



City of Hamilton Report for Information

To: Chair and Members
Date: May 23, 2025
Report No: PED25100
Subject/Title: Current Practices with respect to the Protection of
Agricultural Lands and Sustainable Development in
Relation to Provincial Projects and Excess Soil
Management Practices
Ward(s) Affected: (City Wide)

Recommendations

- 1) That Report PED25100 regarding current practices with respect to the Protection of Agricultural Lands and Sustainable Development in Relation to Provincial Projects and Excess Soil Management Practices be **RECEIVED** for information.

Key Facts

- The purpose of the report is to identify the City's current practices with respect to the movement of excess soils generated from municipal, provincial and development related construction projects, onto Agricultural Lands within the City of Hamilton. The report details the City's current enforcement protocols, restrictions and Site Alteration Permit requirements.
- Excess soil, often generated through construction, infrastructure, and development projects, presents both an environmental and logistical challenge in Ontario. With increasing urban development, the province has implemented new Excess Soil Regulations to ensure the proper management and reuse of this soil. The Ministry of Environment, Conservation and Parks (MECP) Excess Soil Regulation, O.Reg 406/19, provides a framework for excavating, removing, and transporting excess soil generated from construction projects, defining when excess soil is considered waste and where it can be reused based on quality. These regulations aim to promote beneficial reuse of excess soil, ensure contaminated soil is not improperly moved, and reduce the environmental impacts of soil dumping. The regulation is implemented under the *Environmental Protection Act of Ontario* and in response to

concerns about soil dumping practices, including impacts on water quality, noise, traffic, and road damage. Recent changes to the regulation aim to minimize environmental impacts by promoting beneficial reuse and preventing illegal dumping.

- On December 18, 2024, the City of Hamilton received notice (attached as Appendix A to Report PED25100) from the Ministry of the Environment, Conservation and Parks (MECP) with respect to proposed amendments to the Excess Soil Regulation 406/19. The notice advised that the Ministry is updating the Excess Soil Regulation to change the in-effect date of a provision preventing the landfilling of cleaner soil by two years and to clarify the exemptions to this provision. The Ontario government's Excess Soil Regulation aims to minimize landfill use by encouraging reuse and recycling of clean soil. The regulation delays the ban on landfilling of excess soil meeting residential, parkland, and institutional standards from January 1, 2025, to January 1, 2027. These changes will provide more time for industry to learn about and prepare for this provision and respond to concerns that current lack of awareness could result in project delays and illegal soil dumping.
- The existing exemptions from the restriction have been revised to make it clear when excess soil meeting Table 2.1 Residential/Parkland/Institutional (RPI) standards may still be taken to a landfill. The amendment clarifies that this exemption applies if a qualified person determines that the excess soil is inappropriate for reuse because it:
 - contains other chemicals for which there are no applicable excess soil quality standards and that may result in an adverse impact if finally placed;
 - contains invasive species that should not be relocated; or
 - is geotechnically unstable and cannot be used at a reuse site for structural purposes and after reasonable efforts were made, another reuse site where the soil could be used for another beneficial purpose was not identified.

Additional amendments to the Excess Soil Regulation were proposed to enable greater reuse of excess soil and avoid it being landfilled, including:

- exempting certain soil management depots from waste approvals;
- flexibility for reuse of aggregate and stormwater pond sediment;
- and greater reuse of soil within the project area and between infrastructure projects.

The purpose of these amendments is to encourage beneficial re-use of excess soils.

- While the Province regulates Excess Soil and how it can be re-used, *the Municipal Act* grants a municipality the authority to:
 - (a) prohibit or regulate the placing or dumping of fill;
 - (b) prohibit or regulate the removal of topsoil;
 - (c) prohibit or regulate the alteration of the grade of the land;

- (d) require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land; and
 - (e) impose conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site. 2006, c. 32, Sched. A, s. 76 (1).
- The City's Site Alteration By-Law 19-286 (attached as Appendix B to Report PED25100), Being a By-law for Prohibiting and Regulating the Alteration of Property Grades, the Placing or Dumping of Fill, and The Removal of Topsoil was created to:
 - (a) control and regulate site alteration on lands within the City of Hamilton;
 - (b) ensure site alteration is undertaken for necessary or beneficial purposes, not primarily for financial gain;
 - (c) minimize adverse impacts on infrastructure, environment and community in respect of site alteration undertakings; and
 - (d) to promote and protect agricultural resources.
- To obtain a Site Alteration Permit for the purpose of importing excess soils onto an Agricultural property within the City of Hamilton, the property owner must demonstrate a beneficial re-use such as improving site drainage or soil fertility in a manner consistent with Normal Farm Practice, as defined in the *Farming and Food Production Protection Act, 1998*; and
- Enforcement of the Site Alteration By-Law is conducted on a complaint basis by the City's Municipal By-Law Enforcement Officers with technical support from the Growth Management Division Development Inspector/Coordinators.

Financial Considerations

Not Applicable

Background

On November 27th, 2024, Council received correspondence from the Township of Puslinch (attached as Appendix C to Report PED25100) requesting support for their resolution for the Protection of Agricultural Lands and Sustainable Development in Relation to Provincial Projects and Excess Soil Management Practices. Council recommended that the correspondence be endorsed and referred to the General Manager of Planning and Economic Development to report back on the City of Hamilton's current process in this regard.

The municipal By-Law regulates the properties within the City of Hamilton that wish to receive Excess Soil generated from any municipal or provincial infrastructure project or development project. The Ministry of Environment, Conservation and Parks (MECP) Excess Soil Regulation, O.Reg 406/19, requires the generator of the Excess Soils from all infrastructure or development projects to export Excess Soils to a suitable and

permitted receiving site governed by instrument i.e. Registered Subdivision Agreement or Site Alteration Permit or landfill.

In response to Council direction to prepare a new by-law focused on the protection of Agricultural lands thereby restricting the act of filling for financial gain and the importation of unsuitable soils, a new By-Law was passed November 19th, 2019. Council passed a revised Site Alteration By-Law (By-Law 19-286 Attached as Appendix B to Report PED25100) that focused on the protection of Agricultural lands. Specifically, every rural property would now require a permit for the importation of excess soils. The previous By-Law (By-Law 03-126) permitted the importation of excess soils on rural agricultural properties with no consideration with respect to the purpose of the filling and grading and contained exemptions that relieved the property owner from any oversight of the work by the City.

Analysis

There is a one-time provision to exempt a rural property from permit provided the City has been notified, the property owner is limited to 500 cubic meters of excess soil from an approved source and the purpose of the soil is to address minor drainage issues or improve soil fertility.

Given the limited exemptions within the By-Law, enforcement with respect to the illegal importation of excess soils has improved significantly since the passing of By-Law 19-286 (Attached as Appendix A to Report PED25100).

One key feature of the current Site Alteration By-Law is that excess soils generated from outside the City of Hamilton City limits are prohibited. This provision was added to address the influx of excess soils coming into the City of Hamilton, mainly Flamborough, that were generated from both infrastructure and development projects within the Greater Toronto Area. This provision provides the City with greater control of the sources of excess soils normally generated by development projects where the City has first hand knowledge of the soil quality and receiving sites.

With respect to permitting, if an application is made for a site where an agricultural operation is carried on OR is intended to be carried, the application shall contain information with respect to the purpose, such as increasing soil fertility or resolving a drainage issue and evidence that the proposed work falls within the scope of "Normal Farm Practice" and;

- (a) is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or;
- (b) makes use of innovative technology in a manner consistent with proper advanced farm management practices;

The application shall also contain:

- (a) A statement of nature of the agricultural operation;
- (b) The farm business registration number of the agricultural operation or proof of membership in an accredited farm organization;
- (c) A description of the normal farm practice; and,
- (d) Any plans or evidence supporting normal farm practice, including the qualifications of any person providing such evidence or plans.

The intent of these requirements are to protect rural agricultural resources and eliminate the practice of obtaining fill for profit and illegal dumping.

In considering whether to issue a Site Alteration Permit, the Director and Chief Development Engineer in the Growth Management Division shall have regard to:

- (a) whether the primary use of the site is the depositing of fill on the site;
- (b) whether the proposed site alteration is necessary for the purpose identified in the application;
- (c) whether the proposed site alteration is part of a normal farm practice.

A full list of criteria maybe found in Section 11 (4) of the By-Law (Attached as Appendix A to Report PED25100).

As all rural properties are subject to a Site Alteration Permit, the City will be in position to mitigate any impacts to the environment and drainage patterns and enforcement will be carried out in accordance with the Site Alteration By-Law.

The City may impose any other conditions specific to the site and nature of the application.

Relationship to Council Strategic Priorities

The current practices with respect to the protection of agricultural lands and sustainable development in relation to provincial projects and excess soil outlined in this Report (PED25100) will support Council Priority 1, Sustainable Economic & Ecological Development

- 1. Sustainable Economic & Ecological Development
 - 1.1. Reduce the burden on residential taxpayers
 - 1.2. Facilitate the growth of key sectors
 - 1.3. Accelerate our response to climate change
 - 1.4. Protect green space and waterways

Previous Reports Submitted

- [New Site Alteration By-Law \(PED19201\)](#)
- [Amendments to Site Alteration By-law 19-286 \(PED23067\)](#)

Consultation

Not Applicable

Appendices and Schedules Attached

Appendix A: By-law No. 19-286

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