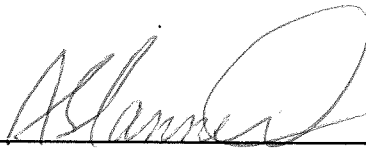

Meeting: GENERAL PURPOSE AND ADMINISTRATION COMMITTEE
Date: March 19, 2012 **Resolution#:** **By-law#:**
Report#: EGD-010-12 **File#:**
Subject: PROPOSED AMENDMENTS TO THE SITE ALTERATION BY-LAW

RECOMMENDATIONS:


It is respectfully recommended that the General Purpose and Administration Committee recommend to Council the following:

1. THAT Report EGD-010-12 be received;
2. THAT Council approve the proposed amendments to the Site Alteration By-Law No. 2008-114 and the Noise By-Law No. 2007-071 by adopting the amending by-law attached to this report (Attachment 1); and
3. THAT a copy of this report and Council's decision be forwarded to the interested parties listed in Report EGD-010-12.

Submitted by:


A.S. Cannella, C.E.T.
Director of Engineering
Services

Reviewed by:


Franklin Wu,
Chief Administrative Officer

ASC/jo

1. BACKGROUND

1.1 In June 2008, the Municipality of Clarington enacted the Site Alteration By-law No. 2008-114 and endorsed the Policies and Procedures.

1.2 The need for a Municipal "Site Alteration By-Law" had been identified for a number of reasons:

- Oak Ridges Moraine Conservation Plan and Act which obligate municipalities to enact site alteration by-laws
- Concern regarding the impact of concentrated heavy truck traffic on municipal roads (particularly on low class bituminous and gravel roads)
- Concern for the volume of fill placed on a property in a relatively short timeframe
- Concern for the placing of fill in nature heritage features including wetlands and woodlots
- Concern for noise, mud, dust, erosion, and sediment control
- Concern for the alteration of existing drainage patterns which may adversely affect adjacent properties or may affect the watershed overall.

1.3 Staff met with a representative of the Durham Region Heavy Contractors Association and the Ontario Sewer and Watermain Contractors Association earlier this fall to review the existing by-law. That representative had a few comments which were incorporated in the amending by-law where possible.

1.4 It was always staff's intention, in time, to revisit the By-law and its effectiveness as the Municipality became more experienced in implementing the By-law. At this time, staff recommend certain amendments as first identified in Report LGL-006-11. Specifically, the By-law was reviewed with respect to:

- Requirement for a public meeting
- Fees
- Standards and protocols to regulate fill quality
- Permit duration
- Source restrictions
- Large fill operations
- Regulating hours of operation

2. DISCUSSION OF ISSUES

2.1 Public Meetings

Since the Site Alteration By-law was enacted, some fill activities have resulted in considerable attention and concern from the public. Enquiries mostly pertain to dust, noise, haul routes, hours of operation, and quantity and quality of the fill.

Some members of the public have stated that they feel a public meeting should be held prior to the approval of a permit and particularly in fill operations which involve a high volume of fill. Staff do not see the need to hold a public meeting in all cases. Public meetings require a great deal of municipal resources: both staff and financial, and many fill operations are small in nature with no adverse impacts to the property, adjacent properties or the surrounding environment.

In some very unusual circumstances (e.g. very large fill operations, residential surroundings), it may be appropriate to notify all property owners in the vicinity of the receiving site and invite their input as well as to outline the conditions under which the permit may be issued.

Wording to this effect has been included in the proposed amending by-law to allow the Director of Engineering Services to call a Public Meeting prior to the issuance of a permit which entails unusual or sensitive circumstances.

2.2 Fees

Currently the fees that are collected by the Municipality to process the application are:

- \$100 application fee
- Less than 250m³ - \$250 (including application fee)
- Greater than 250m³ - \$500 (including application fee) plus \$25 per 1000m³

Particularly in cases of large fill operations, considerable staff time is spent processing the application, monitoring the operation, responding to neighbour complaints/enquiries, and following up with the applicant. Table 1 shows fees charged by other municipalities as well as CLOCA and GRCA.

Table 1
Site Alteration Permit Fees (current)

Municipality/Authority	Flat Rate Fee	Additional Fee
Scugog	\$100 < 500m ³ \$1000 > 500m ³	\$0.25/m ³ \$0.60/m ³
Oshawa	\$150 – 500 depending on number of lots	\$25/ha in some cases
Whitby	\$500 < 1.0ha \$750 > 1.0ha	n/a n/a
Pickering	\$500	\$1000/ha to a max. \$4000
CLOCA	\$500	\$0.50/m ³
GRCA	\$500	\$1.00/m ³

As indicated in Table 1, most municipalities/authorities charge a flat rate plus a charge per cubic metre of fill or per hectare of the site. Staff recommend a flat rate plus a charge per cubic metre since this would be more representative of the size of the fill operation. The following permit fee is recommended:

Minor fill operation 1-100m ³	\$250
Small fill operation 100-500m ³	\$500
Large fill operation >500m ³	\$500 plus \$0.60/m ³

This fee structure would not be too onerous on the individual who is altering his grade with a minor amount of fill while providing for higher fees for more significant operations.

2.3 Standards and Protocols to Regulate Fill Quality

Staff have reviewed several policies and standards and protocols which recommend what would be considered acceptable fill in terms of quality.

Geotechnical engineers contracted to undertake chemical analyses of soil refer to the Ministry of Environment's Environment Protection Act – Table of Site Conditions Standards: Table 1 and Table 2. Table 1 represents a soil quality standard where the current background soils conditions of the site reflect a site never having received “point source contamination.”

Table 2 represents the contaminate levels acceptable for areas with potable groundwater and is considered an acceptable quality of fill for agricultural and other land uses. Recent Director's Orders from the Ministry of the Environment call for the quality of soil on a receiving site to meet Table 2 standards.

Staff have amended the definition of Contaminated Fill to be consistent with the approach that has been taken by Scugog Township in their fill by-law and by CLOCA in their “Large Fill Policy”. Essentially, the approach is to ensure that no fill can be deposited on any site if the result would be to reduce the ambient soil quality or detrimentally impact ground water.

2.4 Permit Duration

Currently, a Clarington Site Alteration permit expires 90 days after its issuance. Most municipalities/authorities allow one year for the fill operation to take place (Scugog permits expire after six months). Some contractors have complained about Clarington's short term; however, a ninety day term provides the Municipality much more control in terms of managing all aspects of the fill operation and

ensuring that all terms and conditions of the permit have been complied with. Maintaining a ninety day permit also gives the Municipality a better opportunity to confirm that the fill is coming from the source listed on the application. Longer permits may result in one source of fill being depleted and another subsequent source being utilized unbeknownst to the Municipality. Notwithstanding that a permit can be revoked, continuance of the ninety day permit provides the Municipality an unconstrained ability to cease the operation (upon expiry of the permit) if the Municipality sees fit for any reason.

2.5 Source Restrictions

Under the amended by-law the source of fill that Clarington is willing to accept will be restricted to only that which comes from within the boundaries of Clarington. We make this change because it is nearly impossible to know with any degree of certainty what the source and quality of material is that comes from outside of Clarington. The only exception we are willing to make is for fill that has been taken from within a municipal road allowance as part of a construction or reconstruction project undertaken by or on behalf of another municipality.

2.6 Large Fill Operation

As Council is aware, there is a greater risk of adverse effects arising from a large fill operation than from a minor or small fill operation. Increased noise, dust, erosion, mud, road damage, altered drainage patterns, and pollution are all at a higher probability of occurring as a result of a large fill operation.

CLOCA and Scugog define a large fill operation as one which involves greater than 500m³ of fill. In these cases, the municipality will be extremely vigilant in requiring all reports, plans studies, surveys and documentation necessary to make an informed decision with respect to the economic, social and environmental impacts of the operations.

It is staff's view that there is no need to define a "commercial fill operation" as opposed to any other fill operation for the following reasons:

- Whether fill is received as a "commercial enterprise" has no bearing on potential impacts.
- The main concerns that the public has with respect to potential impacts are the same as those for a large fill operation.
- A receiving site owner may argue that his fill operation is not "commercial" while importing huge quantities of fill since any agreement between the owner and the source site may remain private.

For these reasons, staff recommend that the definition of a "large fill operation" be defined as one which involves the importation or exportation of greater than 500m³. The Director of Engineering Services will continue (under the amending by-law) to be able to require **any** information that he sees fit in order to process or renew "large fill operation" applications.

2.7 Hours of Operation

The Municipality's current Noise By-law No. 2007-071 as amended imposes a "noise curfew" to "any construction work whatsoever" between 11 p.m. and 7 a.m., Monday through Saturday and from 11 p.m. Saturday night until 10 a.m. Sunday and from 5 p.m. Sunday until 7 a.m. Monday. Further, no "mechanically powered excavation or earth moving equipment" is permitted to operate at any time on Sundays or statutory holidays. Notwithstanding that no fill operation can occur on Sunday, the hours of operation from Monday through Saturday are perceived by some to be too long in the context of placing and grading fill. Staff recommend that the curfew be imposed between 7 p.m. and 7 a.m. Monday through Saturday and from 5 p.m. Saturday to 7 a.m. on Monday.

2.8 Additional Recommended Amendments

In addition to reviewing the matters outlined in the Report LGL-06-11, staff have met to discuss any additional changes which are deemed appropriate at this time:

- Previously, a site alteration involving a maximum of 30 m³ on properties less than 0.1 ha. or a maximum of 60 m³ on properties greater than 0.1 ha. was exempt from the site alteration by-law (although concerns arising from the placement of that amount of fill would continue to fall under the provisions of the Property Standards By-law). Staff recommend that the maximum amount which would be exempt from a permit be amended to 10m³ and 20m³ respectively.
- The exemption to place topsoil on a property which is deemed a bona fide normal agricultural practice has been amended to require a permit to place 100m³ or greater of topsoil due in part to the inability of the Municipality to collect road damage deposits during significant fill activity in the absence of a permit.
- Other minor text improvements as recommended by the Municipal Solicitor.

3. CONCLUSIONS

Staff have the following comments regarding the Site Alteration By-Law No. 2008-114 which have been incorporated in the draft amending by-law (Attachment 1):

- i. The draft amending by-law allows for a public meeting to be held at the discretion of the Director of Engineering Services to receive public input and provide information to the public prior to the issuance of a site alteration permit which involves a large fill operation or where other sensitive issues may exist.
- ii. Permit fees have been revised to better provide for staff time to review, monitor and follow up on large fill operations. Proposed fees are:

Minor fill operation 1-100m ³	\$250
Small fill operation 100-500m ³	\$500
Large fill operation > 500m ³	\$500 plus \$0.60/m ³

- iii. The by-law has been revised to reference the Environmental Protection Act – Table of Site Condition Standards – Table 2 as the acceptable standard for fill quality in situations where the ambient soil quality will not be reduced and groundwater will not be detrimentally impacted.
- iv. The term of the site alteration permit is proposed to remain at 90 days (potentially renewable) which will provide greater municipal control of the fill operation.
- v. The draft amending by-law now restricts source sites to those located in Clarington only. Fill material will also be accepted from municipal construction or reconstruction projects undertaken by or on behalf of a municipality.
- vi. Large fill operations are defined as those involving greater than 500m³. In these cases, the fee structure better reflects the amount of staff time involved in processing and administering the application for these larger operations. Further, the by-law is clear that reports, studies, plans, and securities will be required by the Director of Engineering Services in order to process and administer the permit.
- vii. The hours of operation for a site alteration have been reduced in the draft amending by-law from those hours of work permitted in the Noise By-law.

4. CONCURRENCE

This report has been reviewed by the Municipal Solicitor, the Director of Planning, the Director of Operations and by the Manager of Municipal Law Enforcement who concur with the recommendations.

5. RECOMMENDATION

In light of the three years of experience that the Municipality has in processing and administering site alteration permits, staff recommend certain revisions to the existing Site Alteration By-law and certain clauses to remain unchanged as outlined in this report. Staff recommend that the General Purpose and Administration Committee recommend that Council approve the proposed amendments to the Site Alteration By-Law No. 2008-114 and Noise By-Law No. 2007-071 by adopting the amending by-law attached to this report (Attachment 1).

CONFORMITY WITH STRATEGIC PLAN

The recommendations contained in this report conform to the general intent of the following priorities of the Strategic Plan:

- Promoting economic development
- Maintaining financial stability
- Connecting Clarington
- Promoting green initiatives
- Investing in infrastructure
- Showcasing our community
- Not in conformity with Strategic Plan

Staff Contact: Leslie J. Benson, Manager, Transportation and Design

Attachments:

Attachment 1 - Proposed amended Site Alteration By-law

List of interested parties to be advised of Council's decision:

Carmela Marshall
Chris Ostler
Karen Moloney
Sherry Ibbotson
Donna Middleton
Ted Meszaros

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

BY-LAW 2012 - _____

Being a by-law to amend Site Alteration By-law 2008-114
and Noise By-law 2007-071

WHEREAS on June 23, 2008, the Municipality enacted Site Alteration By-law No. 2008-114; and

WHEREAS Council deems it advisable to amend the Site Alteration By-law No. 2008-114 and make a corollary amendment to the Noise By-law 2007-071.

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the Municipality of Clarington enacts as follows:

1. Site Alteration By-law 2008-114 is amended by adding the following sections:
 - 1.9.1 "Large Fill Operation" means an operation that involves the Placing or Dumping more than 500m³ of Fill.
 - 1.10.1 "Minor Fill Operation" means an operation that involves the Placing or Dumping less than 100m³ of Fill.
 - 1.19.1 "Small Fill Operation" means an operation that involves the Placing or Dumping of between 100 and 500m³ of Fill.
 - 1.21.1 "Table 1 Standards" means the standards set out in Table 1 of the "Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*" published by the Ministry of the Environment dated April 15, 2011, as amended from time to time.
 - 1.21.2 "Table 2 Standards" means the standards set out in Table 2 of the "Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*" published by the Ministry of the Environment dated April 15, 2011, as amended from time to time.
- 2.5 No Person shall Place or Dump Fill or Topsoil or cause or permit Fill or Topsoil to be Placed or Dumped anywhere in the Municipality unless (a) the source of the Fill or Topsoil is a Lot within the Municipality or (b) the Fill has been taken from within a municipal road allowance or municipal easement as part of a municipal construction or reconstruction project undertaken by or on behalf of a municipality.
- 5.7 Prior to issuing any Permit, the Director may require an Applicant seeking a Permit to hold an information meeting at the Applicant's expense. The time, location and manner of providing notice of such meeting shall be determined by the Director.
- 6.5 The Director may require a lot grading certificate upon completion of the work described in any Permit and may require the Owner or Applicant to post security to ensure delivery of such certificate.
- 9.2 If an Owner fails to carry out any work required by an order issued under section 9.1, the work may be done by the Municipality at the Owner's expense and the cost of such work shall be added to the tax roll and collected in the same manner as property taxes.

9.3 If requested by the Director or a Municipal By-law Enforcement Officer, an Owner shall be required to produce documentation in a form acceptable to the Director showing the amount of Fill being deposited and the source of the Fill pursuant to a Permit.

2. Sections 1.3, 5.2(b), 5.2(f) and 5.2(h) of Site Alteration By-law 2008-114 are deleted and the following substituted therefor:

1.3 "Contaminated Fill" means,

- (a) any Soil that does not meet the Table 1 Standards, unless the Applicant has demonstrated to the satisfaction of the Director that the existing ambient soil quality of the receiving site does not meet Table 1 Standards or that the Placing or Dumping of Soil that meets Table 2 Standards would not have a detrimental effect on ground water;
- (b) any Fill that contains putresible material; and
- (c) bio-solids created by the paper manufacturing process, either in the form of pure paper fibre bio-solids or as mixed with other material to form products known as "nitro-sorb", "sound-sorb", or other products with similar composition.

5.2(b) Permit fees shall be as follows:

Minor Fill Operation	\$250
Small Fill Operation	\$500
Large Fill Operation	\$500 plus \$0.60/m ³ of Fill

5.2(f) a certificate of the Owner, Applicant and each qualified expert referenced in section 5.2(e) certifying that the Fill contains no Contaminated Fill;

5.2(f.1) such other studies and reports as are necessary to properly assess the application, including studies and reports required under the Clarington Official Plan and the Oak Ridges Moraine Conservation Plan, and fees to cover the peer review of such studies and reports if deemed necessary by the Director;

5.2(h) security in a form and in an amount satisfactory to both the Director and the Director of Finance to secure the proper Dumping or Placing of Fill as described in the Permit and all work required as a condition of Permit issuance including erosion and sediment control, signage, mud cleanup, dust control and road damage.

3. Section 3.2 and clauses 3.2 (d) and (e) of Site Alteration By-law 2008-114 are amended by deleting the word "Fill" and substituting therefor the word "Topsoil".

4. Clause 3.2 (d) of Site Alteration By-law 2008-114 is amended by deleting "30 cubic metres" and substituting therefor "10 cubic metres".

5. Clause 3.2 (e) of Site Alteration By-law 2008-114 is amended by deleting the "60 cubic metres" and substituting therefor "20 cubic metres".

6. Section 3.3 of Site Alteration By-law 2008-114 is amended by adding the following words "up to a maximum of 100 cubic metres" after the word "Practice".

7. Section 5.5 of Site Alteration By-law 2008-114 is amended by adding the following words: "or any emergency work (as determined by the Director) that the Municipality is required to undertake on the Owner's behalf".

8. Section 6.2 of Site Alteration By-law 2008-114 is amended by deleting the words "contaminants as defined in the *Environmental Protection Act*" and substituting therefor the words "Contaminated Fill".
9. Noise By-law 2007-071 is amended by adding the following section:
 - 3.3.1 Notwithstanding anything contained in this By-law, a noise curfew shall apply (a) from 7:00 p.m. to 7:00 a.m., Monday to Saturday; (b) from 5:00 p.m. Saturday to 7:00 a.m. Monday; and (c) all day on statutory holidays, to any noise in relation to work undertaken pursuant to a permit issued under Site Alteration By-law 2008-114.
10. Sections 1 and 2 of this by-law shall not apply to (a) any application for a permit made under section 5 of Site Alteration By-law 2008-114 on or before the date of passage of this by-law; or (b) any application to renew a permit under section 7.2 of Site Alteration By-law 2008-114 made on or before the date of passage of this by-law.
11. This by-law shall be effective on the date that it is passed.

By-law passed this ____ day of March, 2012.

Adrian Foster, Mayor

Patti L. Barrie, Municipal Clerk