1. RECOMMENDATION

It is respectfully recommended that:

1.1 this report outlining considerations for Tree Preservation and Protection be received; and

1.2 Council direct Staff to hire a facilitator to engage in a public consultation process to determine the need for a Private Tree By-law, at an estimated cost not to exceed $20,000.

2. PURPOSE / PROPOSAL

It is the intent of this report to provide Committee with background information to further consider Council motions concerning the preservation and protection of trees.

3. BACKGROUND

Council has approved two separate motions regarding the protection of trees during the current term. In November of 2015, Council approved the following motion:

\[
\text{That the information presented to Council re: Tree Protection Policy for Public and Private lands be forwarded to staff to investigate and come back to Council with a report on their findings and outline steps to move forward on such a policy, including cost and management.}
\]

Staff suggested that the motion be further considered as part of the policy development of the new Official Plan; however, that process was put on hold pending the outcome of the Provincial Co-ordinated Land Use Planning Review.

More recently, Council approved the following motion on April 10, 2017:
That Staff present to Council a draft by-law regarding residential development of subdivisions (green fields) or property redevelopment of existing homes requiring them to present a Tree Preservation and Planting Plan as required in the Official Plan and an Active Transportation Plan showing sidewalks and/or trails prior to zoning, official plan or site plan approvals moving forward.

The Tree Preservation By-law come forward to COTW by Sept. 2017.

4. DISCUSSION / ANALYSIS

It is clear that the residents of Niagara-on-the-Lake place high value on the urban forest and its protection is very important within the community. There is abundant evidence that a healthy urban forest provides environmental, economic and social benefits, including stormwater retention/absorption, reduction in air pollution and home energy savings. Members of the community have expressed concern over the random removal of trees, the impact of infilling development within established residential area and clear cutting to accommodate the development of greenfields.

This report is intended to address Council’s motions and give consideration to the possibility of extending the protection of trees beyond municipally owned lands to affect private property.

There is a limited number of regulatory and voluntary tools available to a municipality for the protection and preservation of trees. The attached Appendix A provides a detailed description of the Municipal Act and Planning Act tools as well as measures currently in place.

The primary measure to protect privately owned trees is the adoption of a by-law under Section 135 of the Municipal Act. This section allows municipalities to enact by-laws to regulate the destruction or injuring of municipally owned trees, private trees in wood lots and environmentally sensitive lands and/or trees on private lands. However, it is important to note that the provisions of the Act require that any such by-law provide a mandatory exemption for the removal of trees based on a condition to the approval of a site plan, a plan of subdivision, or a consent under Sections 41, 51, or 53 of the Planning Act.

The following scenarios are provided in order to help understand the impact of a Section 135 by-law on tree removal activities in the Town:

Threat to life or property because of poor tree health

Most Tree By-laws contain provisions that permit emergency work where the tree failure is imminent and poses an extreme risk in which the likelihood of severe consequences, such as serious injury to persons or property is high. In situations where the tree is dead or damaged by failure is not imminent, a permit would typically be required.
**Property owner decision**

By-laws vary in allowing the removal of trees by number, size and location. Typically, by-laws in other municipalities require the submission of an arborist report and the issuance of a permit.

**Accommodation of development**

If tree removal was required to accommodate development (e.g. construction of an accessory building or addition) and no application for site plan, subdivision or consent to sever was proposed, a property owner would be subject to the provisions of the Tree By-law.

If tree removal was required as part of an application for site plan, subdivision or consent to sever, the provisions of the Tree By-law would not apply, rather the policies of the Official Plan would be considered and appropriately addressed within conditions of approval.

**Council Motions**

With respect to the April 2017 motion, understanding that a *Municipal Act* Tree By-law requires exemptions for site plan, subdivision and consent to sever applications, Staff is of the opinion that Official Plan policy is the appropriate policy for protection of trees at the time of development. It is understood that the current Official Plan policy requires enhancement and, as explained in *Appendix A*, the draft Official Plan provides improved policy direction related to preservation reforestation.

Digressing to the November 2015 motion, if Council is interested in regulating the preservation and protection of trees on private property outside of the planning process, the only manner in which to effectively do so is the adoption of a by-law under Section 135 of the *Municipal Act*. Staff recommend that Council endorse a broad public consultation that would afford all of the Town’s residents and stakeholders with an opportunity to provide input into a potential By-law.

Staff further recommend that the public consultation process be designed to address the following key questions specifically:

1. **Does the Town need a private tree by-law?**

   There are a number of key questions that need to be addressed in order for Staff to prepare a by-law affecting trees located on private property. These questions could form the basis of the public consultation and help shape a private tree protection by-law that is appropriate for Niagara-on-the-Lake.

2. **Should a private tree by-law apply in both the rural and urban areas?**
While infill development appears to have generated the majority of discussion, is the preservation and protection of trees equally important in both environments?

3. **Do the environmental benefits of a private tree by-law outweigh the financial considerations for the Town?**

The cost of permits and the financial burden on homeowners was one area of significant contention during last year’s debate. If we agree that the protection of trees and the creation of a healthy urban forest is important, should the cost be borne by all taxpayers as part of the cost of Town administration? Or should the cost of enforcement and education be covered by establishing fees for tree removal permits or inspections?

4. **What size of tree should be covered by a by-law? Should homeowners be allowed to remove a limited number (how many?) of trees without requiring any kind of permit?**

   Should a by-law define the minimum size of a tree addressed within a by-law? Should it be over a certain size before a permit is required? Should there be a limit on the number of trees that can be removed without a permit? Should certain species have special protection? Will a by-law encourage homeowners to cut down trees before they get too large just to avoid being subject to the by-law?

5. **Should there be an application process for permits? Can a permit be denied?**

   How does the Town balance the need to protect trees with property owner’s concerns about more bureaucracy? Should a permit be required to remove a tree? Can it be applied for online or do you need to have an interview with a qualified forester? Does a permit need to be posted for neighbours to see? Should there be an inspection process to see if there are alternatives to removing the tree? Are there circumstances where a permit should be denied or is the application process enough of a deterrent?

6. **Should there be an inventory of trees prior to the adoption of a by-law?**

   Should the Town identify, quantify and value all trees present in the Town to properly administer a by-law to preserve and protect?

7. **Should replacement trees be required for the removal of large trees?**

   If the goal is to maintain healthy trees and woodlots, how do we encourage homeowners to replant? Should there be incentives to encourage replanting of
larger, more mature trees? Can replanting occur anywhere in the Town or on the subject property? Can a donation be made rather than replanting?

8. **What penalties would be associated with the by-law? Are penalties needed to ensure compliance with the by-law? Is there an appeal process?**

The *Municipal Act* sets out fines for offences. Should fines differ between individuals and corporations? If permits are denied, what is the appeal process?

9. **Should there be exemptions for dead, sick or hazardous trees?**

How do you define these circumstances? Should there be a requirement to prove that a tree should be exempt?

10. **Does the Town need to consider changes in its planning process?**

Are there policies that should be considered during the update of the Official Plan to further encourage the preservation of trees?

The challenge in creating any policy or by-law is to balance the need for preservation and protection and the greater good of the community with the need to respect the rights and responsibilities of individual property owners. For this reason, Staff recommend that Council engage a broad consultation process to fully involve the public in advance of implementing a Private Tree By-law.

Should Council choose to forego the implementation of a By-law, consideration could be given to developing a public education program to demonstrate the value of maintaining healthy and sustainable trees.

5. **STRATEGIC PLAN**

The Strategic Plan does not address the preservation of trees.

6. **OPTIONS**

1. Accept the recommendation to engage in a public consultation process to draft a new Private Tree Protection By-law for Council consideration.

2. Refuse the recommendation and direct Staff to develop a public education program to demonstrate the value of maintaining healthy and sustainable trees.

7. **FINANCIAL IMPLICATIONS**

Should Council choose to pursue public consultation, the cost associated with this process would be funded through operating budget, specifically consultants.
The cost of implementing a by-law of this nature is likely a central question for consideration. The implementation of a By-law and permit system would require additional resources including enforcement staff and access to a qualified arborist. Public consultation would need to address the question of whether costs should be incurred by individual property owners or should be accommodated within the Town’s administrative costs as part of the general tax base.

8. COMMUNICATIONS

If Council chooses to consult with the public, the process would be advertised in the newspaper and on the Town’s website. In addition, the consultation would involve all Town Departments and affected external agencies and stakeholders.

9. CONCLUSION

Staff is of the opinion that Council should initiate a public consultation process prior to considering the implementation of a Private Tree By-law.

Respectfully submitted,

Craig Larmour, MCIP, RPP
Director, Community & Development Services

Holly Dowd
Chief Administrative Officer

ATTACHMENTS

Appendix A Tree Preservation.docx

WEB ATTACHMENTS

ATTACHMENTS FOR LINK

First Capital of Upper Canada - 1792
Overview of Regulatory Tools

1. Tools under the Planning and Development Scenario

Planning Act

The Planning Act provides a legislative framework for land use control powers available to municipalities. The tools available to restrict tree removal are limited by a variety of factors, including inherent rights or property owners, the balancing of other matters of provincial and municipal interest and constraints relating to the physical characteristics of individual properties (e.g. size, topography, etc.). Staff attempts to protect individual trees that are determined to have significance through such the processing of planning applications; however, retention is not always and in some cases cannot be reasonably required.

The following tools provided under the Planning Act are listed below:

Official Plan

Part III of the Planning Act requires municipalities to develop an Official Plan that sets the framework and policies describing the values, goals and objectives of the community and how it will grow. The Act also requires that municipalities review their Official Plan at least once every five years.

In regard to protecting trees, an Official Plan typically defines natural heritage systems, significant woodlands, wetlands and environmental features and provides policies recognizing and protecting their functions.

Section 6: General Development Policies of the Town of Niagara-on-the-Lake Official Plan provides the following policy framework for “Tree Preservation and Reforestation”:

It is a policy of this Plan that existing trees must not be unnecessarily removed and that wherever possible existing trees should be preserved and protected. In urban areas where it is unavoidable that trees be removed the following policies shall apply.

1 As a condition of any development or redevelopment where it is unavoidable that trees must be removed. The proponent shall plant trees of a similar or comparable species having a minimum caliper acceptable to the Town elsewhere on the site and the Town may require the proponent retain the services of a qualified arbourist or similar professional. Where no other reasonable location exists on the site the town may require the owner to contribute to the town sufficient money to replant an equal number of new trees on public lands identified for reforestation by the Town.
(2) The Town will undertake to identify public lands owned by the municipality or by agreement lands owned by other public agencies where reforestation can occur.

(3) Tree preservation and reforestation which encourages the reforestation with native species and naturalization of disturbed areas within the Niagara Escarpment Plan is encouraged; and

(4) In the case of dying or diseased trees particularly fruit trees which have the potential to infect healthy trees, such trees may be removed immediately and trees of an appropriate species shall be planted in accordance with policy (a) of this section.

The Town is currently in the process of reviewing and updating the Official Plan. The June 2016 draft of the Official Plan provides enhanced policy direction related to tree preservation and reforestation as follows:

7.1.4 Tree Preservation and Reforestation

7.1.4.1 The existing tree canopy in the town is an important component of the character of the town and its community design features.

7.1.4.2 In urban areas, where it is unavoidable that trees be removed, the following policies apply:

   a) Significant trees in urban areas are to be protected where appropriate with emphasis on preservation of Carolinian species;

   b) As a condition of any development or redevelopment, the proponent will be required to plant trees of a similar or comparable species having a minimum caliper acceptable to the Town elsewhere on the site and the Town may require that the proponent retain the services of a qualified arbourist or similar professional. Where no other reasonable location exists on the site, the Town may require the owner to contribute to the town sufficient money to replant new trees on public lands identified for reforestation as determined by the development review process or relevant tree by-law;

   c) Tree preservation and reforestation which encourages the reforestation with native species and naturalization of disturbed areas within the Niagara Escarpment Plan is encouraged; and

   d) In the case of dying or diseased trees, particularly fruit trees which have the potential to infect healthy trees, such trees may be removed immediately and trees of an appropriate species will be planted in accordance with policy (a) of this section.

7.1.4.3 The Town, in the undertaking of public works, will not remove trees unnecessarily and should trees be removed for this purpose, replacement trees will be planted to enhance the streetscape.
7.1.4.4 The Town may pass by-laws to prohibit or regulate the destruction or injuring of trees, require that a permit be obtained to injure or destroy trees, and impose conditions to a permit, as provided in the Municipal Act.

7.1.4.5 The Town may establish a tree replacement by-law that would require replacement of the same aggregate stem thickness of trees removed in the same location or another defined location of the town as a condition of permitting trees to be removed. The Town may identify in the by-law an appropriate ratio of new trees to old trees for specific areas of the town.

7.1.4.6 A tree cutting by-law will not prevent the harvesting of trees under the supervision of a qualified forester or cutting trees outside of the specified areas.

Zoning By-law

Under Section 34 of the Planning Act, municipalities are permitted to employ the use of zoning bylaws to implement the policies of the Official Plan. Section 34 (3.2) of the Planning Act permits municipalities to pass zoning bylaws to conserve natural features by prohibiting:

any use of land and the erecting, locating or using of any class or classes of buildings or structures within any defined area or areas,

(i) that is a significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest,
(ii) that is a significant corridor or shoreline of a lake, river or stream, or
(iii) that is a significant natural corridor, feature or area.

The Town’s Zoning By-laws identify natural features through the use of appropriate protective zones. A review of the Zoning By-laws as they pertain to permitted uses and regulations for natural heritage features is anticipated following completion of the Official Plan review.

Subdivisions & Condominiums

Section 51 of the Planning Act addresses the approval process and requires developers to identify all natural features within or adjacent to the land proposed to be subdivided. In making decisions, Council must “have regard” to a variety of matters of provincial interest, including the protection of ecological systems, including natural areas, features and functions, and the conservation and management of natural resources.

Council may also attach conditions to the approval of plans of subdivision and condominium. Currently, the Town uses a standard set of clauses to implement the tree protection policies of the Official Plan, where appropriate.
Appendix A

Regulatory Tools

Site Plan Control

Section 41 of the *Planning Act* allows municipalities to establish a Site Plan Control area and by-law, allowing municipalities to exercise some degree of control over development applications. Site Plan Control is addressed in Section 22 of the Official Plan. While the Site Plan Control policies allow the Town to require the provision of landscaping as a condition of approval, the preservation of trees is not specifically provided for.

**Municipal Act**

(A) Site Alteration

Section 142 of the *Municipal Act* authorizes local municipalities to pass by-laws prohibiting or regulating the placing or dumping of fill, the removal of topsoil, and the alteration of the grade of land. The Town of Niagara-on-the-Lake has a Site Alteration By-law in place (By-Law 3941-05). Although the By-law does not prohibit the removal of trees, it requires that work is completed in a manner that minimizes the detrimental effect on trees that might otherwise occur through this process.

**Ontario Heritage Act**

The *Ontario Heritage Act* provides municipalities with the opportunity to protect trees under specific circumstances, namely, conservation easements, provided for under Part II, Sections 22 and 37 and designation, provided for under Parts IV and V of the *Ontario Heritage Act*.

A conservation easement is a voluntary legal agreement between a property owner and a trust holder (e.g. the municipality or the Ontario Heritage Trust). The easement establishes mutually accepted conditions that ensure the preservation of the heritage property in perpetuity. Generally, trees that have been protected using this tool have significant heritage and cultural significance as opposed to simply being a certain size or age.

The use of the designation powers under Part IV of the *Heritage Act*, involve the individual designation of trees of “heritage value”, following the same process as that used for the designation of a property.

2) **Tools Outside of Planning and Development Scenario**

**Municipal Act**

Section 135 of the Municipal Act empowers lower-tier municipalities to enact by-laws to regulate the destruction or injuring of municipally owned trees, private trees in wood lots
and environmentally sensitive lands (so long as it does not conflict with an upper-tier by-law) and/or trees on private lands.

It should be noted that mandatory exemptions under the Municipal Act include the injuring or destruction of trees based on a condition to the approval of a site plan, a plan of subdivision, or a consent under Sections 41, 51, or 53 of the *Planning Act* or a requirement of a site plan or subdivision agreement.

**Regional (Upper Tier) Tree By-law**

Niagara Regional Tree and Forest Conservation By-law No. 30-2008 was adopted by Regional Council April 10, 2008 and came into effect July 31, 2008. The By-law regulates the destruction of trees in woodlands to conserve and improve woodlands in Niagara. The By-law applies to woodlands across the Region that are 1.0 hectare or more in size. The By-law also applies to woodlands having an area of less than 1.0 hectare where the local municipality delegates such authority to the Region. Niagara-on-the-Lake, Grimsby, Niagara Falls and West Lincoln, have delegated authority to the Region in this regard.

The By-law requires that where tree cutting occurs, it is carried out in accordance with Good Forestry Practices. The By-law is administered and enforced by the Niagara Peninsula Conservation Authority. The By-law prohibits the clearing of woodland except under certain specified circumstances.

While the Regional Tree protects trees in woodlots, it does not address smaller properties and individual trees which are generally the subject of public interest during infill development within urban areas.

**Municipal (Lower Tier) Tree By-law**

The Town does not currently regulate trees located on private property.

In July of 2012 Council adopted By-law No. 4571-12 being a By-law to authorize and regulate the planting, care, maintenance and removal of trees on the Town of Niagara-on-the-Lake's property. This By-law applies to Town owned property only.
REQUEST TO APPEAR AS A DELEGATE  
TOWN OF NIAGARA-ON-THE-LAKE  
(PLEASE PRINT CLEARLY)

| Name: Sandra O'Connor/ Gradie Janes/ Holmes Hooke | E-mail: sakoconnor@gmail.com |
| Street: 206 - 225 Ricardo St. | Box #: / RR #: |
| Town: Niagara-on-the-Lake | Telephone #: 228-868-9310 |
| Postal Code: L0S 1J0 | Fax #: |

☐ (√) I have never spoken on this issue before and the key points of my presentation are as follows:

We are asking Council to develop and implement a tree protection policy for public and private lands. Specifically, an urban tree by-law addressing the need to preserve the quality of life provided by trees that we currently have in NOLT. In addition, we ask that specifications for construction near trees, including building, pipes, cables, road and sidewalk construction, be developed.

If an individual appears as a delegate before Council or Committee of the Whole, a further presentation from the same individual concerning the same topic(s) will not be permitted unless there is significant new information to be brought forward. Specific new information must be identified on this form, which will require approval. (Policy #CC-GEN-005F)

☐ (√) I have spoken on this issue before, and the specific new information I wish Council to review is as follows: (attach a separate page(s) if necessary)

I wish to appear before Council on November 23, 2015  
(Meeting time is 7:00 p.m. unless otherwise noted)  
DATE

Note: Your request must be made no later than 10:00 a.m. on the morning of the meeting.

I wish to appear before Committee of the Whole on  
(Meeting time is 7:00 p.m. unless otherwise noted)  
DATE

☐ Community & Development Services ☐ Corporate Services ☐ Operations-Parks & Recreation/Public Works

Note: Your request must be made no later than 10:00 a.m. on the morning of the meeting.

I have read and understand the Delegation Protocol on the back of this form and acknowledge the information contained on this form, including any attachments, will become public documents and listed on Town Meeting Agendas.

I also understand presentation materials must be submitted with this delegation form and electronic presentations must be emailed to hdowd@notl.org no later than 10:00 a.m. on the morning of the meeting.

Sandra O'Connor
Signature  
Novembar 10, 2015
Date

Presentation Requirements: No ☒ Yes (description) ________________________________
The Need for an Urban Tree Management Plan for Niagara-on-the-Lake

Contextual Preamble

The unique character of Niagara-on-the-Lake is defined by an unusual blend of old and new; grand Victorian cottages; post War homes - War of 1812 and both World Wars I and II; weekend getaways and modern new homes. Every house is different. Every house fits the style, personality and needs of its owner. And every house tells a story about the history of our small town.

In almost any other closely settled environment--urban, suburban or rural--these diverse and colourful qualities would have been lost over time, rendered uniform in the path of relentless municipal progress. Yet here, in our tree sheltered streets, enclosed by the lake and river, time and the dulling effects of progress seem part of another world.

We like it this way. We are protected and charmed in every season by our towering oaks, maples, birches, chestnuts, black walnut, firs, willows and catalpas, by the ancient privet and cedar hedges that line our beautiful streets, the sprawling creepers and vines that surround us.

In Niagara-on-the-Lake, every street is our street. Every street feels like home.

So, as plans are being made to re-develop large swaths of Niagara-on-the-Lake, both by individuals and by corporations, we urge those in government to be mindful of why we choose to live here and to respect our reasons for wanting to preserve our old trees, our old vegetation, our sense of the timeless nature of this quaint and charming town. Our living trees are a vital and fascinating facet of the town's heritage. A tree by-law ensures this heritage is protected; a prominent tree planting initiative spearheaded by the town ensures a beautiful green canopy for the generations to come.

Purpose/Rationale

Each year, many trees on private property are destroyed or damaged due to construction, disease and irresponsible acts. We need look no further than the clear cutting that has taken place in Old Town at 135 Queen Street. Peer over the fence which separates this property from the Post Office parking lot and you will see no fewer than 20 stumps. These are all that remain of a tree canopy which once added considerably to the beauty and health of the town, and is now gone forever.

Thousands of trees make up our urban forest and provide abundant environmental, health, aesthetic and property-value benefits to our community. According to the city of Toronto, trees can increase property values by as much as 27 per cent. Regardless of whether trees grow on private or public land, the removal or damage to trees needs to be monitored and/or managed by the Town of Niagara-on-the-Lake. An urban tree by-law would plug any loopholes allowing developers to clear cut urban woodlots.

There is a need to protect trees, particularly those that are native or have a significant heritage or landmark value. The developers, land owners and the Town need to be mindful of where and how they dig and bore, to think twice about which tree might be damaged as they lay foundations, sidewalks, pipes, cables and roads. Town policy needs to reflect this reality and a process needs to be established that regulates which, when and how trees on private and public property can be removed or altered through such acts as chopping, pruning, root cutting or topping, within the urban areas of Niagara-on-the-Lake and in accordance with the 2013 Ontario Superior Court ruling about tree ownership.

Trees, particularly those that are native or have a significant heritage or landmark value, need to be protected. Preparing a registry of heritage trees is important, and recognition of the devastation the emerald ash borer is having on the tree canopy in Niagara and plans need to be made to replace those that are dead or dying.

Urban trees:
• increase property values
• reduce noise
• conserve energy
• combat the climate change
• provide oxygen
• cool the streets and the town
• save water
• help prevent water pollution
• help prevent soil erosion
• enhance air quality

Trees provide value and benefits to our community. However, we recognize that not all people view trees with the same enthusiasm. Some see trees as a "nuisance" - sources of leaves and needles or shade to "spoil" a perfect lawn. Some see trees as “interfering” with their right to be able to park their car on their property, or to develop property for houses or to widen a driveway. The dilemma is that while all trees live on "someone’s" property, the benefits they provide are not specific to property boundaries. All trees affect everyone’s life in many ways. So this is why a management plan for our urban trees is needed, including a tree by-law and a registry of heritage trees.

In 2013 the Superior Court of Ontario ruled that a shared tree under the provincial Forestry Act starts from where its roots join the trunk up to where the trunk branches out. Under provincial law, this ruling gives neighbours common ownership of trees. The rights of a landowner to cut the branches or roots of a neighbour’s tree that cross over the boundary line face new restrictions. Municipalities need to have rules and regulations in place to deal with this new dimension in the urban tree issue.

Goals

We ask Council to develop and implement:

1. A tree protection policy for public and private lands;
2. An urban tree by-law addressing the need to preserve the quality of life provided by trees that we currently have in NOLT, and that this by-law address, among other things:
   • Compliance; permit required; approval required; prohibited activities
   • Permit conditions and refusal
   • Offences and penalties
   • Tree replacement regulations
   • Inspection for presence of pests; removal of infested trees
3. Specifications for construction near trees, including building, pipes, cables, road and sidewalk construction.

Because in Niagara on the lake, every street is our street. Every street feels like home.

Special Committee of the Niagara Conservancy

Sandra O’Connor, Chair
Gracia Janes, Conservancy Liaison
Susan Baxter
Rob Copeland
Ruth Denyer
Holmes Hooke
Louise Howe
Louise Leyland
Alice Triano