



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members General Issues Committee
<b>COMMITTEE DATE:</b>	June 18, 2014
<b>SUBJECT/REPORT NO:</b>	A Draft Woodland Conservation By-law for Private Property Within the Urban Area (PD02229(e)) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Cathy Plosz (905) 546-2424 Ext. 1231
<b>SUBMITTED BY:</b>	Jason Thorne General Manager Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the draft Urban Woodland Conservation By-law, attached as Appendix “B” to Report PD02229(e), to regulate all woodlands 0.2 ha. (0.5 ac.) or more in size in the Urban Area, be brought forward for public review and comment;
- (b) That the draft By-law, attached as Appendix “C” to Report PD02229(e), to amend the existing Tree/Woodland Conservation By-laws for the Regional Municipality of Hamilton-Wentworth, the Town of Ancaster, Town of Dundas, and the City of Stoney Creek, be brought forward for public review and comment;
- (c) That a Public Meeting be held at a Planning Committee Meeting in the summer of 2014 to receive comments on the By-laws, attached as Appendices “B” and “C” to Report PD02229(e);
- (d) That the costs for one additional FTE with expertise in forestry or arboriculture to implement and administer the Urban Woodland Conservation By-law, be referred to the 2014 Budget process;
- (e) That staff be directed to prepare a work plan and report back to Planning Committee on a Woodland Protection Strategy, which supplements the new By-law, to implement non-regulatory tools that protect and enhance trees and woodlands in the Urban and Rural Areas of Hamilton.

## **EXECUTIVE SUMMARY**

As a result of a Motion at the General Issues Committee (GIC) on January 14, 2013, Planning staff were directed to report back to the Planning Committee on options for a draft Urban Woodland Conservation By-law. Report PD02229(d) was reviewed by the Planning Committee on December 3, 2013, and was tabled so that staff could meet with Councillors and address their concerns. Meetings with Councillors were held in December 2013 and January 2014. Report PD02229(d) has been revised as Report PD02229(e) to address concerns that Councillors raised. Staff are also seeking Council approval to bring this draft By-law forward for public review and comment at a Planning Committee Meeting in the summer of 2014.

In 2012 and 2013, two woodlands within the Urban Area were cut down (see Appendix "E"). In response to the recognition that trees and woodlands in the Urban Area may not be adequately protected, the General Issues Committee (GIC) passed a Motion on January 14, 2013, which directed:

- (a) That staff report back to the Planning Committee on options for a draft Urban Woodland Conservation By-law, specifically addressing current urban woodland clear-cutting;
- (b) That staff consult with the Agriculture and Rural Affairs Advisory Committee (ARAAC) and the Ontario Federation of Agriculture (OFA) on options to protect woodlands in Rural Hamilton, taking into account the traditional interests of farmers who already manage their woodlands in a proper fashion, but noting that other Rural landowners may be engaging in woodland clear-cutting; and,
- (c) That the Planning Committee be directed to hold a Public Meeting on this matter.

The recommended option is for a new Urban Woodland Conservation By-law, which would regulate woodlands in the Urban Area, and is attached as Appendix "B". To be a woodland, a stand of trees must be of a prescribed density and at least 0.2 ha. (0.5 ac.) in size. If the draft By-law is enacted, areas such as Waterdown, Binbrook, and the former City of Hamilton will have additional protection for woodlands. Landowners who wish to remove trees in woodlands, apply for a permit. The By-law sets out the process to obtain a permit, conditions to be considered when issuing permits, and the process to appeal a decision on a permit. It also establishes penalties for violations, and describes the powers of Municipal By-law Enforcement Officers when enforcing the By-law.

Currently, there are four By-laws in effect conserving trees and woodlands on private property – one for the former Regional and one each for the former area Municipalities of Ancaster, Dundas, and Stoney Creek. These would remain in effect, with the Urban Woodland Conservation By-law added. The existing By-laws would be amended to make it clear which would apply in the case of overlap between them and the new By-law. This amending By-law is attached as Appendix "C".

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 3 of 19**

---

Staff recommend that public consultation, to receive input on the new By-law, occur at a Planning Committee Meeting in the summer of 2014. As directed in the January 13, 2013, Motion at GIC, staff consulted with the ARAAC on August 19, 2013. The ARAAC requested that they be provided with the draft By-law for their information. Further consultation will occur with ARAAC in 2014.

If the new By-law is enacted, staff will immediately begin to promote the By-law to affected urban property owners, developers, and tree removal businesses. By ensuring that all are aware of the By-law and the value of Hamilton's woodlands, violations are less likely to occur.

Also, staff recommends that a Tree and Woodland Protection Strategy be prepared, which would work with the Tree/Woodland Conservation By-laws, to protect and enhance tree cover within the City of Hamilton, including:

- Programs to restore or manage forests;
- Financial incentives, such as tax relief or grants to landowners who manage and maintain significant natural areas on their land in a natural state;
- Conservation easements to protect forested portions of a landowner's property; and,
- Landowner stewardship, education, and awareness programs, including public-private partnerships to plant trees, and active promotion of tree planting and preservation.

This Strategy would be prepared for the entire City (Rural and Urban Areas), and would gather input from the community on how best to protect and enhance trees and woodlands.

***Alternatives for Consideration – See Page 17***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** The proposed new Urban Woodland Conservation By-law (see Appendix "B") requires landowners to get a permit from the City to remove trees in regulated woodlands. Permits allow City staff to work with the landowner, to preserve as many trees as possible. They also allow the City to approve or deny tree removal.

Staff do not recommend fees for permits. Residents were opposed to permit fees during the public consultation for the 2009 By-law, and fees may discourage some residents from notifying the City. If fees are required by the City, staff recommend they be minimal (i.e. not full cost-recovery).

**Staffing:** To provide an indication of the existing level of activity, approximately 12 permits are processed per year for the existing Town of Ancaster By-law, 12 Notices of Intent to Cut for the Region of Hamilton-Wentworth By-law, and 2 permits for Dundas, for a total of 26 permits per year. This total includes permits for both the Urban and Rural Areas. These permits are processed by the existing one full-time employee in Municipal Law Enforcement. In addition to processing permits, the full-time employee is responsible for:

- Answering inquiries about the new and existing By-laws;
- Receiving, responding to, and documenting complaints;
- Periodically writing reports for Appeal Hearings for those who contest permit conditions or denials;
- Conducting pre-cut and post-cut site inspections (verifying work has been done according to permit conditions); and,
- Periodically enforcing violations, collecting evidence, and appearing in court.

Although it is not known how many additional permits would be submitted if the new By-law is approved, it is possible that permit numbers may double in number. Since there is no capacity for the existing full time employee to take on additional work, staff recommend that one new FTE be added to Municipal Law Enforcement. This employee should have expertise in forestry or arboriculture, and would be responsible for implementing the new and existing Tree Cutting By-laws, responding to inquiries and complaints, issuing permits, and enforcement.

**Legal:** The new By-law (see Appendix “B”) has been prepared under the applicable Municipal Act authority.

An amendment to the existing By-laws, which regulate trees on private property for the former Town of Ancaster, City of Stoney Creek, Region of Hamilton-Wentworth, and Town of Dundas, is recommended together with the new By-law to clarify which By-law will apply in the case of overlapping regulation. There is no such clarification in the existing By-laws. The existing By-laws for the former Municipalities would remain in effect. The amending By-law is attached as Appendix “C” and includes, as directed at the December 3, 2013, Planning Committee Meeting, the removal of permit fees from the Stoney Creek By-law.

## **HISTORICAL BACKGROUND**

### What By-laws are Currently in Effect?

Since amalgamation, the City of Hamilton has been responsible for enforcing four Tree and Woodland Protection By-laws (Ancaster, Dundas, Region of Hamilton-Wentworth, and Stoney Creek).

These By-laws apply to different areas. For example, in the cases of Ancaster, Stoney Creek, and the Region, the By-laws apply to the entire Municipalities. In contrast, the Dundas By-law protected individual trees and woodlands within the Niagara Escarpment Plan Development Control Area, and in specific heritage districts defined in the By-law.

The By-laws also differ in which trees and woodlands they regulate. The Regional By-law regulates woodlands 0.8 ha (2 ac) or more in size, while the Ancaster By-law regulates woodlands 0.2 ha (0.5 ac or more) and individual heritage trees 45 cm. diameter at breast height or greater. The prescribed density for a woodland is the same in all of the By-laws.

The By-laws have different exemptions and enforcement processes. For example, the Regional By-law requires a Notice of Intent to Cut, which is simply a notification to the City that the landowner intends to harvest trees in his/her woodland. This differs from a permit (Ancaster, Dundas, and Stoney Creek By-laws), which requires City approval before trees can be removed.

A summary of the scope of the existing Tree/Woodland Conservation By-laws for private property is shown in Appendix "A".

### The 2009 Draft Private Tree and Woodland Conservation By-law:

In 2002, the Planning and Economic Development Department and the Community Services Department prepared Report PD02229/CS02106, which explored the need for a Tree and Woodland Conservation 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 approved.

In 2004, Planning and Economic Development Department staff prepared Report PD02229(a), which outlined the options for developing a Tree and Woodland Conservation By-law for private property in Hamilton. The Report indicated that a new By-law was needed to consolidate the existing Tree/Woodland Conservation 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

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 6 of 19**

---

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. The second version of the By-law was presented to the 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. Comments were also received from residents and agencies by telephone and e-mail.

In October 2009, after extensive public consultation and revisions, staff presented a draft Private Tree and Woodland Conservation By-law in Report PD02229(c) to regulate trees on private property in both Rural and Urban Hamilton. The draft By-law regulated larger woodlands (1 ha. or 2.5 ac. or more in size) in Rural and Urban Areas. In the Urban Area, the draft By-law also regulated smaller woodlands (greater than 0.2 ha (0.5 ac.) and less than 1 ha (2.5 ac.) in size), and individual trees 40 cm. diameter at breast height or more.

However, it was apparent that some in the community remained concerned about the By-law. In the end, the Planning Committee received the presentation, and the By-law was not adopted. Since that time, the By-laws that were enacted by the former Municipalities (Region of Hamilton-Wentworth, Dundas, Ancaster, and Stoney Creek) have remained in effect.

Why is the By-law Being Revisited?

There are many pressures on trees in Hamilton, and recently woodlands within the Urban Area were cut for development in Wards 7, 8, 11, and 15. There have also been a number of small-scale tree cutting incidents in the Urban Area. This has resulted in the need to reconsider a new By-law for Hamilton.

These incidents have exposed a number of issues with the existing Tree/Woodland Conservation By-laws, including:

- The permit process differs between the By-laws and could be made stronger;
- There are gaps in the geographic areas protected by the By-laws, resulting in loss of urban woodlands in certain areas; and,
- Some of the definitions in the By-laws could be made more specific and clear.

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 7 of 19**

---

In response, GIC passed a Motion on January 14, 2013, which directed:

- (a) That staff report back to the Planning Committee on options for a draft Urban Woodland Conservation By-law, specifically addressing current urban woodland clear-cutting;
- (b) That staff consult with the ARAAC and the OFA on options to protect woodlands in Rural Hamilton, taking into account the traditional interests of farmers who already manage their woodlands in a proper fashion, but noting that other rural landowners may be engaging in woodland clear-cutting; and,
- (c) That the Planning Committee be directed to hold a Public Meeting on this matter.

On December 3, 2013, Report PD02229(d) was reviewed by the Planning Committee and tabled, as Councillors had concerns about adding a FTE, differences in permit fees in the existing By-laws, the severity of the fines/punishment, and how the single family homeowner would be affected. As a result, in December 2013 and January 2014, staff from Planning and Legal Services met with Councillors who sit on the Planning Committee to answer questions and hear their concerns.

This report has been prepared to address the concerns from Councillors.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

If a new draft By-law is enacted for the Urban Area, the existing lower tier By-laws (Ancaster, Dundas, Region of Hamilton-Wentworth, and Stoney Creek) will be amended, but will remain in effect. The local Municipal By-laws were passed under the Municipal Act, which allows a municipality to regulate the destruction of individual trees and small woodlands. The Regional By-law was passed under the Forestry Act, and applies to Urban and Rural Areas. It is important to retain the Regional By-law because it protects the extensive forest cover, Environmentally Significant Areas, and Provincially Significant Wetlands (swamps) in Rural Hamilton. Threats to these forests include rural businesses, quarries, and poor forest management practices (over-harvesting and high-grading). The proposed new By-law for the Urban Area would be passed under the Municipal Act. To see how the new By-law would work with the existing Municipal By-laws (i.e. what would be regulated), please refer to Appendix "D".

A new Urban Woodland Conservation By-law would support the goals of the Provincial Policy Statement and the Niagara Escarpment Plan, to protect the biodiversity of natural heritage systems. It is a tool that will assist the City in limiting negative impacts on significant woodlands, valley lands, wetlands, and wildlife habitat. The Hamilton Urban Official Plan requires 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 No. C.2.11, Tree and Woodland

Protection). The proposed new By-law will also contribute to Vision 2020 goals to improve natural areas and corridors, and improve water and air quality. Finally, the By-law would contribute to the Environmental Stewardship goals in the Corporate Strategic Plan by ensuring that natural resources are protected and enhanced.

## **RELEVANT CONSULTATION**

In preparing this Report, Planning staff consulted with Legal Services, Councillors who sit on the Planning Committee, and Municipal Law Enforcement staff.

The draft new Urban Woodland Conservation By-law is based on the 2009 Tree and Woodland Conservation By-law, but with a reduced scope. The 2009 By-law underwent extensive public and stakeholder input, including other City staff (Forestry, Public Works, Development Planning, Parks and Open Space, Legal Services, and Municipal By-law Enforcement), stakeholders (Conservation Authorities, the Hamilton-Halton Homebuilders' Association), the ARAAC, and residents.

Since extensive public consultation occurred for the 2009 By-law, one Public Meeting is recommended to receive input on the proposed new Urban Woodland Conservation By-law (see Appendix "B"). This Public Meeting will occur at a future Planning Committee Meeting in the summer of 2014.

Staff also consulted with ARAAC at their August 19, 2013, meeting. The ARAAC indicated that they would be interested in reviewing the draft By-law. Staff will provide the draft By-law to the ARAAC and the OFA for their review.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

When exploring the options for a new By-law, staff considered the following:

- What does the City want to achieve with the new By-law?
- What should the scope of the new By-law be?
- What geographic area should it apply to?
- How do we define a woodland?
- If the new By-law applies only to the Urban Area, how will woodlands in the Rural Area be protected? How will urban and rural woodland protection work together?
- What are the resource implications of enforcing a By-law? Should permits be required? Should there be permit fees?



**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 9 of 19**

---

- What is the best way to enhance protection for urban woodlands? How can a new By-law work together with non-regulatory tools such as education and awareness, landowner stewardship, habitat restoration projects, and tax incentives?

These questions and options for a new By-law are discussed below.

What does the City want to achieve with the By-law?

Based on the GIC Motion, staff understands that Council wishes to:

- Increase the protection of urban woodlands in the Urban Area;
- Focus on woodland protection and not on protecting individual trees at this time; and,
- Address gaps in the existing By-laws.

Scope of the By-law:

The GIC Motion was specific in directing staff to explore options for a By-law which regulated urban woodlands only. There was no direction to include protection for individual trees in the new By-law.

Many municipalities (e.g. Toronto, Mississauga, Oakville, Kitchener) include protection for both woodlands and individual trees in their By-laws. This reflects the importance that City residents place on trees in downtown areas, parks, and along streets.

There is some existing protection for individual trees in the Ancaster and Dundas By-laws, and staff recommend that this protection continue to ensure that the intent of these By-laws, to preserve tree cover, is carried forward.

Size of Woodlands to be Regulated:

GIC directed staff to prepare a By-law which protects woodlands on private property in the Urban Area. The By-law could protect urban woodlands of any specified size.

Tree/Woodland Conservation By-laws under the Municipal Act typically regulate woodlands between 0.2 ha. (0.5 ac.) and 1 ha. (2.5 ac.) in size.

To provide the highest level of protection, staff recommend that the By-law regulate the smallest size woodlands possible under the Municipal Act, which is 0.2 ha. The existing Town of Ancaster Tree and Woodland Conservation By-law regulates woodlands 0.2 ha. (0.5 ac.) or more in size, and it has been successful in protecting tree cover in Ancaster.

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 10 of 19**

---

This option is recommended because it would protect the smaller woodlands remaining in the Urban Area, and it most closely reflects the direction provided to staff in the GIC Motion.

Permits:

For Tree and Woodland Protection By-laws passed under the Municipal Act, a municipality may require that a permit be approved before injuring or destroying trees. A permit will provide the City with useful information, such as how many trees are to be removed, species and condition of trees, and reason for removal. Staff would carefully consider this data before making a decision on whether the permit and tree removal would be permitted.

The existing Tree/Woodland Conservation By-laws in Hamilton vary in their requirements for a permit. The Stoney Creek, Ancaster, and Dundas By-laws, all require a permit. In contrast, the Regional Woodland Conservation By-law requires a Notice of Intent to Cut, which is not a permit. City staff have found the Notice of Intent to Cut process to be ineffective.

Because a permit gives the City the ability to approve or deny an application for tree removal, it is recommended that permits be required under the new By-law. The permit process also allows the City to attach conditions for tree removal to the permit, such as the manner or timing of tree removal, replanting requirements, or ensuring that sensitive natural features on site are not damaged.

If permits are to be used, the City needs to consider whether it will require fees. The advantage of having a permit fee is recovery of costs for enforcing the By-law.

If fees are chosen, there are options to reduce their impact on residents, such as charging a fee based on how many trees are to be removed. For example, the fee would increase with the number of trees to be removed.

During the 2009 public consultation, it was clear that residents were opposed to permit fees, and it is possible that fees will discourage some residents from applying for a permit. For these reasons, staff recommend that no fee be charged for permits under the new By-law.

Exemptions:

Exemptions allow an individual or agency to remove trees in a woodland regulated by a By-law in certain specific circumstances, without a permit. There are mandatory exemptions under the Municipal Act that must be included in a By-law:

## **Exemption from By-law**

135(12) A by-law passed under this section does not apply to,

- (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*, or
- (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
  - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*.

Other exemptions, which are not mandatory, have been included, such as allowing the removal of hazardous trees, or trees that are growing close to a building (within 3 m.).

### How will the existing and the new By-laws work together?

The existing By-laws vary in the types of trees and woodlands that they regulate (see Appendix "A"). These By-laws were enacted before amalgamation and reflect the

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 12 of 19**

---

priorities of each former municipality. In particular, the Ancaster By-law is comprehensive and protects individual trees, so it goes beyond the scope of the draft By-law. The Regional By-law also goes beyond the scope of the draft By-law, regulating woodlands in the Rural Area.

There are two options related to the existing By-laws. First, the existing By-laws can be left in effect, but amended to state that, in the case of differences between the draft and existing By-laws, the By-law which is most restrictive applies. This continues the existing situation and, administratively, is the simplest way of dealing with the issue.

Alternatively, the existing By-laws could be amended to remove the sections which overlap, so that only the new draft By-law would apply to woodlands. Staff conducted a review of the existing By-laws to determine whether this approach would result in any loss of tree protection. Staff concluded that it would be a complicated exercise, as each By-law is structured quite differently and is concerned that some of the existing protection to trees would be lost as a result. This option is not recommended.

Staff recommend that the existing Municipal By-laws for Dundas, Stoney Creek, Region of Hamilton-Wentworth, and Ancaster, remain in effect to ensure that the tree protection identified by these communities before amalgamation, continues. This recommendation includes amending each By-law to clarify which By-law would apply in the case of conflict between the existing and new By-laws. Staff further recommend, whether a new By-law is enacted or not, that a note be attached to each By-law indicating that other By-laws may be in effect, and that property owners and tree removal businesses should check with City staff to determine which apply.

**Preferred Option:**

Staff recommend an Urban Woodland Conservation By-law, which regulates woodlands 0.2 ha. (0.5 ac.) or more in size in the Urban Area. This option best addresses the concern of the General Issues Committee in its January 2013, Motion. The By-law will protect smaller woodlands across the Urban Area, with residents continuing to manage the individual trees on their properties.

To move forward with protecting urban woodlands, staff have drafted an Urban Woodland Conservation By-law with this recommended scope. The draft By-law is attached as Appendix “B” for review by the Planning Committee. To clarify the relationship between the existing By-laws and the new By-law, staff have also prepared a draft By-law (see Appendix “C”) to amend the existing By-laws.

The draft Urban Woodland Conservation By-law is based on the 2009 Tree and Woodland Conservation By-law tabled by the Planning Committee in October 2009.

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 13 of 19**

---

The draft By-law:

- Regulates woodlands 0.2 ha. or greater in size in the Urban Area (as defined in the Urban Hamilton Official Plan);
- Requires that permits be obtained from the City before tree removal can occur;
- Describes the process to obtain a permit, conditions to be considered when issuing permits, and the process to appeal a decision on a permit; and,
- Establishes penalties for violating the By-law.

The By-law contains exemptions, including:

- Activities undertaken by the City, local board, or Conservation Authority;
- Removing trees, in accordance with an approved Tree Protection Plan for a Site Plan, Plan of Subdivision, Consent, or Plan of Condominium;
- Removal of trees by public utilities, surveyors, and quarries;
- Removal of hazardous trees, and in the interest of public safety;
- Tree removal using good forestry practices;
- Removal of trees necessary under an approved Building Permit; and,
- Removal of a tree in a woodland located within 3m of an occupied building.

The draft Hamilton Urban Woodland Conservation By-law is an improvement over the existing By-laws, because it:

- Regulates small woodlands across the entire Urban Area so there is uniform protection of urban woodlands;
- Requires that permits be obtained for tree removal and gives the City the authority to approve or deny permits;
- Considers the ecological value of the woodland, by allowing the City the opportunity to deny a permit if tree removal is proposed within a Core Area in the City's Natural Heritage System in the Urban Hamilton Official Plan;
- Describes a specific, clear process for approving and denying permits, and an appeal process, in the event that a landowner wishes to appeal a permit decision;

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 14 of 19**

---

- Allows the City to issue a stop work order, if staff believe a violation is occurring; and,
- Specifies that the City can attach conditions to a permit approval, including requiring compensation plantings on the applicant's land, specifying the timing of tree removal, and ensuring that the site is not damaged during tree harvest.

Staff have prepared a draft Hamilton Urban Woodland Conservation By-law (see Appendix "B"). Staff are seeking instruction from the Planning Committee to obtain public input on this draft By-law by holding a Public Meeting at a future General Issues Committee meeting in the summer of 2014.

**Other Issues:**

**Rural Woodland Protection:**

If the City adopts a new Urban Woodland Conservation By-law, it will be important to retain protection for woodlands in the Rural Area. Since many of the City's most significant natural areas are in the Rural Area, and there are some land uses which may conflict with tree protection (such as rural businesses, golf courses, and quarries), staff recommend continued protection for woodlands in the Rural Area. It is important that regulatory protection remain for rural woodlands.

To address the protection of rural woodlands, and to receive feedback on the proposed new Urban Woodland Conservation By-law, staff have consulted with the ARAAC and the OFA, as directed in the January 2013, GIC Motion:

That staff consults with the ARAAC and the OFA on options to protect woodlands in Rural Hamilton, taking into account the traditional interests of farmers who already manage their woodlands in a proper fashion, but noting that other rural landowners may be engaging in woodland clear-cutting.

Development Planning staff attended the ARAAC Meeting on August 19, 2013, to discuss the proposed new Urban By-law. The ARAAC did not raise any concerns, but requested the draft By-law for information. The ARAAC member who represents the OFA offered to circulate the draft By-law to OFA members.

Staff recommend that the ARAAC and OFA be consulted in the future, as part of preparing a comprehensive Woodland Protection Strategy, as described below.

**Protecting Individual Trees in the Urban Area:**

During the public consultation for the 2009 By-law, urban residents expressed an interest in protecting and enhancing mature individual trees, particularly in Downtown areas. Residents valued mature trees, and felt they added to the beauty and

ecosystem health of the City. Also, staff research has found that the larger urban centres (Mississauga, Oakville, Kitchener, Brampton, Markham, and Toronto) regulate both woodlands and individual trees in their private Tree/Woodland Conservation By-laws. For example, the City of Mississauga regulates trees 15 cm. (6 in.) diameter at breast height (dbh) or more, the City of Kitchener regulates trees greater than 10 cm. (4 in.) dbh, the Town of Oakville's By-law protects trees 20 cm. (8 in.) dbh or more, and the City of Toronto regulates trees 30 cm. (12 in.) dbh or more.

The draft By-law will retain the current protection of individual trees in some areas, as the existing By-laws for Ancaster and Dundas protected individual trees. However, individual trees in other Urban Areas, such as Waterdown, Binbrook, Stoney Creek, and Downtown Hamilton, would not be protected.

At this time, regulating individual trees is beyond the scope of the GIC Motion. However, staff recommend that protection for individual trees in the Urban Area be considered in the future, as it was apparent during the 2009 By-law consultation that many urban residents valued urban trees and wanted them protected.

#### Education and Awareness Program

During the December 3, 2013, Planning Committee Meeting, concern was raised that the proposed new By-law was too restrictive on the small urban homeowner, who might want to remove a few trees on the edge of a woodland on their property. Would these residents be prosecuted under the full extent of the By-law?

Staff believe that most violations can be prevented through education and awareness. Enforcement and prosecution are never the preferred option, but they should be available if the circumstances warrant it. To assure Councillors that staff will not unnecessarily prosecute residents, staff can prepare Guidelines for Enforcement after the final By-law is presented to Council.

When the draft By-law is approved, staff will immediately begin to promote the By-law to affected urban property owners, contractors, and tree removal businesses. By ensuring that all are aware of the By-law and the value of Hamilton's woodlands, violations are less likely to occur. This program could include:

- Workshops with tree removal contractors and arborists who provide services to landowners;
- Sending a postcard to all residents, notifying them that By-law is in effect and who to contact for information;
- Workshops and brochures for residents;
- Publicize local success stories (forest management, restoration projects);
- Placing a note attached to the front of all written and digital copies of the new and existing By-laws, that list the By-laws in effect in Hamilton and provides City staff contact information;

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 16 of 19**

---

- More detailed and specific information on the City's web site, which clearly describes the By-laws in effect and who to contact for information; and,
- Education of City staff so they provide consistent and accurate information to residents and contractors.

Through this program, it is hoped that residents and contractors will contact City staff with any questions or concerns about tree removal. With a more open dialogue, enforcement issues are less likely to arise.

Woodland Protection Strategy:

A new Urban Woodland Conservation By-law should be used, together with other non-regulatory tools, to protect and enhance the tree cover which makes Hamilton a beautiful City. The City of Hamilton could prepare a Woodland Protection Strategy, which includes methods to encourage the protection and enhancement of woodlands. Regulatory approaches, such as Tree/Woodland Conservation By-laws, provide the necessary legislation to protect trees by discouraging tree destruction and providing the City with recourse if a violation occurs. However, the regulatory approach should be combined with other tools to provide the best protection to Hamilton's trees and woodlands.

If the draft By-law is enacted, a Woodland Protection Strategy could then be prepared, which examines other means of protecting and enhancing woodlands, including:

- Restoration and management of forests;
- Financial incentives, such as tax relief or grants to landowners who manage and maintain significant natural areas on their land in a natural state;
- Conservation easements to protect forested portions of a landowner's property; and,
- Landowner stewardship, education, and awareness programs, including public-private partnerships to plant trees, and active promotion of tree planting and preservation.

This Strategy would be prepared for the entire City (Rural and Urban Areas), and would gather input from the community on how to best protect and enhance trees and woodlands.

Permit Fees

The By-law for the City of Stoney Creek is the only existing By-law in Hamilton to require permit fees. Since staff are recommending against permit fees for the new By-law, this appears to be an area of conflict. During the December 3, 2013, Planning



**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 17 of 19**

---

Committee Meeting, direction was given to remove permit fees from the Stoney Creek By-law, and the amending By-law (attached as Appendix "C") includes this.

Staff recommend that, in the future, all of the administrative sections (and possibly also the regulatory content) of the new and existing By-laws, be harmonized.

Penalties

Sections 45, 46, and 47 of the draft By-law set out penalties upon conviction, as authorized by the Municipal Act. Maximum fines, as well as per-tree fines, are included to allow for a higher fine amount when a large number of trees have been cut. In addition to fines, if a person is convicted of an offence under the By-law, they may be ordered to replace the trees that were cut.

**PUBLIC CONSULTATION:**

In its Motion, GIC identified the need to conduct a Public Meeting. Extensive public consultation was completed prior to the 2009 Private Tree and Woodland Conservation By-law. The draft Hamilton Urban Woodland Conservation By-law (see Appendix "B") is based on the 2009 By-law, with a reduced scope to include only woodlands within the Urban Area. Notice of a future Public Meeting at the Planning Committee, to receive input on the proposed new Urban Woodland Conservation By-law, will be advertised. This will provide an opportunity for public input to be considered when the Planning Committee reviews the attached draft By-laws.

**ALTERNATIVES FOR CONSIDERATION**

Financial:

Staff recommend that permits be required to cut trees under the draft By-law.

Three of the four existing By-laws in Hamilton (Dundas, Ancaster, Region of Hamilton-Wentworth) do not require a permit fee.

The advantage of having a permit fee is that it provides a mechanism to recover some of the staff costs for enforcing the By-law. However, during the 2009 public consultation, residents were opposed to permit fees, and it is possible that fees will discourage some residents from obtaining a permit.

Staffing:

To provide an indication of the existing level of activity, approximately 12 permits are processed per year for the existing Town of Ancaster By-law, 12 Notices of Intent to Cut for the Regional Hamilton-Wentworth By-law, and 2 permits for Dundas. These permits are currently processed using one full-time employee. If the number of permits

**SUBJECT: A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(e)) - Page 18 of 19**

---

increases as a result of the new By-law, one new full-time employee must be added to Municipal Law Enforcement. There is currently one FTE to administer and enforce the existing four Tree Cutting By-laws. In addition to processing permits, the full-time employee is responsible for:

- Answering inquiries about the new and existing By-laws;
- Receiving, responding to, and documenting complaints;
- Periodically writing reports for Appeal Hearings for those who contest permit conditions or denials;
- Conducting pre-cut and post-cut site inspections (verifying work has been done according to permit conditions); and,
- Periodically enforcing violations, collecting evidence, and appearing in court.

Since there is no capacity to place additional workload on the existing FTE, staff recommend that the costs of one new FTE, with expertise in forestry or arboriculture, be reviewed in the 2014 Budget process.

Legal:

The Urban Woodland Conservation By-law, if approved, would require that the existing By-laws, which regulate trees on private property for the former Town of Ancaster, City of Stoney Creek, Region of Hamilton-Wentworth, and Town of Dundas, be amended to indicate which By-law prevails when regulations overlap. By retaining the existing By-laws, their intent and content can be carried forward to work together with the new Urban Woodland Conservation By-law. The amending By-law is attached as Appendix "C". To see the implications of how the new By-law and the existing Municipal By-laws will work together, and which trees and woodlands will be protected, please see Appendix "D".

Another option is to delete the sections of the existing By-laws which relate to woodlands. This approach may be cleaner, as it would likely reduce confusion due to the overlap in woodland regulations in the new and existing By-laws. However, care would have to be taken when deleting sections of the existing By-laws so other sections of the By-laws are not affected.

Policy:

A new Urban Woodland Conservation By-law would support the goals of the Provincial Policy Statement 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 Hamilton Rural and Urban Official Plans 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 No. C.2.11, Tree and Woodland Protection). The proposed new By-law will also contribute to Vision 2020 goals to improve natural areas and corridors, and improve water and air quality. Finally, the By-law would contribute to the Environmental Stewardship goals in the Corporate Strategic Plan by ensuring that natural resources are protected and enhanced.

## **ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN**

### **Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

### **Strategic Objective**

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

## **APPENDICES AND SCHEDULES ATTACHED**

- Appendix “A”: Existing Tree Cutting By-law Summary
- Appendix “B”: Draft Hamilton Urban Woodland Conservation By-law
- Appendix “C”: Draft Amending By-law for the Existing Tree Cutting By-laws
- Appendix “D”: Application and Effect of the New and Existing Tree Cutting By-laws
- Appendix “E”: Examples of Recent Tree Destruction in the City of Hamilton

:CP

Attachs. (5)