



# The Corporation of the Town of Milton

---

Report To: Council

---

From: Jill Hogan, Commissioner, Development Services

---

Date: September 12, 2022

---

Report No: DS-107-22

---

Subject: Update to Site Alteration By-law 033-2004

**Recommendation:** THAT Report DS-107-22 outlining the required update to By-law 033-2004 be received for information;

AND THAT Site Alteration By-law 033-2004, be repealed and replaced with the new Site Alteration By-law attached in Appendix I to report DS-107-22;

AND FURTHER THAT the appropriate By-laws be presented to and approved by Council.

## EXECUTIVE SUMMARY

The purpose of this report is to present an updated Site Alteration By-law to Council for approval. The current By-law (033-2004) has not been updated since 2004, and this update is required to:

- ensure current provincial legislation is addressed;
- ensure enforcement of the By-law is feasible;
- introduce new exemptions; and,
- address challenges in both rural and urban Milton with respect to By-law violations.

## REPORT

### Background

The Town of Milton Site Alteration By-law was last amended in 2004. This update is required to ensure the Town's By-law reflects new and updated provincial legislation, including to both the Municipal Act and On-Site and Excess Soil Management O. Reg.

## Background

406/19; to address the major enforcement challenges facing the Town and similar municipalities today, to create new exceptions for routine minor site alterations that do not exist in the current By-law, and to address the needs of development. This update will also help to improve efficiencies in permit related processes and clearly identify when permits are required. Finally, the updated By-law will also ensure the Town has the ability to recover costs associated with any peer review or remediation works the Town has to complete in order to ensure compliance with the By-law and/or restoration of a site that has been illegally altered. To inform the proposed amendments, Town staff and legal counsel completed a comprehensive review of several Site Alteration By-laws in other municipalities, engaged a Professional Agrologist to assist with engaging the agricultural community, and have reached out to stakeholders in the development community, local conservation authorities, and the Region of Halton for input. If passed, the amendments to the By-law will come into effect January 1, 2023.

## Discussion

### Challenges with Current By-law and Overview of New By-law

The Town's Site Alteration By-law has not been updated since 2004. An update is well overdue to provide the Town the tools it needs to address the challenges faced by today's municipalities as well as to provide a more flexible approach than the existing By-law.

One major challenge is illegal dumping. Due to the unprecedented level of construction in the GTA, nearby municipalities with significant rural areas are facing a rise in illegal dumping of fill. This can take different forms. Some landowners have used their properties as unlicensed black market dump sites for which they have charged tipping fees (a load-based disposal fee) to contractors. In other circumstances, contractors have offered "free topsoil" to unsuspecting farmers from source sites that may have been contaminated or had lower soil quality than the receiving site.

Town enforcement staff have direct experience with this issue, and have also had discussions with other municipalities facing the same challenge. Illegal dumping has also been well covered in the media, with some examples of this attached in Appendix II, for Council's benefit. The Province has adopted a new regulation under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, O. Reg 406/19 On-Site Excess Soil Management in part to deal with this issue, which compliments municipal authority to regulate site alteration; however, municipalities remain the front line in protecting the public from illegal dumping.

Beyond illegal dumping and contaminated fill, there are other enforcement challenges. Major, unpermitted site alterations are often the first sign of a new illegal land use, such as the establishment of illegal truck depots - another growing problem GTA municipalities with large rural areas face. There are also challenges associated with changes to drainage

## Discussion

patterns, or the filling in of drainage features such as swales or catch basins that can cause issues for neighbouring properties, watercourses and municipal infrastructure.

The new By-law provides a more modern suite of enforcement tools, harmonises with the new O.Reg 406/19 requirements and provides a number of new exceptions to allow residents and the agricultural community to undertake routine work such as landscaping, gardening, repaving of driveways, etc. and the bringing in of small loads of soil for agricultural purposes, without the need for a permit, as long as there are no significant grade changes and existing drainage features are respected. It should be noted that the current By-law has no exceptions for these activities, meaning that if applied to the letter, permits would be required.

In addition, the current By-law does not allow for the Town to recover the costs of any peer review services that may be required in reviewing a permit application or resolving enforcement matters (i.e. Environmental specialists, Geotechnical consultants, Agrologist, Legal surveyor, etc.) and does not provide sufficient flexibility in dealing with site alterations proposed by developers in advance of development approval.

Finally, the new By-law includes delegated authority to the Directors of Development Engineering and Infrastructure to amend and update the schedules of the By-law, which set out technical details such as the information required in control plans, to establish application forms and requirements, to issue permits and set permit conditions, determine securities, as well as to issue orders (a power shared by other staff, including Municipal Law Enforcement Officers). There is also a process whereby an applicant can request a decision of the Director to be reviewed by the Commissioner of Development Services.

Many of these powers were already present in the existing By-law and they are generally consistent with similar By-laws elsewhere as well as other municipal By-laws. To the extent that any of them are of a legislative or quasi-judicial in nature, they are of a minor nature having regard to the powers in question, their largely administrative nature, the number of people, the size of geographic area and the time period affected by an exercise of the power, and the examples set out in s.23.2(5) of the *Municipal Act*, S.O., c.25.

Staff are also working through standard permitting and enforcement practices to ensure consistent service delivery.

## Document Review

In order to inform the proposed updates to the By-law, Town staff and our legal counsel have reviewed several Site Alteration By-laws of various other local municipalities, including the following:

## Discussion

- The City of Burlington (2014)
- The Town of New Tecumseth (2020)
- The City of Hamilton (2019)
- The Township of King (2021)

These By-laws were selected for review mainly based on their last date of update vs. the Town of Milton's By-law (to see how recent provincial legislation updates have been reflected in those By-laws), the similar nature of their geographical layout to that of Milton's (i.e. comprise both rural and urban areas), and in the case of the City of Burlington, that this is also a local municipality within Halton Region.

While certain updates have been incorporated from each of the By-laws noted above, the updated Town of Milton By-law has been mostly based on the City of Burlington's current Site Alteration By-law.

## Stakeholder Engagement

Historically, violations to the Site Alteration By-law have regularly occurred within Milton's rural area - including the operation of illegal landfills or illegal filling of properties or the introduction of material (dirt, construction debris, etc.) onto a property without a permit in place. In some instances, staff have been told "this is part of a normal farming practice". In updating this By-law, Town staff wanted to ensure that legitimate farm and agricultural practices are allowed (as outlined in the proposed By-law update, with some criteria that need to be met) and that legitimate farmers are not being hindered by the Site Alteration By-law. We also want to ensure that false claims of "normal agricultural or farming practice" can be identified by staff.

In order to inform the updates to the By-law, staff engaged a Professional Agrologist (a specialist in the field of agrology; essentially an agricultural soil expert), Dave Hodgson, P.Ag. of DBH Soils Services Inc., to help prepare a survey for the agricultural community in Halton, to gain some understanding and clarity around what might constitute "normal farm/agricultural practices" in Milton. This survey was distributed digitally to the following organizations, for distribution to their members:

- Halton Agricultural Advisory Committee
- Halton Region Federation of Agriculture
- Ontario Soil and Crop Improvement Association
- Halton Agricultural Society
- Ontario Ministry of Agricultural, Food and Rural Affairs

A total of 25 responses were provided to the Town. A copy of the survey as well as a summary report are included as part of Appendix III to this report. Using the survey results,

## Discussion

as well as drawing on his own knowledge, expert literature, and a review of several existing Site Alteration By-laws in Ontario, Mr. Hodgson has prepared a report with recommendations as to regulatory requirements (included as Appendix III), that has been used to help inform related updates to the By-law. At the core of his recommendations, is that a Site Alteration By-law should include requirements designed to prevent soil contamination, reduction in soil quality, silt, erosion and drainage issues or adverse effects to the environment.

In addition to the rural agricultural community, emails were also sent to the Conservation Authorities (Conservation Halton and Grand River Conservation Authority), the Region of Halton, and the development community in Milton. The intent of the emails was to provide information to these groups, identifying that the Town was undertaking a review and update of our Site Alteration By-law, and to solicit any hi-level feedback from these groups on our current By-law and their experience with same.

The critical piece of feedback from the Conservation Authorities was a request to have the Town update our By-law to ensure the Site Alteration By-law is also applicable to areas that are regulated by the Conservation Authorities (a change that is in line with updates to the Municipal Act, since the 2004 version of the Town's Site Alteration By-law). This request has been reflected in the proposed update to the Town's By-law.

With respect to the development community, Development Engineering staff held a meeting with several developers who had provided some written feedback. Overall, the development community is satisfied with the site alteration process and permitting requirements under the current By-law; the following summarizes the requested changes from the development community:

- Incorporate flexibility to allow an increase in permit validity period from 12 months to 18 months to facilitate construction time on large-scale earthmoving operations.
- Incorporate flexibility in the permitting process to allow for importing of soil from multiple fill sources.
- Clearer definition of normal farming practices.
- Allow flexibility with regards to sites undergoing environmental remediation.

These requests have been considered by staff, and where feasible, associated changes have been made to the By-law.

Although they were contacted, no response was received from the Region of Halton.

## Discussion

### Required Updates to the By-law

As previously noted, the intent of the update to the Site Alteration By-law is to ensure consistency with provincial regulations, to address the major enforcement challenges faced by the Town and similarly situated municipalities, to provide new exemptions for minor, routine site alterations, to ensure cost recovery from applicants when external peer review is required is feasible, and to provide greater flexibility to address the needs of the development community.

A copy of the complete proposed By-law update can be found in Appendix I.

### Communication and Public Education Strategy

In addition to the stakeholder engagement outlined above, Town staff are also keenly aware that public education regarding the Site Alteration By-law is imperative to mitigating violations and ensuring the public is aware that permits may be required for the work they are contemplating on their property. In order to ensure the public is aware that not only does a Site Alteration By-law exist, but that they may require approval from the Town prior to completing work on their property, Development Services staff have engaged the help of Strategic Communications to prepare a communications and public education strategy.

The following outlines the hi-lights of the communication and public education strategy for the Site Alteration By-law Update, as well as a planned, ongoing public awareness campaign that focuses on:

- Advising residents of the update, and highlighting changes to the By-law and what that may mean for residents.
- Clear communication around when a Site Alteration Permit is required (for both urban and rural properties) - with real-world examples included (i.e. I want to build a garden in my back yard - do I require a Site Alteration Permit?) and information specific to the new urban areas in Milton regarding the importance of maintaining backyard drainage patterns and how to ensure work won't impact neighbouring properties.
- Reminding residents that certain work requires a permit, where additional information can be found, and the importance of abiding by the Site Alteration By-law.
- Communication outreach to industry stakeholders (construction industry, engineering consulting firms, development community) to provide a copy of the updated By-law and overview of responsibilities of haulers that may be engaged by these stakeholders in carrying out site alteration activities.

## Discussion

### Fees and Cost of Service

Fees associated with Site Alteration Permits are charged in accordance with the Town's User Fee By-law. During regular comprehensive reviews of the Town's user fees, with the most recent undertaken in 2022 and also included on tonight's agenda, the cost of providing the service is evaluated and fees are set with the intention of full cost recovery. On an annual basis fees are indexed to maintain the cost recovery ratio.

The amendments being proposed to the Site Alteration By-law result in additional services for which new fees will need to be established. These are as follows:

1. Site Alteration Permit review fee (if the applicant wants to request a review of the decision of the Director on a permit application, by the Commissioner)
2. Site Alteration Permit amendment fee (if amendment to an approved permit is required)
3. Site Alteration Permit application re-opening fee (if a permit application has been closed because all requirements have not been addressed in time, and a request to re-open is made by the applicant/owner)
4. Site Alteration Permit Renewal fee - if work is not completed in the time specified on a permit approval and the applicant wishes to renew the permit approval (within 6 months of expiry of original approval)
5. Site Alteration Permit Re-opening fee (Where an application has been deemed abandoned, it may be re-opened within a period of 3 months from the date of expiry upon the submission of a written request to the Director, by the applicant)
6. Site Alteration Permit Revocation fee (if a permit needs to be revoked, for any reason as identified in the By-law; for example, a permit may need to be revoked if the applicant fails to complete the works in line with the terms of permit approval)

Timing did not allow for these new fees to be added to the User Fee By-law in 2022, however staff will work to have these added to the By-law in 2023, as part of the annual update to the user fee By-law. When deriving the fees, staff will follow the same cost recovery methodologies as followed during the comprehensive user fee By-law update.

Language has been added to the User Fee By-law to ensure the Town is able to recover costs of any peer review services that may be required to facilitate the approval of a permit and/or the restoration of a property that has been altered in violation of the By-law.



# The Corporation of the Town of Milton

Report #:  
DS-107-22  
Page 8 of 8

## Financial Impact

The proposed changes to the Site Alteration By-law will require additional staff time to facilitate the new services outlined, which is expected to be managed within the existing staff complement. It is intended that new fees will be added to the User Fee By-law in 2023 to recover the costs of providing these services on an ongoing basis. Peer review services will be fully recovered as incurred.

Respectfully submitted,

Jill Hogan  
Commissioner, Development Services

For questions, please contact: Diana Jiona, Manager  
Infrastructure & Right of Way

Phone: Ext. 2513

## Attachments

Appendix I - Updated Site Alteration By-law  
Appendix II - Relevant Media Coverage  
Appendix III - Agrologist Report and Survey Results

Approved by CAO  
Andrew M. Siltala  
Chief Administrative Officer

## Recognition of Traditional Lands

The Town of Milton resides on the Treaty Lands and Territory of the Mississaugas of the Credit First Nation. We also recognize the traditional territory of the Huron-Wendat and Haudenosaunee people. The Town of Milton shares this land and the responsibility for the water, food and resources. We stand as allies with the First Nations as stewards of these lands.