



## The Corporation of the Town of Tecumseh

Development Services

**To:** Mayor and Members of Council

**From:** Brian Hillman, Director Development Services

**Date to Council:** July 23, 2024

**Report Number:** DS-2024-27

**Subject:** Memorandum of Understanding and  
Zoning By-law Amendment  
Proposed Excess Soil Fill Site and Future Passive Municipal  
Recreational Area  
Northeast of South Talbot Road and Howard Avenue  
Intersection  
Scheduling of a Public Meeting  
OUR FILE: D19 AMICO

---

### Recommendations

It is recommended:

**That** Report DS-2024-27 entitled “Memorandum of Understanding and Zoning By-law Amendment: Proposed Excess Soil Fill Site and Future Passive Municipal Recreational Area, Northeast of South Talbot Road and Howard Avenue Intersection, Scheduling of a Public Meeting” **be received**;

**And that support in principle** for the Amico Infrastructure Inc. Memorandum of Understanding, dated July 5, 2024, satisfactory in form to the Town’s Solicitor, which provides terms and conditions regarding Amico Infrastructure Inc.’s proposal to permit its 15 hectare (37 acre) property located on the north side of South Talbot Road, immediately east of its intersection with Howard Avenue to be used as a temporary re-use site in accordance with Ontario Regulation 406/19: Onsite and Excess Soil Management, and long-term to be used for a naturalized, passive municipal recreational property **be approved**, subject to the outcome of the associated zoning by-law amendment application and public consultation process;

**And further that** the scheduling of a public meeting, to be held on Tuesday, August 13, 2024 at 5:00 p.m., in accordance with the *Planning Act* for a zoning by-law amendment application submitted for a 15 hectare (37 acre) parcel of land located on the north side of South Talbot Road, immediately east of its intersection with Howard Avenue, seeking to amend Zoning By-law 85-18 by rezoning the subject property from “Agricultural Zone (A)” to a site-specific “Agricultural Zone (A)” to permit the use of the property as a temporary reuse site in accordance with Ontario Regulation 406/19: Onsite and Excess Soil Management, and long-term to be used for a naturalized, passive municipal recreational property, **be authorized**.

**And furthermore that** Administration **be directed** to prepare a further Administrative Report summarizing the comments received through the public consultation process and providing final recommendations on the Amico Infrastructure Inc. Memorandum of Understanding, dated July 5, 2024, and associated zoning by-law amendment at a future meeting of Council.

## Executive Summary

This Report summarizes the proposal by Amico Infrastructure Inc. (“Amico”) to permit its 15 hectare (37 acre) property located on the north side of South Talbot Road, immediately east of its intersection with Howard Avenue, to be used as a temporary re-use site in accordance with Ontario Regulation 406/19: Onsite and Excess Soil Management, and long-term to be used for a naturalized, passive municipal recreational property. The Report provides details regarding an associated Memorandum of Understanding (“MOU”) and zoning by-law amendment application and indicates the need for a future site plan control agreement and new fill permit. This Report is requesting support in principle for the Amico MOU dated July 5, 2024 and authorization for the scheduling of a public meeting related to the proposed zoning by-law amendment in accordance with the requirements of the *Planning Act*.

## Background

### Subject Property

Amico owns an approximate 15-hectare (37-acre) property on the north side of South Talbot Road, immediately east of its intersection with Howard Avenue (County Road 9), shaded in blue on Attachment 1. The subject property is generally rectangular in shape and has an approximate frontage of 241 metres (790 feet) on South Talbot Road. It is

designated Agricultural in the Town of Tecumseh Official Plan (see Attachment 2), and zoned Agricultural Zone (A) in Zoning By-law 85-15 (see Attachment 3).

During the multi-year construction of the Herb Grey Parkway and after that period, Amico has, as one of the main Parkway project contractors, been placing excess fill on the property. Subsequently and at the time the Town negotiated the transfer of portions of the Amico property to the Town to accommodate the multi-use trail connecting the Chrysler Canada Greenway to the Herb Grey Parkway trail (trail shown in green on Attachment 1), a fill permit was issued by the Town to permit the raising of the Amico property to a specific height and volume in accordance with the Town's Grading By-law. The site has received approximately 80 percent of the fill that is allowed by the current fill permit.

### **Amico Proposal for Subject Property**

Amico would like to continue to place (clean) fill on the subject property and use it as a "Reuse Site" in accordance with the new Provincial Excess Soil regulations, in particular Ontario Regulation 406/19: Onsite and Excess Soil Management ("Provincial regulations"). Amico retained a qualified engineer who prepared a Fill Management Plan for the current fill operation in accordance with the Provincial regulations. An update to this Fill Management Plan to the satisfaction of the Ministry of Environment, Conservation and Parks ("MECP") would be required if the Town supports this proposal.

The clean fill brought to the site would be exclusively from Amico projects, with an allowance for 10% of clean fill to be brought to the site from Town capital infrastructure projects, at a cost to be negotiated by the Town.

Amico proposes to place the fill on the property in a manner that when complete, will form two approximately 40-foot-high hills centrally located, and includes the planting of indigenous plants and the construction of gravel multi-use trails. Upon approval by the Town the property would then be transferred at no cost to the municipality, possibly in phases. No transfers would take place until after completion of various due diligence matters relating to satisfactory condition of the property. The intended long-term use would be for a naturalized, passive municipal recreational property (see preliminary park concept plan, cross-section and park images at Attachment 4). It is estimated that the entire property would be filled, naturalized and transferred to the Town in 10-12 years after approvals. Vehicular access to the property would continue to be from the current driveway on South Talbot Road.

The placement of soil within the 15 hectares (37 acres) would be completed in such a manner that complies with a to-be-agreed-upon Park Plan prepared by and at the expense of Amico with the assistance of a landscape architect and/or parks planner and

approved by the Town. Fill will be placed on the site in a fashion that implements the agreed upon parks plan. If the Town wishes to include such items as a trail head feature and washrooms, these could be included in the parks plan, but would be the financial responsibility of the Town. Amico would be responsible for complying with all legislative requirements regarding this use and for the cost of the site's operation, including having qualified professionals available as required.

Administration, comprising representation from Development Services, Community and Recreation Services, Public Works and Engineering Services, and Legislative and Clerk Services have had a number of meetings with Amico representatives regarding this proposal. In addition, staff from MECP have attended several meetings.

## **Proposed Municipal Actions**

The proposal would be implemented through the following municipal actions:

- 1) execution of an MOU between Amico and the Town.
- 2) successful adoption of a zoning by-law amendment to place the property into a suitable zone to permit the site's temporary use as an excess soil reuse site in accordance with Provincial regulations and a passive municipal naturalized recreational area. At the same time, a by-law would be recommended for passage having the effect of making the lands subject to site plan control;
- 3) execution of a site plan control agreement; and
- 4) the issuance of a new fill permit.

With respect to the preceding actions, the following details are provided.

## **Proposed MOU Between Amico and Town**

Administration negotiated with representatives of Amico on an MOU, that was ultimately signed by Amico on July 5, 2024 (see Attachment 5). The following is a summary of the terms of the MOU, all of which will be further detailed in and made conditional upon the signing of a Site Plan Control Agreement within 180 days after the date of provisional passage (1<sup>st</sup> and 2<sup>nd</sup> readings) of a Zoning By-law amendment:

- Amico will forthwith make application to rezone the property to an Agricultural Defined Area that will permit the site's temporary use as an excess soil reuse site in accordance with Provincial regulations and a passive municipal recreational area. Amico will submit as part of the

application a Preliminary Site Plan and Fill Management Plan. The zoning by-law application will proceed through the usual legislative process prescribed by the *Planning Act* including public consultation. As has been previously noted, a zoning by-law amendment application from Amico has been received by the Town;

- If Council supports the proposal then the proposed By-law authorizing the zoning amendment will first be proposed to Council for provisional passage (two readings) with the By-law only to be brought back for proposed third and final reading upon the completion and execution between the parties of the Site Plan Control Agreement;
- Upon the execution of a Site Plan Control Agreement, the Zoning By-law amendment by-law will be given third and final reading and the Owner will forthwith make application for issuance of a new Fill Permit, which will establish capacities and attach such other terms and conditions as may be applicable;
- Amico will continue to place (clean) fill on the property for up to a 10-year period, the “New Fill Permit Period” (made subject to Permit capacity limits and fill rates), and use it as a “Reuse Site” in accordance with the new Provincial regulations. Such use will be further in accordance with a Site Plan, a Fill Management Plan (in compliance with Provincial regulations), and the terms and conditions of the Site Plan Control Agreement;
- The clean fill brought to the site will be exclusively from Amico projects, with an allowance for not more than 10% of the volume allowed by Permit to be clean fill brought to the site from Town capital infrastructure projects, at a cost to be negotiated;
- The Site Plan Control Agreement will have several requirements, conditions and warranties to ensure that the use and operation of the property by Amico during the New Fill Permit period:
  1. is in accordance with all applicable regulations including those of the Ministry of Environment, Conservation and Parks (“MECP”); and
  2. will not be adverse in any way to the Town’s ability to use the property in the future as a passive municipal naturalized recreational area;

- The Site Plan Control Agreement will also grant various inspection/audit rights to the Town, including the right to enter onto the property, view records and require such testing as may be required to ensure that Amico is in compliance thereof;
- To further ensure their commitments under the MOU and Site Plan Control Agreement, including the eventual conveyance of all or such parts of the subject property to the Town, Amico will provide a security deposit in an amount and upon such terms to be agreed to;
- During the New Fill Permit Period the placement of soil within the 38 acres would be completed in such a manner that complies with the Site Plan Control Agreement's Grading and Park Plans (prepared by and at the expense of Amico and approved by the Town. Fill will be placed on the site in a fashion that implements the agreed upon parks plan. If the Town wishes to include such items as a trail head feature and washrooms, these could be included in the parks plan, but ultimately would be the financial responsibility of the Town;
- Amico proposes to place the fill on the property in a manner that when complete, will form two approximately 40-foot-high hills centrally located, and includes the planting of indigenous plants and the construction of gravel multi-use trails;
- Amico will be responsible for complying with all legislative requirements regarding this use and for the cost of the site's operation, including having qualified professionals available as required;
- On or prior to the end of the New Fill Permit Period the property will be (upon exercise of option(s) by the Town) transferred at no cost to the municipality, in whole or possibly in phases and pursuant to a previously agreed upon form of Purchase Agreement. No transfers would take place until after completion of various due diligence matters (including a Phase 1 and Phase 2 Environmental Site Assessment) relating to ensuring the satisfactory condition of the property;
- It is estimated that the entire property would be filled, naturalized and transferred to the Town in 10-12 years after approvals.

## **Proposed Zoning By-law Amendment & Site Plan By-law**

An application has been filed by Amico requesting that the subject property be rezoned from Agricultural Zone “A” to a new site-specific Agricultural Zone to permit the site’s temporary use as an excess soil reuse site in accordance with Provincial regulations and a passive naturalized municipal recreational area. A public meeting in accordance with the requirements of the *Planning Act* is required prior to Council rendering a decision in relation to the requested rezoning.

If, after the public meeting, Council is willing to support the rezoning, the recommended next step would be for Council to give first and second reading to the zoning by-law amendment, with third and final reading withheld pending the execution of a site plan control agreement between the Town and Amico. This will provide Amico with a high degree of certainty with respect to the likely outcome of the rezoning process, while ensuring for the Town that the property is not prematurely zoned without the agreed upon details and obligations being executed and registered on title by way of agreement, including the requirement for the ultimate transfer of the land to the Town in an approved form and at no cost to the Town.

For clarification, a by-law making the lands subject to site plan control would be brought to Council for adoption at the same time as the first and second reading of the zoning by-law amendment. This would provide clear statutory authority to negotiate and execute a site plan control agreement for this proposal on the property.

## **Proposed Site Plan Control Agreement**

As previously summarized, the site plan control agreement will ensure the temporary excess soil re-use site is properly managed and operated in accordance with Provincial regulations and that the site ultimately is conveyed in a satisfactory condition to the Town for public use. The agreement will also establish the transfer of land will be at no cost to the Town and that the land will be improved to an acceptable form (naturalized plantings, gravel multi-use trails, etc.).

It is anticipated that the site plan control agreement would include the following items:

1. A Park Plan prepared by a landscape architect depicting the phasing, progression and design of the property from a temporary re-use excess soil site to a naturalized municipal park;
2. A Fill Management Plan with Fill volume reporting protocols to the Municipality;

3. A Fill Management Plan for the importation of excess soils in accordance with the Provincial regulations;
4. Ground Water Monitoring Plan;
5. Stormwater Management Plan;
6. Grading Plan/Site Plan;
7. Mud and Dust Control Plan;
8. Approved Haul Route Plan;
9. Complaint Response Plan;
10. Commitment to undertake any Drainage Act related requirements/processes;

### **Proposed New Fill Permit**

Upon the execution of a Site Plan Control Agreement, Council would give consideration for third and final reading of the Zoning By-law amendment by-law, after which the Owner would make application for issuance of a new Fill Permit. The new Fill Permit would establish capacities and attach such other terms and conditions as may be applicable.

### **Comments**

In considering this proposal, Administration offers the following comments:

- Excess soil and its illegal placement have been an ongoing challenge for the construction industry and municipalities throughout Ontario. Excess fill is a common outcome of urbanization and the construction of large infrastructure projects. The new Provincial regulations are intended to provide a mechanism that creates a framework for regulating excess fill sites in an appropriate, transparent and safe manner. The Amico proposal provides an opportunity for the Town to be part of the solution in addressing the challenge created by the production of excess soil;
- The new Provincial regulations provide an improved regulatory environment regarding the control of excess soil sites;



- The property's former use for agricultural purposes was seemingly permanently disrupted during the construction of the Herb Grey Parkway. Its viability for agricultural use has been greatly depreciated as a result;
- The property is at the confluence of major, regional multi-use trail systems. The proposed change in elevation (two hills up to 40 feet each) would add welcome diversity for trail users, with an outlook on top of each hill to surrounding areas. These hills would be consistent with some of the other hills in the immediate vicinity that resulted from the Herb Grey Parkway project;
- The naturalized recreational end use would add diversity to the Town's recreational inventory, with limited initial investment required by the Town;
- The road network leading to the property (including Howard Avenue Diversion, Highway 3 and Highway 401) provides suitable truck access at the southwest corner of the property;
- A public benefit would be realized at the end of the fill project with the conveyance of the property to the Town for a naturalized, passive, public recreational area, including the integration of a multi-use trail on the property with adjacent system of regional multi-use trails;
- The property is relatively remote in relation to other potentially sensitive land uses;
- The property is designated Agricultural in the Official Plan. The Plan currently does not specifically speak to excess fill sites. The filling and grading of land has not historically been a matter specifically addressed in an Official Plan. However, we do note that the Agricultural designation does allow "forestry, conservation uses, wildlife management .... and passive recreational uses such as pedestrian/cycling trails". It is believed that adequate policy direction exists to form the basis for Council to consider a rezoning to permit the proposed temporary and ultimate use of the property. It is our opinion that such a zoning by-law amendment would conform to the Official Plan;
- The property is zoned Agricultural A in the Zoning By-law. The proposed uses are not currently permitted, and the Provincial regulations do contemplate the need for appropriate zoning for this type of excess fill site. A site-specific rezoning is required to clearly establish the temporary excess fill site use and the ultimate naturalized passive municipal recreational use intended for the property.

In conclusion, it is the opinion of Administration that the use of the property in the manner proposed results in appropriate development. Accordingly, and having regard to the decision-making process contemplated by the MOU, it is recommended that Council:

- 1) Provide support in principle for the Amico MOU dated July 5, 2024, subject to the outcome of the associated zoning by-law amendment application and public consultation process;
- 2) Authorize the scheduling of a public meeting in accordance with the provisions of the *Planning Act* to seek public input. A public meeting to consider the proposed zoning by-law amendment will provide an opportunity to hear concerns and comments, if any, of neighbouring owners and other interested stakeholders/agencies. It is important that the concerns and comments of these stakeholders be taken into consideration as part of the full evaluation of the application and the proposal;
- 3) Direct Administration to prepare a further Report summarizing the comments received through the public consultation process and provide final recommendations on the Amico proposal, MOU and associated zoning by-law amendment at a future meeting of Council.

## Consultations

Community & Recreation Services  
Legislative Services & Clerk  
Public Works & Engineering Services  
MECP

## Financial Implications

None.

## Link to Strategic Priorities

Applicable	<a href="#">2023-2026 Strategic Priorities</a>
<input checked="" type="checkbox"/>	Sustainable Growth: Achieve prosperity and a livable community through sustainable growth.
<input type="checkbox"/>	Community Health and Inclusion: Integrate community health and inclusion into our places and spaces and everything we do.
<input type="checkbox"/>	Service Experience: Enhance the experience of Team Tecumseh and our citizens through responsive and respectful service.

## Communications

Not applicable ☒

Website ☐ Social Media ☐ News Release ☐ Local Newspaper ☐

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Brian Hillman, MA, MCIP, RPP  
Director Development Services

Reviewed by:

Beth Gignac, BA Hons  
Director Community & Recreation Services

Reviewed by:

Robert Auger, LL.B.  
Director Legislative Services & Clerk

Reviewed by:

Phil Bartnik, P.Eng.  
Director Public Works & Engineering Services

Recommended by:

Brian Hillman, MA, MCIP, RPP  
Director Development Services and Acting Chief Administrative Officer

<b>Attachment Number</b>	<b>Attachment Name</b>
1.	Property Location Map

<b>Attachment Number</b>	<b>Attachment Name</b>
2.	Official Plan Map
3.	Zoning Map
4.	Preliminary Park Concept Plan, Cross-Section, and Park Images
5.	MOU dated July 5, 2024