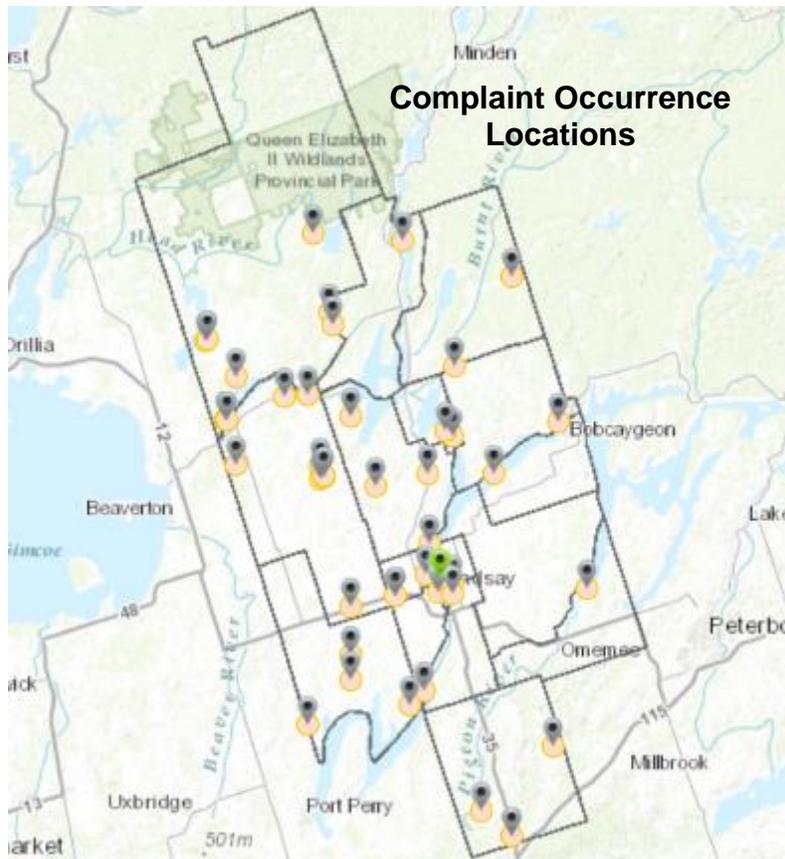
- a. Existing drainage patterns are maintained and Erosion and sedimentation is prevented;
- b. Changes to drainage or Grades are appropriate to protect natural heritage features and archaeological resources;
- c. Interference and damage to watercourses or water bodies are prevented;
- d. Groundwater and surface water quality is maintained;
- e. There is no discharge of a contaminant into the natural environment that causes or may cause an Adverse Effect and that degradation of the pre-existing soil and ground water quality at the Site and on abutting and adjacent properties is prevented;
- f. Haul Routes for the transportation of Fill and Topsoil authorized for Placement, Dumping or removal will be designated to and/or from a Site by the Director to minimize damage to the City's roads and minimize interference and/or disturbance to the City's residents and businesses;
- g. Disturbance to landform characteristics are kept to a minimum;
- h. The proponent of the Site Alteration project pays for its costs; and
- i. The precautionary principle, as defined by the Bergen Ministerial Declaration on Sustainable Development (1990), is respected and applied to the issue of Site Alteration within the Municipality.

Staff advises that since 2017 Removal of Soil, Placement of Fill, and the Alteration of Grade data has been tracked and the City has received 54 complaints, all but 6 occurrences have occurred in areas outside of the settlement areas primarily on properties designated for agricultural use.

Number of Complaint Occurrences in the City of Kawartha Lakes



Location of Complaint Occurrences – investigated by MLE staff



On December 13, 2018 City staff attended the Agricultural Development Advisory Committee meeting to discuss and review By-Law 2018-014 regulating the Removal of Soil, Placement of Fill, and the Alteration of Grades.

Agricultural Development Advisory Committee Recommendation

At the December 13, 2018 meeting of the Agricultural Development Advisory Board, the following motion was passed:

The Agricultural Development Advisory Committee (ADAC) recommends that Council amend By-Law 2018-014 Regulating the Removal of Soil, Placement of Fill, and the Alteration of Grades in the following ways:

- **That** the exemption provided in Schedule “A” Section 2.1, for construction where a permit authorized under the Building Code Act, 1992, S. O. 1002, c. 23, as amended, has been issued by the Chief Building Official, be extended for agricultural buildings or structures to include an area of 100 m surrounding the building and that there be no volume limit imposed for fill dumped or placed within that radius; and
- **That** a section be added in Schedule “A” Section 3.0 Agricultural Exemptions such that the provisions of this By-law do not apply to the Placing or Dumping of Fill for projects of up to 1000 m³ as an incidental part of a Normal Farm Practice as defined by the Farming and Food Production Protection Act, S.O. 1998, c. 1 as amended, on Agricultural Lands as part of an Agricultural Operation, save and except requirements for the Protection of the Natural Environment found within Sections 2.6 and 2.7, unless permitted or required by the Nutrient Management Act, 2002, S.O. 2002, c. 4, as amended; and
- **That** a section be added in Schedule “A” Section 3.0 Agricultural Exemptions such that the provisions of this By-law do not apply to any form of Site Alteration or the alteration of Grade where soils are being moved within the property as an incidental part of a Normal Farm Practice as defined by the Farming and Food Production Protection Act, S.O. 1998, c. 1 as amended, on Agricultural Lands as part of an Agricultural Operation; and
- **That** that the final sentence of Schedule “A” Section 3.3, “This exception does not include the removal of Topsoil for sale, exchange or other disposition”, be removed.

Carried

On April 12, 2019 Staff had a follow-up meeting with the Agricultural Development Advisory Committee. Staff was able to review the draft with the ADAC and committed to providing the final draft report and by-law prior to a final review meeting on April 26, 2019. The ADAC passed the following motion:

- **That** the April 11, 2019 correspondence from Aaron Sloan, regarding the December 2018 recommendations from ADAC on By-Law 2018-014 Regulating the Removal of Soil, Placement of Fill and the Alteration of Grades, be received; and
- **That** in addition to the previous recommendations provided, the ADAC recommends Council amend the By-law to provide an extension of the exemption from the Site Alteration permit requirements for “within property” movement of soils to be amended to exempt “within-Agricultural Operation” movement of soils for properties in the Agricultural Operations within the City of Kawartha Lakes.

Staff have reviewed the resolutions and recommendations received from the Agricultural Development Advisory Committee attached as **Appendix “B”**.

Minimizing Regulatory Impact on Normal Farm Practices

Members of the Agricultural Development Advisory Board have clearly identified that site alteration projects including grading, placement and removal of soil on agricultural operations are typically of the Small Fill Operation size, under 1,000 cubic metres. Since it is clear that Council’s main concern in enacting this by-law was to avoid potential contamination from the Large Fill Operations, it is reasonable to provide exemptions where feasible. Typically the operations to be concerned about are very large in size, with fill originating from outside Kawartha Lakes and are not part of a Normal Farm Practice, nor are being done by actual Agricultural Operations. The exemptions recommended have been incorporated with a slight adjustment in two tiers. A blanket exemption has been provided for Placing or Dumping of Fill for projects up to 500 cubic metres as an incidental part of a Normal Farm Practice as defined by the Farming and Food Production Protection Act, S.O. 1998, c. 1 as amended, on Agricultural Lands as part of an Agricultural Operation. For those projects of between 500 cubic metres and 1,000 cubic metres, as an incidental part of a Normal Farm Practice as defined by the Farming and Food Production Protection Act, S.O. 1998, c. 1 as amended, on Agricultural Lands as part of an Agricultural Operation, a Declaration Statement will be submitted to the City so as to attest to the eligibility and therefore be exempted from permitting requirements.

The exemptions as well as the Declaration Statement offer a streamlined and efficient process which recognizes that many of the projects undertaken by Agricultural Operations have a very narrow window of opportunity between crops, during appropriate seasons, and while avoiding wet conditions and other weather impacts. It was understood that there wasn't an intention by Council to interfere with Normal Farm Practices, impose time delays, or oversight for small-scale normal farm practices undertaken by agricultural operations. Therefore Staff believe this is a reasonable compromise.

Option 1 – Staff is recommending that Council receive the report as written and repeal By-Law 2018-214 Regulating the Removal of Soil, Placement of Fill, and the Alteration of Grades and replace with the by-law as attached in **Appendix “C”**. The new Site Alteration By-Law considers the ADAC recommendations and the overall impact of fill operations in the City. Staff has completed consultations with the ADAC and has incorporated their feedback into many of the by-law changes being proposed.

Other Alternatives Considered:

Council can choose to receive the report as written and allow the by-law to remain unaltered. Staff is not recommending this option being that the consultation with Agricultural Development Advisory Committee highlighted a number of wording items that required attention and served to clarify our processes internally. This review has resulted in minor wording changes generally to the Site Alteration By-law.

Financial/Operation Impacts:

This Site Alteration By-Law impacts the operations across a number of City Departments.

For example: Municipal Law Enforcement will handle the enforcement processes, which will involve extensive property inspection, communications to the property owner and coordination internally with other City services including Planning, Engineering, Agriculture Economic Development, Public Works, Realty Services and Prosecution for legal services.

Staff will charge a fee for the approval of the permit, where applicable and these fees are anticipated to cover costs associated with staff time. Securities will also be taken through a Development Agreement for large fill operations that will deal with general performance standards associated with these operations and to ensure that filling is conducted in accordance with the approved plans. Any additional costs such as any enforcement activity that may be associated with

violation will be recovered from the property owner in accordance with the fees by-law in a like manner as municipal taxes

Relationship of Recommendations To The 2016-2019 Strategic Plan:

The City's Strategy Map outlines Council's Vision of a Community Pursuing Prosperity, Quality of Life and a Healthy Environment. This report and by-law recommendations align with the Strategic Priorities:

- Goal 3 – A Healthy Environment

Consultations:

Agricultural Development Advisory Committee – Committee
Director, Engineering
Director, Public Works
Director, Development Services
Manager of Planning
Agriculture Development Officer

Attachments:

Appendix "A" - By-Law 2018-214 Regulating the Removal of Soil, Placement of Fill, and the Alteration of Grades



2018-214 Repeal
and Replace 2012-20

Appendix "B" – Memo from Agricultural Development Advisory Committee Chair



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Appendix "C" - Draft By-Law 2019-0xx Regulating the Removal of Soil, Topsoil, Placement of Fill, and the Alteration of Grades (short title Site Alteration By-law)



2018-214 Regulating
the Removal of Topsoil

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