

REPORT TO: Community and Infrastructure Services Committee

DATE OF MEETING: April 24, 2023

SUBMITTED BY: Garrett Stevenson, Interim Director, Planning, 519-741-2200 ext. 7070
Jeffery Silcox-Childs, Director, Parks & Cemeteries, 519-741-2600 ext. 4518

PREPARED BY: Gaurang Khandelwal, Planner (Policy), 519-741-2200 ext. 7611
Adam Buitendyk, Forestry Project Manager, 519-741-2600 ext. 4218
Carrie Musselman, Sr Env. Planner, 519-741-2200 ext. 7068

WARD(S) INVOLVED: All

DATE OF REPORT: April 14, 2023

REPORT NO.: DSD-2023-161

SUBJECT: Tree Conservation Processes Review

RECOMMENDATION:

That staff be directed to initiate a second phase of the Tree Conservation Processes Review that includes further evaluation of specific enhancement opportunities to existing tools and processes.

REPORT HIGHLIGHTS:

- The purpose of this report is to outline findings from a review of tree conservation processes existing in Kitchener; findings from a scan of processes from other select municipalities; and, outline specific enhancement opportunities to existing tools and processes to be explored as part of a second phase of the project.
- The key findings of this report are:
 - Kitchener currently utilizes all tools available and has mechanisms and processes in place to support tree conservation.
 - 72% of Kitchener's existing tree canopy is collectively protected or regulated through different tools.
 - 28% of Kitchener's Tree Canopy is not protected or regulated.
 - A scan of other municipalities' practices reveals that Kitchener is using similar tools - perhaps to even greater effect than elsewhere, but there are differences in how Kitchener applies these tools, such as: no proactive permitting process to protect public trees or orders to cease or correct a public tree bylaw contravention; private tree by-law considers the size of property and the size of the tree; tree replacement/compensation is based on tree value; and, staff resourcing.
 - There is opportunity for improvement of Kitchener's existing tree conservation processes, and a second phase of the project that explores updates to Kitchener's existing tree conservation processes.

- Community engagement included two presentations to the Climate Change and Environment Committee and posting of the report on City's website with the agenda in advance of the Community and Infrastructure Services Committee in April.
- There are no financial implications arising from this report. Financial implications of potential updates to Kitchener's tree conservation and management processes will be explored as part of Phase 2.
- This report supports Environmental Leadership.

BACKGROUND:

On January 10, 2022 staff presented report [INS-2022-002 Tree Canopy Target for Kitchener](#) to Council recommending approval of a tree canopy target of 30 percent for each ward by 2050 and an overall City-wide tree canopy target of 33 percent by 2070.

Council approved staff's recommendation and further directed staff to initiate a review of existing tree conservation processes in the City with an intention to extend and strengthen tree conservation measures, including:

- a review of the existing bylaws and processes, including the [Kitchener Tree Bylaw](#) and the [Kitchener Tree Conservation Bylaw](#);
- a review of requirements for tree planting contained within the [Development Manual](#);
- a review of the [Tree Management Policy](#) and any relevant policies as required; and,
- a jurisdictional scan of other municipal tree conservation processes, policies and bylaws.

Staff has undertaken a review of the tree conservation processes in Kitchener and other select municipalities. On February 16, 2023 and March 23, 2023 staff presented information from the tree conservation processes review to Kitchener's Climate Change and Environment Committee (CCEC) with an opportunity for CCEC to review the findings and provide feedback to staff. On March 23, 2023 CCEC passed the following resolution:

"That the Climate Change and Environment Committee support staff taking a report to the April 24th Committee of Council outlining existing tree conservation processes that conserve, manage and/or regulate public and private trees in Kitchener as well as in other relevant municipalities; and,

That the Climate Change and Environment Committee support initiating a second phase of the Tree Conservation Processes Review that includes consideration of specific enhancement opportunities to existing tools and processes."

This report presents key findings from the Tree Conservation Processes Review Discussion Paper (Attachment A) and specific enhancement opportunities to Kitchener's current tree conservation tools and processes that can be further evaluated through initiating a second phase of the project.

REPORT:

Tree Conservation Processes Review Discussion Paper:

The Tree Conservation Processes Review Discussion Paper (Attachment A) outlines the current approach to tree conservation and management in Kitchener, and the findings from a scan of processes and tools from select municipalities.

Key highlights of the Discussion Paper are:

Kitchener's tree canopy

- Kitchener's existing tree canopy is approximately 3,615 hectares or 27.12% of its land base.
- 72% of Kitchener's existing tree canopy is collectively protected or regulated through one or more of the following:
 - the Natural Heritage Conservation land use designation in the Official Plan,
 - the Natural Conservation (NHC-1) zone in Zoning By-law 2019-051,
 - the Region of Waterloo's Woodland Conservation By-law (woodlands 1 hectare in size or greater),
 - the Kitchener Tree By-law (trees on City property),
 - the Kitchener Tree Conservation By-law (trees on private properties 1 acre in size or greater).
- 28% of Kitchener's Tree Canopy is not protected or regulated.

Current approach to tree conservation in Kitchener

- Kitchener uses all tools available for tree conservation such as the [Kitchener Tree Bylaw](#) (public trees), the [Kitchener Tree Conservation Bylaw](#) (private trees), [Tree Management Policy](#) (development applications), and the [Development Manual](#) (requirements for tree planting).
- These tools have worked well for Kitchener in the past, regulating trees and providing opportunities for tree conservation through development review processes.

Learning's from other jurisdictions when compared to Kitchener

- A scan of other municipalities' practices suggest that Kitchener is using similar tools and approaches - perhaps to even greater effect than elsewhere.
- Public Property
 - Kitchener's Tree By-law (public trees) does not have a permitting process in place to proactively notify staff when work near a tree could potentially impact a tree (roots, branches and/or trunk), while some municipalities do.
 - Kitchener's Tree By-law (public trees) does not allow for conditions to be applied when work is occurring near a tree, or the collection of securities to ensure tree protection and monitoring measures are implemented
 - Kitchener's Tree By-law (public trees) does not enable making orders to cease or correct contravention of any provision of the by-law.
- Private Property
 - The application of private tree by-laws differs from municipality to municipality and is largely based on the municipality's objectives and resources available.
 - Most municipalities apply their private tree by-laws based on only size of the tree, irrespective of size of the property. Kitchener uses a combination of size

- of tree (tree equal to or greater than 10 cm diameter at breast height) and size of the property (property equal to or larger than 1 acre).
- Different ways that private tree by-laws apply does not necessarily mean that all trees are protected/regulated.
- Tree replacement/compensation in Kitchener is based on the value of the tree to be removed. Some municipalities have specified tree replacement ratios based on the size of the tree, while others have used different approaches for determining a tree's monetary value and replacement costs and the overall compensation value.
- Kitchener does not outline a process to appeal tree permit applications, while some municipalities do.

Additional learnings

- The extent and success of tree regulation on public and private properties is closely linked to staff resources available to implement these regulations.
- Education of stakeholders and clear communication around tree conservation and management processes is key for successful tree conservation.
- There are advantages of forestry staff, being able to directly enforce by-laws, including the ability to issue orders and penalties as they are the subject area experts regarding tree physiology and tree growth.
- Conviction of a bylaw offence through the court system is a long and difficult process and costs to pursue a conviction may be higher than the fine amount received even if there is a successful conviction.
- There are benefits of having tree care professionals working on trees to be licensed with the municipality, such as:
 - Ensuring tree care professionals are aware of applicable by-laws and their obligations to adhere to them,
 - Improving communication between industry professionals and city staff, and
 - Protecting private property owners from retaining unqualified companies.
- Adopting an iterative process which monitors tree canopy changes in relation to tree permits and development applications (i.e., removals) aids in making more informed updates to processes.
- Having a notification procedure for planned tree removals not subject to a bylaw that documents where, why, and what size and type of tree(s) is being removed can allow for targeted bylaw or process updates to better conserve existing tree canopy.
- Establishing set bylaw review intervals allows for new best practices to be adopted and incremental changes to bylaws and processes to be adapted to changing needs for tree conservation
- Incentive programs providing financial support or tax credits to property owners for maintaining and retaining trees on private properties can help conserve existing tree canopy.
- There are concerns around a lack of process and repercussion against property owners who remove trees before submitting a formal development application.

Direction for Phase 2:

The review of tree conservation processes in Kitchener and other municipalities (Phase 1) has highlighted the opportunity to improve and update Kitchener's tree conservation tools

and the underlying mechanisms and processes (potential directions for Phase 2 of this project).

Based on learnings from other municipalities, staff has identified the following specific enhancement opportunities to the current tools and processes that can be further evaluated in phase 2:

- Targeted refresher and education of the various tree conservation tools
- Updating tree protection standards to align with current best practices
- Enabling orders to be issued to cease or correct a public tree by-law contravention
- Updating fines, costs recoverable for tree damage and costs recoverable for tree removal
- Setting administrative penalties for injury or removal of city trees
- Setting fines for those who do not adhere to the By-law (rather than the more onerous process of charges/court)
- Developing and implementing a permitting system to protect city trees and soil habitat zones during construction/development including but not limited to:
 - Fees collected for permit application review
 - Provision for arborist reports and monitoring when work occurs within a Tree Protection Zone (TPZ)
 - Collection of securities for public trees to be retained based on appraised value, where work occurs within a TPZ
 - Protection of soil habitat zones for future tree canopy, where no trees existing currently
 - Compensation requirements for loss of soil habitat zones for future tree canopy
- Repercussions for pre-emptively removing tree canopy before submitting a formal development application
- Licensing of tree care professionals working within the municipality
- Introducing incentive programs to support maintenance and retention of trees on private property
- Creating a notification procedure for planned tree removals from private properties that are currently not subject to the Tree Conservation Bylaw
- Establishing set canopy targets that must be achieved within all new development properties
- More formalized tree replacement/compensation process in place for both the Tree Management Policy (Planning Act applications) and the Tree Conservation Bylaw
- Clarity on when the Tree Management Policy applies (or does not) regarding Committee of Adjustment applications
- Establishing rules/standards through updates to the Tree Conservation By-law for as-of-right intensification development
- Consideration of the application or 'trigger' for the Tree Conservation By-law to target the 28% of the City's tree canopy that is currently unprotected or unregulated from tree removals

Staff continues to support a measured approach to balance staff and budget resources with adequate level of tree protection. Phase 2 of the Tree Conservation Processes Review will evaluate the specific enhancement opportunities through assessing staff resources needed

to achieve the necessary level of improvement, budget implications, the anticipated improvement in level of tree protection, turnaround time for implementation and other possible advantages/disadvantages.

STRATEGIC PLAN ALIGNMENT:

This report supports Environmental Leadership.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget. Potential updates to Kitchener’s tree conservation and management processes may impact operating budget and will be explored as part of Phase 2.

COMMUNITY ENGAGEMENT:

INFORM – This report will be posted to the City’s website with the agenda in advance of the CISC meeting.

CONSULT – The findings of the review of tree conservation processes were presented to the Climate Change and Environment Committee and feedback was received on potential direction for phase 2 of the project.

PREVIOUS REPORTS/AUTHORITIES:

- [INS-2022-002 Tree Canopy Target for Kitchener](#)

REVIEWED BY: Natalie Goss, Manager, Policy and Research
Joshua Shea, Manager, Forestry & Natural Areas Management

APPROVED BY: Justin Readman, General Manager, Development Services
Denise McGoldrick, General Manager, Infrastructure Services

ATTACHMENTS: Attachment A – Tree Conservation Processes Review – Discussion Paper