



November 27, 2015

Kevin Narraway
Supervisor, By-law Services
By-law Division, Legal and Human Resource Services Department
575 Rossland Road East,
Whitby, ON L1N 2M8

Re: Town of Whitby Proposed Amendments to Fill Control By-law

Dear Mr. Narraway,

I am writing to you on behalf of the Residential and Civil Construction Alliance of Ontario (RCCAO) and Supporting Ontario Infrastructure Investments and Lands (SOiIL). As you know the construction sector has been working very closely over the past few years with the Ontario Ministry of the Environment and Climate Change (MOECC), the Ministry of Municipal Affairs and Housing (MMAH), the Association of Municipalities of Ontario (AMO) along many other non-governmental organizations to ensure the responsible management of clean excess soils in Ontario.

The MOECC released their Soil Management - A Guide for Best Management Practices (BMP's) in January, 2014. This document provides a blueprint for managing the movement of excess soils in Ontario. The BMP Guide benefitted from many years of stakeholder consultations. We are now increasingly focused on implementation at the municipal level of government.

With respect to your request and email of October 15, 2015 we would like to comment on the Town of Whitby proposed draft Report LS 06-15 discussing proposed revisions to the Town's fill control by-law. These comments are in addition to our earlier written response of June 16, 2015 to proposed fill amendment by-law changes and subsequent discussions and representations made to the Town of Whitby Operations Committee at the June 22, 2015 meeting.

The following general comments are focussed on the proposed Town of Whitby By-law #XXX-15 Site Alteration By-law. This letter will not specifically comment on the Town of Whitby's Fill Control By-law Amendment #7052-15 covering the proposed Infrastructure/Road Damage fee levy. Based on the discussions held at the Town of Whitby Operations Committee meeting on October 26, 2015, we support the ongoing consultation through industry representatives including the Durham Region Heavy Contractors Association (DRHCA) and the Ontario Sewer and Watermain Contractors Association (OSWCA) with your office. This would include finalized fee structure and threshold volume recommendations, indemnification requirements and how to effectively operationalize the Fill Control By-law.

Town of Whitby Site Alteration By-law #XXXX-15

General Comments

As stated previously, MOECC and other Ministries including MMAH, are actively engaged with industry and other stakeholders working on an Ontario Bill of Rights (EBR) study review and report on soil policy needs in Ontario. It is anticipated that this report will be released by year end 2015 and will provide significant insight and direction in terms of developing and implementing excess soils policy in Ontario. Based on consultations to date, it is our understanding that the recommendations will look at a “regulatory framework” that will include support to the municipal sector.

Subject to the outcome of the soil policy review, it would be premature to implement a local Site Alteration By-law that would not incorporate the broader elements and approaches of a comprehensive excess soil policy in Ontario. There is a pressing need for alignment amongst all municipalities to implement a more consistent approach with respect to local site alteration by-laws. Given the work to-date, the Town of Whitby is well positioned to be a municipal leader in introducing a responsible “model” Site Alteration By-law regime in Whitby.

In addition to alignment with forthcoming provincial policy, there is a need to reflect in the final Whitby excess soils Site Alteration By-law the referenced Ontario MOECC Soil Management - A Guide for Best Management Practices (BMP's). These BMP's provide the basic elements to put in place a comprehensive managing system for excess soils. This includes advance source site planning controls, soil quality protocols, professional oversight requirements, truck tracking and auditing. Additionally BMP's encourage the environmentally responsible, beneficial reuse of excess soils in support of provincial sustainability and climate change objectives at the municipal level. Any “state of the art” fill by-law document should reflect current, accepted provincial recommended soil handling practices.

Specifically we request the Town of Whitby to use, reference and include appropriate BMP Guide wording and approaches in the finalized Whitby Site Alteration By-law document. The further inclusion of BMP approaches in Town of Whitby tenders and procurement activities has the potential to save the Town significant monies involving the handling and movement of excess soils from municipal infrastructure projects. A soon to be released survey and study report prepared by the Ontario Society of Professional Engineers (OSPE), the Greater Toronto Sewer and Watermain Contractors' Association (GTSWCA) and RCCAO to demonstrate the financial, social and environmental benefits of following best management practices for municipal infrastructure and development projects. We would be pleased to share these study findings with yourself and Town staff when we meet as part of planned stakeholder consultations.

In conjunction with the implementation of an updated, responsible and efficient Site Alteration By-law the Town of Whitby is encourage to establish locally of designated “soil depots” or interim temporary soil storage locations to facilitate the timely and cost effective stock piling and management of excess soils. Establishment of such facilities is in alignment with Provincial best practices.

The inclusion of BMP guidance approaches will also position the Town of Whitby for the future in terms of environmental responsibility. Adoption of BMP's, encouraging the sustainable and beneficial reuse of excess soils, will in turn reduce the production of greenhouse gases (GHG's) by further reducing local truck traffic. This latter aspect is a major concern in the Town of Whitby from a truck safety, congestion and wear and tear on municipal roads perspective.

Specific Comments

With reference to the preceding general comments, following are requested elements that be included in the final version of proposed draft Site Alteration By-law #XXXX-15 going forward to Town Council. The referenced definitions to be added are included to align component items used in the MOECC's Soil Management - A Guide for Best Management Practices as well as generally accepted industry practices.

1. Definitions

"Excess soil" means soil that has been excavated, typically during construction activities, that is to be relocated on site or removed off site with the purpose of being beneficially reused.

"Adverse effect" means under The Environmental Protection Act, R.S.O. 1990 that the MOECC has the authority to address the discharge of a contaminant into the natural environment as it applies to all activities related to soil management including excavation, transportation and final disposition.

"Best Management Practices" or BMP's means recognized and generally accepted practices for the handling and management of excess construction soils in Ontario as outlined in the Ontario MOECC Document (January 2014) Soil Management - A Guide for Best Management Practices;

"Soil Management Plan" means a documented plan prepared in advance of starting work by owners and operators involved in excess soils handling activities in consultation with a qualified person. The plan should address all source and receiving site issues including site access locations, truck queuing, parking, dust control, truck cleaning, noise, haul routes and minimization of traffic congestion;

"Fill Management Plan" means a documented plan prepared in accordance with the Town's Public Works Department's Site Alteration Guidelines and Permit Application requirements summarizing materials and volumes to be transported:

"Source or Generating or Donor Site" means a site or construction project that is the source site for excess soil material to be managed;

"Receiving Site" means the property or construction site that is the final disposition location of relocated excess soil;

"Temporary Storage Site or Soil Depot" means the general reference to a temporary or intermediate storage site between the source site and the final receiving site location. Includes the interim collection and storage of excess soil material in accordance with required provincial approvals;

"Soil Matching" means the formal activity to match generating sites and receiving sites having or requiring like excess soils to reduce formal land filling and the need to transfer large volumes of material over extended distances;

"Beneficial reuse" means the planned activity to assess excess soils at a source site and from an environmental and soil quality perspective, responsibly reuse those soils and materials at a final receiving site or project. Reuse must comply with all applicable legislation and not have the

potential to cause an adverse effect. This could include soil for specific reuse in construction projects under road right of ways, berms or grading.

“Direct Transfer or Reuse” means the reuse of excavated soils at the excavation site or property in compliance with required approvals where required;

“Procurement” means when tendering contracts involving the movement of excess soils municipalities and agencies will consider including best management practices in their procurement documents. Procurement documents should specify the need for a Soil Management Plan at source site that includes appropriateness of planned receiving site(s) based on the Fill Management Plan including any Temporary Storage Site or transportation plans. This is done in advance of starting actual work;

“Dumping” - Within the Definitions section it is recommended that the term “Dumping” while broadly recognized as defined, be replaced with more positive references to disposing or depositing excess soil material. The term dumping is generally associated with a more negative waste or rubbish disposal activity by the public at large. As such it does not facilitate the more progressive approach to beneficially and responsibly reuse excess soils as a resource.

We trust the preceding general and specific comments will be considered in the drafting of the final proposed Site Alteration By-law XXXX-15 to be submitted to Town Council early in the new year. The intent is to have the Town of Whitby produce a “model type” by-law that reflects the progressive approaches that are part of adopting provincial and industry best management practices.

As stated in your email of October 15, 2015, it is essential that a face to face meeting with Town staff be arranged to follow on these submitted comments and to describe in more detail further opportunities to enhance the current draft Site Alteration By-law document. This staff meeting will also afford the opportunity for Town staff to be updated on the OSPE-OSWCA-RCCAO case study analysis that contains metrics on the application of BMP approaches at municipal infrastructure projects.

We look forward to meeting with you and Town staff at your earliest convenience.

Yours truly,



Alan J. Durand
SOiL Administrator

CC. A. Manahan - RCCAO
P. McManus – OSWCA/GTSWCA
R. Robinson - DRHCA