



## Planning and Development Services

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**Prepared for: Council-in-Committee**

**Report: PDS-06-2024**

**Meeting Date: February 12, 2024**

### 1. Title

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Updates to By-Law 60-04 – A By-Law to Regulate the Destruction, Injury and Harvesting of Trees in the Town of Fort Erie – Recommendation Report

### 2. Recommendations

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**That:** Council approves the amendment to the Town’s Tree By-law 60-04, as amended, as detailed in Report Number PDS-06-2024, and further

**That:** Council directs Staff to submit the necessary By-laws;

### 3. Relation to Council’s Corporate Strategic Plan

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Priority: Environmental and climate change resiliency

Initiative: 5.1 Review and refine policies that preserve and enhance our natural heritage

### 4. List of Stakeholders

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Corporation of the Town of Fort Erie

Niagara Region

Niagara Peninsula Conservation Authority (NPCA)

Fort Erie Residents

### 5. Purpose of Report

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The purpose of this report is to provide recommendation to Council regarding proposed amendments to the Town of Fort Erie By-law 60-04 - A By-Law to Regulate the Destruction, Injury and Harvesting of Trees in the Town of Fort Erie.

### 6. Analysis

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#### Background

On May 29, 2023 Council adopted Resolution No.11 which directed staff to provide Council with a memo regarding By-law 60-04, Being a By-law to Regulate the Destruction, Injury and Harvesting of Trees in the Town of Fort Erie in response to a number of tree removal related activities throughout the Town. The Town’s By-law regulates the destruction, injury and harvesting of trees covering an area between 0.5 hectares (1.2 acres) and 1 hectare (2.47

acres). The Niagara Region Woodland Conservation By-law 2020-79 governs the cutting of trees in woodlands greater than 1.0 hectare. Both by-laws include the same definitions of “woodland” or “woodlands”. The definition is derived from the Forestry Act definition in which a treed area must meet a specified density to be considered a Woodland; This ensures consistency of interpretation.

There are several on-going issues related to tree removal within the Town of Fort Erie that have triggered the need for a review and update to the existing by-law, including but not limited to tree removal prior to Planning Act approval, a reduction in woodland density due to trees impacted by Emerald Ash Borer and the removal of large individual trees within urban areas. Currently, the Town’s By-law Enforcement Officers respond to complaints about tree removal throughout the Town. In many cases, either due to the size of the woodland or due to the number of dead ash trees, neither the Town’s or the Region’s bylaws apply and permits are not required. It has been necessary for the By-Law Enforcement Officers to request the assistance of Regional staff who have expertise in conducting woodland density assessments.

On August 28, 2023, Council directed staff to initiate formal review and amendment to By-law 60-04 - A By-Law to Regulate the Destruction, Injury and Harvesting of Trees in the Town of Fort Erie in accordance with the Municipal Act as outlined within Report PDS-54-2023. Council also directed staff to proceed with discussions with external agencies (i.e., Niagara Region, NPCA) regarding education, compliance and enforcement coordination approaches.

On September 25, 2023 an open house was held at Town Hall to obtain preliminary feedback from residents regarding potential upcoming amendments. Approximately 30 residents attended the Open House, 12 of which provided public comments and an additional 12 comments were received via email prior to the Open House. Comments were also provided by the Town’s Environmental Advisory Committee. In general, most comments received during the consultation period were supportive of enhanced tree protection measures throughout the Town, however some residents did express concerns over the regulation of individual trees on private property.

On November 27, 2023, Public Meeting information regarding potential regulation approaches was presented to the public and members of Council within Report No. PDS-78-2023. Staff have reviewed the comments received to date from both the information open house and the public meeting and have revised the draft by-law accordingly. The draft By-law can be found in Appendix 1. A summary of the changes can be found below:

### **Draft Tree By-law Amendments**

Based on research conducted by Town staff and the comments received as part of the public consultation process, Planning staff have revised the draft Tree By-law, which can be found in Appendix 1.

If approved by Council, the By-law would:

1. Generally prohibit the removal of the following trees without a permit:
  - a) Trees of all size within the Natural Heritage System
  - b) Trees equal to or greater than 30cm Diameter at Breast Height (DBH) within the Urban Boundary
  - c) To Trees designated as a Heritage Tree under Part IV or Part V of the Ontario Heritage Act;

- d) To Trees of any size located on lands upon which there is pending an application for a plan of subdivision, a plan of condominium, a severance or consent, an Official Plan amendment, a Zoning Bylaw amendment, a minor variance, or a site plan approval;
- e) To Trees of any size located on lands upon which there has been a Pre-Consultation meeting held with the Town for a plan of subdivision, a plan of condominium, a severance or consent, an Official Plan amendment, a Zoning Bylaw amendment, a minor variance, or a site plan approval and the Pre-consultation Meeting was held no more than one year prior;
- f) To Trees of any size identified in a Tree Preservation Plan submitted as part of a development application;
- g) To Replacement Trees planted as a requirement of a permit issued under the By-law
- h) To Trees of any size located in whole or in part on Public Property

2. Include various exemptions, including:

- (a) activities or matters undertaken by a municipality or a local board of a municipality;
- (b) activities or matters undertaken under a licence issued under the Crown Forest Sustainability Act, 1994;
- (c) the injuring or destruction of Trees by a person licensed under the Surveyors Act to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- (d) the injuring or destruction of Trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the Planning Act or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (e) the injuring or destruction of Trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the Planning Act or as a requirement of an agreement entered into under the regulation;
- (f) the injuring or destruction of Trees by a transmitter or distributor, as those terms are defined in section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (g) the injuring or destruction of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act;
- (h) the injuring or destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
- (i) that has not been designated under the Aggregate Resources Act or a predecessor of that Act, and;
- (j) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the Planning Act. 2001, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).

- (k) Injury or Destruction of a Tree that is located within a building, a solarium, a rooftop garden, interior courtyard, actively managed golf course, cemetery, actively managed cultivated orchard, Tree farm or plant nursery;
- (l) Woodlands as defined by the Niagara Region Woodland Conservation By-law, or any successor by-law regulating the injury or destruction of Trees in Woodlands in the Niagara Region;
- (m) the Injuring or Destruction of Trees undertaken by a Conservation Authority;
- (n) the Injuring or Destruction of Trees at the direction of Emergency Services;
- (o) Pruning that is necessary to maintain the health and condition of the Tree and is carried out in accordance with Good Arboricultural Practices;
- (p) A Tree on lands operated by a railway;
- (q) Where a Property Standards Order or Lot Maintenance Order has been issued by an Officer for the removal of a Hazardous Tree.
- (a) The Harvesting, Injuring or Destruction of Trees by a Farmer that involves the clearing of Trees for Agricultural Use on land that is owned by the Farmer doing the clearing and is part of a farm operation or farm corporation that has existed for at least three (3) years prior to such clearing;
  - i. The clearing shall be carried out in accordance with Normal Farm Practices as defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1, as amended, provided that:
    - ii. the land that is cleared is put into Agricultural Use within three (3) years of the date on which such clearing commences;
    - iii. the land being cleared for Agricultural Use is outside the Urban Boundary, and is designated in the Official Plan and zoned for Agricultural Use in the Zoning By-law.

3. Provide Staff with the ability to issue exception letters for the following:

- a. the Injuring or Destruction of the following Tree species
  - i. *Morus alba* (White Mulberry)
  - ii. *Rhamnus cathartica* (Common Buckthorn)
  - iii. *Rhamnus frangula* (Glossy Buckthorn)
  - iv. Black Alder (*Alnus glutinosa*)
- b. The Harvest of Trees by the Owner of a Property for the for the purpose of heating a dwelling or for personal use maintained on the property which the Trees are located (or part thereof) where the Owner has been the registered Owner of the Property on which the Trees are located for a minimum of 2 years prior to the date of Harvest and provided that:
  - i. such activity is conducted consistent with Good Forestry Practices;
  - ii. no more than 10 Trees per hectare are Harvested, injured or destroyed within a 1-year time period

4. Provide Staff with the ability to refuse or grant a permit for tree removal based on several criteria as described within Report PDS-78-2023.
5. Provide Staff with the ability to put conditions on a permit as described within Report PDS-78-2023.
6. Provide Staff with the ability to require compensation/replacement for trees that are removed under the authority of a permit. A ratio-based compensation approach has been included within the Draft By-law and is scaled depending on the diameter of the tree. A security deposit is also recommended for each replacement tree and is included within the Draft By-law. Should replacement plantings not be able to be accommodated on the subject property, a cash-in-lieu amount of \$1000.00 per tree (using the ratio-based compensation approach) paid to the Town for natural feature enhancement is recommended.
7. Provide Staff with the ability to implement various enforcement approaches, including Orders to Discontinue Activity, Work Orders to ensure the owner does work to correct the contravention and the issuance of Administrative Monetary Penalties. A schedule of recommended Administrative Monetary Penalties is included in the Draft By-law. An Owner of the property who conducts work that is in contravention of the By-law can also be found guilty of an offence and, upon conviction in court, be liable to a fine for each day or part of a day on which the offense continues. Penalties associated with an Offense should remain consistent with those outlined within the Provincial Offences Act, S.O. 1990, c. P.33 and the Municipal Act, 2001, as amended.

## **7. Financial, Staffing and Accessibility (AODA) Implications**

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If accepted by Council, a new tree bylaw with greater tree protections and technical specifications would necessitate the need for additional staffing to assist with administering the bylaw, permitting and enforcement. Staff recommends that one additional staff member with a background in arboriculture or forestry (preferably an ISA Certified Arborist) be obtained. This staff member's primary responsibilities would be to lead administration and permitting efforts associated with the by-law. Should time allow, the staff member may also be able to support the Town's Arborist to manage other tree-related priorities and projects (i.e. plantings, maintenance, inspections, annual operations, storm recovery, tree removals, etc.). Staff would further rely upon Municipal Enforcement Officers (MLEO), particularly the Junior MLEO identified in the 2024 Supplemental Budget, to assist with after-hour complaint investigations and orders, enforce the by-law and provide assistance with administering the bylaw. Staff also recommend that the Town's Senior Environmental Planner be involved with the administration of the by-law in areas where there are proposed development applications. Though Staff feel that this approach would provide adequate staffing to administer and enforce the proposed by-law, it is

recommended that staffing be reevaluated after a period of 6 months to determine if additional resourcing is required.

Staff have recommended a permit fee schedule within the Draft By-law that will aid in offsetting costs associated with administering the by-law. Low permit fees for owners who are individuals are recommended in order to obtain increased compliance from residents. Recommended fees were derived from other municipal tree by-laws within Southern Ontario and adjusted to reflect increased Staff review time for applications within the Natural Heritage System. The fees included within the Draft By-law schedules will be used to update the Town's Consolidated Schedule of Fees and Charges through amendments to By-law 176-2023. The revenue of any Administrative Monetary Penalties (AMPS) that are issued may also be used to both offset the cost of staff resourcing and to contribute to the overall enhancement of the Town's tree projects and improved tree canopy.

## **8. Policies Affecting Proposal**

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Policies affecting the recommendation are contained in the Town's Official Plan, Niagara Region Official Plan, Niagara Peninsula Conservation Authority Policy Document, as well as other applicable Provincial Regulations.

## **9. Comments from Departments, Community and Corporate Partners**

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Comments received prior to the September 25<sup>th</sup> open house can be found within Report No. PDS-78-2023.

A number of comments were raised by members of the public and Council during the statutory public meeting held on November 27<sup>th</sup>, 2023. A summary of these comments and Staff's responses can be found below.

### Regulations Threshold for the Trees

Council and members of the public expressed concerns surrounding the previously proposed regulation threshold of 50cm DBH and asked for clarification on how 50cm was derived. Staff provided clarification at the time that 50cm was chosen as it was felt that this diameter threshold would serve to regulate larger, older trees that residents had expressed concerns over. Several members of the public also expressed concerns with the 50cm DBH threshold and provided comments that they would like to see anywhere from 10cm DBH to 20cm DBH threshold. As a result of these comments, and previous comments made by the Town's Environmental Advisory Committee (see Report PDS-78-2023), Town Staff recommend that the threshold for individual tree regulation within the Urban Boundary is lowered to 30cm DBH from the previously proposed 50cm DBH.

### Replacement of Trees

Council also expressed concerns that the planting of replacement trees in the form of saplings was not an adequate replacement value for large, older trees that are removed under the

authority of a permit. Staff provided information regarding the minimum size requirements for replacement plantings (50 mm caliper deciduous tree, or a one hundred and fifty (150) centimeter height coniferous tree in a 5-gallon container or balled and bur lapped or in a wire basket). Staff have proposed tree replacement ratios on Schedule D of the Draft By-law that scale up depending on the size of the tree removed in an effort to more accurately replace the value of the lost tree.

Council inquired as to whether there was any consideration given to exemptions for farmers who are tenants as opposed to those who were owners of the land. Staff are recommending that property owners are the primary permit holders and any tenants applying for permit applications will require the signature of the property owner to act as an agent on the file.

Council requested that Staff look into whether properties greater than 2.02 hectares that are proposed to be regulated under the new by-law will also include those that are not currently zoned as residential. Town staff have reviewed this clause and have excluded it from the Draft By-law. It is staff's opinion the reduction of DBH threshold for regulated trees inside of the Urban Boundary from 50cm to 30cm will sufficiently protect canopy coverage within the Urban Boundary. Staff have concluded that the regulation of lands 2.02 ha or greater does not provide significant additional protection for trees and removal of this clause will help to simplify the process for landowners.

### Natural Heritage Areas

Council inquired as to what areas would be included within the Natural Heritage System. Staff have included a Schedule of these areas within the Draft By-law for consideration. The Schedule was compiled based on the Town's Environmental Conservation Areas, Environmental Protection Areas, Hazard Areas and Dune Protection Areas in addition to areas identified in the Regional Official Plan as Significant Woodland, 'Other Woodland' and 'Other Wetland'.

### Boundary Trees

Council noted the importance of regulating Boundary trees within the Urban Boundary (trees with shared ownership). Staff does not recommend the regulation of all Boundary trees within the By-law. However, all trees greater than 30cm DBH will be regulated within the Urban Boundary, regardless of ownership. Staff feel that this approach will regulate trees with larger diameters that are most disputed by residents.

### Penalties for Tree Removal

Council noted the importance of having high fines for large-scale tree clearing that has been occurring within the Town. Staff have compiled a recommended Schedule of Administrative Monetary Penalties (AMPS) in the Draft By-law that, when applied to a large-scale tree clearing event, can result in fines that Staff feel are appropriate to address Council's concern. Staff also

have the ability to lay a charge under the Provincial Offences Act, R.S.O 1990 for any significant occurrences.

## **10. Alternatives**

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Staff may elect to include properties greater than 2.02 hectares within the municipal boundary to be regulated within the By-law, however this is not Staff's recommendation as it will result in a considerable increase in Staff time and does not significantly contribute to greater protection of the Town's Natural Heritage System or canopy coverage within the Urban Boundary.

## **11. Communicating Results**

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The Town has provided regular updates regarding the by-law amendments to the public through the use of the Town's Website. If Council approves the amendments, a newspaper notice would be published in the local newspaper as well as on the Town's website.

## **12. Conclusion**

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Planning staff are in support of the Draft By-law amendments found in Appendix 1 in order to regulate trees within the Natural Heritage System within the municipal boundary and trees greater than 30cm DBH within the Urban Boundary.

## **13. Report Approval**

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Submitted by:  
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Director of Planning and Development Services

Approved by:  
Chris McQueen, MBA  
Chief Administrative Officer

## **14. Attachments**

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Appendix 1 – Draft Tree By-law