



Town of Niagara-on-the-Lake

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REPORT #: FES-25-010

COMMITTEE DATE: 2025-06-17

DUE IN COUNCIL: 2025-06-24

REPORT TO: COTW-General

SUBJECT: Updated Private Tree By-law

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 The changes to the Private Tree By-law identified in Report FES-25-010 be **APPROVED** and that the By-law attached as Appendix I be forwarded to Council for adoption and rescission of the existing Private Tree By-law 5139-19;
- 1.2 The Short-Form Wording attached as Schedule D to the By-law be **APPROVED**;
- 1.3 The Tree Protection and Preservation Policy attached as Schedule E to the By-law be **APPROVED**;
- 1.4 Staff be **DIRECTED** to present a By-law to appoint a Hearing Officer to handle all Private Tree Permit Appeals; and
- 1.5 Staff be **DIRECTED** to present a By-law to amend Appendix VI of the Annual User Fees By-law 2025-012 to include the proposed fees.

2. EXECUTIVE SUMMARY

- In January 2025, Council directed staff to review and prepare a more detailed Private Tree By-law.
- Staff have reviewed the By-law, as well as neighbouring municipalities' By-laws and are bringing forward a more detailed Private Tree By-law.
- Identified improvements include the addition of definitions, the transition of the fees to the Annual User Fee By-law, an increase in the size of a tree before which destruction would be considered an offence, removal of the exempted list of weed trees, removal of cedar trees from the preferred list to be used to meet replanting requirements, clarification for emergency work, and addressing the height/distance of trees to structures.
- This report presents the Tree Protection and Preservation Policy that provides required protection measures and suggested best practices to protect trees not designated for removal, both on public and private property.
- The Tree appeal process is recommended to be outsourced to a third-party Hearing Officer.
- The draft of the Private Tree By-law is attached to this report (**Appendix I**).

3. PURPOSE

The proposed Private Tree By-law addresses concerns brought to the attention of staff by Council and suggests improvements identified to ensure the By-law is designed to effectively protect the community's environmental assets.

4. BACKGROUND

At the January 28, 2025, Council Meeting, the following motion was passed by Council;

*WHEREAS the Town of Niagara-on-the-Lake established a private tree by-law in 2019;
and*

WHEREAS similar Municipalities have a more detailed private tree by-law that includes heights and distances to structures;

THEREFORE BE IT RESOLVED that Council directs staff to update the existing private tree by-law to include more details and return the updated draft to Council no later than Q3.

Staff received the direction and conducted a municipal scan to determine possible improvements to the Private Tree By-law. Municipalities within the Niagara Region were reviewed, as well as Burlington and Oakville which have robust Private Tree By-laws in effect.

A comprehensive review of the proposed Private Tree By-law was conducted to ensure it is adequate and appropriate for the community, incorporating the requested additional details. Consideration was given to the importance of proactive environmental protection throughout the review.

Town Staff, including the Climate Change Coordinator, reviewed changes to ensure that the proposed By-law would be of value to the community and promote environmental protection.

5. DISCUSSION / ANALYSIS

The proposed Private Tree By-law introduces several key improvements to promote environmental protection, encourage effective use of resources and provide greater clarity. Several of the more significant changes are identified below:

Definitions Added/Clarified:

Several definitions were added to the By-law to provide clarity and encourage tree protection. Definitions added include, but are not limited to *Extreme Risk Tree*, *Arborist Report*, *Invasive Tree* and *Critical Root Zone*. Additional definitions were expanded to provide further clarity through more detailed descriptions.

Fees Transition to Annual Fee By-law:

The fees for tree permit applications and inspections currently exist under the Private Tree By-law. To encourage consistency and annual review, it is being proposed that the fee transition be included in the Annual User Fee By-law. This transition would create efficiencies and encourage annual cost-of-goods increases in the permitting process as Council determines through the budget process.

Minimum Diameter at Breast Height (DBH) Increase:

The minimum DBH of a tree considered an offence for the destruction of said tree was increased from 12.5 centimetres to 15 centimetres. Staff is suggesting this change as comparable municipalities have larger DBH requirements varying from 15 centimetres to 30 centimetres. The slight increase will bring the By-law and practices into better alignment with the identified range. Staff anticipate that the increase will not significantly affect the number of trees that will be removed.

Weed Tree Exemption Removal:

The weed tree list that is present in the current Private Tree By-law has been removed from the proposed By-law because the concern has been addressed through alternative methods.

A tree classified as prohibited or restricted under the *Invasive Species Act, 2015* or as a noxious weed under the *Weed Control Act, 1990*, is defined as an *Invasive Tree* under the proposed By-law. An *Invasive Tree* and a *Nuisance Tree*, as listed in Schedule C, are eligible for a permit exemption under section 9 subsection (i) of the By-law.

For greater clarity, individuals and corporations will be required to obtain permits to remove trees that previously were on the weed tree list and were exempt from permits. The removal of the weed tree list exemption allows staff to review each application on a case-by-case basis and provides the ability to monitor the removal of these trees to ensure that Niagara-on-the-Lake's tree canopy is not compromised.

Replanting of Cedar Trees:Current

Under the current Private Tree By-law, cedar trees are included on the List of Preferred Trees for Replanting (Schedule B). When permits are issued to remove By-law-protected trees, cedar trees can be selected as replacement trees. Over the past six years, a large number of cedar trees have been planted as replacements. However, these trees have not significantly contributed to the Town's urban canopy.

Proposed

In the proposed updates to the Private Tree By-law, cedar trees have been excluded from the List of Preferred Trees for Replanting (Schedule B). This change aims to reduce the negative impact of using cedar trees for replanting, given their limited contribution to the urban canopy. Staff anticipate that this exclusion will encourage the use of more suitable tree species that better support the Town's urban forest goals.

Emergency Work:

Within the current By-law, it is requested that the owner notify the Town as soon as is practicable when emergency tree removal is required. The proposed By-law establishes a timeline that the Inspector must be notified within seventy-two (72) hours of the commencement of the work, which staff believe is a reasonable timeline and ensures timely notification. Specifications have also been added to outline the documentation that may be requested by the Inspector to ensure that the emergency tree removal was appropriate.

Distance and Height in Relation to Structures:

In response to the motion passed during the January Council Meeting, Staff reviewed the criteria that are considered during the permit process. Subsection (c) was added to Section 16 to address the concerns outlined in the motion.

Section 16 of the By-law reads: *In deciding whether or not to issue a Permit in respect of a regulated tree, an Inspector shall consider the following criteria:*

Subsection (c) includes the criteria of *"the location of the regulated tree including heights and distances to structures.*

It was also identified that, through Section 9 subsection (d), documentation from an engineer certifying that a tree is causing structural damage to a drain, load-bearing structure or roof structure due to the location of the tree may be presented to be considered for exemption. If structural damage is evident, then the destruction or injury of a regulated tree is exempt from the requirement for a Permit. Section 9 subsection (e) speaks to exemptions for regulated trees located on a rooftop or elevated podium or in an interior courtyard or solarium and are likely to cause damage. These clauses, in addition to Section 16 subsection (c), address the concern of tree heights and distances to structures.

Appeals:

In 2023, Council heard two (2) Tree Appeals, followed by ten (10) in 2024 during scheduled meetings. This corresponds to 2% and 12% of the decisions made by Staff from Private Tree Permit applications. Staff expect that this trend will not continue steadily, as the number of applications varies each year due to changing environmental and economic factors.

In accordance with the current By-law, the Tree Appeal Requests are presented to Council and result in either the Permit being issued with conditions, without conditions, or upholding staff's decision and remaining denied. Under the proposed By-law, the appeal process will be outsourced to a third-party Hearing Officer who will be provided with the same ability. This shift is intended to make more effective use of resources and improve the timeliness of addressing the appeal. Rutherford Prosecution Services, which currently provides Hearing Officer services for the Town, is recommended for appointment to ensure consistency. It is also recommended that an appeal fee be implemented to ensure cost recovery.

Tree Protection and Preservation Policy:

The proposed Tree Protection and Preservation Policy is attached to the proposed By-law as Schedule E. This document will serve as a resource for various groups within the Town, ensuring that tree protection is a key consideration when building or conducting activities near trees. The document highlights best practices that have been identified by Town Staff. This policy, as proposed, will apply to trees located on both public and private property.

6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

Pillar

3. Enrich Community Assets, Environment, & Infrastructure

Priority

3.2 Environment

Action

- 3.2 a) Sustainable Natural Environment
- Environmental Stewardship Lens

Pillar

4. Optimize Organizational Excellence

Priority

4.1 Streamline & Modernize

Action

- 4.1 a) Streamline Processes
- Update Enforcement Plans

7. OPTIONS

- 7.1 **Option 1:** Council approve the changes to the Private Tree By-law and forward to Council for adoption and rescission of the existing Private Tree By-law 5139-19; Council additionally direct staff to prepare a By-law to appoint a Hearing Officer to handle all Private Tree Appeals and a By-law to amend the Appendix VI of Annual User Fees By-law 2025-012 to include the proposed fees.

(Recommended)

- 7.2 **Option 2:** Council choose not to approve the recommendations in this report and provide alternate direction *(Not Recommended)*

8. FINANCIAL IMPLICATIONS

Additional fines are included in the Short Form Wording on Schedule D of the Private Tree By-law Draft to allow for enhanced enforcement. This may result in a nominal increase in funds raised to offset the enforcement costs.

Upon the passing of the proposed By-law an appeal fee will be introduced. The appeal fee will be used to offset the costs of using a third-party hearing officer. This fee is not anticipated to be a revenue source.

The fees associated with a private tree permit will also be transitioned to be located under the Town's Annual Fees By-law, which will allow the fees to remain current with the appropriate market average. The private tree permit fees are allocated to the Town's Tree Replacement Fund.

9. ENVIRONMENTAL IMPLICATIONS

Trees enhance soil and water conservation, store carbon, and regulate the local climate by providing shade and controlling temperature fluctuations. They increase wildlife habitats and improve the land's ability to adapt to climate change. Protecting current trees and planting new ones are effective and low-cost methods for removing CO₂ from the atmosphere to combat climate change. As trees grow, they absorb and store carbon dioxide, which is a key driver of global warming.

The implementation and enforcement of the updated Private Tree By-law is anticipated to have positive impacts on the tree canopy and additional positive environmental implications as a result of the enhanced tree canopy protection.

10. COMMUNICATIONS

If approved, the updated Private Tree By-law will be posted on the Town's website and enforced accordingly. The Town will also share information about the by-law on its social media platforms, along with easy-to-understand materials designed to help residents understand the changes and how they may affect them.

11. CONCLUSION

Environmental protection is a priority within the Town, as evidenced through Council's approval of a Climate Change Coordinator and the Environmental Stewardship Lens in the Strategic Plan. The approval and passing of the updated Private Tree By-law will contribute to the Town's environmental protection efforts. The improvements outlined in this report will create efficiencies to optimize resources without compromising the integrity of the process while positioning the Town positively in regard to climate change prevention.

12. PREVIOUS REPORTS

There are no previous reports associated with this report.

13. APPENDICES

- Appendix I – Private Tree By-law Draft

Respectfully submitted:

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By-law and Policy Coordinator

Recommended by:



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Submitted by:



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