



Committee of the Whole Report

Report Number: LGL2023-012
Meeting Date: November 7, 2023
Title: Tree Preservation By-laws
Description: Proposed By-law for the Preservation of Trees on private property within 30 metres of a shoreline, within an environmentally protected area or on property greater than 0.5 ha & Proposed By-law for the Preservation of Tree Canopy in ownership of the City of Kawartha Lakes
Author and Title: Robyn Carlson, City Solicitor

Recommendations:

That Report LGL2023-012, Tree Preservation By-laws, be received;

That a proposed Tree Preservation on Private Property By-law, provided in Appendix A be advanced to the Kawartha Lakes Environmental Advisory Committee, the Kawartha Lakes Agricultural Development Advisory Committee, the Williams Treaties First Nations, and the public via Jump In survey, for consideration and consultation, and following receipt of input, return to Council for approval with recommended amendments as appropriate;

That a proposed City Tree Canopy Preservation By-law, provided in Appendix B be advanced to the Williams Treaties First Nations for consultation and, following receipt of input, return to Council for approval with recommended amendments as appropriate;

That the Consolidated Fees By-law 2018-234 be amended to incorporate the fees introduced in the Tree Preservation By-laws, when in their final form and once approved by Council;

That the costs associated with a new Environmental Officer and City Arborist, and additional fleet vehicle, be included in appropriate 2025 Budget(s); and

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

That these recommendations be brought forward to Council for consideration at the next Regular Council meeting.

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. In the Lake Management Plans for the various lakes within the City of Kawartha Lakes, the City has similarly made commitments to improve tree cover along shorelines.

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 two by-laws for the protection of trees: The first proposed by-law protects trees on privately-owned property. The second proposed by-law protects trees on City property.

The proposed Tree Preservation on Private Property By-law is consistent with City of Kawartha Lakes Official Plan 2012 waterfront policies, at Section 20 of that Plan. More specifically, one of the objectives of that policy is to protect surface water quality through shoreline naturalization efforts, among other things. As per policy 20.3.3, naturalized and/or vegetative shorelines shall be retained and restored. As per policy 20.5.4, tree cover and vegetation shall be retained to uphold the environmental integrity of the waterfront.

The proposed by-law to regulate the destruction or injuring of trees on City property by members of the public supports the Road Construction – Existing Lots of Record Management Directive MD2022-007, the City's Docking Policy CP2021-047, the Encroachment By-law 2018-017 and the Assumption of Unassumed and Private Roads Council Policy CP2017-010. This by-law was first introduced to Council on July 19, 2022

in draft form, for consideration. Council directed that the draft by-law be referred to the City's Environmental Advisory Committee and to the Williams Treaties First Nations, for consideration and comment, and for the revised by-law to return to Council:

CR2022-264

Moved By Councillor Yeo

Seconded By Deputy Mayor Richardson

That Report LGL2022-013, **Tree Preservation By-Law - City Property**, 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 \$192,720.00, 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.

Carried

Following receipt of the above resolution, Staff met with the City's Environmental Advisory Committee, which was supportive of the By-law but wanted to see a by-law protecting trees on private property along shorelines, in furtherance of the recommendations in the Lake Management Plans.

Rationale:

Private Tree Preservation By-law

The overall purpose of this by-law is to encourage growth and development in a manner that minimizes negative impact on existing tree cover. Areas of environmental significance have been prioritized for retention of tree cover, which includes shoreline areas.¹ Larger properties have also been prioritized for retention of tree cover, as these larger properties are also usually associated with lot creation by way of subdivision or

¹ The Kawartha Region Conservation recommends the introduction of a tree preservation by-law to protect shoreline areas. See "Shoreline Planning and Policy in the City of Kawartha Lakes: Summary of land use policies across 22 lake based municipalities in Ontario"; Kawartha Region Conservation Authority; 2020: <https://www.kawarthaconservation.com/en/resources/Shoreline-Planning-and-Policy-in-the-City-of-Kawartha-Lakes---Comparison-of-municipal-land-use-policies-2020.pdf>

plan of condominium. Where subdivision or condominium development is not contemplated, the construction of a single dwelling/ building on a large property provides more opportunity to avoid mature healthy trees than does construction of a single dwelling/ building on a small property. This by-law acknowledges the lack of flexibility for smaller lot owners.²

This by-law proposes that, in areas designated Environmental Protection per the City's Official Plan, or within 30 metres of shorelines, or in cases of tree removal on property greater than 0.5 hectares, property owners are required to apply for and obtain a permit to cut mature trees.³ The proposed By-law is found at Appendix A.

The by-law requires the payment of \$425 per healthy mature tree removed⁴ on shoreline/ environmentally protected property up to 0.5 hectares for any reason (including building a new dwelling or structure, clearing land for a back yard or driveway access to a property) and not replaced with a mature sapling. For tree removal on any property greater than 0.5 hectares, whether or not shoreline or environmental protection, the by-law requires a payment of \$1,700 per healthy tree removed and not replaced with 4 mature saplings.

The payment for healthy tree removal on property greater than 0.5 hectares in size is pursuant to precedent in the City: The City has negotiated Framework Development Agreements with the developers within the Town of Lindsay that have obtained Ministerial Zoning Orders from the province. These Agreements provide that the developer will make a payment of \$1,500 for every healthy mature tree removed. In the case of the only development to proceed to draft plan of subdivision approval as of the date of this report, the Gateway development at the Southeast corner of the Town of Lindsay, at the corner of Highway 7 and Lindsay Street South, this has net the City \$136,500 in payment to the Tree Canopy Reserve. This payment is in addition to the existing requirement to ensure one tree is planted for each lot created in the subdivision. This payment, once received at the time of the registration of the plan of

² By applying to all lots greater than 0.5 ha in size regardless of concurrent development application, the by-law avoids a loophole that would allow development to occur post land clearing and avoid the more restrictive permitting process.

³ A 30 metre riparian buffer zone was chosen, as the Lake Scugog Environmental Management Plan (2020) notes that there is a 57% average of natural, vegetated buffer within this zone, and that Environment Canada recommends a 75% cover within this zone. The Kawartha Region Conservation Authority supports a 30 metre setback. See "Shoreline Planning and Policy in the City of Kawartha Lakes: Summary of land use policies across 22 lake based municipalities in Ontario"; Kawartha Region Conservation Authority; 2020: <https://www.kawarthaconservation.com/en/resources/Shoreline-Planning-and-Policy-in-the-City-of-Kawartha-Lakes---Comparison-of-municipal-land-use-policies-2020.pdf>

subdivision, will fund the aforementioned hedgerow project, subject to future Council approval.

Exemptions to the by-law exist for agricultural operations, forestry operations, cemetery operations, golf clubs, orchards, tree nursery businesses, affordable housing development⁵, and low income residents.

Payment for tree removal will be placed into the Tree Canopy Reserve and earmarked for maintaining and improving the amount of tree and vegetative cover within shorelines and environmentally protected areas elsewhere in the City, when funds are received from tree removal within shorelines or environmentally protected areas. When funds are received from development outside these sensitive areas, they will be placed within the Tree Canopy Reserve to allow Council to fund tree and/or hedgerow planting initiatives elsewhere in the municipality.

To make the by-law less costly to implement for the property owner, this proposed by-law does not require the property owner to have expert consultants (arborist and environmental) assist in the submission of an application for a permit. There is no application fee. This By-law will apply to:

- the individual property owner cutting down a tree to get better water views from an existing residential property,
- a developer preparing a large property for future development, including rezoning and subdivision,
- an owner of vacant property clearing land for installation of a building, driveway, and/or accessory building (garage),
- an owner with a home on a piece of property greater than 0.5 hectares in size wishes to cut down a mature tree on their property,

A person is not allowed to cut down mature healthy trees in an area designated for environmental protection in the City's Official Plan, however, unhealthy trees can be removed without a permit.

Results of Consultation with the Agricultural Development Advisory Committee

The author of this Report attended the Agricultural Development Advisory Committee meeting held on October 27, 2023, to overview the proposed Private Lands Tree Preservation By-law and obtain comment. The Committee had several interesting

⁵ The by-law provides an exemption for affordable housing developments of the Kawartha Lakes Haliburton Housing Corporation and Habitat for Humanity. Other housing developments must proceed through the existing municipal incentivization process for affordable housing developments, in order to have these fees waived.

proposed amendments that have been accepted by the author and placed into the by-law attached to this Report:

- An exemption should be made for septic installation/ repair within 30 metres of shorelines, to encourage septic rehabilitation (which will improve phosphorous loading into lakes and rivers);
- An exemption should be made for removal of buckthorn; an invasive species; and
- A broadening of the exemptions relating to agriculture, to allow hobby farms and managed wootlots to be included in the exemptions.

The Committee also recommended that the threshold relating to property size be increased from “greater than 0.5 hectares” to “greater than 5 hectares”, to capture all subdivision and condominium development but not to impact a great number of large shoreline residential property owners. This option bears further review, so it has been placed into the “Alternatives” section of this Report for further consideration and is a question posed to the public on the online Jump In platform.

The author of this Report will return to the Committee in February 2024, to obtain further and fulsome comments to draft.

Outstanding Consultation – Environmental Advisory Committee, Agricultural Development Advisory Committee, Williams Treaties First Nations and Members of the Public

This report recommends that this proposed by-law be advanced to the City’s Environmental Advisory Committee for comment and input, be returned to the City’s Agricultural Development Advisory Committee for comment and input, and to the Williams Treaties First Nations for consultation. This report recommends further that the public be invited to provide feedback online per survey via the City’s Jump In platform. Once this input is sought, this by-law with appropriate amendment will return to Council for further consideration.

City 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 City Tree Preservation By-law does not regulate tree cutting on privately owned property.

The proposed City Tree Preservation By-law does not permit members of the public or any other entity from cutting down City-owned trees on shoreline road allowances, 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.⁶

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 the case of road construction by a property owner, however, the property owner will compensate the City for the necessary tree removal. Telecommunication entities and utility companies are exempt from the permitting requirement.⁷

Tree removal in the context of an entrance permit to permit a new driveway entrance to an existing roadway is exempt from the permit requirement.

The City 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 City Tree Preservation By-law does permit the creation of new access roads for telecommunications and utility infrastructure in environmentally-sensitive lands.⁸ Accordingly, the City 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.

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 and established approval processes.

Costs to the developer/ ratepayer

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 mature⁹ tree removed with 4 mature saplings. This cost recovery is not unprecedented in the case of development in the City: In the case of the Sumac Ridge Wind Energy Project off of

⁶ Sections 3.04 and 3.05 of the proposed By-law give priority to naturalization of shorelines.

⁷ They enter into municipal consent agreements with the City.

⁸ This does not result in the creation of roadways that are assumed for maintenance purposes by the City.

⁹ "Mature" was defined as 5 inches at 4.5 feet from the ground, consistent with the current proposed by-law.

Ballduff Road in 2016, this compensation ratio, at \$1,300 per tree based on the 2016 cost of mature saplings, net the City \$192,720. The monies are being used to fund hedgerow installation in roadways in the Oak Ridges Moraine, to protect driver safety from blowing snow while improving vegetative cover in the Moraine.

Funds recovered under this by-law will likewise be used to protect driver safety by the installation of hedgerows adjacent to roadways where drifting snow is an issue throughout the City. When the program is complete, future funding will be earmarked for other tree canopy and vegetation maintenance and creation projects. As a Council resolution is required to remove funds from a Reserve, Council and the public will receive further details at the time that monies are being proposed to be removed from the Reserve for use.

Results of Public Consultation – Environmental Advisory Committee

The Kawartha Lakes Environmental Advisory Committee recommended that a series of fines be considered for enforcement purposes, so that higher-value trees (larger/older and/or threatened or endangered according to the *Species at Risk Act*) would attract a higher fine.

While the by-law provides minimum fines, it leaves room for opportunity for the prosecutor to consider higher fines for more egregious offences, which could consider the value of a tree cut down as well as the number of trees cut down and the location of trees cut down (with trees in environmentally-protected areas attracting higher fines). For this reason, no amendment to the by-law is recommended at this time.

Outstanding Consultation – Williams Treaties First Nations

As a result of the recommendation made by the Kawartha Lakes Environmental Advisory Committee for additional by-law creation, consultation with the Williams Treaties First Nations on this by-law will occur in conjunction with the further by-law proposed below. Once this further consultation has occurred, this by-law will return to Council for further consideration.

Additional Consultation Not Required – Public or Agricultural Development Advisory Committee

No public or Agricultural Development Advisory Committee consultation is being done for the City Tree by-law over and above the public process afforded by debate and decision before Committee of the Whole and Council Meetings. The only real impacts on the public, including the farming community, arises from the proposed Tree By-law on Private Property. The City Tree by-law governs how the City treats its own trees on:

- treed road allowances, which shouldn't impact farmers unless they are looking to construct a road. Road construction is largely governed by the Environmental Impact Assessment process from a process and cost perspective;
- open space water access blocks, which shouldn't impact farmers. Members of the public are already prohibited from cutting down trees on these open space blocks without City approval, so the only change introduced by the City Tree By-law would be that the By-law expressly does not permit private individuals from cutting down trees on water access blocks; and
- shoreline road allowances (with or without a road). The City already prohibits tree cutting by private interests in these locations, per the Encroachment By-law and Docking Policy, so the only change introduced by the City Trees By-law is to the fines related to an offence.

Implementation

These by-laws are intended to apply to development and non-development scenarios.

Other Alternatives Considered:

Upset Fee Limit

An upset limit on total fees to be paid was considered (i.e. Markham has a \$5,000 upset limit), but rejected: The City has obtained \$197,000 in the case of removal of City-owned trees for the purpose of road construction in the past, and \$136,500 associated with the removal of privately-owned trees in the context of subdivision development. This indicates that these fees are commercially viable. With the significant exemptions to the by-law (i.e. for use in residential home fuel), the only upset limit that might be appropriate would be to allow for construction on an existing lot of record. A \$5,000 limit would allow in excess of 11 mature healthy trees to be cut for free (the first 11 being paid for at \$425/ tree not replaced). The author recommends that the impact on construction on existing lots of record be tracked and, if a significant negative impact is established, the issue be brought back at a future date for amendment to the by-law.

Increased Threshold relating to Property Size

The Agricultural Development Advisory Committee has recommended that the threshold relating to property size be increased from "greater than 0.5 hectares" to "greater than 5 hectares", to continue to capture all subdivision and condominium development but not to impact a great number of large shoreline residential property owners. This option bears further review, so it has been placed into the "Alternatives" section for further consideration and is a question on the online Jump In platform.

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 and Lake Management Plans.

Financial/Operation Impacts:

Private Tree Preservation By-law

This by-law will not operate in a cost-neutral manner, so as to encourage compliance. Accordingly, the related implementation and enforcement costs will be added to the City's 2025 Operating Budget and be paid out of the tax roll. These costs are unquantified at this time. Once quantified using 2025 actual numbers, Staff will propose adjustment to the 2026 Operating Budget, accordingly.

The estimated staffing needs of 1 Environmental Officer and 1 Arborist may be insufficient to run the program. Once the area to which the by-law applies has been determined, the author of this report will identify comparable municipal programs and, based on discussion with those municipalities, obtain a better estimate of likely staffing requirements. These estimates will be refined for the purposes of the report back to Council in 2024.

City-owned Tree Preservation By-law

There is no impact to the entrance permit process, administered by Public Works, as tree removal in the context of entrance permits is exempt from the by-law.

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 by-law proposes that

requests from the public to cut down trees on City road allowances will go to Parks and Recreation (the Environmental Officer and City Arborist) via the email address "treebylaw@kawarthalakes.ca".

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 City-owned Tree Preservation By-law is consistent with the administration of the Docking Policy, in that the City-owned 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 City-owned 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 City-owned 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 City-owned 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 healthy mature tree, will allow for 4 mature saplings 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 property elsewhere in the municipality. Preference will be to fund identified revegetation projects on City-owned land.

Attachments:

Attachment A – Privately-owned Tree Preservation By-law



Tree By-Law -
Private Property - Sh

Attachment B – City-owned Tree Preservation By-law



Tree By-law - City
Owned Property.doc

Attachment C – Proposed Amending By-law to the Fees and Charges By-law



Amend Fees By-law
- Tree Preservation E

Consultations:

Kawartha Region Conservation Authority
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
Manager, Municipal Law Enforcement Office
Kawartha Lakes Agricultural Development Advisory Committee

Department Head email: rcarlson@kawarthalakes.ca

Department Head: Robyn Carlson