Report to Planning and Environment Committee

To: **Chair and Members**
Planning and Environment Committee
From: **Kelly Scherr, P. Eng., MBA, FEC**
Managing Director, Environmental & Engineering Services and City Engineer
Subject: **Proposed New City of London Tree Protection By-law and Notice of PPM**
Date: **June 17, 2019**

Recommendation

That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, the attached proposed new City of London Tree Protection By-law (Appendix "A") **BE REFERRED** to a public participation meeting to be held at the Planning and Environment Committee on September 23, 2019 for the purpose of seeking public input on the proposed new by-law.

Executive Summary

Several issues with the existing Tree Protection By-law have emerged since it was passed by Council on 30 August 2016. Public consultation also revealed a number of administrative, interpretive or technical matters that were difficult to understand, or creating problems with compliance. There have also been observations of ambiguity made by the Hearings Officer that suggest improvements in by-law language is necessary. Given the extent of those changes, a new Tree Protection By-law will need to be put in place.

This report brings the proposed By-law forward for public review and comment while the existing Tree Protection By-law C.P.-1515-228 remains in place.

Analysis

1.0 Previous Reports

June 18, 2018	Planning & Environment Committee Report – The City of London Tree Protection By-Law C.P.-1515-228 Amendments and Implementation Update - Proposed new by-law received for information and referred to the Trees & Forest Advisory Committee for review and comment
November 20, 2017	Planning & Environment Committee Report - The City of London Tree Protection By-law-C.P.1515-228 Implementation Review
July 17, 2017	Planning & Environment Committee Report – Staffing Resources to support the new Tree Protection By-law
August 22, 2016	Planning & Environment Committee Report – Adoption of the Tree Protection By-law and direction to monitor the implementation of the By-law and provide a status report and any recommended amendments to the By-law within a period of one year
August 26, 2014	Planning & Environment Committee Report - Adoption of the Urban Forest Strategy and endorsement of an Implementation Plan that includes By-law revisions

2.0 History

Since Vision 96 in 1996, the City of London has had a private tree by-law in place, for the first twenty years in the form of a Tree Conservation By-law aimed at protecting

woodlands on private lands. Through public consultation for the Urban Forest Strategy (2014) it became clear that there was unmet, significant public demand for a better private tree by-law with 86% of respondents supporting this. One of the themes of the Urban Forest Strategy is to “Protect More” trees. Requiring replacement planting of protected trees that are destroyed with an approved Permit is an obvious way to help achieve our Urban Forest Strategy goal of 34% tree canopy cover by 2065

A new Tree Protection By-law was prepared and passed by Council on 30 August, 2016, scoped to protect:

(i) Distinctive Trees within the Urban Growth Boundary defined as having a trunk diameter 50cm or greater measured 1.4m above ground, and

(ii) all trees regardless of size that are within mapped Tree Protection Areas.

The passing of the By-law was subject to an end-of-first-year review, with reports submitted to this Committee in July and November of 2017. A more detailed report was prepared in 2018 with information gathered from public engagement, but due to the then-ongoing Boulevard Tree Protection By-law review and internal, organizational changes affecting Urban Forestry it was necessary to defer a public participation meeting about the private Tree Protection By-law until 2019.

3.0 Legislative and Policy Information

Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*

Bill 68 amended subsection 270 (1) of the *Municipal Act, 2001* by adding a new clause (7) that requires municipalities to adopt and maintain policies which sets out “*the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.*” This provision came into effect March 1, 2019.

The London Plan Policies, 2016

Policy 389 (6)	“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.”
Policy 392	“Engagement of the public to manage private trees and woodlands is crucial to achieving tree canopy coverage targets and will be implemented through education, promoting stewardship, planting programs, and the development of policies, by-laws, standards and guidelines.”
Policy 399 (8)	“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.”

4.0 Community Engagement & Feedback (see more detail in Appendix “B”)

The following community engagement since the By-law was passed has been considered in the development of the proposed new By-law.

Tree Care Professionals & Industry Workshop
In February 2018, a public workshop was held for tree care companies who had prior dealings with the Tree Protection By-law. Staff received feedback on criticisms and concerns about the By-law, mainly focussed on its language, interpretation and administration. There was strong industry support to reduce the Distinctive Tree size from 50cm or greater, so to protect far more trees and ensure more trees remain to be pruned regularly over a long timeframe. A reasonable application fee was not a concern, but the sliding scale of fees and the absence of a limit with respect to the fees for a number of Distinctive Trees was a concern. The fee of $1,000 for a good forestry

practices application (i.e. selective tree harvesting in a woodland) was viewed as too high.

Public Surveys – online and by email or mail
Two public surveys were undertaken in 2018. One was aimed primarily at those persons who had requested a permit under the existing By-law. Questions were asked about how satisfied was the client with the administrative process and what changes might be suggested. Details of that survey were included in the June 18, 2018 report.

The second survey was open to the public for three months asking for feedback on general tree protection topics, by-law awareness and tree planting (summary of survey results included in Appendix "B"). Some of the major findings of the survey included approximately 73% knew that there was a private tree by-law but did not necessarily know if it applied to their land. 87% replied that the size for "Distinctive" trees should stay the same or be decreased therefore protecting more trees.

Trees and Forests Advisory Committee
The Trees and Forests Advisory Committee provided detailed recommendations to staff regarding proposed changes to the By-law (included in Appendix "B"). This included a recommendation to reduce the size threshold for a Distinctive Tree to 25cm or greater.

Hearings Officer
All appeals that may be brought under the By-law are heard by the Hearings Officer. Several appeals have been upheld due to ambiguous language, with similar decisions by the Hearings Officer that ran counter to the original intent of the By-law. The proposed new By-law language should ensure that the By-law is clear and unambiguous, for everyone.

Comments to Staff
Staff received a letter from a consultant to bring forward concerns on behalf of two cemeteries (included in Appendix "B"). The exemption of the municipality from the By-law has been criticised as a financial or competitive advantage at municipally-run golf courses, whereas privately-owned golf courses must adhere to the By-law.

Meetings were also held with London Development Institute and staff attended the London's Planner Lunch to discuss the By-Law. Staff hear informal complaints during their day-to-day work about how to make improvements to the By-Law. Once such complaint was that the payment process is challenging as only cash and cheques can be received at one location. Staff have been able to address this recently with Recreation staff leading a project for other payment types being accepted at multiple City facilities outside of normal business hours.

5.0 City Response to Major Proposed Changes

Adoption of a Reduced Size for a Distinctive Tree
The Trees and Forests Advisory Committee and members of the tree-care industry are recommending that the size threshold for a Distinctive Tree should be reduced to 20cm or 25cm, or greater. This was a result of an observation from the industry that many healthy trees, in this size category, are being removed. Based on the data collected in the 2008 Urban Forests Effects Model (UFORE), it is estimated that approximately 60% (not including buckthorn) of our tree canopy are trees of this size. At our current size threshold approximately 6% of our tree canopy is being protected.

This change is not recommended. If the size threshold is decreased, it is estimated there would be a four-fold increase in Tree Protection By-law workload. This would remove any remaining ability of staff to conduct other necessary duties, tasks, programs and initiatives under the Implementation Plan for the Urban Forest Strategy (2014) without a corresponding deterioration in customer service levels. In addition, since March 2019, Urban Forestry staff have assumed additional duties to enforce the removal of hazardous trees under the Property Standards By-law, and enforcement

duties for the Boulevard Tree Protection By-law. Workloads remain high, especially in the spring to fall period.

Cemeteries and Golf Courses
In the existing By-law, cemeteries and golf courses, covered by Tree Protection Areas where all trees are protected regardless of size, follow a different application process. It was intended to avoid these businesses from having to make multiple applications and pay their associated fees when managing a dynamic, large tree resource. In the existing By-law, cemeteries and golf courses may apply for an extended 5-year Permit that implements an approved long term forest (tree) management plan. No application fee is required.

The City considers that the By-law has not proven to be the correct tool to bring about the long-term pro-active management as was envisioned. For these reasons that the City is considering to exempt active cemeteries and golf courses from the new By-law.

Cemeteries
Cemeteries have struggled with developing long term management plans as required for a complete application. Most applications received have been short-term, involving only one or a few large trees that must be removed to allow for a structure (e.g. a mausoleum) to be built. Cemeteries typically manage their trees for amenity and maintain them for as long as possible, removing trees only as they become unsafe. These circumstances cannot be predicted or planned up to 5 years in advance. While pro-active management occurs, this is usually achieved by pruning which is an exempted activity under the By-law.

Cemeteries are regulated under the *Funeral, Burial and Cremation Services Act, 2002* and have their own By-laws passed under that Act. Such By-laws include the manner in which vegetation may be managed. For example there may be clauses that govern where and what type of trees are acceptable to be planted, or not, which may conflict with our By-law.

Golf Courses
Golf courses have struggled with developing long-term management plans for similar reasons. Most often, golf courses need to remove trees when they present an unacceptable risk to the public that may enjoy walking over their lands, or to members and guests playing golf. The City is aware of one golf course having long-term plans to change its landscape to meet the expectations of the world-class professional players. The potential for a conflict between the By-law, and such actions the Board of Directors may desire so to continue to attract business, has been criticised, pointing out that municipally-owned golf courses operate and continue to generate revenue with no such barriers to their business.

Golf courses have relatively low tree canopy cover. Most of the Tree Protection Area is, in fact, open turf. Those trees and small woodlands that occur are highly valued for creating the interest and variety that attracts and retains players, and most trees are pruned regularly in winter to keep them safe and provide for line-of-sight.

Replacement Tree Planting & Fees
Requiring replacement planting of protected trees that are destroyed with an approved Permit is an obvious way to help achieve our Urban Forest Strategy goal of 34% tree canopy cover by 2065. At present, replacement tree planting is discretionary and may be determined by the approver of the Permit – which is sometimes the Hearings Officer. The applicant, as they proceed with their application, has no way of knowing if they will be required to plant, or not, how many replacement trees, or whether they may be required to pay a fee if they are unable to plant the required trees due to lack of suitable space on-site.

With the proposed By-law, replacement tree planting will be required (see Schedule B) for all Permit types except for Dead Distinctive Tree Permits. This means where an otherwise healthy is proposed to be removed, replacement tree planting will apply. The

By-law states the number of replacement trees required (varying by the size of tree being destroyed), and an additional fee of $350 may be charged by the City for each replacement tree that is not planted for lack of suitable space.

Application Fees
It is proposed to introduce a flat fee of $100 regardless of the type of application and the number of protected trees being injured or destroyed. The City Engineer or designate will retain the ability to waive the fee where extenuating circumstances occur.

No fees at all will be collected before staff have considered the application and are prepared to proceed to a decision. This avoids requiring a fee be paid upfront as part of a complete application, only for staff to discover circumstances that the fee should not be paid, and then returning it. It also means the applicant can pay all the required fees (e.g. if required for a replacement tree that will not be planted) at one time, in one place.

There will continue to be no fee for trees that are dead, hazardous, or required to be destroyed by Order issued under other legislation.

Fees - Denial of a Permit and Right to Appeal
No application fee will be charged for an application that will end in a denial to issue a Permit. Should the denial be appealed, however, a new appeal fee of $100 will be required.

6.0 Conclusion

The proposed new By-law aims to strengthen and improve on the existing Tree Protection By-law C.P.-1515-228, with public input that will inform its existing and further development. Protected trees will continue to be protected under the existing Tree Protection By-law C.P.-1515-228 while the proposed By-law remains in development. The changes that have been made since the June 2018 report to the by-law are a result of further technical review by staff. These changes are noted as new language is underlined and deleted language is ~~struck through.~~

A detailed staff report will be submitted along with the proposed new By-law for the Public Participation Meeting on September 23, 2019.

Acknowledgements

Sara Rowland, R.P.F., Urban Forestry Planner with the Roads Operations & Forestry Division played a key role in authoring this report.

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Recommended by:	**Kelly Scherr, P. Eng., MBA, FEC** **Managing Director, Environmental & Engineering Services and City Engineer**

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Appendix A: Proposed By-law
Appendix: Public Engagement and Feedback

Appendix A

Bill No.
2018~~8~~9

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 Municipal Council has determined that it is desirable to enact a By-law to generally prohibit the Injury and Destruction of Trees within the Urban Growth Boundary that have a diameter of at least 50 cm, and all trees located within Tree Protection Areas, and to allow for the Injury and Destruction of such Trees in limited circumstances with a Permit, and to encourage preservation and planting of Trees throughout the City of London;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001,* S.O. 2001, c.25, as amended ("*Municipal Act, 2001*") provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001* or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality, including respecting climate change"; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 9, Animals;

AND WHEREAS pursuant to subsection 135(1) of the *Municipal Act, 2001*, without limiting sections 9 and 10, a municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS pursuant to subsection 135(7) of the *Municipal Act, 2001*, without limiting sections 9 and 10, a municipality may require that a permit be obtained to injure or destroy trees, and impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

AND WHEREAS subsections 151(1) to (4) of the *Municipal Act, 2001* apply with necessary modifications to a system of licences with respect to any activity, matter or thing for which a by-law may be passed under sections 9 and 10 as if it were a system of licences with respect to a business;

AND WHEREAS subsection 1(1) of the *Municipal Act, 2001* defines "licence" to include a permit;

AND WHEREAS section 23.2 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS the Municipal Council for The Corporation of the City of London is of the opinion that the delegation of legislative powers under this by-law to the ~~City~~

~~Planner~~ City Engineer and the Hearings Officer including without limitation the power to issue, revoke, suspend and impose conditions on the permit and prescribe operational standards such as the format and content of forms or documents, are powers of a minor nature having regard to the number of people, the size of geographic area and the time period affected by the exercise of the power in accordance with subsection 23.2(4) of the *Municipal Act, 2001*;

AND WHEREAS subsection 391(1) of the *Municipal Act, 2001* provides that a municipality may impose fees and charges on persons;

AND WHEREAS sections 429, 431, 444 and 445 of the *Municipal Act, 2001* provide for a system of fines and other enforcement orders;

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

Part 1 SHORT TITLE

1.1 This By-law may be cited as the "Tree Protection By-law".

Part 2 DEFINITIONS

2.1 For the purpose of this By-law:

"Applicant" means the Landowner or the Landowner's authorized representative who, pursuant to this By-law, applies for a Permit;

"Arborist" means 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; or a Registered Professional Forester;

"Arborist Opinion (Dead Distinctive Tree)" means a written opinion by an Arborist that contains the following:
(a) the Arborist's opinion that the Tree is a Dead Distinctive Tree as that term is defined;
(b) correct identification of the location, species and size of the Dead Distinctive Tree; ~~and~~
(c) a photograph or video of the Tree; and
(d) the professional accreditation of the Arborist (e.g. International Society of Arboriculture (ISA) Certification Number);

"Arborist Report" means a written report by an Arborist that contains the following:
(a) correct identification of the location, species, size and condition of Trees;
(b) states the Arborist's opinion why a Tree should be Injured or Destroyed~~;~~ , and whether it represents Good Arboricultural Practices or Good Forestry Practices;
(c) describes how the Tree is proposed to be Injured or Destroyed;
(d) ~~states~~ an analysis and description of any reasonable alternatives to the Tree Injury or Destruction or an analysis and description as to why ~~whether~~ there are no reasonable alternatives to the Tree Injury or Destruction;
(e) ~~calculate~~ calculation of the number of Replacement Trees based on Schedule B, and suggest the species and location, and if in a Tree Protection Area, the Trees that may be planted or established through appropriate natural regeneration, the number of Replacement Trees that can be planted on the Site;
(f) if Trees are to be Injured but not Destroyed, ~~describes~~ description of maintenance strategies and protection measures to be implemented; ~~and~~
(g) if requested by the ~~City Planner~~ City Engineer, further information ~~to include~~ such as Tree or Trees on adjacent properties that may be affected, and an aerial map representation showing the Critical Root Zone of those Trees; and
(h) the professional accreditation of the Arborist (e.g. International Society of Arboriculture (ISA) Certification Number);

"Boundary Tree" means a tree having any part of its trunk located on the boundary between adjoining lands. For the purposes of this definition, 'trunk' means that part of the tree from its point of growth away from its roots up to where it branches out to limbs and foliage;

"Building Permit" means a building permit issued under the *Building Code Act, 1992,* S.O. 1992, c. 23, or successor legislation;

"By-Law Enforcement Officer" means a person appointed pursuant to the *Police Services Act*, or any successor legislation, as a Municipal Law Enforcement Officer to enforce the provisions of this By-law;

"City" means The Corporation of the City of London;

~~"City Planner"~~ "City Engineer" means the person who holds the position of ~~City Planner~~ City Engineer for The Corporation of the City of London or their written Designate who is authorized by the ~~City Planner~~ City Engineer to act on their behalf in respect of this By-law;

"Conservation Authority" has the same meaning as defined in the *Conservation Authorities Act,* R.S.O. 1990 c.C.27;

"Critical Root Zone" means the area of land within a radius of ten (10) cm from the trunk of a tree for every one (1) cm of trunk diameter;

"Dead Distinctive Tree" means a Distinctive Tree that, as a result of natural causes, is dead~~,~~ or, as a result of natural causes, is in advanced and irreversible decline in health;

"Dead Distinctive Tree Permit" means a permit issued by the ~~City Planner~~ City Engineer to permit the Injury or Destruction of a Dead Distinctive Tree;

"Declared Emergency" means a situation or impending situation that has been declared an emergency under the *Emergency Management and Civil Protection Act* , R.S.O. 1990 c.E.9 or successor legislation;

"Designate" means any person acting with express authority conferred in writing by the ~~City Planner~~ City Engineer and may include but is not limited to City employees or Qualified Persons hired by the City;

"Destroy" means to cut down, remove, 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 a Trunk Diameter of 50cm or greater, and that is located on a property within the Urban Growth Boundary, excluding a Tree Protection Area;

"Distinctive Tree Permit" means a permit issued by the ~~City Planner~~ City Engineer to permit the Injury or Destruction of a Distinctive Tree or Trees;

"Emergency Services" means the fire, police, or ambulance services when responding to an emergency event;

"Good Arboricultural Practices" means the implementation of the most recent techniques or methods of Tree management as recommended by the International Society of Arboriculture or their successor;

"Good Forestry Practices" has the same meaning as defined in the *Forestry Act* R.S.O. 1990 c. F.26;

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

“Injure” means to harm, damage or impair the natural function~~,~~ or form of a Tree, including its roots within the Critical Root Zone, by any means excepting ~~Injury~~ 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~~ introduction 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 a person having title in the land on which the Tree(s) are situated; ~~the term “Landowners” shall have the same meaning, plural~~;

“Natural Ground Level” means 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~~ ground level varies around the Tree, it ~~any measurement that is referenced from Natural Ground Level~~ shall be measured from the highest part of the soil;

“Normal Farm Practice” means a normal farm practice defined in the *Farming and Food Production Protection Act 1998,* S.O. 1998, c.1.

“Order” means an Order to Discontinue Activity or a Work Order, as the context requires;

“Permit” means a Tree Protection Area Permit or a Distinctive Tree Permit, or a Dead Distinctive Tree Permit, as the context requires;

“Permit Holder” means the Landowner to whom a Permit has been issued;

“Pest” means ~~anything~~ any thing that is injurious or potentially injurious, whether directly or indirectly, to a Tree~~;~~ ,and includes any species that is invasive or new to Canada where the potential for harm is yet unknown or unpredictable;

“Pruning” means the removal of live or dead branches from a standing Tree. The terms “Prune” and “Pruned” shall have a corresponding meaning;

“Qualified Person” ~~shall~~ means a person who, in the opinion of the ~~City Planner~~ City Engineer, has satisfactory qualification, experience, education or knowledge to be an expert in the matter;

“Registered Professional Forester” means a person who is a registered and 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. 1*8 or successor legislation;

“Replacement Tree” means a ~~native, shade or large growing~~ tree of a size and type determined by the City Engineer that is required to be planted to replace a tree Destroyed pursuant to a Permit;

“Security” means an agreement between the City and an Applicant where the Applicant arranges an irrevocable letter of credit from a financial institution to specify and lodge a sum of money as determined by the ~~City Planner~~ City Engineer as a condition of a Permit;

“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 activities subject to this By-law ~~is~~are planned or executed, and in the case of a tract of land that extends over multiple landholdings, each separate landholding is a separate "Site";

"Swimming Pool Fence Permit" means a swimming pool fence permit issued under the City's Swimming Pool Fence By-la PS-5, or successor legislation;

~~"Species at Risk" means any species listed in *Ontario Regulation* 242/08 under the *Species Act, 2007,* S. 0. 2007,c.6 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, could reach, or could have reached a height of at least 4.5 metres (15 feet) at physiological maturity~~. The term "Trees" shall have the same meaning, plural~~;

"Tree Management Plan" means a written plan that sets out the scope, rationale and management intentions for managing an inventory of a Tree or Trees for a year or more. Other names for a "Tree Management Plan" include 'Landscape Management Plan', 'Tree Protection Plan', 'Tree Planting Plan', 'Woodland Management Plan' and 'Forest Management Plan';

"Tree Protection Area" means any geographic area of the City that appears as a Tree Protection Area on Schedule C of this By-law;

"Tree Protection Area Permit" means a permit issued by the ~~City Planner~~ City Engineer to permit the Injury or Destruction of a Tree or Trees within a Tree Protection Area;

"Trunk Diameter" means the diameter of the trunk of a Tree measured 1.4m above the Natural Ground Level;

"Urban Growth Boundary" means the Urban Growth Boundary as defined in the City's Official Plan;

~~"Woodland" shall have the same meaning as "Woodlands" as defined by the *Forestry Act,* R.S.O. 1990, c. F.26.~~

2.2. In this by-law, words importing the singular number include the plural and vice versa, unless the context requires otherwise.

Part 3 SCOPE

3.1 This By-law applies to private property in the City of London:
(a) to Trees that have diameter of at least 50 cm within the Urban Growth Boundary; and
(b) to Trees of any size within a Tree Protection Area.

Part 4 ADMINISTRATION

4.1 The administration of this By-law shall be performed by the ~~City Planner~~ City Engineer who shall generally perform all of the administrative functions conferred upon them by this By-law.

Part 5 EXEMPTIONS FROM BY-LAW

Exemptions from By-law

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 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,

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

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

(i) the Injuring or Destruction of Trees that are a noxious weed as defined in the *Weed Control Act*, R.S.O. 1990, c. W.5 if the Injury or Destruction 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;

(j) the Injuring or Destruction of Trees undertaken by a Conservation Authority on its own lands or in response to a Declared Emergency;

(k) the Injuring or Destruction of Trees at the direction of Emergency Services;

(l) Pruning that is necessary to maintain the health and condition of the Tree and is carried out in accordance with Good Arboricultural Practices;

(m) Injury or Destruction of a Tree that is not a Distinctive Tree and is not located within a Tree Protection Area;

(n) Injury or Destruction of a Tree that is located within a building, a solarium, a rooftop garden or an interior courtyard;

(o) Injury or Destruction of a Tree located within an actively managed cultivated orchard, tree farm or plant nursery;

(p) Injury or Destruction of a Tree that is an immediate threat to health or safety;

(q) Injury or Destruction of the Tree that is required by a Property Standards Order issued under the *Building Code Act*; or

(r) Injury or Destruction that is a Normal Farm Practice as defined in the *Farming and Food Production Protection Act, 1998,* S.O. 1998, c.1.~~.~~

Part 6 PROHIBITIONS

Injure or Destroy Tree – Tree Protection Area

6.1 Subject to section 5.1 and Part 8, no person shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree in a Tree Protection Area.

Injure or Destroy Tree – Distinctive Tree

6.2 Subject to section 5.1 and Part 8, no person shall Injure or Destroy a Distinctive Tree or cause or permit the Injury or Destruction of a Distinctive Tree. This section 6.2 shall not apply to a Tree located in a Tree Protection Area and section 6.1 shall apply instead.

Injure or Destroy Tree – Not in Accordance with Permit Conditions

6.3 No Permit Holder or person acting under authority of a Permit shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree unless the Injury or Destruction is carried out in accordance with all conditions of the Permit.

Fail to Protect Tree in Accordance with Permit Conditions

6.4 No Permit Holder or person acting under authority of a Permit shall fail to protect a Tree in accordance with all conditions of a Permit.

Fail to Comply with Conditions of Permit

6.5 No Permit Holder or person acting under authority of a Permit shall fail to comply with all conditions of a Permit.

Fail to Comply with Order to Discontinue Activity or Work Order

6.6 No person who has been issued an Order to Discontinue Activity or a Work Order shall fail to comply with the Order.

Part 7 APPLICATION FOR PERMITS ~~– Exceptional Circumstances~~

7.1 Applicants for a Permit should refer to Part 8 of this By-law, as Permits are only issued for the grounds set out in section 8.2 ~~Only under the following exceptional circumstances~~ (and subject to all applicable requirements in this By-law including sufficient evidence of the ~~exceptional circumstances~~ grounds) ~~may a Permit be issued~~ for the Injury or Destruction of a Tree:

~~(a) the Tree is a dead or dying Distinctive Tree (Dead Distinctive Tree Permit);~~

~~(b) the Tree is unsafe (Tree Protection Area Permit);~~

~~(c) the Tree is causing or is likely to cause structural damage to load-bearing structures or roof structures (Tree Protection Area Permit or Distinctive Tree Permit);~~

~~(d) Tree removal is required to remediate contaminated soil (Tree Protection Area Permit or Distinctive Tree Permit);~~

~~(e) the Tree Injury or Destruction is required 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 (Tree Protection Area Permit or Distinctive Tree Permit);~~

~~(f) the Injury or Destruction of a Distinctive Tree represents Good Arboricultural Practices, or, for Trees within a Tree Protection Area it represents Good Forestry Practices (Tree Protection Area Permit or Distinctive Tree Permit);~~

~~(g) the Tree Injury or Destruction is required for purposes of a Building Permit (Tree Protection Area Permit or Distinctive Tree Permit);~~

~~(h) the Tree Injury or Destruction is required for purposes of locating a swimming pool (Tree Protection Area Permit or Distinctive Tree Permit).~~

Application to ~~City Planner~~ City Engineer

7.2 (1) Every application for a Permit shall be made to the ~~City Planner~~ City Engineer in a format provided by the ~~City Planner~~ City Engineer.

Application – Requirements

(2) Every application for a Permit shall include the following:

(a) payment of the Application Fee as set out in Schedule A of this By-law;

(b) the name, municipal address, email address (if available) and telephone number (if available) of the Landowner, and if not the same, the Applicant;

(c) if the Applicant is not the Landowner, written confirmation that the Applicant is making the application as the Landowner's authorized agent;

(d) if the Applicant or the Landowner is a corporation, the address of its head office;
(e) the municipal address and legal description of the land, upon which the Tree or Trees are to be Injured or Destroyed;
(f) if known, the name, municipal address, email address, and phone number of any contractor anticipated to Injure or Destroy the Tree or Trees;
(g) for a Dead Distinctive Tree Permit, an Arborist Opinion ~~(Dead Distinctive Tree)~~;
(h) for a Distinctive Tree Permit or a Tree Protection Area Permit, an Arborist Report;
(i) for a Distinctive Tree Permit or a Tree Protection Area Permit, where any of the following grounds for the proposed Tree Injury or Destruction apply:
    (i) an Arborist's written opinion that the Tree is unsafe;
    (ii) an Arborist's, Professional Engineer's or Insurance Loss Adjuster's written opinion that the Tree is causing or is likely to cause structural damage to load-bearing structures or roof structures;
    (iii) a "qualified person's" (as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E.19) written opinion that Tree removal is required to remediate contaminated soil;
    (iv) a ~~Quantity Surveyor's~~ Qualified Person's written opinion that the Tree Injury or Destruction is required 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~~ Building Permit has been issued with no reasonable alternative to locating those utilities or infrastructure;
    (v) an Arborist's written opinion that the Distinctive Tree Injury or Destruction represents Good Arboricultural Practices, or a Registered Professional Forester's written opinion that the Injury or Destruction of a Tree within a Tree Protection Area represents Good Forestry Practices;
    (vi) a copy of the Building Permit if the Tree Injury or Destruction is required for purposes of a Building Permit;
    (vii) a copy of the Swimming Pool Fence Permit, where one is required, or other evidence that is satisfactory to the City Engineer that a pool is to be installed, if the Tree Injury or Destruction is required for purposes of locating a swimming pool.

Application – Additional Information May be Required

(3) In addition to the requirements in subsection~~s~~ (2), the ~~City Planner~~ City Engineer may require the Applicant to provide one or more of the following:

(a) for a Tree Protection Area Permit, an inventory, tally or estimates from sample plots of the species and size classes of all Trees to be Injured or Destroyed, including a map of the location of sample plots, to the satisfaction of the ~~City Planner~~ City Engineer;
(b) for a Tree Protection Area Permit, a Silvicultural Prescription that complies with Good Forestry Practices and is prepared by a Registered Professional Forester;
(c) a drawing of the Site showing any proposed development, construction, works, excavation or site alteration that may require the Tree Injury or Destruction, and a schedule for this proposed activity, including start and end dates;
(d) confirmation of any other matters (past or present Planning applications or otherwise) affecting the land upon which the Tree or Trees are to be Injured or Destroyed;
(e) a Tree Management Plan, which may be for one or more Trees, prepared by a Qualified Person;
(f) affidavits in support of an application.

Application – Further Information – Supplied within 60 days

(4) The Applicant must provide any further information requested by the ~~City Planner~~ City Engineer under subsection (3) to the ~~City Planner~~ City Engineer within 60 days of such request.

Application – Deemed Incomplete

7.3 An application that does not contain everything required in subsection 7.2(2) within 60 days of the receipt of the application by the City, or does not contain the information as further required under subsection 7.2 (3) within 60 days of the request, shall be deemed to be incomplete and will not be processed. The ~~City Planner~~ City Engineer shall notify the Applicant that the file has been closed for incompleteness. The Schedule A fees paid shall not be returned to the Applicant.

Application – Permission for City to Inspect

7.4 By submitting an application, the Landowner shall be deemed to have granted permission for the City to enter on the Landowner's land for purposes of this By-law.

Boundary Tree

7.5 If the Tree to be Destroyed or Injured is a Boundary Tree, all owners of the Boundary Tree or their authorized agents ~~must~~ would need to apply for a Permit, otherwise a Permit will not be issued. ~~If one of the adjoining lands upon which the Boundary Tree is located is City-owned boulevard, then the City's Boulevard Tree By-law will apply and this By-law will not apply~~. In the event that the City is an owner of a Boundary Tree (not on the City Boulevard) the written approval of the City Engineer would be required but such approval is entirely at the discretion of the City Engineer.

7.6 **Boundary Tree - City Boulevard Tree**

If one of the adjoining lands upon which the Boundary Tree is located is City-owned boulevard, then the City's Boulevard Tree By-law will apply and this By-law will not apply.

Part 8 POWERS OF THE ~~CITY PLANNER~~ CITY ENGINEER

8.1 The power and authority to issue a Permit, refuse to issue a Permit, to cancel, revoke or suspend a Permit, to impose terms and conditions on a Permit, including special conditions, are delegated to the ~~City Planner~~ City Engineer.

~~City Planner~~ City Engineer – When Permit Shall Issue

8.2 The ~~City Planner~~ City Engineer shall issue a Permit where all of the following are satisfied:

(1) the application is complete and all fees paid; and

(2) the ~~City Planner~~ City Engineer is satisfied that there are no reasonable alternatives to the proposed Tree Injury or Destruction; and

(3) the ~~City Planner~~ City Engineer has determined, in their discretion, that ~~is not aware of any~~ there are no grounds for refusing to issue a Permit under section 8.3; and

(4) the ~~City Planner~~ City Engineer is satisfied that one or more of the following grounds for issuing a Permit apply:

(a) the Tree is a Dead Distinctive Tree;

(b) based on the opinion of an Arborist, it is necessary to remove unsafe Trees;

(c) based on the opinion of a Professional Engineer, the Tree or Trees are causing or are likely to cause structural damage to load-bearing structures or roof structures;

(d) based on the opinion of a 'qualified person' (as defined in the *Environmental Protection Act*), the Tree Injury or Destruction is required to remediate contaminated soil;

(e) based on the opinion of a ~~Quantity Surveyor~~ Qualified Person, the Tree Injury or Destruction is required 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~~ Building Permit has been issued with no reasonable alternative to locating those utilities or infrastructure;

(f) the Tree Injury or Destruction is required for purposes of a Building Permit;

(g) the Tree Injury or Destruction is required for purposes of locating a swimming pool;

(h) based on the opinion of an Arborist, the Distinctive Tree Injury or Destruction represents Good Arboricultural Practices, or based on the opinion of a Registered Professional Forester, the Injury or Destruction of a Tree within a Tree Protection Area represents Good Forestry Practices.

(5) The ~~City Planner~~ City Engineer shall refuse to issue a Permit if (1), (2), (3) and (4) are not satisfied.

~~City Planner~~ City Engineer – May Refuse to Issue Permit, Revoke Permit, Suspend Permit, Impose Conditions on Permit

8.3 The ~~City Planner~~ City Engineer at their discretion may refuse to issue, may revoke, or may suspend a Permit or impose a term or condition on a Permit on any one or more of the following grounds:

(a) the species of Tree is an endangered species or threatened species as defined in the *Endangered Species Act, 2007*, S.O. 2007, c. 6, or the *Species at Risk Act*, S.C. 2002, c. 29;

(b) the Tree is designated under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18;

(c) ~~the presence, within the Tree, of breeding~~ migratory birds ~~as~~ are making use of the Tree, or migratory bird nests are in the Tree, as contemplated in the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22;

(d) the protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;

(e) erosion, flood control and sedimentation of watercourses;

(f) any information contained in the original application form or any other information provided to the ~~City Planner~~ City Engineer has ceased to be accurate and the Applicant, Landowner or Permit Holder has not provided up-to-date accurate information to allow the ~~City Planner~~ City Engineer to conclude that the Permit should continue;

(g) an Applicant or Permit Holder does not meet one or more of the requirements of this By-law or a condition imposed on a Permit;

(h) the Applicant or Landowner is carrying on activities that are in contravention of this By-law;

(i) there are reasonable grounds to believe that an application or other documents provided to the ~~City Planner~~ City Engineer by or on behalf of the Applicant or Landowner contains a false statement.

~~City Planner~~ City Engineer – Additional Reasons to Revoke

8.4 In addition to section 8.3 above, the ~~City Planner~~ City Engineer may revoke a Permit if:

(a) the Permit was issued in error;

(b) the Landowner or Permit Holder requests, in writing, that it be revoked;

(c) the Landowner or Permit Holder fails to comply with any condition of the Permit or this By-law;

(d) the Permit Holder is no longer the owner of the land while the Permit is still valid or the owner on title to the lands has changed;

(e) the ~~City Planner~~ City Engineer is satisfied that there is a material

change in circumstances in connection with or on the Site and the ~~City Planner~~ City Engineer is satisfied that the Permit needs to be revoked to avoid further Injury or Destruction of a Tree or Trees.

~~City Planner~~ City Engineer – May Impose Conditions, Special Conditions

8.5 Notwithstanding any other provision of this By-law, the ~~City Planner~~ City Engineer may impose terms and conditions on any Permit at issuance or at any time during the term of the Permit, including special conditions, as are necessary in the opinion of the ~~City Planner~~ City Engineer to give effect to this By-law.

~~City Planner~~ City Engineer – Permit Decisions – Refuse, Revoke, Suspend, Conditions

8.6 (1) Where the ~~City Planner~~ City Engineer is of the opinion that:

(a) an application for a Permit should be refused;
(b) a Permit should be revoked;
(c) a Permit should be suspended for no more than 14 days; or
(d) a term or condition of a Permit should be imposed;

the ~~City Planner~~ City Engineer shall make that decision.

~~City Planner~~ City Engineer – Written notice of Decision under ss. 8.6(1)

(2) Where the ~~City Planner~~ City Engineer has made a decision under subsection 8.6(1) of this By-law, the ~~City Planner~~ City Engineer shall give written notice of that decision to the Applicant or Permit Holder by electronic mail or regular mail to the last known address of that person and shall be deemed to have been given on the third day after it is mailed. Written notice to a corporation may be given by registered mail to the address of the corporation's registered head office, or by electronic mail if requested by the corporation.

Contents of Written Decision – Can Appeal

(3) The written notice to be given under subsection 8.6(1) shall:

(a) set out the grounds for the decision;
(b) give reasonable particulars of the grounds;
(c) be signed by the ~~City Planner~~ City Engineer; and
(d) state that the Applicant or Permit Holder is entitled to a hearing by the Hearings Officer if the Applicant or Permit Holder delivers a notice of appeal to the City Clerk, within thirty (30) days after the notice in subsection 8.6(1) is given, and the appeal fee as set out in Schedule A attached to this By-law.

No Appeal – Decision Deemed Final

(4) Where no appeal is registered within the required time period, the decision of the ~~City Planner~~ City Engineer is deemed to be final.

Permit Voluntarily Surrendered – Revoke – No Notice Required

(5) Despite subsection 8.6(2), where a Permit is voluntarily surrendered by the Permit Holder for revocation, the ~~City Planner~~ City Engineer may revoke the Permit without notice to the Permit Holder.

~~City Planner~~ City Engineer – May Make Regulations – Forms, Documents

8.7 In addition to any other power, duty or function prescribed in this By-law, the ~~City Planner~~ City Engineer may make regulations under this By-law including prescribing the format and content of any forms or other documents required under this By-law.

Copy of Regulations to City Clerk – Available for Public Inspection

8.8 The ~~City Planner~~ City Engineer shall provide the City Clerk with copies of any regulations made under this By-law. The City Clerk shall maintain a record of all such regulations. The record of all regulations shall be available for public inspection at the office of the ~~City Planner~~ City Engineer and the office of the City Clerk during normal business hours.

Part 9 ISSUANCE OF PERMITS

Information on Permits

9.1 Every Permit issued under this By-law shall be in the form and manner as provided by the ~~City Planner~~ City Engineer and shall include on its face the following information:

(a) the Permit number;
(b) the name of the Permit Holder;
(c) the date the Permit was issued and the date it expires;
(d) the municipal address of the premises on which the Tree or Trees to be Injured or Destroyed is located;
(e) the Tree or Trees that are permitted to be Injured or Destroyed;
(f) the nature of the Injury or Destruction.

Permit – Automatic Conditions

9.2 Every Permit that is issued is subject to the following conditions of obtaining and continuing to hold a Permit, all of which shall be performed and observed by the Permit Holder and Landowner:

(a) the Permit Holder shall ensure that the number of living Replacement Trees as determined by the ~~City Planner~~ City Engineer, and the species, or choice of species, ~~range~~, size and location of Replacement Trees as determined by the ~~City Planner~~ City Engineer, are planted on the same Site by the date specified on the Permit;
(b) where there is insufficient space on the same Site to plant all the Replacement Trees, the Permit Holder shall plant as many Replacement Trees as the City Engineer determines the Site will allow and the Permit Holder shall ~~ensure that they~~ forthwith pay the fee as determined by the ~~City Planner~~ City Engineer in Schedule B with respect to the number of Replacement Trees that could not be planted due to insufficient space (Fee for Off-Site Tree Planting);
(c) the Permit Holder or Landowner shall pay all fees related to this By-law;
(d) the Permit Holder or Landowner shall pay all other fees and fines owed by the Permit Holder or Landowner to the City;
(e) the Permit Holder or Landowner shall allow, at any reasonable time, the City to inspect the Site;
(f) the use of the Site is permitted or conforms with the uses permitted under the applicable zoning by-law or is a legal non-conforming use;
(g) the Permit Holder or Landowner shall meet all of the requirements of this By-law~~.~~;
(h) the Permit Holder or Landowner shall ensure that it complies with applicable law including the *Migratory Birds Convention Act, 1994*, and the *Endangered Species Act, 2007*.

Permit – Additional Conditions That May be Imposed

9.3 The ~~City Planner~~ City Engineer may impose other conditions on a Permit, including but not limited to:

(a) the Permit Holder shall ensure that the Injury or Destruction of the Tree is carried out in accordance with Good Arboricultural Practices or Good Forestry Practices;
(b) the Permit Holder shall ensure that the Injury or Destruction of the Tree is carried out in a particular manner or at or during a particular time;
(c) the Permit Holder shall ensure that Permit is posted in a public location for a time period before, during and after the Injury or Destruction of the Tree or Trees;
(d) the Permit Holder shall ensure that the Injury or Destruction of the Tree is to be carried out by or under the supervision of a Qualified Person;

(e) the Permit Holder shall ensure that measures are to be implemented to protect any retained Trees for the period the Permit remains valid;
(f) the Permit Holder shall ensure that the ~~City Planner~~ City Engineer is informed within 48 hours of a change of Landowner;
(g) the Permit Holder shall ensure that a Tree Management Plan satisfactory to the ~~City Planner~~ City Engineer is implemented by a required date;
(h) the Permit Holder shall ensure posting of Security that the City may draw upon in full if the By-law is contravened or if there is a failure in the proper and complete execution of a Permit and its conditions, such that restoration of all or part of the Site has to be done by the City;
(i) the Permit Holder shall ensure it complies with any requirements to protect or relocate wildlife (including bees) as determined by the ~~City Planner~~ City Engineer;
(j) the Permit Holder shall ensure it implements the Silvicultural Plan or Tree Management Plan submitted with the application to the satisfaction of the ~~City Planner~~ City Engineer within a period of time specified by the ~~City Planner~~ City Engineer;
(k) a condition recommended by a Qualified Person that the ~~City Planner~~ City Engineer determines is appropriate.

Permit – Valid For Time Issued – 6 Month Maximum

9.4 A Permit issued under this By-law shall be valid only for the period of time for which it is issued. Unless expressly stated on the face of the Permit, all Permits issued under this By-law shall expire 6 months after issuance.

Permit Issuance – Not permission to Contravene Laws

9.5 The issuance of a Permit under this By-law is not intended and shall not be construed as permission or consent by the City for the Permit Holder or Landowner to contravene or fail to observe or comply with any law of Canada, Ontario or any By-law of the City.

Permit – Owned by City – Valid only to Person and Site Named On It

9.6 Every Permit, at all times, is owned by and is the property of the City and is valid only in respect of the person and the Site named on it.

Permit – Cannot be Sold, Transferred, etc.

9.7 No Permit issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, seized, distrained or otherwise dealt with.

Permit – Notify ~~City Planner~~ City Engineer if Change of Information

9.8 The Permit Holder shall notify the ~~City Planner~~ City Engineer of any change in their name, business, home address, Site ownership, or any other information relating to the Permit within fifteen (15) days after such change and, if the ~~City Planner~~ City Engineer determines it necessary, shall immediately return their Permit to the ~~City Planner~~ City Engineer for amendment.

Requirement to obtain all other approvals required by any level of government

9.9 A Permit issued pursuant to this By-law does not preclude the responsibility of the Applicant or Landowner or Permit Holder to obtain all other approvals which may be required by any level of government and agencies.

Part 10 APPEALS – HEARINGS BEFORE THE HEARINGS OFFICER

10.1 The power and authority to conduct hearings of appeals under this By-law are delegated to the Hearings Officer.

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

10.3 The Hearings Officer may uphold or vary the decision of the ~~City Planner~~ City Engineer or make any decision that the ~~City Planner~~ City Engineer was entitled to make in the first instance.

10.4 The decision of the Hearings Officer is final.

Part 11 ENFORCEMENT

Enforced By

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

Powers of Entry

11.2 The provisions of the City's Inspections By-law A-30, or any successor by-law, apply to Powers of Entry for the purpose of carrying out inspections.

Prohibition - Hinder or Obstruct By-law Enforcement Officer

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

Part 12 POWER TO MAKE ORDERS – REMEDIAL ACTION

Order to Discontinue Activity

12.1 (1) Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make an Order to Discontinue Activity requiring the person who contravened the By-law or a person that caused or permitted a contravention of the By-law or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.

(2) The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date and time by which there must be compliance with the Order to Discontinue Activity.

Work Order

12.2 (1) Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make a Work Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

(2) A Work Order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred, and the work to be done and the date by which the work must be done.

Service of Order to Discontinue Activity or Work Order

12.3 (1) An Order to Discontinue Activity or Work Order may be served personally by the By-law Enforcement 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.

(2) Where an Order to Discontinue Activity or Work Order 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.

(3) The posting of the Order to Discontinue Activity or Work Order at the Site 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.

(4) Where an Order to Discontinue Activity or Work Order issued under the By-law is sent by registered mail, it shall be sent to the last known address of one or more of the following, as applicable:

(a) the Applicant;
(b) the Permit Holder;
(c) the Landowner;
(d) the person contravening the By-law;
(e) the person or company undertaking 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.

12.4 **Remedial Action**
If a person is required, under a Work Order under this By-law, to do a matter or thing, then in default of it being done by the person so required to do it, the matter or thing may be done at the person's expense under the direction of a By-law Enforcement Officer.

12.6 The City may recover the costs of doing a matter or thing under section 12.4 from the person required to do it, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.

12.7 The amount of the costs under section 12.4, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien.

Part 13 PESTS - INSPECTION – REMOVAL OF INFESTED TREES

Inspection for Presence of Asian Long-Horned Beetles and Other Serious Pests; Removal of Infested Trees

13.1 The ~~City Planner~~ City Engineer is authorized to inspect for the presence of Asian Long-Horned Beetles and other Pests that may create serious widespread economic or ecological harm, and to remove such infested trees, on all public and private property, with the consent of the property owner.

13.2 **Inspection for Pests; Right to Enter Private Property – Consent Not Required**
Where the ~~City Planner~~ City Engineer has been designated as an "inspector" by the President of the Canadian Food Inspection Agency under section 13 of the *Canadian Food Inspection Agency Act*, S.C. 1997, c.6 for the purposes of enforcing the *Plant Protection Act*, S.C. 1990, c.22, the ~~City Planner~~ City Engineer has the authority to inspect for the presence of Pests and to take action including the removal of trees on all public and private property, with or without the consent of the property owner, if it is in accordance with the *Plant Protection Act*.

Part 14 OFFENCES AND PENALTIES

Offences

14.1 Any person who contravenes any provision of this By-law, or an Order to Discontinue Activity, or a Work Order, is guilty of an offence.

14.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

Penalties – Minimum and Maximum

14.3 A person convicted under this By-law is liable to a minimum fine of $500.00 and a maximum fine of $100,000.00, where the fine is not a set fine.

Penalties – Continuing Offence

14.4 Contravention of an Order to Discontinue Activity or a Work Order is a continuing offence, and 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 and the total of all daily fines for the offence is not limited to $100,000.

Penalties – Special Fines

14.5 A person convicted under this By-law is liable to a special fine of maximum $200,000.00 which may be imposed in addition to the regular fine, to eliminate or reduce any economic advantage or gain from contravening the By-law.

Court Order - Additional Order to Discontinue or Remedy – s. 431 *Municipal Act, 2001*

14.6 Under section 431 of the *Municipal Act, 2001*, when this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order~~,~~:

(a) prohibiting the continuation or repetition of the offence by the person convicted; and

(b) in the case of a by-law described in section 135 of *Municipal Act, 2001*, requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Part 15 MISCELLANEOUS

Transition

15.1 Any Permit issued under the provisions of By-law C.P.-1515-228 that has not expired or been revoked as of the date of ~~the coming into force of t~~his By-law coming into force shall be deemed to have been issued under this By-law and will be valid until such Permit is revoked, surrendered or expires.

Repeal

15.2 The Tree Protection By-law C.P.-1515-228 passed on August 30, 2016 is repealed.

Coming into force

15.3 This By-law shall come into force and effect on _____.

Passed in Open Council on , 201~~8~~9.

~~Matt Brown~~ Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – (Insert Council Meeting Date)
Second Reading – (Insert Council Meeting Date)
Third Reading – (Insert Council Meeting Date)

Schedule A - Fees

1. The following fees apply to this By-law:

DESCRIPTION OF FEE	**FEE AMOUNT**
Fee for Dead Distinctive Tree Permit	$0
Fee for Application for Distinctive Tree Permit	$100
Fee for Application for Tree Protection Area Permit	$100
Fee for Appeal Hearing Request	$100

Schedule B

Calculation of Number of Distinctive Tree Replacement Trees & Calculation of Fees for Off-Site Tree Planting (insufficient space on Site to plant Replacement Trees)

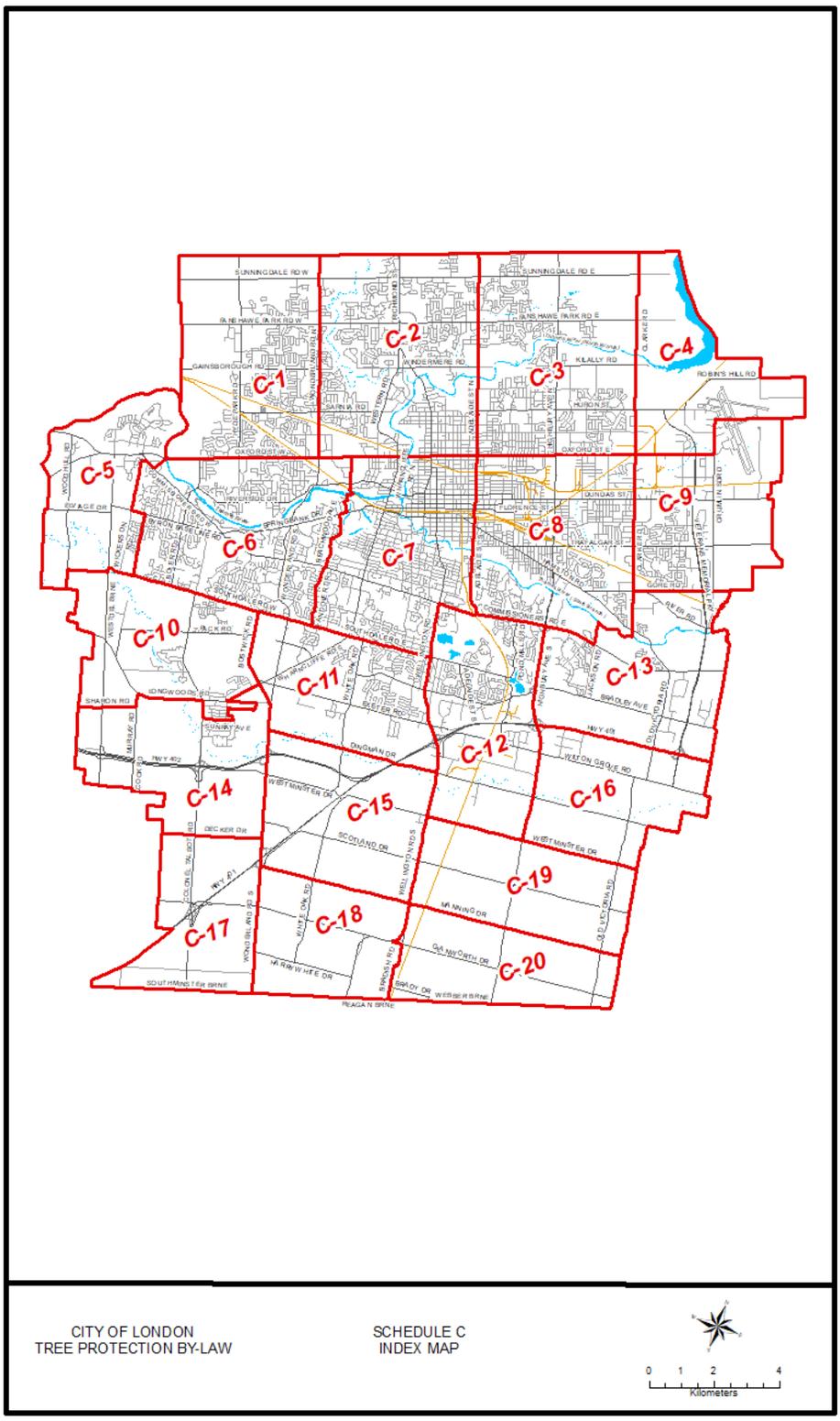
1. For the purposes of subsection 9.2(a) of this By-law with respect to a Distinctive Tree Permit, the ~~City Planner~~ City Engineer shall determine the number of living Replacement Trees that will be required based on the chart below. The diameter of the Tree to be Destroyed under a Distinctive Tree Permit, as set out in Column 1, shall correspond to the number of ~~replacement trees~~ Replacement Trees required, as set out in Column 2.

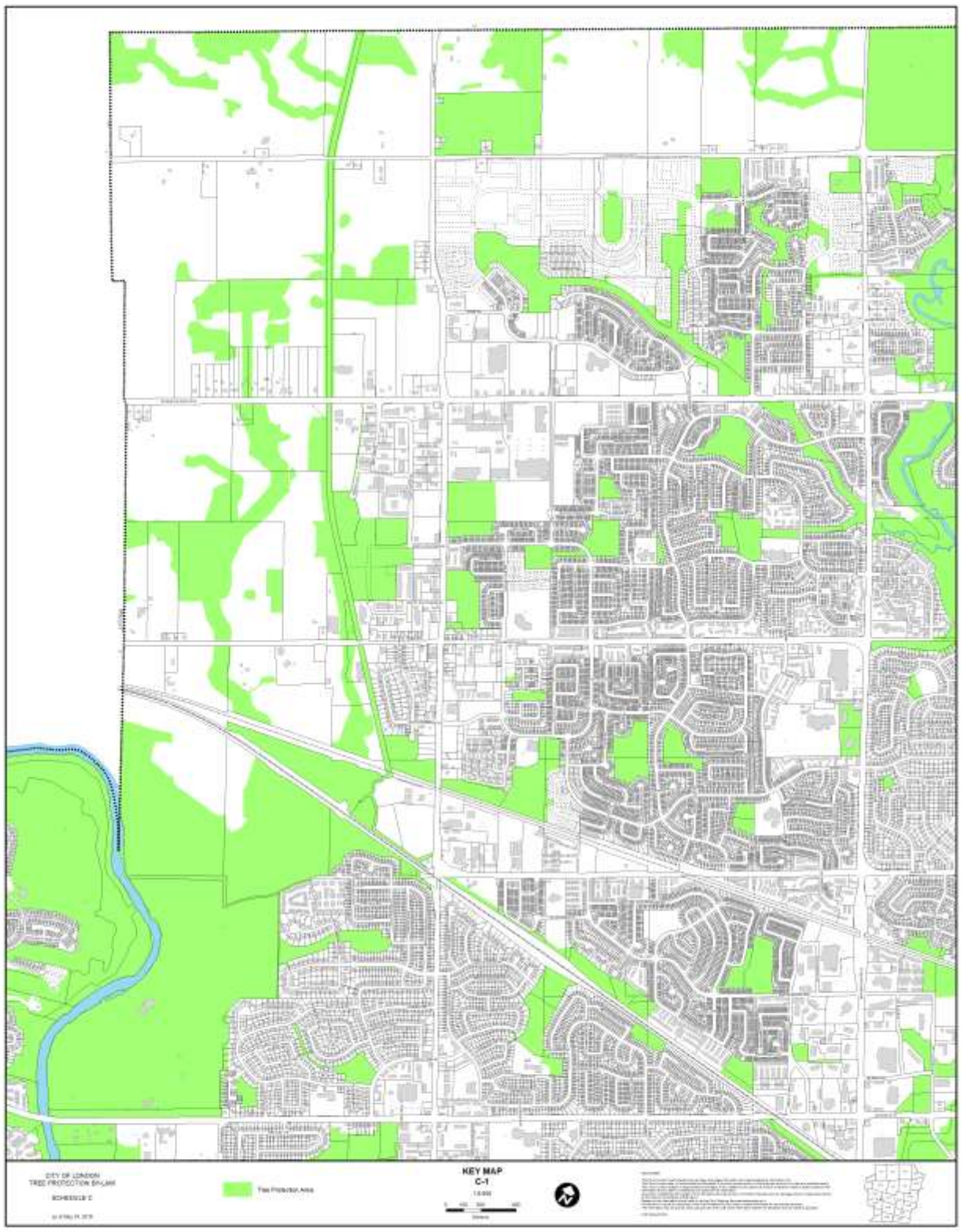
2. For the purposes of subsection 9.2(b) of this By-law with respect to a Distinctive Tree Permit, where there is insufficient space on the same Site to plant all of the number of Replacement Trees as calculated for 9.2(a) of this By-law, ~~the City Planner shall determine the amount of the fee based on the chart below~~ the Permit Holder shall plant as many Replacement Trees as the site will allow as determined by the City Engineer, and with respect to the number of Replacement Trees that could not be planted due to insufficient space, the ~~City Planner~~ City Engineer shall calculate the amount of the fee by multiplying the number of Replacement Trees that could not be planted on site due to insufficient space by $350 per tree. The diameter of the Tree to be Destroyed under a Distinctive Tree Permit, as set out in Column 1, shall correspond to the ~~Fee required, as set out in Column 3~~ number of Replacement Trees, as set out in Column 2.

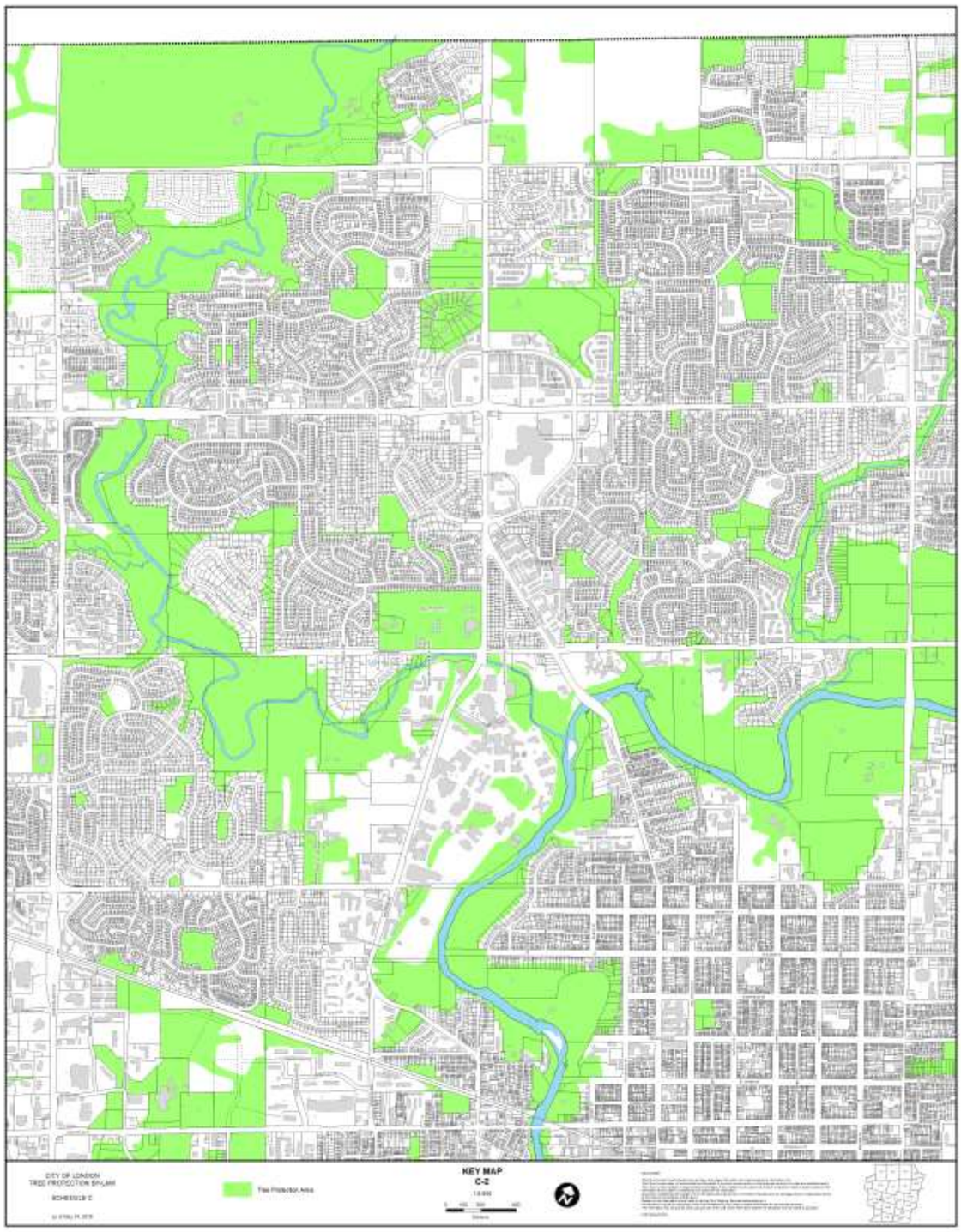
Column 1: Trunk Diameter of Distinctive Tree Destroyed	Column 2: Number of Replacement Trees Required	~~Column 3: Fee for Off-Site Tree Planting~~
50 cm	1	~~$350~~
51-60 cm	2	~~$700~~
61-70 cm	3	~~$1 050~~
71-80 cm	4	~~$1 400~~
81-90 cm	5	~~$1 750~~
91-100 cm	6	~~$2 100~~
101–110 cm	7	~~$2 450~~
111-120 cm	8	~~$2 800~~
121-130 cm	9	~~$3 159~~
131-140 cm	10	~~$3 500~~
>141cm	11	~~$3 850~~

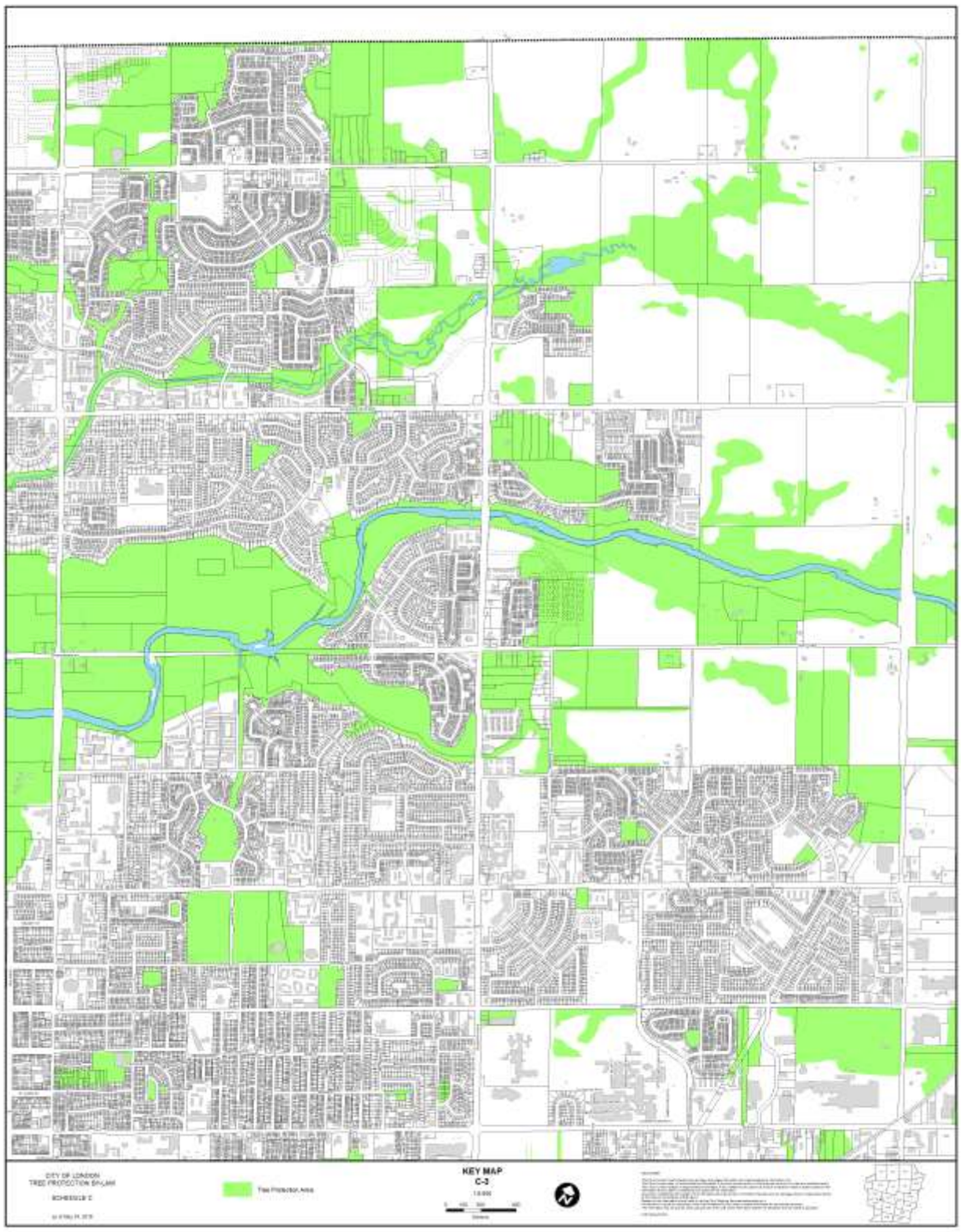
*NOTE: does not apply to Dead Distinctive Tree Permit

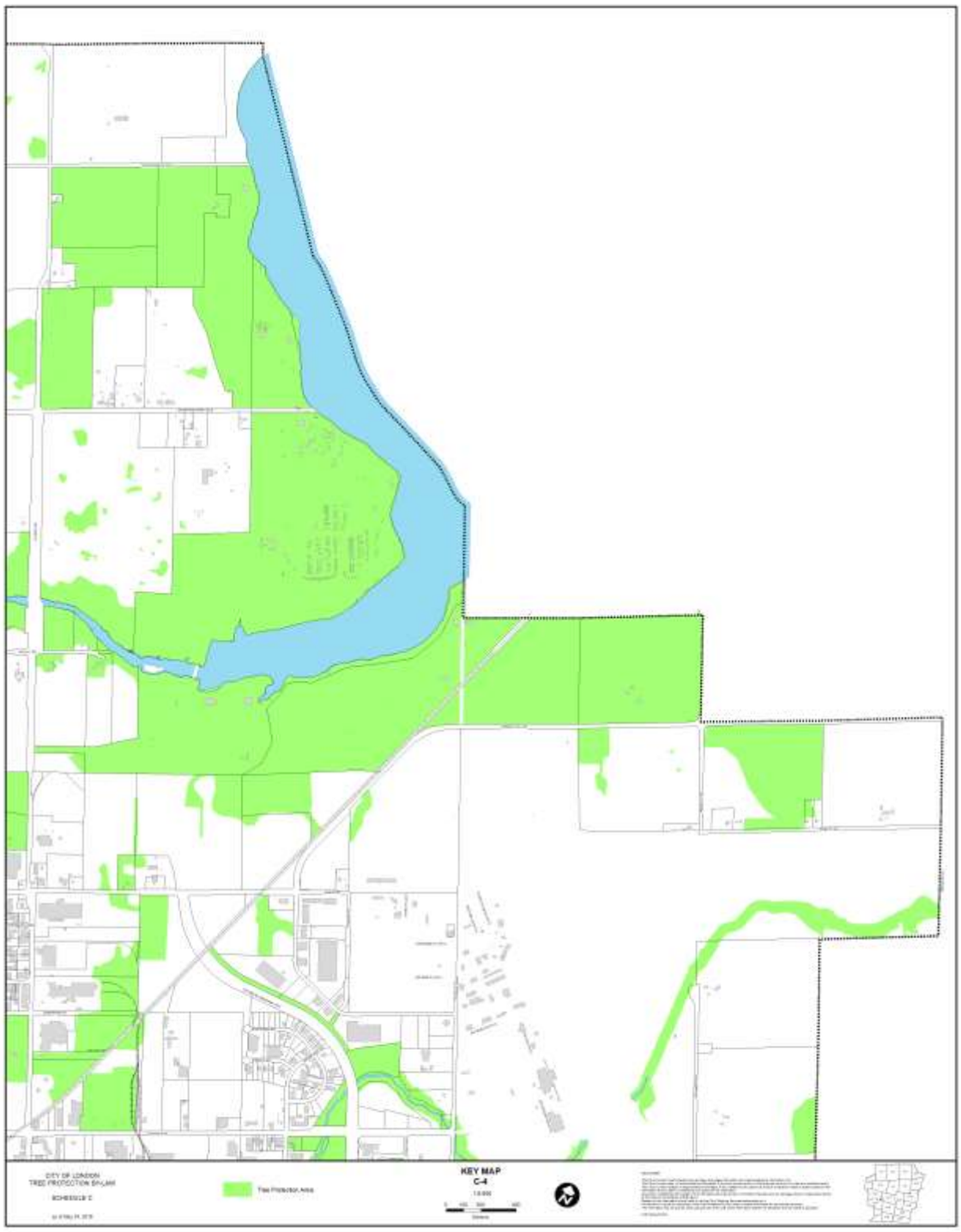
Schedule C - Tree Protection Area Maps

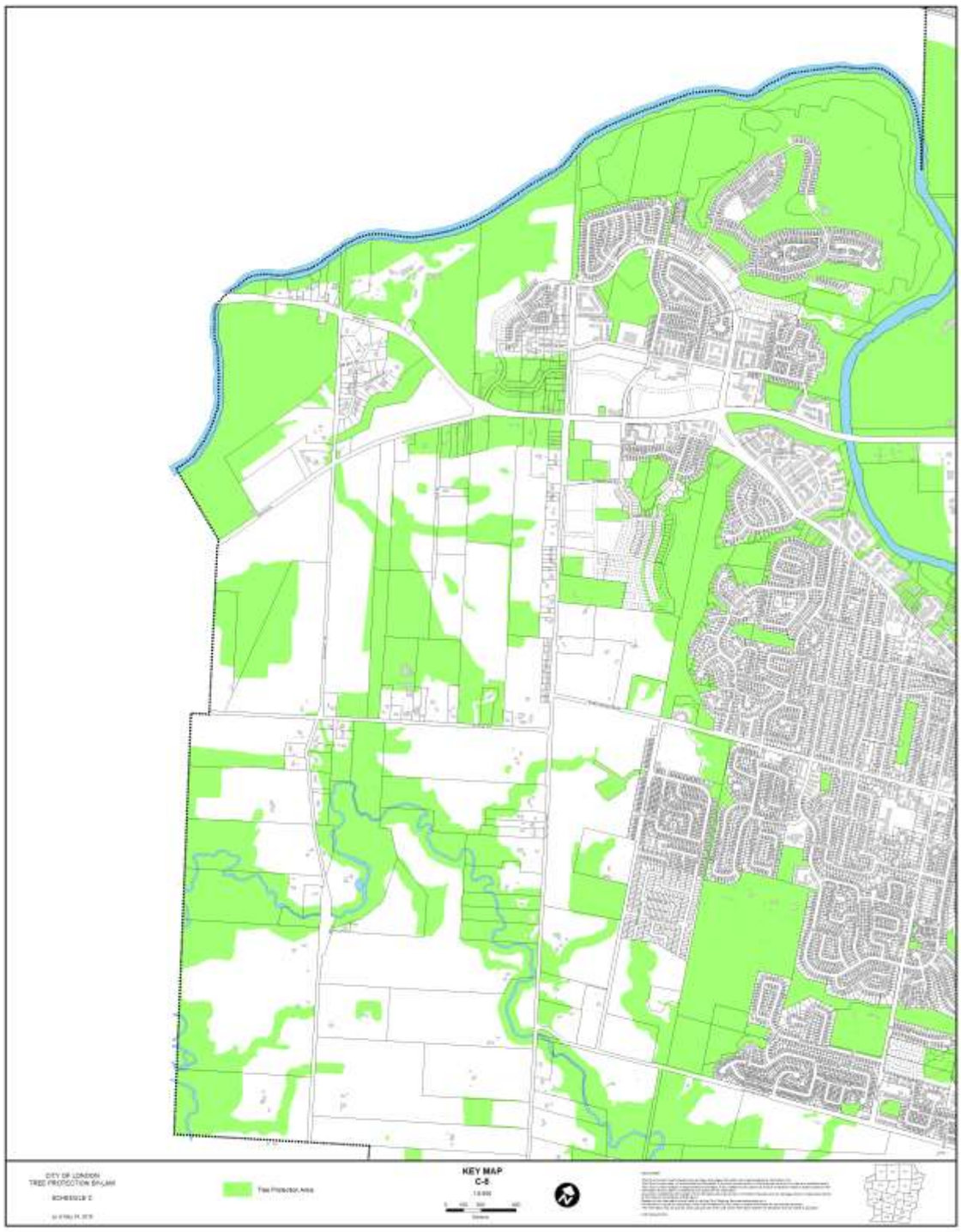


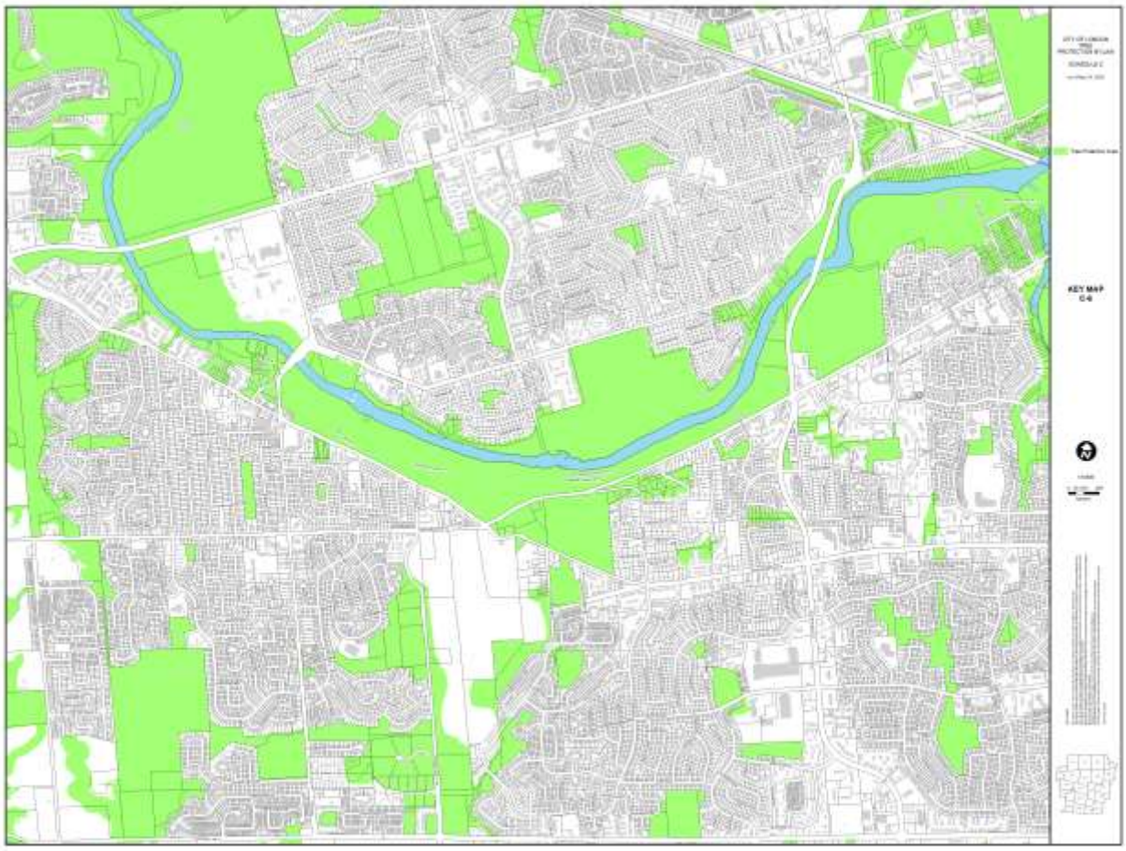

CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-1

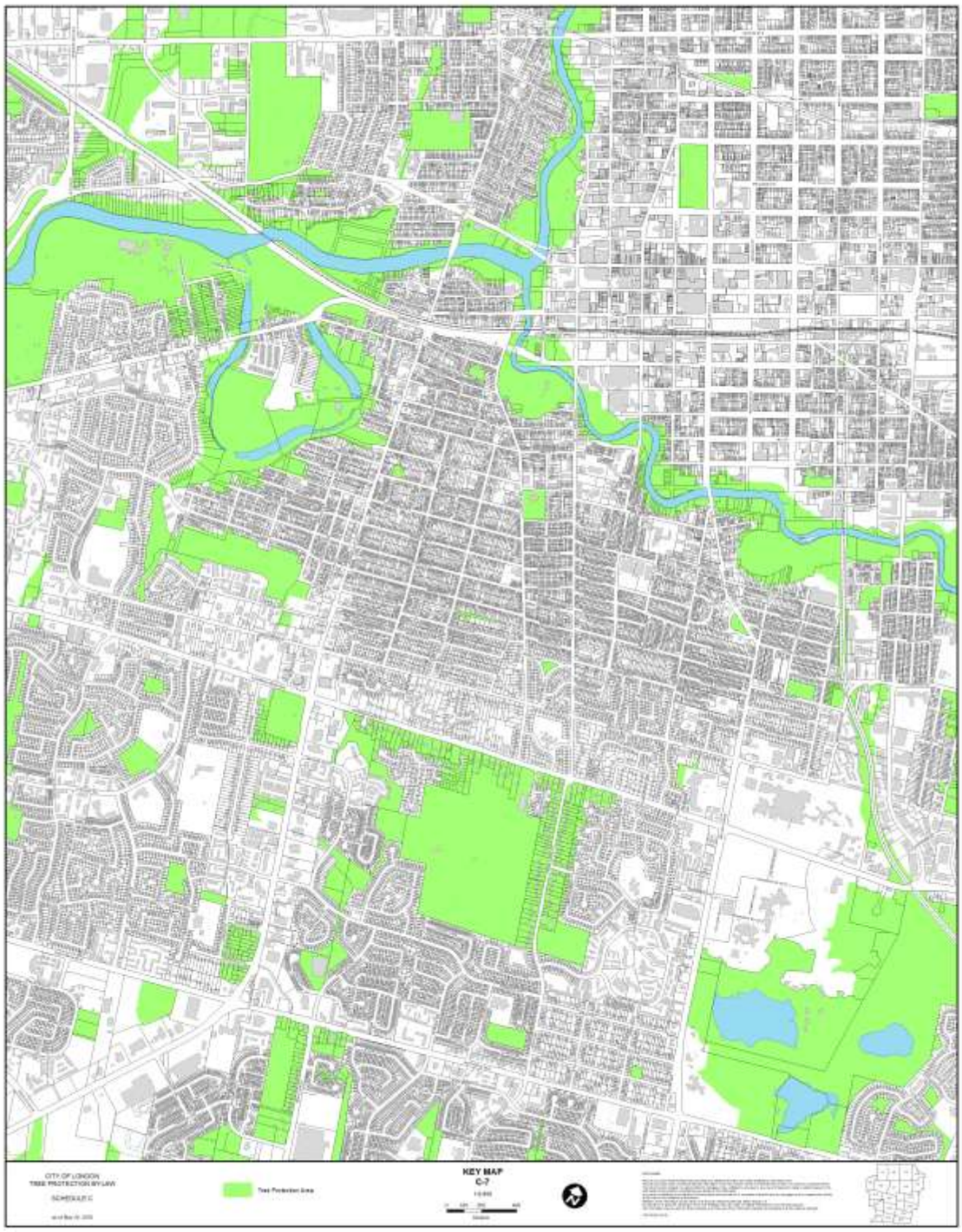

CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-2

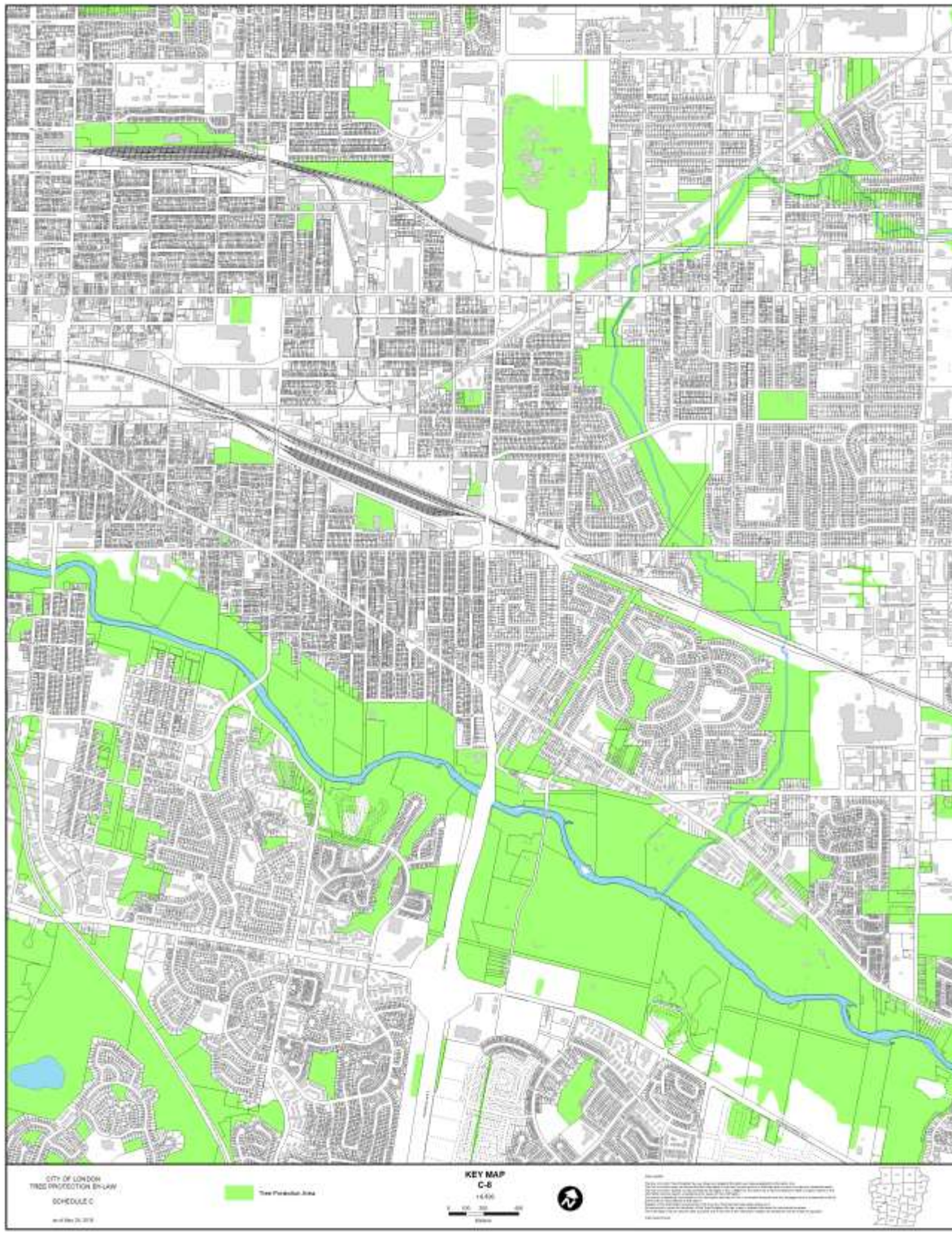

CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-3

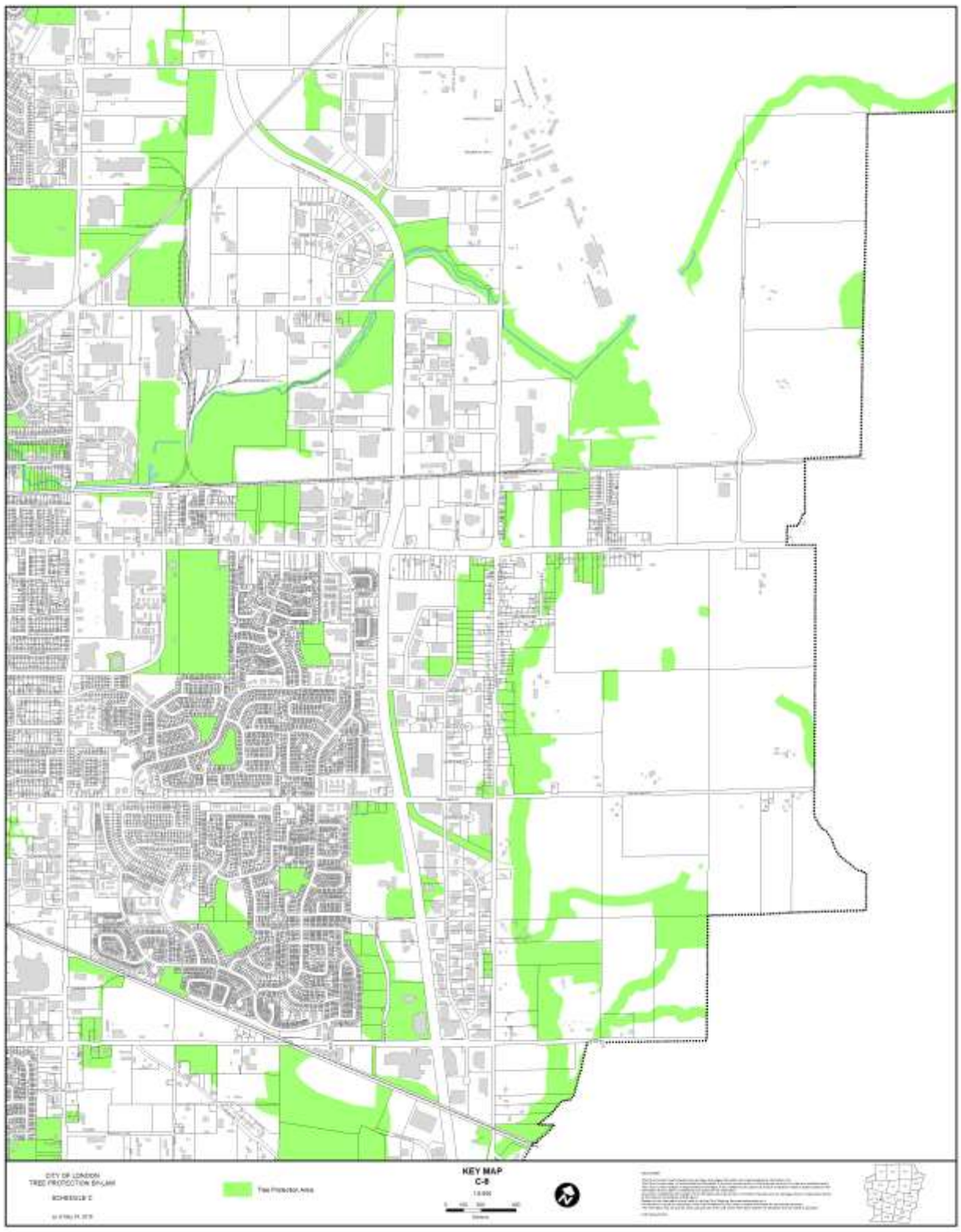

CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-4

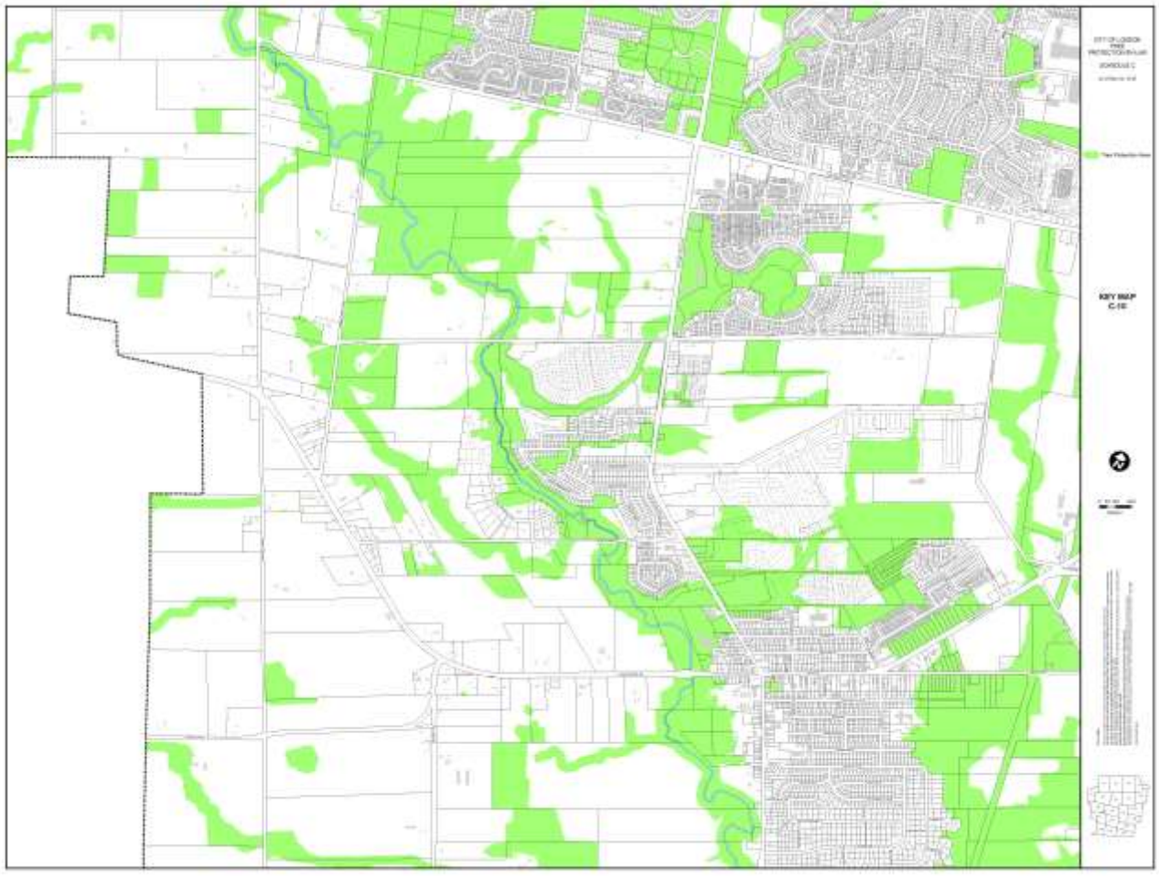

CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-5


KEY MAP
C-6

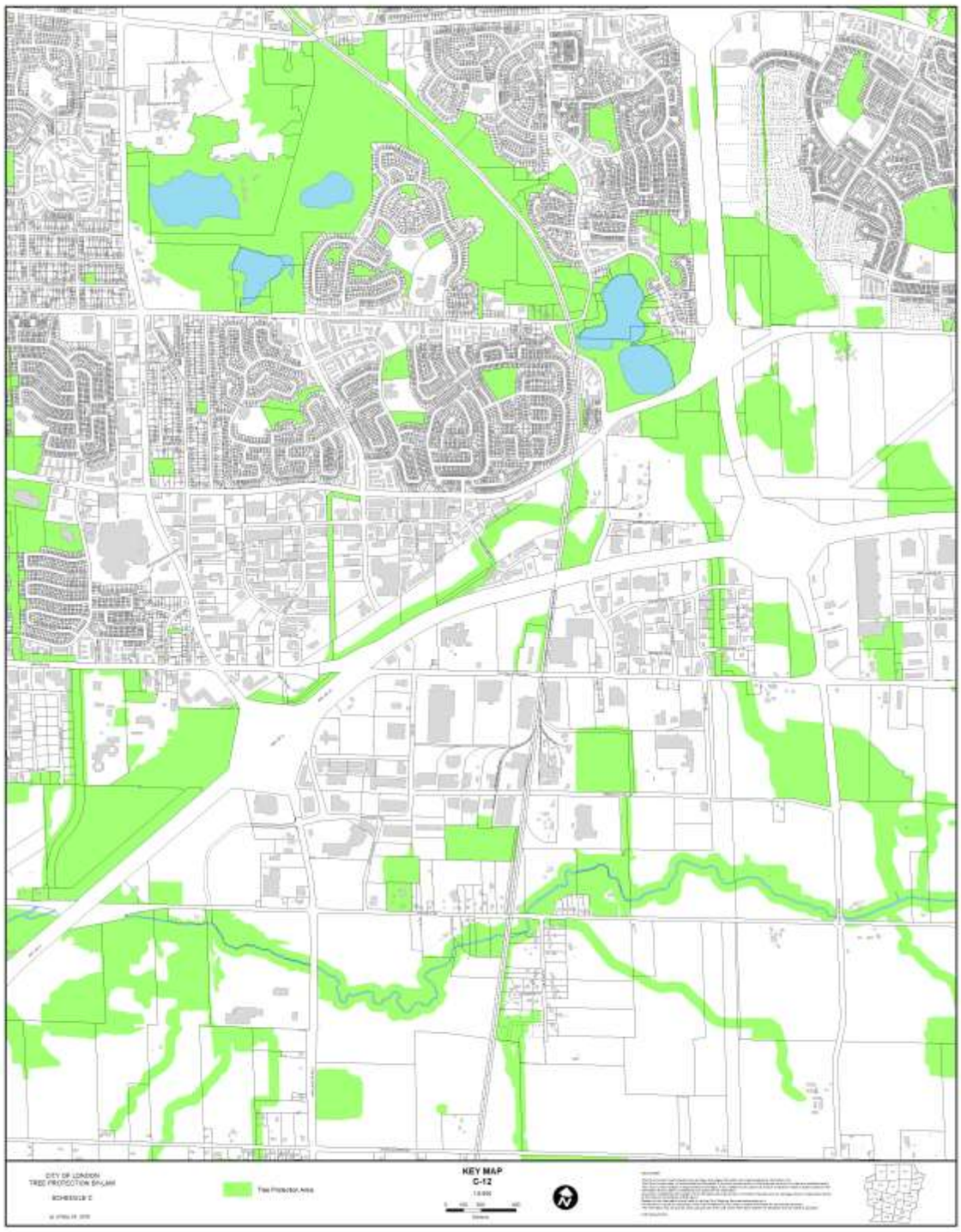

CITY OF LONDON
TREE PROTECTION BY-LAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-7


CITY OF LONDON
TREE PROTECTION BY-LAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-5

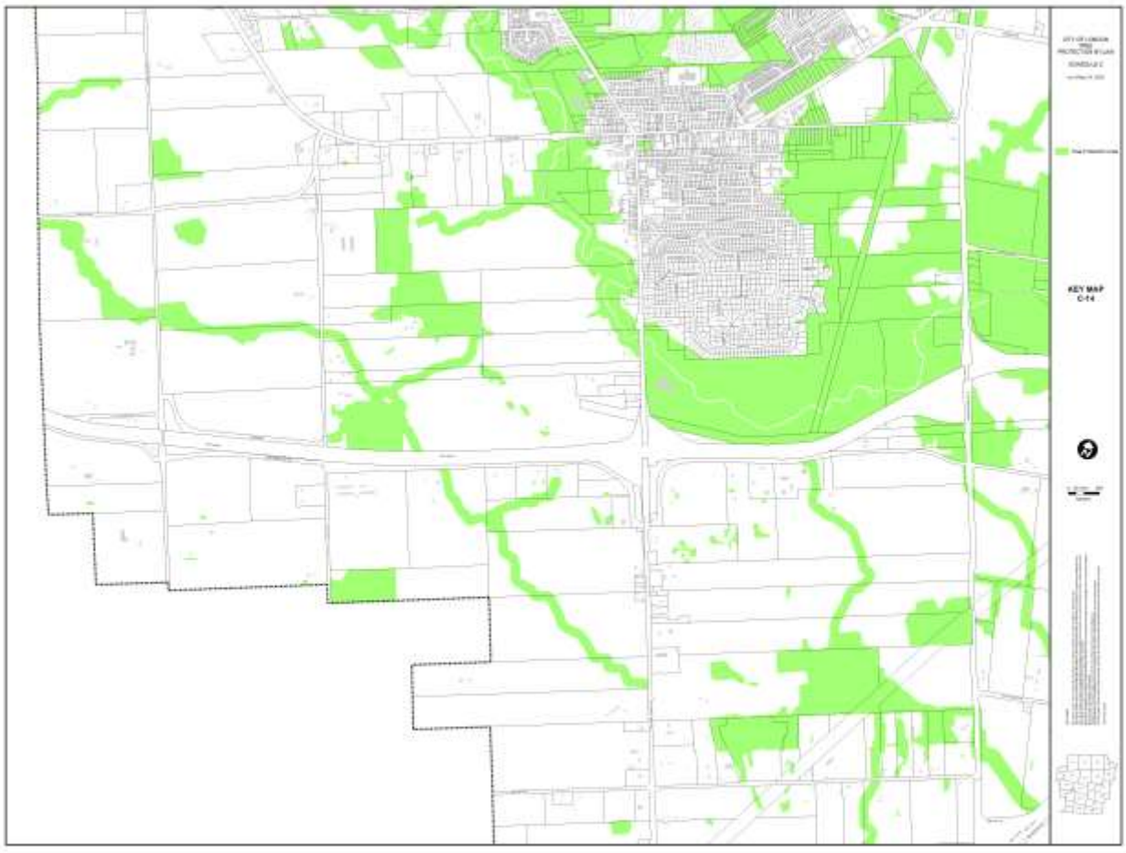

CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-8





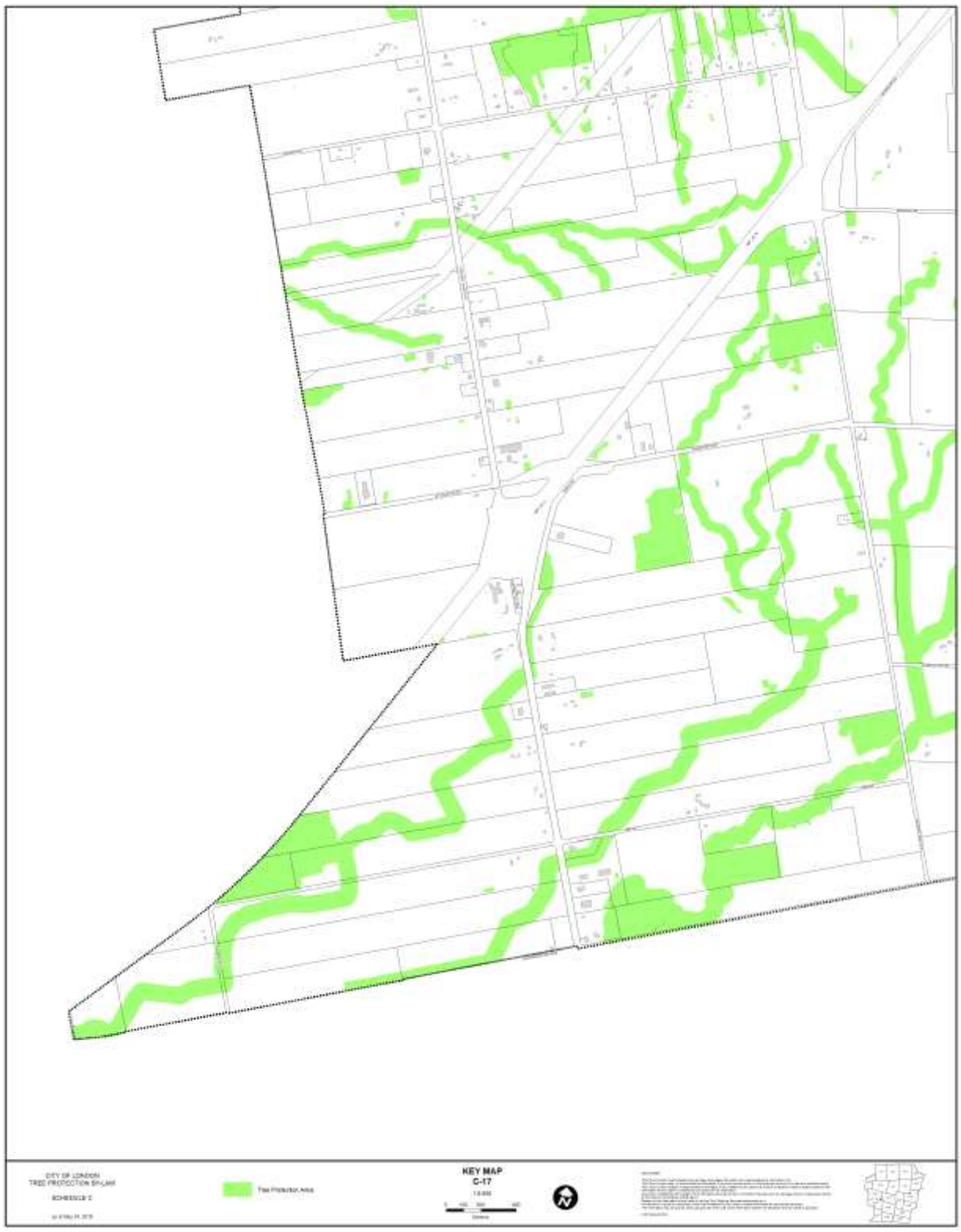

CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
KEY MAP
C-12


KEY MAP
C-13

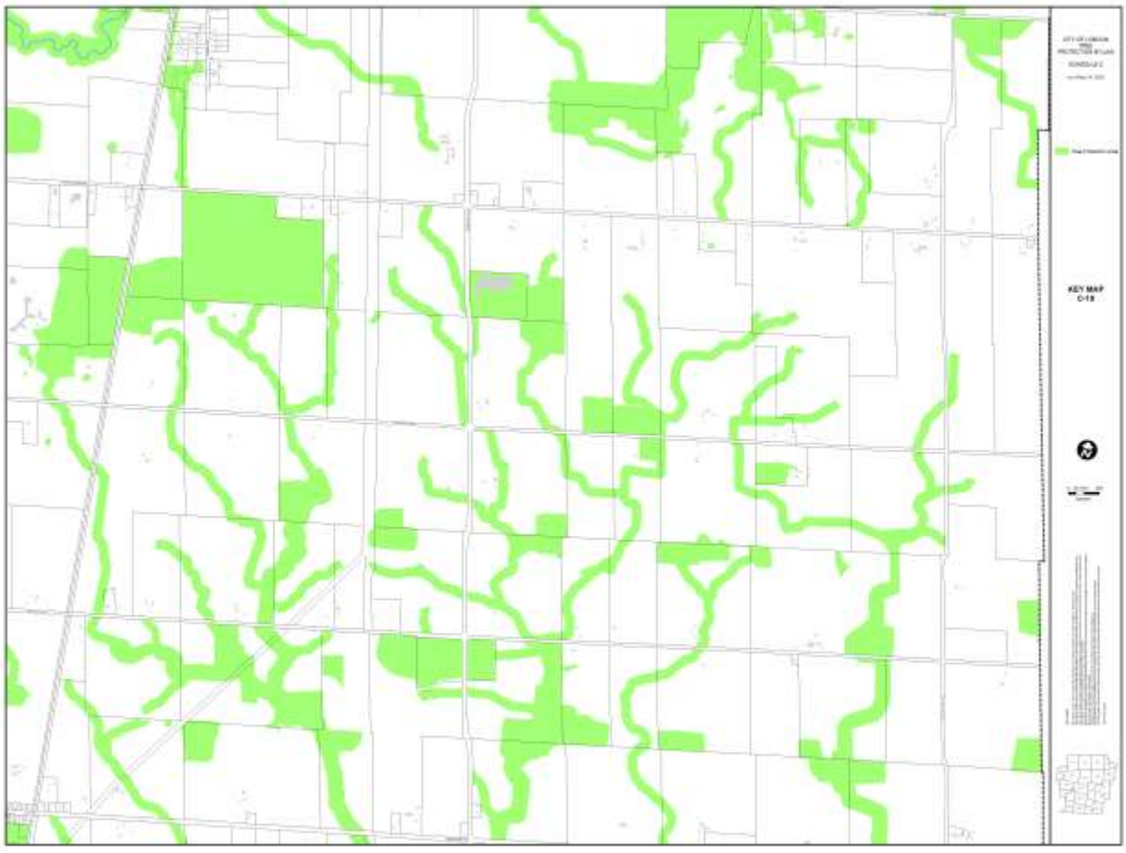

KEY MAP
C-14


KEY MAP
C-15


KEY MAP
C-16


CITY OF LONDON
TREE PROTECTION BYLAW
SCHEDULE C
Tree Protection Area
KEY MAP
C-17


KEY MAP
C-19


KEY MAP
C-19


KEY MAP
C-03

Appendix B- Public Engagement & Feedback

Trees and Forests Advisory Committee (TFAC) Comments
7th Meeting of the Trees and Forests Advisory Committee
July 25, 2018

That the Civic Administration **BE ADVISED** of the following comments of the Trees and Forests Advisory Committee with respect to the City of London Tree Protection By-law:

- there should be a standardized form as part of the application package for both the "Arborist Report" and the "Arborist Opinion";
- the by-law should include a minimum canopy target of 51% of irreversible die back;
- the definition of "Pest" should be revised to include an infestation causing detrimental and irreversible damage to the direct health of a tree;
- the distinctive tree size should be reduced to 25 cm for a permit;
- the definition of "Replacement Tree" should be revised to clarify that "native" is required and that "shade" and "large growing tree" are synonymous;
- golf courses should be added to the exemption list in Section 5 of the by-law; and,
- wildlife values and interests within a tree should be considered more carefully with respect to provincial and federal Acts and Regulations and tied back to the by-law process to ensure a consistent approach;

it being noted that the attached communication from the Tree Protection By-law Working Group, with respect to this matter, was received.

Official Recommendations for City of London Tree Protection By-law

1. Standardized form as part of the application package for both the "Arborist Report" and "Arborist Opinion"

REASONING: Make the application process more streamlined and accessible for applicants and city staff reviewing application package material.

2. Include a minimum canopy target of irreversible die back within the by-law

REASONING: Give arborists an acceptable and standardized target for reports and opinions.

3. Review the definition of "Pest" to include an infestation causing detrimental and irreversible damage to the direct health of a tree

REASONING: Many trees can become "infested" with aphids and other "pests" that do not impact the overall long term health of the tree, and just cause physical appearance to change.

4. Review "Replacement Tree" definition to clarify "native" is required, and "shade or large growing tree" are synonymous.
a. *** Should the distinctive tree size recommendation go forward (25cm), the replacement definition should be altered to

REASONING: As the by-law currently reads, native appears independent from shade or large growing tree, and doesn't give the impression it is mandatory.

5. Golf courses be added to the exemption list

REASONING: Golf courses currently manage trees on a "required removal for safety" rational, and many do not have the resources to include replacement programs, nor do they want to increase forest density. Overall, the forest cover across the City on golf course land is not significant to raise concern about overall large scale canopy loss.

6. Reduce distinctive tree size to 25cm for a permit (=14% of trees protected in London compared to the current 4% with 50cm diameter)

REASONING: At current 50cm diameter standards, 4% of trees in the City of London are protected under this bylaw. Changing protection to 25cm diameter increases the protection of trees to 14%, and encompasses a greater species diversity.

7. Adding Species at Risk Act (Ontario 2004) to section 8.3 (including other wildlife in the tree), or consider removing other specific provincial legislation and speak generally to halting work when wildlife are present.

REASONING: Select provincial legislation is included (Migratory Birds Convention Act, 1994), but does not encompass all potential wildlife issues that are addressed at the provincial level.

RON KOUDYS LANDSCAPE ARCHITECTS INC

September 17, 2018

Jill-Anne Spence Manager
Urban Forestry City of London
267 Dundas Street, 3rd Floor
London, ON
N6A 1H2

Re: Proposed Amendments to the City Tree Protection Bylaw

Dear Jill-Anne,

The following comments and suggestions are offered in response to the stakeholder feedback process regarding the draft amendments to The City of London Tree Protection Bylaw C.P. 1515- 228. These comments have been prepared by Ron Koudys Landscape Architects Inc. after consultation with St. Peters Cemetery and Mount Pleasant Cemetery. We welcome the opportunity to provide input to help shape this bylaw.

A. Introductory Comments

The sites of London's two oldest cemeteries, St. Peter's (1861) and Mount Pleasant (1875) have been designated as Tree Protection Zones in the current draft of the Bylaw. These cemeteries have been actively maintained for over 140 years, are in excellent condition and are widely regarded as significant natural areas. The trees form an important part of the heritage of these sites and help to reinforce the quiet, serene character of each location. The trees are important to the quality of the experience people have at these cemeteries and are significant when establishing the value of the plots available for sale. As a result, the management of each site places a great deal of emphasis on the proper care of the trees and the protection of the forested character of the site.

The cemeteries have clearly demonstrated that they have been excellent stewards of the trees on their property and they believe that the recommended restrictions are unreasonable and unnecessary. Some of the proposed regulations outlined in the Tree Protection Bylaw are entirely inappropriate when applied to cemetery sites and will pose significant management challenges and financial burdens.

B. Specific References

The Tree Protection Bylaw section 6.1 stipulates that "no person shall injure or destroy a tree or cause or permit the injury or destruction of a tree in a tree protection area".

tree is defined as "…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, could reach, or could have reached a height of at least 4.5 metres (15 feet) at physiological maturity."

And "'Injure' means to harm, damage or impair the natural function, form of a Tree, including its roots within the Critical Root Zone, by any means…".

Section 3.1 (b) stipulates that the bylaw applies to "Trees of any size within a Tree Protection Area".

C. Concerns

1. The digging of graves near trees will damage roots within the Critical Root Zone and would require a permit under the bylaw. The issuance of a permit typically takes 4 to 6 weeks. A burial is not something that can be anticipated in advance and requires immediate response. Waiting for a permit to dig each grave site is not practical or necessary.

   The cutting of roots to open a new grave site has been a normal practice at all cemetery sites for a very long time. Since only a small portion of the root mass is removed with each grave, the affected trees recover quickly from this impact and continue to grow as is evidenced by the number of healthy large trees throughout the cemetery sites.

2. The general maintenance practice of removing seedlings and small trees that have sprung up in formal planting areas, in lawns, alongside grave stones or in areas that are not actively maintained is prohibited under the bylaw and would require an arborist report and a permit. The way the bylaw is written, it is intended to promote natural growth and regeneration in wooded areas. A cemetery is a formal setting and is actively maintained. Seeds blowing onto the site or squirrels planting nuts that sprout into trees is a common occurrence and the removal of these seedlings is important to preserve the character of the property.

3. Section 9.2 (a) stipulates that "the permit holder shall ensure that the number of living replacement trees as determined by the City Planner, and the species, range, size and location of Replacement Trees as determined by the City Planner, are planted on the same Site by the date specified on the Permit.

   The cemeteries have been diligently replanting when large trees are removed but undertake this work as new sections are opened, or donations are made to plant memorial trees on the site.

   Replanting in a short time frame and as part of a permitting process would be very difficult to implement and would negate opportunities for families to donate memorial trees. In addition, the requirement to pay a fee to the City to facilitate the planting of trees on other properties is not warranted and onerous. The cemeteries are not land developers in the way the bylaw envisions. They are actively managing the land and they must accommodate the needs of bereaved families while maintaining a beautiful,

park-like setting. This has been going on for many decades and has resulted in three beautiful sites that are now surrounded by the City. There is no evidence that the current practice needs to change or that they have been deficient in the replacement of trees.

4. The previous bylaw permitted the development of a Tree Management plan which provided the framework for the ongoing care of the trees on the property over an extended period of time. The suggested change to require a permit every time a tree is to be injured or removed is cumbersome and simply won't work. City staff complain that they don't have the resources to administer the permitting process now so adding cemeteries (and golf courses) to their workload would require additional funding and is unnecessary.

D. Recommendations

1. Section 7.3 (e) indicates that the City Planner may require the applicant to provide, "a Tree Management Plan, which may be for one or more Trees". We would respectfully submit that a plan such as this could be prepared for each Cemetery site that outlines a general management program and sets out the arboricultural principals that will continue to be the standard of care for the trees on the property. The plan would be for an extended period of time (10 to 20 years) and could be monitored by City staff on an infrequent basis.
2. Cemetery sites should not be included in the Tree Protection Zone and should be given specific exemptions that reflect the practical issues outlined in this report.
3. Permits should not be required every time a grave is dug near a tree or to remove "weed' trees that appear on site.
4. No compensation for the few distinctive trees that are removed is necessary. The cemeteries will continue to replant trees as space permits and manage the mature trees under their care.

Again, we thank you for the opportunity to submit our thoughts and suggestions. If you have any questions or concerns, we would encourage you to contact us.

Yours truly,

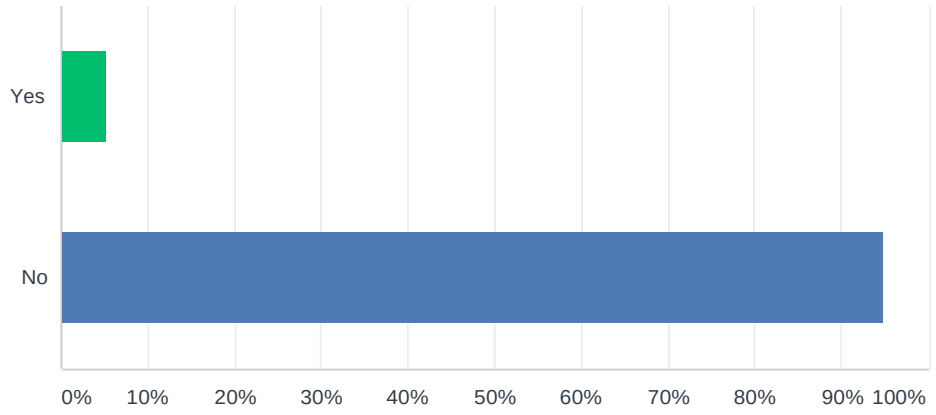


Ron Koudys
B.L.A., M.Ed.,
O.A.L.A., F.C.S.L.A., A.S.L.A., C.L.D., R.L.A. (Mich)

PUBLIC FEEDBACK SURVEY SUMMARY JULY 2018

Q1 Have you ever submitted an application under the Tree Protection By-Law to remove a tree from private property?

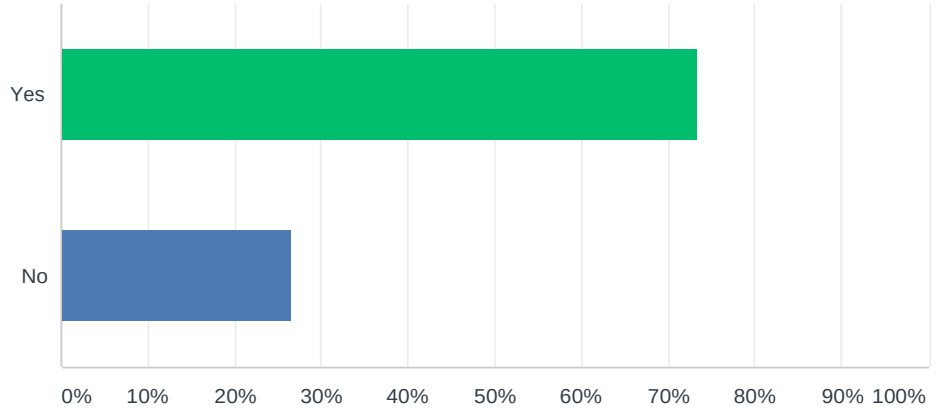
Answered: 135 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	5.19%	7
No	94.81%	128
TOTAL		135

Q2 Did you know there is a Tree Protection By-Law that protects trees on private property?

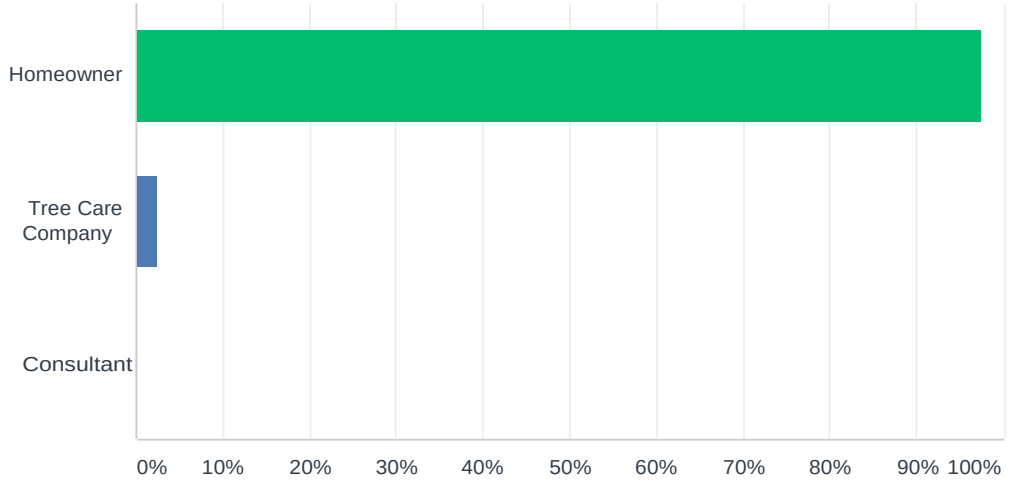
Answered: 135 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	73.33%	99
No	26.67%	36
TOTAL		135

Q3 Please tell us a little about yourself and who you are.

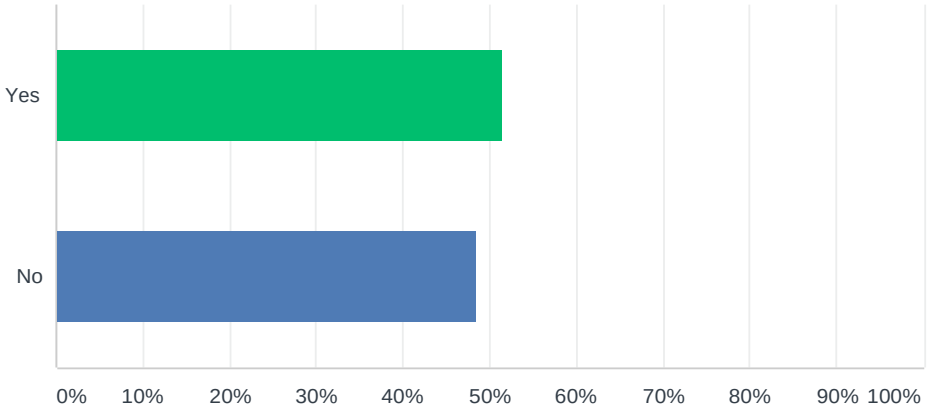
Answered: 122 Skipped: 14



ANSWER CHOICES	RESPONSES	
Homeowner	97.54%	119
Tree Care Company	2.46%	3
Consultant	0.00%	0
TOTAL		122

Q4 Do you know if the Tree Protection By-Law applies to yourproperty?

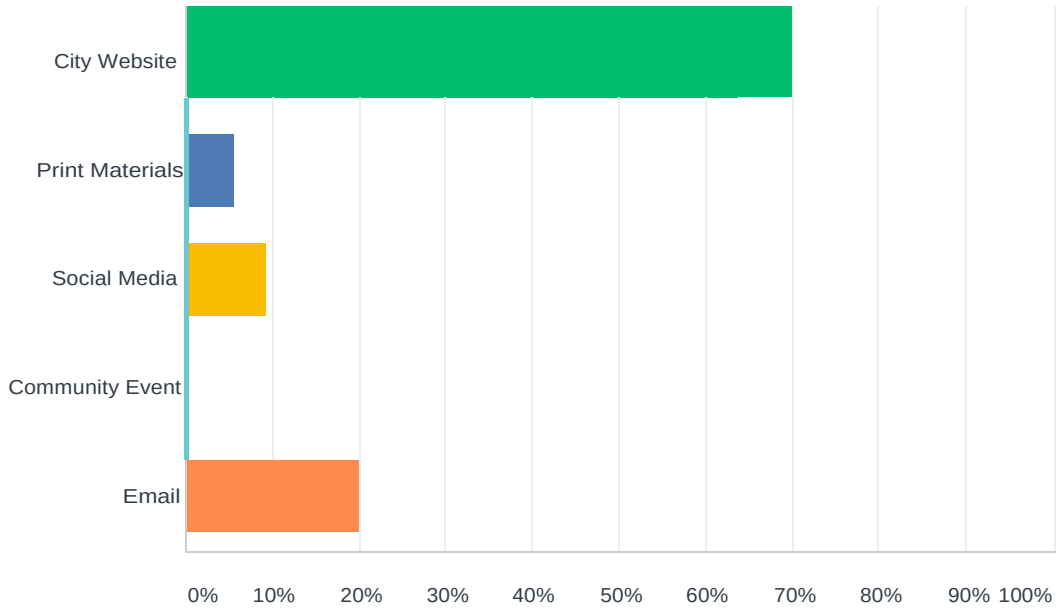
Answered: 132 Skipped: 4



ANSWER CHOICES	RESPONSES	
Yes	51.52%	68
No	48.48%	64
TOTAL		132

Q5 If you needed information about the By-Law, how would you like to receive it?

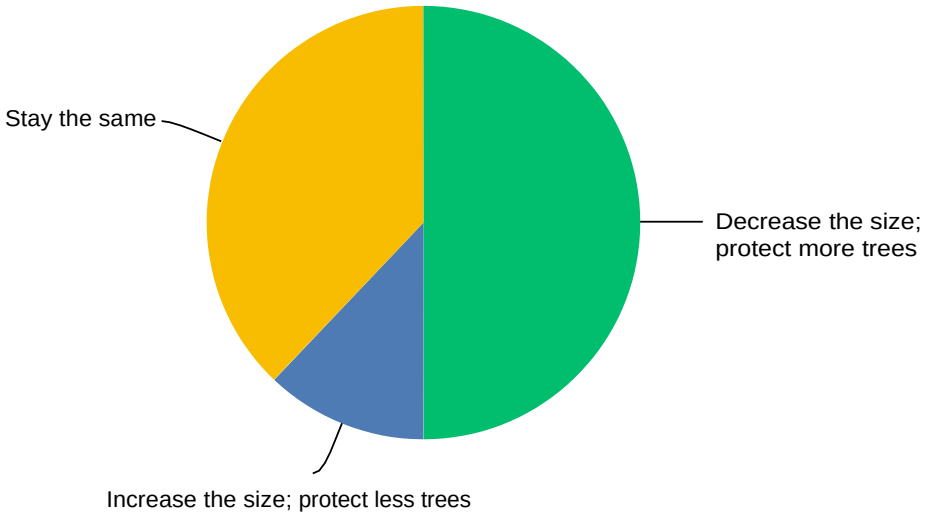
Answered: 129 Skipped: 7



ANSWER CHOICES	RESPONSES	
City Website	63.57%	82
Print Materials	5.43%	7
Social Media	9.30%	12
Community Event	0.78%	1
Email	20.93%	27
TOTAL		129

Q6 **Our current by-law protects trees that are located in specially mapped Tree Protection Areas (TPAs) and ALL trees that are 50 cm diameter at breast height (DBH) or larger. *Do you think the size of the "Distinctive" tree should change?***

Answered: 124 Skipped: 12



ANSWER CHOICES	RESPONSES	
Decrease the size which means more trees and tree types will be protected	50.00%	62
Increase the size which means fewer trees and less tree types will be protected	12.10%	15
Stay the same	37.90%	47
TOTAL		124

Q7 If you were to receive a permit to remove a tree, would you attend an event at a later date to get a discounted tree to replace it?

Answered: 132 Skipped: 4

