

Township of
Langley



Est. 1873

REPORT TO MAYOR AND COUNCIL

PRESENTED: JUNE 28, 2021 - REGULAR MEETING
FROM: ENGINEERING DIVISION
SUBJECT: SOIL DEPOSIT AND REMOVAL BYLAW AMENDMENTS

REPORT: 21-81
FILE: 5280-14

RECOMMENDATIONS:

That Council authorize staff to forward all soil or fill use applications involving the removal of soil, or deposit of soil and other material having a volume of 600 cubic metres or less to the provincial Agricultural Land Commission (ALC) for consideration, without the need for Council consideration of referral to the ALC on an individual basis, subject to compliance with the provisions of the Township of Langley Zoning Bylaw, Soil Deposit and Removal Bylaw; and other regulations as may be applicable;

That Council give first, second, and third reading to Soil Deposit and Removal Bylaw 2013 No. 4975 Amendment Bylaw 2021 No. 5724 to amend the volume fee requirements for soil or other material previously deposited without a permit issued pursuant to the Soil Deposit and Removal Bylaw; and

That Council direct staff to continue with the current practice of enforcing Bylaw provisions in cases where deposit or removal of soil, or other material, exceeds 600 cubic metres without a permit.

EXECUTIVE SUMMARY:

In 2019, the provincial Agricultural Land Commission (ALC) amended the regulations for the deposit and removal of soil or other material on properties within the Agricultural Land Reserve (ALR) to provide the following two (2) processes for property owners:

- Notice of Intent (NOI) – property owners submit NOI to the ALC for staff review 60 days prior to the proposed deposit or removal. If approved, municipal permits are issued by the Township. No Council approval required; or
- Soil or Fill Use Application – property owners submit an application to the ALC; with an approximate timeframe for review and approval by the ALC of between 12 to 24 months. Approval from Council and subsequently the ALC required.

The Agricultural Land Commission Act (the Act) restrict local governments from issuing soil deposit and removal permits when prior approval from the ALC has not been obtained. Currently, retroactive NOI's are not being accepted by the ALC for material deposited, without prior local government approval. This requires property owners go through the more protracted soil or fill use application process and requires consideration and approval by Council before the applications are reviewed for consideration of approval by the ALC.

In 2015, Council adopted a 'standing resolution', providing staff with authorization to review and forward all applications equal or less than 600 m³ of soil, or other material, to the ALC, without each application being individually presented to Council for resolution, thereby reducing the administrative burden on Council given the minimal overall community impact of such applications. In response to a request from the ALC and in consultation with legal counsel, the 'standing resolution' will need to be updated to reflect the changes to the Act as well as on a regular basis following each municipal election to ensure the 'standing resolution' reflects the will of each newly constituted Council.

There are frequently cases brought to staff's attention where a property owner has deposited material without the necessary Township and ALC permits and approvals in place. Many of these files involve relatively small amounts of soil or other material and compliance is obtained through issuance of a retroactive permit provided there are no further concerns (given the applicant complies with the Township's requirements including payment of all required fees). This approach has been a longstanding practice in the Township of Langley.

With the amended ALC regulations, achieving compliance for these property owners is more difficult particularly as retroactive NOI's are not being accepted by the ALC. In an attempt to discourage property owners from seeking compliance after unauthorized deposits or removals have occurred; and rather to encourage owners to obtain the necessary approvals prior to filling activity taking place, it is proposed to increase the volume fee from \$1 per m³ to \$3 per m³, where soil or other material have been found to have been deposited without a permit. There are no proposed amendments to the current application fees with the double application fee proposed to remain in effect.

The recommendation seeking Council's approval of staff's current practice of enforcing the bylaw in cases of deposit or removal of soils or other materials exceeding 600 m³, without a permit having been first obtained, has been included to more formally publicize the intent for strict compliance with bylaw provisions. For added clarity, the intent of this recommendation is to ensure that property owners fulfill the requirements of the Soil Deposit and Removal Policy including the public notification and mailout process, prior to any deposit or removal.

PURPOSE:

To adopt a standing resolution of Council for staff to review and process soil or fill use applications where the volume is less than 600 m³, to amend the Soil Deposit and Removal Bylaw for increased volume fees in retroactive compliance situations, and to direct staff to enforce removal of soil or other material in excess of 600m³ deposited without a permit.

BACKGROUND/HISTORY:

In 2019, the ALC amended the regulations regarding the deposit of soil or other material within the ALR. Following the amended regulations, there are now two (2) separate processes available for property owners located in the ALR desiring to deposit soil or other material as summarized below:

Table 1. Summary of processes available for deposit on ALR properties

Process	Timeframe	ALC approval process	Municipal approval
Notice of Intent (NOI)	60 days for consideration	By CEO/Staff	Staff
Soil or Fill Use Application	Approximately 12-24 months	By Commission	Resolution of Council

The ALC has not published any clear guidelines on which process property owners should follow when addressing a proposal with the suggestions that property owners contact the ALC directly. However, the following items are observed based on Township staff's experience and history with these applications, since the new regulations came into effect:

- A NOI is generally not accepted in instances where the deposition of soil or other material has already taken place;
- Proposals that involved a higher volume of soil or fill are typically addressed through the soil or fill use application;
- Proposals may be filed under an NOI, however there is a provision for the ALC CEO, at their discretion, to require a soil or fill use application; and
- Proposals that are more complicated or involve substantial changes on the property are usually addressed through a soil or fill use application.

Prior to the amendments in 2019, the ALC effectively considered the deposit/removal of soil or other material as either farm use or non-farm use. If it was determined that the proposal was farm use as specified in the regulations, further interaction with or approval from the ALC was not required. Non-farm use applications could still proceed but required endorsement by the ALC and Council. As set out above, these requirements have been effectively replaced with the NOI and soil or fill use application process. The adoption of the 2019 amendments mostly eliminated the deposit/removal of soil or other material being considered as either a farm use or a non-farm use (although there are still a small category of deposits for specified farm uses that do not require ALC approval), and instead created the above two processes.

DISCUSSION/ANALYSIS

Section 18(4) of the Act restricts the issuance of municipal soil deposit permits until ALC approvals are in place. The lack of guidance from the ALC on which process (NOI or soil or fill use application) should be followed by property owners places municipal staff in the unfortunate position of being unable to provide clarity to owners in the ALR for inquiries and remedial works involving soil deposit and removal permits that require ALC approval. Many residents contact local government staff first and express concern or frustration when they are advised by the Township that they must contact the ALC directly for clarity and direction.

The Township frequently encounters scenarios where the property owner has deposited material without the necessary permits and approvals in place as noted in Table 2 below. Many of these files involve relatively small amounts of soil or other material. Compliance is typically obtained through issuance of a retroactive municipal permit, after the required application and fees are received provided there no further concerns. This approach has been a longstanding practice in the Township.

Table 2. Summary of soil files by year

Year	Stop Work Orders ALR	Stop Work Orders Non-ALR	Total Stop Work Orders	Permit Issued ALR <600	Permit Issued ALR >600	Permit issued Non-ALR <600	Permit Issued Non-ALR >600	Total Permits Issued
2016	59 (87%)	9 (13%)	68	66 (71%)	13 (14%)	14 (15%)	0	93
2017	29 (83%)	6 (17%)	35	47 (69%)	8 (12%)	13 (19%)	0	68
2018	30 (77%)	9 (23%)	39	65 (86%)	2 (3%)	8 (11%)	1 (1%)	76
2019	44 (73%)	16 (27%)	60	22 (63%)	3 (9%)	10 (29%)	0	35
2020	54 (92%)	5 (8%)	59	29 (66%)	0	12 (27%)	3	44
Total	216 (83%)	45 (17%)	261	229 (72%)	26 (8%)	57 (18%)	4 (1%)	316

As noted, a significant number of soil files originate with a stop work order where soil or other material are deposited without a permit. Many of these files result in a permit being issued for retention of the soil or other material deposited. Recent amendments have resulted in a significant decrease in the number of permits issued for lands in ALR, particularly for volumes less than 600 m³.

When the amendments were adopted in 2019, the published ALC bulletin stated that an NOI was not to be used for situations where soil or other material was already deposited. However, in practice, a number of retroactive NOIs were still accepted by the ALC. Recently the ALC has changed its practice to align with the 2019 bulletin and has denied several retroactive NOIs. Accordingly, property owners are required to either:

- Pursue approval through a soil or fill use application; or
- Remove the soil or other material from the property and start the process over.

This creates challenges for the Township as the first option above requires consideration of all these applications by Council (soil or fill use applications require a Council resolution before they will be considered by the ALC). Due to the timeframes involved with a soil or fill use application, this can significantly delay resolution for these properties and the unpermitted soil or fill may be left on the property for months or years. For residents who have made a complaint or raised concerns with these unlawful deposits of soil or other material, it appears as if their concerns are not being addressed in a timely manner. Mandating removal of the material from the property and starting the process over also has several negative implications including:

- being burdensome and expensive for property owners who are reluctant or unwilling to undertake this option (requires significant staff time and resources dealing with non-compliance and enforcement); and
- impact on municipal infrastructure, particularly roadways, as the same material may be moved three (3) times via heavy trucks (deposited on the property without approval, removed from the property for compliance, then redeposited on the property once approvals are obtained).

There are three (3) recommendations, as outlined below, for Council's consideration of adoption, to streamline processes, and discourage seeking compliance after works have been completed; but instead to seek approval prior to any deposit or removal activity; and further to enhance transparency and eliminate uncertainty for property owners:

1. Renew a standing resolution for volumes under 600m³

In 2015, a standing resolution was adopted providing staff with the ability to review applications below 600 m³ without such requiring individual Council approval. Under section 25 of the Act, Council is required to authorize all soil or fill use applications, where the owner is seeking to deposit soil or fill on property located in the ALR, prior to the ALC reviewing and considering the application.

As outlined above, the ALC has recently decided to enforce its requirement that any soil or fill deposited in the ALR prior to being approved by the ALC must be approved through a soil or fill use application (as opposed to a more streamlined approval through an NOI, which does not require Council's authorization under the Act). As such, Township staff expects that there will be an increased administrative burden on Council in having to review and authorize more applications.

If adopted by Council, the new standing resolution would authorize staff to forward all soil or fill use applications (for the removal of soil, or deposit of soil and other material having a volume of 600 m³ or less) that are compliant with the Township's Zoning Bylaw and Soil Deposit and Removal Bylaw, directly to the ALC without each application having to be first presented to Council for a specific resolution. This would significantly decrease the administrative burden on Council, while still ensuring that such applications are compliant with the Township's Zoning Bylaw. In addition, if the deposit of soil or fill is approved by Council under the resolution, and then by the ALC, the owner will still have to comply with the Township's Soil Deposit and Removal Bylaw, including obtaining a permit from the Township and paying the requisite fees. Further, the requirements under the Township's Soil Deposit and Removal Policy (05-008) (the Policy) will continue to be applicable, meaning Council will still review and consider all applications where deposit of soil or other material is greater than 600 m³.

Council has adopted a similar standing resolution in respect to non-adhering residential use applications to the ALC, which are forwarded to the ALC if they comply with the Township's Zoning Bylaw. This standing resolution was first adopted by Council in January 2007 and was recently updated in December 2020 to ensure the resolution represents the will of Council as it is currently constituted. In consultation with external legal counsel, Township staff have been advised that such standing resolutions should be updated following every municipal election to ensure proper authorization has been provided by each subsequent iteration of Council.

2. Increase volume fees for files seeking retroactive compliance

In an effort to discourage deposition of soil or other material without the applicable approvals in place, staff propose to increase the non-refundable volume fee for soil deposit or removal applications for soil or other material less than or equal to 600 m³, completed without prior approval from the Township, to \$3/m³ from the current \$1/m³. It is expected that an increase in the volume fee will act as a deterrent for owners from depositing soil or other material without the necessary authorizations in place. It is recommended that section 13 of the Bylaw be amended as follows:

Current wording:

13. *If it is determined by the Engineer that Depositing or Removing has occurred without a valid Permit, as required by this Bylaw, all work must cease and a Permit application must be immediately submitted with a non-refundable Permit fee of twice the amount specified in section 12(d) of this Bylaw. If the aforesaid application and fee is not submitted within seven (7) days of the Engineer's determination, as set out herein, or the Permit expires or is revoked, all Soil or Other Material Deposited on a Property without a Permit will forthwith be removed from the Property by the owner of the Property, or their agent, at their sole cost, unless exempted by the Engineer.*

Proposed wording:

13. *If it is determined by the Engineer that Depositing or Removing has occurred without a valid Permit, as required by this Bylaw, all work must cease and a Permit application must be immediately submitted with a non-refundable Permit fee of twice the amount specified in section 12(d) of this Bylaw and a volume fee of triple the amount specified in section 12(e) of this Bylaw. If the aforesaid Permit application and fee is not submitted within seven (7) days of the Engineer's determination, as set out herein, or the Permit expires or is revoked, all Soil or Other Material Deposited on a Property without a Permit will forthwith be removed from the Property by the owner of the Property, or their agent, at their sole cost, unless exempted by the Engineer in their sole discretion.*

3. Enforce removal of material deposited without a permit in excess of 600m³

For instances where the volume deposited without a permit or approvals in place exceeds 600 m³, an additional recommendation is to require either full removal or removal so the remaining amount of soil or other material will be 600 m³ or less. The deposit of soil or other material more than 600 m³ requires completion of the mailout process as outlined in the Policy. Recommendation 2, which requires payment of increased volume fees, would be utilized for all soil or other material deposited up to 600 m³ and where the property owner is seeking retroactive compliance.

Providing retroactive permits for deposits in excess of 600 m³ with increased volume fees may result in some property owners intentionally bypassing the soil mailout process under the Policy to avoid fees, the time associated with the mailout process, and the “risk” of not obtaining community support.

Bylaw amendments are not required to implement this recommendation as Section 47 of the Bylaw already provides this flexibility. A summary of the applicable application and volume fees with the adoption of the recommendations is provided below.

Table 3. Summary of application and volume fees with proposed recommendations

Scenario	Volume < or = 600 m ³			Volume > 600 m ³			Comments
	Application Fee	Volume Fee	Mailout Process	Application Fee	Volume Fee	Mailout Process	
Approval prior to deposit	\$250	\$1/m ³	N/A	\$500	\$1/m ³	Applies	
Seeking retroactive compliance	\$500	\$3/m ³	N/A	\$1,000	\$3/m ³ - soil deposited without a permit up to 600 m ³ , \$1/m ³ - soil deposited in excess of 600 m ³ after obtaining a permit	Applies	Removal required to bring volume to 600 m ³ or less prior to mailout

The proposed bylaw amendments do not require approval from the Minister. Section 9(e) of the Community Charter requires approval of the Minister where a bylaw “prohibits” the removal or deposit of soil, but bylaw amendment does not do so nor does it have that as a primary effect.

Respectfully submitted,

Richard Welfing
MANAGER, ENGINEERING SERVICES
for
ENGINEERING DIVISION

THE CORPORATION OF THE TOWNSHIP OF LANGLEY

SOIL DEPOSIT AND REMOVAL BYLAW 2013 NO. 4975

AMENDMENT BYLAW 2021 NO. 5724

EXPLANATORY NOTE

Bylaw 2021 No. 5724 updates Soil Deposit and Removal Bylaw 2013 No. 4975 by amending the volume fee requirements for soil or other material previously deposited without a permit.

THE CORPORATION OF THE TOWNSHIP OF LANGLEY

SOIL DEPOSIT AND REMOVAL BYLAW 2013 NO. 4975

AMENDMENT BYLAW 2021 NO. 5724

The Municipal Council of the Corporation of the Township of Langley, in Open Meeting Assembled, ENACTS AS FOLLOWS:

- 1. This Bylaw may be cited for all purposes as “Soil Deposit and Removal Bylaw 2013 No. 4975 Amendment Bylaw 2021 No. 5724”.
- 2. The “Soil Deposit Bylaw 2013 No. 4975” as amended is further amended by:

Deleting and Replacing Section 13 with the following:

- 13. If it is determined by the Engineer that Depositing or Removing has occurred without a valid Permit, as required by this Bylaw, all work must cease and a Permit application must be immediately submitted with a non-refundable Permit fee of twice the amount specified in section 12(d) of this Bylaw and a volume fee of triple the amount specified in section 12(e) of this Bylaw. If the aforesaid Permit application and fee is not submitted within seven (7) days of the Engineer's determination, as set out herein, or the Permit expires or is revoked, all Soil or Other Material Deposited on a Property without a Permit will forthwith be removed from the Property by the owner of the Property, or their agent, at their sole cost, unless exempted by the Engineer in their sole discretion.

READ A FIRST TIME the	day of	, 2021
READ A SECOND TIME the	day of	, 2021
READ A THIRD TIME the	day of	, 2021
ADOPTED the	day of	, 2021

_____ Mayor _____ Township Clerk