

Subject: Site Alteration By-law Review

File Number: ACS2023-PRE-EDP-0041

Report to Agriculture and Rural Affairs Committee on 30 November 2023

and Council 6 December 2023

Submitted on November 8, 2023 by David Wise, Director, Economic Development and Long Range Planning, Planning, Real Estate and Economic Development Department

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Ward: Citywide

Objet: Révision du Règlement sur les modifications d'emplacements

Dossier: ACS2023-PRE-EDP-0041

Rapport au Comité de l'agriculture et des affaires rurales

le 30 novembre 2023

et au Conseil le 6 décembre 2023

Soumis le 8 novembre 2023 par David Wise, Directeur, Développement économique et planification à long terme, Services de la planification, des biens immobiliers et du développement économique

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Quartier: À l'échelle de la ville

REPORT RECOMMENDATIONS

That the Agriculture and Rural Affairs Committee recommends:

- 1. That Council approve the proposed amendments to the Site Alteration By-law 2018-164, as described in this report and attached as Document 1.**
- 2. That the General Manager, Planning, Real Estate and Economic Development and the City Solicitor be delegated the authority to finalize the**

amendments and bring forward the amending by-law to Council for enactment.

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'agriculture et des affaires rurales :

- 1. recommande au Conseil d'approuver les propositions de modification du *Règlement sur les modifications d'emplacements* (n° 2018-164), telles que décrites dans le présent rapport et dans le document 1 ci-joint.**
- 2. recommande de déléguer au directeur général de la Planification, de l'Infrastructure et du Développement économique et à l'avocat général de la Ville le pouvoir de finaliser les modifications et de présenter le règlement modificatif au Conseil en vue de son adoption.**

BACKGROUND

The Site Alteration By-law was approved and enacted by Ottawa City Council in May 2018, with a direction for staff to conduct a review in two years and report back on its performance and any recommended improvements ([ACS2018-PIE-EDP-0005A](#)). The intended two-year review and update of the by-law was delayed by the pandemic, competing work priorities and the 2022 municipal election. While the by-law has generally performed as intended, staff have identified some opportunities for improvement. Administrative updates are needed to reflect changes in the Official Plan, other related by-laws and the City's organizational structure. Other changes to clarify the by-law's intent and improve its function have been identified by staff for Council's consideration.

DISCUSSION

The [Site Alteration By-law](#) enables the City to regulate activities such as placing or dumping fill, removing topsoil, clearing or stripping vegetation and altering the grade of land. In general, all lands within the City of Ottawa are subject to the by-law, except for lands that are already regulated by a conservation authority (e.g., floodplains, rivers and creeks, or certain wetlands). The by-law is intended to establish basic rules and practices to avoid impacts to neighbours and the environment, and specifically addresses the prevention of drainage problems and the protection of soils in designated Agricultural Resource Areas. It also protects designated natural areas and other identified natural features (such as significant woodlands and valleylands) in and around the urban area. In most cases, residents do not need the City's approval before beginning site alteration, but they must follow the rules in the by-law.

The by-law has been in effect for over five years, and staff have received over 2,500 complaints or concerns related to site alteration in that time. This number does not include complaints related to projects associated with *Planning Act* applications, which were handled by Planning Services staff as part of their normal processes. As of the end of July 2023, 2,435 service requests had been directed to Drainage staff, 98 per cent of which were resolved. The author of the by-law received approximately 15-20 calls or e-mails per year in the first three years from staff and residents seeking more information or voicing concerns about site alteration activities, which have since tapered off.

The implementation of the by-law has been challenging at times. By-law Services cautioned at the time of the by-law's development that they would not be able to take on responsibility for its enforcement, due to resourcing issues and lack of technical expertise in the various areas of concern (drainage, soil quality, natural heritage, sediment and erosion, etc.). Responsibilities are therefore distributed among several different departments and teams, based on their expertise and jurisdiction. Prior to the enactment of the Site Alteration By-law, Drainage staff had already been engaged in administering and enforcing its predecessor (the Drainage By-law). Other teams had no such prior experience and were required to take on new responsibilities, in addition to their existing duties. Training was provided to several staff in 2018, but turnover since then has resulted in some knowledge gaps and lack of awareness about the by-law's provisions and processes that may require some refresher training to correct. There have also been cases where confusion over which team should respond to a given complaint has resulted in delays and frustration to residents.

To date, however, very few complaints have required enforcement by the City. Most were resolved through discussions with staff or were determined to be exempt or outside the scope of the by-law. For example, many complaints involving impacts to natural features came from areas that were not subject to the by-law's protection for such features. The City has laid charges in only one case, involving the clearing of a significant woodland just outside the urban boundary near Stittsville. That case was delayed in the provincial court system by the pandemic but was recently resolved when the property owners and their primary contractor pled guilty to removing the woodland without prior authorization. A total of \$87,525 dollars in fines and victim surcharges was imposed by the court, with one year probation for all guilty parties.

While the by-law has largely performed as intended, staff have identified several opportunities for improvement, both in the by-law itself and in its implementation. The implementation of the by-law can be improved through renewed communications and training for staff, which will follow this review. The improvements to the by-law itself include administrative updates required due to changes in the City's Official Plan, tree

by-laws, and organizational structures referenced in the by-law. Staff also recommend that the by-law be revised to clarify the intent of several provisions, recognize changes in applicable provincial regulations, refine the scope of the drainage provisions, and support the implementation of new Official Plan policies relating to rural wetlands and woodlands. Notification requirements for projects that are not associated with a *Planning Act* application would be removed. These proposed changes are discussed in more detail below and are shown in Document 1.

Administrative updates

Several changes to the by-law are needed to reflect new Official Plan designations and terminology, the new Tree Protection By-law, and organizational changes since 2018. These include references to:

- Specific Official Plan designations, policies and schedules (e.g., removal of references to Rural Natural Features, addition of new Greenspace sub-designations as well as Natural Heritage System Core Areas and Linkages, changing General Rural Area to Rural Countryside, changing Schedule L to Schedule C11);
- The City's previous tree by-laws, which were consolidated into the Tree Protection By-law 2020-340 in January 2021;
- Responsible City departments and General Managers, to reflect the corporate restructuring that occurred in late 2021 / early 2022; and,
- Excess soils as defined and managed under the new provincial regulations (O.Reg. 406/19).

Drainage-related revisions

Based on their experiences over the past five years, Infrastructure and Water Services staff have recommended some refinement of the drainage provisions and related definitions, to focus on surface drainage and deviations from approved drainage patterns. Those recommended changes are included in the attached Document 1. Staff have also identified the potential need for more substantive changes, to address stormwater management concerns on small-scale developments no longer subject to site plan control. Those changes are being considered as part of the Infrastructure Master Plan review and will be addressed separately at a later date.

Natural environment revisions

Natural Systems and Rural Affairs staff typically receive several complaints each year regarding the clearing of woodlands and other natural features located outside the current limit of the by-law's environmental protections. Some of these complaints involved normal farm practices or rural property management activities, which would have been exempt from the by-law's requirements for prior City approval. Others involved site alteration on development lands in advance of *Planning Act* approvals, or a *Planning Act* application, circumventing the City's normal review process. Those are the types of cases that the by-law's environmental protections were primarily intended to address. They were exempt only due to their distance from the urban boundary.

The restriction of the by-law's environmental protections to the urban area and the adjacent two kilometres (approximately) was introduced during its approval in 2018. The provisions were originally intended to apply throughout urban and rural areas and were drafted to accommodate normal activities in both contexts. While lands closer to the urban boundary may be more vulnerable to pre-emptive clearing, the complaints received show that it is still an issue of concern to residents in other rural areas.

Staff recommend that the natural environmental protections should be extended to include the entire city. This would be consistent with the other rules in the by-law and would directly support the implementation of new Official Plan policies for the protection of rural woodlands and wetlands. While existing exemptions for agricultural land clearing and other normal rural activities would be maintained for the most part, staff are further proposing that the agricultural exemption should no longer automatically apply to the removal of identified natural features from Rural Countryside lands within two kilometres of the urban boundary. Staff would develop a simple review process for proposed removals in these circumstances to verify that they are for agricultural purposes. This change would also enable staff to ensure that advance notice is provided to the Ward Councillor and other community stakeholders. No application fee or technical studies would be required for this review. The Tewin land clearing in February 2023, which involved the removal of a significant woodland from Rural Countryside lands near the urban boundary for agricultural purposes, is an example of the type of project that would be subject to review and verification by staff under this proposed new process.

Notification revisions

Staff from By-law Services and other groups recommend that notification requirements be removed for projects that are not associated with a *Planning Act* application (e.g., pool installations and other major landscaping projects). This provision is difficult to

enforce, does not add substantial value or protection for residents, and may be misused in disputes between neighbours. Projects on sites that are subject to *Planning Act* application processes would still be required to notify the City planner and adjacent neighbours before starting work.

Emerging issues

Staff have noted some potential concerns that may warrant future revisions to the by-law, although no changes are being recommended currently. First, that the continued separation of jurisdictions between the City's Site Alteration By-law and the Conservation Authorities' regulations may not fully support the City's goals in terms of protecting agricultural soils and natural features. The *Conservation Authorities Act* and its regulations are focused on natural hazards, and do not provide Conservation Authority staff with the full range of enforcement options available to City staff under the *Municipal Act* (e.g., Stop Work Orders and set fines). For example, if a complaint is received about site alteration on Agricultural Resource Area lands that are within a regulated floodplain, the Conservation Authority would only be able to respond to the floodplain-related aspects of the case, not the potential impacts to agricultural productivity. The *Conservation Authorities Act* and its regulations have also been subject to significant provincial review and revisions in recent years, which have generally served to restrict their scope further, and these changes are still ongoing. However, due to resource implications, staff are not prepared to recommend extending the Site Alteration By-law to include regulated areas at this time. Staff will continue to work with the three local Conservation Authorities to respond to complaints, monitor changes in our respective regulatory frameworks, and identify any issues.

Secondly, full implementation of the new provincial regulations for the movement and handling of excess soils (O.Reg. 406/19) at the beginning of 2023 has resulted in additional complications for site alteration projects. Infrastructure Services staff are working diligently to ensure that the City's projects are carried out in compliance with the new regulations and in accordance with our own by-laws. While most industry members are well aware of the rules, some excavation contractors have had issues navigating the overlapping regulations. Staff have received a few complaints about soil and other fill materials being processed, stockpiled or deposited on sites where such activities are inappropriate under the City's by-laws. Storage or deposition of fill on Agricultural Resource Area lands could, if done improperly, be detrimental to the productivity of the land and therefore contravene the Site Alteration By-law. Outdoor processing and storage of soil and other fill materials as an ongoing activity, rather than as a temporary use accessory to an allowed project, is not a widely permitted use in the City's Zoning By-law. Staff have been working with environmental officers from the Ministry of the Environment, Conservation and Parks to jointly address these complaints

to ensure that all applicable regulations are met, but these cases have proven to be complicated and time-consuming. The provincial regulations allow for certain activities to be authorized through legal instruments such as municipal *Planning Act* approvals or site alteration permits. Since our Site Alteration By-law does not include a permit system, it cannot be used as a mechanism for authorization under the excess soils regulations, and any resultant infractions will continue to trigger parallel investigations by both City and provincial staff. Introducing a permit system would resolve this issue, but it would be a significant change to the Site Alteration By-law, requiring additional resources to develop and administer the permitting process. It is not recommended at this time. Staff are, however, recommending some changes to the by-law to clarify that the City is not taking on responsibility for enforcing provincial or federal laws.

FINANCIAL IMPLICATIONS

There are no direct financial implications.

LEGAL IMPLICATIONS

There are no legal impediments associated with the implementation of the recommendation of this report.

COMMENTS BY THE WARD COUNCILLOR

Councillor Darouze provided the following comment: “As Chair of the Committee I am aware of the report.”

CONSULTATION

Extensive stakeholder and public consultation occurred during the initial development of the Site Alteration By-law. Public consultation is not required for by-laws under the *Municipal Act*, however, and was not mandated as part of the direction to staff in 2018. Staff have notified the stakeholders involved in the by-law’s development of the outcome of the internal review and the proposed revisions to the by-law. These stakeholders included industry representatives (e.g., Greater Ottawa Homebuilders Association, National Capital Heavy Construction Association, Ottawa Construction Association, Landscape Ontario, Ontario Stone, Sand and Gravel Association) and utility companies as well as local chapters of the Ontario Federation of Agriculture and the Ontario Woodlot Association, the Union des cultivateurs franco-ontariens, the Carleton Landowners Association, the Federation of Citizens’ Associations, the Greenspace Alliance, Ecology Ottawa, and regulatory agencies such as the Ministry of Environment, Conservation and Parks and the three local Conservation Authorities. Staff met with several stakeholders upon request to explain the proposed changes and obtain their feedback. Stakeholders were informed of the Committee meeting date in

advance so that they could submit any input for consideration.

ACCESSIBILITY IMPACTS

There are no accessibility impacts. The revised by-law and associated information will be published on Ottawa.ca in accessible formats.

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications.

CLIMATE IMPLICATIONS

The proposed changes to the Site Alteration By-law reflect and support the City's Official Plan policies, including policies for the protection of agricultural soils as well as rural woodlands and wetlands, all of which are valued for their contributions to Ottawa's environmental health and climate resilience. The by-law also enables the City to regulate changes to approved drainage patterns, which will be of increasing importance as extreme weather events continue to challenge our built environment's capacity to handle precipitation.

DELEGATION OF AUTHORITY IMPLICATIONS

The Site Alteration By-law identifies two General Managers and their designated staff as having authority for the administration, implementation, and enforcement of the by-law. The proposed by-law revisions include updates to reflect organizational changes in the responsible departments, ensuring that this authority rests with the appropriate General Managers.

ECONOMIC IMPLICATIONS

There are no economic implications.

ENVIRONMENTAL IMPLICATIONS

The proposed extension of natural environment protections to the remainder of the rural area, beyond the current two-kilometre limit around the urban boundary, would support the new Official Plan policies for no net loss of rural woodlands. Rural residents have reported numerous losses of woodlands from this unregulated part of the city over the past five years. The refinement of the agricultural exemption on Rural Countryside lands within two kilometres of the urban boundary may not entirely prevent further losses of peri-urban woodlands but will enable staff to better monitor and manage the situation.

RISK MANAGEMENT IMPLICATIONS

There are risk implications. These risks have been identified and explained in the report and are being managed by the appropriate staff.

RURAL IMPLICATIONS

The Site Alteration By-law has been in effect for over five years and has not resulted in negative impacts to rural residents, unless their activities contravened the rules and caused complaints to the City. The majority of the by-law already applies city-wide and will continue to do so. While the proposed revisions would extend natural environment protections to areas that were previously unregulated, the exemptions in the by-law will continue to allow for normal rural property management and agricultural activities in those areas without prior City approval. The refinement of the agricultural exemption for Rural Countryside lands within two kilometres of the urban boundary will enable staff to ensure that local residents and Councillors are informed before woodlands or other natural features are cleared for agricultural purposes.

TERM OF COUNCIL PRIORITIES

The changes to the by-law do not directly support Council's strategic objectives for 2023-2026, but they do contribute to the long-term goals of liveability, sustainability, and resilience by maintaining or enhancing the City's ability to regulate site alteration activities that could negatively impact drainage, agricultural productivity, or the natural environment.

SUPPORTING DOCUMENTATION

Document 1 – Site Alteration By-law, showing proposed updates and revisions in tracked-changes format

DISPOSITION

Natural Systems and Rural Affairs staff will work with Legal Services and support staff to bring forward the approved amendments to the by-law for enactment by Council, and will work with staff in By-law Services and other relevant departments to update the set fines, templates and processes, as well as internal and external information sources including Ottawa.ca.