

**WHEREAS** Sections 8, 9, 10 and 11 of the *Municipal Act*, 2001 S.O. 2001 c.25, as amended or replaced from time to time (the “**Municipal Act**”) provides a Municipality with broad authority, including the authority to pass by-laws respecting the economic, social and environmental well-being of the Municipality;

**AND WHEREAS** Subsection 135(1) of the *Municipal Act* authorizes the Council of a Municipality to enact a by-law to prohibit or regulate the destruction or injury of trees, without limiting the Municipality’s authority under Sections 9, 10 and 11 of the *Municipal Act*;

**AND WHEREAS** Subsection 135(7) of the *Municipal Act* provides that a Municipality may, by the passing of a by-law, require that a permit be obtained to injure or destroy trees, and impose conditions to the permit, including those relating to the manner in which destruction occurs and the qualification of persons authorized to destroy or injure trees;

**AND WHEREAS** Section 436 of the *Municipal Act* provides that a Municipality may pass by-laws permitting the Municipality to enter on land within the Municipality at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law or an order made pursuant to the by-law;

**AND WHEREAS** Subsection 429(1) of the *Municipal Act* provides that a Municipality may establish a system of fines for contraventions of a by-law passed under the *Municipal Act*;

**AND WHEREAS** Part XIV (Enforcement) and section 444 of the *Municipal Act* provides methods for a Municipality to enforce its by-laws and allows a Municipality to make an order to require any Owner to discontinue contravening a by-law and to do the work required to correct the contravention;

**AND WHEREAS** Section 446 of the *Municipal Act* provides that a Municipality may proceed to do work at an Owner’s expense which that Owner is otherwise required to do under a by-law but has failed to do and the costs incurred by a Municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as property taxes;

**AND WHEREAS** Subsection 391(1) of the *Municipal Act* provides that a Municipality may impose fees or charges on an Owner for service or activities provided or done by the Municipality and subsection 398(2) of the *Municipal Act* provides that such fees and charges may be added to the tax roll for any property in the Municipality owned by the same Owner and collected in the same manner as taxes; and

**AND WHEREAS** the Council of the Corporation of the Municipality of Kincardine deems it desirable in the public interest to enact a Tree Preservation By-law for the purposes of:

- (a) Protecting vegetation for the purpose of wildlife habitat protection, water quality, air quality, ensuring natural form dominates the shoreline, and aesthetics;
- (b) Preventing soil erosion and water run-off;
- (c) Protecting and conserving vegetation in Environmental Protection Areas;
- (d) Retention of tree cover in Scenic Areas and Scenic Corridors;
- (e) Minimizing the destruction or injuring of trees;
- (f) Regulating and controlling the removal, maintenance, and protection of trees;
- (g) Protecting, promoting, and enhancing the aesthetic and economic values of land;
- (h) Sustaining a healthy natural environment;
- (i) Protecting significant and sensitive natural areas to ensure maximum environmental benefits of trees in both urban and rural settings; and
- (j) Contributing to physical and psychological well-being through the maintenance of tree cover.

**NOW THEREFORE**, the Council of The Corporation of the Municipality of Kincardine enacts as follows:

## 1. INTERPRETATION

**“Applicant”** means an applicant for a Permit under this By-law who is the Owner(s) of the land where the subject Tree(s) is located and also means the Owner’s authorized representative including but not limited to a contractor, arborist, occupant or other agent authorized to act on behalf of the Owner(s). The Municipality will request written verification of such Owner’s authorization;

**“Application”** means an application pursuant to this By-law for a Permit;

**“Arborist”** means a person who has graduated from an accredited college or university with a diploma or degree in Urban Forestry, Arboriculture or equivalent and satisfies at least one of the following requirements:

- (a) Is certified by the Ministry of Labour, Training and Skills Development or the International Society of Arboriculture (ISA) as an arborist;
- (b) Is currently accepted as a consulting arborist with the American Society of Consulting Arborists; or
- (c) Is a Registered Professional Forester (RPF) as defined in the *Professional Foresters Act*, 2000, S.O. 2000, c.18, as amended or replaced from time to time (the “Professional Foresters Act”);

**“Arborist Report”** means a technical report prepared and signed by an Arborist, which includes details on the designated or surveyed location, species, size, health, location of the Tree(s) to be destroyed, injured or removed, and an assessment of the structural integrity of the subject Tree(s) using the “Tree Risk Assessment, Best Management Practices”, Companion publication to ANSI 300 part 9, standard practices, ISA, as may be amended or replaced and sets out the rationale for any proposed injuring, destruction or removal of a Tree and includes the author information including contact information and qualification, Tree planting plan and describes Tree protection measures or other mitigating activities to be implemented;

**“Boundary Tree”** means a Tree, any part of whose trunk is growing across one or more property lines;

**“Building Permit”** means a building permit issued pursuant to the *Building Code Act*, 1992, S.O. 1992, c.23, as amended;

**“Breast Height”** refers to the point of measurement 1.37 metres (4.5 feet) above the highest point on the Tree where the ground meets the trunk;

**By-Law Officer”** means an individual appointed by The Corporation of the Municipality of Kincardine to enforce the provisions of this By-law, including a municipal by-law enforcement officer and may include a Municipally appointed Arborist;

**“Council”** means the Council of The Corporation of the Municipality of Kincardine;

**“Crown”** means the upper part of a Tree, which includes the branches and leaves;

**“Destroy”** means directly or indirectly, including through construction activities, remove, ruin, uproot or kill a Tree, whether by accident or by design, and whether by cutting, burning, girdling, interfering with its water supply, applying chemicals, puncturing, or compacting, regrading or resurfacing within its drip line, or to remove, cut down, or Injure a Tree in any way to such an extent that it has become a Hazard or its life processes have been compromised in such a way that it cannot survive, but does not including Maintenance Pruning, and **“Destruction”** has a corresponding meaning;

**“Designate”** means a person who is an employee of the Corporation of the Municipality of Kincardine and who has been appointed by the Director to administer all or part of this By-law on behalf of the Director including a Municipally appointed Arborist;

**“DBH”** means the diameter of a Tree, outside the bark, at breast height, where breast height is measured from the existing grade of the ground adjoining the base of the trunk: (i) for a trunk rising straight and vertically from ground with a horizontal grade, 1.37 metres (4.5 feet) above that grade; - 3 - (ii) for a trunk rising straight and non-vertically

from ground with a horizontal grade, 1.37 metres (4.5 feet) along the centre axis of the trunk from that grade; (iii) for a trunk rising straight and vertically from ground with a nonhorizontal grade, 1.37 metres (4.5 feet) along the centre axis from the trunk from that grade; (iv) for a trunk rising up straight, 1.37 metres along the centre axis of the trunk from that grade; and where diameter is: (i) for a tree with a single trunk, the diameter of that single trunk; (ii) for a tree with two or three trunks, the total diameter of those two or three trunks; and, (iii) for a tree with more than three trunks, the total diameter of the three trunks with the greatest diameters;

**“Development”** means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of sustainably increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in subsection 164(4) of the *Municipal Act*;

**“Diameter”** means the diameter of the stem of a Tree measured outside the bark at a specified point of measurement;

**“Director”** means the Director of Infrastructure and Development for the Municipality of Kincardine or their Designate;

**“Good Forestry Practice”** means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape, and also includes, but is not limited to the forestry management practices set out in the Provincial Silvicultural Guidelines as referred to in the Forest Operations and Silviculture Manual and its revisions prepared under the authority of the *Crown Forest Sustainability Act*, S.O. 1994, c. 25, as amended or replaced from time to time (the **“Crown Forest Sustainability Act”**);

**“Hazard” and “Hazardous”** means a Tree, or part of a Tree, that is destabilized, structurally compromised or obstructing views of vehicle operators or pedestrians in such a way that it is deemed, by the Director, to pose a potential safety concern to the property or public;

**“Infestation” or “Infest”** means infestation as defined in the *Forestry Act*, R.S.O. 1990, c. F.26, as amended or replaced from time to time (**“Forestry Act”**);

**“Injury”** means any action causing directly or indirectly, whether by accident or design, including through construction activities, harm, damage, or impairment to a Tree, and includes, but is not limited to, causing stress or injury of Trees by changing grades or compacting or excavating soils within the drip line of a Tree, severing roots, the improper application of chemicals excessive or otherwise, excessive or improper pruning, attachments of any items, and the removal or slashing or defacing or girdling or burning of the bark, and **“Injure”, “Injured” and “Injurious”** shall have the corresponding meaning;

**“Lot”** means a parcel of land that:

(i) is the whole of a lot or block on a registered plan of subdivision so long as such registered plan of subdivision is not deemed, pursuant to section 50 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended or replaced from time to time (the **“Planning Act”**), not to be a registered plan of subdivision for subdivision control purposes;

(ii) is all land held or owned under distinct and separate ownership from the ownership of the fee or equity of redemption in abutting land;

(iii) has the same description as in a deed which has been given consent pursuant to section 53 of the *Planning Act*; or

(iv) is the whole remnant remaining to an owner or owners after conveyance made with consent pursuant to section 53 of the *Planning Act*.

**“Municipality”** means The Corporation of the Municipality of Kincardine;

**“Official Plan”** means the Official Plan of the Municipality of Kincardine, as amended or replaced from time to time;

**“Owner”** means the person having right, title, interest or equity in the land where a Tree is located. A Boundary Tree may have multiple Owners;

**“Permit”** means the authorization from the Director to injure or destroy a Tree pursuant to this By-law;

**“Permit Holder”** a Permit is deemed to be held in all cases by all parties who are an Owner(s) of the lands on which the Tree(s) is located and Permit holder means the Owner(s) in addition to the following: a) an agent that has obtained a Permit on behalf of the Owner with the Owner’s authorization and approval; b) any Person conducting work pursuant to a Permit; and c) an occupant of such lands where the occupant is the Applicant for the Permit;

**“Person”** includes an individual, a partnership, joint venture, trust, company, corporation, association, organization, government or any department or agency thereof, and any other incorporated or unincorporated entity;

**“Qualified Forestry Consultant”** means a certified Arborist or a registered professional forester;

**“Registered Professional Forester”** means a member of the Ontario Professional Foresters Association as defined in the *Professional Foresters Act*

**“Remove, Removes, Removal”** means to move from a place or position occupied; or

- (a) To transfer or convey from one place to another; or
- (b) To take off; or
- (c) To take away; withdraw; or
- (d) To do away with; eliminate.

**“Silviculture”** means the theory and practice of controlling forest establishment, composition, growth, and quality of forests to achieve the objective of forest management;

**“Site”** means the area of land containing any Tree(s) proposed to be Injured;

**“Stop Work Order”** or **“Order”** means an official document issued pursuant to this By-law to stop the Injury or Destruction of Trees;

**“Tree”** means a specimen of any species of deciduous or coniferous growing woody perennial plant, supported by a single root system, which has reached, could reach or could have reached a height of at least 4.0 metres from the ground at physiological maturity and includes the root system and all above ground parts of the Tree;

**“Tree Preservation and Protection Plan”** means a plan prepared by a Qualified Forestry Consultant or Arborist in accordance with Schedule “B” of this By-law, which includes measures required for the protection of Trees that eliminate or mitigate the potential risk of Tree damage;

**“Woodland”** means land with at least:

- i. 1,000 trees of any size, per hectare;
- ii. 750 trees, measuring over 5 centimetres in DBH, per hectare;
- iii. 500 trees, measuring over 12 centimetres in DBH, per hectare; or
- iv. 250 trees, measuring over 20 centimetres in DBH, per hectare;

But does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees.

A woodland is not limited by property boundaries. Specifically, if the Owner of a small parcel of a large woodland has requested a permit to destroy Trees, the small parcel may be considered a woodland, even though it may not meet

the area requirement on its own.

**“Zoning By-law”** means The Corporation of the Municipality of Kincardine By-Law Number 2003-25, as amended or replaced from time to time, regulating land use as provided for under the *Planning Act* within the Municipality of Kincardine.

## 2. APPLICATION OF THIS BY-LAW

- 2.1. The Director of Infrastructure and Development or their Designate shall be responsible for the administration and enforcement of this By-law.

## 3. PROHIBITIONS

- 3.1. No Person through their own actions or through any other Person shall, within the boundaries of the Municipality of Kincardine, Injure or Destroy or cause or permit the Injury or Destruction of the following Trees located on a Lot with an area of 0.5 hectares up to 0.99 hectares, without first obtaining a Permit pursuant to this By-law:

- (i) Five (5) or more Trees on a Lot simultaneously, or the sixth Tree or more Trees in a given calendar year;
- (ii) A Tree with a DBH greater than thirty (30) cm;
- (iii) Trees located in a Woodland; or.
- (iv) Trees within a proposed Development that can be retained without negatively impacting the overall efficiency of the Development.

- 3.2. In addition to the criteria noted in Section 6 below, a Permit pursuant to this By-law shall generally not be issued to Injure or Destroy or cause or permit the Injury or Destruction of the following Trees:

- (i) Trees located on lands designated in the Official Plan as Environmental Protection, Recreation or Rural;
- (ii) Trees identified for preservation in a Tree Preservation and Protection Plan approved by the Director; or
- (iii) Trees located on lands where there are no Development related applications being actively considered by the Municipality.

- 3.3. No Person shall cause or permit the Injury, Destruction or Removal of any Tree classified as an endangered, threatened, or at-risk Tree species, as defined in the provincial *Endangered Species Act*, 2007, S.O. 2007, c.6, as amended or replaced from time to time (the **“Endangered Species Act”**), or any Tree classified as an endangered or threatened Tree species, or a Tree species of special concern, as defined in the federal *Species at Risk Act*, 2002, S.C. 2002, c.29, as amended or replaced from time to time (the **“Species at Risk Act”**).

- 3.4. No Person shall cause or permit the Injury, Destruction, or Removal of any Tree with a Diameter equal to or greater than fifteen (15) centimeters on a Lot, or any Tree required to be retained or planted as a condition of an approved site plan, without first obtaining a Permit pursuant to this By-law.

- 3.5. No Person shall permit or cause the Injury, Destruction, or Removal of a Tree within 15m (50 ft) of a navigable waterway for those lands designated as Waterfront, Urban Centre or Community designations in the Municipal Official Plan;

- 3.6. No Person shall permit or cause the Injury, Destruction, or Removal of a Tree within an area zoned Environmental Protection in the Municipality's Zoning By-law, except in conjunction with the permitted uses of and in compliance with the Zoning By-law.
- 3.7. No Person shall cause or permit the Injury, Destruction or Removal of a Tree without an Owner or Person first obtaining a Permit under this By-law in any area between 15m (50ft) and 91.4m (300ft) of a navigable waterway in an Urban Centre or Community designation as defined in the Municipality's Official Plan;
- 3.8. Despite Section 4.2 (h) of this By-law, no Person shall cause or permit the Injury, Destruction or Removal of a Tree in order to erect a building, structure or thing for an occasional or special event as permitted by the Zoning By-law;
- 3.9. No Person shall fail to re-vegetate or re-naturalize a temporary access road upon completion of a Building Permit or septic permit;
- 3.10. No Person shall fail to comply with an Order issued under this By-law;
- 3.11. No Person shall pull down, Remove or deface an Order posted under this By-law;
- 3.12. No Person shall fail to produce or post a Permit as required under this By-law;
- 3.13. No Person shall fail to provide sufficient erosion and sedimentation control measures, such as a sedimentation fence, around any area that may be disturbed in a manner satisfactory to the Director or an Officer prior to the commencement of any Injury or Destruction of Trees, and such measures shall be maintained in good working order until the Site has been stabilized and operations completed;
- 3.14. No Person shall fail to erect an adequately installed sedimentation fence before the commencement of and during any Injury, Destruction or Removal of any Tree or construction of a building, structure, septic area or patio;
- 3.15. No Person shall allow or permit to allow an Injury, Destruction or Removal of any Tree contrary to the provisions of a Development Agreement registered on title against the property on which such Injury or Destruction or Removal of Trees take place.

#### **4. EXEMPTIONS**

- 4.1. A Tree may be Injured, Destroyed, or Removed without applying for a Permit, where:
  - (a) The Applicant proposes to Injure, Destroy, or Remove five (5) or fewer Trees simultaneously, or in a given calendar year;
  - (b) The Tree has a DBH of less than thirty (30) cm;
  - (c) Pruning is necessary to maintain the health and condition of the Tree, provided that Injury is in accordance with good arboricultural and forestry practices;
  - (d) Any Tree, or a portion of such Tree that necessitates removal as a result of being infested, diseased, severely Injured, Hazardous or, considered locally as an invasive species;
  - (e) The Injury, Destruction, or Removal is required as part of the operation of an existing cemetery or golf course;
  - (f) The Tree is within a building or structure, a solarium, rooftop garden, interior courtyard, or nursery;
  - (g) The Trees that are destroyed are located within a cultivate orchard, tree farm, or plant nursery that are being actively managed and harvested for the purposes for which the trees were planted;

- (h) The Injury, Destruction, or Removal is necessary to clear land in accordance with a normal farm practice conducted by an agricultural operation for its own agricultural activity, provided that the Trees are not located on lands designated Environmental Protection or Recreation in the Municipality of Kincardine Official Plan.
  - (i) Where a Tree is found to impact the efficiency of an overall Development, removal shall be permitted provided an approved Tree retention and landscaping plan is in place. This would not apply to nuisance or scrub type trees.
- 4.2. In accordance with subsection 135(12) of the *Municipal Act*, this By-law does not apply to:
- (a) Activities or matters undertaken by the Municipality, County of Bruce, or a local board of the Municipality;
  - (b) Trees Injured, Destroyed, or Removed by or with the permission of the Municipality of Kincardine that are situated on lands owned or controlled by the Municipality;
  - (c) The Removal of damaged or destroyed Trees in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfalls, freezes, or as a result of insects, disease or wildlife;
  - (d) The Destruction, Injury, or Removal of Trees required in the exercise of the rights or powers of a hydroelectric corporation or any public utility board or commission;
  - (e) The removal of dead, dangerous or severely Injured Trees of stumps, in accordance with good forestry practice;
  - (f) The pruning of tree branches in accordance with Good Forestry Practice to maintain, improve, or protect Tree health and surrounding forest health while maintaining the Tree's natural shape;
  - (g) The Injuring, Destruction, or Removal of Trees that are required in order to erect any building, structure, septic system or thing in respect of which a building or septic permit is issued and has taken into consideration the protection of Trees surrounding the structure or work within the building envelope, provided that no Tree is Removed or Injured that is located more than 6.0m (20 ft.) from the outer edge of the building, structure, septic system, or thing;
  - (h) Activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act*
  - (i) The Injuring, Destruction, or Removal of Trees by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. S.29, as amended or replaced from time to time, to engage in the practice of cadastral surveying or their agent, while making a survey;
  - (j) The Injuring, Destruction, or Removal 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;
  - (k) The Injuring, Destruction, or Removal 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
  - (l) The Injuring, Destruction, or Removal of Trees by a transmitter or distributor,

as those terms are defined in Section 2 of the *Electricity Act, 1998*, S.O. 1998, c.15, as amended or replaced from time to time, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;

- (m) The Injuring, Destruction, or Removal of Trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended or replaced from time to time (the “**Aggregate Resources Act**”); or the Injuring, Destruction, or Removal 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*.

## 5. PLANNING AND DEVELOPMENT PROCESS

- 5.1. The provisions of this By-law shall form part of the Development approval process governed by the *Planning Act*.
- 5.2. An application for a Permit may be processed concurrently with a development related application submitted pursuant to the *Planning Act* and may form part of the technical information requested in order to consider the *Planning Act* application complete.

## 6. APPLICATION REQUIREMENTS FOR A PERMIT

- 6.1. A permit is required under this By-law as follows:
  - (a) Every person who intends to Injure, Destroy, or Remove a Tree, whether personally or through another Person, where a Permit is required to do so under this By-law shall first complete and submit an Application to the Municipality containing the information set out in Schedule “A” to this By-law, in such form as may be approved by the Director;
  - (b) Is accompanied by the prescribed fees payable to the Municipality in accordance with the existing Municipality of Kincardine Fees and Charges By-law;
  - (c) As part of the Application for a Permit, the Owner shall permit an Officer, Director or anyone designated by an Officer or Director to enter upon his or her property and undertake such Site inspections as may be required to consider the Application. An Officer, Director or anyone designated by an Officer or Director may undertake a Site inspection prior to, during and after the proposed activity;
  - (d) The Applicant shall submit an Arborist Report prepared by a Qualified Forestry Consultant in accordance with Schedule “B” of this By-law, that will form part of the Application
  - (e) The Application shall not be considered complete until such time as the Arborist Report is submitted;
  - (f) The Director shall have the option of not requiring an Arborist Report in special circumstances to be determined at their discretion;
  - (g) Applications to Injure, Destroy, or Remove a Tree shall include any report required by the Municipality or external agency (e.g., Sedimentation Control Plan, vegetation analysis, environmental impact assessment, geotechnical report, arborists report, or hydrogeological report); and
  - (h) An Application for a Permit shall be deemed incomplete, and no Permit issued if:



- i. The Application has not been completed in full;
- ii. The Owner/Applicant has not signed the Application;
- iii. The party who will be undertaking or responsible for the Injuring, Destruction, or Removal of Trees has not signed the Application;
- iv. The Application fee has not been paid in full; or
- v. Any required inspections have not been undertaken.

## **7. TREE REMOVAL PERMIT ISSUANCE**

7.1. The Director shall issue a Permit where all the following are satisfied:

- (a) The Application is complete in accordance with this By-law and the Schedules;
- (b) The Injury, Destruction, or Removal of a Tree will not result in:
  - i. Soil erosion or slope instability including impacting existing flood control measures;
  - ii. Blockage of a watercourse or interference with natural drainage processes;
  - iii. Siltation in a watercourse;
  - iv. Pollution of a watercourse;
  - v. Significant impact on any healthy vegetation community within, or adjacent to the Site; or
  - vi. Significant impact on any fish or wildlife habitat within, or adjacent to, the Site.
- (c) That the Site is not within an area where Tree removal or cutting is prohibited under Section 3 of this By-law;
- (d) The Injury, Destruction or Removal of Tree(s) is required to permit the establishment or extension of a use permitted by the Zoning By-law and there is no reasonable alternative to the Injury, Destruction, or Removal of the Tree(s);

7.2. The Director shall review the complete Application and may:

- (a) issue a Permit;
- (b) Issue a Permit with conditions; or,
- (c) Refuse to issue a Permit.

7.3. The Director may confer with such person, staff, qualified professional, and agencies as they consider necessary for the proper review of the Application.

7.4. A Permit shall not be issued where:

- (a) An application for a plan of subdivision or consent related to lands on which the Tree is located has been submitted to the municipality and has not received draft approval;
- (b) An application to amend the Official Plan, for rezoning or for site plan approval related to the lands on which the Tree is located has been submitted to the Municipality, and has not received final approval;
- (c) Where approval would be in contravention of the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22, as amended or replaced from time to time;
- (d) The Permit would result in the Destruction of a Tree that is designated

as a heritage Tree under the Ontario Heritage Tree Program; or

- (e) The Destruction of a Tree will not be in accordance with Good Forestry Practice, as determined by the Director.

## **8. TERMS AND CONDITIONS OF A PERMIT**

- 8.1. The Director may impose conditions on a Permit that in their sole discretion are reasonable. Without limiting the generality of the foregoing, the following conditions may be imposed:
  - (a) Any conditions in accordance with Good Forestry Practice, and established Silviculture;
  - (b) Measures to be implemented to mitigate the direct and indirect effects of the Injuring, Destruction, or Removal of Trees on the natural environment including protected Trees adjacent to or on the land where the tree destruction or injury is to take place;
  - (c) The requirement to prepare a Tree Preservation and Protection Plan in accordance with Schedule "B", which must be approved and implemented as a condition of the Permit;
  - (d) To require the Injury, Destruction or Removal of the Tree to occur in a safe and appropriate manner and within a specified time frame;
  - (e) A requirement to plant a replacement Tree in accordance with Section 8.4 of this By-law; and
  - (f) Where the Injury, Destruction or Removal of a Tree is not conducted as part of, and in accordance with: a Site Plan Agreement, a Subdivision Agreement, or a Condominium Agreement, the Owner may be required:
    - i. To enter into an agreement regarding the conditions as set out in 8.1 (a) to (e) above this section which form part of the Permit; and
    - ii. To register the agreement on the title of the lands affected by the Permit.
- 8.2. A copy of the Permit shall be posted on the property prior to the commencement of any Injury, Destruction or Removal of any Tree allowed by the Permit, in a conspicuous place on the Site that is adjacent to a public road and visible to all persons or at such other location deemed appropriate.
- 8.3. At least seven days prior to the Injuring, Destruction or Removal of any Tree, but not prior to the issuance of the Permit, the Owner shall cause all Trees which are to be Injured, Destroyed, or Removed to be marked with clearly visible marks of paint at Breast Height and upon the stump to remain after cutting.
- 8.4. Where a Permit requires the planting of replacement trees, the Director may impose conditions on the Permit that in their discretion are reasonable. Without limiting the generality of the foregoing, the following conditions may be imposed related to the replacement tree:
  - (a) The species, size, number, and location of the replacement Tree;
  - (b) The manner and timing in which the Injuring, Destruction or Removal of Trees is to be carried out;
  - (c) The date by which any replacement Tree is to be planted;
  - (d) The maintenance and care of any replacement Tree shall be determined by the Director in consultation with a Qualified Forestry Consultant;
  - (e) Where the Removal involves a distinct Tree, the replacement Tree shall be equal to the net DBH of the removed Tree, either as a single Tree or multiple Trees, and shall include the same species, where appropriate and

commercially available;

- (f) The maintenance and care of a replacement Tree including the deposit of security in the form of a letter of credit, cash, or certified cheque in an amount to be determined by the Director of guarantee, for a specified period of time, the cost of maintaining or replacing a replacement tree;
  - (g) Replacement Trees are to be maintained and protected in accordance with Good Forestry Practices by the Owner or person responsible for the Injury, Destruction or Removal, for a minimum period of two (2) years after planting;
  - (h) Replacement Trees shall be subject to the following locational priorities:
    - i. The first and highest priority shall be to plant the replacement Tree on the property where the Tree was Destroyed; and
    - ii. The next highest priority shall be to plant the replacement Tree on another site(s) in the Municipality for the purpose of general reforestation.
- 8.5. An Officer, a Director or any person authorized by an Officer or Director, may at all times enter upon and inspect any land for the purposes of enforcing this By-law, determining compliance with this By-law, determining compliance with terms and conditions of a Permit issued under this By-law, determining compliance with an Order issued under Section 11 of this By-law or laying charges under this By-law.
- 8.6. Transferring of Permits:
- (a) A Permit shall expire upon the transfer of ownership of the Site unless the new Owner provides written commitment to comply with all conditions under which the Permit was issued, prior to transfer of the Site, including compliance with this By-law and agreement to provide financial assurance previously provided by the original Permit holder pursuant to this By-law shall be released.
  - (b) Failing the written commitment from the new Owner, the Permit shall be deemed to be cancelled as of the date of transfer.
  - (c) A Permit is not transferable to another site.
- 8.7. The Municipality may revoke any Permit if:
- (a) It was obtained on mistaken, false or misleading information;
  - (b) It was issued in error;
  - (c) The Owner or permit holder requests it be revoked in writing;
  - (d) Work authorized under the permit has not commenced prior to its expiry date;
  - (e) The Owner has breached any of the prohibitions of Section 3 of this By-law; and
  - (f) The land has been transferred and the new Owner has not complied with the requirements under this section of the By-law.
- 8.8. When a Permit expires or is revoked, the Owner shall immediately cease all Tree cutting, and shall immediately rehabilitate and revegetate the Site to the Municipality's satisfaction. If the Owner has registered a site plan agreement, a subdivision agreement, or a developmental agreement that includes the revegetation of the Site as a condition or requirement, revegetation shall take place in accordance with that agreement.

## **9. DURATION OF A PERMIT**

- 9.1. A Permit shall remain in effect for twelve (12) months after the date of issuance subject to the following:

- (a) The Applicant may request, in writing to the Director, an extension to the Permit for a period of up to one (1) additional year, provided that the request is filed at least thirty (30) days prior to its expiry;
    - i. In considering whether or not to grant a request to extend a Permit, the Director shall take into account to what extent the work authorized by the Permit has been completed, and to what extent the conditions of the permit have been adhered to, and in no case shall a permit be extended so that the Permit remain in effect for more than two (2) years from the original date of its issuance; and
    - ii. No Permit shall be renewed or extended where the Owner or the Applicant is in breach of any terms of this By-law.
- 9.2. No Person shall Injure, Destroy, or Remove a Tree after a permit has expired or revoked.

## **10. REQUIREMENTS FOR TREE PROTECTION PLANS**

- 10.1. Every Tree Protection Plan shall be signed by a Qualified Forestry Consultant as defined in the *Professional Foresters Act*.
- 10.2. A Tree Protection Plan shall identify and include all requirements as set out in Schedule “B” of this By-law.
- 10.3. The Municipality may request additional information on any Tree Protection Plan that is submitted with an Application.

## **11. ISSUANCE OF A STOP WORK ORDER**

- 11.1. If the Director or an Officer is satisfied that a Person has contravened any provision of this By-law, the Officer may issue a “Stop Work Order”, an “Order to Remedy” or both and such Orders shall contain:
  - (a) The municipal address and legal description of the land, this may also include the roll number associated with the land;
  - (b) Reasonable particulars of the contravention(s); and
  - (c) The period in which there must be compliance.
- 11.2. The Orders issued pursuant to Section 11.1 of this By-law may require a Person who has contravened any section of this By-law to:
  - (a) Cease all work in relation to Tree cutting, limbing or pruning;
  - (b) Submit a satisfactory revegetation plan or re-naturalization plan which is to be completed by a qualified professional in that field;
  - (c) Submit a satisfactory Tree Protection Plan which is to be completed by a Qualified Forestry Consultant;
  - (d) Submit a satisfactory sketch of the property outlining all remedial work that will be completed in order to revegetate or re-naturalize the property;
  - (e) Submit a financial assurance sufficient to cover the costs of completing any requirement of the Municipality in fulfilling the Order;
  - (f) Complete the works required in the revegetation, re-naturalization or Tree Protection Plans in the timeframe provided within the Order;
  - (g) Eliminate any hazard or potential hazard from the removal, limbing or pruning of Trees and to restore the Site to a condition of safety and/or its original environmental condition to the satisfaction of the Municipality;
  - (h) Undertake such further investigations as required by the Municipality to identify the extent of any breach of this By-law and do work to correct the contravention, as deemed appropriate by the Municipality; and

- (i) Any other requirement as deemed necessary by the Director or Officer.
- 11.3. Where an Order issued under this By-law is sent by registered mail, it shall be sent to the last known address of:
  - (a) The Applicant;
  - (b) The Owner; and
  - (c) The person or company retained to work on the trees on the land, if known.
- 11.4. Where service of an Order is made by registered mail, the Order shall be deemed to have been served on the fifth day after the Order is mailed;
- 11.5. Where a person fails to comply with an Order issued under this By-law and the Municipality enters on the lands and completes the work specified in the Order, the Municipality shall be entitled to recover the costs to complete the work from the person named in the Order by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;
- 11.6. If a person or corporation is not satisfied with the terms of an “Order to Remedy” or a “Stop Work Order” they may request an appeal to be heard by Council and shall refer to Section 15 of this By-law;
- 11.7. When an appeal is heard by Council, Council has the power to confirm, modify or rescind an “Order to Remedy” or “Stop Work Order”.

## **12. ENFORCEMENT**

- 12.1. This By-law shall be enforced by an Officer:
  - (a) An Officer may, at any reasonable time, enter and inspect any land to determine whether this By-law, an Order, or a condition of a Permit is being complied with, provided that the power of entry does not allow the Officer to enter any building;
  - (b) An Officer, in carrying out an inspection, may be accompanied by the Director, and any person necessary to assist the Officer with their enforcement activities; and
  - (c) No person shall obstruct or interfere with the Director, or an Officer, in the discharge of their duties under this By-law, and any person who obstructs the Director or an Officer is guilty of an offence pursuant to this By-law.
- 12.2. For the purposes of conducting an inspection, the Municipality may, in accordance with Section 436(2) of the *Municipal Act*:
  - (a) Require the production of documents or things relevant to the inspection;
  - (b) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (c) Require information from any person concerning a matter related to the inspection;
  - (d) Alone or in conjunction with a person possessing special or expert knowledge, make examination or take tests, samples, or photographs necessary for the purpose of the inspection.
- 12.3. Upon completion of the work pursuant to the Permit, the Owner and/or Permit holder shall contact the Municipality for an inspection;
- 12.4. This By-law shall be administered and enforced by the Director or an Officer.

## **13. PENALTIES FOR NON-COMPLIANCE WITH THE BY-LAW**

- 13.1. Every Person who contravenes any provision of this By-law, and every Director or Officer of a corporation who knowingly concurs in the contravention of this

By-law by the corporation is guilty of an offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended or replaced from time to time;

- 13.2. Every Person who contravenes the provisions of any section of this By-law, is guilty of an offence under the provisions of the *Municipal Act* and is liable on conviction to a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act*;
- 13.3. Every Director or Officer of a corporation who contravenes any provisions of the By-law is guilty of an offence under the provisions of the *Municipal Act*, and is liable on conviction to a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act*;
- 13.4. Every Person who contravenes the provisions of any section of this By-law, and every Director or Officer of a corporation who knowingly concurs in the contravention of the By-law by the corporation is guilty of an offence under the provisions of the *Municipal Act, 2001* and is also liable for a special fine in circumstances where there is an economic advantage or gain from the contravention of this By-law and the maximum amount of the special fine may exceed \$100,000;
- 13.5. Continuous Offences:
  - (a) If there is a contravention of any provision within this By-law, and the contravention has not been complied with or corrected, the contravention of the provisions shall be designated as a continuous offence for each day or part of a day that the contravention remains uncorrected;
  - (b) For the purposes of this By-law, if there is an offence respecting two or more acts or omissions, each of which separately constitutes an offence and is a contravention of the same provision of this By-law, then the offence is deemed a multiple offence;
  - (c) If an Order has been issued under this By-law, and the Order has not been complied with, the contravention of the Order shall be designated as a continuous offence for each day or part of a day that the Order is not complied with.
- 13.6. If any Person is convicted of an offence for contravening this By-law, the conditions of a Permit, or an Order issued under this By-law, the Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may, in addition to any fine imposed, make an order:
  - (a) Prohibiting the continuation or repetition of the offence;
  - (b) To rehabilitate the land, including planting replacement trees, applying accepted silvicultural treatments necessary to re-establish the trees, and governing the timing of the rehabilitation, planting or replanting, which such a period as the Court considers appropriate; and
  - (c) To provide compensation for the Injury, Destruction, or Removal of the Tree to the Municipality, in accordance with Section 15 of this By-law.
- 13.7. Any Person who contravenes any provision of this By-law or an Order is guilty of an offence and is liable:
  - (a) On a first conviction, to a fine of not more than \$50,000 or \$1,000 per tree with a DBH over 15cm, whichever is greater; and
  - (b) On any subsequent conviction, a fine of not more than \$100,000 or \$2,500 per tree with a DBH over 15cm, whichever is greater.

#### **14. COMPENSATION**

14.1. The Director shall calculate the compensation for the Injury, Destruction, or Removal of a Tree required as a condition of a Permit, or required as a condition of an Order issued under this By-law as follows:

- (a) The value of any Tree that is injured or destroyed shall be determined using the International Society of Arboriculture Trunk Formula Method;
- (b) The value of the Tree Injured, Destroyed, or Removed, as calculated pursuant to Section 14.1 (a) shall be used to determine the number, species, and size of the replacement Tree that shall be planted by the Permit holder or the Person responsible for the injury or destruction, as the case may be. The Director shall make this determination in consultation with a Qualified Forestry Consultant and his or her decision as to the number, species, and size of replacement Tree shall be final; and
- (c) The provisions of Section 8.4 with necessary modifications, shall apply to replacement Trees planted in accordance with this section.

#### **15. APPEALS TO COUNCIL**

15.1. An Applicant for a Permit pursuant to this By-law may appeal in writing to Council by filing notice of appeal by personal service or pre-paid registered mail with the Clerk:

- (a) If the Municipality refuses to issue a Permit, within thirty (30) days after the refusal;
- (b) If the Municipality fails to make a decision on the Application, within forty-five (45) days after the Application is received by the Infrastructure and Development Department; or
- (c) If the Applicant objects to a condition in the Permit, within thirty (30) days after the issuance of the Permit.

15.2. The Council has the same powers as the Director under this By-law, and may:

- (a) Confirm the refusal to issue the Permit;
- (b) Issue a Permit, with or without conditions;
- (c) Affirm, vary, or add any conditions to the Permit; or
- (d) Confirm the issuance of a Stop Work Order.

15.3 The decision of the Council is final.

#### **16. CONFLICTS**

16.1. Nothing in this By-law shall exempt any person from complying with the requirement any By-law in force or from obtaining any license, permission, permit, authority, or approval required under any By-law or legislation.

16.2 The issuance of a Permit under this By-law does not excuse the Applicant from complying with other applicable federal, provincial and municipal By-laws.

16.3 If there is a conflict between this By-Law and a by-law passed under the *Forestry Act*, the provision that is most restrictive of the Injuring, Destruction or Removal of Trees prevails.

16.4 If there is a conflict between this By-Law and a by-law passed under the *Endangered Species Act*, the provision that is most restrictive of the Injuring, Destruction or Removal of Trees prevails.

16.5 If there is a conflict between this By-Law and a by-law passed under the *Municipal Act*, the provision that is most restrictive of Injuring, Destruction or

Removal of Trees prevails.

- 16.6 If there is a conflict between this By-Law and a by-law passed under the *Species at Risk Act*, the provision that is most restrictive of the Injuring, Destruction or Removal of Trees prevails.

#### **17. SEVERABILITY**

- 17.1. If any section or sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such section or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent there from and continue in full force and effect unless or until similarly found illegal.

#### **18. ADMINISTRATION**

- 18.1. The short title of this By-law is the “Tree Preservation By-law (Larger Parcels)”.
- 18.2. Schedules A, B and C shall form part of this By-law..
- 18.3. This By-law shall be administered and interpreted by the Director.
- 18.4. In this By-law unless the context otherwise requires, words in the singular number shall include the plural.