

BY-LAW NUMBER 29-2023

OF

THE CORPORATION OF THE CITY OF BRANTFORD

Being a By-law to Repeal and Replace By-Law 28-2011 – Site Alteration

A BY-LAW TO PROHIBIT OR REGULATE THE REMOVAL OF TOPSOIL, THE PLACING OR DUMPING OF FILL AND, THE ALTERATION OF GRADE OF LAND IN AREAS OF THE CITY OF BRANTFORD.

WHEREAS, Section 10(2) of the *Municipal Act 2001*, S.O.2001, c.25, as amended, authorizes a Municipality to pass by-laws respecting the economic, social and environmental well-being of the Municipality and the health, safety and well-being of Persons;

AND WHEREAS Section 142 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes local municipalities to pass by-laws which:

- 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 a Site;
- 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 a Site; and
- e) impose conditions to a Permit, including requiring the preparation of plans acceptable to the City relating to Grading, Filling or Dumping, the Removal of Topsoil and the rehabilitation of a Site.

AND WHEREAS Council may also require that a Permit be obtained for the Placing or Dumping of Fill, the Removal of Topsoil, and the Alteration of the Grade of a Site within the City, and may prescribe the fees for such Permit, the circumstances under which a Permit may be issued, and the conditions that may be attached to such Permit;

AND WHEREAS Council considers it to be in the public interest to enact a by-law for prohibiting or regulating the Placing or Dumping of Fill, the Removal of Topsoil, and the Alteration of the Grade of a Site in order to ensure that:

- a) Existing drainage patterns are maintained;
- b) Interference and damage to watercourses or other bodies of water is limited;
- c) Groundwater and surface water quantity and quality is maintained;
- d) Erosion and sedimentation are prevented;
- e) Haul routes for the transportation of Fill and Topsoil authorized for placement, Dumping or removal will be designated to and/or from the Site by the City to minimize damage to the Municipality's roads and minimize interference and/or disturbance to the Municipality's residents and businesses and changes to drainage or Grade are appropriate to protect natural heritage features and areas and archaeological resources;
- f) The use of hazardous or improper Fill is prevented; and,

g) The costs associated with the site alteration project are paid by the proponent.

AND WHEREAS it is in the interest of the community to protect significant cultural and natural heritage features and areas from unnecessary Alteration or destruction;

AND WHEREAS Council wishes to enact this by-law for these purposes;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF BRANTFORD ENACTS AS FOLLOWS:

SECTION 1 – DEFINITIONS

The following terms shall be defined as:

- 1.1 “Adverse Effect” means one or more of:
 - 1.1.1 impairment of the quality of the natural environment for any use that can be made of it;
 - 1.1.2 injury or damage to property, archeological resources, or plant or animal life;
 - 1.1.3 harm or material discomfort to any Person;
 - 1.1.4 an Adverse Effect on the health of any Person;
 - 1.1.5 impairment of the safety of any Person;
 - 1.1.6 rendering any property or plant or animal life unfit for human use;
 - 1.1.7 loss of enjoyment of normal use of property; and
 - 1.1.8 interference with the normal conduct of business;
- 1.2 “Agricultural Lands” includes all lands that are used by a farming business registered under the *Farm Registration and Farm Organizations Funding Act, 1993*, S.O. 1993, c.21 as amended, for growing of crops, including nursery and horticultural crops, raising livestock, raising of other animals for food, fur or fibre, including poultry and fish, aquaculture, apiaries, agro-forestry and maple syrup production.
- 1.3 "Applicant" means the Person who submits an application to the City for a Site Alteration Permit pursuant to the provisions of this by-law.
- 1.4 “Arborist” means an Arborist qualified by the Ontario Ministry of Training, Colleges and Universities; a Certified Arborist with the International Society of Arboriculture; a consulting arborist registered with the American Society of Consulting Arborists; a Registered Professional Forester, or qualified ecologist.
- 1.5 “Building Permit” means a building permit issued under the *Building Code Act, 1992*, S.O. 1992, c. 23, or successor legislation.
- 1.6 "By-Law Enforcement Officer" means a person appointed pursuant to the *Police Services Act*, or any successor legislation, as a Municipal Law Enforcement Officer to enforce the provisions of this by-law.
- 1.7 "City" means The Corporation of the City of Brantford.
- 1.8 “Commercial Fill Operation” means a Site Alteration where the placing or Dumping of Fill is for commercial benefit or gain, whether for the owner or occupier of the land or for a third party, including the placing or Dumping of Fill involving remuneration paid, or any other form of consideration provided, to the owner or occupier of the land or a third party, whether or not the remuneration or consideration is the sole reason for the placing or Dumping of the Fill.
- 1.9 "Conservation Authority" means the Grand River Conservation Authority as established

under the *Conservation Authorities Act*, R.S.O. 1990 c.C.27.

- 1.10 "Critical Root Zone" means the area of land within a radius of ten (10) cm from the trunk of a Tree for every one (1) cm of trunk diameter as measured from ground level.
- 1.11 "Director" means the Director of Planning and Development Services of the City or their Designate.
- 1.12 "Dump or Dumping" shall be broadly interpreted to include stripping, removing, moving, transporting, importing, exporting or placing of any fill into, out of or upon lands within the City.
- 1.13 "Engineer" means a Professional Engineer currently licensed to practice in the Province of Ontario.
- 1.14 "Environmentally Sensitive Areas" means any natural heritage and hydrologic features and areas deemed to provide social, economic, ecological and/or hydrologic functions and processes how-so-ever described in Provincial Policies and Plans, Official Plans or Zoning By-laws including, but not limited to, terms such as Natural Heritage Systems, Water Resource Systems, Key Natural Heritage Features, Key Hydrologic Features, Vegetation Protection Zone and Green Infrastructure. Environmentally Sensitive Areas shall include lands within thirty (30) meters of the boundary of Key Hydrologic Features and Key Heritage Features.
- 1.15 "Fill" means any type of material deposited or placed on lands and includes, but is not limited to soil, stone, concrete, asphalt, rubbish, garbage, turf, dirt, earth, aggregate, and binder or any combination of such materials, as may be acceptable to the Director.
- 1.16 "Grade" means the elevation of the ground surface and shall be more particularly defined as follows:
 - 1.16.1 "Existing Grade" means the elevation of the existing ground surface of the land as of the date that this by-law is passed, including abutting ground surface up to three (3) meters wide surrounding such lands;
 - 1.16.2 "Finished Grade" means the approved elevation of ground surface of lands upon which Fill has been Placed or Dumped, the Grade altered or Topsoil Removed, in accordance with this by-law;
 - 1.16.3 "Proposed Grade" means the proposed elevation of ground surface of and upon which Fill is proposed to be Placed or Dumped, the Grade altered or Topsoil Removed;
- 1.17 "Haul Routes" means routes defined by the City as part of a Permit or any agreement made under this by-law that describe which routes must be followed with transportation Fill to or from a Site.
- 1.18 "Insurance" includes Commercial General Liability Insurance and Pollution Liability Insurance or any other Insurance as deemed necessary by the City.
- 1.19 "Management of Excess Soil - Rules for Soil Management and Excess Soil Quality Standards 2019 (MOECP BMP)" means the document released by the MECP in 2019 and which addresses management of excess Soils, as amended.
- 1.20 "Order" means an Order to Discontinue Activity or a Work Order, as the context requires.
- 1.21 "Owner" means the Person(s) registered on the title of the land, which is the Site, in the Registry Office or Land Titles Office as the owner of such land.
- 1.22 "Site", in the Registry Office or Land Titles Office as the owner of such land.
- 1.23 "Permit" means a Permit that may be issued pursuant to this by-law.
- 1.24 "Permit Holder" means the Owner or the Person in possession of the property, and includes a lessee, a mortgagee in possession, or a person in charge of the property, to

whom a valid Permit has been issued pursuant to this by-law.

- 1.25 "Person" means a company, corporation, partnership, individual or a person as defined in subsection 29(1) of the *Interpretation Act*, R.S.O. 1990, c.I-11 as amended.
- 1.26 "Place" or "Placing" means the distribution of Fill on lands which has the effect of establishing a Finished Grade higher or lower than the Existing Grade, and includes soil stripping.
- 1.27 "Plan(s)" means engineering plans submitted by a Professional Engineer in accordance with the specifications and requirements of Schedule "A".
- 1.28 "Qualified Person" has the same meaning as in Section 5 of Ontario Regulation 153/04 "Qualified Person, other than Risk Assessment", or a licensed surveyor (for the purpose of land surveying), possessing expert or special knowledge in regards to matters contained within this by-law.
- 1.29 Receiving Site means the property to which Fill is transported and will include the term "Site".
- 1.30 "Removal" means the excavation or extraction of any Fill that lowers the existing grade and includes soil stripping.
- 1.31 "Retaining Wall" means a wall designed by an Engineer to contain and support Fill which has a Finished Grade higher or lower than that of adjacent lands.
- 1.32 "Significant Archaeological Resources" means resources that have been determined to have cultural heritage value or interest under the processes and criteria established by the Province for determining cultural heritage value or interest under the authority of the *Ontario Heritage Act*.
- 1.33 "Site" means the lands which are the subject of an application for a Permit pursuant to this by-law.
- 1.34 "Site Alteration", for the purposes of this by-law, means the physical changing of Site conditions through the placement or Dumping of Fill; the removal of vegetative cover; the removal of topsoil; the excavation and/or movement of earth or rock; the compaction of soil; the creation of impervious surfaces; the obstruction of drainage facilities; the modification of Watercourses; or any combination of the aforementioned activities.
- 1.35 "Topsoil" means those horizons in a soil profile containing organic material and includes deposits of partially decomposed organic material such as peat, such horizons being technically known as the 'O' and 'A' horizons.
- 1.36 "Tree" means a woody perennial plant, whether alive or dead, healthy or unhealthy, including saplings or seedlings and including the root system, where the plant has reached, could reach, or could have reached a height of at least 4.5 metres (15 feet) at physiological maturity.
- 1.37 "Works" means any physical change made to land and a noun synonymous with "Alteration".
- 1.38 "Zoning By-law" means a by-law passed by the City pursuant to Section 34 of the *Planning Act*, R.S.O. 1990 c. P.13, as amended.

SECTION 2 – SCHEDULES

- 2.1 The following schedules are attached hereto and form part of this by-law:
Schedule "A" – Standards for Plans Application for Site Alteration Permit.

SECTION 3 – PROHIBITION AND REGULATIONS

- 3.1 No person shall cause or permit to cause Alteration of a Site in the City, without having first obtained a Site Alteration Permit in accordance with this by-law unless otherwise exempt in Section 4. Site Alteration activities include but are not limited to:
 - 3.1.1 the physical changing of Site conditions through the placement or Dumping of Fill;
 - 3.1.2 blockage to a drainage course;
 - 3.1.3 the removal of vegetation;
 - 3.1.4 siltation in an environmentally sensitive area or storm sewer
 - 3.1.5 Adverse Effect on matters of inherent ecological or hydrological sensitivity such as, but not limited to aquifer recharge, Soil permeability, water quality and quantity, key hydrologic areas, and environmentally sensitive areas;
 - 3.1.6 injury or destruction of other Trees, which in the opinion of the Director could reasonably be avoided;
 - 3.1.7 the removal of topsoil;
 - 3.1.8 the excavation and/or movement of earth or rock;
 - 3.1.9 the compaction of soil;
 - 3.1.10 the creation of impervious surfaces;
 - 3.1.11 the obstruction of drainage facilities;
 - 3.1.12 the modification of watercourses;
 - 3.1.13 the removal or damage to the Critical Root Zone of a Tree;
 - 3.1.14 an Adverse Effect on areas of archaeological significance;
 - 3.1.15 Site-Alteration activities on lands containing archaeological resources or areas of archaeological potential as identified through an archaeological assessment, through Provincial plans or policies, municipal archaeological plans, or Official Plans and/or Zoning By-laws, unless significant archaeological resources have been conserved in manner that is consistent with the Standards and Guidelines for Consultant Archaeologists issued by the Province of Ontario;
 - 3.1.16 contamination of or the degradation of the environmental quality of land;
 - 3.1.17 or any combination of the aforementioned activities.
- 3.2 Any person intending to undertake any Site Alteration within the limits of the City, through their own actions or through the actions of any other Person, shall apply for and obtain a Site Alteration Permit in accordance with the provisions of this by-law, unless otherwise exempted by Section 4, prior to undertaking any Site Alteration.
- 3.3 The issuance of a Permit does not relieve the Owner from any responsibility to obtain all other approvals that may be required from any level of government or authority having jurisdiction or any agencies thereof.
- 3.4 A Site Alteration Permit is not transferable to another property.
- 3.5 No Person shall perform a Site Alteration on any lands except in accordance with the Municipality's Official Plan Policies and Zoning By-law, as amended.
- 3.6 No Person shall undertake any Site Alteration that may adversely affect the quality or quantity of water in a well, pond or watering hole intended for use as a source of water for agriculture or human consumption on a property with an adjoining property boundary, or any other property.

- 3.7 If archaeological resources are discovered or identified during the Site Alteration, even after the issuance of a Permit, the Owner shall immediately cease all activity on the Site and contact the City and take such actions as defined by the Director, a provincial ministry, or other responsible agency to address, safeguard, and protect the resources.
- 3.8 Haul Routes for the transportation of Fill and Topsoil authorized for placement, Dumping or removal at the permit site may be designated to and/or from a Receiving Site by the Director to minimize damage to the City's roads and minimize interference and/or disturbance to the Municipality's residents and businesses in accordance with a Permit issued by the Municipality, if applicable.
- 3.9 The City may restrict the daily volume of truckloads to ensure adequate Municipal oversight of the operations, ensure traffic safety and to address reasonable concerns regarding adverse effects to citizens along the Haul Route and in the vicinity of the proposed Site Alteration Work.
- 3.10 No Person shall place or Dump Fill or cause or permit Fill to be placed or Dumped on a Lot fronting on a City road that has been deemed by the City, in its sole discretion, to be unsuitable for the transportation of Fill.
- 3.11 No Permit Holder or person acting under authority of a Permit shall fail to comply with all conditions of a Permit.
- 3.12 No person who has been issued an Order to Discontinue Activity or a Work Order by the Director shall fail to comply with the Order.
- 3.13 The existing Topsoil on lands subject to Site Alterations shall be preserved by removing and stockpiling it for use as final cover prior to the performance of any Site Alteration work, as applicable.
- 3.14 The Owner shall keep all records associated with the requirements in this By-law in a good and business-like manner for review by the City at their request, authorized under this By-law, for a minimum of seven (7) years after the completion of the Site Alteration and associated activities at the discretion of the City.
- 3.15 Fill shall meet the standards:
- 3.15.1 set out in the Tables contained within: Management of Excess Soil Rules for Soil Management and Excess Soil Quality Standards 2019 for Use Under Part XV.1 of the *Environmental Protection Act*, referenced in 2011 O. Reg. 153/04 as amended, for the established property use as agreed to by the Director; or
- 3.15.2 set out in the O. Reg. 406/19: On site and excess Soil management.
- 3.16 Notwithstanding section 3.15 above, the stricter standard applies;

All Fill shall be properly compacted using acceptable engineering and construction practices, as appropriate, unless it is being stockpiled on the Site for future use in accordance with all applicable By-laws and zoning for the Municipality, and grading plans and timelines as approved by the Director.

- 3.17 Every Permit Holder shall ensure that a request is made to the Director by the Permit Holder or an authorized agent to make inspections at the commencement and completion of the

work that is subject to the Permit and to make any such further inspection(s) as may be required by the Director.

3.18 All Permit Holders shall:

- 3.18.1 Notify the Director in writing within 48 hours of commencing any land disturbance or Site Alteration;
- 3.18.2 Obtain permission in writing from the Director prior to modifying any Plan;
- 3.18.3 Install all control measures as identified in the approved Plan;
- 3.18.4 Maintain all road drainage systems, storm water drainage systems, erosion and sediment control measures, environmental protection measures and other facilities identified in the Plan;
- 3.18.5 Repair any siltation or erosion damage to adjoining surfaces and drainage ways;
- 3.18.6 Inspect the construction control measures at least once per week and after each rainfall of at least 25 millimetre in 24 hours and make needed repairs and provide to the Director a written report documenting the condition of the construction control measures observed during each inspection and repair work undertaken or to be undertaken, complete with applicable timelines for completion;
- 3.18.7 Allow employees or agents of the City to enter the Site for the purpose of inspection, to assess compliance with the control plan or for performing any work necessary to bring the Site into compliance with the Plan; and
- 3.18.8 Maintain a copy of the Plan on the Site.

3.19 The City:

- 3.19.1 Upon the failure by the Permit Holder to complete all or part of the Works in the time stipulated in the control plan, may draw the appropriate amount from the securities posted and use the funds to arrange for the completion of the said Works, or any part thereof;
- 3.19.2 Upon the failure by Permit Holder to repair or maintain a specific part of the Works as required by the City, and in the time requested, may at any time authorize the use of all or part of the securities to pay the cost- of any part of the Works it may in its absolute discretion deem necessary; or
- 3.19.3 In the case of emergency repairs or clean-up, the City may undertake the necessary Works without notice at the expense of the Permit Holder and reimburse itself out of the securities posted by the Applicant or to add the cost of the Works to the real property tax roll to be collected in like manner as taxes;
- 3.19.4 Notwithstanding Sections 3.19.1, 3.19.2 & 3.19.3 above, the Director may exercise discretion with respect to extreme rainfall events and provide additional time to repair damaged construction control measures after such an event.

3.20 In addition to the other requirements of this by-law, and notwithstanding any Permit issued under this by-law, no Person shall cause or permit to cause a Site Alteration in the City, unless:

- 3.20.1 it is done with the written consent of the Owner of the Site;
- 3.20.2 all Fill to be used includes only soil, stone, sod or other material acceptable to the Director, conforms with the requirements of all current environmental laws, is clean and such Fill is free of any glass, plastics, rubber, metals, liquid, roofing shingles, large pieces of concrete rubble, garbage or other contaminants;

- 3.20.3 the drainage system for the Site is provided in accordance with this by-law and any Permit issued hereunder and as otherwise required by law, and in accordance with proper engineering standards and practices and will not result in erosion, blockage, siltation or contamination of a water course, flooding or Pending;
 - 3.20.4 the Fill is Placed or Dumped, any Retaining Wall containing such Fill is erected, the Grade is Altered, or the Topsoil is removed, in such a manner that no flooding, ponding, or other adverse effects are caused on other lands.
- 3.21 Every Person to whom a Permit is issued pursuant to this by-law shall, in addition to any conditions of the Permit:
- 3.21.1 ensure that all Work is carried out in accordance with the approved Plans;
 - 3.21.2 ensure that all environmental protection measures specified in the Plans, including erosion and sediment control, are installed and maintained in good repair throughout the duration of the Permit;
 - 3.21.3 ensure that all Work is carried out in accordance with all applicable legislation, regulation and municipal by-laws;
 - 3.21.4 provide a Retaining Wall where required by the Director which does not encroach upon abutting lands, either above or below Existing Grade, and such Retaining Wall shall be constructed to the satisfaction of the Director, and comply with the requirements of the Ontario Building Code;
 - 3.21.5 ensure that the Finished Grade surface is protected from erosion with appropriate cover;
 - 3.21.6 ensure that Fill shall not be Placed or Dumped around the perimeter of any existing building in contravention of the requirements of the Ontario Building Code:
 - 3.21.6.1 In this section, Contaminant means those Contaminants of concern listed in the MECP Soil and Groundwater and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*, 2011.
 - 3.21.7 ensure that no trench in which piping is laid forming part of the drainage system shall be covered and backfilled until the Work has been inspected and approved by the Director;
 - 3.21.8 provide and maintain such protection for Trees as may be require by the Director;
 - 3.21.9 ensure that the Work pursuant to the Permit does not soil or otherwise foul any municipal roads. In the event that this occurs, the Person to whom the Permit was issued shall, in accordance with the City's by-law to prohibit the obstructing, encumbering, injuring or fouling of highways and bridges, as amended from time to time, ensure that the road(s) affected are cleaned to the satisfaction of the Director;
 - 3.21.10 ensure that all conditions of the Permit issued pursuant to this by-law and any requirements of this by-law are fulfilled to the satisfaction of the Director;
 - 3.21.11 ensure that the Work that is the subject of the Permit does not occur in areas regulated by a Conservation Authority or other approval agency without written approval of the respective regulatory or approval agency, and, in the event that such Work is undertaken without such approval; ensure that the affected areas are restored to the satisfaction of the approval agency or Conservation Authority;
 - 3.21.12 The City may restrict the hours of operation and days of operation permitted beyond those restrictions found in municipal by-law.

SECTION 4 – EXEMPTIONS

- 4.1 The provisions of this by-law shall not apply to:
 - 4.1.1 activities or matters undertaken by a municipality or local board of a

municipality in accordance with the *Municipal Act, 2001*;

- 4.1.2 the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of land imposed, after December 31, 2002, as a condition to the approval of a Site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a Site plan agreement or subdivision agreement entered into under those sections;
- 4.1.3 the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of land, imposed after December 31, 2002, as a condition to a development permit authorized by regulation made under Section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under that regulation;
- 4.1.4 the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- 4.1.5 the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of land undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8;
- 4.1.6 the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of land undertaken on 1 and in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - 4.1.6.1 that has not been designated under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8 or a predecessor of that Act, and
 - 4.1.6.2 on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13.
- 4.1.7 the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of land undertaken as an incidental part of drain construction under the *Drainage Act*, R.S.O. 1990, c. D.17 or the *Tile Drainage Act*, 2001, c. 25, s. 142 (5); 2002, c. 17, Sched. A, s. 30 (2, 3);
- 4.1.8 as part of the construction, extension, Alteration, maintenance, or operation of works under Section 26 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50, as amended.
- 4.1.9 associated with the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site within the meaning of Part V of the *Environmental Protection Act*, or a waste, waste disposal or waste management system that is exempted by regulation from Part V of the *Environmental Protection Act*;
- 4.1.10 the removal of Topsoil as an incidental part of a Normal Farm Practice as defined in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1., including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products but not including the removal of Topsoil for sale, exchange or other disposition;
- 4.1.11 replacement of Topsoil for restoration of Agricultural Lands used for normal agricultural practices and which is an incidental part of sod farming, greenhouse operations, and nurseries for horticultural practices and which shall not exceed one thousand (1,000) cubic metres annually and which shall not result in a landform change of more than 0.2m, or at the discretion of the Director;
- 4.1.12 Agricultural Lands: Site Alteration - the altering of the land, addition or removal of less than one thousand (1,000) cubic meters of Topsoil used for an Agricultural Operation. Provided the Site Alteration is at least 1.0 meters from any property line and does not adversely affect Drainage on abutting properties; unless written permission is obtained from the adjacent

landowner;

- 4.1.13 the placement or Dumping of Fill as a nutrient management activity for agricultural practices in compliance with the *Nutrient Management Act, 2002*;
 - 4.1.14 construction of a building, structure, retaining wall or on-site sewage system pursuant to a valid Building Permit which has been issued for the erection of the building, structure, retaining wall and/or on-site sewage system, and the plans accompanying the Building Permit application provides sufficient information to determine that the placing or Dumping of Fill conforms with the provisions of this By-law, and the amount of Fill to be Dumped or placed pursuant to the Building Permit does not exceed one thousand (1,000) cubic metres;
 - 4.1.15 the business practices of a Commercial Fill Operation, provided that proof of such operation has been provided to the Director.
- 4.2 Site Alteration is permitted:
- 4.2.1 on a Lot located outside of any Environmentally Sensitive Areas or areas of Significant Archaeological Resources, that is smaller than 0.405 hectare (1 acre) as identified in the City's Zoning By-law, so long as it is Residential Site Alteration;
 - 4.2.2 on a Lot with a registered development agreement, so long as it is restricted to Development Site Alteration;
 - 4.2.3 on residential properties outside of any Environmentally Sensitive areas or areas of Significant Archeological Resources for the purpose of swimming pool installations or filling in of swimming pools;
 - 4.2.4 outside of any Environmentally Sensitive areas or areas of Significant Archeological Resources as a result of reconstruction or expansion of driveways;
 - 4.2.5 outside of any Environmentally Sensitive areas or areas of Significant Archeological Resources as a result of reconstruction of parking lots provided that an approved, existing site plan is in place;
 - 4.2.6 outside of any Environmentally Sensitive areas or areas of Significant Archeological Resources as a result of reconstruction work, including landscaping activities, in accordance with an approved, existing site plan.

SECTION 5 – REQUIREMENTS FOR ALL PERMITS

- 5.1 A Person applying for the issuance, renewal, amendment or revocation of a Permit shall submit, in a form and manner approved by the Director, all information that is requested.
 - 5.1.1 A completed application in the form which may be amended from time to time by the Director;
 - 5.1.2 Payment of the prescribed fees as set out in the City's Fees and Charges By-law; which fee may be amended from time to time;
 - 5.1.3 Provision of security, if required, in a form and amount to be determined in accordance with the Fees and Charges By-law and Section 12 of this by-law, to secure performance of the Applicant's obligations under this by-law and any Permit that is issued hereunder;
 - 5.1.4 The submission of any Plan(s) and/or supporting studies, as identified in Schedule "A" of this by-law;
 - 5.1.5 Provision of any required permit that may be required by the Grand River Conservation Authority;
 - 5.1.6 Retain a qualified consultant or Qualified Person to prepare a report or reports, to the reasonable satisfaction of the Director, that demonstrate how the proposed operations reconcile to the Ministry of the Environment, Conservation and Parks document

- entitled, "Management of Excess Soil-A Guide for Best Management Practices;
- 5.1.7 Proof of Insurance; and
- 5.1.8 Confirmation of permission, in writing, from all property owners that will be receiving Fill generated in accordance with the Permit and the Works.
- 5.2 Notwithstanding Schedule A, the Director may, in writing, waive the requirements for any of the application items listed, after taking into consideration the nature and scale of the proposed Works and the anticipated impact on the Site and surrounding environment.
- 5.3 The Owner may be required to notify the Director of the commencement, the completion and of the various stages of performance of the Site Alteration and to make the commencement, the completion and the various stages available for inspection by the City or its agents.
- 5.4 Notwithstanding any other provisions of this By-law, the City may require one or more of the provisions as set out in the Section 5 be complied with for any Permit being considered or issued by the City, after taking into consideration the proposed works and the anticipated impacts to the Site, adjacent properties and the surrounding environment.
- 5.5 The Director may attach such other conditions to a Permit that are reasonably required to protect the economic, social and environmental well-being of the City and the health, safety and well-being of residents as a result of anticipated impacts of the Fill operation.

SECTION 6 – ISSUANCE OF PERMIT

- 6.1 The Director shall issue a Site Alteration Permit in the event that;
- 6.1.1 The Director is satisfied that the Applicant has complied with or will comply with all requirements of this by-law;
- 6.1.2 The payment of the prescribed fees as set out in the City's Fees and Charges By-law; which fee may be amended from time to time, has been paid in full to the City;
- 6.1.3 Provision of security, if required, in a form and amount to be determined in accordance with the Fees and Charges By-law and Section 12 of this by-law, to secure performance of the Applicant's obligations under this by-law and any Permit that is issued, has been paid in full to the City;
- 6.1.4 The submission of any Plan(s) and/or supporting studies, as identified in Schedule "A" of this by-law, have been received, reviewed and approved by the City;
- 6.1.5 Proof of Insurance has been provided to the City; and
- 6.1.6 Clearance from the Grand River Conservation Authority has been provided to the City, if required.
- 6.2 The Director shall refuse to issue a Permit when the requirements of this by-law have not been satisfied. In the event that the Director refuses to issue a Site Alteration Permit, the Applicant shall be informed in writing of the refusal by the Director and the reasons for such refusal. The Director may reconsider the Application if additional information or documentation required by the Director is submitted by the Applicant.
- 6.3 Where a Permit has been issued pursuant to this by-law, no Person shall undertake the Work which is the subject of the Permit except in accordance with the Permit Applications, Plans, supporting studies, and other information submitted to the City upon which the Permit was issued and in accordance with the terms and conditions of the Permit.
- 6.4 Notwithstanding the issuance of a Permit pursuant to this by-law, the Permit Holder or

Owner shall comply with all other applicable legislation, including but not limited to all other municipal by-laws and obtain all necessary permits from relevant approval authorities.

- 6.5 The Director may impose terms and conditions, to be fulfilled either prior to or upon issuance of any Permit, as required by the Director. In addition to any other terms or conditions that may be imposed by the Director, Permits shall be issued subject to the terms and conditions set out in this by-law unless exempted in writing by the Director.

SECTION 7 – REVOCATION OF PERMIT

- 7.1 A Site Alteration Permit may be revoked by the Director under any of the following circumstances:
- 7.1.1 If it was issued on mistaken, misleading, false, or incorrect information;
 - 7.1.2 If it was issued in error;
 - 7.1.3 If the Owner, Applicant, or Permit Holder requests, in writing, that it be revoked;
 - 7.1.4 If the terms of an agreement under this by-law are not complied with; or,
 - 7.1.5 If an Owner fails to comply with any provision of the Site Alteration Permit or this by-law or any other applicable statute, regulation or policy regarding the Site, the Site Alteration Permit or the Work.
- 7.2 When a Site Alteration Permit is revoked, the Owner, Applicant, and/or Permit Holder shall immediately cease all operations and Work being conducted under the authority of the revoked Permit and shall immediately rehabilitate and stabilize the land so as to prevent adverse impacts from erosion and sedimentation.

SECTION 8 – TERM OF PERMIT AND PERMIT RENEWAL

- 8.1 Any Permit issued pursuant to this by-law shall be valid for a period of one (1) year from the date of issuance unless revoked in accordance with this by-law.
- 8.2 A Permit which has expired may be renewed by the Director prior to the date of expiry by making a written request to the Director accompanied by a payment of one-half (1/2) of the original Permit fee, provided that the proposed Work which was the subject of the Permit has not been revised. A Permit that has been renewed in accordance with this section shall therefore be treated as a new Permit except that it shall not again be renewed.
- 8.3 No Permit shall be renewed in the event that the Permit Holder is in breach of any of the terms of this By-law or the Site Alteration Permit.

SECTION 9 – ENFORCEMENT

- 9.1 This by-law may be enforced by a By-law Enforcement Officer.
- 9.2 A By-law Enforcement Officer shall have the right to enter onto any private property to inspect for compliance with the provisions of this Chapter.
- 9.3 No person shall hinder or obstruct or attempt to hinder or obstruct the By-law Enforcement Officer in the discharge of duties under this By-law.

ON 10 – POWER TO MAKE ORDERS – REMEDIAL ACTION

- 10.1 Where a By-law Enforcement Officer, in consultation with City Development Engineering staff, is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make an Order to Discontinue Activity requiring the person who contravened the By-law or a person that caused or permitted a contravention of the By-law or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.
- 10.2 The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date and time by which there must be compliance with the Order to Discontinue Activity.
- 10.3 Where a By-law Enforcement Officer, in consultation with City Development Engineering staff, is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make a Work Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.
- 10.4 A Work Order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred, and the work to be done and the date by which the work must be done.
- 10.5 An Order to Discontinue Activity or Work Order may be served personally by the By-law Enforcement Officer, may be sent by registered mail to the person contravening the By-law, or may be posted in a conspicuous place on the property where the contravention occurred.
- 10.6 Where an Order to Discontinue Activity or Work Order under this By-law is served personally by the By-law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the person or persons named.
- 10.7 The posting of the Order to Discontinue Activity or Work Order at the Site shall be deemed to be sufficient service of the Order to Discontinue Activity on the person or corporation to whom the Order to Discontinue Activity is directed on the date it is posted.
- 10.8 Where an Order to Discontinue Activity or Work Order issued under the By-law is sent by registered mail, it shall be sent to the last known address of one or more of the following, as applicable:
 - 10.8.1 the Owner;
 - 10.8.2 the Applicant;
 - 10.8.3 the Permit Holder;
 - 10.8.4 the person contravening the By-law;
 - 10.8.5 the contactor working on behalf of the Owner and/or Applicant.
- 10.9 If a Person is required, under a Work Order under this By-law, to take or cease taking any action, then in default of it being done by the Person so required to do it, the City may do so at the Person's expense under the direction of a By-law Enforcement Officer.
- 10.10 The City may recover the costs of any action taken under section 10.9, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.

- 7.11 The amount of the costs under section 10.9, including interest, constitutes a lien on the land upon the registration in the proper Land Registry Office of a notice of lien.

SECTION 11 – OFFENCE AND PENALTY

- 11.1 Any Person who contravenes any provision of this By-law, or an Order to Discontinue Activity, or a Work Order, is guilty of an offence.
- 11.2 A Person convicted under this By-law is liable to a minimum fine of \$500.00 and a maximum fine of \$100,000.00, where the fine is not a set fine.
- 11.3 Contravention of an Order to Discontinue Activity or a Work Order is a continuing offence, and a Person who is convicted of an offence under this By-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00 and the total of all daily fines for the offence is not limited to \$100,000.00.
- 11.4 A Person convicted under this By-law is liable to a special fine of maximum \$200,000.00 which may be imposed in addition to the regular fine, to eliminate or reduce any economic advantage or gain from contravening the By-law.
- 11.5 Under Section 431 of the *Municipal Act, 2001*, when this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order
- 11.5.1 prohibiting the continuation or repetition of the offence by the Person convicted; and
 - 11.5.2 in the case of a by-law described in Section 135 of *Municipal Act, 2001*, requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

SECTION 12 – FEES AND SECURITY

- 12.1 The fee for processing, administration and inspection for a Permit shall be in accordance with the City's Fees and Charges by-law.
- 12.2 Where required, the Owner shall provide a security deposit to the City which may be used to remedy any breach of this By-law or Permit to be drawn on by the City at its sole discretion, and, without limiting the generality of the foregoing, such security may be used to return the land to a condition satisfactory to the City and to pay any outstanding amounts owed by the Owner that relate to the Permit.
- 12.3 Security shall be in the form of cash, certified cheque, surety bond or a letter of credit in a form acceptable to the City.
- 12.4 The security shall be in an amount determined by the Director and as set out in the Fees and Charges By-law.
- 12.5 The security must be replenished in full by the Permit Holder within thirty (30) days whenever it is drawn upon.

- 12.6 Any letter of credit or surety bond must remain in effect for the full duration of the Permit. Any letter of credit or surety bond and its subsequent renewal forms shall contain a clause stating that sixty (60) days written notice must be given to the City prior to its expiry or cancellation.
- 12.7 In the event that the City receives notice that a surety bond or letter of credit is expiring and will not be renewed, or if further or additional securities are not provided within the said sixty (60) days, the City may draw on the current letter of credit at the discretion of the Director.
- 12.8 Any interest accruing on realized cash security shall belong to the City and not to the Permit Holder.
- 12.9 Such security may be reduced from time to time at the discretion of the Director; but shall otherwise be held pending the completion of all Works required under the Permit and any Order issued under this by-law.
- 12.10 Where the Permit Holder has entered into an agreement pursuant to Section 41 or 51 of the *Planning Act* with the City, the securities provided for Works carried out under a Site Alteration Permit shall be returned to the Permit Holder or applied towards the security requirements specified in the site plan or subdivision agreement.

SECTION 13 - SEVERABILITY

- 13.1 If a court or a tribunal of competent jurisdiction declares any provision or part of a provision of this by-law to be illegal or unenforceable for any reason whatsoever, then that particular provision or provisions or part of the provision shall be severed and the remainder of this by-law shall continue to remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 14 - SHORT TITLE

- 14.1 This by-law shall be referred to as the City of Brantford Site Alteration By-law.

SECTION 15 - REPEAL

- 15.1 The Site Alteration By-law 28-2011 passed on March 11th, 2011, is repealed.

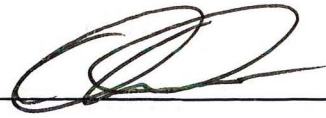
SECTION 16 - FORCE AND EFFECT

- 16.1 This by-law shall come into force and effect immediately upon the signing of this by-law.

READ A FIRST TIME: FEBRUARY 28, 2023

READ A SECOND TIME: FEBRUARY 28, 2023

PASSED: FEBRUARY 28, 2023



MAYOR



ACTING CLERK

SCHEDULE "A" TO BY-LAW NUMBER 29-2023
Standards for Plans Application for Site Alteration Permit

APPLICATION PACKAGE

1.1 The Director may require the applicant to submit to the City:

- a) a completed application in the form which may be amended from time to time by the Director and shall include the following;
 - i. the municipal address of the Site where the Site Alteration is to take place;
 - ii. the legal description of the land upon which the Fill is to be Dumped or placed or other Site Alteration is to occur;
 - iii. the name, address, PIN abstract and contact information of the Owner of the land upon which the Fill is to be received and placed or Dumped, including written acknowledgement and written acceptance of the Fill material being transported to his/her property;
 - iv. the name, address and contact information of the agent/consultant Engineers authorized by the Owner of the land upon which the Fill is to be placed, Dumped, cut or removed or other Site Alteration is to occur;
 - v. the name, address and contact information of the contractor authorized by the Owner of the land upon which the Fill is to be placed, Dumped, cut or removed or other Site Alteration is to occur;
- b) the applicable fees calculated in accordance with the rates set out in the City's Fees and Charges By-law or as indicated in this document;
- c) securities in ensure the Owner's obligations according to the Site Alteration Permit shall be in accordance with Section 12 of this by-law;
- d) proof of Insurance;
- e) permission in writing from the Owner of the Receiving Site;
- f) confirmation that the property where the proposed Site Alteration is to take place are not within any of the prohibited areas listed in Section 3.23;
- g) all source location(s) of the Fill being placed or Dumped including any Soil testing as required by the Director;
- h) a brief description of the Works to take place including the use of the land and any adjacent land;
- i) a schedule of the anticipated starting and completion dates of each Site Alteration activity including the installation of Site control measures needed to meet the requirements of this by-law;
- j) the location, dimensions, details, design calculations and estimated costs for the supply, installation and maintenance of all construction *Site* control measures, including dust and mud control, necessary to meet the requirements of this By-law including sediment and *erosion* control measures as prepared by a qualified professional, who will oversee the implementation and administration of the *erosion* and sediment control plan during construction and after as required;
- k) the details of the Site rehabilitation including the type and location of all interim and permanent stabilization measures;
- l) details regarding the proposed Haul Routes to and from the Site, including the routes to be used and the times these routes will be used;
- m) any further and other information with respect to the Site as may be required by the Director.

BACKGROUND STUDIES

1.2 The City may require the Applicant to undertake and submit the following studies in support of the proposed Site Alteration Works:

- a) confirmation of the surrender of the license if the Site has been previously licensed by the Ministry of Northern Development, Mines, Natural Resources and Forestry;
- b) confirmation from a traffic consultant that the proposed traffic and road access components of the Site Alteration operation meet the requirements of the City and provide any Site specific conditions imposed by the City;
- c) confirmation from a hydrogeologist and/or hydrologist that the proposed Site Alteration operation will have no Adverse Effects on water quality and quantity, key hydrological areas or Environmentally Sensitive Areas;
- d) confirmation prepared by an Arborist that the proposed Site Alteration meets all Tree protection requirements of the City, Province or Federal Government that prohibit or regulate the destruction or injuring of Trees and provide any Site specific conditions imposed by the applicable authority;
- e) confirmation by an qualified environmental consultant of on-site presence or absence of migratory birds as regulated by the *Migratory Birds Convention Act* and any Site specific conditions imposed by legislation;
- f) confirmation by a fisheries biologist of on-site presence or absence of fish habitat as regulated by the *Fisheries Act* and any Site specific conditions imposed by legislation;
- g) an environmental impact study, including a natural heritage and/or hydrological assessment, by a qualified consultant, where the proposed Site alteration has the potential to have adverse effects or negative impact on Environmentally Sensitive Areas;
- h) In the event that a Site is identified as containing archaeological resources, or as being within an area of archaeological potential, the Applicant or Owner shall be required to submit a Stage 1 archaeological assessment for the Site. Where a Stage 1 archaeological assessment confirms the presence of archaeological resources or the presence of archaeological potential, the Applicant shall be required to submit a Stage 2 archaeological assessment for the site. The Applicant may submit a combined Stage 1 and Stage 2 archaeological assessment. These assessments shall be prepared by an archaeologist holding a license from the Province of Ontario, in accordance with all relevant legislation and policy, including, but not limited to, the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 the archaeological assessment technical guidelines, Standards and Guidelines for Consulting Archaeologists, or any other document(s) or requirements as published by the Province of Ontario.
- i) all assessments of soil quality by a geotechnical consultant and groundwater quality by a hydrogeologist at the Receiving Site in order to establish the current, ambient Site condition;
- j) a stormwater management report by a qualified professional where the Site Alteration has the potential to effect the water quality and/or quantity of runoff, erosion potential or thermal regime;
- k) any relevant landform conservation plan prepared to the satisfaction of the Director, and
- l) any other studies or reports as required by the Director.

ENGINEERING PLANS

1.3 The engineering Plan(s) shall be based on an identified legal survey of the Site, if required by the Director. The engineering Plan(s) shall be prepared by a Qualified Person and may include the following at the discretion of the Director:

- a) a key map showing the location of the Site;
- b) the scale of the drawing in meters, at a range of 1:250 to 1:1000 or as approved by the Director;
- c) the Site boundaries including property lines that are clearly shown;
- d) the number of hectares of the Site;
- e) the location, dimensions and use of building or structures existing or proposed to be erected on the Site;
- f) the location, dimensions and use of building or structures on adjacent property within thirty (30) meters beyond the Site boundaries;
- g) the location of any easements;
- h) the location of wells, wellheads and source water protection areas;
- i) the location of lakes, streams, wetlands, channels, ditches, swales, watercourses, other bodies of water, natural drainage channels or other natural heritage features on the Site or within thirty (30) metres beyond the Site boundary;
- j) the location of Environmentally Sensitive Areas on the Site and within ninety (90) metres beyond the property line;
- k) the regional storm flood plan and conservation authority Fill regulation lines;
- l) the location of the predominant soil types;
- m) a general inventory of vegetative cover, including all Trees, on the Site;
- n) the location, including distance from the property line, species, for every Tree located within five (5) metres of the Site, any access route to the Site, or any proposed staging or storage area;
- o) the location, dimensions and invert elevations of any existing and proposed storm water drainage systems, sewers, drainage pipes, culverts, inlet chambers, drainage tiles, septic beds and natural drainage patterns on and thirty (30) meters beyond the property lines
- p) the existing Grade elevations at contour intervals not to exceed one half (1/2) of one (1) metre and to extend a minimum of thirty (30) metres beyond the Site boundary with spot elevations along the property line at sufficient intervals to clearly show the existing drainage patterns on the land and on abutting lands;
- q) the proposed Final Grade elevations of the Site;
- r) the details of any required Retaining Wall, including the dimensions, type of material, proposed elevations and design cross-section;
- s) the location and dimension of all proposed land-disturbing activities;
- t) the location and dimension of all proposed temporary stockpiles of Topsoil, Fill and other materials;
- u) the location and dimensions of utilities, structures, roads, highways, paving, sidewalks, walkways, easements, catch basins;
- v) the location and dimensions of all proposed access routes from highways;
- w) the location and dimensions of all proposed staging areas for equipment;
- x) the location, dimensions, design details and design calculations of all construction Site control measures necessary to meet the requirements of this by-law, including details of the proposed erosion and sediment control measures, and details of any drainage system to be used upon the completion of the Site Alteration; and
- y) any further and other information with respect to the Site as may be required by the Director.

