

## **Growing Space for Trees: Protecting and Enhancing the Tree Canopy While Supporting Infill Housing**

**Date:** November 15, 2023

**To:** Planning and Housing Committee

**From:** Chief Planner and Executive Director, City Planning and Acting General Manager, Parks, Forestry and Recreation

**Wards:** All

### **SUMMARY**

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This report responds to a Council direction to identify potential strategies to protect and enhance the city's tree canopy and growing space for trees, while also supporting infill housing growth in Toronto's low-rise neighbourhoods.

Trees are a critically important asset to address the climate and biodiversity crisis and concurrently contribute to provide the development of attractive and desirable neighbourhoods. New infill housing will help address Toronto's current housing challenges but has the potential to negatively impact the tree canopy and reduce the amount of suitable growing space for trees if proactive solutions are not implemented.

The City has been proactive in its requirements for protection of trees and growing space. Toronto has one of the strongest suites of tree protection by-laws in North America and has comprehensively addressed tree protection in the Official Plan amendments related to provision of garden suites, laneway suites and multiplex housing. The City must continue to be proactive and innovative in supporting and expanding its tree canopy and growing space while supporting opportunities for infill residential development, as both are critical in responding to the current climate emergency.

This report highlights the existing policy and regulatory framework, past studies and proactive solutions underway. It also identifies proposed strategies related to protection and enhancement of tree canopy and growing space under the City's Official Plan and Zoning By-law; practices in administering Committee of Adjustment applications and tree by-laws; and monitoring of impacts to trees from infill housing development enabled by the City's Expanding Housing Options in Neighbourhoods (EHON) initiative. Specifically, these strategies include:

- i) review of Official Plan policies with respect to protection of existing trees and expansion of tree canopy when permitting infill housing;

- ii) review of the city-wide Zoning By-law for opportunities to further support protection and enhancement of growing space for trees, including a review of the definitions of landscaping and soft landscaping and landscaping regulations in low-rise residential zones;
- iii) review and modification of Committee of Adjustment existing minor variance and consent to sever application requirements to support tree protection;
- iv) comprehensive evaluation of internal review and commenting practices for Committee of Adjustment minor variance and consent applications, with specific regard to tree protection and canopy enhancement, with process improvements to follow;
- v) continued monitoring of tree impacts resulting from Expanding Housing Options in Neighbourhoods (EHON) related development;
- vi) follow-up inspections when a tree permit has been issued; and
- vii) enhanced enforcement of tree by-laws.

## **RECOMMENDATIONS**

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The Chief Planner and Executive Director, City Planning and the Acting General Manager, Parks Forestry and Recreation recommend that:

1. City Council request the Chief Planner and Executive Director, City Planning, in consultation with the Acting General Manager, Parks Forestry and Recreation to review the Official Plan policies with respect to protection of existing trees and expansion of tree canopy when permitting infill housing and report back to the Planning and Housing Committee on potential updates to the Official Plan policies by Q4 2024.
2. City Council request the Chief Planner and Executive Director, City Planning, in consultation with the Acting General Manager, Parks Forestry and Recreation, to review the city-wide Zoning By-law 569-2013 for opportunities to further support, protect, and enhance growing space for tree growth, including a review of the definitions of landscaping and soft landscaping and landscaping regulations in low-rise residential zones, and report back to the Planning and Housing Committee on opportunities to update the Zoning By-law by Q4 2024.
3. City Council amend its previous direction 2018.PE25.1 respecting the requirements for a complete Committee of Adjustment application, by removing the site plan outlining the "as-of-right" footprint requirement, and only require applicants to submit:
  - a. a completed tree declaration form;
  - b. up-to-date colour photos showing the entire front and rear yard of the site regardless of if there are trees, and up-to-date colour photos of all By-law protected trees located on the site and within 6m of the site (12m with Ravine and Natural Feature Protected Areas); and
  - c. plans showing the location of all By-law protected trees and tree protection zones, with species and diameter of each By-law protected tree at breast height indicated.
4. City Council request the Chief Planner and Executive Director, City Planning and the Acting General Manager, Parks Forestry and Recreation in consultation with the Chief Building Official, Toronto Building and the City Solicitor to complete a review of

Committee of Adjustment application requirements, as well as the review and commenting practices in order to enhance tree protection and enhancement of growing space for trees and report back to the Planning and Housing Committee by Q4 2024.

5. City Council request the Chief Planner and Executive Director, City Planning in consultation with the Acting General Manager, Parks, Forestry and Recreation, to continue to monitor for tree impacts resulting from laneway suites, garden suites, multiplex dwellings and other residential building types permitted as part of the monitoring programs for the *Expanding Housing Options in Neighbourhoods* initiative.

6. City Council request the Chief Planner and Executive Director, City Planning and the Acting Manager, Parks, Forestry and Recreation, in consultation with the City Solicitor, to review whether amendments to existing policies or by-laws or a new policy or municipal by-law may be recommended in addition to the review arising from Recommendations 1 and 2 above pursuant to Section 212(1)9 of the City of Toronto Act, 2006.

7. City Council request the Chief Planner and Executive Director, City Planning and the Acting General Manager, Parks, Forestry and Recreation to consult with relevant stakeholders in responding to the recommendations of this report.

## **FINANCIAL IMPACT**

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There are no financial implications resulting from the adoption of the recommendations in this report in the current budget year or in future years. Staffing resources and expertise needed to advance the due diligence required, and to support enabling work of any of the proposed strategies outlined in the report will be accommodated within the existing approved budgets for relevant City Divisions.

The Interim Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

## **EQUITY IMPACT**

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Strategies to protect and enhance the city's tree canopy and growing space, while also supporting infill housing growth in the city's neighbourhoods, contributes to a number of strategies and actions that support equity-deserving groups, including: the Resilience Strategy, TransformTO and the HousingTO 2020-2030 Action Plan.

A healthy tree canopy contributes to a healthy, resilient, and complete community. Trees assist in cooling outdoor and indoor spaces, reducing utility costs, provide shelter and improve living conditions for all residents and in particular, vulnerable populations.

## CLIMATE IMPACT

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On October 2, 2019, City Council voted unanimously to declare a climate emergency and accelerate efforts to mitigate and adapt to climate change. At its meeting on January 29, 2020, City Council adopted the 2018 Tree Canopy Study and on December 15, 2021, reaffirmed Toronto's target of 40 per cent tree canopy cover by 2050 to align with the City of Toronto's TransformTO NetZero Strategy.

It is important that infill housing be considered through a climate impact lens such that it supports protecting and enhancing the city's tree canopy and allows for soft landscaping for growing space. Infill housing helps reduce greenhouse gas (GHG) emissions through the efficient use of land and resources. Density within the built-up area enables low carbon transportation choices, such as walking, cycling, and public transit. Housing built in Toronto also reduces sprawl and reduces transportation driven GHG emissions regionally. Density enables the use of existing infrastructure, which avoids carbon-intensive infrastructure built elsewhere. Smaller infill buildings can more easily achieve net zero operational emissions, and low carbon materials are readily available at this scale. These buildings are also more easily deconstructed and much of the existing material can be salvaged and reused.

## DECISION HISTORY

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At its meeting on May 10, 2023, City Council, through item PH3.16 Expanding Housing Options in Neighbourhoods: Multiplex Study - Final Report requested the Chief Planner and Executive Director, City Planning and the General Manager, Parks, Forestry and Recreation to report in the third quarter of 2023 with a status update on work previously requested in Items 2021.PH29.2 and 2022. IE30.18, which respectively requested staff to consider strategies to protect and enhance growing space and the City's tree canopy and growing space, while also supporting infill housing growth in the City's Neighbourhoods, and to report back regarding potential strategies to protect and enhance the City's tree canopy and growing space, while also supporting infill housing growth in the City's Neighbourhoods.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH3.16>

At its meeting on May 25, 2022, City Council through item IE30.18 Planting Spaces on Private Property, requested the General Manager, Parks Forestry and Recreation, in consultation with the Executive Director, Municipal Licensing and Standards, the Chief Building Official and Executive Director, Toronto Building, and the Chief Planner and Executive Director, City Planning to report on potential strategies to protect and enhance the City's tree canopy and growing space, while also supporting infill housing growth in the City's Neighbourhoods.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.IE30.18>

At its meeting on February 15, 2022, Planning and Housing Committee adopted item Expanding Housing Options in Neighbourhoods - Update Report which introduced the EHON work plan, including reference to an interdivisional Working Group, (the 'Tree/House Working Group' ) which was to consider strategies to protect and enhance

growing space and the City's tree canopy and growing space, while also supporting infill housing growth in the City's Neighbourhoods, and report Planning and Housing Committee in the first quarter of 2023.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH31.6>

At its meeting on February 2, 2022, City Council requested City Planning, in consultation with Parks, Forestry and Recreation, to monitor impacts to the City's tree canopy and growing space as a result of Garden Suite construction and to report on these matters as part of both the monitoring program, and any other work being undertaken by City staff to understand the broader implications of infill development on the City's tree canopy.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH30.2>

Also, at its meeting on December 15, 2021, City Council adopted item IE26.6, Actions to Reaffirm Toronto's Tree Canopy Target, which reaffirmed Toronto's canopy cover target of 40 per cent by 2050 to align with the City's TransformTO Net Zero Strategy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.IE26.6>

At its meeting on December 15, 2021, City Council through item PH29.2 Changing Lanes, requested City Planning and Parks, Forestry, and Recreation to report on potential strategies to protect and enhance the City of Toronto's tree canopy and growing space, while also supporting infill housing growth in the City's neighbourhoods.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.PH29.2>

At its meeting on May 5, 2021, City Council directed the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor, the Chief Building Official and Executive Director, Toronto Building, and the Ombudsman, to report to Planning and Housing Committee on a consultant review of the Committee of Adjustment.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.PH22.7>

As a result of the above direction, City Planning retained KPMG, who conducted this review over the course of 2022. KPMG delivered its Final Report titled "Committee of Adjustment Review" in January 2023. City Planning staff summarized this report and recommendations through Item 2023.PH2.5 which was considered by the Planning and Housing Committee in February 2023.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH2.5>

At its meeting on March 26, 2018, City Council requested City Planning to undertake several actions to ensure that members of the Committee of Adjustment and the Toronto Local Appeal Body panels were aware of and trained on urban forestry and environmental planning issues. City Council also directed that a number of submissions be made as part of a complete Committee of Adjustment application, including a tree declaration form, preliminary photos, a site plan showing the "as-of-right" footprint and tree details and identification of all trees and tree protection zones.

<https://secure.toronto.ca/council/agenda-item.do?item=2018.PE25.1>

## **BACKGROUND**

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### **Policy and Regulatory Framework**

#### **City of Toronto Act**

The City's tree by-laws are enacted pursuant to Section 104 of the City of Toronto Act. It grants the City the authority to enact by-laws prohibiting or regulating the destruction or injuring of trees. It also stipulates when the tree by-laws do not apply. Sections 104(3)(c) and (c.1) exempts the application of the by-law where a condition is imposed on the approval of a site plan, a plan of subdivision or a consent or as a requirement of a site plan agreement or subdivision agreement for the injuring or destruction of trees.

Section 212(1) Paragraph 9 of the City of Toronto Act states "the City shall adopt and maintain policies with respect to the following matter: the manner in which the City will protect and enhance the tree canopy and natural vegetation in the City." This provision came into effect on March 1, 2019.

While the City has not yet formally adopted a policy pursuant to Section 212(1)9 of the City of Toronto Act, this will be reviewed in consultation with the City Solicitor to determine whether a policy or further municipal code amendment may be appropriate to implement this legislative direction, if required.

#### **City of Toronto Official Plan**

The Official Plan envisions Toronto as "a city with: ... vibrant neighbourhoods that are part of complete communities; ... attractive, tree-lined streets with shops and housing that are made for walking; ... a healthy natural environment including clean air, soil, energy and water; infrastructure and socio-economic systems that are resilient to disruptions and climate change; ... and a connected system of natural features and ecological functions that support biodiversity and contribute to civic life." Policy 3.4.1 specifies that changes to the built environment will be "environmentally friendly, based on: b) sustaining, restoring and enhancing the health and integrity of the natural ecosystem; d) preserving and enhancing the urban forest by: i) providing suitable growing environments for trees; ii) increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and iii) regulating the injury and destruction of trees." Official Plan policy 3.1.16 also states that: "the preservation, long-term growth and increase in the amount of healthy trees will be a priority for all development. Development proposals will demonstrate how the protection, provision and maintenance of trees and their growing spaces above and below ground will be achieved."

On September 11, 2020, the Minister of Municipal Affairs and Housing approved Official Plan Amendment 479 ("OPA 479") which, among other matters, allows the City to require a Soil Volume Plan as part of a complete application for Zoning By-Law, Plan of Subdivision, Consent to Sever and Site Plan Control applications. For properties with existing trees, OPA 479 also requires a "Tree Protection Plan" to identify the location, species and size of trees, the extent of injury (where applicable) and to illustrate details of protection measures including the location of protective barriers.

On June 15, 2022, City Council approved Official Plan [Amendment 583](#) which updated the environment and climate change policies, including policies to enhance the urban forest. New policies include: 3.4.1 a) protecting and improving the health of the natural ecosystem, by (xi) maintaining pervious area where possible, identifying opportunities to reduce impervious area through redevelopment, and prioritizing green infrastructure; d) preserving and enhancing the urban forest by: (i) providing suitable growing environments for trees, including adequate soil volumes; (ii) increasing tree canopy coverage, especially of long-lived native and large shade trees with an emphasis on increasing tree canopy, distribution, and diversity in areas of the city with lower tree canopy coverage; and iii. regulating the injury and destruction of trees and protecting mature and native trees; OPA 583 is pending Ministerial approval and will come into effect upon Provincial approval.

### **City-wide Zoning By-law 569-2013**

On May 9, 2013, City Council enacted city-wide Zoning By-law 569-2013. The purpose of the new city-wide Zoning By-law was to harmonize 43 former municipal by-laws from the pre-amalgamated City into one zoning by-law. The city-wide zoning by-law comprehensively regulates all land uses, buildings and structures and applies to most of the City of Toronto. As some lands are not covered by Zoning By-law 569-2013 the comprehensive zoning by-laws from former municipalities remain in effect on some lands in the City. A final order issued by the Ontario Land Tribunal on November 30, 2022 concluded outstanding appeals to the regulations in the by-law's Residential Zone Category.

Chapter 10 of the city-wide Zoning By-law applies to all lands, uses, buildings and structures in the Residential Zone category. The Residential Zone category permits uses generally associated with the Neighbourhoods designation in the Official Plan. This zone category includes a range of residential zones including the Residential (R) Zone, Residential Detached (RD) Zone, Residential Semi-Detached (RS) Zone, Residential Townhouse (RT) Zone, and the Residential Multiple (RM) Zone. Through the Expanding Housing Options in Neighbourhoods (EHON) initiative, permissions for laneway suites, garden suites and multiplexes have been expanded to all residential zones.

### **Tree Protection By-laws**

Toronto's urban forest is a vital part of the City's green infrastructure that provides \$55 million in ecosystem services and benefits annually, including air pollution removal, reducing storm water runoff and carbon sequestration. Protecting and enhancing the urban canopy is critical to building climate resilience and improving quality of life in the City. The following municipal by-laws support these goals by protecting healthy and maintainable trees on streets, private property, in ravines and in parks:

Toronto Municipal Code Chapter [813](#) Article II (Trees on City Streets) regulates the injury, destruction and removal of all trees located on City streets.

Toronto Municipal Code Chapter [813](#) Article III (Private Tree Protection) regulates the injury, destruction and removal of all trees located on private property with a trunk diameter measuring 30cm or greater at 1.4 metres above ground level.

Toronto Municipal Code Chapter [658](#) (Ravine and Natural Feature Protection) regulates the injury, destruction and removal of all trees located within designated ravine protected areas, as well as grade changes and dumping of fill or refuse within designated ravine protected areas.

Toronto Municipal Code Chapter [608](#) Article VII (Parks) regulates the injury, destruction and removal of all trees located in City owned parks.

These by-laws direct compensation requirements for replacement trees when permits have been issued or appeals granted through Community Council, and when a party has undertaken tree removal or injury in contravention of a tree by-law.

The Compliance and Enforcement Unit within Tree Protection and Plan Review was established in 2016 with an overall objective to enforce the City's Tree By-laws and initiate appropriate actions when contraventions are committed.

The intention of the tree by-laws is not to impede development, but rather to regulate tree injury and destruction while promoting maximum tree protection and retention, and to require compensation planting. The tree by-laws are not considered applicable law under the Ontario Building Code, and as such the Chief Building Official cannot withhold the issuance of a building permit where the applicant has complied with all other applicable law.

## **Studies**

### **2018 Tree Canopy Study Findings on Tree Canopy and Growing Space**

Toronto's urban forest is a vital part of the City's green infrastructure that provides \$55 million in ecosystem services and benefits annually, including air pollution removal, reducing storm water runoff and carbon sequestration. Protecting and enhancing the urban canopy is critical to building climate resilience and improving quality of life in the city.

At its meeting on January 29, 2020, City Council adopted the 2018 [Tree Canopy Study](#) and on December 15, 2021, reaffirmed Toronto's target of 40 per cent tree canopy cover by 2050 to align with the City of Toronto's TransformTO NetZero Strategy.

The 2018 Tree Canopy Study provided an updated analysis of the extent, size class distribution, composition, condition, and ecosystem benefits of Toronto's urban forest. It also provided insights on land use change and canopy trends across the city over the ten-year study period.

Over the last decade, Toronto's urban forest has faced many challenges including damage by forest pests, particularly Asian long-horned beetle, emerald ash borer, and spongy moth; the impacts of the 2013 ice storm; and the city's intensive development and growth. Despite facing these significant impacts, Toronto's tree population



increased from 10.2 million to 11.5 million trees, an increase of 1.3 million trees, and city-wide canopy cover increased from 26.6 - 28 per cent to 28 - 31 per cent, as a result of annual tree planting programs on public land; new and replacement planting on both public and private land; and natural regeneration on public land.

As part of the Tree Canopy Study, consultants used automated continuous land cover data together with other spatial data to examine possible correlations with positive and negative tree canopy cover change. A preliminary analysis was undertaken with existing data, including building permits, development applications, emerald ash borer tree removals and ice storm service calls. The analysis showed that urban intensification, emerald ash borer and ice storm damage may explain negative tree canopy cover change in associated areas over the ten-year study period.

The Tree Canopy Study also indicated that the most land area converted from pervious to impervious land cover was on low rise residential neighbourhoods. This is of concern because the analysis also showed that the greatest amount of possible pervious planting area was similarly found on low rise residential neighbourhoods (5,292 ha). Using the automated land cover classification analysis, tree canopy in low rise residential lands decreased from approximately 35 per cent in 2008 to 31 per cent in 2018. These residential lands also experienced the greatest increase in impervious land cover, which is defined as any hard surface other than buildings and roads (e.g., driveways, patios).

The conversion of pervious surfaces or "soft" surfaces, capable of supporting tree growth, to impervious or "hard" surfaces that do not, is a barrier to achieving the City's 40 per cent canopy target by 2050. Broadly, the conversion of lands from pervious cover to impervious cover has potential negative implications for stormwater management, water quality, loss of healthy soils, biodiversity, urban heat island effect, and the reduction of growing space for potential tree planting. If adjacent to existing trees, loss of soft landscaping can cause decline and mortality due to compaction; root injury; or the alteration to, or loss of, usable soil that supports tree growth.

## **COMMENTS**

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Trees are a critically important asset to address the climate and biodiversity crisis, and to provide attractive and desirable neighbourhoods. New infill housing, while critical in responding to Toronto's current housing challenges, also has the potential to negatively impact the tree canopy and growing space. "Growing space" refers to the availability of pervious land cover (or "soft" landscape), capable of supporting tree growth. The Tree Canopy Study (2018) identified low-rise residential neighbourhoods as having the most potential to provide growing space to allow for increased tree canopy and also where significant loss of pervious landscape had occurred.

The City must continue to be proactive and innovative in supporting and expanding its tree canopy and growing space while supporting opportunity for infill residential development, as both are critical in responding to the current climate emergency. Tree protection policies should be viewed as a regulatory complement to infill housing policies required to build a sustainable, resilient city.

This report discusses the existing policy and regulatory framework, past studies and proactive solutions underway. It also identifies proposed strategies to protect and enhance tree canopy and growing space under the City's Official Plan and Zoning By-law, practices in administering Committee of Adjustment applications and tree by-laws and monitoring impacts to trees in EHON related infill housing.

### **Official Plan: Infill Housing and Trees**

Recent amendments to the Official Plan permit laneway housing, garden suites and multiplexes 'as of right', meaning that a rezoning or minor variance is not required provided that the proposal conforms to zoning standards. These policies provide for additional protection of existing trees and encourage expansion of the tree canopy and state that: development will maximize contiguous soft landscaping that is supportive of maintaining and expanding the urban tree canopy; should not result in the injury or removal of a healthy tree protected under a tree by-law; and encourage expansion of the urban tree canopy through the planting of a new tree. Further, and where a laneway suite, garden suite, or multiplex preserves existing trees protected under a tree by-law, the policies allow for variances from applicable zoning.

### **Proposed Strategies**

In addition to laneway suite, garden suite and multiplex developments, there may be other infill development in *Neighbourhoods* where it is important to protect trees and encourage planting and allocation of growing space. It is proposed that the Official Plan *Neighbourhood* (4.1) policies be reviewed for opportunities to address protection of existing trees and growing space, for example when considering development applications.

### **Zoning By-law 569-2013 and Landscaping Requirements**

The city-wide Zoning By-law 569-2013 (the "Zoning By-law") regulates landscaping in residential zones primarily through requirements for minimum landscaping percentages in front and rear yards that are linked to the lot frontage. For example, for a lot with a frontage of 15 metres or greater, a minimum of 60 per cent of the front yard area must be landscaping. Of this, at least 75 per cent of the landscaping must be in the form of soft landscaping. For a lot with a frontage of 6.0 metres or greater, 50 per cent of the rear yard must be soft landscaping.

The requirements for landscaping in front yards in the Zoning By-law are derived from amendments to the former zoning by-laws in 2006 to ensure provision of soft landscaping to support the growth of vegetation such as grass, trees, shrubs, flowers or other plants, enhance biodiversity, permit water infiltration into the ground, and reduce the urban heat island effect. The requirements for rear yard soft landscaping were introduced in the first draft city-wide harmonized zoning by-law in 2009 and included in the final city-wide Zoning By-law adopted in 2013.

The Zoning By-law defines landscaping as "an area used for trees, plants, decorative stonework, retaining walls, walkways, or other landscape or architectural elements. Driveways and areas for loading, parking or storing of vehicles are not landscaping."

Soft landscaping is defined as “landscaping excluding hard-surfaced areas such as decorative stonework, retaining walls, walkways, or other hard-surfaced landscape-architectural elements.” In addition, the water surface area of swimming pools and other water-retaining features can be counted towards the required provision of soft landscaping. The soft landscaping component of required landscaping is intended to support the growth of vegetation, enhance biodiversity, permit water infiltration, and reduce the urban heat island effect.

Lot coverage is used in some areas of the city (mainly Scarborough, North York and Etobicoke) to regulate the area of the lot that is covered by buildings (i.e., the building footprint). It is intended to provide for a certain ratio of open space on a site and provide opportunities for landscaping, tree planting and ensure sufficient stormwater infiltration. Maximum lot coverage requirements may result in a building that is smaller than what other performance standards (i.e., setbacks, building depth) may permit as these regulations work together to control the built form of the building. While the open space that results from maximum lot coverage requirements could be used for soft landscaping, there is no requirement that all open space on site be used for soft landscaping beyond the landscaping requirements described above.

## **Proposed Strategies**

### **Review Definitions of Landscaping and Soft Landscaping**

As the definition of soft landscaping is exclusionary rather than descriptive (i.e., the definition specifies what isn't soft landscaping), further clarification could be provided about the landscape elements that can be considered as soft landscaping.

For example, questions have emerged regarding artificial turf and whether it should be considered as soft landscaping. Overall, artificial turf does not constitute soft landscaping as it does not perform in a similar manner to natural vegetative cover and does not meet the intent of soft landscaping with respect to supporting the growth of vegetation, enhancing biodiversity, reducing the urban heat island effect, and effectively managing stormwater infiltration.

To provide clarity regarding what is considered landscaping and soft landscaping, staff propose to review the definitions for these terms in Chapter 800 of the Zoning By-law. This review will aim to better identify the intended objectives of landscape elements, to support permeability, biodiversity, reduction of urban heat island and other related objectives.

Additional clarity in what is considered appropriate soft landscaping elements would reinforce the provision of sufficient space within yards that is permeable and unencumbered by hardscaped elements to support preservation of existing trees and opportunities for tree planting.

### **Review Landscaping Requirements**

The current regulations for landscaping and soft landscaping focus on the surface area of the lot and do not contain performance standards or other measures to clearly ensure that required landscape elements function or are maintained as intended. This may result in circumstances where the required amount of soft landscaping is provided but is

located directly above a sub-surface portion of a structure. As a result, the intended stormwater infiltration benefits may not be achieved given the limited soil depth and volume. In addition, more intensive planting of vegetation and trees would not be supported. Further clarification could be provided in the landscaping regulations to ensure sufficient soil depths and volumes are achieved.

To further support tree preservation and enhance planting opportunities, staff propose to review the existing landscaping regulations in the Zoning By-law 569-2013 to identify ways in which they could be updated to support these objectives.

This review will explore the potential of including requirements for a minimum soil depth for soft landscaping to provide sufficient growing medium and enable stormwater infiltration, including where soft landscaping is proposed above below-ground structures. In addition, staff will explore the potential for integrating minimum soil volumes and areas (including minimum dimensions) in the Zoning By-law to secure adequate growing space for existing and newly planted trees.

Staff also propose to review the inclusion of pools and other water-retaining features as soft landscaping. These features, while they may assist in short-term stormwater retention, do not contribute to biodiversity objectives and in some circumstances may result in the need to injure existing trees and preclude the planting of new trees given conflicts with root zones.

Definitions and regulations from other jurisdictions will be reviewed to identify best practices and to help inform any proposed approaches.

## **Related Initiatives**

### **Zoning By-law Simplification and Modernization for Low-rise Residential Zones**

As part of the work to simplify and modernize the Zoning By-law in low-rise residential zones, staff are reviewing regulations for Floor Space Index (FSI), which is mainly used in areas that were part of the former City of Toronto as a method of controlling the internal area and bulk or massing of buildings. These areas typically do not use lot coverage, and instead rely on the combination of FSI and other performance standards to maintain open space on site. Through this review, staff are exploring potential approaches to consistently regulate building area and footprint in all areas of the city to harmonize land use regulation across the city and support objectives such as preserving open space and opportunities for landscaping and tree planting.

### **Zoning Regulations for Basements**

Concerns have been raised about extensive below-ground development that currently is not directly regulated by the zoning by-law. These "iceberg basements" may extend multiple levels below ground and/or extend horizontally beyond the surface footprint of the structure. Issues associated with this form of development potentially include: impacts on stormwater infiltration, alteration to sub-surface water flows, reduced growing space and soil volume for trees, and limited opportunity for effective soft landscaping. In October 2021 (Item MM36.33), Council directed staff to assess the impacts of "iceberg homes" and identify potential strategies to address these impacts.

Staff are studying this form of development and intend to report to Planning and Housing Committee in 2024 to further identify issues and propose potential regulatory approaches to address them. Given that the issues identified to date with "iceberg basements" overlap with issues regarding growing space for trees and landscaping, it is anticipated that consultation and future reporting may occur jointly on these topics.

## **Committee of Adjustment and Tree Protection**

Parks, Forestry and Recreation is a commenting division to the Committee of Adjustment. Urban Forestry staff in Parks, Forestry and Recreation review all minor variance and consent to sever applications to assess what, if any, impact an application may have on by-law protected trees. For every Committee of Adjustment application, Urban Forestry staff conduct a desktop review (including but not limited to review of documents, plans and mapping) and may also conduct an in-person site visit to obtain all necessary information to make a recommendation on the application. Once their review is complete, Urban Forestry staff either recommend refusal of the minor variance or severance application, recommend deferral, confirm that it has no objections, or that it has no objections subject to certain conditions.

One such condition, which requires the planting of a new City tree for certain Committee of Adjustment applications, originates from a July 25, 26 and 27, 2006 City Council decision. At that meeting City Council adopted the following recommendation: "In order to achieve one tree in front of every dwelling, the Committee of Adjustment be requested to impose a condition requiring that, for consent applications involving the creation of one or more new lots and for minor variance applications involving a proposal to construct a new dwelling unit (e.g. detached, semi-detached, townhouse, etc.), where no street tree exists, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting the site to the satisfaction of the General Manager, Parks, Forestry and Recreation."

## **Proposed Strategies**

### **Commenting Practice Review and Redesign**

Starting in Q1 2024, Parks, Forestry and Recreation and City Planning, in consultation with Toronto Building and Legal Services, will be reviewing Committee of Adjustment commenting practices to enhance tree protection and canopy expansion through Committee of Adjustment decisions and or conditions. This work is part of a larger project within City Planning on improving Committee of Adjustment commenting practices, which was one of the 15 recommendations provided by KPMG in a recently completed review of the Committee of Adjustment. KPMG's final report on the Committee of Adjustment review was considered by the Planning and Housing Committee in February 2023 through Item PH2.5 and staff are currently implementing the recommendations contained in that report. This initiative, which is described in more detail below, will also be coordinated with a refresh of Committee of Adjustment application requirements that is being undertaken in 2024.

### **Enhanced Tree-related Committee of Adjustment Application Requirements**

On March 26, 2018, City Council adopted 2018.PE25.1 Tree Protection through the Committee of Adjustment process. As a result of that decision, among other things,

Committee of Adjustment application requirements were updated and applicants are required to submit a completed tree declaration form; plans showing the location of all by-law protected trees and tree protection zones, with species and diameter of each by-law protected tree; up-to-date colour photos showing the entire front and rear yard of the site regardless of if there are trees, and up-to-date colour photos of all By-law protected trees located on the site and within 6m of the site (12m with Ravine and Natural Feature Protected Areas).

Staff have not required applicants to submit a site plan outlining the 'as-of-right' footprint because applicants are unable to provide this information accurately. Many applicants, especially inexperienced ones, do not have the tools or knowledge to determine the as-of-right footprint of their dwelling. Providing inaccurate information to the Committee, and by extension, the public, only complicates the Committee's ability to make an evidence-based decision on an application. Further, staff would not solely rely on a site plan drawing with the as-of-right footprint shown to make a determination on an application. Staff have better tools to determine the impact that an application may have on by-law protected trees, including in-person site visits.

Further, it should be noted that when Council directed these additional materials to be submitted with Committee of Adjustment applications, there was no allocation of the additional resources required for staff to review and verify these submissions. To verify the as-of-right footprint as accurate, a Toronto Building plans examiner would need to review the drawing. This is not currently a service provided by Toronto Building. To fund this service, Council would need to direct additional resources to Toronto Building.

Given the context above, it is staff's recommendation that Council amend previous direction respecting the requirements for a complete Committee of Adjustment application, by removing the site plan outlining the "as-of-right" footprint requirement, and only require applicants to submit:

- a. a completed tree declaration form;
- b. up-to-date colour photos showing the entire front and rear yard of the site regardless of if there are trees, and up-to-date colour photos of all by-law protected trees located on the site and within 6m of the site (12m with Ravine and Natural Feature Protected Areas); and
- c. plans showing the location of all by-law protected trees and tree protection zones, with species and diameter of each by-law protected tree at breast height indicated.

If, despite staff's recommendation against it, Council wants to require applicants to submit a site plan showing the as-of-right footprint, staff are ready to implement it by the end of 2023. However, with the current application intake and review model, no City staff will verify the applicant submitted information. As noted above, if this information is not reviewed or verified, there is a significant risk that incorrect information will be provided and potentially relied on by staff, the Committee of Adjustment panel members and the public.

Starting in Q1 2024, Parks, Forestry and Recreation and City Planning, in consultation with Toronto Building and Legal Services, will be reviewing and redesigning Committee of Adjustment application requirements to enhance tree protection and canopy

expansion through Committee of Adjustment decisions and or conditions. This review will consider, among other things, what information should be provided, what format it should be provided in, who should be providing it (i.e., applicant or staff), and who is responsible for verifying it (i.e., applicant or staff). These issues must be addressed to ensure accurate and useful information is provided to the Committee, staff and the public. Other factors that will be considered during this review are reducing the cost and complexity of application preparation and minimizing the processing steps and time for application intake, verification, review and comment.

This work will be coordinated with a larger refresh of Committee of Adjustment application requirements, which is being undertaken by staff in 2024 as a result of KPMG Committee of Adjustment Review recommendations. Staff will report back to the Planning and Housing Committee by Q4 2024 on the outcome of this review and redesign.

### **Education and Training for Committee of Adjustment Panel Members**

Since 2017, City of Toronto staff have delivered annual training to Committee of Adjustment panel members on urban forestry and environmental planning issues. In 2021, this training was extended to Toronto Local Appeal Body members as well. These presentations highlight the City's tree by-laws, the purpose of the by-laws, the policy and legal framework of the by-laws including relevant Official Plan policies, the Committee of Adjustment authority under the Planning Act, the impact of decisions on existing trees, and the importance of protecting natural heritage and ecosystem planning to address the climate and biodiversity crisis. Staff will continue to give these presentations because they provide both important information to the adjudicators and give staff an opportunity to gather feedback on their review and commenting practices.

This year Committee of Adjustment panel and Toronto Local Appeal Body members also received training on the new Official Plan and Zoning By-law policies for garden suites and multiplexes.

### **Expanding Housing Options in Neighbourhoods (EHON): Monitoring Tree Injury and Removal**

In recognition that neighbourhoods are important places for tree establishment and tree growth, the policy development associated with Expanding Housing Options in Neighbourhoods included the protection of existing trees and tree canopy as a key consideration. Official Plan policies, Council direction and current divisional practices under the tree by-laws regarding tree protection for laneway suites, garden suites and multiplexes are more specific and restrictive than the City's current policies and practices regarding any other type of development in Neighbourhoods.

Urban Forestry staff have monitored the impact on tree canopy resulting from infill development approved through the new EHON policies and zoning by-laws. The laneway suite, garden suite and multiplex data relates to applications received and permits issued under the tree by-laws as follows:

Between November 1, 2019, and June 30, 2023, Urban Forestry had been circulated on 569 laneway suite, garden suite and multiplex building permit notices, and of those, 101

included the submission of a tree by-law application requesting for tree injury and/or tree removal. A total of 41 tree by-law applications have resulted in tree permits being issued, which have authorized a total of 29 tree injuries and 23 tree removals. Regarding the 60 permit applications for which a tree permit was not issued, reasons for this include: application still under review, application dormant, application withdrawal, application revision, or permit refusal.

Urban Forestry's monitoring suggests the impact of laneway suites, garden suites and multiplexes on by-law regulated trees has been minor when looking at the permitted tree impacts alone; 7 per cent of building permit notices for laneway suites, garden suites or multiplexes resulted in a permit for tree impacts. The monitoring program has limitations, as it does not account for outcomes unrelated to permitting such as impacts to trees not regulated under the tree by-laws and the area or volume lost in tree growing space as a result of construction. However, the monitoring of EHON-related tree by-law outcomes is considered a meaningful proxy for tree canopy and growing space impact. The flexibility associated with the construction of laneway suites and garden suites (e.g., they may not require a full foundation, may be built in an area already occupied by an accessory structure such as a garage) can lend well to tree-friendly design and construction.

Urban Forestry has seen positive outcomes where a laneway suite or garden suite has been built alongside the preservation and protection of existing, healthy mature trees. The above noted specific and restrictive EHON tree protection policies can prompt applicants to submit approvable, tree-friendly designs or to revise plans resulting from Urban Forestry's review to accommodate a healthy, mature tree as part of laneway or garden suite construction.

### **Proposed Strategies**

Urban Forestry and City Planning will continue to monitor for regulated tree impacts resulting from EHON related development. City Planning is leading ongoing monitoring programs for laneway suites, garden suites and multiplexes and will include evaluation of tree impacts in the consideration of any necessary changes to policies or regulations for these infill building types.

### **Enforcement of the Tree By-laws**

Toronto's Tree By-laws contribute to growing space for trees through tree removal permit denials, which retain an existing tree and its associated growing space. The Tree by-laws also regulate activity within a Tree Protection Zone, which protects growing space. Requiring replacement trees to be planted when trees are permitted for removal also contributes to the protection of growing space.

The growing space surrounding any by-law protected tree is captured in the regulation of activity within Tree Protection Zones. The Tree Protection Zone area is based on a tree's diameter, which increases over time as a tree grows. A larger diameter equals a larger Tree Protection Zone. Replacement tree plantings on private property and their respective tree protection zone, even though less than the standard threshold of 30 cm diameter under Article III of MCC 813, are also protected under MCC 813 and cannot be removed or injured without a permit from the City.



Urban Forestry's Compliance and Enforcement Unit was established in 2016 with an overall objective to enforce the City's Tree By-laws and initiate appropriate actions when contraventions are committed.

## **Proposed Strategies**

### **Follow-Up Inspections when a Tree Permit has been Issued**

When permits to injure or remove trees have been issued, Urban Forestry staff undertake proactive, enhanced follow-up inspections to confirm compliance with permit conditions. Examples of permit conditions include the requirement to plant replacement trees and/or to install and maintain tree protection hoarding for the duration of construction. These follow-up inspections are a helpful oversight tool to ensure approved plans have been implemented.

Urban Forestry staff completed 1,534 tree planting follow-up inspections in 2020, 1,442 inspections in 2021, and 2,037 inspections in 2022. Urban Forestry completed 503 tree protection hoarding follow up inspections in 2020, 1,187 inspections in 2021 and 1,419 inspections in 2022.

If approved plans have not been implemented, Urban Forestry staff may enforce permit conditions or escalate non-compliant sites to the Compliance and Enforcement Unit to enforce as a tree by-law contravention. Urban Forestry staff may also engage staff from other City divisions who administer other City by-laws with respect to soft landscaping. For example, if a tree by-law contravention is observed for tree injury resulting from unauthorized hardscaping around a private tree, Urban Forestry staff can engage Municipal Licensing and Standards to assess the hardscaping for compliance against the City's Zoning By-law provisions on soft landscaping minimums.

Urban Forestry will continue to set targets for follow-up inspections to verify tree by-law permit conditions and incrementally increase those targets annually where need and staffing resources allow.

### **Enhanced Enforcement of the Tree By-laws**

Urban Forestry's Compliance and Enforcement Unit has undertaken a number of changes to its practice to enforce the City's Tree Protection By-laws more strategically. Urban Forestry has recently refined the criteria by which Compliance and Enforcement staff decide to pursue prosecution through the provincial court system. Part of that refinement includes prioritizing contraventions that are uncorrectable and that result in irreversible damage or encroachment such as cases where not only has a by-law-regulated tree been injured or removed without a permit, but where tree planting and growing space has been permanently removed. For example, under this approach, Urban Forestry would prioritize prosecution of a contravention that involves the construction of an illegal parking pad that irreversibly injures or removes a City-owned tree and removes the planting and growing space required for a replacement tree.

Urban Forestry staff will work with City Legal to monitor prosecution outcomes and use these findings to inform practices to improve outcomes in protection of trees and growing space.

## Conclusion

Toronto's tree canopy is vital green infrastructure and provides the nature-based solutions required to contribute to the city's climate resiliency.

Toronto's commitment to providing a diversity of housing options, including new forms of infill housing, is also required to address Toronto's current housing challenges.

Balancing both of these critical city building initiatives requires collaboration, innovation and creative solutions so that Toronto continues to provide attractive, resilient, desirable and climate ready neighbourhoods.

This report provides a variety of potential solutions through improving the regulatory framework, practices and enforcement, concurrent with a commitment to continue monitoring the outcomes to ensure strong tree protection and growing space provisions are prioritized. Staff will report back in approximately one year with updates on the efficacy of these recommendations.

## CONTACT

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## SIGNATURE

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