



**SUBJECT: Grading and Drainage Clearance Certificate By-law**

**TO: Committee of the Whole**

**FROM: Capital Works**

Report Number: CW-29-18

Wards Affected: All

File Numbers: 110-04-1, 815-01, (PB-03-16, PB-70-16)

Date to Committee: July 9, 2018

Date to Council: July 16, 2018

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**Recommendation:**

Approve By-law XX-2018, attached as Appendix A, which defines the requirements for a Grading and Drainage Clearance Certificate, to regulate the grading or drainage on “Low Density Residential Lands”, within the City of Burlington pursuant to section 142 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended effective January 1, 2019.

**Purpose:**

The purpose of this report is to establish a new approval process to replace the Site Engineering grading and drainage review/clearance requirement of the eliminated Site Plan Approval process for low density residential lands. This process will establish new details, fees and requirements for a Grading and Drainage Clearance Certificate (GDCC).

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**Background and Discussion:**

In February 2016 the City’s Planning and Building Department (now Department of City Building) submitted Report PB-03-16 to Development and Infrastructure Committee which recommended eliminating the Site Plan process for low density residential lands. The report indicated that the majority of development issues for low density residential lands were related to grading, drainage and zoning. As such, these concerns could be reviewed by Site Engineering and Zoning outside of the Site Plan process. The report also indicated that a GDCC process would have to be created to manage the grading and drainage review as one did not exist outside of the Site Plan process.

On October 3, 2016 Council approved amendments to Planning and Building Department Report PB-70-16, eliminating the requirement for Site Plan approval for low density residential lands. As a result, staff recommended the GDCC By-law be established to replace the Site Engineering grading and drainage review/clearance requirement of the eliminated Site Plan process for low density residential lands.

### **Strategy/Process**

The primary purpose is to create a GDCC process to regulate the grading and drainage review/clearance for low density residential lands. The GDCC process will enable Capital Works to regulate grading and drainage on any low density residential lands. The GDCC process will be similar to that of the Town of Oakville's Development Engineering Site Plan (DESP) process, adopted in April 2018 for the regulation of development on low density residential lands.

### **Fee Revisions**

The eliminated Site Plan process fee structure for low density residential lands recovered less than half of the actual staff time costs required to process, administer and inspect the permits by Site Engineering. As such, it is recommended that the GDCC Fees be as follows to provide a more appropriate level of cost recovery.

Recommended fee structure for Grading and Drainage Clearance Certificates (GDCC):

1. Fees for new housing/ large additions (floor area increase of 75m<sup>2</sup> or greater) on low density residential lands, exclusive of Zoning Clearance Certificate Fees:

i) Fees for Eliminated Site Plan Process:

➤ Processing, review and administration = \$1,110

➤ Inspection Fees = \$385

Total Fees = \$1,495

ii) Recommended Fees for GDCC:

➤ Processing, review and administration = \$850

➤ Inspection Fees = \$500

Total Fees = \$1,350

(For comparison purposes, the Town of Oakville's DESP fee for this type of application is \$1,620)

2. Fees for small additions (floor area increase of less than 75m<sup>2</sup>) and accessory buildings/decks/etc. on low density residential lands, exclusive of Zoning Clearance Certificate Fees:

i) Fees for Eliminated Site Plan Process:

(Note: Previously, Site Plan Applications were not required for this type of application)

➤ Processing, review and administration = \$0

➤ Inspection Fees = \$0

Total Fees = \$0

ii) Recommended Fees for GDCC:

➤ Processing, review and administration = \$150

➤ Proposed Inspection Fees = \$150

Total Fees = \$300

(For comparison purposes, the Town of Oakville's DESP fee for this type of application is \$1,620)

3. Fees for Legal Agreement (if necessary):

i) Fees for Eliminated Site Plan Process:

(Note: Previously, the Site Plan process for low density residential lands only called for an undertaking through the *Planning Act* and separate legal agreements were not required)

➤ Total fees = \$0

ii) Recommended Fees for GDCC:

(Note: A legal agreement shall only be necessary when the Grading and Drainage Plan includes drainage system appurtenances on the site and for the site's drainage only)

➤ Agreement preparation and registration = \$700 (plus disbursements)

(For comparison purposes, the Town of Oakville's DESP fee for legal agreements is \$750)

It is recommended that the GDCC fees be effective on January 1, 2019.

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## **Financial Matters:**

### **Total Financial Impact**

For the period of 2010 to 2015, the eliminated Site Plan process, which included an urban design component, received an average of 98 applications annually for new housing and large additions for low density residential lands. During the same time period, the Planning and Building Department issued an average of 64 Zoning Clearance Certificates annually for small additions, accessory buildings, etc. for low density residential lands. Exclusive of Zoning Clearance Certificates, these applications generated average annual revenues of \$146,510 (or \$146,510 and \$0, respectively) for the City.

Based on the new fee structure and the same annual averages of 98 new housing and large addition applications and 64 small addition, accessory building, etc. applications, the low density residential development applications are anticipated to generate annual revenues of \$151,150 (or \$132,300 and \$19,200, respectively).

### **Other Resource Impacts**

The Site Plan process for low density residential lands was coordinated by the Planning and Building Department. As suggested in Report PB-03-16, the staff time for Site Plan control associated with low density residential lands was between 3 and 5 FTE's. As such, the additional administrative requirements included in this By-law may result in the need for additional staff resources. It is estimated that an additional 1 FTE could be required for the additional administrative requirements associated with the GDCC process, depending on the number of GDCC applications in progress.

At this time, an additional FTE is not being recommended. The impact on staff work load will be reviewed during 2018 and 2019. If necessary, a recommendation regarding staffing resources will be provided during the 2020 Current Budget review.

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## **Public Engagement Matters:**

The elimination of the Site Plan process for low density residential lands has been discussed with the Burlington Housing and Development Liaison Committee (HDLC) and they are supportive of the proposed change in review process.

The establishment of the GDCC By-law was discussed with the Hamilton Halton Home Builders Association (HHHBA) in early 2018 and an initial draft of the GDCC By-law was provided to HHHBA in April 2018 for their review and comment.

If Council adopts the staff recommendation to establish the GDCC By-law, notice to the public and development industry will be required in accordance with the *Planning Act* and the City of Burlington Official Plan.

**Conclusion:**

The establishment of the GDCC By-law will replace the Site Engineering grading and drainage review/clearance requirement of the eliminated Site Plan process and provide similar regulatory ability for grading and drainage on low density residential lands.

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Respectfully submitted,

Angelo Capone, C.E.T.  
Coordinator of Site Engineering  
905-335-7600 ext. 7679

**Appendices:**

A By-law XX-2018

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.

## **APPENDIX A**

### **THE CORPORATION OF THE CITY OF BURLINGTON**

#### **By-law XX-2018**

#### **A By-law to regulate the altering of grades or drainage on Low Density Residential Lands**

WHEREAS Council determines it necessary to enact a By-law for regulating the altering of grades or drainage on low density residential lands within the City of Burlington to limit interference and damage to watercourses, drainage systems and water supplies, to regulate unanticipated grading and drainage alterations, to limit the use of improper fill and potential environmental impacts, to limit erosion arising from such changes and to limit impacts on neighbouring and surrounding properties;

WHEREAS Section 142 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the Council of a local municipality may pass By-laws prohibiting or regulating the placing or dumping of fill, removal of topsoil or fill, alteration of the grades and drainage of land in any defined area or on any class of land;

NOW THEREFORE the Council of the Corporation of the City of Burlington hereby enacts as follows:

### **CONTENT**

#### **INTRODUCTION**

The By-law provides an explanation of what defines the requirements for a Grading and Drainage Clearance Certificate. It also details the steps involved in submitting an application, calculating fees and securities, issuing a Grading and Drainage Clearance Certificate, and administering/inspecting the site engineering works. The following is an index of the contents of By-law XX-2018.

1. Definitions
2. Authority
3. Administration
4. General Requirements
5. Application Procedure

6. Grading and Drainage Plan
7. Legal Agreements
8. Fees and Security Requirements
9. Enforcement, Remedial Action and Expense Recovery
10. Offences and Penalties
11. Revocation
12. Renewal
13. Transfer
14. Severance

Schedule "A"	Application Form
Schedule "B"	Fees and Securities
Schedule "C"	Drainage System Appurtenances Agreement

## **1. Definitions**

### 1.01 In this By-law:

- 1.01.01 "Adjacent Lands" means any lot, block, section or parcel of property owned by a Person, other than the Owner of the Site, that shares a property boundary with the Owner of the Site;
- 1.01.02 "Agreement" means a legal agreement between the property Owner and the City;
- 1.01.03 "Applicant" includes any Person, partnership, organization or corporation who or which is the certified agent to act on behalf of the registered Owner of the Site in the application process and the performance of the Site Engineering work;
- 1.01.04 "Approved Subdivision Grading Plan" means a grading plan in a form acceptable to the Director, which is approved at the time of final subdivision approval which illustrates the drainage systems and patterns common to two or more lots in a plan of subdivision;
- 1.01.05 "Body of Water" includes any bodies of flowing or standing water, whether naturally or artificially created;
- 1.01.06 "Certificate" means a Grading and Drainage Clearance Certificate issued pursuant to this By-law;

- 1.01.07 “Certificate Holder” includes the Owner of the Site and any Person, partnership, organization or corporation who or which is the certified agent to act on behalf of the registered Owner of the Site in the performance of the Site Engineering work;
- 1.01.08 “City” means the Corporation of the City of Burlington;
- 1.01.09 “Complete Application” means an application including the contents pursuant to Section 4, 5, 6, 7 and 8 of this By-law, to the satisfaction of the Director;
- 1.01.10 “Council” means the Council of The Corporation of the City of Burlington;
- 1.01.11 “Cut” and “Cutting” means to remove by digging, scraping or scooping;
- 1.01.12 “Director”, means the Executive Director of Capital Works for The Corporation of the City of Burlington and shall include any person authorized by the Executive Director to carry out any of the powers or duties of the Executive Director pursuant to this By-law;
- 1.01.13 “Ditch” means a narrow channel dug in the ground, typically used for Drainage alongside a road or the edge of a field;
- 1.01.14 “Drainage” means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by artificial means;
- 1.01.15 “Drainage System Appurtenance” includes the various accessories on the Drainage System that are necessary for the approved operation of the Drainage System, including but not limited to catchbasins, area drains, manholes, infiltration galleries and low impact development measures;
- 1.01.16 “Drainage System” includes areas of land surface that contribute water flow to a particular point;
- 1.01.17 “Dump”, “Dumped” and “Dumping” means the movement and depositing of Fill in a location other than where the Fill originated;



- 1.01.18 “Environmentally Sensitive Area” or “ESA” refers to Environmentally Sensitive Areas identified in the Halton Region Environmentally Sensitive Areas Consolidation Report dated April 2005, as amended;
- 1.01.19 “Erosion” means the detachment and movement of Soil, sediment or rock fragments by water, wind, ice or gravity;
- 1.01.20 “Excavation” means to remove by digging, scraping or scooping out;
- 1.01.21 “Fee” means a nonrefundable payment by certified cheque or cash in a form acceptable to the Director;
- 1.01.22 “Fill” means any type of material capable of being removed from or deposited on lands, including Topsoil;
- 1.01.23 “Flooding” means a large amount of water covering an area of land that is usually dry;
- 1.01.24 “Grade” means the elevation of the ground surface and shall be more particularly defined as follows:
  - 1.01.24.01 “Existing Grade” means the elevation of the existing ground surface of the Site upon which the Placing, Dumping, Cutting or Removal of Fill or altering of the Grade is proposed and of the existing ground surface of Adjacent Lands up to 5 m wide surrounding such Site, except that where such activity has occurred in contravention of this By-law, Existing Grade shall mean the ground surface of the Site and Adjacent Lands as existed prior to the said activity requiring a Certificate under this By-law;
  - 1.01.24.02 “Proposed Grade” means the proposed finished elevation of ground surface of the Site after Fill is Dumped or Placed, the Grade altered or Topsoil Removed; and
  - 1.01.24.03 “Finished Grade” means the approved elevation of ground surface of the Site upon which Fill has been Placed, Dumped, Cut or Removed or the Grade altered pursuant to this By-law.

- 1.01.25 “Grading and Drainage Plan” and “GDCC” means a drawing or drawings pursuant to Section 6 of this By-law, that details the Site Engineering to the satisfaction of the Director;
- 1.01.26 “Inspector” means any Person designated by this or any other By-law of the City as an Inspector for the purposes of this By-law;
- 1.01.27 “Lot” means a parcel of land, described in a deed or other document legally capable of being conveyed, or shown as a block on a registered plan of subdivision;
- 1.01.28 “Low Density Residential Lands” means all Lots that are intended for any single detached dwelling, duplex dwelling or semi-detached dwelling used solely for residential use;
- 1.01.29 “Municipality” means a city, town or village incorporated for local self-government;
- 1.01.30 “Owner” includes any Person, partnership, organization or corporation who or which is the registered owner of, or controls, maintains or occupies lands;
- 1.01.31 “Person” means an individual, property Owner, multiple Persons, partnership or corporation;
- 1.01.32 “Place”, “Placed” and “Placing” means the distribution of Fill on Low Density Residential Lands to establish a Finished Grade higher than the originally Existing Grade;
- 1.01.33 “Ponding” means the accumulation of surface water in an area not having Drainage there from which the lack of Drainage could have been caused by the Placing or Dumping of Fill, altering of Grade or removing of Fill;
- 1.01.34 “Removal” and “Removing” means the moving of Fill off of an existing property;
- 1.01.35 “Security” means a refundable deposit by certified cheque, cash or an irrevocable Letter of Credit in a form acceptable to the Director;
- 1.01.36 “Site” means the Low Density Residential Lands which are the subject of an application for a Certificate pursuant to this By-law;

- 1.01.37 “Site Alteration Permit” means a Site Alteration Permit issued pursuant to City By-law 64-2014, as amended;
- 1.01.38 “Site Control Measures” means Erosion and siltation control measures imposed by the Director pursuant to this By-law;
- 1.01.39 “Site Engineering” means:
  - 1.01.39.01 the Placing, Dumping, Cutting or Removal of Fill from Low Density Residential Lands;
  - 1.01.39.02 the alteration of the Grade of Low Density Residential Lands by any means including Placing, Dumping, Cutting or Removal of Fill, clearing and grubbing, the compaction of Soil or the creation of impervious surfaces,
  - 1.01.39.03 the alteration of the Drainage, Drainage System and/or Drainage System Appurtenances of Low Density Residential Lands; or
  - 1.01.39.04 any combination of these activities.
- 1.01.40 “Soil” means material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel;
- 1.01.41 “Storm Sewer” means a sewer for the collection and transmission of uncontaminated water, storm water, Drainage from land or from a Watercourse or any combination thereof under City roads and on City property;
- 1.01.42 “Swale” means a shallow depression in the ground sloping to a place of disposal of surface water for the purpose of providing a method of Drainage;
- 1.01.43 “Topsoil” means the upper, outermost layer of Soil, usually the top 5 - 20 cm, containing organic material and includes deposits of partially decomposed organic matter such as peat;
- 1.01.44 “Tree Removal” means digging up, cutting down, bulldozing, pulling down or any other method required to remove a tree;

- 1.01.45 “Vegetation” means trees, shrubs or other plant life found within a defined geographic location;
- 1.01.46 “Watercourse” means an identifiable depression, channel, or Ditch either natural or artificial, in which the flow of water occurs either continuously or intermittently;
- 1.01.47 “Wetlands” means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case, the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens. Periodically soaked or wet lands being used for agricultural purposes, which no longer exhibit wetland characteristics, are not considered to be wetlands for the purposes of this definition; and
- 1.01.48 “Wildlife” means all wild mammals, birds, reptiles, amphibians, fish, invertebrates, plants fungi, algae, bacteria and other wild organisms.

## **2. AUTHORITY**

- 2.01 Nothing in this By-law shall be interpreted so as to permit Site Engineering, which by provisions of any applicable City By-law, Plan, approval, etc. or Provincial Act, Regulation, Policy, etc. or to a provision thereof is prohibited.
- 2.02 Any reference to any City By-law, Plan, approval, etc. or Provincial Act, Regulation, Policy, etc. or to a provision thereof shall be deemed to include a reference to any City By-law, Plan, approval, etc. or Provincial Act, Regulation, Policy, etc. or provision enacted in substitution or amendment thereof.
- 2.03 This By-law shall apply to Site Engineering on all Low Density Residential Lands.
- 2.04 Notwithstanding Section 2.03, this By-law shall not apply to the following:
  - 2.04.01 renovation of an existing building that does not involve changes to the building footprint or changes to the Existing Grade and Drainage of the Site; or
  - 2.04.02 development construction where the Finished Grade is regulated by an approved Site Alteration Permit, Site Plan, Draft Plan of Subdivision,

Approved Subdivision Grading Plan or a Consent under Sections 41, 51 or 53 of the *Planning Act* or as a requirement of a Site Plan Agreement or Subdivision Agreement entered into under those sections.

### **3. ADMINISTRATION**

- 3.01 The Director shall be responsible for the administration of this By-law.
- 3.02 The Director shall be authorized to issue a Grading and Drainage Clearance Certificate (GDCC) in the form of an approved Application Form and/or Grading and Drainage Plan including conditions of approval, pursuant to this By-law, and to amend or revise such GDCC, from time to time, provided that the GDCC, amendment(s) or revision(s), as the case may be, are in a form satisfactory to the City Solicitor.

### **4. GENERAL REQUIREMENTS**

- 4.01 Nothing in this By-law shall exempt any person from complying with any other By-law or requirement of the City, or from obtaining any certificate, license, permission, permit, authority or approval required by any other City By-law, Plan, approval, etc. or Provincial Act, Regulation, Policy, etc. or to a provision thereof.
- 4.02 Where the provision of this By-law conflict with those of any other City By-law, Plan, approval, etc. or Provincial Act, Regulation, Policy, etc. or to a provision thereof, the more stringent requirements shall prevail.

### **5. APPLICATION PROCEDURE**

- 5.01 Subject to Section 2, no lands shall have any Site Engineering undertaken unless a Grading and Drainage Clearance Certificate has been issued by the Director.
- 5.02 Subject to Section 2, an application for a Grading and Drainage Clearance Certificate shall be made prior to or at the same time as a Building Permit application or any other required permit application.
- 5.03 An application for a Grading and Drainage Clearance Certificate shall include three (3) copies of a Grading and Drainage Plan prepared pursuant to Section 6 and as follows:

- 5.03.01 where an Approved Subdivision Grading Plan exists, and the Drainage patterns depicted on the Approved Subdivision Grading Plan are being modified, the Grading and Drainage Plan is to be prepared and certified by a Professional Engineer; or
- 5.03.02 where an Approved Subdivision Grading Plan does not exist, the Grading and Drainage Plan is to be prepared and certified by either an Ontario Land Surveyor or a Professional Engineer.

## **6. GRADING AND DRAINAGE PLAN**

- 6.01 A Grading and Drainage Plan is deemed to be approved when it meets the requirements of this By-law and a Grading and Drainage Clearance Certificate has been issued by the Director.
- 6.02 A Grading and Drainage Plan, pursuant to Section 5.03, shall be to the satisfaction of the Director and include but not be limited to the following:
  - 6.02.01 the metric scale of the drawing;
  - 6.02.02 the property lines of the Site where the Site Engineering is to be undertaken;
  - 6.02.03 the location and dimensions of the City's right-of-way and if the City's right-of-way is not at its deemed width, an Ontario Land Surveyor will need to determine the required right-of-way widening (measured from the original centreline of the City's right-of-way and to 3 decimal places);
  - 6.02.04 the location, dimensions, elevations and use of any buildings and other structures, including fencing, to be protected or demolished or proposed to be erected on the Site and Adjacent Lands;
  - 6.02.05 the location, dimensions, elevations and Grade of existing or proposed driveways, including the locations of existing and proposed driveway curb cuts;
  - 6.02.06 the location, dimensions and elevations of the Existing Grade, including Swales, Ditches and any Drainage System Appurtenances, on the Site and 5 metres beyond the property line for the Adjacent Lands and the location, dimensions, elevations and Grade of any proposed Site

Engineering, including Swales, Ditches and any Drainage System Appurtenances, to address Site runoff;

- 6.02.07 the location and discharge direction of all existing and proposed downspouts and sump pumps;
  - 6.02.08 the location of all existing and proposed services (water, sanitary and storm) and appurtenances and all aboveground utility locations;
  - 6.02.09 the location, dimensions and instrument number of any existing or proposed easements;
  - 6.02.10 the location of all Site Control Measures;
  - 6.02.11 the locations of all public and private trees and tree protection measures; and
  - 6.02.12 the location of Environmentally Sensitive Areas, lakes, streams, channels, Ditches, Swales, Water Courses and other bodies of water on the site and 15 m beyond the property lines for Sites less than 0.2 ha, and 30 m beyond the property lines for Sites greater than 0.2 ha.
- 6.03 Following the issuance of a Grading and Drainage Clearance Certificate, a Person shall only undertake Site Engineering pursuant to the approved Grading and Drainage Plan.

## **7. LEGAL AGREEMENTS**

- 7.01 A Drainage System Appurtenances Agreement, pursuant to Section 2 of the *Drainage Act*, R.S.O. 1990, c. D.17, as amended, shall be executed and registered against title on the site when the Grading and Drainage Plan includes Drainage System Appurtenances on the Site and for the Site's Drainage only.
- 7.02 The Drainage System Appurtenances Agreement shall be to the satisfaction of the City Solicitor and shall be in accordance with Schedule "C".
- 7.03 The Fees associated with Drainage System Appurtenances Agreement shall be paid by the Owner, pursuant to Section 8 of this By-law.
- 7.04 When the provisions above have been fully complied with, to the satisfaction of the Director, the Certificate Holder's Securities shall be eligible for release, pursuant to Section 8 of this By-law.

## **8. FEES AND SECURITY REQUIREMENTS**

### ***Fees***

- 8.01 The Fees for processing, administration, renewal and inspection for a Grading and Drainage Clearance Certificate and the Fees for preparation, registration and disbursement for a Drainage System Appurtenances Agreement shall be in accordance with the City's Rates and Fees by-law, as amended.
- 8.02 Where unauthorized Site Engineering works occur prior to the issuance of a Grading and Drainage Clearance Certificate, and the Director determines that a Certificate can be issued, the Certificate fees will be as identified in the City's Rates and Fees by-law, as amended, in addition to all other applicable fees, costs and Securities related to the Certificate and the costs of rehabilitation and/or reinstatement of the site as may be required by the Director.

### ***Inspection Fees***

- 8.03 The prescribed inspection fees for a Grading and Drainage Clearance Certificate are included in the application fees detailed in the City's Rates and Fees by-law, as amended.
- 8.04 Additional Inspection Fees, as identified in the City's Rates and Fees by-law, as amended, refer to additional inspections being required by the City, in circumstances where the Certificate Holder's contractor has not complied with the conditions of the Certificate and remedial work is required to meet the conditions of the Certificate.

### ***Security Requirements***

- 8.05 Securities, as identified in Schedule "B", shall be required in the form of a certified cheque, cash or irrevocable Letter of Credit in a form acceptable to the Director.
- 8.06 Securities may be required to ensure maintenance of Site Control Measures, proper rehabilitation, to prevent fouling or tracking of soil, mud, or debris on roads and highways of the City and Halton Region, and to secure performance of the Applicant's and Owner's obligations pursuant to this By-law and any Certificate that is issued, including as may be needed, returning the Site and/or the City's right-of-way to its original condition so far as possible, carrying out the work under the



Certificate, and complying with other provisions of the By-law including rehabilitation of the Site.

- 8.07 Securities must remain in effect for the full duration of the Certificate.
- 8.08 It is the responsibility of the Certificate Holder to obtain the approval of the Director that the Site has been adequately reinstated and stabilized in accordance to this By-law and the plans accompanying the Certificate and to request that the City carry out a final inspection of the Site and obtain the approval of the Director that this By-law and terms and conditions of the Certificate have been complied with by the Certificate Holder.
- 8.09 When the provisions above have been fully complied with, to the satisfaction of the Director, the Certificate Holder's Securities shall be released.
- 8.10 If the Certificate is revoked, the Securities are to remain in effect until the Site is restored to a condition acceptable to the Director.

## **9. ENFORCEMENT, REMEDIAL ACTION AND EXPENSE RECOVERY**

- 9.01 The Director shall be responsible for the enforcement of this By-law.
- 9.02 The Director, or any person acting under his or her direction, may enter upon any Site or Adjacent Lands at any reasonable time without a warrant for the purpose of inspecting the lands, machinery, equipment, work, activity or documents to determine:
  - 9.02.01 whether the Site conforms to the standards prescribed in this By-laws; or
  - 9.02.02 whether a notice of contravention, Order to Comply or Certificate made under this By-law has been complied with.
- 9.03 If the Owner fails to comply with this By-law, the Director may issue an Order to Comply to the Owner and the Owner shall, at the Owner's sole expense, bring the Site into compliance with this By-law.
- 9.04 An Order to Comply issued pursuant to Subsection 9.03 of this By-law shall specify the date on which the Site is to be brought into compliance.
- 9.05 The Order to Comply shall be served: (i) upon the Owner by personal service or (ii) by mailing a copy of the notice by registered mail to the last known address noted on the tax assessment roll and shall be deemed to have been served five (5) days after it is mailed.

- 9.06 In the event that an Order to Comply issued pursuant to Subsection 9.03 of this By-law is not complied with by the specified date, the City may take such action as necessary to rectify and remedy the contravention of this By-law at the Owner's sole expense and the City may send an invoice to the Owner of the expenses incurred by the City thereto. In the event of failure to pay the entire invoice within thirty (30) days of the date of the invoice, at the discretion of the Director, the outstanding balance of the invoice may be added to the tax roll of the Owner's property as municipal taxes and collected in the same manner as municipal taxes.

## **10. OFFENCES AND PENALTIES**

- 10.01 Every Person, other than a corporation, who contravenes any provisions of this By-law, the terms or conditions of a Certificate issued pursuant to this By-law or an order issued pursuant to this By-law and Section 444(1) or 445(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, is guilty of an offence and, upon conviction, is liable:

10.01.01 on a first conviction, to a fine of not more than \$10,000; and

10.01.02 on any subsequent conviction to a fine of not more than \$25,000.

- 10.02 Every corporation that contravenes any provision of this By-law, the terms or conditions of a Certificate issued pursuant to this By-law, or an order issued pursuant to this By-law and Section 444(1) or 445(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, is guilty of an offence and on conviction is liable:

10.02.01 on a first conviction, to a fine of not more than \$50,000; and

10.02.02 on any subsequent conviction to a fine of not more than \$100,000.

## **11. REVOCATION**

- 11.01 A Grading and Drainage Clearance Certificate which was issued pursuant to this By-law may be revoked by the Director for the following reasons:

11.01.01 the Certificate Holder has failed to comply with the provisions of this By-law;

11.01.02 the Site Engineering authorized under the Certificate has been halted for a period of 1 year;

11.01.03 the Certificate was obtained on mistaken, false or incorrect information;

11.01.04 the Certificate was issued in error;

11.01.05 the Certificate Holder requests in writing that the Certificate be revoked;

11.01.06 the Site has been transferred and the new Owner has not complied with the requirements under Section 13 of this By-law.

11.02 Where a Certificate has been revoked under this section or for any other reason pursuant to this By-law, the Certificate Holder shall forthwith cease all work under the revoked Certificate and restore the Site and City right-of-way to a condition acceptable to the Director.

## **12. RENEWAL**

12.01 A Grading and Drainage Clearance Certificate which has been revoked and which was issued pursuant to this By-law may be renewed by the Director provided:

12.01.01 a period of not more than 6 months has passed from the date of revocation;

12.01.02 a written request for renewal is submitted to the Director;

12.01.03 a payment of one-half of the original Application Fee is submitted to the Director; and

12.01.04 the proposed work, which was the subject of the revoked Certificate, has not been revised.

12.02 A Certificate which has been renewed pursuant to this section shall thereafter be treated as a new Certificate except that it shall not again be renewed, unless specifically noted in the Certificate.

**13. TRANSFER**

13.01 A Grading and Drainage Clearance Certificate shall be revoked upon the transfer of ownership of the Site unless the new Owner provides written commitment to comply with all conditions under which the Certificate was issued, prior to transfer of the Site, including:

13.01.01 compliance with this By-law; and

13.01.02 agreement to provide security in a form and amount acceptable to the Director, at which time any security previously provided by the original Certificate Holder pursuant to this By-law shall be released.

13.02 Failing the written commitment from the new Owner, the Certificate shall be deemed revoked as of the date of property ownership transfer.

13.03 A Certificate is not transferable to another Site.

**14. SEVERANCE**

14.01 In the event that any provision or part of a provision in this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

**15. EFFECTIVE DATES**

15.01 This By-law shall come into effect and force on January 1, 2019.

**Schedule “A” to By-law No. XX-2018**  
**Grading and Drainage Clearance Certificate**

**APPLICATION FORM**



Grading and Drainage Clearance Certificate No.
--

**THIS APPLICATION IS AUTHORIZED BY BY-LAW No. XX-2018**

**Grading and Drainage Clearance Certificate Application**

Application Fee:      Residential (\$1350) – New dwellings or large additions (*equal to or greater than 75 m<sup>2</sup>*)

Residential (\$300) – Small additions (*less than 75 m<sup>2</sup>*) or accessory buildings/decks/etc.

Grading Plan Required?                    Yes (*Refer to “Plan Requirements”*)      No (*Exempt*)

Security Required?                          Yes (*\$5,000 minimum*)                          No

<b>Property Address</b>	<b>Date Received</b>
<b>Brief Description of Work:</b>	

*Contact Information (Applicant)*

Applicant	
Address	
Phone	Email

*Contact Information (Owner)*

Owner	
Address	
Phone	Email

\_\_\_\_\_  
**(Applicant/Owner – signature)**

\_\_\_\_\_  
**Date**

*\* By signing, the Applicant acknowledges acceptance of the Terms & Conditions (see attached)*

\_\_\_\_\_  
**(Applicant/Owner – print name)**

*For Office Use Only*

**Comments**

Drainage System Appurtenances Agreement Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Other Agreement(s) Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Entrance Permit Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Permit for Construction on Public Property Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Tree Permit/Security Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Erosion and Sediment Control Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Site Alteration Permit Required?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Conservation Halton Regulated Area*?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Adjacent Major Pipeline (30.0 m)*?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Existing Municipal Easement*?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

*\*based on City of Burlington GIS Mapping*

**Approved By:**

\_\_\_\_\_  
**(Capital Works – signature)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**(Capital Works – print name)**

**Notes:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Grading and Drainage Plan Requirements**

- 1 The Grading and Drainage Plan (the “Plan”) must be stamped and certified by an Ontario Land Surveyor or a Professional Engineer, pursuant to Section 5.03 of By-law XX-2018.
- 2 Submit three (3) copies of a Grading and Drainage Plan, for approval, pursuant to Section 6 of By-law XX-2018 and in accordance with the following requirements:
  - a) Only a Plan drawn to a metric scale of 1:100, 1:200, 1:250 or 1:300 will be accepted.
  - b) All property lines shall be shown on the Plan.
  - c) If the City’s right-of-way is not at its deemed width, an Ontario Land Surveyor will need to determine the required right-of-way widening (measured from the original centreline of the City’s right-of-way and to 3 decimal places) and the deemed right-of-way shall be shown on the Plan.
  - d) All site engineering, as defined in Section 1 of By-law XX-2018, shall be shown on the Plan and shall not encroach onto the City’s deemed right-of-way or adjacent lands.
  - e) All site engineering shall be in accordance with City of Burlington Lot Grading Standard Drawings S-118 and S-119.
  - f) All restoration of the City’s right-of-way shall be shown on the Plan and shall be in accordance with City of Burlington Reinstatement Standard Drawings S-114, S114-A and S-114-B, as required.
  - g) All existing and proposed elevations shall be derived from a City of Burlington control monument and reference to the monument shall be provided on the Plan. For a complete list of control monuments, visit the City’s Navigate Burlington webpage: <https://navburl-burlington.opendata.arcgis.com/pages/apps>.
  - h) The location, dimensions and elevations of the existing grade, including swales, ditches and any drainage system appurtenances, on the site and 5 metres beyond the property line for the adjacent lands and the location, dimensions, elevations and grade of any proposed site engineering, including swales, ditches and any drainage system appurtenances, to address site runoff shall be shown on the Plan. The proposed site engineering shall be in accordance with the following:
    - i) Drainage system appurtenances shall be designed to accommodate the stormwater runoff of a 5-year storm event and the design shall be certified by a Professional Engineer;
    - ii) Minimum slope for side and rear yard swales shall be 2% or shall require subdrain;
    - iii) Minimum slope for finished ground (except impervious surfaces) shall be 1%;
    - iv) Maximum slope for finished ground (except impervious surfaces) shall be:
      - 2:1 for slopes less than 0.6 metres in height;
      - 3:1 for slopes from 0.6 metres to 1.25 metres in height;
      - 4:1 for slopes greater than 1.25 metres in height; and
    - v) Minimum slope for impervious surfaces (except driveways) shall be 0.5%.
  - i) The location, dimensions, elevations and use of any buildings and other structures, including fencing, to be protected or demolished or proposed to be erected on the site and adjacent lands shall be shown on the Plan. The provided elevations of any buildings and other structures on the site shall include and be in accordance with the following (where applicable):
    - i) Top of Foundation Wall (TFW) – shall be a minimum of 0.15 metres above surrounding finished ground elevations;
    - ii) Finished Floor Elevation (FFE) – shall be a minimum of 0.30 metres above TFW;
    - iii) Basement Slab Elevation (BSE);
    - iv) Underside of Footing Elevation (USF); and

**v) Garage Floor Elevation (GFE).**

- j) The location, dimensions and elevations of any retaining walls to be protected or demolished or proposed to be erected on the site shall be shown on the Plan. Any proposed retaining walls shall be located a minimum of 0.3 metres from the property line. Any proposed retaining walls greater than 1 metre in height shall be designed by a Professional Engineer. Any proposed retaining walls greater than 0.6 metres in height may require a barrier.**
- k) The location, dimensions, elevations and grade of existing or proposed driveways, including the locations of existing and proposed driveway curb cuts shall be shown on the Plan. Proposed driveways shall be in accordance with the following:
  - i) Normal Driveway – shall be between 2% (minimum) and 8% (maximum); and**
  - ii) Reverse Driveway – shall be between 2% (minimum) and 5% (maximum) and shall only be permitted when it is proven by a Professional Engineer that the driveway will not flood during a 100-year storm event.****
- l) The location and discharge direction of all existing and proposed sump pumps and downspouts shall be shown on the Plan. Sump pumps shall not discharge to a side yard and both sump pumps and downspouts shall discharge to a permeable surface via concrete splash pads or outlet extensions.**
- m) The location of any existing and proposed underground services (water, sanitary, storm, gas and hydro) and appurtenances and any aboveground utilities (overhead lines, poles, boxes, etc.) and any connections to services or utilities on the City's right-of-way shall be shown on the Plan.**
- n) The location, dimensions and instrument number of any existing or proposed easements shall be shown on the Plan.**
- o) The location and details of all site control measures shall be shown on the Plan.**
- p) The location of Environmentally Sensitive Areas, as identified in the Halton Region Environmentally Sensitive Areas Consolidation Report dated April 2005, as amended, lakes, streams, channels, ditches, swales, water courses and other bodies of water on the site and 15 m beyond the property lines for sites less than 0.2 ha, and 30 m beyond the property lines for site greater than 0.2 ha shall be shown on the Plan.**
- q) The location and dimensions of Conservation Halton's regulated area shall be shown on the Plan (where applicable).**
- r) The location and diameter at breast height (DBH) for any City owned trees shall be shown on the Plan. All City owned trees require tree protection, in accordance with City of Burlington Tree Protection and Preservation Specification SS12A, the location and details of which shall be shown on the Plan. Please Note: The proposed removal of any City owned trees may require Council approval.**
- s) The location and diameter at breast height (DBH) for any privately owned trees on the site and within 3 metres of the property line on adjacent lands and with a DBH of 0.1 metres or shall be shown on the Plan. All other vegetation shall be shown as massed outlines.**



## **Terms and Conditions:**

1. *It is the responsibility of the Owner and Applicant to ensure that all works on the subject site (the "Site") are completed in accordance with the approved Grading and Drainage Plan (the "Plan") that details the site engineering and forming part of the Grading and Drainage Clearance Certificate (the "Certificate") issued by the City of Burlington (the "City") pursuant to By-law XX-2018.*
2. *It is the responsibility of the Owner and Applicant to execute a Drainage System Appurtenances Agreement (the "Agreement"), if required by the Executive Director of Capital Works (the "Director"), and register the Agreement against title on the Site when the Plan includes drainage system appurtenances on the Site and for the Site's drainage only, pursuant to By-law XX-2018. The Agreement shall be to the satisfaction of the City Solicitor and shall be in accordance with Schedule "C" of By-law XX-2018.*
3. *It is the responsibility of the Owner and Applicant to ensure that any changes in grading and drainage will not have a negative impact on neighbouring properties, pursuant to City Drainage By-law 17-2018, as amended, and to comply with all other City by-laws.*
4. *It is the responsibility of the Owner and Applicant to document (i.e. photograph/video) the pre-construction condition of the City's right-of-way that is adjacent to the Site and provide copies of this documentation to the City, at its discretion, in order to assess any damage to the City's right-of-way that may have been caused during construction. All damage to the City's right-of-way will be attributed to the construction if the pre-construction condition is not documented.*
5. *It is the responsibility of the Owner and Applicant to ensure that an Entrance Permit is obtained from the Capital Works Department, if required by the Director, prior to the commencement of any construction.*
6. *It is the responsibility of the Owner and Applicant to ensure that a Permit for Construction on Public Property is obtained from the Capital Works Department, if required by the Director, prior to the commencement of any construction on the City's right-of-way and to ensure that any restoration of the City's right-of-way is completed in accordance with City of Burlington Reinstatement Standard Drawings S-114, S114-A and S-114-B, as required. Contact City's Utility Coordinator at 905-335-7600 ext. 7668 for permit and additional security requirements.*
7. *It is the responsibility of the Owner and Applicant to ensure that a Road Occupancy Permit is obtained from the Transportation Services Department, if required by the Director of Transportation Services, for storage of equipment/bins/materials/etc. on the City's right-of-way.*
8. *It is the responsibility of the Owner and Applicant to ensure that throughout the duration of construction that all City's right-of-ways and adjacent lands are kept in good condition and clear of construction materials and debris. If deemed damaged by the Director, the City's right-of-ways and/or adjacent lands will be restored immediately and to the satisfaction of the Director. All costs associated with restoration of the City's right-of-ways and/or adjacent lands shall be borne by the Owner and Applicant. Failure to complete the restoration works in a period of time deemed satisfactory to the Director may result in the necessary works being carried out by the City's contractor and charged against the security, pursuant to By-law XX-2018.*
9. *It is the responsibility of the Owner and Applicant to contact Capital Works staff and request that the City carry out a final inspection of the completed works on the Site, the adjacent lands and the City's right-of-way. If the completed works are deemed acceptable and the terms and conditions of the Certificate have been complied with the securities shall be released.*
10. *The City of Burlington, its employees, officers, and/ or agents are not responsible for any errors, omissions, or inaccuracies, due to negligence or otherwise. All information should be verified.*
11. *The Owner and Applicant agree to indemnify and forever save harmless the City, its officers, employees and agents and City Council, from any claim, suit, demand, action, costs or causes of action against the City by any other party, arising out of or in connection with the Certificate or any work, act, matter or thing done or omitted to be done by the City, its officers, employees or agents or City Council pursuant to or in connection with this Certificate.*
12. *The Owner and Applicant authorize Capital Works Department staff to enter onto the property (exterior only) for the limited purpose of inspecting the proposed, approved and/or constructed works associated with this Certificate, pursuant to By-law XX-2018.*

**Schedule “B” to By-law No. XX-2018**  
**Grading and Drainage Clearance Certificate**

**SECURITIES**

The following Grading and Drainage Clearance Certificate Securities shall be effective upon approval by City Council.

1. For Grading and Drainage Clearance Certificates for new housing development and large additions (floor area increases of 75m<sup>2</sup> or greater) on Low Density Residential Lands:
  - 1.01 Security = \$5,000 minimum
  
2. For Grading and Drainage Clearance Certificates for small additions (floor area increases of less than 75m<sup>2</sup>) and accessory buildings/decks/etc. on Low Density Residential Lands:
  - 2.01 Security = \$5,000 minimum

**Schedule “C” to By-law No. XX-2018  
Grading and Drainage Clearance Certificate**

**THIS DRAINAGE SYSTEM APPURTENANCES AGREEMENT**

is made the <#> day of <month>, <year>

**B E T W E E N:**

**THE CORPORATION OF THE CITY OF BURLINGTON,**

(Hereinafter called the “City”)

**OF THE FIRST PART**

- and -

**<NAME>**

(Hereinafter called the “Owner”)

**OF THE SECOND PART**

**WHEREAS** the Owner is the registered owner of the lands municipally known as <address>, legally described as <legal description> in the City of Burlington, in the Regional Municipality of Halton (the “Lands”);

**AND WHEREAS** the Owner has applied to the City pursuant to the provisions of Section 142 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, and Section 2 of the Drainage Act, R.S.O. 1990, c. D.17, as amended, for a Grading and Drainage Clearance Certificate (the “Certificate”) pursuant to By-law XX-2018 to allow for the Site Engineering on the Lands (City of Burlington Grading and Drainage Clearance Certificate No. <#>);

**AND WHEREAS** conditional approval of the Certificate and the required Grading and Drainage Plan (the “Plan”) was given by the City on <date>; and

**AND WHEREAS** the execution of this agreement and the registration of this agreement against title to the Lands was a condition of approval of the Certificate.

**NOW THEREFORE:**

1. For the purposes of this agreement:
  - a. *Site Engineering* – means:
    - i. the placing, dumping, cutting or removal of fill;

- ii. the alteration of the grade by any means including placing, dumping, cutting or removal of fill, clearing and grubbing, the compaction of soil or the creation of impervious surfaces;
    - iii. the alteration of the drainage, drainage system and/or drainage system appurtenances; or
    - iv. any combination of these activities.
  - b. *Drainage* – means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by artificial means.
  - c. *Drainage System* – includes areas of land surface that contribute water flow to a particular point.
  - d. *Drainage System Appurtenance* – includes the various accessories on the drainage system that are necessary for the approved operation of the drainage system, including but not limited to catchbasins, area drains, manholes, infiltration galleries and low impact development measures.
2. The Owner agrees that all Drainage System Appurtenances identified on the Plan shall be completed to the satisfaction of the City at the Owner's expense.
3. The Owner agrees to complete a video inspection to document the pre-construction condition of the City's storm sewer and provide copies of this documentation to the City, at its discretion, in order to assess any damage to the City's storm sewer that may have been caused during construction. The Owner further agrees that all damage to the City's storm sewer will be attributed to the construction if the pre-construction condition is not documented.
4. The Owner agrees that prior to the release of securities any drainage system connection to the City's storm sewer shall be cleaned and confirmation of acceptable Mandrel testing and video inspection shall be submitted to the City, for approval.
5. The Owner agrees that all Drainage System Appurtenances identified on the Plan shall be maintained ensuring the Drainage System Appurtenances function and perform as designed and/or intended. Should any required Drainage System Appurtenances fail to function or perform for any reason, the Owner further agrees to promptly cause the Drainage System Appurtenances to be repaired and/or replaced.
6. The Owner agrees that all Drainage System Appurtenances identified on the Plan shall not be removed or altered in a manner that would not comply with the Plan without the written consent of the City.
7. The Owner agrees that, should the City be unable to register this agreement on title of the Lands as a result of incorrect information provided by the Owner, any additional

