



Administrative Report

Office of the Manager, Planning Services

To: Warden MacDonald and Members of Essex County Council

From: Rebecca Belanger, MCIP, RPP
Manager, Planning Services
David Sundin, BA (Hons), LL.B.
County Solicitor

Date: Wednesday, November 01, 2023

Subject: Natural Heritage Areas Preservation By-law

Report #: 2023-1101-IPS-R37-RLB-DMS

Purpose

The purpose of this Administrative Report (the "**Report**") is to report back to County Council with respect to the Motion of County Council on March 15, 2023, which was as follows:

That Essex County Council direct County Administration to review the feasibility of a tree cutting and site alteration by-law pertaining to designated protected natural heritage features and land identified on the natural environment overlay in the Essex County Official Plan and report back to County Council with recommendations.

Background

The County of Essex Official Plan identifies those natural areas protected through designation as Natural Environment on Land Use Schedule "A1" and other natural features identified in the Natural Environment Overlay on Schedule "B2". These Schedules are attached as **Appendices 1 and 2** to this Report.

The *Municipal Act*- Requirements regarding the Protection and Enhancement of Tree Canopy

Bill 68, entitled *Modernizing Ontario's Municipal Legislation Act, 2016*, received royal assent on May 30, 2017. Bill 68 introduced a series of reforms

to the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, and the *Municipal Elections Act, 1996*.

Of the various reforms introduced, an amendment to Section 270 of the *Municipal Act, 2001*, has the effect of requiring all municipalities (without distinction between upper tier and lower tier) to adopt and maintain policies with respect to the protection and enhancement of the tree canopy and natural vegetation in the municipality.

This section of Bill 68 came into force and effect on March 1, 2019. Specifically, Section 270 requires that:

270(1) A municipality shall adopt and maintain policies with respect to the following matters...

7. The manner in which the municipality will protect and enhance the tree canopy and vegetation in the municipality.

The County does not presently have a policy and/or by-law regarding the enhancement and protection of its tree canopy and vegetation (a "**Natural Heritage Areas Preservation By-law**"). It is the intent of Administration that in bringing forward this Report and recommending a Natural Heritage Areas Preservation By-law, that the said By-law would cover off both the County's requirements pursuant to Section 270(1)7 of the *Municipal Act, 2001*, as well as address some issues that have arisen from some recent changes enacted by the Province and destruction of natural features (all or in part) observed prior to development approvals obtained (as further outlined below).

Through a review of by-laws and policies throughout the Province, there appears to be a broad range of methods that municipalities have utilized to implement Section 270(1)7 of the *Municipal Act, 2001*.

Local Municipal Tree Preservation By-laws and Policies

It appears that 5 of the local municipalities in the County have tree canopy policies and by-laws as listed below:

- Town of Amherstburg Tree Canopy and Natural Vegetation Protection and Enhancement Policy, November 23, 2020 (attached as **Appendix 3** to this Report)
- Town of Kingsville By-law 71-2014, A By-law to prohibit the injury or destruction of trees on public property (attached as **Appendix 4** to this Report)

- Municipality of Lakeshore By-law 107-2021, A By-law to Adopt the Preservation of Tree Canopy and Vegetation Policy (attached as **Appendix 5** to this Report)
- Town of LaSalle, Trees on Municipal Property Maintenance Policy, November 9, 2021 (attached as **Appendix 6** to this Report)
- Town of Amherstburg By-law 2016-94, A By-law to regulate planting, preservation, maintenance and removal of public trees, including the cleanup of debris falling from such trees (attached as **Appendix 7** to this Report)
- Town of Tecumseh, Tree Maintenance and Removal Policy No. 108 (attached as **Appendix 8** to this Report)

Bill 23- Impacts to the Protection of Provincially Significant Wetlands and Natural Heritage Features

In a report provided to County Council on February 15, 2023, regarding Bill 23, Administration identified sweeping changes to the Planning system and the *Conservation Authorities Act* that would affect the relationship between the County, member municipalities and conservation authorities in reviewing Environmental Impact Assessments (EIAs) and providing comments relating to natural heritage.

Through recent changes to the planning system, including the draft of the *Provincial Planning Statement* (the "**PPS**"), there is both strong direction to expedite increasing housing supply throughout the Province and to protect the natural environment.

The draft PPS was originally published on April 6, 2023 with the comment period extended to August 4, 2023. The proposed notice was then updated on June 16, 2023 to include proposed natural heritage policies which appear unchanged from the PPS 2020. The policies in the draft PPS continue to prohibit development in some natural heritage features including Provincially Significant Wetlands ("**PSWs**") and for other natural heritage features impacted by development proposals to provide a demonstration of "no negative impact" on the natural feature or ecological function for which the feature has been identified prior to development approvals advancement.

Natural Areas Coverage in Essex County

According to the finding of the Essex Region Natural Heritage System Strategy ("**ERNHSS**"), published in 2013, within the Essex Region there has been an overall loss of approximately 97% of the original wetland area (Snell, 1989) and 95% of the original forest area (Vandall, 1979).

Further ERNHSS provided that *"while it is recognized that the forest guidelines from the Framework (Environment Canada, et al., 1998; Environment Canada, 2004) include a recommendation of at least 30% forest cover, it is realized that within the Essex region this target may be impractical to achieve due to the extent of deforestation that has taken place since European settlement. Therefore, no specific local target for the amount of forest cover has been set, but rather efforts are recommended to be concentrated on reforestation opportunities which improve function such as reducing edge effect, increasing interior forest habitat and providing connecting linkages."*

The total natural area coverage of Essex County in 2013 was at 6.89%.

Natural Areas Coverage by Jurisdiction					
Jurisdiction	Total Area		Natural Coverage		% Natural
	Hectares	Acres	Hectares	Acres	
Town of Amherstburg	19521.48	48238.44	3115.18	7697.75	15.96
Town of Essex	27826.60	68760.76	2486.30	6143.75	8.93
Town of Kingsville	24821.47	61334.93	1442.68	3564.93	5.81
Town of Lakeshore	53253.15	131590.87	1609.18	3976.35	3.02
Town of LaSalle	6805.10	16815.70	1112.61	2749.32	16.35
Municipality of Leamington	25359.67	62664.85	1285.51	3176.55	5.07
Town of Tecumseh	9538.60	23570.30	459.22	1134.76	4.81
County of Essex Subtotal	167126.06	412975.86	11510.69	28443.42	6.89
City of Windsor	14626.96	36143.86	866.21	2140.45	5.92
Township of Pelee	4169.53	10303.09	950.17	2347.91	22.79
Municipal Subtotal	185922.55	459422.80	13327.07	32931.79	7.17
Point Pelee National Park	1507.87	3726.02	1406.00	3474.28	93.24
Overall Total	187430.42	463148.82	14733.07	36406.07	7.86

Policies and Responsibilities for protection of Natural Heritage Features from the County Official Plan

The County is the delegated approval authority by the Province for lower-tier Official Plans, Official Plan Amendments, Subdivisions and Condominiums. County Planning Administration continue to update procedures regarding *Planning Act* application processing to ensure regional consistency and clarity in the process.

One of the purposes of having a Natural Heritage Areas Preservation By-law (in addition to bringing itself into compliance with the requirements of the *Municipal Act, 2001*), would be to implement the County's natural heritage Official Plan policies and facilitate the planning process to support the

development community in understanding that they cannot alter and remove natural heritage features, or portions thereof, prior to obtaining *Planning Act* approvals (see Section 3.4 of the County Official Plan, attached as **Appendix 9** to this Report). In the instance where a developer/property owner prematurely removes or alters natural features prior to receiving approvals, the developer negates their ability to conduct an Environmental Impact Assessment ("**EIA**") and therefore cannot proceed through the process of obtaining development approval under the *Planning Act*. The County Official Plan states the following:

- iv) *Before development is approved in the area subject to the environmental impact assessment, the environmental impact assessment shall demonstrate that the relevant policies of this Plan and the local Official Plan are met. The environmental impact assessment should also demonstrate that the development and site alteration will not have an impact on significant natural heritage features and related ecological functions.*
- v) *Where an environmental impact assessment has been completed, the County, as the approval authority for land use planning applications, must be satisfied that the assessment demonstrates that there will be no negative impacts on the natural features or their ecological functions.*
- ...
- viii) *Removal of a natural heritage feature for the purpose of lowering the "Natural Environment" classification in this Plan and/or otherwise affecting the Environmental Impact Assessment, will not be sufficient grounds for amending the planning documents to a lower classification and will invalidate the Environmental Impact Assessment.*

To put this in perspective, the premature removal of any part of natural heritage features prior to completion of an EIA makes it impossible to complete the study as there is no method to inventory the flora and fauna that existed on site prior to destruction. Another purpose of having a Natural Heritage Areas Preservation By-law is to ensure that once an EIA, including a tree inventory, is completed and approved by the County, a permit will be sought by the developer to remove trees as part of the servicing of a development. The process flowchart attached as **Appendix 10** to this Report identifies how the Natural Heritage Areas Preservation By-law would be implemented in areas with a natural heritage overlay seeking development approvals.

Discussion

Throughout the Province there are various methods to deal with protection of public/private trees and natural areas. In reviewing what the County can do to address its requirements to have a Tree Canopy By-law/Policy under the *Municipal Act*, we have confirmed that the most comprehensive version of a Natural Heritage Areas Preservation By-law, was the one recently adopted by the City of Ottawa. Ottawa recently updated their Tree Protection and Municipal Natural Areas By-law (By-law 2020-340, a copy is attached as **Appendix 11** to this Report). That by-law addresses trees on both municipal and private property, and addresses protection of natural areas larger than one hectare in area.

Due to the natural heritage mapping in the County that recognizes potentially significant woodlands as those areas typically larger than 2 ha (4.94 acres) in size, should Council adopt a Natural Heritage Areas Preservation By-law, the by-law could be structured to focus on areas that are a minimum of 2 ha in size as opposed to very small natural features and individual trees. The target of a Natural Heritage Areas Preservation By-law at the County level would not be on residential street or yard trees. That is something that should be addressed by the local municipalities as they see fit, with that being an area that the County should not be getting involved in.

Further, a Natural Heritage Areas Preservation By-law should target all natural heritage features that are designated for protection in the County of Essex Official Plan as well as areas that are within the natural environment overlay. County Council could also consider limiting the Natural Heritage Areas Preservation By-law only for natural heritage features located within settlement areas, where the majority of the tree removal and site alteration is occurring, and where the County would have a clear role to play in providing (or not providing as the case may be) approvals.

Considerations in the Development of a County By-law

In order for the County to meet the intent of Bill 68 under the *Municipal Act* in combination with modernizing the process to protect natural heritage features that are included in *Planning Act* processes such as draft plans of subdivision, the following recommendations are offered for County Council's consideration prior to finalizing and adopting a Natural Heritage Preservation By-law.

- The Natural Heritage Areas Preservation By-law should include provisions that require protection of municipal trees on the County's properties and a permit process to destroy, remove branches, trim or alter any municipal tree.

- The Natural Heritage Areas Preservation By-law should include a provision that if a private property owner abutting a County Road requests the removal of a municipal tree on County land or the County's right of way that has been determined to be in good health through a condition assessment of a certified arborist, the private property owner requesting to remove the tree would be required to provide the monetary value for the replacement of the tree.
- The Natural Heritage Areas Preservation By-law should outline the process to request the removal of a portion of a natural area prior to any destruction, as part of the development approvals process including appropriate mitigation and compensation.
- The Natural Heritage Areas Preservation By-law should include a provision requiring that at the same time that an EIA is being completed, a tree assessment would be required to determine the overall inventory of trees by size and variety.
- The Natural Heritage Areas Preservation By-law should include a provision requiring that anyone seeking to remove a tree within a natural environment overlay area, to first obtain a permit from the County, which permit would address any mitigation requirements of the County for the removal of the said tree(s).
- In implementing the provisions of a Natural Heritage Areas Preservation By-law, the County would use the ERNHSS as the primary reference document, along with the priority and secondary restoration opportunities overlay in the County Official Plan, to guide locations for compensatory plantings. Any permitted compensatory plantings would be required to demonstrate an overall benefit to the natural heritage system in the County.

Finally, should County Council adopt a Natural Heritage Areas Preservation By-law, as required by the *Municipal Act, 2001*, it will have to consider what type of enforcement mechanisms it may wish to have in place. The County does not have a By-law Enforcement Officer through which to enforce By-laws, and through consultation with the local municipalities, it is apparent that they lack the resources to enforce a Natural Heritage Areas Preservation By-law on our behalf. As such, in considering a Natural Heritage Areas Preservation By-law, County Council will have to determine the allocation of resources, either at the County level or the local level to enforce a Natural Heritage Areas Preservation By-law once adopted.

Financial Implications

The financial implications associated with approving a Natural Heritage Areas Preservation By-law will depend on the preferred approach of County Council, and how narrow or broad they would like the Natural Heritage Areas Preservation By-law to be. A subsequent report to County Council will further flesh out the details of options for implementation along with the projected associated costs with each option.

Consultations

During a County Planning Directors/Managers Meeting held in July, the prospect of a Tree Canopy By-law was discussed, including the potential roles of local municipalities and the conservation authorities. The local Municipal Planners were generally receptive of a County Natural Heritage Areas Preservation By-law however expressed concerns with the role of local administration being involved in the review and approval process, as well as their role with enforcement. The local Municipal Planners expressed a concern that they lack the capacity for the review and approval process, and believe the same is true of their local by-law enforcement staff, should the County seek their effort to enforce this County Natural Heritage Areas Preservation By-law.

Through recent discussions with senior administration from ERCA, there has been an offer for the ERCA Forester to potentially provide service delivery to the County in reviewing tree assessments and undertake site visits after destruction and compensatory planting sites. However, we cannot rely on ERCA for enforcement, and that will remain a concern for the County to address prior to a County Tree Canopy By-law being adopted.

Recommendation

That Essex County Council receive Report number 2023-1101-IPS-R37-RLB-DMS, Natural Heritage Areas Preservation By-law, dated November 1, 2023, from Rebecca Belanger, Manager, Planning Services and David Sundin, County Solicitor;

That Essex County Council direct Administration to investigate potential approaches to further enhance/implement/improve the existing policies and by-laws of the County regarding tree preservation and tree canopy enhancement; and

That Council direct Staff to bring a further Report to Council regarding options and next steps related to a Natural Heritage Areas Preservation By-law for County Council's further consideration following consultation with

each of the local municipalities and prior to proceeding with a formal public engagement initiative.

Approvals

Respectfully Submitted,

Rebecca Belanger

Rebecca Belanger, MCIP, RPP, Manager, Planning Services

David Sundin

David Sundin, BA (Hons), LL.B., County Solicitor

Concurred With,

Allan Botham

Allan Botham, P.Eng., Director, Infrastructure and Planning Services

Concurred With,

Sandra Zwiers

Sandra Zwiers, MAcc, CPA, CA, Chief Administrative Officer

Appendix Number	Title
1	Land Use Schedule Schedule "A1"
2	Natural Heritage System Schedule "B2"
3	Town of Amherstburg Tree Canopy and Natural Vegetation Protection and Enhancement Policy
4	Town of Kingsville By-law 71-2014, A By-law to Prohibit the Injury or Destruction of Trees on Public Property
5	Municipality of Lakeshore By-law 107-2021, A By-law to Adopt the Preservation of Tree Canopy and Vegetation Policy

Appendix Number	Title
6	Town of LaSalle, Trees on Municipal Property Maintenance Policy, November 9, 2021
7	Town of Amherstburg By-law 2016-94, A By-law to regulate planting, preservation, maintenance and removal of public trees, including the cleanup of debris falling from such trees, within the Town of Amherstburg
8	Town of Tecumseh, Tree Maintenance and Removal Policy No. 108
9	Section 3.4, Natural Environment Policies, County of Essex Official Plan
10	NH Areas Preservation By-law Development Permit Process
11	City of Ottawa By-law 2020-340