



Council Report

Report Number: LGL2024-008
Meeting Date: September 24, 2024
Title: Proposed Amendments to Site Alteration By-law 2019-105
Description: Requesting instruction
Author and Title: Robyn Carlson, City Solicitor

Recommendations:

That Report LGL2024-008, Proposed Amendments to Site Alteration By-law 2019-105, be received; and

That a by-law be advanced to Council to enact the amendments to By-law 2019-105 as set out in Attachment A.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

In 2019, Council passed a by-law to regulate the removal of topsoil, placement of fill, and the alteration of grades on properties within the City of Kawartha Lakes in situations wherein a property owner was not also seeking a building permit or pursuing a development application under the Planning Act (more specifically, a site plan application or an application to subdivide land), as those processes regulate the removal of topsoil, placement of fill, and the alteration of grades. In other words, Council recognized that the removal of topsoil, placement of fill, and the alteration of grades could exist outside of these contexts, and sought to regulate the removal of topsoil, placement of fill, and the alteration of grades in all possible scenarios.

The By-law does not apply to development applications such as site plan, subdivision and consent to sever; aggregates; contractor's yards; construction authorized by building permit; non-residential site alteration involving fill up to 200 m³¹; etc, as more specifically set out in Schedule A to the By-law, which is found at Attachment A to this Report.

The purpose of the By-law is set out in section 5 of the Recitals to the By-law, and is to ensure the following:

- 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 to the environment, and that degradation of the pre-existing soil and ground water quality at the site and on abutting and adjacent properties is prevented; and
- f. Haul Routes for the transportation of fill will be designated to minimize damage to the City's roads and minimize disturbance to the City's residents and businesses.

¹For context, this would be approximately 15 to 20 dump trucks.

Changes to legislation and Council Policy since the inception of the by-law has necessitated updates to the By-law to ensure the By-law remains in conformity with its stated objectives. More specifically, since the enactment of the By-law, the Province of Ontario passed Ontario Regulation 406/19 to the *Environmental Protection Act*, R.S.O. 1990, c. E.19, known as the “Excess Soil Regulations”, and the City passed Council Policy CP2022-007 – First Nations Consultation Policy.

The purpose of this Report is to seek amendment to By-law 2019-105 to bring it into alignment with this law and policy.

As the By-law has been in effect for five years, Staff implementing the By-law recommend several potential improvements to it, which would allow for greater ease of enforcement while maintaining the intent of the By-law. The proposed amendments are set out below.

Rationale:

Excess Soil Guidellines

The Province of Ontario passed the Excess Soil Guidelines to better manage the movement of soil between properties throughout Ontario. Previous to the enactment of this regulation, the Environmental Protection Act prevented the discharge of contaminants into the environment. While this is still the case, it now also requires soil to be tracked when it leaves a site so that its former use is known when entering another site. This is helpful, to ensure that soil from a contaminated site does not end up at a sensitive site, where it would be considered a contaminant.

One of the purposes of the By-law is to ensure that there is no discharge of a contaminant into the natural environment and that degradation of the pre-existing soil and ground water quality at the site and on abutting and adjacent properties is prevented.² Complimentary wording is proposed to build on this purpose, in the way that the Excess Soil Guidelines have built on compliance with the purpose of preventing the discharge of contaminants into the environment: that “[e]xcess soil is appropriately reused, in accordance with [the Excess Soil Guidelines]”.

A new section 2.12 is proposed: “No Person or Owner shall remove Soil, or Place or Dump Fill in contravention of the rules pertaining to the reuse of excess soil set out in [the Excess Fill Guidelines].”

² recitals, paragraph 5(e).

This section is in addition to section 2.6, which set out the requirements of the Environmental Protection Act as it existed prior to the Excess Soil Guidelines, and which continue to be in force and effect.

This compliance scheme also requires an amendment to sections 4.5 (p) & (q), 5.5 and a new section xxiii to Schedule B. See track changed amendments at Attachment A.

Council Policy CP2022-007 – First Nations Consultation Policy

On page 7 of this policy, passed by Council in 2022, is the following commitment:

“Movement of Fill (Site Alteration) in Proximity to Water Bodies or in areas with Archaeological Potential (Indigenous Interest Identified).

If site alteration is proposed in an area which may contain archaeological resources or have archaeological potential (i.e. within 300 metres of a water body or another area with potential to have archaeological resources, or has a known archaeological site as identified by the City’s Heritage Officer), the City/ developer, as the case may be, is required to conduct an Archaeological Assessment. This requirement, in the case of terrestrial works, is per the City’s Fill By-law 2019-105. In the case of in-water works and shorelines adjacent to the Trent-Severn Waterway, this may be a requirement of obtaining a permit from Parks Canada.

The assessment must be completed by a qualified Archaeologist in accordance with the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) standards. For more information, see ‘Criteria for Evaluating Archaeological Potential’ –Form 0478E, located on the MHTSCI website.

If the Archaeologist finds an artefact or remains of Indigenous origins, the Archaeologist shall contact all Potentially-Impacted First Nations to provide an opportunity for input, as they have identified they require consultation prior to submission of any archaeological report to the MHSTCI, and they also wish to be engaged at Stage 1-2 for participation in on-the-ground fieldwork and to offer any Indigenous Knowledge that may be pertinent for the Stage 1 report. Reference should be made to the Curve Lake First Nation Archaeological Protocol.”

The following new requirement is proposed to be added to the By-law, so that it complies with CP2022-007:

“Protection of Archaeological Resources:

2.18. No Person or Owner shall remove or disturb Soil in an area that may contain archaeological resources or have archaeological potential, as identified in accordance

with provincial criteria and/or the City’s archaeological potential modelling, without first having an archaeological assessment conducted by a qualified archaeologist in accordance with provincial standards, and submitted to the City to its satisfaction.”

This requirement in turn requires amendment to section 4.5 (new section “o”; see Attachment A).

Post-offence Compliance with the By-law

Persons who have imported fill, removed fill or altered the grade of their property in contravention of the By-law can come into compliance with the By-law by returning their property to its original condition. Alternatively, and if supported by the report of a Qualified Person issued after soil sampling has occurred, the property owner can come into compliance with the By-law by complying with the terms of an Order pursuant to section 7.2.

Accordingly, amendments to sections 6.6 - 6.8, 7.2(v) and (viii) of the By-law are proposed. See Attachment A. Section 7.2(vii) provides for enhanced fees, to deter people from deciding to proceed via this route.

Amendment to the Definitions

The definition of “fill” is needlessly complex and results in difficulty in enforcement of offences relating to “fill” under the By-law. Accordingly, this definition is proposed to be simplified (see section 1.1.21 at Attachment A).

Service of an Order

Service of an Order can now be made by email.

Time for Compliance with an Order

The maximum length of time for compliance of an Order – 60 days – has been removed in light of the constraints of the seasons on the ability to comply with an Order.

Other Alternatives Considered:

None.

Alignment to Strategic Priorities

This report demonstrates progress towards achievement of the City’s strategic priority of A Vibrant and Growing Economy. Page 10 of the Strategic Plan indicates that a vibrant and growing economy in Kawartha Lakes will be achieved through the goal of

encouraging sustainable growth and development, which in turn requires the City's Secondary Plans to come into force and effect.

Financial/Operation Impacts:

Should the proposed amendments be approved by Council, compliance with the by-law itself will become more expensive and time consuming for those within areas of known or potential archaeological importance, and will require additional staff time to administer, accordingly. It is recommended that Staff return to Council with an impact report on the one-year anniversary of the amendments.

Attachments:

Attachment A – Proposed Amendments to By-law 2019-105, shown in track change format



LGL2024-008 -
Attachment A - By-la

Attachment B – Council Policy CP2022-007 – First Nations Consultation



LGL2024-008
Attachment B - CP20

Consultations:

Director of Engineering and Corporate Assets
Manager of Municipal Law Enforcement
Economic Development Officer – Heritage Planning
Economic Development Officer - Agriculture
Manager, Development Engineering
Supervisor, Development Engineering
Director of Development Services
Policy Supervisor
Manager of Planning

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