

Town of Ladysmith

STAFF REPORT



To: Ruth Malli, City Manager
From: Felicity Adams, Manager of Development Services
Date: Oct 14, 2008
File:

Re: DRAFT TREE PROTECTION BYLAW – STATUS REPORT

RECOMMENDATION:

That the Government Services Committee recommends to Council that:

- the approach to the draft tree protection bylaw be reviewed as part of the implementation of the results of the Community Sustainability Visioning Process;
- resource requirements be referred to the 2009 budget process,
- staff be directed to require a tree protection plan (referencing significant trees identified in the draft tree protection bylaw) for new rezoning applications that have not yet been considered by Council; and
- the list of trees identified in the draft bylaw as important to the community for their heritage value be referred to the HRAC for review and comment.

BACKGROUND / HISTORY:

Community Charter, section 8 (3) (c) [*spheres of authority – trees*], provides Council the authority, by bylaw, to regulate, prohibit, and impose requirements in relation to trees. This authority may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*, e.g. s. 919.1 development permit authority for the protection of the natural environment or the protection of development from hazardous conditions. The legislation can be found in Appendix 1.

The legislation requires the municipality to provide a statement respecting Council's reasons for adopting a tree bylaw. The draft tree protection bylaw includes this statement: WHEREAS the Council considers it in the public interest to provide for the protection and preservation of trees, the regulation of their cutting and removal and their replacement.

The Town currently has a tree cutting regulation bylaw (Bylaw 695, adopted in 1979) and tree pruning and removal policy (adopted in 1998). Bylaw 695 regulates the cutting of trees in parks, greenbelt and public area and is administered by the Works Foreman. The tree pruning policy (98-065) provides criteria for tree pruning and removal on public land and is administered by the Director of Parks, Recreation and Culture.

In 2001, Council provided direction to staff to conduct a tree protection bylaw review (2001-147). In 2004, the tree pruning policy was referred to the Parks, Recreation and Culture Commission for review with the intent of creating flexibility within the policy in order to accommodate the protection of views such as at Ryan Place (2004-347).

The review process was conducted by the Director of Parks, Recreation and Culture and focused on the development of a tree management plan including looking at the subdivision approval process and the developer's obligation towards existing trees.

A task group was formed in 2004 including members of the Parks, Recreation and Culture Commission, the Advisory Planning Commission and their staff liaisons. The tree management plan that was received by the Public Works and Government Services Committee included three phases.

- Phase I: Establish inventory of all municipal trees; outline Ladysmith's current tree management data; create a Tree Protection Bylaw that includes both municipal and private lands. Refer to neighbouring municipality bylaws for guidance.
- Phase II: Draft bylaw; hold public meeting; finalize draft; formally adopt bylaw; utilize local resources.
- Phase III: Include community awareness, municipal tree programs, and risk management.

Phase 1 commenced in May 2005 when consultants were contracted to draft the bylaw. The task force oversaw the project. A first draft of the bylaw was completed in December 2005 and it was not endorsed by the task force.

Since that time, several drafts of the tree protection bylaw were prepared by the citizen members of the task force using the City of Nanaimo tree protection bylaw as a basis.

The draft bylaw has not been reviewed by legal counsel.

ANALYSIS:

The draft tree bylaw is reviewed below and comments are provided regarding approach, administration and required resources.

What trees are covered?

The draft tree protection bylaw does not apply to trees having a diameter at breast height (DBH) or 1.3 metres or less than 150 mm, or to a parcel of land that is less than 0.6 hectares in size, unless it is located within a development permit area or unless the tree is a significant tree as defined in the draft bylaw. Danger trees are exempt, as is pruning by sound arboricultural practice. Specific circumstances are listed in the draft bylaw where a permit may be issued for tree removal, such as driveway access, interference with utilities, or proximity to a building foundation.

Significant trees (i.e. trees to which the bylaw applies) includes these categories of trees recognized as having community value: wildlife habitat trees, landmark value

trees, heritage value trees, as specified in the draft bylaw. The trees identified in the draft bylaw are listed in Appendix 2.

Comment: The draft bylaw needs to be carefully reviewed for consistency with the *Community Charter* and to make sure it is clear as to which trees are and are not affected by the draft bylaw.

For all other trees, the draft tree protection bylaw provides a prohibition on cutting a tree except by permit.

Comment: The draft bylaw needs to be reviewed to determine administrative requirements, such as bylaw interpretation, permit review and issuance and bylaw enforcement. Currently the draft bylaw includes administration by the Director of Parks, Recreation and Culture.

The administration of other municipalities' tree bylaws also refers to the Director of Parks, Recreation and Culture, as well as the Director of Planning, Manager of Parks, or on-staff Arborist.

What is required?

The draft tree bylaw requires the applicant to prepare a tree management plan, to mark trees to be removed or retained, and to advise the Director prior to commencing tree removal. In addition to the trees to be retained as noted below, an additional 5% of trees are to be protected to be determined in consultation with the Director.

In the draft bylaw, a tree management plan means a plan of a parcel of land prepared by or for an owner indicating the location, size, and type of trees which the owner proposes to cut or remove from the parcel of land or protect on the parcel of land.

Comment: The form of the tree protection plan, application requirements, application forms and fees have not been developed. The draft bylaw puts the onus on the land owner to prepare the tree management plan.

Tree protection is required as follows:

- “Building development”, other than an individual single family dwelling, where one or more significant trees are to be removed, the applicant will provide replacement trees. Replacement trees are specific in a schedule to the draft bylaw, and may be required in a 2:1 ratio in the same species as removed from the land.
- “Subdivision of a parcel of land” the applicant will provide for the protection and replacement of significant trees on the land and protection of at least 20% of the trees (excluding areas set aside for park dedication) where the parcel to be subdivided is greater than 0.6 ha,
- “Logging of commercial timber” which requires retention of 20% of the trees.

What would a permit include?

The permit issued to allow the removal of trees may specify conditions, such as: the work to be done must be supervised by an arborist; the number, species and sizes of replacement trees to be planted; and the location of replacement trees (private lands or boulevards).

If the works would encroach on public lands the draft bylaw anticipates proof of liability insurance with the Town as an additional named insured.

Comment: Such conditions require a certain type of knowledge and training to evaluate and specify.

What type of security?

Replacement trees are required to be replaced if there is an indication of imminent failure within one growing season, or the tree dies within one year of replanting. Replacement trees are to be planted within 90 days. The draft bylaw also stipulates that the Town may require two trees to replace every one tree removed. Security in the form of 120% of the cost of replacing and maintaining replacement trees is required for a one year period. The draft bylaw also provides an exemption from security for less than five replacement trees and \$200 per tree for five or more trees, and a scheme for a phased reduction in the deposit as trees are replanted.

Comment: Consistency will be required in the amount of security. Monitoring of work completed, tree health and financial management of security would be required of Town staff. The scheme appears to be onerous.

What type of penalty?

The draft bylaw includes a penalty of \$500 (per tree cut down, damaged or removed in contravention of the bylaw) for the first offence and \$1000 per offence thereafter, and a requirement that the cut tree be replaced by a new tree on the same parcel. A reduced penalty applies to payment within 14 days.

Comment: The *Community Charter*, permits the establishment of a maximum fine of up to \$10,000 with provision for continuing offences.

Other issues:

The time, expertise and staff resource requirements for the implementation of the draft tree protection bylaw have not been reviewed by the City Manager or the Senior Management team. The implementation of such a bylaw will have budget implications. No legal review has been undertaken of the draft bylaw.

New rezoning applications not yet considered by Council that could be included by the requirement of the preparation of a tree protection plan include:

- 1323 4th Avenue (G. Bezeau)
- Cook Street (JR Homes – E. Wallace)
- 1142 TransCanada Highway (M. Huntjens)

Appendix 1 – Legislative Authority

Community Charter

s. 8 (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:

(c) trees;

(7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter

(a) are separate powers that may be exercised independently of one another,

(b) include the power to regulate, prohibit and impose requirements, as applicable, respecting persons, property, things and activities in relation to the matter, and

(c) may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*.

(8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:

(a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;

(b) to prohibit persons from doing things with their property;

(c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

(9) A municipality must make available to the public, on request, a statement respecting the council's reasons for adopting a bylaw under subsection (3), (4), (5) or (6).

(10) Powers provided to municipalities under this section

(a) are subject to any specific conditions and restrictions established under this or another Act, and

(b) must be exercised in accordance with this Act unless otherwise provided.

Restrictions in relation to authority

- 50** (1) A bylaw under section 8 (3) (c) [*spheres of authority – trees*] that is in relation to the protection of trees does not apply to the following:
- (a) land and the trees on it if forestry practices on the land are governed by a tree farm licence, permit or other authority or tenure under the *Forest Act*;
 - (b) land and trees on it if section 21 of the *Private Managed Forest Land Act* applies to the land;
 - (c) tree cutting or removal that is undertaken by a utility, on land owned or held by the utility, and done for the purpose of safety, maintenance or operation of the utility's infrastructure.
- (2) Subject to subsection (3), if a bylaw under section 8 (3) (c) would have the effect on a parcel of land of
- (a) preventing all uses permitted under the applicable zoning bylaw, or
 - (b) preventing the development to the density permitted under the applicable zoning bylaw,
- the bylaw does not apply to the parcel to the extent necessary to allow a permitted use or the permitted density.
- (3) A bylaw referred to in subsection (2) applies without limit to a parcel if the council, by resolution, commits the municipality to
- (a) pay compensation to the owner of the parcel for any reduction in the market value caused by the prohibition, or
 - (b) provide, by development permit, development variance permit or otherwise, alternative means for the parcel to be used for a permitted use or developed to the permitted density.
- (4) For the purposes of subsection (3),
- (a) the compensation must be as determined and paid as soon as reasonably possible in an amount set by agreement between the owner and the municipality or, if no agreement is reached, by the Supreme Court, and

(b) the council may issue a development permit or development variance permit on its own initiative without an application from the owner.

Compensation not payable

51 Except as provided in section 50 (3), no compensation is payable to any person for a reduction in the value of any interest in land that results from

(a) a bylaw under section 8 (3) (c) [*spheres of authority – trees*], or

(b) the issue or refusal of a permit required under such a bylaw.

Right to reconsideration by council

52 If a council delegates powers, duties or functions in relation to its authority under section 8 (3) (c) [*spheres of authority – trees*], the owner or occupier of real property that is subject to a decision of a delegate is entitled to have the council reconsider the matter.

Appendix 2 – Trees to be regulated

1. Trees important to the community as wildlife habitat:

- Section 34 of the BC Wildlife Act

34 A person commits an offence if the person, except as provided by regulation, possesses, takes, injures, molests or destroys

(a) a bird or its egg,

(b) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or

(c) the nest of a bird not referred to in paragraph (b) when the nest is occupied by a bird or its egg.

2. Trees important to the community for landmark value (native trees):

Tree	Status	Size of Tree Diameter for Retention:
Western White Pine (<i>Pinus monticola</i>)	Very Uncommon	20 cm +
Shore Pine (<i>Pinus contorta</i> vari. <i>contorta</i>)	Fairly Common	20 cm +
Sitka Spruce (<i>Picea sitchensis</i>)	Very Uncommon	80 cm +
Western Hemlock (<i>Tsuga heterophylla</i>)	Common	50 cm +
Douglas-Fir (<i>Pseudotsuga menziesii</i>)	Abundant	80 cm +
Grand Fir (<i>Abies grandis</i>)	Fairly Common	80 cm +
Western Red-Cedar (<i>Thuja plicata</i>)	Common	80 cm +
Rocky Mountain Juniper (<i>Juniperus scopulorum</i>)	Uncommon	10 cm +
Western Yew (<i>Taxus brevifolia</i>)	Uncommon	15 cm +
Trembling Aspen (<i>Populus tremuloides</i>)	Very Uncommon	20 cm +
Black Cottonwood (<i>Populus balsamifera</i>)	Fairly Uncommon	80 cm +
Pacific Willow (<i>Salix lasiandra</i>)	Fairly Uncommon	15 cm +
Hooker's Willow (<i>Salix hookeriana</i>)	Very Uncommon	15 cm +
Sitka Willow (<i>Salix sitchensis</i>)	Fairly Uncommon	15 cm +
Red Alder (<i>Alnus rubra</i>)	Common	30 cm +
Garry Oak (<i>Quercus garryana</i>)	Fairly Uncommon	7 cm +
Pacific Crabapple (<i>Malus fusca</i>)	Uncommon	10 cm +
Black Hawthorne (<i>Crataegus douglasi</i>)	Uncommon	10 cm +
Bitter Cherry (<i>Prunus emarginata</i>)	Fairly Uncommon	15 cm +
Bigleaf Maple (<i>Acer macrophyllum</i>)	Common	80 cm +
Douglas Maple (<i>Acer glabrum</i>)	Very Uncommon	40 cm +
Cascara (<i>Rhamnus purshiana</i>)	Fairly Common	15 cm +
Western Dogwood (<i>Cornus nuttallii</i>)	Common	7 cm +
Arbutus (<i>Arbutus menziesii</i>)	Common	25 cm +

3. Trees important to the community for their heritage value:

<u>SPECIES/COMMON NAME</u>	<u>CLASSIFICATION</u>	<u>LOCATION</u>
<i>Acer macrophyllum</i> and <i>Acer</i> (?) / Big Leaf Maple and (?) Maple	Heritage Group	Dalby's Corner – 202-204 Dogwood Street
<i>Acer macrophyllum</i> / Big Leaf Maples	Heritage Group	133 White Street
Various	Heritage Group	Arboretum
<i>Magnolia soulangeana</i> ; <i>Hamamelis mollis</i> ; <i>Prunus cerasifera</i> ; <i>Forsythia</i> species; and more / Saucer Magnolia; Chinese Witch Hazel; Purple Leaved Plum; Forsythia; and more	Historical	101 First Avenue
<i>Prunus serrulata</i> / Japanese Flowering Cherries	Landmark Heritage / Outstanding	Ladysmith Post Office
<i>Pseudotsuga menziesii</i> / Douglas Fir	Landmark Heritage	Aggie Field
<i>Ginkgo biloba</i> / Ginkgo	Outstanding / Rare	Below highway
<i>Araucaria araucana</i> / Monkey Puzzle Tree	Outstanding / Rare	202 Dogwood Street
<i>Fagus sylvatica</i> "Atropunicea" / Purple Beech	Outstanding	202 Dogwood Street
<i>Arbutus menziesii</i> / Arbutus	Heritage Area	Arbutus Ridge in Transfer Beach Park
<i>Rhododendron</i> species / Rhododendron	Outstanding / Landmark Heritage	228 Kitchener Street
<i>Magnolia soulangeana</i> / Saucer Magnolia	Outstanding	217 Baden-Powell Street
<i>Prunus serrulata</i> / Japanese Flowering Cherry	Outstanding	217 Baden-Powell Street
<i>Acer palmatum</i> / Japanese Maple	Outstanding	217 Baden-Powell Street
<i>Castanea mollissima</i> / Chinese Chestnut	Rare	High Street & Third Avenue
<i>Aesculus hippocastanum</i> / Horse Chestnut	Outstanding	First Avenue & Baden-Powell Street – low side
<i>Platanus acerifolia</i> / London Plane Trees	Rare	Ladysmith Credit Union parking lot on First Avenue
<i>Cornus nuttalli</i> / Western Flowering Dogwood	Outstanding	First Avenue & White Street
<i>Quercus garryana</i> / Garry Oak	Outstanding	Junction - Dogwood & Belaire Streets
<i>Cornus nuttalli</i> / Western Flowering Dogwood	Outstanding	132 High Street

Rhododendron species / Rhododendrons	Outstanding	208 Dogwood Street
Cornus florida / Eastern Flowering Dogwood	Outstanding	210 Dogwood Street
Fagus sylvatica / Beech	Outstanding	217 Dogwood Street
Salix babylonica / Weeping Willow	Landmark Heritage	Transfer Beach Park
Prunus cerasifera "Atropurpurea" / Purple Leaved Plum	Outstanding	Ladysmith Child Care – Roberts Street & Second
Camellia japonica / Camellia	Outstanding	212 White Street
Juglans species/ Black Walnut (?)	Heritage	Fourth Avenue Farm
Liriodendron tulipefera / Tulip Tree	Outstanding	La Rosa Gardens area
Cornus species / (?) Dogwood	Outstanding	First Ave. by the Ladysmith Credit Union
Populus nigra "Italica" / Lombardy Poplar	Outstanding	(?)
Robinia pseudoacacia (?) / Black Locust (?)	Rare	By the Hospital
Prunus serrulata / Japanese Flowering Cherry	Outstanding	(?)