

From: [Erwin Dreessen](#)
To: ["MacPherson, Amy"](#)
Cc: ["Iola Price"](#); ["Rod MacLean"](#); ["MARIE COOK"](#); [Klaus Beltzner \(klaus@beltzner.ca\)](mailto:klaus@beltzner.ca); ["Agnes Warda"](#); ["Robert Brinker"](#)
Subject: SAB: Comment on August 14 draft
Date: September 24, 2017 4:23:00 PM

Dear Amy,

It will not surprise you that we remain deeply disappointed that, unlike every other Ontario municipality you and we have examined, the City of Ottawa is bringing forward a site alteration by-law without a permit system. What is so unique about Ottawa, we wonder?

When nine candidate Councillors who were elected in 2014 promised unconditional support for a "strong" by-law, "strong" was defined as including the removal of vegetation cover. Thankfully, that is in the draft by-law. Never had we contemplated that there would be no permit system! Without it, in no way can this by-law be considered "strong."

We appreciate that there would be a kind of permit system for any site alteration in or within 30 m of a designated natural area or feature, which goes further than the current Official Plan policy because the latter only applies to applications under the *Planning Act* (when 'adjacent' is defined as within 120 m). Still, the net effect is that, if this by-law is adopted, nothing will stop a landowner from engaging in yet another tree massacre -- the primary type of event this by-law was supposed to prevent!

As a result, on balance we cannot support this by-law.

Various other comments follow, including answers to your two questions.

+ Definition of Agricultural Operation: Does "in the expectation of gain or reward" mean that a not-for-profit operation does not qualify? This needs to be nuanced.

+ Definition of Fill: This is a very broad definition but Schedule A-2(3) narrows it down considerably. It would be better to define Fill as Acceptable Fill from the start. The Schedule gives a negative definition ("free of...") while GOHBA's definition, taken from the Ontario Soil Regulation Task Force, gives a positive definition. The latter's only problem is that it says "includes" -- i.e., the list given is not exhaustive. We propose deleting A-2(3) and adopting this definition:

Acceptable Fill means soil, subsoil, topsoil, stone, sod, turf, clay, sand, gravel or other such similar material that is free of trash, rubbish, glass, liquid or toxic chemicals, hazardous waste, contamination or other deleterious material.

+ Definition of Negative Impact: We repeat that the PPS defines negative impact with respect to more than natural features/ecological functions. The three additional meanings all relate to water and are clearly applicable to a drainage/site alteration by-law: hydro-geological or water quality impacts, surface and groundwater impacts, and impact on fish habitat.

+ Definition of Topsoil: An earlier annotation was dropped: that the source is s. 142(1) of the *Municipal Act*.

+ We are pleased that in clause 9 (2) (a) the removal of topsoil or peat for sale is not included in the exemption for Normal Farm Practice.

+ Re clause 10 (3) (d): We repeat that absolute primacy of agricultural operations over natural heritage preservation is contrary to a basic principle of the PPS which calls for a balancing of its various objectives.

+ Re par. 17 - Corrective Work Order: Why was subsection (3) of the previous draft dropped? This seems to us a significant safeguard -- a mild form of retroactivity.

+ Schedule A - Notification: A verbal communication to neighbours does not belong in a by-law: Any dispute would come down to "I did - you didn't." Nor does the current text say how long before the works would start the notification has to be made. (The earlier draft specified 3 weeks.) Also, why was the notification to the Councillor's office omitted? We think notifying the Councillor is a valuable safeguard, especially since enforcement is to be on a complaint basis. Even better, of course, as we have suggested earlier, would be to publish notifications on the City's web site.

Your annotation [MA27] exemplifies the key weakness of this by-law: A neighbour may be notified but is powerless to object. And how is anyone else to find out "what is going on"? The by-law makes the utterly false assumption that the only people who could be interested in "what is going on" are the neighbours and City staff. How is the complaint system to work if almost nobody is told?

It is simply not acceptable that enforcement of a City by-law has to depend solely on the complaints either of a neighbour or of someone who happens to drive by. The neighbour is directed to the "Person or company responsible for carrying out the Site Alteration," not a City official. Anyone else has no idea who is responsible and will likely call 311, a City staff member or her Councillor. Such a complete failure in transparency can only lead to frustration on all sides.

+ Schedule A - Scope: Works in accord with conditions of Planning Act or Building Code approvals are generally excluded from the scope of this by-law but through the comment at par. 2 [MA30] one learns that violation of any conditions of such approval would also be a violation of the by-law. Is there value-added here?

+ Schedule A - Species at Risk: We support MNRF's suggestion that Schedule A should have a clause similar to the one about archaeological resources: If an endangered or threatened species is observed, work must cease and the GM and MNRF are to be contacted. We appreciate the change from "should" to "shall."

+ Schedule A - Finished Grade: We don't agree with your reply to GOHBA's comment that the clause (ss. 7 in the earlier draft) is redundant. We would agree to extend the period for seeding / sodding to 6 months, as GOHBA proposed.

We look forward to seeing the final draft of the By-law and your report, hopefully with a bit more lead time than a few days before it appears on the Committees' agendas.

Submitted on behalf of the GA/FCA Working Group,

Erwin Dreessen

Cc: Members of the WG: Iola Price, Rod MacLean, Marie Cook, Klaus Beltzner, Agnes Warda, and Robert Brinker