

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

Report to: Chair and Members Economic Development and Planning Committee	Submitted by: Tim McCabe General Manager Planning and Economic Development Department
Date: September 28, 2009	Prepared by: Cathy Plosz (905) 546-2424, Ext. 1231

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide)

RECOMMENDATION:

- (a) That the draft Hamilton Private Tree and Woodland Conservation By-law, attached as Appendix "A" to Report PD02229(c), which has been prepared in a form satisfactory to the City solicitor, be approved, but enactment and implementation of the By-law be held in abeyance pending the outcome of Recommendation (e).
- (b) That subject to final approval of the By-law, the fees for permits and appeals under the Private Tree and Woodland Conservation By-law be added to the User Fees and Charges By-law.
- (c) That the Tree Protection Guidelines, dated July 2009, attached as Appendix "B" to Report PD02229(c), be adopted by Council. Further, that staff be directed to use these as the new Guidelines for the preparation of Tree Protection Plans (TPPs) associated with the approval of development applications.
- (d) That the fees for reviews and approvals, under the Tree Protection Guidelines, be added to the User Fees and Charges By-law.
- (e) That additional FTEs and costs for implementation and administration of the Private Tree and Woodland Conservation By-law be referred to the 2010 Budget process.
- (f) That Planning and Economic Development Department staff be directed to prepare an Education and Awareness Strategy to promote the new Private Tree and Woodland Conservation By-law and Tree Protection Guidelines.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 2 of 20

- (g) That Planning and Economic Development Department staff be directed to initiate a process to define and identify an approach to the protection and management of heritage trees in Hamilton, which would be implemented in a future amendment to the Private Tree and Woodland Conservation By-law.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

In 2004, Planning and Economic Development Department staff prepared Report PD02229(a), which outlined the options for developing a Tree Cutting By-law for private property in Hamilton. The report indicated that a new By-law was needed to consolidate the existing Tree Cutting By-laws from the former Regional and local municipalities, which were out of date. Council directed staff to prepare a Tree Cutting By-law, and approved hiring one full-time enforcement officer to administer and enforce the existing By-laws from the former area and regional municipalities.

In May 2005, staff released a draft By-law for public review. There was a strong response from both urban and rural residents. Staff considered the comments and revised the By-law accordingly. The second version of the By-law was presented to Economic Development and Planning Committee in Report PD02229(b), in June 2008, as the basis for another round of public consultation.

Four Public Open Houses were held in the fall of 2008 to receive public and agency input on the draft By-law. Also, meetings were held with the Agricultural and Rural Affairs Advisory Committee, the Municipal Heritage Committee, the Hamilton-Halton Homebuilders' Association, and Clean Air Hamilton. Comments were also received from residents and agencies by telephone and e-mail. A summary of the main comments received on the draft By-law include:

- The By-law is needed and should have been passed long ago;
- Concern over government regulation of private property owners - seen as government interference;
- Permit fees are too high, and not necessary;
- Concern about the limit of 2.5 cords per hectare for harvesting trees for own use;
- How will the By-law be enforced;

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 3 of 20

- Size of tree regulated (40 cm dbh) - some wanted smaller trees regulated, some wanted larger trees regulated; and,
- Heritage trees - wanted definition and strong protection for them.

The revised Private Tree and Woodland Conservation By-law, attached as Appendix “A”, regulates the cutting of trees within woodlands of 1 hectare or more in size in the Rural area. In the Urban Area, tree cutting is regulated in woodlands of 0.2 hectares or more in size, and for individual trees with diameter at breast height (dbh) of 40 centimetres and greater. The By-law includes exemptions for City and Conservation Authority-owned lands, surveyors licensed under the Surveyors Act, public utilities, lands on which a pit or quarry is permitted under the Aggregate Resources Act, and trees cut in the interest of public safety (i.e. hazardous trees).

The Private Tree and Woodland Conservation By-law presented in this Report differs from the Forestry and Horticulture Section, Public Works Department By-law No. 06-151 (2006), which governs only trees on public lands, such as in parks and in road rights-of-way, whereas this By-law regulates trees and woodlands on privately-owned lands.

The Tree Protection Guidelines for development sites (the “Guidelines”), attached as Appendix “B”, provide guidance and information to landowners and developers who wish to remove trees as part of a Planning Act approval (e.g. draft plans of subdivision/condominium, site plan control, and consent applications) or as part of Niagara Escarpment Commission permit applications. In this way, there is a clear process for lands proposed for development. Permits would not be required once a Tree Protection Plan has been approved. These Guidelines were also presented for public review and comment during the four Public Open Houses in 2008, and revisions were made as a result.

If Council supports the adoption of the By-law and Guidelines, adequate additional resources for administration and enforcement of the By-law, and Education and Awareness to promote the By-law must be considered during the 2010 Budget process. To enforce the By-law, a total of 3.5 full-time employees would be required. Currently, there is one full-time employee enforcing the existing By-laws of the former area and regional municipalities. Consequently, an additional 2.5 new employees would be required. For By-law enforcement, 1.5 employees (an enforcement officer and a part-time clerk) would be required. In addition, one employee is needed to review and approve Tree Protection Plans, as required by the Guidelines for properties undergoing a Planning Act approval.

BACKGROUND:

Introduction

In 2002, the Planning and Economic Development Department and the Community Services Department prepared Report PD02229/CS02106, which discussed the need for a Tree Cutting By-law to regulate trees on privately-owned property, and outlined staff resource requirements if a By-law for the amalgamated City of Hamilton was

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 4 of 20

approved. In 2004, Planning and Economic Development Department staff prepared Report PD02229(a), which outlined the options for developing a Tree Cutting By-law for private property in Hamilton. The report indicated that a new By-law was needed to consolidate the existing Tree Cutting By-laws of the former Regional and local municipalities, which were out of date. At that time, Council approved hiring one full-time employee to administer and enforce the existing By-laws from the former regional and local municipalities. Council also directed staff to prepare a new By-law, with the scope outlined in Report PD02229(a), and to conduct public consultation.

In May 2005, staff released a draft By-law for public review. There was a strong response from both urban and rural residents. Staff considered the comments and revised the By-law accordingly. This version of the By-law (“revised second draft”) was presented to Economic Development and Planning Committee in Report PD02229(b), in June 2008, as the basis for another round of public consultation.

In the fall of 2008, four Public Open Houses were held to present the By-law and Guidelines, and to receive public input. In addition to the Open Houses, the public consultation process included presentations to stakeholder groups, distribution to the public and agencies, and posting the draft documents on the City’s web site. Generally, the Open Houses were not as well attended, and staff received fewer comments and concerns compared to the public consultation for the first draft in 2005. The comments received (see Appendix “C” for the By-law and Appendix “D” for the Guidelines) were considered, and minor revisions were made to produce the versions presented in this Report.

Public Consultation Process

As outlined in Report PD02229(b), the public consultation process for the revised second draft of the By-law included:

- Four Public Open Houses;
- Presentations to Stakeholders; and,
- Posting of the Draft By-law and Tree Protection Guidelines on the City’s web site.

The dates for public consultation events are outlined below:

- September 8, 2008 - Stakeholder meeting with Clean Air Hamilton.
- September 12, 2008 - Stakeholder meeting with the Hamilton-Halton Homebuilders Association.
- September 18, 2008 - Open House at the Beverly Community Centre, Rockton.
- September 23, 2008 - Open House at the Stoney Creek Municipal Centre, Stoney Creek.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 5 of 20

- September 30, 2008 - Open House at the Hamilton Public Library, Hamilton.
- October 2, 2008 - Open House at the Dundas Town Hall, Dundas.
- October 23, 2008 - Stakeholder meeting with Municipal Heritage Committee.
- November 4, 2008 - Ward 11 meeting held at the Binbrook Municipal Service Centre, Binbrook.
- May 28, 2009 - Stakeholder meeting with the Agriculture and Rural Affairs Advisory Committee.

A total of 50 people attended the four public Open Houses. Also, staff received approximately 25 e-mails and telephone calls from interested residents.

The draft By-law and Guidelines were also circulated to the following City Divisions and Sections for review:

- Planning and Economic Development Department - Economic Development and Real Estate Division, Community Planning and Design Section, Development Planning Section, Zoning By-law Reform Section, and Municipal By-law Enforcement Section;
- Corporate Services Department - Clerks Section, and Legal Services Division;
- Public Works Department - Forestry and Horticulture Section, Open Space Development Section, and Environmental Planning Section; and,
- Public Health Services Department - Environmental Health Section.

The drafts were also provided to the four Conservation Authorities in Hamilton (Conservation Halton, Grand River Conservation Authority, Hamilton Conservation Authority, and Niagara Peninsula Conservation Authority), and the Ontario Ministry of Natural Resources (MNR).

During the public consultation process, there were a variety of comments received from residents, stakeholders, City staff, and agencies. These detailed comments, and staff response to them, are found in Appendix "C" for the By-law and Appendix "D" for the Guidelines. A summary of the main comments received includes:

- Don't like the permit fee; it is a tax grab;
- This By-law is needed; support it, and want it to be enacted as soon as possible;
- This By-law is not needed, and infringes on private property rights;

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 6 of 20

- Trees are a cash crop/resource for farmers, and the management of their woodlot is no one's business but theirs;
- Concern over the 40 cm dbh regulation limit on urban trees. Some felt larger trees should be regulated, others felt smaller trees (e.g. 30 cm dbh, 10 cm dbh) should be regulated;
- The City cannot enforce the By-laws it has now - why add more?;
- Suggest changes to the composition of the Tree Permit Committee so it includes a farmer;
- The exemption which allows trees to be removed within 7 metres of a building should be reduced to account for smaller lots sizes in the future;
- Rural heritage trees are not protected in the By-law, and should be;
- Suggested changes to the list of non-native species which are exempted;
- Would like heritage trees to be defined and identified in the By-law;
- Education, awareness, and promotion will be key to successfully implementing this By-law;
- Concern about the exemption to harvest for own use - it limits the amount of wood a landowner can harvest to 2.5 cords per hectare; and,
- Concern about enforcement staff entering private property to check for violations.

During the public consultation process, staff noted that attendance at the Open Houses was low, and residents had fewer concerns. All comments received have been carefully considered and changes to the By-law and Guidelines have been made, where appropriate.

Contents of the Revised Hamilton Private Tree and Woodland Conservation By-law

The following section provides an outline of the contents of the By-law, attached as Appendix "A" and known as the "Hamilton Private Tree and Woodland Conservation By-law".

Where does the By-law Apply?

The By-law regulates:

- Large woodlands across the municipality (woodlands 1 hectare or more in size within the rural areas of the City of Hamilton);

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 7 of 20

- Smaller woodlands within the urban boundary of the City (woodlands 0.2 to 1 hectare in size); and,
- Individual trees with a diameter at breast height (dbh) of 40 cm or more within the urban boundary of the City, with the exception of the following invasive species: Siberian Elm (*Ulmus pumila*), Norway Maple (*Acer platanoides*), Tree of Heaven (*Ailanthus altissima*), and Manitoba Maple (*Acer negundo*).

What Trees and Woodlands are Exempt from the By-law (i.e. permit is not required)?

The revised By-law contains a number of exemptions (refer to Section 8 of Appendix “A”), including:

- Fruit and nut orchards, tree nurseries, Christmas tree and other plantations, and hedgerows;
- Activities of the City, local boards, or Conservation Authorities;
- Surveyors, quarries, hydro, public utilities;
- Trees that are dead, dying, diseased, or pose a hazard to any person, building, or structure;
- Pruning a tree according to good arboricultural practices to maintain its health;
- Landowners harvesting trees for personal (own) use, provided the harvest is done using good forestry practices and the volume does not exceed 2.5 cords per hectare of woodland per year;
- Trees within 3 metres of the outer edge of a building or structure; and,
- Trees which must be removed to erect a building or structure as part of an approved building permit.

When are Permits Required?

Permits are required to remove individual trees in the Urban Area and for commercial woodland harvests in both Urban and Rural Areas.

Permits may be issued if the proposed tree removal follows good forestry practices, as approved by a Registered Professional Forester. Permits may also be issued if the trees have been damaged (i.e. by disease, wind, or insects) to such a degree that they will not recover or if there is concern that the pest/disease may spread to other trees.

Permits **will not** be issued if:

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 8 of 20

- The proposed tree removal will affect the functions of a wetland (including flood and erosion control); or,
- The proposed tree removal will affect a Sensitive Natural Area (defined in the By-law as Environmentally Significant Areas; Areas of Natural and Scientific Interest; wetlands; habitat of threatened, endangered or special concern species; Significant Woodlands, Wildlife Habitat, or Valleylands; and Core Areas in the City of Hamilton Natural Heritage System, as defined and designated in the Council approved Rural and Urban Hamilton Official Plans).

Permits **may be refused** if:

- Trees are healthy;
- A rare (threatened, endangered, or special concern) tree species will be impacted;
- The total basal area (a measure of woodland density and volume) will be reduced below 20 square metres per hectare; or,
- The number of trees in the woodland will be reduced below the minimum to constitute a woodland.

Permit Conditions

The By-law establishes the Director of Municipal Law Enforcement (and/or his/her designate) as the approval authority who may issue the permits and impose conditions. Conditions on a permit can include requiring that replacement trees be planted; requiring a security deposit to ensure compliance; specifying the timing and manner of tree removal; and the size, species, number, and location of trees to be removed.

Appeal Process for Permits

If the Director refuses to issue a permit, the owner may appeal the decision by requesting a hearing by the Tree Permit Committee within 30 days. The purpose of the Tree Permit Committee is to consider whether the permit should be granted based on all of the information presented to the Director or on grounds not originally presented. This Committee will hold a hearing and forward a report to Council for a final decision.

Revisions to the Tree Cutting By-law

As a result of public consultation, minor revisions were made to the By-law, including:

- Adding Tree of Heaven (*Ailanthus altissima*), as an exempted species, and removing Poplars (*Populus* species) and Willows (*Salix* species) as exempted species. This means that the By-law would not apply to the non-native invasive Tree of Heaven, and would apply to Poplar and Willow trees.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 9 of 20

- Staff considered changing the dbh of trees regulated, from 40 cm to 30 cm dbh, as some suggested. However, regulating 40 cm dbh trees balances tree protection, landowners' rights to manage trees on their property, and enforcement requirements.
- The exemption for cutting a tree within 7 metres of an occupied building was decreased to 3 metres, in consideration of the smaller residential lot sizes anticipated for intensification.
- Exemptions were added to allow the removal of a hazardous tree or a tree that must be removed for public safety reasons.
- Adding the option to replant trees on other lands owned by the landowner if there is no room for replanting on the site (refer to Section 16(a) of Appendix "A").
- Adding a new Section (18), which allows the City to take cash as compensation for trees removed by the landowner if it is not possible to replant trees on site. This money would be used by the City to replant and maintain trees on City lands.
- Changes were made to the composition of the Tree Permit Committee, which hears appeals to permit approval decisions made by the Director. There are three members of this Committee: one member from the Environmentally Significant Areas Impact Evaluation Group (ESAIEG), one member must be a farmer, and the third member must be an arborist/registered professional forester/landscape architect.

These revisions are highlighted in the revised By-law, attached as Appendix "A".

Tree Protection Guidelines

Trees growing on proposed development sites (i.e. those that are the subject of a Planning Act or a Niagara Escarpment Commission permit application) are not exempted from the provisions of the Tree-Cutting By-law, and applicants are required to prepare a Tree Protection Plan, to the satisfaction of the City.

Since there are currently no standard requirements for Tree Protection Plans (TPP), City staff prepared Tree Protection Guidelines based on 'best practices' to improve tree preservation on development sites and provide guidance to applicants.

Public Consultation Process

The following public consultation process occurred in conjunction with that for the Tree Cutting By-law:

- Four Open Houses were held. As part of the presentation of the By-law, staff also reviewed the content of the draft Guidelines, and received comments and questions from residents.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 10 of 20

- The draft Guidelines were presented to the Hamilton-Halton Homebuilders Association, the Conservation Authorities, the Agricultural and Rural Affairs Advisory Committee, the Municipal Heritage Committee, Clean Air Hamilton, and at a Ward 11 Meeting.
- The draft Guidelines were available on the City's web site, and some individuals took the opportunity to provide comments to staff by phone or e-mail.

During this public consultation process, input was received from approximately 13 individuals or stakeholder groups.

The main concern with the Tree Protection Guidelines was in balancing the need to protect trees with the smaller lot sizes required as part of intensification and redevelopment. Many in the development community felt that the draft Guidelines conflicted with the principle of compact urban form and would result in less dense development. Comments indicated that there is limited room on some development sites for tree preservation after grading, servicing, drainage, and road constraints are included.

The City recognizes that, particularly with new urban intensification targets, there may not be sufficient space on some development sites to save all trees. Also, City staff will assess tree preservation, along with grading and servicing constraints, to ensure that any trees identified for protection will be likely to survive construction impacts. Staff recognizes that the goal of maximizing tree preservation cannot be carried out in isolation, and planning and engineering constraints may exist which affect tree preservation. However, the key to preserving more trees on development sites lies in identifying trees of value early in the process, so that the site is designed to protect as many trees as possible; the Guidelines outline this process.

Other comments on the draft Tree Protection Guidelines included:

- Do street trees count as compensation for private trees lost to development? Would like the City to recognize street trees and park and open space plantings as part of the replacement numbers;
- Concerned with the requirement that an arborist has to be on site during construction to ensure Tree Protection Plan is implemented properly;
- Concerned that the required tree protection zone is large, and will take up too much room on a site;
- Concerned about the time period and amount of securities to be held; and,
- Asked for clarification on how compensation for trees removed will be calculated.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 11 of 20

Revisions to the Draft Tree Protection Guidelines

Revisions were made based on the input received. The main changes are outlined below:

- Clarification on the relationship between the Tree Cutting By-law and the Tree Protection Guidelines was made.
- During public consultation, concerns were raised that the Guidelines conflicted with urban intensification targets; if lots are smaller, there will be fewer opportunities to retain existing trees. To address this, staff added a section in the Guidelines stating that the City recognizes that, particularly with new urban intensification targets, there may not be sufficient space on some development sites to permit saving all trees. Also, City staff will assess tree preservation along with grading and servicing constraints, to ensure that any trees identified for protection will be likely to survive construction impacts. Staff recognizes that the goal of maximizing tree preservation cannot be carried out in isolation, and planning and engineering constraints may exist which affect tree preservation.
- The amount of time that the City will hold security deposits was reduced to two years (from three) to conform to the City's normal practice for securities.
- Additional detail was added on how compensation plantings will be calculated by the City.
- A statement was included that compensation plantings will be in addition to those already required for streets, storm water management facilities, parks, and other open space as part of planning approvals (e.g. site plan, plan of subdivision, or condominium).

The revised Guidelines are attached as Appendix "B", and changes from the draft are highlighted.

Content of the Revised Tree Protection Guidelines

The revised Tree Protection Guidelines will provide guidance, advice, and direction to landowners and developers on how to inventory trees on a proposed development site, and how to prepare a Tree Protection Plan (TPP). The Guidelines also lay out the principles for retaining trees, protecting trees during construction, and replanting requirements. The main principle of the Guidelines is that if trees and woodlands of value can be identified early in the planning process, they can be incorporated into site design and more trees can be preserved.

The Guidelines and the By-law are integrated; to satisfy the requirements of the By-law, landowners applying for Planning Act approval (e.g. draft plans of subdivision and condominium, site plan, consents), and Niagara Escarpment permit applications must fulfil the requirements of the Guidelines prior to any tree removal. While these applications go through a separate process (Tree Protection Plans) than permit

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 12 of 20

approval, enforcement in the event of a violation would be through the By-law and its appointed enforcement officers.

The Guidelines outline a four-step process to ensure tree protection for Planning Act applications:

1. Preparation of a General Vegetation Inventory (GVI) for all portions of the site.
2. Preparation of a Tree Protection Plan for areas containing existing quality vegetation that requires further study, as approved by the City in the GVI.
3. Implementation of the TPP, including installing tree protection measures during construction and monitoring, and collecting securities to ensure the TPP is implemented as approved.
4. Preparation of a Landscaping Plan, including required re-planting and transplanting.

Conclusion

Staff considered all comments and revised the By-law and Guidelines, where appropriate. These versions, attached as Appendices “A” and “B”, are now being presented to the Economic Development and Planning Committee for approval. The revised Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Guidelines are important tools for the City to protect and enhance tree cover. The versions of the By-law and Guidelines presented in this Report address comments received in previous consultations, protect a range of trees and woodlands, balance urban and rural concerns, and can be enforced with a small increase to the current staff levels.

ANALYSIS/RATIONALE:

During the consultation carried out in the fall of 2008, those who commented indicated areas of concern. All of these concerns had been expressed during previous public consultation for the first draft of the By-law; no new issues were raised. A summary of these concerns appears below.

Permit Fees

During public consultation, rural residents in particular were strongly opposed to permit fees. They felt that permit fees were a “tax” which was unfairly applied to rural residents who maintained woodlands, which benefit all residents (e.g. providing clean air and water, erosion and flooding control). If anything, they felt they should be compensated for this community benefit.

Currently, the former City of Stoney Creek Tree Cutting By-law requires a fee of between \$25 and \$100, depending on the number of trees to be cut. The former Towns of Ancaster and Dundas, and the former Region of Hamilton-Wentworth Tree Cutting By-laws do not have fees. Some other municipalities (e.g. Cities of Brampton,

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 13 of 20

Mississauga, Toronto, and Oakville) charge permit fees to offset administration costs. These fees range from \$25 to \$500. Other municipalities (e.g. City of London and the Region of Halton) do not charge permit fees, as they feel this will discourage compliance.

Staff recommends permit fees because permit applications and Tree Protection Plans will require a significant amount of staff time to inspect, review, and process. Permit fees provide a user-pay means to offset the costs of By-law administration and enforcement. Permit fees have been kept as low as possible and will only recover staff administration costs. For rural landowners who wish to commercially harvest trees in their woodland, the amount of income from the harvest will far exceed the \$60 permit fee.

To address the concerns about permit fees, staff has structured them to ensure fairness by:

- Using permit fees that increase with the number of trees to be cut.
- Setting higher fees for General Vegetation Inventories and Tree Protection Plans to account for the greater amount of staff time needed to inspect, review, and process these applications and the greater potential impacts of tree removal.

Staff continues to recommend permit fees be required to implement the revised By-law and to review and evaluate Tree Protection Plans. Proposed amounts for permit fees are outlined under the Financial/Staffing/Legal Implications section of this Report.

Urban and Rural

In both Urban and Rural Areas, staff heard concerns from residents that the By-law infringed on their private property rights. Urban landowners wanted the right to cut a tree they had planted if it was no longer desirable or conflicted with activities they wished to do on their property. By keeping the minimum dbh for individual trees regulated in the Urban Area at 40 cm, staff believes this size of tree is large enough to allow some flexibility to landowners to manage their trees as they grow.

Rural landowners (particularly farmers) said they could not afford the permit fees and wanted to be able to remove trees for agricultural use. For this reason, the permit fees for rural commercial harvest were kept minimal (\$60), and exemptions were added to address areas of concern for farmers, such as the ability to remove trees in hedgerows; remove dead, dying, and hazardous trees; and, cutting trees for their own use.

Rural landowners also felt that urban and rural needs were very different and, therefore, separate By-laws are required for Urban and Rural Areas. Staff has considered the need for separate By-laws for urban and rural trees. The revised By-law does distinguish between the types of trees regulated in Urban and Rural Areas, and, it would be an unnecessary duplication.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 14 of 20

Heritage Trees

Residents indicated that they wanted strong protection for heritage trees in the By-law. A heritage tree is notable because of its physiology (size, age, shape, colour, rarity, distinctive characteristics), cultural importance, or value to the community (landmark, aesthetic value). Since the revised By-law regulates all trees 40 cm dbh or more in the Urban Area, it is assumed that most heritage trees within Urban Areas would be protected, as heritage trees would generally meet the 40 cm minimum size. However, there was concern that the revised By-law does not protect all rural heritage trees since only woodlands are regulated in the Rural Area. If a rural heritage tree is not growing in a woodland, it would not be protected.

Staff considered adding a definition of a heritage tree and a listing of known heritage trees in the By-law. However, to properly define and assess heritage trees, it would take additional staff time to consult with the public. In the interest of getting the By-law in place to protect trees now, staff recommends adoption of the By-law with a future amendment to the By-law dealing with heritage trees to be added at a later time, after public consultation and heritage tree nominations has occurred.

Enforcement Requirements

Throughout the public consultation process, one of the remaining questions asked was how the By-law would be enforced. If By-laws are not properly enforced, they may eventually be ignored and become ineffective. At the same time, residents indicated that they wanted a By-law that regulated the trees and woodlands warranting protection, rather than letting the limitations of enforcement resources dictate the scope.

It is estimated that administration and enforcement of a new By-law will require a total of 3.5 full-time employees. Since the City already has 1 full-time employee devoted to enforcing the existing Tree Cutting By-laws, 1.5 new additional employees are required (one full-time person to review and issue permits, one part time Clerk). One full-time person to review reports received with development applications, as required by the Tree Protection Guidelines, will be offset by allocating one of the vacant planning positions within the current Planning Division staff complement. The required staff enhancements will be referred to the 2010 budget process (see Recommendation (e)).

Appeal Body

The By-law establishes an Appeal Body composed of 3 residents, which would hear appeals to staff decisions on permit applications to cut trees. During public consultation, the farming community recommended that one member of the Tree Permit Committee be a farmer. Staff agrees that farmers have a perspective that is needed on the Committee, and has made this change to the By-law.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 15 of 20

Education and Awareness Strategy

During the public consultation process, many staff and residents discussed the importance of publicizing the By-law and Guidelines. Some felt that a softer approach, which focussed on education and awareness, might provide benefits in addition to the regulatory approach. A proposed Education and Awareness Strategy would provide information to residents, lumber companies, arborists, registered professional foresters, the development industry, and others. The following could be components of the Education and Awareness Strategy:

- The main focus of the Strategy would be on landowner stewardship, to balance the regulatory aspects of tree protection with education.
- Preparing a brochure on the By-law for distribution to residents. The brochure could be provided to partners such as the Hamilton-Halton Watershed Stewardship Project, Conservation Authorities, Hamilton Naturalists' Club, and Environment Hamilton. It would also be available at City Service Centre locations and distributed at City events.
- Preparing and providing educational information brochures (i.e. good forestry practices, managing your woodlot, and the value of trees and woodlands).
- Revising the City's web page to include the By-law, Guidelines, permit application form, educational materials, and Frequently Asked Questions (FAQs).
- Holding workshops for rural and urban landowners on the By-law and various forest-related topics. These could be in partnership with the Ontario Ministry of Natural Resources or the Hamilton-Halton Watershed Stewardship Project.
- Notifying those businesses with an interest (i.e. foresters, arborists, lumber yards) that a new By-law has been adopted in Hamilton.
- Holding training sessions with City staff to ensure that they are aware of the By-law and Tree Protection Guidelines.
- Meeting with the Hamilton-Halton Homebuilders Association to provide information on the By-law and Tree Protection Guidelines.
- Working with community organizations and residents to develop a "Nominate a Heritage Tree" program.

Once the By-law and Guidelines are approved by Council, staff will prepare a more detailed Education and Awareness Strategy. Cost estimates for implementing the Strategy are outlined under the Financial Implications section of this report.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 16 of 20

ALTERNATIVES FOR CONSIDERATION:

The following three options could be considered:

Option A: Use the scope of the revised By-law:

The adoption of the revised By-law, attached as Appendix “A”, and the supporting Tree Protection Guidelines, attached as Appendix “B”, is the recommended option. This option provides the City with the measures to protect a range of trees and woodlands across the Rural and Urban Areas of the City. It provides a consistent, single source of information for residents and City staff. It has undergone extensive public consultation, balances urban and rural values to the greatest extent possible, and borrows from the By-laws of the former area and regional municipalities.

Option B: No new Tree Cutting By-law

This option would involve using the existing Tree Cutting By-laws that the former local and regional municipalities enacted. This would mean that there would be no protection for individual trees or smaller woodlands in the former municipalities of Glanbrook, Flamborough, Hamilton, and most of Stoney Creek and Dundas. If tree cutting occurred in these areas, the City would have no means of enforcement. The existing Tree Cutting By-laws from the former area and regional municipalities are out of date, and result in confusion and inconsistent tree-cutting practices across the City, as four different By-laws are in force.

As a part of Option B, the City could use the Tree Protection Guidelines as a means to ensure better protection of trees on development sites. However, if a tree cutting violation did occur on these sites, the City would have no means of enforcement in areas which currently are not regulated by a By-law (the former municipalities of Flamborough, Glanbrook, and Hamilton, and some areas of Dundas and Stoney Creek).

Option C: By-law with a Different Scope

This option would involve adjusting the scope of the revised By-law presented as Appendix “A” to regulate fewer or more trees and woodlands. For example, the By-law could be altered to regulate smaller trees (e.g. with a dbh of 30 cm), which would increase the scope of the By-law. The scope could also be reduced, by only regulating trees in the Urban Area. Option C is not recommended, as staff believes that, after extensive public consultation and revisions, the By-law attached in Appendix “A” reflects the needs and values of Hamilton’s urban and rural residents.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 17 of 20

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial Implications

Permit Fees

Permit fees have been calculated based on full cost-recovery, as outlined below. The fees are structured to completely cover the cost of By-law administration and enforcement. The permit fees are structured to fully recover the additional staffing and administrative costs of the By-law such that there is no impact on the levy.

The permit fees proposed for the By-law (full cost recovery) are:

- Permits for individual trees -Urban Area: \$75 per tree; up to a maximum of \$225
- Permits for Woodlands: \$60
- For General Vegetation Inventory review: \$375
- For Tree Protection Plan review: \$950

It is estimated that permit fees will generate an annual revenue of \$ 320,000.

Costs Associated with Education and Awareness Strategy

To implement the Education and Awareness Strategy, staff will be requesting an annual budget of \$5,300, with individual cost components as shown in Appendix “E”. These components are for illustrative purposes and may change from year to year.

Staffing Implications

If the proposed By-law is enacted, it will require a total of 3.5 new employees for administration and enforcement. One full-time employee (FTE) is currently enforcing the existing By-laws of the former area and regional municipalities. Accordingly, 1.5 additional FTEs would be required to properly administer and enforce the new By-law. These staff requirements are outlined below:

- One existing employee (1.0 FTE) in the Parking and By-law Services Division of the Planning and Economic Development Department (enforcement officer);
- One new part-time employee (0.5 FTE) in the Parking and By-law Services Division of the Planning and Economic Development Department (a Clerk);
- One new full-time employee (1.0 FTE) in the Development Planning Section of the Planning and Economic Development Department would be required to review tree reports submitted as part of the Tree Protection Guidelines (i.e. General Vegetation Inventory, TPPs). (This position will be offset by allocating one of the vacant planning positions within the current Planning Division staff complement); and,

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 18 of 20

- One new full-time employee (1.0 FTE) in the Parking and By-law Services Division of the Planning and Economic Development Department, to administer and enforce permits, would be required.

Enforcement and administration of the Tree Cutting By-law and Tree Protection Guidelines will involve:

- Processing approximately 132 permits per year (receive application, input data, conduct site visits, issue permits);
- Answering inquiries about the By-law and permits;
- Preliminary inspections;
- Organizing Appeal Hearings for those who contest permit conditions or denials;
- Receiving, responding to, and documenting complaints;
- Conducting pre-cut and post-cut site inspections (Verifying work has been done according to permit conditions);
- Reviewing and commenting on approximately 350 General Vegetation Inventories and 300 Tree Protection Plans;
- Establishing permit conditions; and,
- Periodically enforcing violations, collecting evidence, and appearing in court.

It is estimated that staff costs (salaries, vehicles, computers) for enforcing and administering the By-law and Guidelines will be \$320,000 per year.

Legal Implications

The By-law has been prepared according to the requirements of the Municipal Act, and satisfies the intent of the legislation. As required under the Municipal Act, a Public Notice was published in the local newspapers 14 days in advance of the Economic Development and Planning Committee meeting. The purpose of this Notice is to inform the public that the Committee will be considering an amendment to its User Fees and Charges By-law to add fees under the proposed By-law. This Public Notice also would serve to notify the public about the By-law.

The By-law, if approved, repeals the existing By-laws which regulate trees on private property for the former Town of Ancaster, City of Stoney Creek, Town of Dundas, and Region of Hamilton-Wentworth. However, the intent and much of the content of these By-laws has been carried forward in the new By-law.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 19 of 20

POLICIES AFFECTING PROPOSAL:

The revised By-law and Tree Protection Guidelines support the goals of the Provincial Policy Statement (PPS 2005), the Greenbelt Plan, and the Niagara Escarpment Plan to protect the biodiversity of natural heritage systems by ensuring that there are no negative impacts on significant woodlands, valley lands, wetlands, and wildlife habitat. The new City of Hamilton Rural and Urban Official Plans, approved by Council and pending Ministry approval, require that the City maintain and update the Private Tree and Woodland Conservation By-law, and protect tree cover on new development sites (Chapter C - City Wide Systems and Designations, Policy 2.11, Tree and Woodland Protection). The proposed By-law and Guidelines will also contribute to Vision 2020 goals to improve natural areas and corridors, improve water and air quality, and support the rural economy by allowing sustainable tree harvests. Finally, they contribute to the Environmental Stewardship goals in the Corporate Strategic Plan by ensuring that natural resources are protected and enhanced.

RELEVANT CONSULTATION:

In preparing the revised By-law and Guidelines, input was received from the four area Conservation Authorities, the Ontario Ministry of Natural Resources, Hamilton-Halton Homebuilders' Association, Clean Air Hamilton, the Agricultural and Rural Affairs Advisory Committee, the Municipal Heritage Committee, Environment Hamilton, Hamilton Naturalists Club, interested residents, and the following City Departments and Divisions/Sections: Public Works Department (Forestry and Horticulture Section, Open Space Development Section, and Environmental Planning Section), Planning and Economic Development Department (Economic Development and Real Estate Division, Community Planning and Design Section, Development Planning Section, Zoning By-law Reform Section, and Municipal By-law Enforcement Section), Corporate Services Department (Clerks Section and Legal Services Division), and Public Health Services Department (Environmental Health Section).

Since the By-law was first drafted in 2004, it has undergone two public consultations, one in the spring of 2005 (two Open Houses), and another in the fall of 2008 (four Open Houses).

CITY STRATEGIC COMMITMENT:

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. **Yes** **No**

Opportunities for physical activity are supported and enhanced.

Protecting and enhancing tree cover will result in cleaner air and water, and create recreational opportunities for a healthy, active lifestyle.

SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) - Page 20 of 20

Environmental Well-Being is enhanced. Yes No

Ecological function and the natural heritage system are protected.

The revised By-law and Tree Protection Guidelines will protect and enhance existing natural areas and urban tree cover. Ecological functions such as allowing wildlife and plant movement between natural areas, flood and erosion control, air quality improvement, and providing habitat for wildlife will result in a healthy, sustainable environment.

Economic Well-Being is enhanced. Yes No

Hamilton's high-quality environmental amenities are maintained and enhanced.

Protecting and enhancing tree cover will support ecotourism and attract business to locate here. Encouraging good forestry practices allows a sustainable forest harvest of Hamilton's timber resources and a healthy farm income.

Does the option you are recommending create value across all three bottom lines?

Yes No

Protecting and enhancing tree cover across the City of Hamilton will contribute to the appearance of green and liveable neighbourhoods, provide economic benefits by attracting tourism and business to Hamilton, improve Hamilton's image, and contribute to clean air, water, and a healthy natural environment.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? Yes No

The management and protection of the City's natural heritage resources attest to Council's commitment to an ongoing program and policy of natural heritage conservation.

:CP

Attachs. (5)