



Corporation Of The City Of Kingston

Ontario

By-Law Number 2018-15

**Being a By-Law to Prohibit and Regulate the Destruction or Injuring
of Trees in the City of Kingston, and to Repeal and Replace
By-Law Number 2007-170, as amended**

(Short Title, "Tree By-Law")

Passed: December 19, 2017

As Amended By:

By-Law Number:

By-law Number 2021-111

Date Passed:

July 13, 2021

By-Law Number 2018-15

**Being a By-Law to Prohibit and Regulate the Destruction or Injuring
of Trees in the City of Kingston, and to Repeal and Replace
By-Law Number 2007-170, as amended**

Passed: December 19, 2017

Whereas Section 135(1) of the *Municipal Act, 2001*, SO 2001, c. 25, permits the enactment of a by-law by the Council of The Corporation of the City of Kingston to prohibit or regulate the destruction or injuring of trees; and

Whereas Council may also require that a permit be obtained for the injury or destruction of trees within the City of Kingston, and may prescribe the fees for the permit, the circumstances under which a permit may be issued, and the conditions to such a permit; and

Whereas Council deems it to be desirable to enact a Tree By-Law for the purposes of:

- (a) Regulating and controlling the removal, maintenance, and protection of trees and woodlands.
- (b) Controlling the clear cutting of trees.
- (c) Supporting the City's Strategic Plan and the goal of intensifying the city's urban forest.
- (d) Achieving the objectives of the city's Official Plan by sustaining a healthy, natural environment.
- (e) Protecting and enhancing the biodiversity of woodlands, wildlife habitat, and related ecological functions.
- (f) Promoting Good Forestry Practices and Good Arboricultural Practices that sustain healthy woodlands and tree coverage.
- (g) Contributing to human health and quality of life.
- (h) Mitigating greenhouse gas emissions and reducing the effects of climate change.

Whereas section 434.1(1) of the *Municipal Act, 2001*, as amended from time to time, provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under this Act;

(By-Law Number 2018-15; 2021-111)

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

Definitions

1. In this by-law, the following definitions apply:
 - (1) "Administrative Penalty" means an administrative penalty administered pursuant to "By-Law 2020-69 of The Corporation of the City of Kingston being "A By-Law to Establish a Process for Administrative Penalties
 - (2) "Agricultural Operation" means land used for the commercial production of crops or raising of livestock and includes cultivation, seeding, and harvesting.
 - (3) "Applicant" means a person who submits an application to the city for a Tree Permit pursuant to the provisions of this by-law.
 - (4) "Building Permit" means a Building Permit issued pursuant to the *Building Code Act, 1992*, SO 1992, c. 23.
 - (5) "Certified Arborist" means an arborist certified by the Certification Board of the International Society of Arboriculture.
 - (6) "Certified Tree Marker" means an individual who has full certification, and is in good standing, under the Ontario Ministry of Natural Resources and Forestry program for marking Trees.
 - (7) "City" means The Corporation of the City of Kingston.
 - (8) "Clear Cutting" means the removal of all Trees within a portion of a Woodland or a Significant Woodland where the area to be cleared is in excess of 0.2 hectare.
 - (9) "Closure Plan" means a plan that outlines how the affected land will be rehabilitated and the costs associated with doing so with respect to the *Mining Act*.
 - (10) "Commercial Harvesting" means the business of felling Trees and transporting logs to a market, with the expectation of financial gain or reward.
 - (11) "Cord" means a pile of healthy, live wood that when stacked, measures 3.63 cubic metres (128 cubic feet) in volume.
 - (12) "Dead Tree" means a Tree that has no living tissue as determined by a Qualified Person.

- (13) "Designate" means a person who is an employee of the city and who has been appointed by the Director to administer all or part of this By-Law on behalf of the Director.
- (14) "Destroy" or "Destruction" means any act that renders, or which is likely to render, a Tree unviable or compromise its life processes in such a way that it cannot survive.
- (15) "Diameter at Breast Height" ("DBH") means the diameter of the trunk of a Tree measured in centimetres outside the bark at a point that is 1.37 metres above the ground.
- (16) "Director" means the Director of Planning, Building and Licensing Services or any successor position, and includes his or her Designate.
- (17) "Diseased Tree" means a sustained and progressive impairment of the structure or function of a Tree. Symptoms may include dieback, foliage discoloration, decay, galls, or wilting.
- (18) "Distinctive Tree" means a healthy Tree that is considered by the Director to be an uncommon species in the City of Kingston region and environment, or a Tree of an uncommon size, maturity or age, and includes, without limitation, those Tree species listed in Schedule 'A' to this By-Law.
- (19) "Ecological Function" means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical and socio-economic interactions.
- (20) "Emergency Work" means any work required to be carried out immediately in order to prevent imminent danger to life, health or property from natural events (including lightning, wind, hail or an extreme snow event) or unforeseen circumstances (i.e. automobile accidents), and includes work of an urgent nature which can be associated with drain repairs, utility repairs or structural repairs to a building, and work required to prevent soil erosion, slipping of soil or damage to Trees.
- (21) "Environmental Impact Assessment" ("EIA") means an analysis performed by a Qualified Person with current knowledge in the field of biology, ecology, hydrology or other specialty as required by specific circumstances that inventories and assesses the potential impact of a development on Natural Heritage Features and Areas, and their Ecological Function and makes recommendations for measures to ensure that the proposed development has no Negative Impacts on those features and areas and their Ecological Functions.

- (22) “Environmental Protection Areas” means areas of natural and scientific interest (ANSIs), fish habitat or significant wildlife habitat areas, provincially significant wetlands, significant coastal wetlands and locally significant wetlands, rivers, streams and small inland lake systems and the Snake and Salmon Islands, located in Lake Ontario, all of which are shown in the City of Kingston Official Plan.
- (23) “Forest Management Plan” means a document, including prescriptions for Silviculture and ecological conservation, prepared by a Registered Professional Forester on behalf of an Owner for the purpose of managing natural and forestry resources in accordance with Good Forestry Practices.
- (24) “Good Arboricultural Practice” means the proper planting and care of Trees in accordance with the standards set by the International Society of Arboriculture.
- (25) “Good Forestry Practice” means the proper implementation of harvest, renewal, and maintenance activities known to be appropriate for forest and environmental conditions under which they are being applied that minimize detriments to forest values, including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health;
- (26) “Hazard Tree” means a Tree that is severely damaged to the extent that it poses an immediate safety threat to Persons or property.
- (27) “Injure” or “Injury” means any action that causes physical, biological, or chemical harm or damage to a Tree.
- (28) “Landscaping, Replanting and Replacement Plan” means a plan which identifies the number, location, species and size of existing Trees, Trees to be planted or replaced and other landscaping elements on a property and provides details regarding planting methodology and timing.
- (29) “Natural Heritage Features and Areas” means features and areas, including significant wetlands, significant coastal wetlands, other coastal wetlands, fish habitat, waters supporting aquatic species at risk, Significant Woodlands, significant valleylands, significant habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest, which are important for their environmental and social values as a legacy of the natural landscapes of an area.
- (30) “Negative Impacts” means in regards to Natural Heritage Features and Areas, degradation that threatens the health and integrity of the natural features or Ecological Functions for which an area is identified due to single, multiple or successive development or Site Alteration activities.

- (31) “Normal Farm Practice” means a practice, as defined in the *Farming and Food Production Protection Act*, 1998, SO 1998, c. 1, that is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances or a practice which makes use of innovative technology in a manner consistent with proper advanced farm management practices.
- (32) “Officer” means an individual appointed by the City to enforce the provisions of this By-Law, and includes a municipal by-law enforcement officer.
- (33) “Official Plan” means the City of Kingston Official Plan, being a land use document that sets out the goals, objectives and policies established primarily to manage and direct physical change and the effects of such change on the social, economic and natural environment of the municipality.
- (34) “Open Space” means areas in the municipality designated Open Space in the City of Kingston Official Plan, which include public parks, private open space areas, and natural reserves.
- (35) “Owner” means the Person(s) registered on the title of the land in the Land Registry Office.
- (36) “Penalty Notice” means a notice given pursuant to sections 2.2 and 2.4 of “By-law 2020-69 of The Corporation of the City of Kingston being “A By-Law to Establish a Process for Administrative Penalties.
- (37) “Person” means an individual, firm, corporation, association or partnership.
- (38) “Personal Use” means the utilization of a Tree, Trees or Tree sections Destroyed or Injured and collected solely for the Owner’s use (e.g. fuel wood) and includes the accessory sale of no more than three (3) Cords of wood within a consecutive period of twelve (12) months.
- (39) “Pruning” means the removal, as appropriate, of not more than one-third of the live branches or limbs of a tree in accordance with Good Arboricultural Practice.
- (40) “Plant Nursery” means the use of land, buildings or structures, or portions thereof, where Trees, shrubs or other plants are grown for the purpose of retail or wholesale trade. A Plant Nursery may include the accessory sale of soil, planting materials, fertilizers, garden equipment, ornaments and similar material.

- (41) “Qualified Person” means an individual with qualifications and/or credentials related to a field of study and who is therefore appropriate for conducting a study and/or providing an expert opinion that has been required by the City. The qualifications and credentials of the Qualified Person must be to the satisfaction of the City, or where appropriate, may be defined by relevant legislation, regulations and standards.
- (42) “Registered Professional Forester” means a member of the Ontario Professional Foresters Association as defined in the *Professional Foresters Act, 2000*, SO 2000, c. 18.
- (43) “Residential Unit” means a unit that consists of a self-contained set of rooms located in a building or structure, used or intended for use as a residential premises and contains a kitchen and bathroom facilities that are exclusive to the users of the unit.
- (44) “Rural Area” means the area located outside of the Urban Boundary, as shown in the City of Kingston Official Plan as indicated in Schedule ‘B’ of this By-Law.
- (45) “Selective harvesting” means the selective removal of trees, undertaken in accordance with Good Arboricultural Practices and Good Forestry Practices, that allows for regrowth and does not result in Clear Cutting”.
- (46) “Significant Woodlands” means an area shown in the City of Kingston Official Plan and indicated on Schedule ‘C’ of this By-Law. Significant Woodlands have been identified through the Central Cataraqui Region Natural Heritage Study (2006) or identified using criteria established by the Ontario Ministry of Natural Resources and Forestry which are ecologically important in terms of features such as species composition, age of trees and stand history; functionally important due to its contribution to the broader landscape because of its location, size or the amount of forest cover in the planning area; or economically important due to site quality, species composition, or past forest management history.
- (47) “Silviculture” means the theory and practice of growing and cultivating trees to achieve the objectives of forest management.
- (48) “Silvicultural Prescription” means the site specific operational plan, signed and sealed by a Certified Arborist that describes the existing forest conditions and the forest management objectives for an area, and which prescribes the methods for harvesting the existing forest stand and a series of silvicultural treatments that will be carried out to establish a free-growing stand in a manner that accommodates other resource values as identified.
- (49) “Site Alteration” means activities, such as grading, excavation and the placement of fill that change the landform and natural vegetative characteristics of a site.

- (50) “Tree” means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity.
- (51) “Tree Permit” means the formal written approval from the Director to Destroy or Injure Trees, with or without conditions.
- (52) “Tree Preservation and Protection Plan” means a plan prepared by a Certified Arborist and approved by the Director, that includes measures required to eliminate or mitigate the potential risk of Tree damage.
- (53) “Tree Protection Zone” means an area surrounding a Tree that is marked and fenced off, where storage of materials of any kind, parking or moving of vehicles, and disturbance of the soil or grade is prohibited.
- (54) “Urban Area” means the area within the Urban Boundary as defined in the Official Plan as indicated on Schedule ‘B’ of this By-Law.
- (55) “Urban Boundary” means lands on full municipal services as defined in the Official Plan and indicated on Schedule ‘B’ of this By-Law.
- (56) “Woodlands” means treed areas that provide environmental and economic benefits to both the private landowner and the general public, such as erosion prevention, hydrological and nutrient cycling, provision of clean air and the long-term storage of carbon, provision of wildlife habitat, outdoor recreational opportunities, and the sustainable harvest of a wide range of woodland products, and that have a quantity of Trees of a specific size as defined in the *Forestry Act*, RSO 1990, c F.26, that is more than one (1) hectare in area.

(By-Law Number 2018-15; 2021-111)

Application of the By-Law

- 2. This By-Law pertains to all lands within the geographic limits of the City of Kingston which include the Urban Area and Rural Area as shown on Schedule B and shall apply to:
 - (a) The Injury or Destruction of Trees that are 15 centimetres or greater in Diameter at Breast Height;
 - (b) The Injury or Destruction of Tree species classified as “extirpated”, “endangered”, “threatened”, or of “special concern”, as outlined in the provincial *Endangered Species Act*, 2007, SO 2007, c. 6;
 - (c) The Injury or Destruction of Tree species defined as “extirpated”, “endangered”, or “threatened”, or identified to be of “special concern” in the federal *Species at Risk Act*, SC 2002, c. 29;
 - (d) The Injury or Destruction of Trees classified as a Distinctive Tree as shown on Schedule A;

- (e) The Injury or Destruction of Trees located in areas designated Environmental Protection Areas (EPA) or as Open Space, as identified within the Official Plan;
- (f) The Injury or Destruction of Trees that are within Significant Woodlands as identified within the Official Plan and indicated on Schedule 'C' of this By-Law;
- (g) The Injury or Destruction of Trees that have been identified for protection in a Tree Preservation and Protection Plan approved by the Director;
- (h) The Injury or Destruction of Trees on property owned by the City;
- (i) The Injury or Destruction of Trees necessary to construct a "renewable energy project" as defined and regulated under the *Green Energy Act*, 2009, SO 2009, c. 12, Schedule A and
- (j) The Injury or Destruction of Trees for the purposes of Clear Cutting.

General Prohibitions

- 3. No Person shall Injure or Destroy a Tree or cause the Injury or Destruction of a Tree:
 - (a) Unless exempted by Section 5, 6 or 7 of this By-Law; or
 - (b) Unless in possession of a Tree Permit issued under this By-Law and in accordance with its terms and conditions.
- 4. No Person shall:
 - (a) Contravene the terms or conditions of a Tree Permit issued under this By-Law; or
 - (b) Fail to comply with an order issued under this By-Law.

Exemptions - Urban Area and Rural Area

- 5. Despite Section 2 of this By-Law, this By-Law does not apply to the following activities in the Urban Area and Rural Area of the municipality:
 - (a) The Injury or Destruction of a Tree(s) undertaken by a municipality or a local board of a municipality;
 - (b) The Injury or Destruction of a Tree(s) undertaken under a license issued under the *Crown Forest Sustainability Act*, 1994, SO 1994, c. 25;
 - (c) The Injury or Destruction of a Tree(s) by a person licensed under the *Surveyors Act*, RSO 1990, c. S.29 to engage in the practice of cadastral surveying or his or her agent, while making a survey;

- (d) The Injury or Destruction of a Tree(s) imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision, consent or part lot control under Sections 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 Injury or Destruction of a Tree(s) by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act, 1998*, SO 1998, c. 15, Schedule A for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (f) The Injury or Destruction of a Tree(s) undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, RSO 1990, c. A.8;
- (g) The Injury or Destruction of a Tree(s) 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*;
- (h) The Injury or Destruction of a Tree(s) undertaken on land within a Closure Plan which has been acknowledged to have been completed in accordance with the *Mining Act* by the Ministry of Northern Development and Mines.

The Injury of Destruction of a Tree(s) undertaken on land in order to lawfully establish and operate or enlarge any mine on land,

 - (i) that is not identified within a Closure Plan which has been acknowledged to have been completed in accordance with the *Mining Act* by the Ministry of Northern Development and Mines, and
 - (ii) on which a mine is a permitted land use under a by-law passed under Section 34 of the *Planning Act*.
- (i) Pruning necessary to maintain the health and condition of the Tree, provided the pruning is in accordance with Good Arboricultural Practices;
- (j) The Injury or Destruction of a Dead, Diseased, or severely Injured Tree(s), or a portion of such a Tree(s). A letter of opinion confirming the condition of the tree and the need for the removal may be required by a Qualified Person to the satisfaction of the City. Any such Injury or Destruction of a Tree(s) must be conducted in accordance with Good Arboricultural Practices;
- (k) The Injury or Destruction of an Ash Tree(s) (*Fraxinus* spp.);

- (l) The Injury or Destruction of a Tree(s) as part of Emergency Work;
- (m) The Injury or Destruction of a Tree(s) that are causing, or are likely to cause, structural damage to load-bearing walls or other structures as determined by a Qualified Person;
- (n) The Injury or Destruction of a Tree(s) located within a building or structure, a solarium, a rooftop garden, or an interior courtyard;
- (o) The Injury or Destruction of a Tree(s) required to permit the establishment or extension of a building or structure, including driveways and access routes, provided:
 - (i) the proposed use is permitted by the Zoning By-Law;
 - (ii) there is no reasonable alternative to the Injury or Destruction;
 - (iii) a Building Permit has been issued for the proposed building or structure or extension; and
 - (iv) no Tree is Destroyed or Injured that is located more than 15 metres from the outer edges of the existing building or structure and the outer edges of the expanded building or structure;
- (p) The Injury or Destruction of a Tree(s) necessary to install, provide or maintain utilities or public or private water and sanitary sewer infrastructure required for the construction or use of a building or structure for which a Building Permit has been issued;
- (q) The Injury or Destruction of a Tree(s) that are protected under the *Endangered Species Act* for which the landowner has obtained approval from the Ontario Ministry of Natural Resources and Forestry to remove the Tree(s);
- (r) The Injury or Destruction of a Tree(s) located within a cultivated orchard, Tree farm, or Plant Nursery that is being actively managed and harvested for the purposes for which the Trees were planted;
- (s) The Injury or Destruction of a Tree(s) required as part of the operation of an existing cemetery or golf course; and
- (t) The Injury or Destruction of a Tree(s) necessary to clear land in accordance with Normal Farm Practice conducted by an Agricultural Operation for its own agricultural purposes.

The Injury or Destruction of a Tree(s) located within a Significant Woodland or an Environmental Protection Area may be permitted provided that the activity is associated with a Normal Farm Practice. Whether a farm practice is a Normal Farm Practice shall be determined in accordance with the provisions of the *Farming and Food Production Protection Act*, including final arbitration by the Farm Practices Protection Board, as required.

Exemption – Urban Area only

6. Despite Section 2 of this By-Law, this By-Law does not apply to the following:
- (a) The Injury or Destruction of a Tree(s) located within the limits of any lot that permits a residential use and is occupied by a Residential Unit that was constructed prior to the passage of this By-Law.
 - (b) The Injury or Destruction of a Tree(s) located within the limits of any lot that permits a residential use and was created by way of a registered plan of subdivision, consent, part lot control, or a registered plan of condominium.
 - (c) Notwithstanding Section 6.(a) and 6.(b) of this By-Law to the contrary, the Injury or Destruction of a Tree(s) within an Environmental Protection Area and/or a Significant Woodland is not exempt from this By-Law and will not be permitted unless it has been demonstrated through the completion of an Environmental Impact Assessment (EIA), to the satisfaction of the City, that the Injury or Destruction can be supported.

Exemptions - Rural Area only

7. Despite Section 2 of this By-Law, this By-Law does not apply to the following activities in the Rural Area:
- (a) The Injury or Destruction of Trees that are otherwise exempt from this By-law as indicated in Section 5, 6 and 7, which include Dead, Diseased or Hazard Trees for the purpose of Personal Use or Commercial Harvesting.
 - (b) The Injury or Destruction of Trees for the Owner's Personal Use, provided that:
 - i. for properties less than 5 hectares in area, no more than ten (10) Cords of wood are to be removed within a consecutive period of twelve (12) months.
 - ii. for properties greater than 5 hectares and less than 10 hectares in area, no more than twenty (20) Cords of wood are to be removed within a consecutive period of twelve (12) months.
 - iii. for properties greater than 10 hectares in area, no more than thirty (30) Cords of wood are to be removed within a consecutive period of twelve (12) months.
 - (c) The Injury or Destruction of a Tree(s) on land for which a Forest Management Plan, approved by a Registered Professional Forester has been prepared, a copy of which has been submitted to the Director, and provided any Injury or Destruction is undertaken in accordance the Forest Management Plan;

- (d) The Injury or Destruction of a Tree(s) for Commercial Harvesting, where permitted by the applicable zoning by-law, provided that no more than ten (10) Cords of wood per one (1) hectare of Woodland are removed within a consecutive period of twelve (12) months;
- (e) The Destruction or Injury of a Tree(s) for Personal Use, Commercial Harvesting or those subject to a Forest Management Plan must be completed in accordance with Good Arboricultural Practices and Good Forestry Practices and shall not result in Clear Cutting;
- (f) The Injury or Destruction of a Tree(s) undertaken through Selective Harvesting for Personal Use, Commercial Harvesting, or those subject to a Forest Management Plan, proposed in an Environmental Protection Area and/or Significant Woodland may occur in the Rural Area as an exemption to this By-Law.

Where the Injury or Destruction of a Tree(s) within an Environmental Protection Area and/or Significant Woodland are not to be undertaken through Selective Harvesting, the Injury or Destruction of a Tree(s) must be justified through the completion of an Environmental Impact Assessment (EIA), to the satisfaction of the City and a permit will be required.

Tree Permits

Permit Application Process

- 8. Every Person that intends to Injure or Destroy a Tree, either personally or through another Person, shall:
 - (a) Submit a complete application for a Tree Permit in the form prescribed by the City;
 - (b) Pay the required fee as set out in the City's Fees and Charges By-Law in place at the time of the application;
 - (c) Where prescribed by this By-Law or required by the Director, submit an Environmental Impact Assessment (EIA). The EIA shall be prepared by a Qualified Person and shall include the following:
 - (i) A description of the proposal and rationale for undertaking the Tree removal activity where proposed;
 - (ii) A survey illustrating the legal boundaries of the property, any easements, rights-of-way or other encumbrances;
 - (iii) An inventory and description of the key features present and their significance, including a reference to all Natural Heritage Features and Areas and their associated Ecological Functions;

- (iv) A professional opinion by the Qualified Person as to whether the proposal is acceptable considering potential impacts to Natural Heritage Features and Areas and their Ecological Functions taking into account the relevant policies of the Provincial Policy Statement and the Official Plan; and
 - (v) A description of any mitigation required to protect the Ecological Function of identified Natural Heritage Features and Areas.
 - (d) Where required by the Director, submit a report prepared by a Certified Arborist setting out the reasons for the proposed Injury and/or Destruction of the Tree(s) and the Tree Preservation and Protection Plan for any Trees to be retained. The report shall be prepared in accordance with the City of Kingston's Guidelines for the Completion of an Arborist Report and the Guidelines for Tree Preservation and Protection.
 - (e) A Tree Permit Application shall only be considered complete when accompanied by the information required pursuant to this Section.
9. When all the requirements set out in Section 8 have been met, the Director will review the complete Tree Permit Application and may:
- (a) Issue a Tree Permit;
 - (b) Issue a Tree Permit with conditions; or
 - (c) Refuse to issue a Tree Permit.
10. The Director may refuse to issue a Tree Permit where:
- (a) The Injury or Destruction of a Tree(s) can be avoided, or ought to be avoided, as confirmed by a Qualified Person;
 - (b) The Injury or Destruction of a Tree(s) within an Environmental Protection Area, Open Space and/or Significant Woodland would have a Negative Impact on identified Natural Features and Areas and/or their Ecological Functions.
 - (c) An application for development approvals which relies on the Injury or Destruction of a Tree(s) has been made pursuant to the requirements of the *Planning Act* but for which a decision has not yet been rendered;
 - (d) The Injury of Destruction of a Tree(s) will negatively impact erosion or flood controls; and
 - (e) The Injury or Destruction of a Tree(s) will undermine the objectives of this By-Law as determined by the Director.

Term of a Tree Permit

11. (1) A Tree Permit issued by the Director shall remain in effect for twelve (12) months after the date of issuance.
- (2) A Tree Permit may be renewed for a period of up to two (2) additional years, upon the receipt of a written request from the Applicant at least thirty (30) days prior to its expiry, provided that the Director is satisfied, in his or her sole discretion, that there are reasonable grounds for the renewal.
- (3) No Tree Permit shall be renewed where the Owner or Applicant is in breach of any of the provisions of this By-Law or the terms and conditions of the Tree Permit.
- (4) Every application to renew a Tree Permit shall be accompanied by the applicable fee as set out in in the City's Fees and Charges By-Law in place at the time of application.

Permit Conditions

12. (1) The Director may impose any conditions on a Tree Permit that are reasonable, which may include, but are not restricted to:
 - (a) Measures that will ensure the Injury or Destruction of a Tree(s) is carried out in accordance with Good Arboricultural Practice and Good Forestry Practice, which may include limitations on the manner and timing of the Injury or Destruction;
 - (b) Conditions recommended by a Qualified Person through the completion of an Environmental Impact Assessment (EIA) or other technical evaluation;
 - (c) Mitigative measures to protect against the Injury or Destruction of a Tree(s) that is not subject to removal, which may include the identification of Tree Zones;
 - (d) A requirement to prepare additional technical documentation that will be used to validate the appropriateness of issuing a Tree Permit and may include: an Environmental Impact Assessment; Landscaping, Replanting and Replacement Plan; a Sivicultural Prescription; a Forest Management Plan; and/or a Tree Preservation and Protection Plan;
 - (e) A requirement to provide compensation in accordance with Section 17 of this By-Law;

- (f) A requirement to enter into an agreement with the City which sets out the Owner's obligations to replace Trees and any conditions imposed in accordance with this By-Law; and,
 - (g) A requirement to provide financial security for the performance of the Owner's obligations under the agreement.
- 13.
 - (1) All Trees that are to be Injured and/or Destroyed in accordance with an approved Tree Permit shall be marked by a Certified Tree Marker or Certified Arborist with clearly visible marks of orange paint both at 1.37 metres above ground level and at ground level, at least five (5) days prior to Destroying any Tree, but not prior to the issuance of a Tree Permit.
 - (2) The Applicant shall ensure that each stump remaining after cutting shall show the paint marking applied by the Certified Tree Marker or Certified Arborist.
- 14.
 - (1) The Applicant shall cause the installation of all required Tree preservation measures under the supervision of a Certified Arborist to the satisfaction of the Director.
 - (2) The Applicant shall ensure that Tree preservation measures and Tree Protection Zone(s) are inspected by a Certified Arborist and a bi-monthly report is provided to the Director for the duration of the active period of Tree Injury and/or Destruction. Once Tree removals have been completed, a final report is required to confirm that the Tree(s) that were to remain on the site were not damaged during construction.
- 15.
 - (1) A copy of the Tree Permit shall be posted on the property prior to the commencement of any Injury or Destruction of any Tree authorized by the Tree Permit in a conspicuous place on the property that is adjacent to a public road and visible to all persons, or at such other location designated by the Director.
- 16.
 - (1) A Tree Permit may be revoked by the Director under any of the following circumstances:
 - (a) If it was issued based on mistaken, misleading, false, or incorrect information;
 - (b) If the Owner or Applicant requests, in writing, that it be revoked;
 - (c) If the terms of an agreement entered into pursuant to this By-Law are not complied with; or
 - (d) If an Owner fails to comply with any provision of the Tree Permit or this By-Law.

- (2) Once the Applicant has received written notice that the Tree Permit has been revoked, the Owner and/or Applicant shall immediately cease all operations being conducted under the authority of the revoked Tree Permit.

Compensation

17. (1) An Applicant for a Tree Permit will be required to pay financial compensation when replacement Trees cannot be accommodated on the property.
- (2) Financial compensation must be provided in the form of cash or an irrevocable letter of credit in Canadian currency and must be provided to the City in advance of the issuance of a Tree Permit.
- (3) When replacement Trees can be accommodated on the property, the quantity, species and size of replacement Trees shall be equivalent in value to the value of the Tree(s) Injured or Destroyed as a result of the issuance of the Tree Permit. The City will require financial securities when replacement Tree(s) are proposed in association with a Tree Permit.
- (4) The value of financial compensation or financial securities shall be calculated as follows:
 - (a) The value of any Tree that is Injured or Destroyed as part of an approved plan of subdivision may be determined using a per-Tree flat rate compensation value as indicated in the City's Subdivision Development Guidelines and Technical Standards, as amended and applied as follows:
 - (i) Trees in poor condition will be exempted and will not be used to calculate compensation amounts;
 - (ii) Ash Trees (*Fraxinus* spp.) will be exempted and will not be used to calculate compensation amounts;
 - (iii) Trees in moderate condition, regardless of size, will be given a compensation value based on a one replacement Tree to one Tree removed ratio (1:1);
 - (iv) Trees in good condition, regardless of size, will be given a compensation value based on a two replacement Tree to one Tree removed ratio (2:1); and

- (v) Trees located within a proposed road allowance or area required to accommodate public infrastructure (e.g., stormwater management facility, utility corridors, public servicing infrastructure - water, sewer and storm, etc.) as identified in an existing Secondary Plan or an approved Draft Plan of Subdivision may be exempted from the calculation of compensation amounts where it can be demonstrated that efforts have been made to avoid wooded areas in the design of the plan; or
- (b) The value of any Tree that is Injured or Destroyed and is not part of an approved plan of subdivision will be determined using the International Society of Arboriculture Trunk Formula Method, as amended from time to time, or
- (c) The Director may determine an alternate method for the calculation of any financial compensation or financial security in consultation with City Forestry staff where it can be demonstrated that the objectives of this By-Law and the broader objectives of the City will be achieved.

Agreements, Security and Replacement Trees

18. (1) Owners will be required to enter into an agreement with the City when financial securities are required as a condition of a Tree Permit.
- (2) Financial securities must be provided in the form of cash or an irrevocable letter of credit in Canadian currency and must be provided to the City in advance of the issuance of a Tree Permit.
- (3) When associated with Tree replacement, financial securities shall be deposited with the City and will be held for a minimum of two (2) years after planting. The securities will be released upon the City's confirmation of the survival of the replacement Tree(s) beyond the two (2) year period. If replacement Tree(s) do not survive the two (2) year period, the City may draw upon the financial securities to execute the replacement of any unhealthy or deceased Tree(s).
- (4) Where an Owner has made an application for development approvals in accordance with the *Planning Act* and has been issued a Tree Permit which required the posting of financial securities, the amount of any financial security to be collected by the City as part of the *Planning Act* application may be reduced provided the value of the works, specifically associated with landscaping, meets or exceeds the value of the securities tied to the Tree Permit.

Appeals to City Council

19. (1) An Applicant for a Tree Permit may appeal in writing to Council of the City if the City refuses to issue a Tree Permit, within thirty (30) days after the refusal.
- (2) An Applicant for a Tree Permit may appeal in writing to the Council of the City if the Applicant objects to a term or condition of the Tree Permit, within thirty (30) days after the issuance of the Tree Permit.
- (3) An Applicant shall submit an appeal in writing, by way of registered mail, to the City Clerk.
- (4) The Director shall prepare and forward a report to Council that sets out the reasons for the refusal of the Tree Permit or reasons for the terms and conditions of the Tree Permit, as the case may be.
- (5) On appeal, Council has the same powers as the Director and may make a decision to:
 - (a) Issue a Tree Permit, with or without conditions;
 - (b) Confirm the refusal to issue the Tree Permit; or
 - (c) Affirm, vary, or add any conditions to the Tree Permit.
- (6) The decision made by Council on the appeal of the Tree Permit is final. The Clerk will notify the Applicant in writing of Council's decision within five (5) business days.

Enforcement

20. (1) Council hereby delegates to the Director the authority to enforce this By-Law, to issue Tree Permits under this By-Law and to impose terms and conditions to such permits.
- (2) The Director may appoint from time to time, persons to act as Officers to administer and enforce the provisions of this By-Law.
- (3) An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-Law, an Order, or a condition of a Tree Permit is being complied with.
- (4) An Officer, in carrying out an inspection pursuant to Section 20(3) may be accompanied by the Director, and any other Person necessary to assist the Officer with his or her enforcement activities.
- (5) An Officer carrying out an inspection pursuant to Section 20(3) may:
 - (a) require the production for inspection of documents or things relevant to the inspection;

- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- (6) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-Law.
- (7) Where an Officer has reasonable grounds to believe that an offence under this By-Law has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person.
- (8) Failure to provide proof of identification satisfactory to a Provincial Offences Officer when requested to do so pursuant to Section 20 (7) of this By-Law shall constitute obstruction of an Officer under Section 20 (6) of this By-Law.

(By-Law Number 2018-15; 2021-111)

Orders

21. (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue an Order to Discontinue 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 of the By-Law occurred, to discontinue the contravening activity.
- (2) The Order to Discontinue 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 by which there must be compliance with the Order.
22. (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue an 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 the work specified in the Order that is necessary in the opinion of the Director to correct the contravention, including without limitation the planting of replacement Tree(s) in accordance with Section 18 of this By-Law.

- (2) The Order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, if applicable, and the date by which there must be compliance with the Order.
 - (3) The Order may provide that if the person named in the Order fails to comply with the Order by a date specified in the Order, that the City shall have the right to enter upon the land affected by the Order at any time, and to complete the work specified in the Order at the expense of the person named in the Order and may draw on any financial security provided by the Owner to complete the work.
23.
 - (1) An Order to Discontinue issued under Section 21, or an Order issued under Section 22, may be:
 - (a) served personally by an Officer on the Owner, Applicant or any other Person who caused or permitted the contravention;
 - (b) posted in a conspicuous place on the property where the contravention occurred; or
 - (c) sent by registered mail to the Owner, Applicant or any other Person who caused or permitted the contravention of this By-Law.
 - (2) Where an Order issued under this By-Law is served personally by an Officer, it shall be deemed to have been served on the date of delivery to the Person(s) named.
 - (3) The posting of the Order on the property where the contravention took place shall be deemed to be sufficient service of the Order on the Person named in the Order on the date it is posted.
 - (4) Where an Order issued under this By-Law is sent by registered mail, it shall be sent to the last known address of the Person named in the Order and shall be deemed to have been served on the fifth (5th) day after the Order is mailed.
24.
 - (1) If a Person fails to comply with an Order issued pursuant to Section 21 of this By-Law, the City may enter the lands at any reasonable time for the purposes of doing the things described in the Order at the Person's expense.
 - (2) If the City enters on the lands and completes the work, the City may recover its costs to complete the work from the Person named in the Order by drawing upon the financial security, or by action, or by adding the costs to the tax roll and collecting them in the same manner as property taxes. Costs owing to the City will accrue at a rate of fifteen (15) percent annually and may also be registered as a lien against the property subject to the Tree Permit.

Penalties

25. (1a) Every Person who contravenes any provision of this By-Law shall, upon issuance of a Penalty Notice in accordance with Administrative Penalty Process By-Law 2020-69, be liable to pay to the City an Administrative Penalty as set out in Schedule B of the Administrative Penalty Process By-Law.
(By-Law Number 2018-15; 2021-111)
25. (1) Notwithstanding Part 25 (1a) of this By-Law, every Person who contravenes a provision of this By-Law is guilty of an offence.
(By-Law Number 2018-15; 2021-111)
- (2) Every Person who contravenes an Order under Section 21 or Section 22 of this By-Law is guilty of an offence.
26. (1) 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 maximum of Ten Thousand (\$10,000) Dollars, and the total of all daily fines is not limited to One Hundred Thousand (\$100,000) Dollars.
- (2) If a Person is required to pay an Administrative Penalty under section 25 (1a) in respect of a contravention of this By-Law, the Person shall not be charged with an offence in respect of the same contravention.
- (3) In accordance with section 351 of the Municipal Act, 2001, as amended from time to time, the treasurer of the City may add unpaid fees, charges and/or fines issued under this By-Law to the tax roll and collect them in the same manner as property taxes.
- (4) When a Person is convicted of an offence under this By-Law, the conditions of a Tree Permit, or an Order issued under this By-Law, the Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may, in addition to any fine imposed, make an order:
- (a) Prohibiting the continuation or repetition of the offence; and
- (b) Requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate, including requiring the person to abide by any term or condition of the Tree Permit, rehabilitate the land, plant or replant Trees, or perform any Silviculture treatment necessary to re-establish the Trees, or provide compensation.
(By-Law Number 2018-15; 2021-111)

Administration

27. (1) The short title of this By-Law is the "Tree By-Law".
- (2) Schedule 'A' and Schedule 'B' shall form part of this By-Law.
- (3) References to any statute or any provision thereof include such statute or provision as amended, revised, re-enacted and/or consolidated from time to time, and any successor statute.
- (4) If any Section or Sections of this By-Law or parts thereof are found by any Court of competent jurisdiction to be illegal or beyond the power of the Council to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of this By-Law shall be deemed to be separate and independent therefrom and continue in full force and effect.
- (5) If there is a conflict among this By-Law and a By-Law passed under the *Forestry Act*, *Municipal Act*, or the *Heritage Act*, the provision that is the most restrictive regarding the Injury or Destruction of Trees shall prevail.
- (6) Nothing in this By-Law shall exempt any Person from complying with the requirements of any other by-law in force, or from obtaining any license, permission, permit, authority or approval required under any other by-law or legislation.
- (7) Any application received prior to the passage of this By-Law, will be processed in accordance with the provisions of By-Law 2007-170, as amended.
- (8) A five year review of this By-law shall be undertaken to assess and monitor the effectiveness of its provisions.

This By-Law was given all Three Readings and Passed: December 19, 2017

Note: schedule pages attached to the PDF formatted By-law only.

City of Kingston By-Law Number 2018-15

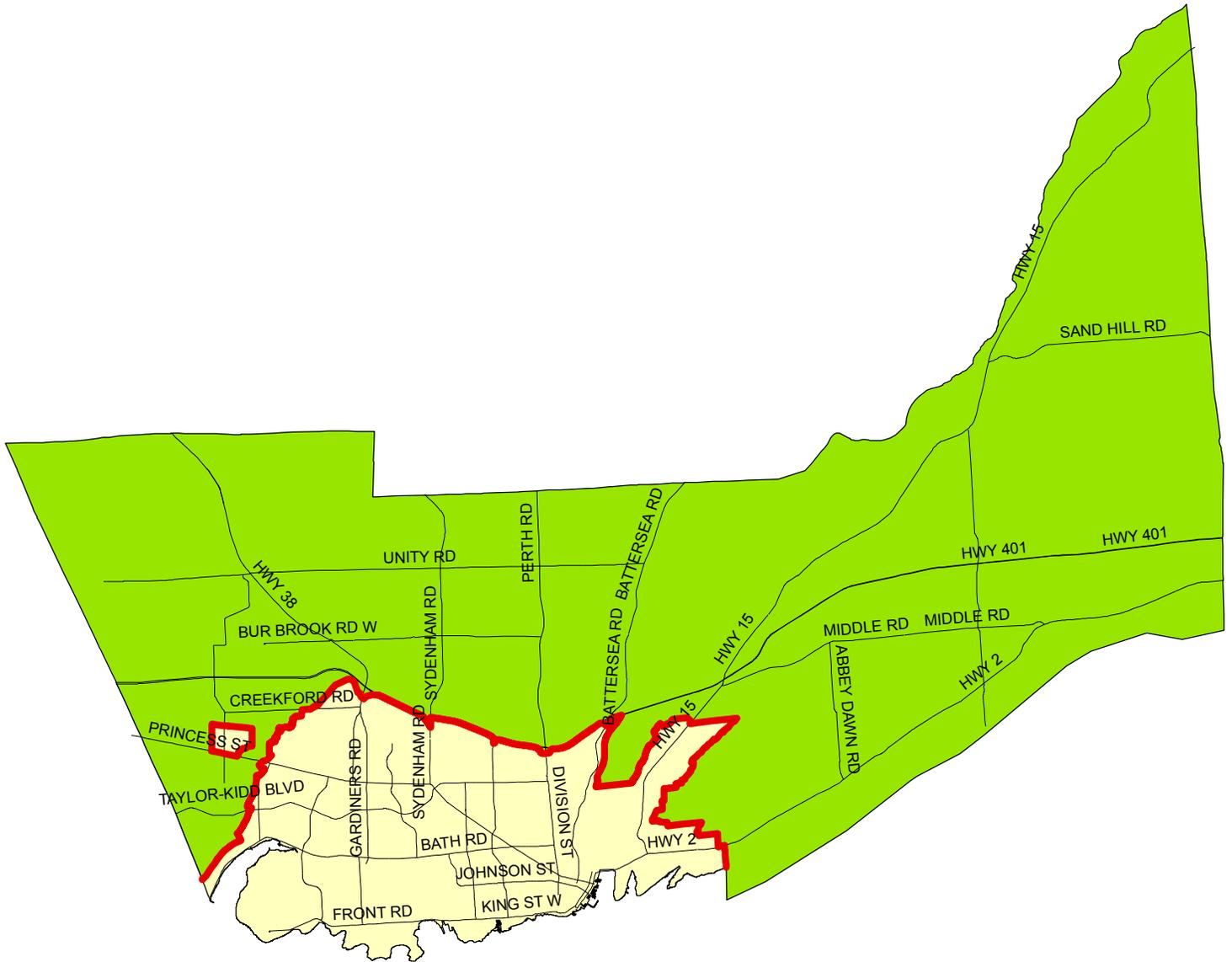
Schedule 'A' - List of Distinctive Tree Species

The following is a list of Distinctive Tree species that are considered to be uncommon to the City of Kingston region and environment:

Common English Name	Latin Name
Black Maple	<i>Acer nigrum</i>
Ginkgo	<i>Ginkgo biloba</i>
Kentucky Coffee Tree	<i>Gymnocladus dioica</i>
Black Walnut	<i>Juglans nigra</i>
Sycamore	<i>Platanus occidentalis</i>
London Plane Tree	<i>Platanus x acerifolia</i>
Tulip-Tree	<i>Liriodendron tulipifera</i>
Ohio Buckeye	<i>Aesculus glabra</i>
Pitch Pine	<i>Pinus rigida</i>
Douglas-Fir	<i>Pseudotsuga menziesii</i>



Schedule 'B' to By-Law Number 2018-15 "Tree By-Law"

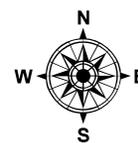


The Corporation of the City of Kingston
Planning, Building and Licensing Services

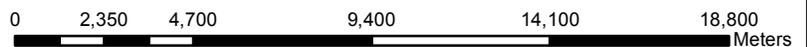
Certificate of Authentication

This is Schedule 'A' to By-Law Number 2018-15,
passed this 19 day of December 2017.

Legend



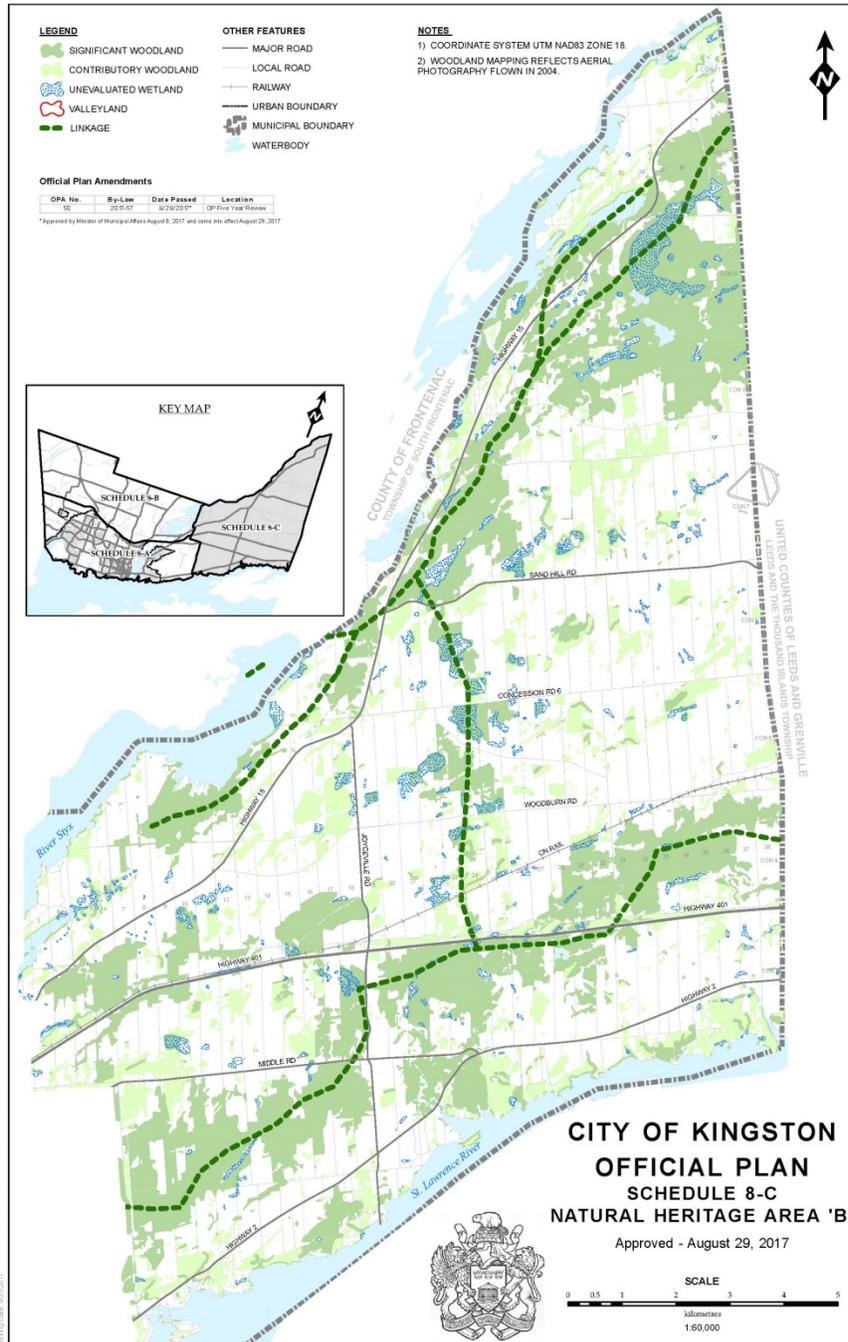
-  Urban Boundary
-  Major Roads
-  Rural Area
-  Urban Area



Schedule 'C' – Significant Woodlands



Schedule 'C' – Significant Woodlands



Map Document: IC21-OP-2017-001 - Official Plan Schedule 8-C Mapping and GIS Database Schedule 8-C (2017) - Approved Aug 29/2017 - Approved Aug 29/2017 - IC Natural Heritage Area B Final