

Township of
Langley



Est. 1873

REPORT TO MAYOR AND COUNCIL

PRESENTED: OCTOBER 26, 2020 - REGULAR MEETING
FROM: ENGINEERING DIVISION
SUBJECT: TREE PROTECTION BYLAW (ONE YEAR REVIEW)

REPORT: 20-133
FILE: 6300-01

RECOMMENDATIONS:

That Council receive this one-year review update of the Tree Protection Bylaw and refer it to the Tree Protection Advisory Committee for consideration of next steps, including amendments to the Tree Protection Bylaw and the Township of Langley Fees and Charges Bylaw, for Council's consideration of approval; and

That Council refer two service enhancement requests related to the administration of the Tree Protection Bylaw to the 2021 budget deliberation process.

EXECUTIVE SUMMARY:

Council adopted Tree Protection Bylaw 2019 No. 5478 (the Bylaw) on July 8, 2019 and directed staff to provide an update after one year of full implementation.

Overall awareness of the Bylaw appears to have been commonly understood and accepted by the public; with staff interactions with property owners, contractors and stakeholders generally well-received. Extensive information is readily available on the Township website. While the Bylaw is working well, based on staff learnings, observations and experience gained over the last 12 months, several amendments are recommended, as outlined in the report, which are proposed to be referred to the newly established Tree Protection Advisory Committee (TPAC) for further discussion and ratification, prior to Council approval.

As anticipated, the volume of work, related to the processing of applications and administration of the Bylaw, has increased significantly since adoption of the Bylaw last year. Staff have monitored and tracked the work arising from implementation of the Bylaw and confirm that the increase in the volume of work is equivalent to two (2) full-time employees, one related to the technical and the other to the administrative aspects of the Bylaw, in Parks Operations and Engineering Business Support respectively. This increase in the volume of work, within the parameters of current staffing resources, has resulted in a reduction in the level of service being provided, with respect to application processing and follow up inspections, as outlined in the report.

An additional arborist and support clerk are required to administer the Bylaw, both in its current form as well as with the proposed amendments incorporated, in order to maintain current service levels for existing programs. Staff will include two service enhancement requests for Council's consideration of approval as part of the 2021 budget, unless otherwise directed by Council.

PURPOSE:

This report is provided in response to Council direction on July 8, 2019 to provide Council an update on the effectiveness and implications of the Tree Protection Bylaw after an approximately 12-month implementation/administration period.

BACKGROUND/HISTORY:

At the July 8, 2019 Regular Evening Meeting, Council adopted Tree Protection Bylaw 2019 No. 5478, the first of its kind for the Township of Langley, following best practices of other municipalities. At that time, it was noted that staff would provide an update on the effectiveness and implications of the tree protection Bylaw after a 12-month trial period with respect to implementation and administration effectiveness and challenges.

As outlined in the May 27, 2019 Council report, additional resources were anticipated to be required for the administration of the bylaw including clerical support, arborists, and possible bylaw officers for enforcement. The report further stated that the additional workload generated by the bylaw would be borne by existing staff resources for the remainder of 2019, with implications monitored for additional staffing needs identified and presented to Council as part of the 2020 budget process.

At the June 15, 2020 Regular Afternoon Meeting, the Community Development Division's Report to Council No. 20-78 on the Tree Protection Advisory Committee and Community Forest Management Strategy, reconfirmed that staff would provide a 12-month update on the effectiveness and implications of the Tree Protection Bylaw.

DISCUSSION/ANALYSIS:

Since implementation of the Bylaw, the number of tree cutting applications has seen a steady increase. Table 1 below outlines the various permit activities and statistics up to the first week of September, 2020.

Table 1. Summary of Tree Permit Activity

Tree Permit Activity	Total
Tree cutting applications	494
Permits issued	370
Fees collected	\$22,300*
Applications denied	2**
Trees cut	801
Hazard trees removed	186
Cut or remove one (1) tree per parcel during a 24 month period	329
Replacement trees required	286
Replacement trees planted	3
Bylaw Offence Notices issued	108
Bylaw Offence Notices rescinded	5
Bylaw Offence Notice Penalties collected	\$15,500
Bylaw Offence Notices resulting in adjudication	1
Bylaw Offence Notices upheld by adjudication	1

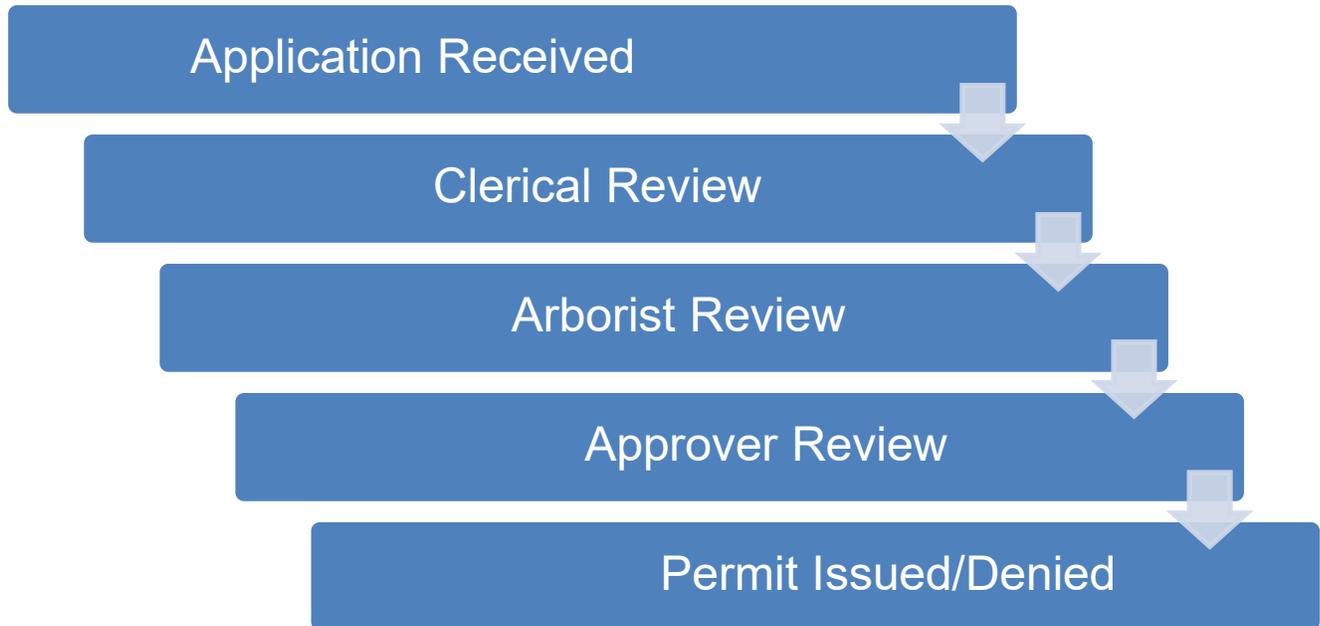
* Does not include hazardous trees, for which no fees are applicable

** Two tree cutting applications were denied because they proposed removal of Township trees.

Permit Application Process

A tree cutting permit is valid for one year from the date it is issued. Filling out a tree cutting application and having it reviewed and approved is a straightforward process. Once approved, a tree cutting permit must be visibly displayed for 72 hours prior to any tree cutting. Figure 1 below illustrates the tree cutting application procedure.

Figure 1. Tree Cutting Application Procedure



After a permit is issued, a follow-up inspection by the Arborist is required to ensure that the conditions of the permit have been followed. If replacement trees are required as a condition of the permit, it is the responsibility of the permit holder to contact the Township when the trees are planted. Security deposits are currently not a requirement of the Bylaw. Without a security deposit, there is no mechanism to ensure permit holders plant the required replacement tree, other ongoing follow up by Township staff.

Tree Cutting Infractions

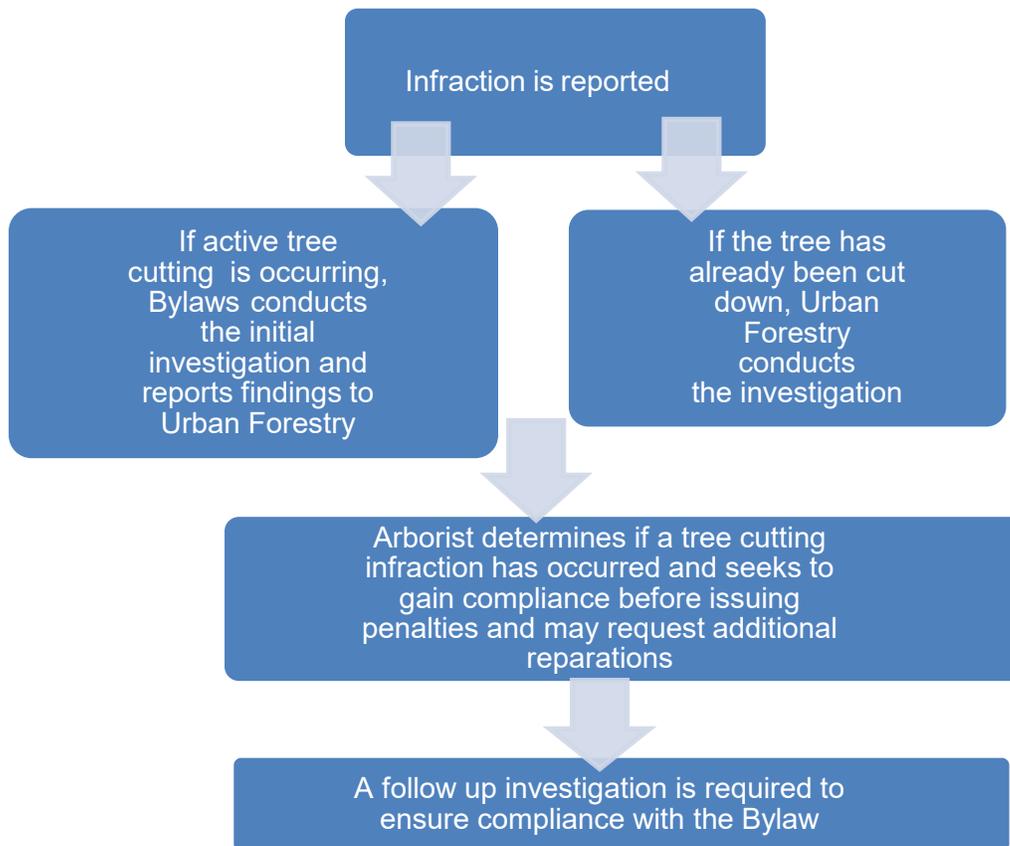
Complaints of tree cutting infractions are generally reported by the public through Service Requests.

When an active tree cutting infraction is reported, Bylaws will investigate and report their findings to the Arborist in the Urban Forestry section of Parks Operations. If the tree has already been cut down, the Arborist will continue the investigation to determine if there is a tree cutting infraction and issue penalties or request reparations if required. A follow up investigation is required to ensure compliance with the Bylaw.

Consistent with Township practices, the primary objective of enforcement is to obtain voluntary compliance from property owners first and to provide education about the Bylaw. Compliance includes obtaining a valid tree cutting permit and providing any reparations, if necessary. If compliance and education are not effective, a stop work order with or without a ticket is issued pursuant to Bylaw Notice Enforcement Bylaw 2008 No. 4703, as amended.

Figure 2 below illustrates the tree cutting infraction procedure.

Figure 2. Tree Cutting Infractions Investigations Procedure



Migratory Birds Convention Act

From March 14 to August 15, the annual nesting birds season is in effect, with exception to raptors and other critical species where the nesting birds legislation is in effect year-round, province-wide. Therefore, it is the applicant's responsibility to ensure that tree removals are compliant with the federal *Migratory Birds Convention Act*, 1994 and the provincial *Wildlife Act* with respect to bird nests. Both of these acts prohibit the disturbance or destruction of active nests and eggs.

Overview: Effectiveness of the Tree Protection Bylaw

A review on the effectiveness and implications of the Tree Protection Bylaw involved input from various Township departments.

a. Effectiveness

Since the implementation of the Bylaw, overall awareness seems to be widely known and accepted in the Township. Property owner interactions with staff have been well-received for the most part.

The Township website provides extensive tree cutting permit application information, Frequently Asked Questions (FAQ's), and tree and wildlife protection information relating to nesting birds legislation and species at risk.

Prior to the COVID-19 pandemic, tree cutting application paper forms were readily available from the Civic Facility and the Operations Centre or downloadable from the Township website. Applications are now downloaded and submitted by email or dropped off in person at the drop boxes at the Civic Facility or Operations Centre.

Multiple departments involved with administration of the Bylaw, specifically Parks Operations, Bylaws, Permits, License and Inspections, Green Infrastructure Services, and Engineering Business Support, are working collaboratively.

The Prospero software tracking system for tree cutting permit applications is working well.

b. Implications

Implementing the Bylaw had some challenges. The initial learning curve had been steep with respect to:

- implementing and interpreting a new Township wide Bylaw and applying it to real situations;
- existing Arborists becoming proficient in using software to track tree cutting permits; and
- collaborating on applications with possible overlapping of jurisdictions or processes, such as tree removals required for driveway applications, building permit applications, or for trees identified to be retained as part of the development process.

After a year of implementing the Bylaw, many of the initial challenges have been resolved. However, staffing levels continue to be a challenge for clerical support and arborists responding to inquiries, reviewing applications, approving permits, and completing follow-up inspections.

From a Parks Operations perspective, the increased workload has had an impact on existing maintenance programs, as time spent by existing staff on administering the bylaw is taking time and funding away from other core programs, with the following observed impacts:

- Reduction in Urban Street Tree program planning, inspection, and pruning;
- Delays in response times to complaints/safety issues;
- Delays with providing arboricultural assistance to other departments;
- Reduced availability to supervise and inspect the work of contractors; and
- Reduction in proactive hazard tree identification in parks, conservation areas and trails.

Urban Forestry staff spend an average of three to four hours to review and process each tree removal application. Based on the approximately 400 applications at the 1-year mark of the bylaw, this is an estimated 1200 to 1600 hours. In addition, site inspections will be required to confirm that the 280+ required replacement trees are planted pursuant to the permit conditions. Staff estimate it will take an average of one to two hours per location to complete the site inspections.

Engineering Business Support staff spend an average of 6 hours per day responding to inquiries and processing tree removal applications.

Another issue revolves around nesting birds surveys and the requirement to display tree cutting permits for 72 hours prior to cutting. The nesting birds season is typically from March 15 to August 15. As provincially mandated, nesting birds surveys are sometimes required as a condition for permit approval. However, nesting birds surveys are only valid for 72 hours from the time the survey is completed. By requiring tree cutting permits to be displayed for 72

hours prior to tree cutting, the nesting birds survey will have expired. This has placed some permit holders in a difficult situation. Most applicants, however, elect to defer tree cutting until after the nesting birds window has passed to avoid the expense of nesting birds surveys.

While the Bylaw has likely slowed the progression of urban tree canopy loss, it will not be eliminated altogether. To date, the Township has experienced a net loss of 329 trees as a result of the cut or remove one (1) tree per parcel during a 24 month period.

Although 186 dead/dying or hazardous trees were counted in the overall number of trees cut, they do not contribute to the urban tree canopy and are therefore considered a net zero loss when they are removed.

Based on initial projections, the Township will continue to experience a net loss of trees annually due primarily to the provision of “one (1) tree to be cut or removed in a 24-month period without having to replant a replacement tree”. The exact numbers are difficult to quantify, and will vary year-to-year depending on the number of tree cutting permits providing the exemption versus tree cutting permits requiring replacement trees. In practical terms, a possible solution to curb the net loss of trees is to remove or revise the “one (1) tree to be cut or removed in a 24-month period without having to replant a replacement tree” provision in the Bylaw.

c. Proposed Revisions

The work plan for the Tree Protection Advisory Committee includes a review of the current Tree Protection Bylaw. To assist, staff are proposing bylaw amendments, as outlined in Table 2 below, which reflects learnings and observations with the Bylaw since July 8, 2019.

Table 2. Summary of Proposed Tree Protection Bylaw Amendments

Bylaw Sector	Proposed changes	Rationale
2	Add definition “Arborist Report” means a technical report prepared by an arborist that follows the International Society of Arboriculture’s (ISA) Guide for Report Writing for Consulting Arborists	To provide clarity and a standard for arborist reports.
2	Replace existing definition of “hedge” means a row of three or more <i>trees</i> that through growth and <i>pruning</i> forms a continuous dense screen of vegetation from ground level that provides privacy, fencing, wind breaking, and/or boundary definition with “hedge” means a row of three or more <i>trees</i> that are pruned and maintained for the purpose of forming a continuous dense screen for privacy, fencing, and/or boundary definition that is no more than 10 m in height and spaced less than 2 m apart.	To provide clarity to the existing definition
2	Add definition “Stream” includes any of the following that provides fish habitat: a. a watercourse, whether it usually contains water or not;	To provide clarity that trees residing in the boundary of a stream requires review by Development Planning.

	<ul style="list-style-type: none"> b. a pond, lake, river, creek or brook; c. a ditch, spring or wetland that is connected by surface flow to something referred to in paragraph (a) or (b). 	
6.2	Remove the clause “A permit is required but the permit fee and arborist report are not required to cut or remove one (1) tree per parcel during a 24-month period from the date of the last permit issued.”	To reduce the loss of urban tree canopy.
7.3	Replace “72 hours” with “48 hours”	Amended to allow trees to be cut within the 72 hour nesting birds survey window.
Schedule A	Add wording that “Hedging shrubs including, but not limited to, cedars (<i>Thuja occidentalis</i>), laurel (<i>Prunus</i> spp.) or yews (<i>Taxus</i> spp.) will not be acceptable as replacement trees. Replacement trees are not to be planted for hedging purposes.	Provides clarification for trees that are acceptable tree replacements.
Schedule A	Propose adding a security deposit for replacement trees	To provide a basis to ensure that replacement trees are planted either by the property owner or the Township. Amount of Security Deposit to be determined by the Tree Protection Advisory Committee.

Additional revisions are proposed to Township of Langley Fees and Charges Bylaw 2007 No. 4616, as amended, as shown in Table 3 below, to support offsetting the costs of administering the Bylaw and to reduce the loss of urban tree canopy.

Table 3. Summary of Proposed Fees and Charges Bylaw Amendments

Schedule 15.	Add: Non-Refundable Application Fee to cut or remove tree(s) \$50.00 (does not apply to a hazard tree)	To offset the cost of staff time to administer processing an application.
	Remove: Permit to cut or remove one (1) tree per parcel during a 24 month period (No Fee)	To offset the cost of staff time to administer the bylaw and to reduce the loss of urban tree canopy.

Financial Implications:

An additional FTE arborist will be required to administer, inspect and enforce the Bylaw, requiring additional funding in the amount of \$102,000 for 2021, which could be reduced by offsetting the budget utilizing the existing estimated annual permit fee revenue of \$20,000.

Additional resources are also required in Engineering Business Support to provide adequate resources to respond to inquiries, and to receive and process tree removal applications. An additional FTE Support Clerk will require funding in the amount of \$63,000 for 2021.

If Council were to approve revisions to the Fees and Charges Bylaw, additional potential revenue of approximately \$50,000 could be realized to assist in offsetting these positions through introduction of a non-refundable application fee for each non-hazard tree removal application, and removal of the 'one free tree removal in a 24 month period' exemption.

Respectfully submitted,

Tab Buckner
MANAGER, PARKS OPERATIONS
for
ENGINEERING DIVISION

This report has been prepared in consultation with the following listed departments.

CONCURRENCES	
Division / Department	Name
FINANCE DIVISION	Sandra Ruff
COMMUNITY DEVELOPMENT DIVISION	Jason Chu