

Township of Lucan Biddulph

BY-LAW NO. 38-2022

Being a By-Law to Prohibit and Regulate the Placing or Dumping of Fill, Removal of Topsoil and the Alteration of the Grade of Land in the Township of Lucan Biddulph

WHEREAS in accordance with Section 2 of the Municipal Act, R.S.O. 2001, the specific natural environment powers conferred on municipalities by sections 135 through 147 of the aforementioned Act supplement the powers provided under section 11 of the same Act to provide municipalities with broad and flexible discretion to create regulations necessary for the economic, social and environmental well-being of their respective municipalities;

AND WHEREAS Section 142 of the Municipal Act, R.S.O. 2001 specifically provides that by-laws may be passed by the Council of a municipality for the purposes of prohibiting and regulating the placing or dumping of fill, removal of topsoil and the alteration of the grade of land within its jurisdiction;

AND WHEREAS Section 425 provides the authority for a municipal by-law to specify that a contravention of a by-law is an offence;

AND WHEREAS section 429 of the *Municipal Act, 2001* provides that a municipality may establish a system of fines for offences under municipal by-laws, including but not limited to establishment of a "special fine" designed to eliminate or reduce any economic advantage or gain from contravening a by-law;

AND WHEREAS Council for the Township of Lucan Biddulph has deemed it to be in the public interest to prohibit and regulate the placing or dumping of fill, removal of topsoil, and the alteration of the grade of land in the Municipality and to establish a system of fines for offences under this By-Law.

NOW THEREFORE, the Council of the Corporation of the Township of Lucan Biddulph enacts as follows:

1. **THAT** the standards herein, and amended from time to time, be hereby adopted and come into effect on the final date of passing of this by-law.
2. **THAT** this By-Law may be referred to as the "Site Alteration By-Law."
3. **THAT** This By-Law applies to all land in the Municipality.

4. DEFINITIONS

In addition to terms defined elsewhere in this By-Law, the following terms have the following meanings under this By-Law, including its Schedules:

- 4.1 "Alteration" means the Placing or Dumping of Fill, causing or permitting the Placing or Dumping of Fill, removal of Soil, causing or permitting the removal of Soil, altering the Grade of land, or causing or permitting the Grade of the land to be altered.
- 4.2 Council" means the Council of the Township of Lucan Biddulph.
- 4.3 "County" means The Corporation of the County of Middlesex.
- 4.4 "Conservation Authority" means any one or more of the Upper Thames River Conservation Authority or Ausable Bayfield Conservation Authority, whichever Authority or Authorities have authority and jurisdiction over particularized land located in the Municipality.
- 4.5 "Drainage" means the movement of water for the purposes of achieving non-harmful water levels.
- 4.6 "Dumping" or "Dump" shall be broadly interpreted for the purposes of this By-Law to include stripping, removing, moving, transporting, importing, exporting or placing of any Fill or Topsoil into, out of or upon lands within any single or different properties within the Municipality.
- 4.7 "Fill" means any material placed on land and without limiting the generality of the foregoing, includes soil, rock, concrete and stone.
- 4.8 "Grade" means the elevation of an existing ground surface, except where the Placing or Dumping of Fill, removal of Soil, or the alteration of the then existing ground surface has occurred in contravention of this By-law, in which case, Grade means the elevation of the ground surface as it existed prior to such Placing or Dumping of Fill on, the Removal of Soil from, or the alteration of the then existing ground surface prior to the occurrence of the Placing or Dumping of Fill or the removal of Soil.
- 4.9 "*Municipal Act*" means the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended or replaced.
- 4.10 "Municipality" means the Township of Lucan Biddulph.
- 4.11 "Officer" means a By-law Enforcement Officer, Building Inspector or Chief Building Official as appointed or authorized by the Council of the Municipality to enforce this By-Law and/or any "provincial offences officer"

as defined in the *Provincial Offences Act*.

- 4.12 "Order to Discontinue Activity" means an order made pursuant to section 8.9 of this By-law.
- 4.13 "Owner" is a Person and means the registered owner(s) of the land or anyone acting under authorization or direction of the registered owner(s).
- 4.14 "Permit" means a permit issued by the Municipality pursuant to the provisions of this Site Alteration By-law.
- 4.15 "Person" includes:
- a) natural individuals and their heirs, executors, administrators, agents, successors and representatives; and
 - b) corporations, partnerships, other forms of business associations and their respective officers, employees, agents, successors, consultants, assignees and representatives.
- 4.16 "Place" or "Placement" means the distribution of Fill on lands to establish a finished ground surface higher or lower than the existing Grade and "Placing" and "Placed" in relation to Fill have the same meaning.
- 4.17 "*Planning Act*" means the *Planning Act*, RSO 1990 c P.13, as amended or replaced.
- 4.18 "*Provincial Offences Act*" means the *Provincial Offences Act*, R.S.O. 1990, c. P.33; as amended or replaced.
- 4.19 "Site" means the area of land subject to the proposed Grade alteration, Placement or Dumping of Fill or removal of Soil.
- 4.20 "Site Alteration Agreement" means an agreement entered into, in accordance with section 6.9 of this By-Law.
- 4.21 "Site Alteration By-law" means this By-Law.
- 4.22 "Soil" means material consisting of a mixture or any one or all of organic remains, clay and rock particles.
- 4.23 "Topsoil" shall have the same meaning as the definition of "topsoil" under section 142(1) of the *Municipal Act*. For reference purposes only and

subject to amendments to the *Municipal Act*, the term as of the date of the passing of this By-Law is defined as "those horizons in a soil profile, commonly known as the "O" and the "A" horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat."

- 4.24 "Work Order" means an order made pursuant to section 8.13 of this By-Law.
- 4.25 "Zoning By-law" means an in-force by-law passed by the Municipality pursuant to section 34 of the *Planning Act*.

5. PROHIBITION

- 5.1 No Person shall Place or Dump Fill or cause or permit the Placing or Dumping of Fill without obtaining a Permit for such purpose from the Municipality.
- 5.2 No Person may remove Soil or cause or permit the removal of Soil without obtaining a Permit for such purpose from the Municipality.
- 5.3 No Person shall alter the Grade of land or cause or permit the Grade of the land to be altered without obtaining a Permit for such purpose from the Municipality.
- 5.4 No Person shall Place or Dump Fill, cause or permit the Placing or Dumping of Fill, remove Soil, alter the Grade of land, or cause or permit the Grade of the land to be altered in a manner that is not in compliance with the terms of a Permit issued for such purpose by the Municipality.
- 5.5 Every person shall comply with an Order to Discontinue Activity issued under the authority of this By-law.
- 5.6 Every person shall comply with a Work Order issued under the authority of this By-Law.
- 5.7 No person shall install underground infrastructure, services or structures in the Municipality.

6. SITE ALTERATION PERMITS AND AGREEMENTS

- 6.1 An application for a Permit to change the Grade of land, Place or Dump fill, or remove Soil must be completed on a form provided by the Municipality, which may be amended from time to time by the Municipality in its sole and

absolute discretion. The Municipality's form as of the day of the passing of this By-Law, which is subject to amendment at the discretion of the Municipality, is attached as Schedule "B".

6.2 Subject to section 6.9 of this By-Law, a Permit shall be issued by the Manager of Public Works or his or her designate when the following criteria have been fulfilled:

- a) The proposed site alteration is related to a use lawfully permitted within the Zoning By-law; and
- b) The Owner has addressed the following matters to the satisfaction of the Municipality:
 - i. All necessary approvals have been obtained from the Conservation Authority which has authority and jurisdiction in the area;
 - ii. All necessary approvals have been obtained in accordance with the County of Middlesex Woodlands Conservation By-Law;
 - iii. The proposal will not cause any adverse impact on area Drainage;
 - iv. The proposal will not adversely impact slope stability or cause Soil erosion;
 - v. The proposal will not adversely impact vegetation communities, wildlife habitat or fish habitat in the area;
 - vi. The proposal will not adversely impact the quality or quantity of groundwater in the area;
 - vii. A haul route has been reviewed and approved to the satisfaction of the municipality.
 - viii. Such other matters related to the proposal which are raised at the absolute discretion of the Manager of Public Works of the Municipality, or his designate, as the context of the proposal requires, which are communicated to the applicant in relation his/her or its application for a Permit.

6.3 It is a condition of each Permit that the Permit may be revoked by the

Municipality under the following conditions:

- a) If it was obtained on mistaken, false or incorrect information;
- b) If it was issued in error;
- c) If the Owner requests in writing that it be revoked;
- d) If the terms of a Site Alteration Agreement entered into in accordance with section 6.11 If this By-Law have not been complied with; or
- e) If an Owner fails to comply with the provisions of this By-Law or with an order requiring work to be done to correct any contravention of this By-Law.

6.4 In any Site Alteration Permit, the Municipality may stipulate conditions that are specific to a particular site alteration proposal. Such conditions may include but are not limited to the following:

- a) The Municipality may, from time to time and at the Applicant's expense, require the testing of any Fill by a qualified expert retained by the Municipality. Dumping and/or Fill Removal may be suspended pending test results at the discretion of the Municipality;
- b) The Municipality may require the Applicant to install such site remediation measures, including Topsoil, seeding, sodding and installation of berms and landscaping as are necessary to minimize the visual impact of Fill or Grade alteration proposals and to provide for stabilization of altered Grade;
- c) The Municipality may require a lot grading certificate upon completion of the work described in any Permit and may require the Owner or Applicant to post security to ensure delivery of such certificate.
- d) The municipality may require a street cleaning schedule for roads, assumed and unassumed, that are affected by the site alteration works.

6.5 A Site Alteration Permit shall not exempt the Owner from obtaining any other necessary approvals from governments, boards and/or other approval authorities which have jurisdiction in the area.

- 6.6 A Site Alteration Permit shall be valid for the length of time detailed by the Municipality.
- 6.7 A Site Alteration Permit shall be transferable to subsequent owners of the Site provided the Municipality is advised in writing of their acknowledgment and commitment to comply with all of the requirements of an existing Site Alteration Permit.
- 6.8 Subject to potential financial conditions which may be required pursuant to section 6.9 of this By-Law, the Site Alteration Permit fee and other fees associated with this By-Law are contained in the Municipality's Fees and Charges By-Law, as amended or replaced.
- 6.9 The municipality may draw on any security provided under this by-law in order to remedy any breach of the provisions of this by-law, the conditions of the permit and any other obligations of the owner relating to the permit.
- 6.10 The Owner is to comply with any requirements of the Ministry of Environment, Conservation and Parks including but not limited to O. Reg 406/19: On-site and Excess Soil Management, as amended or replaced.
- 6.11 Notwithstanding sections 6.2 through 6.8 of this By-Law, the Municipality with respect to any application for a Permit, in its sole and absolute discretion, may require the Owner to enter into a Site Alteration Agreement with the Municipality as a condition of Permit approval and such Site Alteration Agreement shall be registerable on title of and run with the lands to ensure the site alteration proposed for the lands occurs in accordance with approved plans, specifications and proper engineering principles. The aforementioned Site Alteration Agreement may require:
- a) The Owner to provide financial security to the Municipality in an amount and form acceptable to the Municipality in its sole and absolute discretion;
 - b) The Owner to provide evidence that he/she/it has sufficient liability insurance coverage to cover the risks associated with the proposed site alternation;
 - c) The Owner or Applicant to release, indemnify and/or agree to defend the Municipality;

- d) The Owner to certify that the Fill contains no contaminants, as defined by the *Environmental Protection Act*, RSO 1990 c E 19, as amended or replaced, and any Regulations of the aforementioned Act, as amended or replaced;
- e) Certification by a geotechnical engineer or similarly qualified Person at any time during the Site Alteration project; and/or
- f) The Owner to address such other safeguards related to the proposal which are raised at the absolute discretion of the Manager of Public Works of the Municipality, or his designate, as context requires, which are communicated to the applicant.

7. EXEMPTIONS

7.1 The provisions of this By-Law do not apply to the following:

- a) Activities of a Municipality, County, local board or road authority.
- b) Activities authorized pursuant to a building permit issued by the Municipality.
- c) Normal farm practices as defined in section 1.1 of the *Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1*, as amended or replaced.
- d) Any Placing or Dumping of Fill, removal of Soil, or alteration of the Grade of land exempted pursuant to section 142(5) of the *Municipal Act*.
- e) Activities imposed as conditions of the approval of a site plan, plan of subdivision or a consent pursuant to the *Planning Act*.
- f) Activities pursuant to site plan agreement, subdivision agreement, severance agreement or any other development agreement pursuant to the *Planning Act*.
- g) Landscaping or gardening on lands zoned residential under the Zoning By-Law.
- h) Uses defined as industrial under the Zoning By-law which are being carried out in compliance with the Zoning By-Law.
- i) Any area to the extent of any conflict with a regulation made under section 28 of the *Conservation Authorities Act*, RSO 1990 c C. 27, as amended or replaced, respecting the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land in an area where this By-Law is applicable.

8. ENFORCEMENT, REMEDIES AND PENALTIES

- 8.1 The provisions of this By-Law shall be enforced by an Officer.
- 8.2 In accordance with section 436 of the *Municipal Act*, an Officer may at all reasonable times enter and inspect any land to which this By-Law has application.
- 8.3 Every person who contravenes any provision of this By-Law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
- 8.4 Subject to section 7.6 of this By-Law, in the event that the Municipality furthers enforcement of this By-Law by prosecution commenced under Part III of the *Provincial Offences Act*, each contravention of any provision of this By-Law is hereby designated a "continuing offence" pursuant to section 429(2)(a) of the *Municipal Act* for each day or part of a day that the offence continues.
- 8.5 Subject to section 8.6 of this By-Law, any Person guilty of an offence, upon conviction under Part 111 initiated proceedings under the *Provincial Offences Act* is liable to the Municipality for a fine not less than \$500.00 and not more than \$10,000.00 for each day or part of day that the offence continues, in accordance with section 429(3)2. of the *Municipal Act*.
- 8.6 Notwithstanding sections 8.4 and 8.5 of this By-Law, any Person guilty of an offence, upon conviction under proceedings commenced under Part III of the *Provincial Offences Act* who has participated in any manner in arranging, planning, organizing, financially supporting, carrying out or permitting, whether implicitly or expressly, the removal the existing ground surface of land without or contrary to a Permit to allow for the the Placing or Dumping of Fill without obtaining or contrary to a Permit is liable to the Municipality for a "special fine" in the amount of \$50,000.00 in lieu of section 8.5 fines if the "special fine" amount is greater than the amount the total fine amount the convicted Person would be liable to the Municipality for pursuant to section 8.5 at the time the conviction is entered. The "special fine" is established under the meaning and authority of section 429(2)(d) of the *Municipal Act*, for the purpose of eliminating or reducing any economic advantage or gain from the contravention of this By-Law.
- 8.7 As set out in section 431 of the *Municipal Act* and in addition to any other enforcement, remedy or penalty provided for in this By-Law, where a conviction has been entered in Part III proceedings under the *Provincial Offences Act*, the court which enters the conviction and/or any court of

competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the Person convicted.

- 8.8 In accordance with section 444 of the *Municipal Act* and addition to any other fine or remedy authorized by this By-Law, if an Officer is satisfied that this By-Law has been contravened, the Officer may make an order, known as an "Order to Discontinue Activity", requiring the Person who contravened the By-law, or who caused or permitted the contravention, or the Owner of the land on which the contravention occurred, to discontinue the contravention.
- 8.9 An Order to Discontinue Activity shall set out:
- a) The Person to whom it is directed;
 - b) The municipal address or legal description of the property on which the contravention occurred;
 - c) The date of the contravention;
 - d) The reasonable particulars of the contravention of the By-law;
 - e) The date by which there must be compliance with the Order to Discontinue Activity; and
 - f) The date on which the Order may expire
- 8.10 The Order to Discontinue Activity may be served personally on the Owner or Person to whom it is directed or by regular mail to the last known address of that Owner or Person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation, partnership or other business association can be effected by registered mail to its registered corporate or business address or its publicly advertised address.
- 8.11 If the Municipality is unable to effect service on the Owner under section 8.10, it shall place a placard containing the terms of the Order to Discontinue Activity in a conspicuous place on the land and may enter on the land for this purpose. The placing of the placard shall be deemed to be sufficient service of the Order to Discontinue Activity.
- 8.12 In accordance with section 445 of the *Municipal Act* and addition to any

other fine or remedy authorized by this By-Law, if an Officer is satisfied that a contravention of the by-law has occurred, the Officer may make an order, known as a "Work Order", requiring the Owner or 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 the work to correct the contravention.

8.13 A Work Order shall set out:

- a) The municipal address or the legal description of the land;
- b) Reasonable particulars of the contravention and of the work to be done;
- c) A deadline, being a specific date, for compliance with the Work Order; and
- d) A notice that if the work is not done in compliance with the Work Order by the deadline, the Municipality may have the work done at the expense of the Owner and the cost of the work may be recovered by adding the amount to the Owner's tax roll.

8.14 The Work Order may be served personally on the Owner or Person to whom it is directed or by regular mail to the last known address of that Person, in which case it shall be deemed to have been given on the third day after it is mailed. Service on a corporation, partnership or other business association can also be effected by registered mail to its registered corporate or business address or its publicly advertised address.

8.15 If the Municipality is unable to effect service on the owner under section 8.14, it shall place a placard containing the terms of the Work Order in a conspicuous place on the land and may enter on the land for this purpose. The placing of the placard shall be deemed to be sufficient service of the Work Order.

8.16 Where anything required or directed to be done in accordance with this By-Law is not done, an Officer may upon such notice as he/she deems suitable, do such thing at the expense of the Person required to do it, and in so doing may charge an administration fee as outlined within the Municipality's current Fees By-law, as amended or replaced. Both the expense and fee may be recovered by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.

8.17 Where the Municipality proceeds pursuant to section 8.16 of this By-Law, an Officer or any person under his or her direction may enter onto the land and with the appropriate equipment as required to bring the property into compliance with this By-Law.

9. SEVERABILITY

9.1 If a court of competent jurisdiction should declare any section or part of a section of this By-Law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-Law and it is hereby declared that the remainder of the by-law shall be valid and shall remain in force.

10. FORCE AND EFFECT OF BY-LAW

This by-law shall come into force and take effect on the third and final reading thereof.

THAT the Mayor and Clerk be authorized to sign this by-law and the corporate seal be attached.

**Read a FIRST, SECOND and THIRD time and FINALLY PASSED day
of July, 2022.**

MAYOR

CLERK

Schedule "A"



BY-LAW 38-2022: SITE ALTERATION BY LAW

Schedule 'A'

Part I – Provincial Offences Act – Set Fines

ITEM	COLUMN 1 – Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
1.	Place or Dump Fill or cause or permit the Placing or Dumping of Fill without a Permit	Section 5.1	\$500.00
2.	Remove Soil or cause or permit the removal of Soil without a permit	Section 5.2	\$500.00
3.	Alter grade or cause or permit Grade to be altered without a permit	Section 5.3	\$500.00
4.	Alteration of land not in compliance with the terms of a permit	Section 5.4	\$500.00
5.	Failure to comply with an Order to Discontinue Activity	Section 5.5	\$500.00
6.	Failure to comply with a Work Order	Section 5.6	\$500.00
7.	Install underground infrastructure or services or structures without a permit	Section 5.7	\$500.00

Note:

The penalty provision(s) for the offence(s) indicated above is Section 8.3 of the By-Law Number 38-2022, a certified copy of which by-law has been filed.

Schedule "B"

FOR OFFICE USE

Permit No.: _____

Permit Fee: _____

Site Alteration Agreement Required: Yes ___ No ___

This application form is being submitted pursuant to the requirements of Municipality of Middlesex Centre Bylaw No. 2016-087, being the Municipality's Site Alteration By-law. The Owner(s) acknowledges that completion of the work shall be solely the responsibility of the Owner(s). The Owner(s) acknowledges that any and all materials used to complete the work do not contain any contaminants as outlined in the Environmental Protection Act, RSO 1990, c E.19, as amended. The Owner hereby releases and agrees to indemnify the Municipality, its employees, contractors and representatives from and against all damages, demands, claims, expenses, costs and any other liabilities that may arise in the event that any material used to complete the work is found to contain contaminants as outlined in the Environmental Protection Act, RSO 1990, c E.19, as amended.

All fees associated with this permit are as per the Municipalities Fees and Charges By-Law (XXXX-XX).

Address of subject property:

Legal description of subject property:

Assessment Roll Number:

Registered Owner(s) of the subject property.

Name: _____

Mailing Address: _____

Village/Town: _____

Postal Code: _____

Phone: _____ Cell: _____

Fax: _____ Email: _____

Agent (if applicable)

Name: _____

Mailing Address: _____

Village/Town: _____

Postal Code: _____

Phone: _____ Cell: _____

Fax: _____ Email: _____

Please provide a detailed description of the proposed site alteration:
Estimated Start Date _____ **Estimated Finished Date** _____

This application must be accompanied by copies of a grading plan, certified by a Professional Engineer, depicting existing and proposed elevations on the subject property, together with details of any easements affecting the land and the existing elevations of surrounding properties. The locations of existing buildings, structures, driveways and walkways must also be shown. The Professional Engineer preparing the grading plan must submit an accompanying letter certifying that the proposed grades will provide for proper surface drainage without any adverse impact to the existing drainage patterns in the area, adjacent properties or adjacent roadways.

Owner's Signature

Date

Agent's Signature (if applicable)

Date

Public Works and Engineering Staff Approval

Date

Conditions of Approval:

Security Value _____

Applicant must notify the approver 72 hours BEFORE commencing approved works.

This Approval Shall be Valid Until: _____