

## Council Report

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<b>Report Number:</b>	<b>LGL2022-013</b>
<b>Meeting Date:</b>	July 19, 2022
<b>Title:</b>	<b>Tree Preservation By-law – City Property</b>
<b>Description:</b>	Proposed By-law for the Preservation of Tree Canopy in ownership of the City of Kawartha Lakes; not trees on private property
<b>Author and Title:</b>	Robyn Carlson, City Solicitor

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### Recommendations:

**That** Report LGL2022-013, Tree Preservation By-law, be received;

**That** an interest-bearing reserve be established for the preservation of existing tree canopy and hedgerows within the City of Kawartha Lakes, called the “Tree Canopy Reserve”;

**That** \$192,720, obtained by the City for tree preservation associated with the development of a portion of Wild Turkey Road, between Gray Road and Ballyduff Road, to access wind turbines, be removed from the Contingency Reserve (1.32090) and placed into the Tree Canopy Reserve;

**That** a proposed Tree Preservation By-law as at Appendix A be advanced to the Environmental Advisory Committee and the Williams Treaties First Nations and, inclusive of comments from these entities, to Council for approval; and

**That** the Consolidated Fees By-law 2018-234 be amended to incorporate the fees introduced in the Tree Preservation By-law, once approved by Council.

**Department Head:** \_\_\_\_\_

**Financial/Legal/HR/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## **Background:**

Subsection 270(1) of the Municipal Act, 2001 requires a municipality to adopt and maintain policies with respect to the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.

The City of Kawartha Lakes has made a commitment, per the 2020-2023 Strategic Plan, to protect and enhance the City's tree cover. The City of Kawartha Lakes has made similar commitments in the Healthy Environment Plan.

Subsection 135(1) of the Municipal Act, 2001 permits a local municipality to enact by-laws to prohibit or regulate the destruction or injuring of trees. Subsection 135(7) of the Municipal Act, 2001 provides that the by-law may require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees.

This report introduces a by-law to regulate the destruction or injuring of trees on City property by members of the public. The by-law introduced in this report supports the Road Construction – Existing Lots of Record Management Directive, the City's Docking Policy and the Encroachment By-law 2018-017.

## **Rationale:**

### **Tree Preservation By-law**

The purpose and effect of the proposed Tree Preservation By-law is to offset tree removal from City property in certain circumstances with tree planting and naturalization elsewhere in the municipality. The proposed Tree Preservation By-law does not regulate tree cutting on privately owned property.

The proposed Tree Preservation By-law does not permit members of the public or any other entity from cutting down City-owned trees on shoreline road allowance, for the purpose of improving sight lines to the water or from cutting down City-owned trees on City-owned waterfront blocks that are held for the purpose of water access.<sup>1</sup>

The Tree Preservation By-law does permit a member of the public, a developer, a telecommunications provider, or a utility provider to remove trees from a road allowance for the purpose of development, construction on or vehicular access to private property, or for the purpose of installing transmission / distribution lines in the road allowance. In these cases, however, the member of the public or developer will

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<sup>1</sup> Sections 3.04 and 3.05 of the proposed By-law give priority to naturalization of shorelines.

need to compensate the City for the necessary tree removal. Telecommunication entities and utility companies will be exempt from payment.

The Tree Preservation By-law does not permit the creation of new roads for personal development/ development of privately-owned property in the Oak Ridges Moraine Conservation Area or in lands zoned for environmental protection. The Tree Preservation By-law does permit the creation of new roads for telecommunications and utility infrastructure in environmentally-sensitive lands. Accordingly, the Tree Preservation By-law is consistent with the zoning provisions of the City's Oak Ridges Moraine Zoning By-law and the Electricity Act, and respects the federal jurisdiction over telecommunications.

For the removal of every mature tree from City property, the person removing the tree will provide the City with \$1,700. This is based on the cost to replace each mature tree removed with 4 mature seedlings. In the case of the Sumac Ridge Wind Energy Project off of Ballduff Road in 2016, this compensation ratio, at \$1,300 per tree based on the 2016 cost of mature seedlings, net the City \$192,720.

Trail creation, by a hiking association or snowmobile association for example, is not permitted by virtue of this by-law. This does not change the status quo. Accordingly, such requests will need to be considered in light of the City's Trails Master Plan.

#### Creation of a Reserve

One of the recommendations in this report is to create a reserve for the purpose of tree canopy and hedgerow enhancement and preservation. This will be an interest-bearing reserve, called the Tree Canopy Reserve. The money received by the City pursuant to the Sumac Ridge Wind Energy Project, currently held in another reserve for the purpose of tree canopy and hedgerow creation and maintenance within the Oak Ridges Moraine, will be placed in this reserve.

The Public Works Department has plans to utilize some or all of this money to plant "live fences" (hedgerows) to prevent against drifting snow in the winter within the Oak Ridges Moraine. The Department will still be able to access these funds for this purpose once moved.

## Further Consultation and Return to Council

The purpose of this report is to introduce the Tree By-law to Council. The next step will be for the Tree By-law to be circulated to the City's Environmental Advisory Committee for comment. Staff will return the Tree By-law with amendments as suggested by the Committee, if any, to Council at a future date for approval.

At the same time as the draft by-law is circulated to the Environmental Advisory Committee for comment, it will be circulated to the Williams Treaties First Nations for comment/ revision in accordance with the City's First Nations Consultation Policy.

It is anticipated that this will take 6 months to a year to complete. Once this process has concluded, the By-law, as may be amended as a result of the consultation process, will be returned to Council for potential adoption.

## **Other Alternatives Considered:**

None.

## **Alignment to Strategic Priorities**

This report aligns with the City's strategic priority of a Healthy Environment and is in support of the City's Council-adopted Healthy Environment Plan 2019.

## **Financial/Operation Impacts:**

The proposed Tree Preservation By-law, if approved by the municipality, will operate in a cost neutral fashion: the City Arborist's time in reviewing an application to cut trees on City property will be recovered at full cost recovery. This is estimated at \$1,000.

Currently, the City has control over members of the public cutting down trees on City property by virtue of common law (the decisions of the courts), in relation to the rights of a property owner, which rights are civil or are prosecuted in the Ontario Court of Justice via the Trespass to Property Act. The City began regulating unauthorized tree removal in 2018 via Council approval of the Encroachment By-law 2018-017. At which time, additional funds were added to the Municipal Law Enforcement Office operating budget, and staff recommended additional staffing in that Division back in 2018.

Accordingly, there is no additional work contemplated for the Municipal Law Enforcement Office of the City as a result of this proposed by-law; only the tool for enforcement changes.

What this proposed by-law does, however, is provide a framework for the City's approval or denial of a request to cut trees on City property. The proposed by-law also provides for cost recovery of City services. The by-law proposes that requests from the public to cut down trees on City road allowances will go to Parks and Recreation (the Parks Supervisor and administration) via the email address "[treebylaw@kawarthalakes.ca](mailto:treebylaw@kawarthalakes.ca)".

It is anticipated that the By-law will result in additional work for the Community Services Department, in processing permit requests. It is anticipated that some of this work will be contracted out. If volume of work warrants it, additional staff will be requested as part of the report returning to Council next year.

It may be that persons with City-owned shoreline road allowance adjacent to their property may seek a permit to cut down trees on the shoreline road allowance to improve the view from their property to the water. Currently, the City licenses private use of City-owned shoreline road allowance specifically for docking, via the Encroachment By-law 2018-017 and the Council-approved Docking Policy. The Docking Policy CP2021-047 stipulates that private docking on City-owned land is permissible in certain instances, as set out in that Policy. A condition of the licenses permitting docking on City-owned land is that no tree removal can occur. Accordingly, the proposed Tree Preservation By-law is consistent with the administration of the Docking Policy, in that the Tree Preservation By-law only allows for tree removal for the purpose of road construction; not to improve sightlines on private property to waterbodies over unimproved shoreline road allowance, and not to allow for tree removal on blocks of shoreline property owned by the City for the purposes of water access. The Tree Preservation By-law indicates that persons making an application with respect to tree removal on a shoreline road allowance, for the purpose of sight lines, will be directed to the Land Management Team. The Land Management Team, constituted per the Council Policy CP2018-007, is entirely comprised of Staff that meets regularly for decision-making purposes with respect to potential recommendations to Council for sale of shoreline road allowances. The Tree Preservation By-law indicates that persons making an application with respect to tree removal on a water access block will be denied. Accordingly, there is no operational impact with respect to these situations.

The net financial impact of the Tree Preservation By-law is that tree removal in the context of construction of a road on City-owned road allowance will now be compensated for by the developer. The compensation, at \$1,700 per mature tree, will allow for 4 mature seedlings to be purchased by the City for each mature tree removed. This in turn will allow the City to add tree cover and hedgerows to City property

elsewhere in the municipality, to ensure that tree cover on City-owned property is preserved from July 2022 into the future.

### **Attachments:**

Attachment A – Tree Preservation By-law



Attachment A - Tree  
By-Law.docx

### **Consultations:**

Director of Development Services

Manager of Planning

Director of Community Services

Manager of Parks, Recreation and Open Space

City Arborist

Treasurer

Director of Engineering & Corporate Assets

Manager, Infrastructure Design, Department of Engineering & Corporate Assets

Supervisor, Technical Services, Department of Engineering & Corporate Assets

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**Department Head:** Robyn Carlson