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TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	TREE PROTECTION BY-LAW MEETING ON AUGUST 22, 2016

RECOMMENDATIONS

That on the recommendation of the Managing Director, Planning and City Planner the following actions **BE TAKEN** regarding the Tree Protection By-law :

- a) The proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on August 30, 2016 to repeal By-law C.P.1466-249 being a by-law to prohibit and regulate the destruction or injuring of trees in the City of London, and replace it with a new Tree Protection By-law;
- b) That the Civic Administration **BE DIRECTED** to remove the relevant fees relating to the current Tree Conservation By-law in the annual update of the Various Fees and Charges By-law and to add the fees identified in "Schedule A – Permit Fees" and "Schedule B – Schedule of Cash Contribution in Lieu of Off-site Tree Planting" in the new Tree Protection By-law attached in Appendix "A";
- c) The proposed by-law attached hereto as Appendix "B" **BE INTRODUCED** at the Municipal Council meeting on August 30, 2016 to designate Inspectors and Officers for the purpose of enforcing the Tree Protection By-law;
- d) Civic Administration **BE DIRECTED** to submit the approved set fines, as identified in Schedule E of the new Tree Protection By-law attached as Appendix "A", to the Province for approval;
- e) Civic Administration **BE DIRECTED** to direct fees, fines and tree planting funds collected under the Tree Protection By-law into appropriate accounts established specifically for tree planting and urban forest management; and,
- f) Civic Administration **BE DIRECTED** to monitor the implementation of the Tree Protection By-law and provide a status report and any recommended amendments to the By-law within a period of one year.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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August 26, 2014 Report to Planning and Environment Committee regarding Urban Forest Strategy and revised tree canopy cover targets. At the direction of Council, targets were increased by Council resolution to 28% by 2035 and 34% by 2065 recognizing the need for increased tree protection.

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June 3, 2014	Report to Planning and Environment Committee recommending approval of the Urban Forest Strategy and Implementation Plan that included tree canopy targets of 25% by 2035 and 32% by 2065.
May 7, 2012	Report to Planning and Environment Committee on the results of the Urban Forest Effects analysis identifying the structure, function and value of London’s urban forest recognizing that approximately three quarters of all trees are on private property.
February 6, 2012	Report to Planning & Environment Committee from the Trees and Forests Advisory Committee regarding a possible heritage tree by-law.
January 16, 2012	Report to Planning & Environment Committee from the London Advisory Committee on Heritage regarding a possible heritage tree by-law.
May 6, 2009	Planning Committee report relating to the process for issuing tree cutting permits under the Tree Conservation By-law and permits issued at 660 Sunningdale Road East.
February 11, 2008	Planning Committee report on potential updates to by-laws for enhanced conservation of trees. This provided an outline of requested revisions and issues to be addressed, and a suggested timeline.
October 15, 2007	Planning Committee report introducing amendments to the Tree Conservation By-law, it being noted that one of the methods whereby enforcement of the By-law will take place will be through increasing the enforcement capabilities of the City by including existing Bylaw Enforcement Officers for this purpose, and not by adding additional staff; Civic Administration was requested to review the potential for additional tree conservation through the Site Plan Control By-law and the potential for a city-wide tree by-law to conserve trees on private property.

BACKGROUND

Council Resolutions

The following resolutions illustrate that Municipal Council has raised concerns regarding the current Tree Conservation By-law on a number of occasions. In some cases, Council has passed along concerns raised by its advisory committees. In doing so, Council has expressed, at different times, a dissatisfaction with the current Tree Conservation By-law and the need to improve the degree to which it provides protection for trees throughout the City.

2015	Council directed staff to bring forward changes to the Tree Conservation By-law as soon as possible.
2014	Council resolved that the June 14 Urban Forest Strategy and Implementation Plan, for the long term sustainability of London’s urban forest, be adopted and amended to incorporate and achieve tree canopy targets of 28% by 2035 and 34% by 2065 subject to annual budget approval. Council resolved that Civic Administration be directed to revise the Tree Conservation By-law to improve the protection of tree on private property; it being noted that this will require a significant increase in staff and

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administration levels to implement and enforce; it being further noted that an estimated 75% of the urban forest is on private property and higher canopy targets cannot be achieved without maximum protection.

Council resolved that the Urban Forest Strategy be referred back to Civic Administration to report back with respect to increasing the 20 and 50 year tree canopy targets (from 25% and 28% respectively).

Council resolved that Civic Administration review and report back on the communication from Councillor D. Brown to the Planning and Environment Committee regarding protection of tree on private property.

2013 Council resolved that Civic Administration to review unevaluated vegetation patches shown on Schedule “B-1” of the official plan and designate them as “Open Space” or “Environmental Review”, where appropriate, noting that this would make these lands subject to the city’s Tree Conservation By-law.

2011 Council resolved that the following items be incorporated into a future amendment of the Tree Conservation By-law:

(a) i. The requirement for a sign to be placed at the site where a tree cutting permit has been applied for that would provide contact information for residents to call to receive additional information regarding the permit;

ii. The requirement for a sign to be placed at the site where a tree cutting permit has been granted, indicating that permission has been granted and the boundaries of the areas where tree cutting will be permitted;

iii. The requirement for a sign to be placed, for no less than 10 days, at woodlots where a tree cutting permit has been granted, indicating that permission has been granted and the boundaries of the area where tree cutting will be permitted ; and,

(b) Information regarding the Tree Conservation By-law and contact information for residents be placed in a more prominent location on the City’s website.

2010 Council resolved that the Civic Administration:

- review removing the exemption for firewood and considering of other options and penalties.
- review policies relating to plantations in order to strengthen the protection of these areas.

2009 Council resolved that the Civic Administration be requested to:

- Review steps that can be taken to assist with the protection of trees on properties not designated environmental protection but that have some significance.
- Review the process for granting zone changes to Environmental Review lands, as well as the process for issuing Tree Cutting Permits, to ensure that all opportunities to require and achieve tree preservation are achieved.

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2008 Council resolved that:

An interim report be provided to the Planning Committee prior to September 2008 by Planning staff, in consultation with the Urban Forester, with respect to tree preservation on private property to determine what actions can be taken and what criteria can be developed for a by-law in the immediate future to protect rare, threatened or endangered species on private property; it being noted the report should include a review of existing by-laws in place in other municipalities.

1996 Council enacts London's first Tree Conservation By-law.

Strategic Documents Supporting an Improved Tree Protection By-law

Municipal Council's Strategic Plan – 2015-2019

- Shortly after being elected, Municipal Council prepared a Strategic Plan for the period 2015-2019.
- The following sections of the Strategic Plan relate directly to the preparation of an improved Tree Protection By-law:
 - Healthy, Safe and Accessible City
 - (5G) – Improve London's neighbourhoods through proactive enforcement of updated by-laws.
 - Strong and Healthy Environment
 - (3C) – Plant more trees and better protect them from deforestation, invasive species and other threats.
 - Work together to protect all aspects of our natural environment, including woodlands, wetlands, river and watercourse and air quality as our city grows.

UFORE Study

- Fieldwork for the assessment and analysis of London's urban forest by the Urban Forest Effects Model (UFORE) was completed in 2008.
- Data was collected from 383 randomized and stratified plots for a statistically reliable assessment of the urban forest structure, function and value.
- Within London's Urban Growth Boundary the 2008 urban forest provides 24.7% leaf cover, has nearly 4 million healthy trees that would cost more than \$1.5 billion to replace and annually delivers about \$17 million worth of ecosystem goods and services (air contaminant removal, greenhouse gas reduction, energy conservation).
- Recommendations included: to develop an urban forest strategy; to set leaf cover goals; to secure plantable space, and to improve tree planting efforts by both public and private sectors.

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Urban Forest Strategy, 2014

- The Urban Forest Strategy is based on a vision of London as “The Forest City” – A healthy, diverse and extensive urban forest for today and the future.
- Completed in 2014, the Urban Forest Strategy established a mission based on three fundamental pillars:
 1. Plant more
 2. Protect more
 3. Maintain better

- The Plan identifies that the London community engaged through the process of developing the Urban Forest Strategy support a tree protection by-law. The strategy notes:

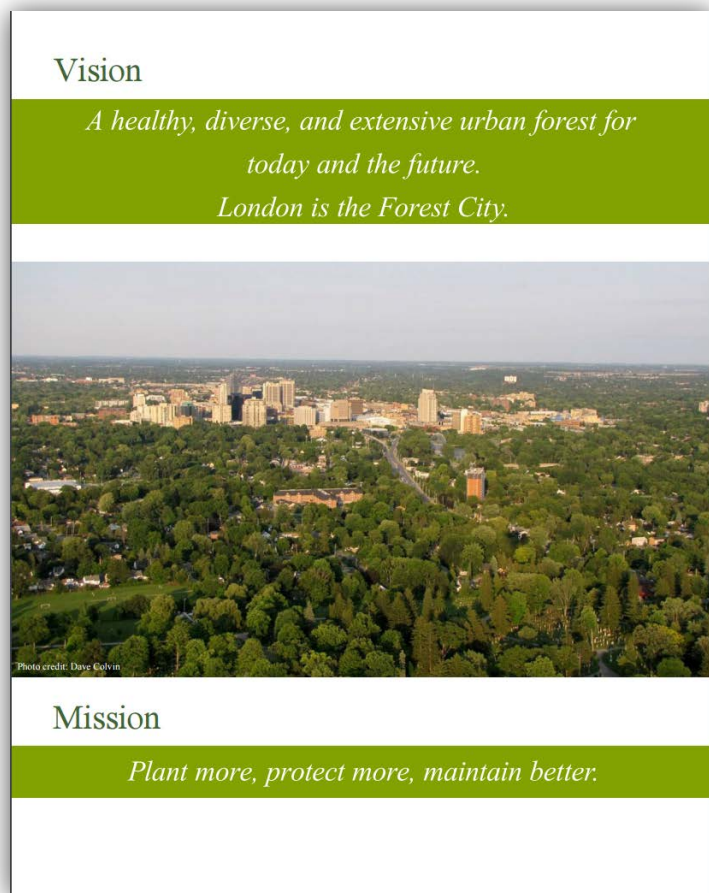
“Furthermore, the results of the public survey show support for a tree protection by-law on private property – specifically to protect rare or unusual specimens, to protect “heritage trees”, or to protect trees of a certain size.”

- The Urban Forest Strategy went on to identify a number of ways that the City is to “protect more” trees in its desire for a greater tree canopy. The following are a sample of those sections of the strategy that may relate to a tree protection by-law:

- Enforce the penalties for cutting trees in woodlands without a permit as required by the Tree Conservation By-law.
- Increase staff and resources for enforcement of tree protection related by-laws
- Develop and enforce a Heritage Tree By-law that protects trees identified as heritage trees due to their size, age, rarity, cultural value or other significant feature.
- Consider new policies and review/enhance existing policies around tree retention.

- The Urban Forest Strategy established a target tree canopy cover target of 28% by 2035 and a target of 34% tree canopy cover. These are ambitious targets.
- The Urban Forest Strategy emphasized that tree planting, alone, will not allow for these targets to be achieved. Tree protection must also be a primary prong of our urban forest strategy now and in the future.

- During the public consultation phase of the Urban Forest Strategy, 1,758 individuals completed the online survey with 86% in support of a tree protection by-law for trees on private property.



86% support a tree protection by-law for trees on private property (public survey).

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The London Plan, 2016

- The London Plan was approved by Council in June of 2016. It is now with the Ministry of Municipal Affairs under review by the province.
- The London Plan built upon the foundation of the Urban Forest Strategy to establish a complete City Building chapter of policies relating to London’s Urban Forest.
- Below are some key policies that relate to an improved Tree Protection By-law.
 - One of the Plan’s eight key directions is to “become one of the greenest cities in Canada”. Under this key direction is the statement “Strengthen our urban forest by monitoring its condition, planting more, protecting more, and better maintaining trees and woodlands.”
 - “The Urban Forest is integral to London’s identity and overall prosperity. As the Urban Forest is strongly influenced by land use decisions and development patterns, the planning, protection, and enhancement of London’s Urban Forest is important for building an attractive, well-designed, and functional city environment.”
 - “A thriving Urban Forest, such as that which we envision in 2035, will provide residents a healthy, safe, and secure environment while preserving and enhancing environmental, aesthetic, economic, social, cultural, and recreational values.”
 - “We establish policies, by-laws, practice standards, and guidelines that clearly define what trees will be preserved and what trees may be removed, to ensure the structure and functions of the Urban Forest are not harmed.”
 - “Protect more - protect existing trees, woodland ecosystems, and other vegetation.”
 - “A tree conservation by-law for private property will be established to prohibit the destruction of trees, unless and until such time as a tree cutting permit is obtained, where required.”

EXAMPLES OF OTHER TREE BY-LAWS IN ONTARIO
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As noted above, London already has a Tree Conservation By-law that covers private lands and the proposed by-law in this report represents an update and improvement. It is useful to understand best practices in a sample of other municipalities within Ontario.

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**Table 1
Comparison of Private Tree By-law for
Sample Municipalities**

Municipality	What is Protected?	What is Not Protected (other than exemptions under Municipal Act or any other Act or Regulation)	Fees for Permits
Toronto	Trees 30cm+ diameter	Hazardous trees Pruning Emergency Work Trees in buildings, on rooftops, solariums, interior courtyard	\$100 per tree \$300 per tree if construction-related
Brantford	Species in Schedule to By-law, that are naturally occurring Lands that are pending a condominium or subdivision application Environmental Protection Area Woodlots as identified in Schedule to By-law	Orchards	Provision to add a fee at a later date by order of Council
Ottawa	Trees 10cm+ diameter that are on parcel 1ha or greater in area Distinctive Tree 50cm+	Existing multi-residence parcels >1ha, and all condominiums Pruning Hazardous trees Cemetery, golf courses Trees in buildings, on rooftops, solariums, interior courtyard Orchards, plantations	\$100 (Distinctive Tree) Permit fee for lots >1ha is included in development application fee
Kingston	Trees 15cm+ diameter Trees on lands that are designated EPA/OS (Official Plan) Tree subject of approved Tree Protection and Preservation Plan Commercial harvest >1ha without a Forest Management	Pruning Hazardous trees Causing or likely to cause structural damage Residential lots as existed at time of passing of By-law Trees within lots created by consent, subdivision	1-5 trees \$75 (renewal \$25) 6-15 trees \$150 (renewal \$50) >15 trees \$300 (renewal \$100) Review/inspect above 3 hours \$50/hr

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	<p>Plan by a Registered Professional Forester</p> <p>Distinctive Trees by species (Sch. A of By-law)</p>	<p>Trees in buildings, on rooftops, solariums, interior courtyard</p> <p>Building Permit issued, where tree is in building envelope</p> <p>Orchards</p>	
Town of Oakville (lower tier)	<p>Trees >=76cm diameter</p> <p>5th or more trees 20cm+ diameter</p>	<p>Pruning</p> <p>Emergency Work</p> <p>Trees in buildings, on rooftops, solariums, interior courtyard</p> <p>4 or fewer trees per year, between 20cm and 76cm diameter</p> <p>Building Permit issued, where tree is in building envelope</p> <p>Nurseries</p> <p>Woodlands (under Halton Region By-law)</p> <p>Issued Property Standards By-law Order</p>	<p>\$200/tree <76cm diameter (maximum \$2,500)</p> <p>\$500/tree >=76cm diameter (maximum \$2,500)</p> <p>\$200 Appeal</p>
Guelph	<p>Regulated Tree – trees of any species not less than 10cm diameter measured at 1.4m above ground, located on a lot larger than 0.2 hectares (0.5 acres)</p>	<p>More than 70% crown death, no living tissue, infected by lethal pathogen, fungus or insect, with option to require a certificate to confirm this</p> <p>Hazardous tree, with option to require a certificate to confirm this</p> <p>Emergency Work</p> <p>Certified as causing structural damage to drain, load-bearing structure or roof</p> <p>Trees on rooftops, podium, solariums, interior courtyard and likely to cause damage</p> <p>In contaminated soil subject to remediation plan</p> <p>Common buckthorn, glossy buckthorn, black alder, autumn olive, white mulberry</p> <p>Fruit trees</p> <p>Active tree nursery,</p>	<p>\$122</p> <p>Cash in lieu of replacement tree planting is taken where 3 or more trees are destroyed or injured and replacement is deemed required but cannot be achieved - \$500 per tree that was destroyed or injured</p>

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		<p>plantation, orchard</p> <p>Work of scientific and educational nature on University of Guelph lands, provided a plan has been submitted</p> <p>Institutions, golf course, commercial and industrial purposes provided a plan has been submitted and approved, subject to any required conditions imposed by the inspector</p> <p>Cemeteries owned by specified landowners</p> <p>Lands operated for a railway</p>
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The above table shows that:

- Tree by-laws are commonly applied throughout cities of various sizes in Ontario. Many more cities that have not been cited above have tree by-laws.
- Tree by-laws apply to trees on privately owned lands.
- Tree by-laws often apply to large individual trees (e.g. Toronto 30cm or more and Oakville 76cm or more).
- Tree by-laws often apply to groupings of trees as well – woodlands, open spaces, or environmental areas.
- Tree by-laws often include fees that relate to permit applications.

LONDON'S CURRENT TREE CONSERVATION BY-LAW
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Legislative Basis for a Tree By-law

- Further to Section 135 of the Municipal Act, “*subject to to subsection (4) and without limiting sections 9, 10 and 11, a local municipality may prohibit or regulate the destruction or injuring of trees. 2006, c. 32, Sched. A, s. 71 (1).*” [emphasis added].
- The Municipal Act goes on to identify certain exemptions where such by-laws would not apply (e.g. actions taken by a municipality).
- The Municipal Act continues to allow municipalities the authority to establish fines and make orders and require remedial action in enforcing such by-laws.

The Municipal Act allows municipalities to establish tree by-laws that regulate the injury and destruction of trees.

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London Currently Has a Tree Conservation By-law

- London has had a Tree Conservation By-law in place since 1996.
- London's current Tree Conservation By-law updated the original by-law to improve administrative and enforcement clauses in 2007.
- The current by-law applies to privately owned lands that are within an Environmental Protection Area – generally large woodland areas.

London currently has a Tree Conservation By-law that regulates the cutting of trees on private property.

- The current Tree Conservation By-law defines an Environmental Protection Area as: *“Environmental Protection Area” means those areas designated as Open Space and/or Environmental Review on Map Schedule “A” of the Official Plan for the City of London Planning Area adopted by the Municipal Council and amended from time to time, and/or those lands that are zoned as Environmental Review and/or OS5 under any of the City’s zoning by-laws passed under section 34 of the Planning Act, R.S.O. 1990, c. P.13, as amended”.*
- *“No person shall injure, destroy, or remove, or cause or permit the injury, destruction or removal of a tree or trees located on an Environmental Protection Area without first obtaining a Permit under this by-law”.*

The fees that currently apply in London are as follows:

PERMIT FEE:

Number of Trees to be Injured/Destroyed	Fee
Less than 10 Trees	\$50
10 to 100 Trees	\$100
More than 100 Trees	\$250
If all trees to be injured/destroyed are severely diseased, severely damaged or severely insect-infested	\$0
If all trees to be injured/destroyed are Non-native or Invasive, as set out in Schedule “E1”	\$0

INSPECTION FEE FOR BY-LAW NON-COMPLIANCE:
\$250.00 per inspection

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Limitations and Challenges with London’s Current Tree Conservation By-law

There are several limitations and challenges associated with London’s current Tree Conservation By-law. Below are some examples:

- The By-law does not include mapping of Environmental Protection Areas where trees are protected. Rather, it relies upon the Official Plan designations and zones applied through the Zoning By-law to define Environmental Protection Areas (see above definition of Environmental Protection Area).
- In doing so, the By-law does not cover lands that may have significant tree stands on them that are designated for growth and development. Trees can be removed BEFORE a planning application is submitted, whereby such tree stands would be evaluated for tree preservation plans as part of the subdivision or site plan process. This represents a loophole in the By-law that is contrary to the intent of the current Official Plan where such tree preservation plans are to be prepared in association with planning applications.
- The only OS zone within the Zoning By-law that is defined as Environmental Protection Area is OS5. This excludes the other OS zones from consideration as Environmental Protection Area entirely.
- The changing nature of the Official Plan and Zoning By-law can create uncertainty on what is, and is not, covered by the By-law.
- Small vegetation patches are not protected if they are not “picked up” by the Official Plan or Zoning By-law as Open Space/OS5 or Environmental Review.
- The current By-law does not cover large trees in London that are outside of the defined Environmental Protection Areas. This means that some of London’s largest trees are not protected.
- The By-law provides very little flexibility to address woodlands based on context – for example, a specific minimal basal area must be retained, even when that may not represent best forestry practices.
- There is no consideration for how tree removal may be addressed in the face of major infestations and emergency forest health measures.
- There is no discretion to waive the rigorous requirements relating such thing as professional tree marking or a complete silvicultural plan, even when the proposed work is very minimal.
- There is no discretion to work with cemeteries and golf course differently, recognizing their ongoing needs for tree management.

London’s current tree by-law has several deficiencies including a lack of protection for trees before planning applications are made, loopholes and a lack of flexibility.

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PROPOSED TREE PROTECTION BY-LAW

General Approach

The proposed By-law protects two categories of trees from injury or destruction without a permit:

1. **Trees within the Tree Protection Area** – the Tree Protection Area is explicitly defined by a schedule located within the Tree Protection By-law (Schedule D). In general terms, the Tree Protection Area defines those lands that are treed, within, adjacent to, or in close proximity to the City’s natural heritage system. However, regardless of this general description, any trees on lands shown as Tree Protection Area defined on Schedule D of the By-law will be protected. These areas are explicitly mapped to provide clarity for property owners and for administration and enforcement of the By-law. Trees of all sizes are protected within these areas.
2. **Distinctive Trees** – these are trees that are 75cm or more in diameter, located anywhere within the municipal boundary, outside of the Tree Protection Area.

With the exception of identified exemptions, trees within the Tree Protection Area and Distinctive Trees cannot be injured or destroyed or removed without a permit.

As part of this general approach, there are a number of **exemptions**, including but not limited to (note: the specifics of the below are important and are identified in the By-law):

- Activities undertaken by the City of London.
- Activities undertaken by, or under order of, a Conservation Authority under the Conservation Authorities Act.
- Activities under a license issued under the Crown Forest Sustainability Act.
- Trees injured or destroyed for cadastral surveying under the Surveyors Act.
- Trees injured or destroyed under a condition to the approval of a site plan, a plan of subdivision, a consent or a community planning permit under the Planning Act.
- Trees injured or destroyed for constructing or maintain a transmission system or distribution system under the Electricity Act.
- Trees injured for a pit or quarry under the Aggregate Resources Act or expansions to existing pits.
- Where a tree is a Noxious Weed as defined in the Weed Control Act.

It is important to understand that, according to the By-law, **permits are not required** for such things as:

- Pruning in accordance with good arboriculture practices.
- Injury or destruction of trees within a building, a solarium, a rooftop garden or an interior courtyard.
- Actively managed, cultivated orchards, tree farms, or plant nurseries.
- A tree that is an immediate threat to public health and safety.
- Normal farm practices as defined in the Farming and Food Production Protection Act.
- Lands subject to federal or provincial regulation e.g. railroad corridors have been excluded.

The proposed Tree Protection By-law protects trees within identified Tree Protection Areas and large Distinctive Trees located outside of those Tree Protection Areas. There are several exemptions and activities that do not require a permit.

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Tree Protection Area

- The Tree Protection Area is identified in Schedule D of the proposed Tree Protection By-law. This area is very similar in nature and scope to the current Tree Conservation By-law's Environmental Protection Areas. However, it does not rely upon the Official Plan or Zoning By-law for definition. Rather, the Tree Protection Area is defined by a map in the By-law that provides clarity on what trees are, and are not, located therein.
- This mapping will be amended on a regular basis (anticipated once per year) to reflect changes that occur during that time resulting from permits that have been issued for tree removal.
- Less regularly (anticipated every five years), this mapping will be amended based on aerial photography or other such inventorying – keeping the map schedule up to date with significant new tree growth and losses from such things as infestation, drought, or storms.
- It is important to note that Schedule D of the Tree Protection By-law explicitly illustrates the Tree Protection Area. This Schedule stands as the sole definition of what lands are included in the Tree Protection Area for the purposes of the By-law. However, for the purposes of transparency and clarity, the following explains how the geographic areas on Schedule D identifying the Tree Protection Area was established. The following lands were compiled using Geographic Information Systems technology to establish the Tree Protection Area:
 - Lands within the Green Space and Environmental Review Place Types, as established in The London Plan, were included. At the time of writing of this report, The London Plan was adopted by Council (June, 2016), but not yet in effect. It is important to understand that there is no legislative connection between The London Plan and the proposed Tree Protection By-law - only that the Green Space and Environmental Review Place Types have been used as a reference point for establishing the boundary of the Tree Protection Area in Schedule D.
 - Based on aerial photography, lands were included to round out tree canopy areas if the continuous tree canopy extended beyond the area captured by the Green Space and Environmental Review Place Type.
 - Inside the Urban Growth Boundary, leaf-on (July 2015) aerial photography was used to identify and include areas of tree canopy cover on lands where there is a strong likelihood of development and re-development and in-filling based on current zoning or future London Plan designations. Whole or part of the parcel was included, depending on how tree canopy is distributed across the parcel.
 - Inside the Urban Growth Boundary, patches of trees <1ha that are within 100m of a larger part of Natural Heritage System/ANSI were included where these may contribute to Natural Heritage System linkages across the landscape.
 - Inside the Urban Growth Boundary, smaller Natural Heritage Systems or natural areas not in the London Plan but having importance or significance at the local urban level e.g. wooded valleys, ravines, patches of woodlands, large tree groups.
- In very general terms, and without diminishing the more explicit list above, lands that are already developed (fully built out with limited development potential) were not included within the Tree Protection Area unless they are within, or adjacent to, a Green Space or Environmental Review Place Type.

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- It is important to recognize that the foregoing method was used to define important clusters of trees. It is not intended to only capture woodlands that have natural heritage significance. It is not intended to reflect only those trees that have special ecological importance. Rather, it is intending to capture clusters of trees, generally without covering clusters of trees that are located on lands that are fully developed and built out.
- It is also important to recognize that tree injury or destruction may be possible within these areas, subject to a permit under the Tree Protection By-law. In addition, it may be possible to injure or remove trees on lands that are designated and zoned for development within the Tree Protection Area where it is deemed appropriate through an approved plan, processed through a planning application review process (e.g. site plan or subdivision).

In very general terms, the Tree Protection Area identified in the proposed Tree Protection By-law does not include lands that are fully built out, but includes lands that have potential for urban development

Distinctive Trees

- Distinctive trees are defined as those trees that are greater than 75 cm in diameter (roughly 2.5 feet in diameter), measured 1.4m above the natural ground level.
- As noted above in the Background section of this report, these trees play a very important role in our communities by:
 - Establishing neighbourhood character and amenity
 - Providing shade
 - Providing urban wildlife habitat
 - Allowing for significant energy savings for heating and cooling
 - Contributing to London's tree canopy – large trees contribute many times more canopy value than smaller trees
 - Sequestering of carbon and release of oxygen
 - Relief from “urban heat island” effects
- Trees of all sizes are protected by the By-law within the Tree Protection Area.
- Outside of the Tree Protection Area, Distinctive Trees are protected and cannot be injured or destroyed without a permit.
- In some cases, trees could be removed by landowners without a permit and the remaining trunk/stump could be less than 1.4m in height. This creates a challenge in enforcing the By-law as it relates to Distinctive Trees. To address this situation, the following clause has been placed within the By-law:

For enforcement purposes, if a tree has been injured or destroyed and its trunk diameter can no longer be measured at 1.4m above natural ground level, but the remains of the trunk can be found, one or more of the following measures may be taken to interpret whether the diameter of the tree at 1.4m would have been equal to, or greater than, 75cm:

- The remaining trunk/stump is 100cm diameter or greater anywhere above 30cm from the natural ground level; or*

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- ii. *The remaining trunk/stump is 150cm diameter or greater anywhere above the natural ground level; or*
- iii. *The By-law Enforcement Officer may estimate what the diameter of the tree would have been at 1.4m above natural ground level, before it was cut, based on well-accepted arboricultural practices or scientific literature and considering such things as the tree species, typical root flare/buttress, the remaining trunk/stump diameter, historical aerial or other photographs or video, or other reliable means that can be substantiated.*

Distinctive Trees are those trees 75cm or greater in diameter.

PERMITS

Process to Apply for a Permit

- There are two types of permits that are covered by the By-law:
 - i. Tree Protection Area Permit
 - ii. Distinctive Tree Permit
- Such permits would allow for tree injury or tree destruction.
- Resources will be made available on-line for property owners to submit an application to receive a permit. Applications will also be available at the Planning Services - Urban Forestry offices front counter. Applications will also be available in Development Services, Building Services and Service London Business offices.
- An application can be made by a property owner, or an agent representing the property owner (e.g. a tree care service).
- Applications will be completed and the applicable fee will be submitted. Urban Forestry Staff will review the application and either:
 - i. Provide a permit
 - ii. Refuse to provide a permit
 - iii. Request an inspection
 - iv. Request more information in support of the application
- Permits may include conditions that must be met by the property owner in accordance with the By-law.

A permit is required to injure or destroy trees protected by the Tree Protection By-law. Permits may be granted to injure or destroy such trees where it is appropriate.

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Submission Requirements

- The Tree Protection By-law identifies information that must be submitted along with an application, based on the type activity that is proposed. This is separated into two categories – (i) basic information and (ii) additional information:

1. **Basic information**, including such things as:
 - a. applicant information
 - b. agent information
 - c. information on the tree or trees to be injured or destroyed
 - d. measured drawings
 - e. starting date and time for the work
 - f. proposed tree planting and tree protection measures
 - g. a report explaining the nature and extent of the injury/destruction and a variety of other considerations listed in the by-law

It is important to recognize that the City has the flexibility to waive any of the above requirements or shape them in accordance with the reasonable need for information given the nature of the proposed activity.

2. **Additional information**, where its deemed necessary, such as:
 - a. An inventory of all trees of 10cm or more in diameter
 - b. Tree markings of all trees to injured or destroyed
 - c. Location of existing or proposed logging roads and skid trails
 - d. Stand height, density and volume
 - e. A silvicultural prescription
 - f. Potential impacts on natural heritage features and areas
- Recognising that golf courses and cemeteries are somewhat unique in that their operation is dependent upon ongoing tree maintenance, the By-law makes provision for such property owners to submit a five year silvicultural plan or management plan to allow for the issuance of a permit for an extended period with appropriate flexibility

The extent of the information required when submitting an application to injure or destroy a tree is flexible to the context and nature of the tree removals.

Reasons for Approving a Permit

- Where the application demonstrates that there is no reasonable alternative to the proposed injury or destruction of a tree or trees, the By-law cites several reasons by which the City Planner may approve the issuance of a permit, including any, or a combination of, the following:
 - a. it is necessary to remove one or more dangerous, dead, diseased or severely injured trees or branches for safety reasons;
 - b. the tree or trees are causing or are likely to cause structural damage to load-bearing structures or roof structures;
 - c. the injury or destruction of the tree or trees is required in order to remediate contaminated soil;
 - d. the injury or destruction is necessary to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a building permit has been issued and there is no reasonable alternative to locating these utilities and infrastructure;

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- e. the applicant has undertaken to implement a satisfactory silvicultural plan, forest management plan, landscaping, replanting or tree preservation;
- f. the proposed tree injury or destruction represents good arboricultural and/or good forestry management practices;
- g. other compelling reasons that the City Planner believes suitably justify the tree injury or removal.

Conditions

- The Tree Protection By-law allows for the imposition of conditions to a permit, including such things as:
 - a. any condition in accordance with good arboricultural and/or good forestry management practices;
 - b. the preparation of a silvicultural plan or forest management plan and any necessary security to ensure that it is implemented;
 - c. the manner and timing of the injury or destruction of the tree or trees;
 - d. a specified period for which the Permit is valid, after which the Permit will lapse;
 - e. the manner and timing of any required tree planting and any necessary security to ensure that it is implemented;
 - f. any condition recommended a qualified person such as an arborist or Registered Profession Forester;
 - g. measures to be implemented to protect the retained trees during construction, where applicable;
 - h. that the injury or destruction is to be carried out by or under the supervision of qualified person;
 - i. a requirement to plant replacement trees or, alternatively, the provision for cash in lieu of such tree planting and any security to ensure that such tree planting is implemented

Permits may come with conditions that must be met in order to injure or destroy one or more trees.

Tree Planting Requirements

- The Tree Protection By-law allows for the establishment of conditions that require tree planting. This can help to mitigate the impact of tree removal, where there are no other options. It is recognized that a young tree will not contribute the same tree canopy benefits of a mature tree for a very long period of time (decades).
- Where tree planting is not possible/practical on the same site as a tree removal, a condition may be applied to require off-site tree planting where amenable to the applicant.
- Where there is no opportunity for tree planting on-site or off-site, the contribution of specified funds may be required as a condition of a permit. Such funds would be directed to appropriate reserve funds for municipal tree planting or community tree planting (Tree Bank).

The Tree Protection By-law allows for conditions to be set that require tree planting in association with a permit to injure or destroy trees.

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Inspections

- Inspections may occur during the application process, during the permitted work, or following completion of the permitted work.
- Inspections may also occur in association with enforcement of the By-law, including following up on complaints of a potential By-law infraction.
- The By-law identifies powers of entry onto private property for the purposes of administering and enforcing the By-law.

Fees

- Fees have intentionally been held low, to encourage adherence to the By-law. It is not expected that such fees will cover the cost of administering and enforcing the By-law.
- It is proposed that fees be directed to a special account that can be used for urban forestry management, including planting programs, research, pest control and other activities within the Planning Services - Urban Forestry work program.

Proposed tree permit fees have been set low to encourage compliance with the By-law.

ENFORCEMENT

Fines

- A person who is convicted of an offence under this By-law is liable to a minimum fine of \$500 and a maximum fine of \$100,000 or \$1,000 per tree injured or destroyed, whichever is greater, as provided for the Municipal Act.
- A person who is convicted of an offence under this By-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000 or \$1,000 per tree injured or destroyed, whichever is greater, and the total of all daily fines for the offence is not limited to \$100,000 as provided for in subsection 429(3) 2. of the Municipal Act, 2001. 33.

Orders

- The By-law establishes powers of the municipality to establish Orders to discontinue activity.
- Similarly, the By-law allows for Work Orders to compel those who have breached the By-law to undertake certain works such as tree planting.
- Orders may also be issued to address forest health issues, emergencies, or the death of trees that were planted as a condition of a permit.

The municipality may impose Orders of different kinds where a Tree Protection By-law infraction has occurred.

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Relationship to Building Permits

- At this time, based on the advice of the Chief Building Official, it is believed that the Tree Protection By-law does not represent applicable law that must be addressed in the process of issuing a building permit.
- However, the need for a tree permit is not relieved in any way, even if a building permit is issued for a site for construction that will injure or destroy a tree.
- A communication and education process will be required to ensure building permit applicants understand that the Tree Protection By-law will apply, even if they have received a building permit (unless such matters have been addressed through a subdivision or site plan process after December 31, 2002 as per the exemptions in the By-law).
- The intent of such an education and communications process will be to make building permit applicants aware of the Tree Protection By-law and direct them towards obtaining their tree permit prior to applying for their building permit.
- Where a building permit is issued and a tree is covered by the Tree Protection By-law, injury or destruction of the tree without a permit would result in enforcement, including the potential for fines and/or a Work Order.

COMMUNICATION AND EDUCATION

- A critical next step in the process following Council’s approval of a Tree Protection By-law will be to communicate and educate.
- The development of a strategy for doing so has begun, but is not complete at the time of writing this report.
- Such a program will include such initiatives as:
 - Communicating with, and educating, tree service operations in the City
 - Directly notifying those property owners that are within a Tree Protection Area that the By-law exists and directing them to on-line information
 - Working with neighbourhood representatives – through the Great Near Campus Neighbourhood network and the Urban League of London – to make residents aware of the Tree Protection By-law
 - Communication for the public will include content on the City’s website, social media outreach, paid advertising, posters in public areas, and outreach to local news media.
 - Presentations to various groups as appropriate
- A dedicated email address trees@london.ca has been created for all tree-related enquiries to the City during regular business hours. This will be managed by staff throughout the day, with an automatic reply generated to indicate safe delivery of the original enquiry that includes details of emergency contact with the City’s Dispatch for urgent out-of-hours situations.
- A dedicated web page for the Tree Protection By-law www.london.ca/treeprotection.

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- A dedicated telephone number 519-661-5783 has been created, through which calls are directed according to whether the caller selects (1) for City trees or (2) for private tree enquiries.

It is critical to inform all Londoners about the Tree Protection By-law, their responsibilities, and how to get help from City Staff.

RESOURCE REQUIREMENTS

- Planning Services Administration believe that the resources required to administer and enforce the proposed By-law are in place. These resources were identified in the four-year budget in anticipation of a new By-law coming into effect.
- Planning Services – Urban Forestry staff are available more hours in the mornings, evenings and Saturdays to provide greater access to service. This will assist the public in applying for tree permits and meeting Forestry Staff for necessary inspections on site.
- Key indicators will be tracked to understand service demands stemming from the By-law and the degree to which current resources are accommodating those demands.

CONCLUSIONS

Advantages of Proposed Tree Protection By-law

- London currently has a Tree Conservation By-law that applies to privately owned lands.
- The proposed Tree Protection By-law offers significant value, beyond London’s current Tree Conservation By-law, including:
 - Closing of the current loophole, whereby trees on properties that are slated for future development are not protected prior to their evaluation through a planning application process
 - Greater clarity and transparency on what is, and what is not, protected by the By-law. The proposed By-law includes a specific schedule showing the Tree Protection Area as opposed to the current By-law that relies upon a combination of Official Plan designations and the Zoning By-law to define the area covered by the By-law.
 - Protection of large trees in London – those that provide the greatest canopy cover value and contribute so significantly to the character of our neighbourhoods.
 - Flexibility to address different types of applications differently (e.g. submission requirements), according to their context and the extent of tree removal that is being proposed.
 - A new forest health component to set the framework to manage emerging or new issues such as infestation, quickly and effectively.
 - Improvements to wording relating to administration and enforcement – greater clarity, less grey area, more flexibility and fewer loopholes

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- Clear exemptions for activities such as pruning
- Opportunities for requiring tree planting in association with permits – on site and off site as well as cash-in-lieu of tree planting (replacement trees) so that such planting can be undertaken off site by the City or other community

Next Steps

- With Council approval, staff will launch the next phase in the communication and education program. This will involve a number of initiatives designed to extensively communicate that the new By-law is in place and property owner responsibilities for obtaining a permit to injure or destroy or remove a tree.
- Staff are prepared to take in applications under the proposed By-law and believe the existing Staff compliment is adequate to administer and enforce the By-law. Staff will monitor the volume of enquiries, complaints and applications relating to the By-law and assess the adequacy of current resources over time.
- Staff will report back on progress within a year of the Tree Protection By-law’s passing to provide an update and to recommend any changes to the By-law that may be necessary based on this experience.

PREPARED BY:	SUBMITTED BY:
SARA ROWLAND URBAN FORESTRY PLANNER	IVAN LISTAR MANAGER, URBAN FORESTRY
RECOMMENDED BY:	RECOMMENDED BY:
ANDREW MACPHERSON MANAGER, ENVORONMENTAL & PARKS PLANNING	JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING SERVICES AND CITY PLANNER

Acknowledgements: Nicole Hall contributed to the preparation of the proposed Tree Protection By-law; Mark Boulger undertook the GIS analysis and map preparation to establish Schedule D of the proposed Tree Protection By-law. Gregg Barrett assisted with By-law development.

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APPENDIX A

Tree Protection By-law

City of London Tree Protection By-law

Bill No. _____

By-law No. _____

A by-law to regulate the injuring and destruction of trees and to encourage preservation and planting of trees throughout the City of London

WHEREAS The Corporation of the City of London is authorized by subsection 11.(1), paragraph 11.(2)5, subsections 135.(1) and (7), and sections 429, 431 and 444 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, to pass by-laws to sustain and promote environmental and social benefits to the community as a whole through preservation and planting of trees throughout the municipality, to regulate the injury and destruction of trees, to require a permit for the removal of trees, to impose conditions on permits and to provide for a system of fines and other enforcement orders;

AND WHEREAS Municipal Council has determined that it is desirable to enact a by-law to regulate the injury and destruction of trees and to encourage preservation and planting of trees throughout the City of London

NOW THEREFORE the Council of the Corporation of the City of London hereby enacts as follows:

1 SHORT TITLE

1.1 This by-law may be cited as the “City of London Tree Protection By-law”.

2 DEFINITIONS

2.1 For the purpose of this By-law:

“Agricultural operation” means an agricultural, aquacultural, horticultural or silvicultural operation that is carried out with the expectation of gain or reward as defined in the *Farming and Food Production Protection Act, R.S.O. 1998*;

“Applicant” means the person who submits an application to the City for a Permit under this By-law;

“Arborist” means an expert in the care and maintenance of trees and includes an arborist qualified by the Ontario Ministry of Training, Colleges and Universities, a certified arborist with the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a Registered Professional Forester or a person with other similar qualifications as approved by the City Planner;

“By-law Enforcement Officer” means a person appointed by the Council of the City of London as a Municipal Law Enforcement Officer to enforce the provisions of this By-law;

“Boundary tree” shall have the same meaning as defined by the *Forestry Act, R.S.O. 1990, c.F.26*;

“City” means The Corporation of the City of London.

“City Planner” shall mean the person who holds the position of City Planner for The Corporation of the City of London or his or her written designate who is authorised by the City Planner to act on his or her behalf in respect of this By-law.

“City property” shall mean any property of value owned by the City or its Boards and Commissions and includes real estate, storage yards, vehicles, animals or equipment.

“Conservation Authority” shall have the same meaning as defined in the *Conservation Authorities Act R.S.O. 1990*.

“Critical Root Zone” shall mean an area defined by a measured circle around a living tree that is deemed to contain the portion of tree roots that are essential for the tree’s structural integrity and capability to remain alive and upright, and shall be determined as described in Schedule C of this By-law.

“Declared Emergency” shall mean a situation that has been identified and declared an emergency under the *Emergency Management and Civil Protection Act , R.S.O. 1990*.

“Designate” shall mean any person acting on behalf of, under direction of or with express authority conferred in writing by the City Planner and may include but is not limited to City employees or Qualified Persons hired by the City.

“Destroy” in relation to tree or trees means to cut down, uproot, unearth, topple, burn, bury, shatter, poison, or in any way cause a tree to die or be killed, or where the extent of injury caused to a live tree or disturbance of any part of its Critical Root Zone is such that it is likely to die or be killed, excepting where a tree and/or its roots are killed by natural causes. The terms “destroyed” and “destruction” shall have a corresponding meaning.

“Distinctive Tree” means a tree that has attained a trunk diameter of 75cm or greater, measured from natural ground level to 1.4m above natural ground level, that is located on a property within the geographic area of the Urban Growth Boundary excluding the Tree Protection Area.

“Emergency Services” shall mean any of the fire, police, and ambulance services, acting as first responders during an incident where life, limb or property may be in peril.

“Forest Management Plan” shall mean a plan signed and sealed by a Qualified Person, for trees in woodland that are to be managed for a number of years and which may include harvesting, planting and tending of trees.

“Forestry purposes” shall have the same meaning as defined by the *Forestry Act R.S.O. 1990, c. F.26* and any amendments thereto.

“Good Arboricultural Practices” means the implementation by any Qualified Person of the most recent techniques or methods of tree management as recommended by the International Society of Arboriculture or their successor.

“Good Forestry Practices” shall be as defined by the *Forestry Act R.S.O. 1990, c. F.26* and any amendments thereto.

“Habitat” by reference to wildlife or Species at Risk shall have the same definition as that defined in the *Endangered Species Act S.O. 2007, c. 6* and any amendments thereto

“Hearings Officer” means a Hearings Officer appointed under the City’s Hearings Officer By-law A.-6653-121, as amended

“Injure” means to harm, damage or impair the natural function, form or habitat of a living tree, including its roots within the critical root zone, by any means excepting injury by natural causes, and includes but is not limited to carving, drilling, injection, exploding, shattering, improper pruning that fails to meet Good Arboricultural Practices, removal of bark, deliberate inoculation of decay fungi , pest or disease, inserting or driving foreign objects into or through the tree or its roots, soil compaction, root excavation, suffocation, drowning, burying or poisoning. The terms “injury”, “injuring” and “injured” shall have a corresponding meaning.

“Landowner” means any person having title in the land on which the tree(s) are situated, and in the case of boundary trees this shall be as defined by the *Forestry Act R.S.O. 1990 c. 10(2) – Trees Common Property* and any subsequent amendment thereto; the term “Landowners” shall have the same meaning, plural.

“Natural ground level” for the purposes of this By-law shall mean the unaltered and original level of the soil around the base of a tree that is supporting or did support the tree during its early growth and establishment

phase; where the natural ground level varies around the tree any measurement that is referenced from natural ground level shall be measured from the highest part of the soil.

“Normal Farm Practice” shall mean a normal farm practice defined in the *Farming and Food Production Protection Act, R.S.O. 1998*

“Normal property maintenance” shall mean the accepted local standards or practices for the care and repair of a property experiencing normal wear and tear, and may include but is not limited to the brushing, sweeping or blowing of leaf, flower or other vegetative litter, the repair or replacement of parts or things at the end of their expected useful life, washing and painting of exterior surfaces, and washing of driveways, windows or vehicles.

“Noxious Weed” shall have the same meaning as that defined in the *Weed Control Act R.S.O.1990 c.W.5* and any subsequent amendment thereto.

“Permit” means a written permit or a written Emergency Permit issued by the City Planner pursuant to this By-law that authorises the injury, destruction or removal of a Distinctive Tree or the injury or destruction of a tree or trees within a Tree Protection Area.

“Permit Holder” means a person to whom a Permit has been issued.

“Person” means a natural person, a recognised community group or special interest group, a corporation, partnership, association, firm, trust, charity, any agency or office of government and any other lawful entity, includes any person acting on behalf of or under authority of such entity; the term “persons” shall have the same meaning, plural.

“Pest” includes but is not limited to animals, plants, insects, fungi, bacteria, viruses or any other organism having the potential to do harm to a tree and may include any species that is invasive or new to Canada where the potential for harm is as yet unknown or unpredictable.

“Pruning” means the removal of live or dead branches from a standing tree, where the manner or method of cutting and the location of cuts accord with Good Arboricultural Practices and without harm to the physiological requirements of that tree in the short or long term. The terms “prune” and “pruned” shall have a corresponding meaning.

“Qualified Person” shall mean a person who, in the opinion of the City Planner, has satisfactory qualification, experience, education and knowledge to be an expert in the matter at hand.

“Registered Professional Forester” means a person who is a registered and currently active full member in good standing of the Ontario Professional Foresters Association and has the right to use the designation “Registered Professional Forester” under the *Professional Foresters Act, 2000, S.O. 2000 c. 18*.

“Remove” as it relates to a tree shall mean the physical displacement of a tree from its original place to a different place, by any means, and shall include acts of salvage in the event a tree has died or fallen as a result of natural causes. The term “removal” and “removed” shall have a corresponding definition.

“Restore” shall mean to bring back damaged or disturbed land to a previous normal or better condition, in order to achieve specific targets or goals, such as, but not limited to enhanced biodiversity, enhanced future timber production and improved hydrological function. The condition may be achieved by various methods including but not limited to soil improvement, topographic alteration, site preparation, planting, mimicking of natural disturbance, placement of coarse woody debris, natural regeneration, seeding, weeding and thinning. The term “restoration” shall have the same meaning.

“Security” means an agreement between the City and an Applicant where the Applicant shall arrange an irrevocable letter of credit from a financial institution to specify and lodge a requisite sum of money that the City may draw upon in full if the By-law is contravened or if a failure occurs in the proper and complete execution of a Permit and its conditions, such that restoration has to be done by the City. The security may be required before a Permit can be issued for sites that, in the opinion of a Qualified Person, contain or support ecological or environmental features or functions at risk of being harmed or impaired.

“Silvicultural Prescription” means an operational plan prepared by a Registered Professional Forester or Qualified Person that describes the existing conditions and the sustainable management objectives for trees on

a site, and that prescribes the practice of controlling tree establishment and the composition, growth and quality of trees to achieve the objectives of management, the methods for managing the trees and a series of silvicultural treatments and Good Arboricultural Practices that will be carried out to perpetuate tree cover and establish a free-growing state for trees that accommodates other resource, environmental and social values as may be identified.

“Site” means the general area where work that may be permitted under this By-law is planned or executed, and in the case of a tract of land that extends over multiple landholdings, each separate landholding is a separate “site”.

“Species at Risk” shall mean any species listed in *Ontario Regulation 242/08* under the *Endangered Species Act*, R. S. O. 2007, as amended from time to time, and species listed in Schedules of the *Species at Risk Act*, S.C.2002. c.29

“Tree” means a woody perennial plant, whether alive or dead, healthy or unhealthy, including saplings or seedlings and including the root system, where the plant has reached or has the potential to reach or, if dead, had the potential while alive to achieve a height of at least 4.5 metres (15 feet) at physiological maturity, typically growing with a single stem and typically developing with branching at regular intervals, provided that where multiple stems grow from the same root system, the number of trees shall be the number of stems that can be measured individually at a point 1.4 metres above the natural ground level. The term “trees” shall have the same meaning, plural.

“Tree Protection Area” means any geographic area of the City that appears as a Tree Protection Area on Schedule D of this By-law, as may be amended from time to time.

“Woodland” shall have the same meaning as “Woodlands” as defined by the Forestry Act R.S.O. 1990, c. F.26 and any amendments thereto.

3 SCOPE

3.1 This By-law applies to a tree anywhere within the City of London.

4 ADMINISTRATION

4.1 The administration of this By-law shall be performed by the City Planner.

5 EXEMPTIONS

5.1 This By-law does not apply to:

- (a) activities or matters undertaken by a municipality or a local board of a municipality;
- (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
- (c) the injuring or destruction of trees by a person licensed under the *Surveyors Act*, to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- (d) the injuring or destruction 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;
- (e) the injuring or destruction of trees imposed after December 31, 2002, as a condition to a development permit or community planning permit authorized by regulation made under the *Planning Act* or as a requirement of an agreement entered into under the regulation;
- (f) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (g) the injuring or destruction or removal of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (h) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,

(1) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and

(2) on which a pit or quarry is a permitted land use under a By-law passed under section 34 of the *Planning Act*;

(i) where a tree is a Noxious Weed as defined in the *Weed Control Act* that is being controlled by an appropriate method under the oversight or direction of a Qualified Person and no trees other than a Noxious Weed are being injured or destroyed; or

(j) activities and matters undertaken by or under order of a Conservation Authority and any works under the *Conservation Authorities Act* and any Regulations and amendments thereto.

5.2 Despite Sections 6 and 7 of this By-law, a permit as defined by this By-law is not required where:

(a) pruning is necessary to maintain the health and condition of the tree and is carried out in accordance with good arboricultural practices;

(b) the tree is not a Distinctive Tree and is located outside of the Tree Protection Area identified in Schedule D of this By-law;

(c) the tree is located within a building, a solarium, a rooftop garden or an interior courtyard;

(d) the tree to be destroyed is located within an actively managed, cultivated orchard, tree farm or plant nursery and is destroyed for the purposes for which the tree was planted;

(e) the tree is an immediate threat to public health and safety; or

(f) the injury or destruction is a normal farm practice as defined in the *Farming and Food Production Protection Act, R.S.O. 1998*

6. PROHIBITION – TREES WITHIN THE TREE PROTECTION AREA

6.1 The provisions of this section shall apply to trees within the Tree Protection Area shown on the maps within Schedule D of this By-law.

6.2 No person shall injure or destroy a tree or cause the injury or destruction of a tree within the Tree Protection Area unless a Tree Protection Area Permit has been issued by the City Planner to permit the injury or destruction.

6.3 No person or permit holder shall injure or destroy a tree or cause the injury or destruction of a tree within the Tree Protection Area unless the injury and destruction is carried out in accordance with all of the conditions of the Tree Protection Area Permit.

6.4 No person or permit holder shall fail to protect a tree within the Tree Protection Area in accordance with all of the conditions of a Tree Protection Area Permit.

6.5 Any person who intends to injure or destroy a tree within the Tree Protection Area shall submit to the City Planner an application for a Tree Protection Area Permit.

6.6 The application for a Tree Protection Area Permit shall include the required permit fee as described in Schedule A of this By-law, and the following basic information:

(a) the name, address and telephone number of the landowner;

(b) if the applicant is different from the landowner, the name, address, telephone number and professional credentials of the applicant and the landowner's written consent to the application;

(c) If the tree is a boundary tree, written consent to the application by the adjacent landowner;

(d) the name, address, telephone number and professional credentials of the Qualified Person hired by the landowner or applicant to complete the Tree Protection Area Permit application;

(e) the name, address and telephone number of the contractor implementing the work identified in the Tree Protection Area Permit;

(f) the municipal address and legal description of the land, upon which the tree or trees are to be protected, injured or destroyed;

(g) confirmation by the Qualified Person of the location, species, size and health of the tree or trees on the property;

(h) the purpose for which the Tree Protection Area Permit is required;

(i) a description of the proposed tree injury or destruction, clearly illustrated in a measured drawing of the site at a scale acceptable to the City Planner. This description shall include trees on adjacent properties, where the critical root zone of such trees will be affected by the proposed activity on the site;

(j) a schedule of the anticipated starting and completion dates of each injuring or destroying of a tree or trees;

(k) a description and measured drawing of the site at a scale acceptable to the City Planner of any proposed construction, works, excavation or site alteration that may lead to the tree injury or destruction which is the subject of the application; a schedule of this proposed activity, including a start and end dates shall also be provided;

(l) a description of any proposed tree planting or tree protection that is to be undertaken in association with the proposed tree injury or destruction, all clearly illustrated in a measured drawing of the site;

(m) a description of any off-site tree planting that may be proposed to mitigate tree canopy loss as a result of the proposed tree injury or destruction and/or any funds that may be provided to the City for such off-site tree planting in accordance with Schedule B of this By-law;

(n) a report prepared by a Qualified Person suitable to evaluate the nature and extent of the proposed tree injury and/or destruction that evaluates the health of the tree or trees and the implications of the proposed injury and/or destruction as it relates to the following, as applicable:

- site topography (e.g. ravines, slopes, contours, etc.);
- hydrological functions (e.g. streams, ponds, wetlands, recharge areas, etc.)
- sensitive environmental features or areas (e.g. riparian zones, seepage areas, amphibian breeding ponds, wetlands, steep or unstable slopes, significant wildlife habitat, stick nests, migrating or breeding birds, patches of conifer, rare species or species of conservation concern, etc.);
- the flood plain and Conservation Authority fill regulation lines;
- sustainability of the trees that are proposed to remain.

The report will evaluate the basis for the proposed tree injury or destruction and identify recommendations for any conditions to be included in a Tree Protection Area Permit that the Qualified Person believes are necessary and will present how the proposal is in accordance with good arboricultural practices;

(o) confirmation of any other applications (Planning applications or otherwise) affecting the land upon which the tree or trees are to be protected, injured or destroyed, including measured drawings of any proposed development of the site or adjacent sites.

At his/her discretion, the City Planner may waive any of the above requirements where it is deemed reasonable to do so.

6.7 Where the City Planner deems that additional information is necessary to evaluate a Tree Protection Area Permit, beyond the basic information identified in Section 6.6 of this By-law, he/she may require one or more of the following:

- (a) where the above basic information requires submission of information, study or a report by a Qualified Person, the City Planner may require this information to be submitted by an Arborist or a Registered Professional Forester as defined in this By-law;
- (b) an inventory of all trees that have a trunk diameter of 10cm or more, measured from natural ground level to 1.4m above the natural ground level, identifying the location, size, species and health of each such tree and identifying those trees that are identified for removal; this inventory is to be submitted in electronic form, such that the data can be linked using the City's geographic information system;
- (c) tree marking of all trees to be injured or destroyed, prepared by an accredited tree marker;
- (d) the location of existing or proposed logging roads and skid trails;
- (e) the landing or loading area for sawlogs as they are being harvested;
- (f) any or all of stand height, structural or age class range, density, species composition, logging tally, basal area and volume;
- (g) a silvicultural prescription as defined by this By-law, prepared by a Qualified Person;
- (h) a forest management plan as defined by this By-law, prepared by a Qualified Person;
- (i) a description of how the trees are to be removed from the site, the potential impact on natural heritage features and areas, and an explanation of how these impacts are to be mitigated.
- (j) such other information deemed necessary by the City Planner.

6.8 Where an application for a Tree Protection Area Permit is made for the operation of an existing cemetery or golf course, the requirements of Section 6.6 and 6.7 of this By-law will not apply and the following will be required for a Tree Protection Area Permit application:

- (a) the name, address and telephone number of the landowner of the golf course or cemetery;
- (b) the name, address and telephone number of the Qualified Person hired by the landowner or applicant to complete the Tree Protection Area Permit application;
- (c) a five-year silvicultural prescription and/or forest management plan, prepared by a Qualified Person, describing how the trees on the site are to be managed in a sustainable fashion to achieve good arboricultural practices and good forestry practices;
- (d) The report cited in clause (c), above, will evaluate the basis for the proposed tree injury or destruction and identify recommendations for any conditions to be included in a Tree Protection Area Permit that the Qualified Person believes are necessary to be in accordance with good arboricultural practices;
- (e) a general description of the circumstances that would represent a substantive change from the five-year silvicultural plan and/or forest management plan that would require a Tree Protection Area Permit.
- (f) such other information deemed necessary by the City Planner.

6.9 Where a tree within a Tree Protection Area is a boundary tree, in addition to the requirements of subsection 6.6, the applicant must provide the written consent of the other landowner or landowners to the application.

6.10 Where a tree within a Tree Protection Area is a boundary tree between City property and private property, the issuance of a Tree Protection Area Permit by the City to the applicant constitutes the City's consent to the injury or destruction of the subject tree or trees.

6.11 The City Planner shall review the complete application for a Tree Protection Area Permit and may,:

- (a) issue a Tree Protection Area Permit;

(b) issue a Tree Protection Area Permit with conditions; or

(c) refuse to issue a Tree Protection Area Permit.

6.12 The City Planner may issue of a Tree Protection Area Permit for one or more of the following reasons, and where the application demonstrates that there is no reasonable alternative to the proposed injury or destruction, all to the satisfaction of the City Planner:

(a) it is necessary to remove one or more dangerous, dead, diseased or severely injured trees or parts of a tree for safety reasons;

(b) the tree or trees are causing or in the opinion of a Qualified Person are likely to cause structural damage to load-bearing structures or roof structures;

(c) the injury or destruction of the tree or trees is required in order to remediate contaminated soil;

(d) the injury or destruction is necessary to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a building permit has been issued and there is no reasonable alternative to locating these utilities and infrastructure;

(e) the applicant has undertaken to implement a satisfactory silvicultural plan, forest management plan, landscaping, replanting or tree preservation;

(f) the proposed tree injury or destruction represents good arboricultural and/or good forestry management practices;

(h) other compelling reasons that the City Planner believes suitably justify the tree injury or destruction.

6.13 The City Planner may impose conditions to a Tree Protection Area Permit, including but not limited to, the following:

(a) any condition in accordance with good arboricultural and/or good forestry management practices;

(b) the preparation of a silvicultural plan or forest management plan and any necessary security to ensure that it is implemented;

(c) the manner and timing of the injury or destruction of the tree or trees;

(d) a specified period for which the Permit is valid, after which the Permit will lapse;

(d) the manner and timing of any required replacement tree planting and any necessary security to ensure that it is implemented;

(e) any condition recommended by an Arborist or Qualified Person;

(f) measures to be implemented to protect the retained trees during construction, where applicable;

(f) that the injury or destruction is to be carried out by or under the supervision of an arborist;

(g) a requirement to plant replacement trees or, alternatively, the provision cash in lieu of such tree planting, consistent with Schedule B of this By-law, and any security to ensure that such tree planting is implemented

6.14 Where a Tree Protection Area Permit requires, as a condition, the planting of replacement trees, the City Planner may impose the following conditions with respect to the replacement tree:

(a) the species, size and location of replacement trees;

(b) the timing for the planting of the replacement trees;

(c) the provision of any security necessary to ensure that such tree planting is implemented; and

(d) where there is no reasonable alternative for the required tree planting on the subject lands, consistent with Schedule B of this By-law, a fee may be required in lieu of the required tree planting that cannot be accommodated on site, that will be used by the City to achieve tree planting within the municipality.

6.15 No permit holder shall fail to post the Tree Protection Area Permit on the site in accordance with the following requirements:

a) in a prominent location so as to be clearly visible to the public;

(b) for a period of not less than seven (7) days prior to any action being undertaken in accordance with the Tree Protection Area Permit for the site;

(c) for the period that any action is being taken on the site; and

(d) for a period of not less than seven (7) days following any action taken in accordance with the Tree Protection Area Permit.

6.16 The City Planner may revoke a Tree Protection Area Permit where:

(a) the Permit was issued on mistaken, misleading, false or incorrect information;

(b) the Permit was issued in error;

(c) the landowner or Permit holder requests, in writing, that it be revoked; or

(d) the landowner or Permit holder fails to comply with any condition of the Tree Protection Area Permit or this by-law.

6.17 No person shall knowingly furnish false or incorrect information for the purposes of obtaining a Tree Protection Area Permit.

7. PROHIBITION – DISTINCTIVE TREES

7.1 The provisions of this section apply to Distinctive Trees, as defined in this By-law.

7.2 No person shall injure or destroy or cause the injury or destruction of a Distinctive Tree, unless a Distinctive Tree Permit has been issued by the City Planner to permit the injury or destruction.

7.3 No person or Permit holder shall injure or destroy or cause the injury or destruction of a Distinctive Tree unless the injury or destruction is carried out in accordance with all of the conditions of a Distinctive Tree Permit.

7.4 No person or Permit holder shall fail to protect a Distinctive Tree that has been identified for protection in accordance with the conditions of a Distinctive Tree Permit.

7.5 Any person who intends to injure or destroy a Distinctive Tree shall submit to the City Planner an application for a Distinctive Tree Permit.

7.6 The application for a Distinctive Tree Permit shall include the required permit fee as described in Schedule A of this By-law and the following basic information:

(a) the name, address and telephone number of the property landowner;

(b) if the applicant is different from the landowner, the name, address, telephone number and professional credentials of the applicant and the landowner's written consent to the application;

(c) If the tree is a boundary tree, written consent to the application by the adjacent landowner;

(d) the name, address and telephone number and professional qualifications of the Qualified Person hired by the landowner or applicant to complete the Distinctive Tree Permit application;

(e) the name, address and telephone number of the contractor implementing the work identified in the Distinctive Tree Permit;

(f) the municipal address and legal description of the land, upon which the Distinctive Tree or trees are to be protected, injured or destroyed;

(g) confirmation by the Qualified Person of the location, species, size and health of the Distinctive Tree or trees on the property;

(h) the purpose for which the Distinctive Tree Permit is required;

(i) a description of the proposed tree injury or destruction, clearly illustrated in a measured drawing of the site at a scale acceptable to the City Planner. This description shall include trees on adjacent properties, where the critical root zone of such trees will be affected by the proposed activity on the site;

(j) a schedule of the anticipated starting and completion dates of each injuring or destroying of a tree or trees;

(k) a description and measured drawing of the site at a scale acceptable to the City Planner of any proposed construction, works, excavation or site alteration that may lead to the tree injury or destruction which is the subject of the application; a schedule of this proposed activity, including a start and end dates shall also be provided;

(l) a description of any proposed tree planting or tree protection that is to be undertaken in association with the proposed Distinctive Tree injury or destruction, all clearly illustrated in a measured drawing of the site;

(m) a description of any off-site tree planting that may be proposed to mitigate tree canopy loss as a result of the proposed tree injury or destruction and/or any funds that may be provided to the City for such off-site tree planting in accordance with Section B of this By-law;

(n) a report prepared by a Qualified Person suitable to evaluate the nature and extent of the proposed tree injury and/or destruction that evaluates the health of the tree or trees and the implications of the proposed injury and/or destruction as it relates to the following, as applicable:

- site topography (e.g. ravines, slopes, contours, etc.);
- hydrological functions (e.g. streams, ponds, wetlands, recharge areas, etc.)
- sensitive environmental features or areas (e.g. riparian zones, seepage areas, amphibian breeding ponds, wetlands, steep or unstable slopes, significant wildlife habitat, stick nests, migrating or breeding birds, patches of conifer, rare species or species of conservation concern, etc.);
- the flood plain and Conservation Authority fill regulation lines;
- sustainability of the trees that are proposed to remain.

(o) confirmation of any other applications (Planning applications or otherwise) affecting the land upon which the trees are to be protected, injured or destroyed, including measured drawings of any proposed development of the site or adjacent sites.

At his/her discretion, the City Planner may waive any of the above requirements where it is deemed reasonable to do so.

7.7 Where the City Planner deems that additional information is necessary to evaluate a Distinctive Tree Permit, beyond the basic information identified in Section 7.6 of this By-law, he/she may require one or more of the following:

(a) where the above basic information requires submission of information, study or a report by a Qualified Person, the City Planner may require this information to be submitted by an Arborist or a Registered Professional Forester as defined in this By-law;

(b) a description of how the trees are to be removed from the site, the potential impact on natural heritage features and areas, and an explanation of how these impacts are to be mitigated.

(c) tree marking of all trees to be injured or destroyed, prepared by an accredited tree marker;

- (d) a silvicultural prescription as defined by the By-law, prepared by a Qualified Person;
 - (e) such other information deemed necessary by the City Planner.
- 7.8 Where an application for a Distinctive Tree Permit is made for the operation of an existing cemetery or golf course, the requirements of Section 7.6 and 7.7 of this By-law will not apply and the following will be required for a Distinctive Tree Permit application:
- (a) the name, address and telephone number of the landowner of the golf course or cemetery;
 - (b) the name, address and telephone number of the Qualified Person hired by the owner or applicant to complete the Distinctive Tree Permit application;
 - (c) a five-year silvicultural prescription and/or forest management plan, prepared by a Qualified Person, describing how the trees on the site are to be managed in a sustainable fashion to achieve good arboricultural practices and good forestry practices;
 - (d) The report cited in clause (c), above, will evaluate the basis for the proposed tree injury or destruction and identify recommendations for any conditions to be included in a Distinctive Tree Permit that the Qualified Person believes are necessary to be in accordance with good arboricultural practices;
 - (e) a general description of the circumstances that would represent a substantive change from the five-year silvicultural plan and/or forest management plan that would require a Distinctive Tree Permit.
 - (f) such other information deemed necessary by the City Planner.
- 7.9 Where a Distinctive Tree is a boundary tree, in addition to the requirements of subsection 7.6, the applicant must provide the written consent of the other landowner or landowners to the application.
- 7.10 Where a Distinctive Tree is a boundary tree between City property and private property, the issuance of a Distinctive Tree Permit by the City to the applicant constitutes the City's consent to the injury or destruction of the subject tree or trees.
- 7.11 The City Planner shall review the complete application for a Distinctive Tree Permit and may,
- (a) issue a Distinctive Tree Permit;
 - (b) issue a Distinctive Tree Permit with conditions; or
 - (c) refuse to issue a Distinctive Tree Permit.
- 7.12 The City Planner may approve the issuance of a Distinctive Tree Permit for any one or more of the following reasons, and where the application demonstrates that there is no reasonable alternative to the proposed injury or destruction, all to the satisfaction of the City Planner:
- (a) it is necessary to remove one or more dangerous, dead, diseased or severely injured trees parts of the trees for safety reasons;
 - (b) the tree or trees are causing or are in the opinion of a Qualified Person likely to cause structural damage to load-bearing structures or roof structures;
 - (c) the injury or destruction of the tree or trees is required in order to remediate contaminated soil;
 - (d) the injury or destruction is necessary to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure for which a building permit has been issued and there is no reasonable alternative to locating these utilities and infrastructure;
 - (e) the applicant has undertaken to implement a satisfactory silvicultural plan, forest management plan, landscaping, replanting or tree preservation;

(f) the proposed tree injury or destruction represents good arboricultural and/or good forestry management practices

(g) other compelling reasons that the City Planner believes suitably justify the tree injury or removal

7.13 The City Planner may impose conditions to a Distinctive Tree Permit, including but not limited to, the following:

(a) any condition in accordance with good arboricultural and/or good forestry management practices;

(b) the preparation of a silvicultural plan or forest management plan and any necessary security to ensure that it is implemented;

(c) the manner and timing of the injury or destruction of the tree or trees;

(d) a specified period for which the Permit is valid, after which the Permit will lapse;

(e) the manner and timing of any required tree planting and any necessary security to ensure that it is implemented;

(f) any condition recommended by a Qualified Person;

(g) measures to be implemented to protect the retained trees during construction, where applicable;

(h) that the injury or destruction is to be carried out by or under the supervision of a Qualified Person;

(i) a requirement to plant replacement trees or, alternatively, the provision of cash, in lieu of such tree planting, consistent with Schedule B of this By-law, and any security to ensure that such tree planting is implemented

7.14 Where a Distinctive Tree Permit requires, as a condition, the planting of replacement trees, the City Planner may impose the following conditions with respect to the replacement tree:

(a) the species, size and location of replacement trees;

(b) the timing for the planting of the replacement trees;

(c) the provision of any security necessary to ensure that such tree planting is implemented; and

(d) where there is no reasonable alternative for the required tree planting on the subject lands, consistent with Schedule B of this By-law, a fee may be required in lieu of the required tree planting that cannot be accommodated on site, that will be used by the City to achieve tree planting within the municipality.

7.15 No Permit holder shall fail to post the Distinctive Tree Permit on the subject property in accordance with the following requirements:

a) in a prominent location so as to be clearly visible to the public;

(b) for a period of not less than seven (7) days prior to any action being undertaken in accordance with the Distinctive Tree Permit on the site;

(c) for the period that any action is being taken on the site; and

(d) for a period of not less than seven (7) days following any action taken in accordance with the Distinctive Tree Permit.

7.16 The City Planner may revoke a Distinctive Tree Permit where,

(a) the Permit was issued on mistaken, misleading, false or incorrect information;

(b) the Permit was issued in error;

(c) the landowner or Permit holder requests, in writing, that it be revoked; or

(d) the landowner or Permit holder fails to comply with any condition of the Distinctive Tree Permit or this by-law.

7.17 No person shall knowingly furnish false or incorrect information for the purposes of obtaining a Distinctive Tree Permit.

8 REQUIREMENT TO OBTAIN ALL OTHER APPROVALS REQUIRED BY ANY LEVEL OF GOVERNMENT

8.1 A Permit issued pursuant to this By-law does not preclude the responsibility of the applicant or landowner to obtain all other approvals which may be required by any level of government and agencies thereof, including, but not limited to, Species at Risk legislation.

9 APPEALS - REFUSAL TO ISSUE A PERMIT

9.1 The power and authority to conduct hearings for appeals under this By-law are hereby delegated to the Hearings Officer of the City of London.

9.2 The provisions of the City's Hearings Officer By-law A-6653-121, as amended, apply to all hearings conducted by a Hearings Officer.

9.3 An Applicant for a Permit pursuant to this By-law may appeal to the Hearings Officer:

(a) if the City Planner refuses to issue a Permit; such an appeal must be made within 30 days after the refusal;

(b) if the municipality fails to make a decision on an application within 60 days after a complete application is received by the City Planner;

(c) if the Applicant objects to a condition in the Permit; such an appeal must be made within 30 days after the issuance of the Permit.

9.4 A request by an Applicant for a hearing shall be made in writing and filed with the City Clerk. The request shall consist of a notice of appeal and must comply with the requirements set out in Schedule 1 of the City's Hearings Officer By-law A-6653-121

9.5 A Hearings Officer may:

(1) Uphold the decision of the City Planner;

(2) Require the municipality to vary any condition on a Permit; or

(3) Require the municipality to issue a Permit with conditions as the Hearings Officer considers appropriate.

9.6 The decision of the Hearings Officer is final.

10 TRANSFER, SUSPENSION OR VARIATION OF A PERMIT OR ORDER

10.1 Any Permit, or any Order made under this By-law and any condition(s) that is not lapsed shall be deemed transferred in the event a site, subject to that existing Permit or Order, is given away, sold, or otherwise disposed, with the new landowner obliged to the existing Permit or Order and all conditions therein, and including the security, if applicable.

10.2 The Permit Holder shall notify the City Planner within two business days if the site that is subject to an existing Permit or Order is given away, sold, or otherwise disposed, and shall provide the City Planner with the name and all other relevant information relating to the new landowner, consistent with the requirements of a permit application within Sections 6.6 and 7.6 of this By-law.

10.3 If the Permit Holder cannot be found or where the public interest requires it, a notice of the revocation, suspension or variance of a Permit may be placed on the City website and in a local newspaper.

10.4 A copy of the notice of revocation, suspension or variance of a Permit shall be recorded by the City Planner in the publicly-available register and recorded on title as a land charge, to be revealed by the Registry Office in the event of a search of title for the subject property.

11 **ENFORCEMENT**

11.1 This By-law shall be enforced by a By-law Enforcement Officer.

11.2 A By-law Enforcement Officer may, at any reasonable time, enter and inspect any land to determine if this By-law, an Order issued under this By-law of a condition of issuance of a Tree Protection Area Permit or a Distinctive Tree Permit has been complied with provided that the power of entry does not allow the By-law Enforcement Officer to enter into any building on the land.

11.3 A By-law Enforcement Officer may, in carrying out an inspection pursuant to subsection 11.2, be accompanied by the City Planner and any other person possessing expert or special knowledge necessary to assist the By-law Enforcement Officer with their enforcement activities.

11.4 A By-law Enforcement Officer may require the production for inspection of the silvicultural prescription or forest management plan, as applicable, and inspect and remove such report for the purpose of making copies.

11.5 A receipt shall be provided for any report removed under subsection 11.4 and the report shall be promptly returned after the copies are made.

11.6 A By-law Enforcement Officer may take photographs, measurements, surveys and other necessary recordings to identify the extent of tree injury or destruction necessary for the purpose of the inspection.

11.7 No person or Permit holder shall hinder or obstruct or attempt to hinder or obstruct the By-law Enforcement Officer in the discharge of duties under this By-law.

11.8 For enforcement purposes, if a tree has been injured or destroyed and its trunk diameter can no longer be measured at 1.4m above natural ground level, but the remains of the trunk can be found, one or more of the following measures may be taken to interpret whether the diameter of the tree at 1.4m would have been equal to, or greater than, 75cm:

- i. The remaining trunk/stump is 100cm diameter or greater anywhere above 30cm from the natural ground level; or
- ii. The remaining trunk/stump is 150cm diameter or greater anywhere above the natural ground level; or
- iii. The By-law Enforcement Officer may estimate what the diameter of the tree would have been at 1.4m above natural ground level, before it was cut, based on well-accepted arboricultural practices or scientific literature and considering such things as the tree species, typical root flare/buttrass, the remaining trunk/stump diameter, historical aerial or other photographs or video, or other reliable means that can be substantiated.

12 **ORDER TO DISCONTINUE ACTIVITY**

12.1 Where the City Planner is satisfied that a contravention of this By-law has occurred, the City Planner may issue an Order to Discontinue Activity requiring the person who contravened the By-law or that caused or permitted a contravention of the bylaw to stop any injury or destruction.

12.2 The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the contravention and the date by which there must be compliance with the Order to Discontinue Activity.

12.3 No person or Permit holder shall fail to comply with an Order to Discontinue Activity issued by the City Planner pursuant to this By-law.

- 12.4 An Order to Discontinue Activity may be served personally by the Bylaw Officer, may be sent by registered mail to the person contravening the By-law, or may be posted in a conspicuous place on the property where the contravention occurred.
- 12.5 Where an Order to Discontinue Activity under this By-law is served personally by the By-law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the person or persons named.
- 12.6 The posting of the Order to Discontinue Activity on the affected lands shall be deemed to be sufficient service of the Order to Discontinue Activity on the person or corporation to whom the Order to Discontinue Activity is directed on the date it is posted.
- 12.7 Where an Order to Discontinue Activity issued under the By-law is sent by registered mail, it shall be sent to the last known address of,
- (a) the applicant;
 - (b) the landowner; or
 - (c) the person or company retained to undertake the injury or destruction,
- and shall be deemed to have been served on the fifth day after the Order to Discontinue Activity or Order is mailed.

13 **POWER TO MAKE A WORK ORDER**

- 13.1 Where a tree or trees in a Tree Protection Area or a Distinctive Tree is/are destroyed or removed without a Permit or contrary to the provisions and conditions of an existing Permit or Order made under this By-law, in addition to or instead of all other actions available under the By-law and any Act, Regulation or By-law, the City Planner may serve an Order known as a Work Order requiring that the site be managed, monitored and maintained in a manner and to a condition satisfactory to the City Planner, within a specified and reasonable timeframe, and this may include requiring the planting of a tree or trees.
- 13.2 The City Planner may serve a Work Order where a tree in a Tree Protection Area or a Distinctive Tree has been injured, destroyed or removed by or on instruction of Emergency Services or during a Declared Emergency, or where a tree has been injured, removed or destroyed by natural disturbance, including but not limited to infection, decay, flood, land slip, erosion, wind storm, ice storm, snow or other severe weather, so long as the Work Order is issued within six months of the tree injury, removal or destruction occurring.
- 13.3 A landowner for any site that was subject to a Permit may be served with a Work Order from the City Planner if a replacement tree that was required as a condition of the Permit dies or is removed without a Permit within three years since the expiry of the prior conditional Permit, or if the required natural regeneration fails to be established by the specified timeframe stated in a Permit or condition of a Permit.
- 13.4 The Work Order shall set out the following:
- (a) the minimum goal that, upon its achievement by a specific date, will satisfy the City Planner;
 - (b) that a plan shall be prepared by a Qualified Person, who shall be a Registered Professional Forester in circumstances where the site contains woodland, at the expense of the landowner, and the plan submitted to the City Planner by a specified date. No works shall commence until the plan is approved by the City Planner;
 - (c) that the plan is required to include all the steps to be taken and all oversight required by the Qualified Person to achieve the goal of the Work Order to the satisfaction of the City Planner;

(d) that the plan approved by the City Planner be commenced and implemented in a manner and to a condition satisfactory to the Qualified Person and City Planner and completed to the satisfaction of the City Planner within a period of time specified in the plan;

(e) that a penalty may arise if the Work Order and approved plan is not complied with or completed by the specified date;

(f) the right to, and proper submission of, an appeal against the Work Order.

13.5 Failure to comply with the requirements of a Work Order and any plan approved under a Work Order may constitute an offence.

13.6 In addition to all other powers under the By-law, if a Work Order is not complied with, whether partially or in full, by the specified date the City Planner may enter onto land after the Work Order is expired and carry out all work that was not done, to the satisfaction of the City Planner, and recoup all costs by applying those costs to the property tax roll.

14 **PROTECTION OF FOREST HEALTH**

14.1 For the purpose of early detection of a pest, and monitoring, measuring or controlling threats to forest health, the City Planner may, at any reasonable time, enter and inspect or survey a property in which the City Planner believes on reasonable grounds there may be a pest or threats to forest health. The City Planner may;

(a) examine anything and take samples of it;

(b) conduct any tests or analyses or take any measurements;

(c) require any person to produce any record or other document that the City Planner believes on reasonable grounds contains any information relevant to forest health and the administration of this By-law

(d) remove any things, tree(s) or parts thereof relating to the protection of forest health, at the City's expense and without compensation.

14.2 An Order known as a Forest Health Order may be served by the City Planner where a threat to forest health may occur or is occurring. The Forest Health Order may prohibit the disturbance or removal of anything within or from subject sites or may require that work be done to reduce or eliminate a specific threat. Failure to comply with a Forest Health Order shall constitute an offence.

14.3 The Forest Health Order shall contain:

(a) the address(es) of the subject property(ies) or, if across a geographic region, the extent of that region may be described by a plan or map;

(b) the details of the prohibited activity, or the action or work required to be done, written in plain language, and using appropriate visually-informative symbols and images where possible;

(c) the date and time at which the Forest Health Order commences;

(d) the date and time when the Forest Health Order expires, no later than six months after the commencement date; and

(e) when and under what terms the Forest Health Order may be lifted, if any.

14.4 The Forest Health Order shall be mailed to the last known address of the landowner(s) and occupier(s) if different, and deemed served two business days after being sent when mailed by regular post.

14.5 If the public interest requires it, in advance of or after the commencement of the Forest Health Order a notice may be posted by the City Planner in the local newspaper and on the City's website to explain the forest health threat and the activity that has been or will be prohibited.

14.6 A Forest Health Order shall be posted, until the date of its expiry, in a public location or on the City's website. Where a geographic area is affected by the Forest Health Order, a copy of the Forest Health Order shall be posted until the date of its expiry in all municipal libraries within the affected area.

14.7 A Forest Health Order may be renewed by the City Planner at its expiry if the forest health conditions warrant a continuation.

14.8 A Forest Health Order cannot be appealed.

15 **POWERS OF ENTRY**

15.1 The City Planner, Municipal Law Enforcement Officer or an officer appointed under By-law may enter a property at any reasonable time for the purpose of carrying out an inspection:

- (a) to assess tree(s) and the site(s) that are subject of an application;
- (b) to determine compliance with any Permit or condition issued under this By-law;
- (c) to inspect for compliance with an Order to Discontinue Activity, a Work Order, or a Forest Health Order;
- (d) to determine compliance with an order under section 431 of the Municipal Act, 2001 or any Court order issued under the By-law; and
- (e) may make examinations of any relevant thing including but not limited to measuring, probing, drilling, excavating, sounding or tapping a tree(s), removing foliage or woody material using appropriate methods, taking an example of a pest, and recording observations by methods including but not limited to video, photograph or written record.

16 **OFFENCES AND PENALTIES**

16.1 Every person who contravenes any provision of this bylaw is guilty of an offence as provided for in subsection 429.(1) of the Municipal Act, 2001.

16.2 Every person who contravenes an Order to Discontinue Activity that is issued pursuant to this By-law is guilty of an offence and the offence is hereby designated a continuing offence as provided for in subsection 429.(2)(a) of the Municipal Act, 2001.

16.3 A person who is convicted of an offence under this By-law is liable to a minimum fine of \$500 and a maximum fine of \$100,000 or \$1,000 per tree injured or destroyed, whichever is greater, as provided for in subsection 429(3) 1of the Municipal Act, 2001.

16.4 A person who is convicted of an offence under this By-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000 or \$1,000 per tree injured or destroyed, whichever is greater, and the total of all daily fines for the offence is not limited to \$100,000 as provided for in subsection 429(3) 2of the Municipal Act, 2001.

16.5 When a person has been convicted of an offence under this By-law, the Superior Court of Justice or any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the person convicted, issue an order:

- (a)prohibiting the continuation or repetition of the offence by the person convicted; and
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

17 **TRANSITION**

17.1 Any Permit issued under the provisions of By-law CP-1466-249 that has not expired or been revoked as of the date of the coming into force of this By-law shall be deemed to be subject to this By-law.

18 **REPEAL – IN FORCE**

18.1 By-law CP-1466-249, as passed on (DATE), and all of its amendments, are hereby repealed.

18.2 This By-law shall come into force and effect on the day it is passed.

Schedule A – Permit Fees

The following fees shall apply for the submission of a Tree Protection Area Permit or Distinctive Tree Permit application.

The City Planner may waive any fee, at his or her sole discretion, where he or she is satisfied that the imposition of a fee would be unreasonable or would cause undue hardship.

NATURE OF APPLICATION FOR A PERMIT	FEE FOR PERMIT
Injure or destroy any tree that the City Planner accepts is hazardous	No fee
Injure or destroy any tree where that injury, or destruction is required under any Court Order or an Order issued under in accordance with an Act or Regulation or other by-law	No fee
Remove any tree that is fallen, falling, or dead or dying, from natural causes	No fee
Injure or destroy one Distinctive Tree	\$100/tree
Injure, destroy or remove one to three living trees within a Tree Protection Area	Less than 75cm diameter: \$75/tree More than 75 cm diameter: \$100/tree
Injure, destroy or remove four or more living trees within a Tree Protection Area	Less than 75cm diameter: \$75/tree More than 75 cm: \$100/tree Up to a maximum of \$1,000

Schedule B – Schedule of Cash Contribution in Lieu of Off-site Tree Planting

Where a permit, or a condition of a permit, requires that a replacement tree is required but there is insufficient space or opportunity on a site to provide for a replacement tree over the long term, the City Planner may require a cash contribution in lieu of such planting, to be paid by the Applicant to the City, to support tree planting elsewhere in the municipality.

The amount of the cash contribution shall be \$350 per replacement tree, subject to a maximum of \$35,000.

Schedule C – Critical Root Zone

The trunk diameter shall be measured at a point of 1.4m above natural ground level. It shall be rounded up or down to the nearest centimetre, with measurements having a decimal nominal of 0.5 or greater rounded up.

The Critical Root Zone is measured horizontally and radially in all directions from the outside bark at the base of the trunk or its root flare, if present, where the tree emerges above natural ground level.

The drip line is where intercepted rain may fall off the outermost branches and leaves of a tree canopy (tree crown). For the purpose of this by-law, where an asymmetric tree canopy occurs, the drip line shall be the greatest of the drip line distances measured horizontally from the base of the trunk at the points corresponding to North, South, East and West.

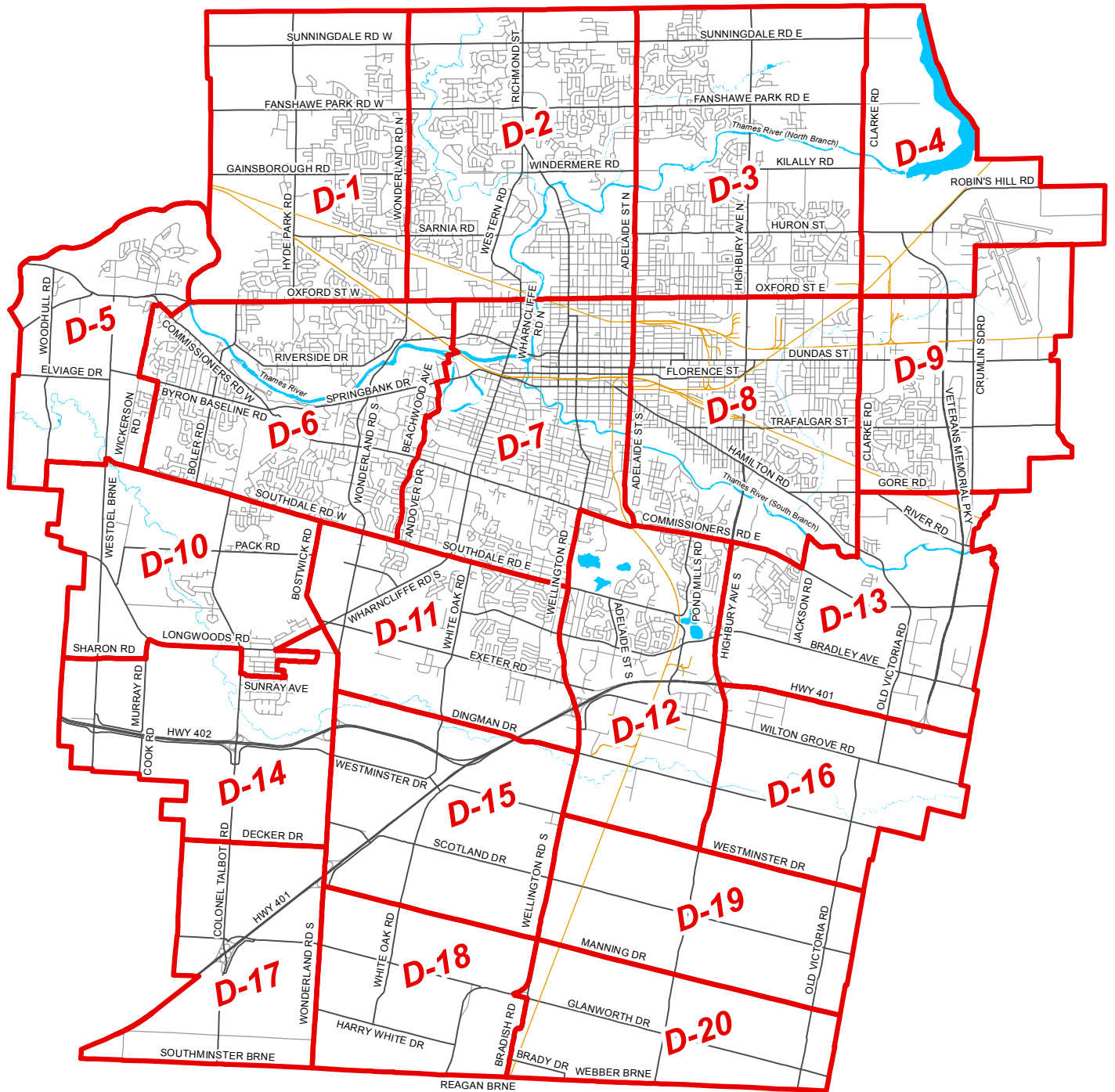
If any drip line cannot be measured, the alternate dimension shown in the Table below shall be used.

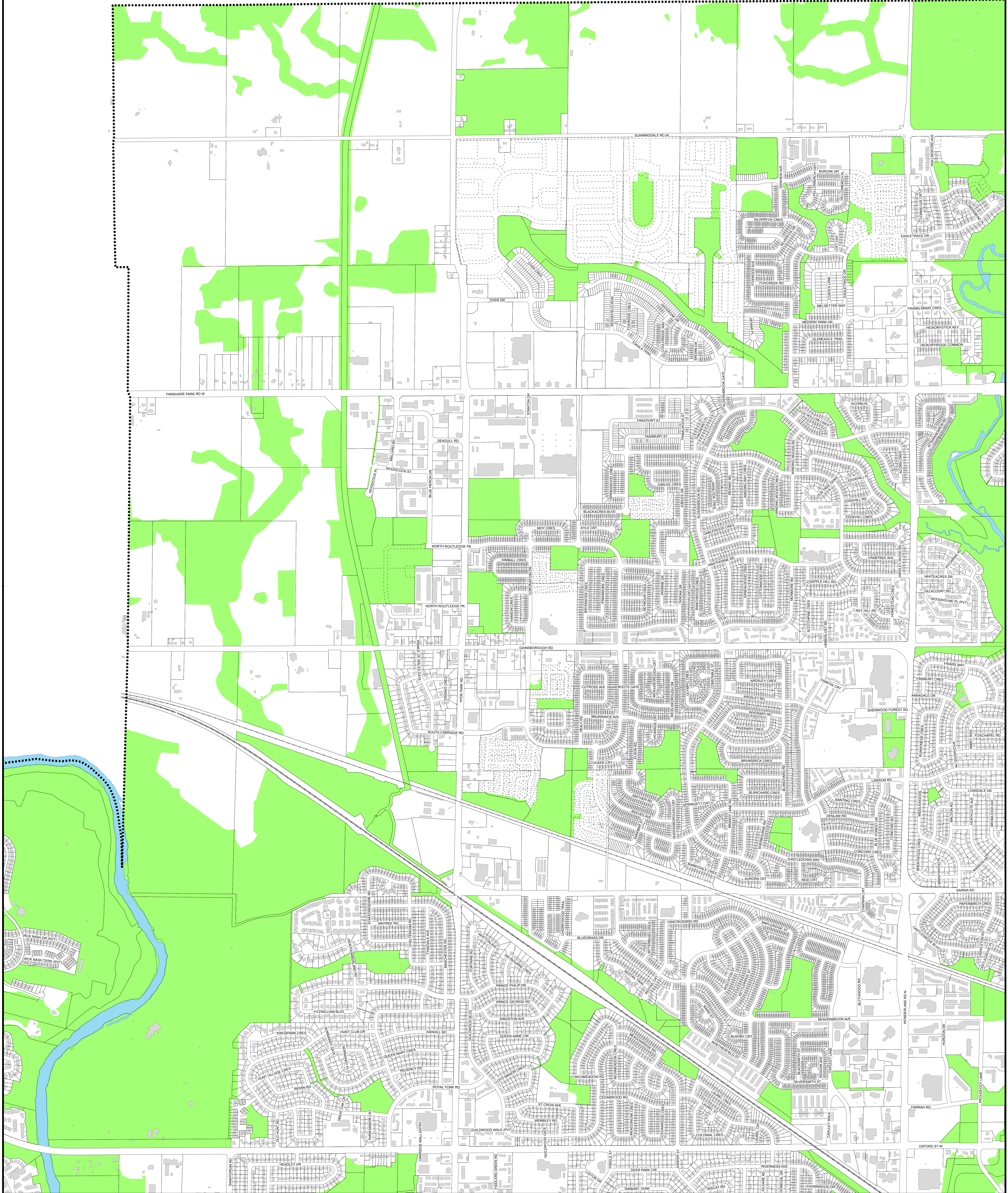
The City Planner, solely at his/her discretion, may make an alternative interpretation of the critical root zone that he/she deems to be reasonable and warranted.

Trunk diameter measured at 1.4m above natural ground level	Critical Root Zone shall be whichever is the greater of:
Less than 10cm	1.2 m
10 -29 cm	3.6 m
30 - 40 cm	4.8 m
41 - 50 cm	6.0 m
51 - 60 cm	7.2 m
61 - 70 cm	8.4 m
71-80 cm	9.6 m
81-90 cm	10.8 m
91-100 cm	12.0 m
>100 cm	12 cm for each 1cm of diameter

Schedule D – Tree Protection Area Maps

Note: The maps provided in this Schedule are for reference only. An online version of these reference maps is also available on the City's website to provide users greater detail. The Tree Protection Area Maps for this By-law are kept by the City Clerk and can be reviewed in the City Clerk's offices.





CITY OF LONDON
TREE PROTECTION BY-LAW

SCHEDULE D

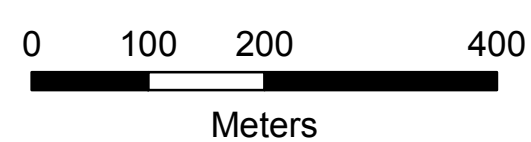
as of August 30, 2016

 Tree Protection Area

KEY MAP

D-1

1:6,500



DISCLAIMER

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