



SUBJECT: *Approval of Tree Protection By-law*

FROM: *Allan D. Downey, Director of Parks and Recreation Services*

DATE: *January 17, 2012*

RECOMMENDATIONS

THAT report PR12-001 be received as information; and

THAT staff be directed to publicise notice of the revised Draft Tree Protection By-law, in the local media, Town of Aurora website and in all municipal facilities for the purposes of allowing the public and stake holders with an opportunity to review the proposed By-law and provide comment; and

THAT following this public consultation period, staff report back to Council prior to May 2012 with a final draft Tree Protection By-law with recommendations for Councils consideration in enacting the final revised By-law.

PURPOSE OF THE REPORT

To provide Council with a draft of a proposed Tree Protection By-law and to provide the public and stake holders with an opportunity to review and comment on the By-law prior to its enactment.

BACKGROUND

At the January 25, 2011 General Committee meeting, Council received a delegation from a citizen who had several concerns with the Town's current *Tree Permit By-Law No.4474-03D*. The concerns of this citizen were primarily focused on tree removal on the Oak Ridges Moraine and, in particular, with the fact that Golf Course establishments are exempt under the Town's current by-law.

In response to this delegation General Committee directed staff as follows:

General Committee recommends:

THAT the comments of the delegate be received and referred to staff; and

THAT staff be directed to report back to Council on the specific comments raised by the delegate respecting golf courses as well as any other issue staff may identify with respect to the enforcement and protection of trees.

Following Council direction, members of the Executive Leadership Team appointed a Tree By-law Review Committee consisting of the Manager of Parks, the Manager of Engineering and Design, the Manager of Building Code Review, and the Manager of Planning and Development.

The Committee held a series of meetings for the purposes of conducting an overall review of the current by-law in an effort to evaluate its applicability and effectiveness including a number of issues revolving around the administration of the by-law.

As a first step in the by-law review, the Committee conducted a public consultation process whereby an online survey was conducted in order to assist the Committee in establishing a baseline of public opinion regarding the importance of trees in our municipality.

The online survey was completed by 100 respondents. This could be considered a relatively low participation rate and not indicative of community-wide public opinion, given Aurora's gross population of over 52,000; however, staff was advised by our Communication Department, who assisted in the survey, that this survey was among the highest in participation of any previously conducted survey.

While the information obtained from the survey was helpful in assisting the Committee, it was not considered paramount or as a single resource in formulating the overall content of the revised by-law; rather, the committee used a measured approach in guiding the review process, taking into consideration a number of criteria including the following:

- Research of other neighbouring and GTA municipalities Tree Protection by-laws;
- Consultation with the Region of York;
- Identification and revision of inconsistent language in the current By-law and revision of same;
- Public opinion;
- Revisions to internal interdepartmental administration processes; and
- Consultation with the Manager of Heritage Planning.

During the review process the Committee focused on a number of areas where there was concern with interpreting and differentiating between the Towns's existing Tree Permit By-law and the Region of York Tree Protection By-law No. TR-004-2005-036.

As with all local by-laws, the Upper-tier municipality by-law (York Region) takes precedence in its applicability over any lower-tier by-law (Aurora). To state this in simplistic terms, the *York Region Tree Permit By-law* will continue to apply to wooded properties in the Town of Aurora greater than one hectare in size. The Town of Aurora's *Tree Protection By-law* will continue to apply to any private property or tree covered area within a property that is less than one hectare in size, as is currently the case.

In our discussions with the Region of York, staff were advised that the Town of Aurora did not delegate to the Region of York, our authority to enforce their *Tree Protection By-law* on Aurora properties of 0.2 to 1.0 hectares in size when the York Region *Tree Protection By-law* was revised in 2005, as is permitted under subsection 135 (10) of the *Municipal Act*.

Staff were advised that many other local municipalities did delegate this authority to the Region of York; however, in our discussions with the Regional Forestry Coordinator, it was agreed that there was no advantage in delegating our authority to the Region given that our by-law is more geared to the higher density municipal setting and properties that are, for the most part, under one hectare in size.

TREE PROTECTION BY-LAW REVISIONS PROPOSED

There are a number of revisions proposed in the by-law, many of which are small in nature; however, in addition to these revisions, there are more significant revisions that will substantially change the way the by-law works and how it is applied. For the purposes of highlighting only the more significant revisions, the Committee has listed these revisions along with a brief explanation of each revision as follows:

1. REDUCTION IN THE NUMBER OF TREES REMOVED WITHOUT A PERMIT DOWN TO TWO TREES IN A 12-MONTH PERIOD FROM NOT MORE THAN FOUR TREES

The proposed by-law will reduce the number of trees that can be removed without first obtaining a permit from the current four trees down to two trees. Based on the results of the public survey, and the fact that many other municipalities require that a permit be issued for the removal of a single tree, this change was considered a more moderate revision that would still enable most private property owners to manage their property.

2. GOLF COURSES NOW INCLUDED IN THE BY-LAW BUT ABLE TO REMOVE UP TO 10 TREES IN A 12-MONTH PERIOD WITHOUT A PERMIT

The current by-law provides for an exemption to golf courses. In reviewing the public survey results and other municipal trees by-laws, the By-law Review Committee sees a need to regulate the cutting of trees on golf course properties; however, the Committee also believes that golf course owners need a level of flexibility to be able to manage their business needs. As such, the Committee felt that being able to remove ten trees in a 12-month period without a permit provides golf courses with that flexibility. In addition, most other municipal tree by-laws require golf courses to obtain a permit to remove a single tree.

3. CONSERVATION AUTHORITY AND SCHOOL BOARDS ARE NOW INCLUDED IN THE BY-LAW REQUIRED TO OBTAIN PERMITS

The current by-law provides for an exemption to Conservation Authorities and School Boards. The By-law Committee in discussions with our Legal Services department were advised that there are no provincial acts or regulations that exempt these agencies from complying with local ordinances. In view of the

public comments and the large tracts of forested lands owned and managed by LSRCA and TRCA in the Town of Aurora, the Committee suggests that these agencies be included in the proposed by-law as an additional measure of protection over these resources.

4. DIRECTOR TO ISSUE/DENY PERMITS AS AN ADMINISTRATIVE FUNCTION

Permits issued under the current by-law are subject to Council approval. Although this is an effective approvals process in that Council is well informed of all tree removal permits, it is a very time consuming and administratively intensive process that can require six to eight weeks to process a tree permit application. The Committee felt that this process should be streamlined both from a customer service and administrative standpoint which is in keeping with the majority of other municipal Tree Protection By-laws. Council will remain involved in the process in the event of a permit refusal by the Director of Parks and Recreation Services whereby an Applicant would appeal the refusal decision directly to General Committee. In addition, staff can establish, via policy, that Council is notified of all tree permits that have been issued or denied.

5. PERMIT MUST BE OBTAINED PRIOR TO REMOVING SINGLE TREES 70 CM (27.5 in.) AND ABOVE

There are no provisions in the current by-law that require a permit to be obtained prior to removing up to four trees of any size in a 12-month period. Based on the results of the public survey and the environmental benefits associated with the leaf area canopy of our larger trees, the Committee suggested that single tree protection in the by-law for these older and much larger trees is appropriate.

6. PERMIT MUST BE OBTAINED PRIOR TO REMOVING A SINGLE TREE IN THE HERITAGE RESOURCE DISTRICT INCLUDING TREES ON DESIGNATED HERITAGE PROPERTIES

The current by-law has provision for protection of five trees or more on properties designated under the *Ontario Heritage Act*. With a further requirement for an applicant to obtain approval from the Town's Heritage Advisory Manager prior to the issuance of a tree removal permit. The proposed revision will apply to single tree protection on OHA designated properties as well as single trees within the Heritage Resource Area as identified on Schedule B attached to the By-law. The Aurora Cemetery would be an example of a designated property that would be subject to obtaining a permit to remove a single tree 20 cm in diameter or larger.

7. CLARIFIED INTENT OF THE BY-LAW EXEMPTIONS AS IT RELATES TO ADMINISTERING SUBDIVISION AND SITE PLAN APPLICATIONS

Section 20 of the existing by-law which deals with tree permit exemptions - relating to planning approvals associated with land development - has been previously interpreted to require that all final development agreements be signed by both parties prior to the removal of trees on the subject lands. In this case a tree removal permit is not required.

Very often there is an extensive period of time required in the process of executing a final development agreement. The By-law Review Committee acknowledges that this particular requirement can cause significant delays and complications for applicants wishing to proceed with pre-servicing of sites while awaiting the final development agreement to be executed. As such the Committee suggests that the revised by-law requires all applicants wishing to move forward with site works prior to a signed agreement be required to obtain a tree removal permit.

Under this scenario, the applicant will be required to apply for a tree removal permit and to fulfill all conditions imposed on the permit in order to satisfy the intent of both the *Tree Protection By-law* and all forestry-related requirements contained in the pending development agreement.

8. SET MINIMUM FINES

Under the current by-law there are no applicable minimum/maximum fines for a first offence. The revised by-law now provides for a minimum fine of \$500.00 on a first offence and a maximum fine for any offence of \$100,000.00.

COMMENTS

Perhaps one of the more significant revisions in this by-law is the provision to include golf course establishments. During the consultation process, staff received a written submission from a local golf course suggesting that the current *Regional Tree Protection By-law* was sufficient enough to ensure that due process was in place to regulate golf courses and further suggested that the inclusion of golf courses in the revised by-law could be seen as duplication.

While the committee acknowledged the fact that the Regional by-law is applicable, it is only applicable to woodlands greater than one hectare in size. The Town's revised by-law will deal with treed areas on golf course lands less than one hectare which is not a duplication of the Regional by-law.

With this more restrictive *Tree Protection By-law* it is expected that there will potentially be a corresponding increase in the level of administrative work that will result. Currently Parks Division staff is primarily responsible for the majority of the administrative requirements associated with the by-law.

The By-law Enforcement section is also involved when an infraction has been reported and an onsite investigation is deemed necessary. Currently, staff issues an average of two or three tree permits each year. A total of nine permits have been issued since the *Tree Permit By-law* was enacted in 2003. As such staff are recommending that a watch-and-wait approach for a one-year period to properly gauge and assess the increase in the administrative work load prior to recommending retention of additional resources.

Following this period staff will be in a better position to evaluate and quantify the impacts that this revised by-law has had on both the Parks and Recreation section and the By-law Enforcement section. If deemed necessary, staff will then follow up with a further report to Council on the matter and include the appropriate recommendations with respect to the administration resource needs of the by-law.

As with any revised or newly created by-law there will be a period of time required to educate and communicate with our residents and businesses in order to ensure that the revised by-law is enacted through a fair and open process.

The Committee suggests that in the event Council approves the revised by-law, a significant effort and time allocation be made to communicate this revised by-law to the public prior to its enactment. As such, staff will prepare an appropriate public notice to be posted in the local media, on our website and in our municipal buildings for a period of time.

ALTERNATIVE(S) TO THE RECOMMENDATIONS

1. Council could direct staff to make further revisions to the draft by-law prior to its releasing the By-law to the Public.
2. Council could delay the acceptance of the draft by-law for an indefinite period of time to provide for more public dialogue, input and revisions.

FINANCIAL IMPLICATIONS

There are a number of financial implications that may be realised with the passage of this more restrictive by-law as follows:

- Increased administration associated with issuing tree protection permits;
- Increased administration associated with preparing reports and materials for appeals to Council;
- Increased site visits, meetings and monitoring for compliance with permits that have been issued;
- Increased time communicating with and educating residents and customers on the various aspects of the by-law.

As previously indicated, it is difficult to forecast with any certainty the definitive impacts associated with administering this by-law at the present time. Revised fees proposed in the by-law will be subject to approval in the annual fees and service charges.

CONCLUSIONS

That Council receive the draft revised *Tree Protection By-law* as information and that staff be directed to publicise notice of the revised *Tree Protection By-law* in the local media for the purposes of allowing the public and stake holders to review the draft By-law and provide comments.

ATTACHMENTS

Attachment #1 – Revised *Tree Protection By-law*

Attachment #2 – Schedule A to the Draft Tree Protection By-law

Attachment #3 – Schedule B to the Draft Tree Protection By-law

PRE-SUBMISSION REVIEW

Executive Leadership Team Meeting, Thursday, January 5, 2012.

Prepared by: Jim Tree, Manager of Parks- Ext.3222



Allan D. Downey
Director of Parks and Recreation Services



Neil Garbe
Chief Administrative Officer

THE CORPORATION OF THE TOWN OF AURORA

By-law Number XXXX-12

BEING A BY-LAW to prohibit and/or regulate the Injury or Destruction of Trees on Private Property in the Town of Aurora and to repeal By-law Number 4474-03.D.

WHEREAS subsection 135(1) of the *Act* provides that a local municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS subsection 135(7) of the *Act* provides that a municipality may in a by-law require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

AND WHEREAS the Town has delegated jurisdiction over Woodlands to the Regional Municipality;

AND WHEREAS Council passed By-law Number 4474-03.D on October 28, 2003, with respect to authorizing the injury or destruction of trees;

AND WHEREAS the Town deems it necessary and expedient to replace By-law Number 4474-03.D with a new By-law and repeal By-law Number 4474-03.D in its entirety;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AURORA ENACTS AS FOLLOWS:

SECTION 1 DEFINITIONS

- 1.1 The following words as set out in this By-law shall have the following meanings:
- (a) "*Act*" means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - (b) "Applicant" means the Owner who submits an Application under the provisions of this By-law;
 - (c) "Application" means an application for a Permit or a Heritage Permit, on such form as prescribed by the Director;
 - (d) "Arborist" means an expert in the care and maintenance of trees, and includes: (i) an arborist qualified by the Ontario Ministry of Training, Colleges and Universities; (ii) a Forest Technician or Forestry Technologist with an applicable college diploma and a minimum of two (2) years urban forestry experience; (iii) a certified arborist qualified by the Certification Board of the International Society of Arboriculture; (iv) a consulting arborist registered with the American Society of Consulting Arborists; (v) a Registered Professional Forester designated pursuant to the *Professional Foresters Act, 2000*, S.O. 2000, c. 18, as amended; or (vi) such other person with other similar qualifications as approved by the Director;
 - (e) "Arborist's Report" means a technical report prepared by an Arborist

or Registered Professional Forester which identifies the surveyed location, species, size and condition of a tree, provides the reasons for any proposed Injuring or Destruction of a tree, and describes tree protection measures or other mitigating activities to be implemented;

- (f) "Council" means the Council of The Corporation of the Town of Aurora;
- (g) "Cultivated Orchard" means land where fruit or nut Trees are grown and maintained for the harvesting of their fruits or nuts;
- (h) "DBH" means the Diameter at Breast Height which shall be the diameter of the trunk of a Tree at a point of measurement 1.37metres above the ground. DBH of multi-trunk Trees shall be measured as prescribed in Schedule "A" to this By-law. Where a Tree has been cut down and the remaining stump is less than 1.37 metres in height, the DBH shall be the extrapolated diameter at 1.37 metres above the ground as set out in Schedule "B" to this By-law;
- (i) "Destroy and/or Destruction" means to kill by cutting, burning, uprooting, chemical application, or other means;
- (j) "Director" means the Director of Parks & Recreation Services for the Town or his or her designate;
- (k) "Emergency Work" means work required to be done immediately in order to prevent imminent danger, including Tree maintenance works necessary arising from natural events (e.g., ice storm, high winds, lightning, etc.) as well as Tree maintenance works associated with emergency drain, utility and building repairs;
- (l) "Golf Course" means an area of land laid out and operating as a golf course, and includes putting greens, driving ranges, and other areas that are ancillary to the golf course uses on the land;
- (m) "Hazardous" means destabilized or structurally compromised to an extent that it presents an imminent danger of causing property damage or injury to life;
- (n) "Heritage Tree(s)" means any Tree, including but not limited to, pairs of Trees, avenues or windrows of Trees, grove or arboreal remnant, or one (1) or more Trees that form part of a cultural heritage landscape that is on private property and is:
 - (i) it is located within a heritage conservation district as designated under Part V of the *OHA*;
 - (ii) it is designated under, or located on a property designated under, Part IV of the *OHA*;
 - (iii) it is designated by the Ontario Urban Forest Council;
 - (iv) it is listed on the Town's Register of Properties of Cultural Heritage Value or Interest.
- (o) "Heritage Permit" means a Heritage Permit issued by the Town as endorsed by Council after consultation with the Town's Heritage Advisory Committee;
- (p) "Injure and/or Injury" means to damage or attempt to Destroy a Tree by: (i) removing, cutting, girdling, or smothering of its roots; (ii) interfering with its water supply; (iii) setting fire to it; (iv) applying chemicals on, around, or near it; (v) compacting or re-grading within the drip line of it; (vi) damages caused by new development or construction related activities that are not evaluated as part of an approval under the *Planning Act*; (vii) storing any materials within the

drip line; or (viii) any other means resulting from neglect, accident or design;

- (q) "Local Board" means a municipal service board, public library board, transportation commission, board of health, police services board, or any other board, commission, committee, body or local authority established or exercising any power under any legislation with respect to the affairs or purposes of the Town, but does not include a school board, a conservation authority, or a private cemetery corporation;
- (r) "Municipal Law Enforcement Officer" means an individual appointed by the Town by By-law pursuant to subsections 15(1) and 15(2) of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended for the administration and enforcement of Town by-laws;
- (s) "OHA" means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended;
- (t) "Owner" means the person having the right, title, interest or equity in the land containing the subject Tree, or his or her agent authorized in writing;
- (u) "Permit" means a Permit to Injure or Destroy a Tree issued by the Director;
- (v) "Permit Application Fee" means the prescribed fee as set out in the Application and as set out in the Town's Fees and Services By-law, as may be amended from time to time;
- (w) "Person" and or "Persons" includes a corporation, a partnership, an individual, a public utility and its heirs, executors, Directors, or other legal representatives of a person to whom the context can apply according to law;
- (x) "*Planning Act*" means the *Planning Act*, R.S.O. 1990, c. P. 13, as amended;
- (y) "Pruning" means the removal of branches from living Trees by cutting at a point outside the branch collar (but does not include the removal of more than one quarter of a Tree's leaf-bearing crown), for the purpose of thinning the crown of a Tree to increase light penetration and air movement; providing clearance for utility lines, buildings, pedestrians or vehicles; or eliminating dead, hazardous or diseased wood;
- (z) "Registered Professional Forester" means a member of The Ontario Professional Foresters Association entitled to use the designation of "Registered Professional Forester" pursuant to subsection 14(6) of the *Professional Foresters Act, 2000*, S.O. 2000, c. 18, as amended ;
- (aa) "Regional Municipality" means The Regional Municipality of York;
- (bb) "Town" means The Corporation of the Town of Aurora;
- (cc) "Tree" means any perennial woody plant, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity, located within the boundaries of the Town;
- (dd) "Tree Farm" means land where Trees are grown and maintained for sale;
- (ee) "Tree Inventory and Preservation Plan" means a plan required by the Town as a condition of development or re-development approval

pursuant to sections 41, 51, or 53 of the *Planning Act*, which plan determines, among other things, the Trees to be: (i) preserved through an assessment process identifying Trees, shrubs and other specific areas of natural habitat and their ecological function or importance; (ii) the impacts of any proposed development on the Trees, shrubs, and other specific areas of natural habitat and their ecological function or importance; (iii) mitigation measures and measures to protect and manage Trees to be preserved (not limited to protective barriers and/or hoarding); and (iv) and proper practices to remove Trees to be destroyed;

(ff) "Woodland" means land at least one (1) hectare in area and with at least:

- (i) 1000 trees, of any size, per hectare;
- (ii) 750 trees measuring over five (5) centimeters DBH per hectare;
- (iii) 500 trees measuring over twelve (12) centimeters DBH per hectare; or
- (iv) 250 trees measuring over twenty (20) centimeters DBH per hectare;

but does not include a nursery, a Cultivated Orchard, or a plantation established for the purpose of producing Christmas trees or nursery stock;

(gg) "Woodlot" means land at least 0.2 hectares in area and no greater than one (1) hectare in area and with at least:

- (i) 200 trees, of any size, per 0.2 hectares;
- (ii) 150 trees, measuring over five (5) centimeters DBH, per 0.2 hectares;
- (iii) 100 trees, measuring over twenty (12) centimeters DBH, per 0.2 hectares
- (iv) 50 trees measuring over twenty (20) centimeters DBH, per 0.2 hectares;

but does not include a nursery, a Cultivated Orchard or a plantation established for the purpose of producing Christmas trees or nursery stock;

(hh) "York Region Forest Conservation By-law" means By-law No. TR-0004-2005-036, as amended, or successor thereto, as enacted by the Regional Municipality.

SECTION 2 PERMIT REQUIRED

2.1 Unless otherwise exempted by this By-law, no person shall permit or cause the Injury or Destruction of:

- (a) more than two (2) Trees within a twelve (12) month period having a trunk diameter of more than twenty (20) centimetres DBH and less than 70 centimeters DBH;
- (b) any Tree greater than seventy (70) centimeters DBH within a 12 month period; or
- (c) any Heritage Tree;

without first obtaining a Permit or Heritage Permit pursuant to this By-law.

2.2 Where a Permit or Heritage Permit has been issued under this By-law, no person shall permit or cause the Injury or Destruction of any Tree unless it is done in accordance with the conditions of the Permit or Heritage Permit and any other supporting documentation relevant to the issuance of the Permit or Heritage Permit.

SECTION 3 PERMIT NOT REQUIRED

3.1 Delegation to the Regional Municipality for Woodlands

The Regional Municipality shall have jurisdiction over the issuance of any type of permit allowing the Injury or Destruction of Trees on Woodlands.

3.2 Exemptions

Notwithstanding section 2 of this By-law, a Permit or Heritage Permit is not required for the Injury or Destruction of Trees:

- (a) within Woodlands that are governed by the York Region Forest Conservation By-law;
- (b) within a building or structure, a solarium, rooftop garden, or an interior courtyard having a soil depth of less than 1.5 metres above a built substructure;
- (c) within a Tree Farm that is being actively managed and harvested for the purpose for which the Trees were planted;
- (d) within a Cultivated Orchard;
- (e) that is for the removal of a dead, diseased or Hazardous Tree, or a portion of such a Tree, where a certificate confirming the need for removal has been issued by an Arborist and submitted to the Director;
- (f) for Emergency Work;
- (g) for Pruning;
- (h) for activities or matters undertaken by the Town or a Local Board, but excluding activities requiring Heritage Permits;
- (i) for activities or matters authorized under a license issued under the *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25, as amended, or successor thereto;
- (j) for work performed by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. S.29, as amended, or successor thereto, to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- (k) imposed after December 31, 2002, as a condition to the approval of an executed site plan, plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act*, or as a requirement of a development agreement entered into under those sections (including the Injury or Destruction of a Tree in compliance with a Tree Inventory and Preservation Plan);
- (l) imposed after December 31, 2002, as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation;

- (m) by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, as amended, or successor thereto, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (n) undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended, or successor thereto;
 - (o) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land that: (i) has not been designated under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended or a predecessor of that Act; or (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*;
 - (p) on lands owned by the Town or lands within the Town owned by the Regional Municipality; or
- for the removal of not more than ten (10) Trees within a twelve (12) month period on a Golf Course. having a trunk diameter of more than twenty (20) centimetres DBH and less than 70 centimeters DBH;
- (q)

SECTION 4 ADMINISTRATION

4.1 Administration Authority Delegated to the Director

The Director is responsible for the administration of this By-law and is hereby delegated the authority to receive certificates from an Arborist, Applications, and any required fees. The Director is further authorized to issue, revoke, or refuse to issue Permits, including imposing conditions thereto, in accordance with this By-law.

4.2 Power of Entry

Submission of an Application is deemed consent of the Owner for the Director or Municipal Law Enforcement Officer to enter onto the lands that are subject to the Application to inspect the Tree(s) if considered necessary, in the sole opinion of the Director.

Furthermore, submission of an Application is deemed consent of the Owner for such person designated as an inspector by the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act*, S.C. 1990, c. 22, as amended, or successor thereto, to inspect for the presence of pests (as defined in the said legislation) and to take any and all action including the removal of Trees on all private property, in accordance with the said legislation.

4.3 Enforcement

The Municipal Law Enforcement Officer is hereby delegated the authority to enforce this By-law, and conduct inspections of Tree(s) pursuant to the exercise of their authority under this By-law and any other enacted legislation.

SECTION 5 CERTIFICATE REQUIREMENTS

5.1 Dead, Diseased, or Hazardous Trees

Subject to section 2.1 of this By-law, no person shall Injure, Destroy, or remove a dead, diseased or Hazardous Tree without first submitting a certificate prepared by an Arborist confirming that the Tree is dead,

diseased or Hazardous, to the sole satisfaction of the Director.

5.2 Emergency Works

Notwithstanding subsection 3.2(f) of this By-law, the Owner shall, within seventy-two (72) hours of the completion of any Emergency Work, submit a certificate prepared by an Arborist confirming the requirement, nature and extent of the Emergency Work performed together with photographs depicting the condition of the Tree(s) removed immediately prior to its removal, all to the sole satisfaction of the Director.

SECTION 6 APPLICATION REQUIREMENTS

6.1 Permit Application

An Owner who wishes to Injure or Destroy Tree(s) for which a Permit or Heritage Permit is required shall submit an Application to the Director, and shall provide the following:

- (a) the name, address and telephone number of the Owner;
- (b) the non-refundable Application fee;
- (c) the purpose for which the Permit is required;
- (d) an Arborist's Report at the discretion of the Director;
- (e) where the base of a Tree straddles a property line, the written consent to the Permit issuance from the affected adjacent property owner; and
- (f) where the Applicant is not the Owner, the written authorization of the Owner consenting to the Application.

Notwithstanding subsection 6.1(b), should the Director determine that the Application is exempt from the requirement for a Permit or Heritage Permit in accordance with section 3 of this By-law, the prescribed costs shall be refunded to the Owner.

6.2 Offence – False or Misleading Information

No person shall submit false or misleading information in support of an Application. Together with any other penalties or fines that may be otherwise imposed, if such false or misleading information is found to have been submitted in support of an Application, such Application under consideration will be refused, and any Permit or Heritage Permit issued on the basis of such false or misleading information will be immediately rescinded.

6.3 Application Fee – Director Authorized to Waive

The Director is authorized to reduce or waive the Application fee at his or her sole discretion, giving consideration to the financial circumstances of the Applicant.

SECTION 7 ISSUANCE OF PERMIT

7.1 Permit Approval Process

Upon receipt of an Application, the Director shall:

- (a) determine, with the assistance of the Manager of Heritage Planning, whether a Heritage Permit (instead of a Permit) is required pursuant to this By-law;
- (b) make a decision as to whether or not a Permit will be issued, and whether any conditions will be imposed on a Permit, through the Director's consideration of the following criteria:

- (i) the species of the Tree;
 - (ii) the condition of the Tree;
 - (iii) the location of the Tree;
 - (iv) the protection of ecological systems and their functions, including the protection of native flora and fauna;
 - (v) erosion, sedimentation of watercourses, and flood control;
 - (vi) impacts to surrounding properties, including loss of shade, vistas or privacy;
 - (vii) any potential cultural heritage value of the Tree in consultation with the Manager of Heritage Planning;
 - (viii) any public comments received;
 - (ix) comments received from such persons, staff and agencies as deemed necessary, in the Director's sole opinion, for the proper review of the Application to determine whether or not a Permit should be issued and any conditions imposed thereto; and
 - (x) any other such information that the Director deems to be necessary for the issuance of a Permit.
- (c) cause the Owner to post an information sign on the property in a location clearly visible from the street. The information sign will be provided by the Town to the Owner at the time of the Application, and shall remain posted on the property until the Permit has been issued. The sign can be attached to an existing feature such as a fence or pole, or placed on a stake. A declaration of sign posting must be completed and signed by the Applicant and submitted to the Director once the sign is posted.

7.2 Signage

The signage called for in subsection 7.1(c) shall be posted and remain on the property for at least fifteen (15) days prior to the issuance of a Permit or Heritage Permit, and shall remain posted and visible on the property until the earlier of the completion of the works permitted pursuant to the Permit/Heritage Permit or the Permit/Heritage Permit expiration date.

7.3 Permit Not Issued - Subdivision Not Yet Draft Approved

A Permit or Heritage Permit shall not be approved or issued where an application for subdivision approval or consent related to lands on which the subject Tree(s) is/are located has been submitted to the Town and has not received draft approval or provisional consent.

7.4 Permit Not Issued - Planning Application Not Approved

A Permit or Heritage Permit shall not be approved or issued where a rezoning application, an application for site plan approval, or an application to amend the official plan related to the lands on which the Tree(s) is/are located has been submitted to the Town and has not received final approval.

7.5 Permit Not Issued - Other

A Permit or Heritage Permit shall not be approved or issued where:

- (a) a Tree to be Injured or Destroyed is an endangered species as defined in the *Endangered Species Act, 2007*, S.O. 2007, c. 6, as amended, or the *Species at Risk Act*, S.C. 2002, c. 29, as amended;
- (b) approval would be in contravention of the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22, as amended;
- (c) issuance of a Permit is under the jurisdiction of the Regional Municipality and/or required under the York Region Forest Conservation By-law; or
- (d) approval is inconsistent with an approved Tree Inventory and

Preservation Plan.

7.6 Permit Approved Subject to Conditions

The issuance of a Permit or Heritage Permit may be subject to conditions imposed by the Director or Council, as the case may be, which may include any or all of the following requirements:

- (a) submission of a Vegetation Management Plan (“VMP”) to the satisfaction of the Director. The VMP shall be prepared by a certified Landscape Architect and may require the retention of an Arborist, at the discretion of the Director or Council. The VMP shall include, but not be limited to, the following:
 - (i) a vegetation inventory & assessment: Identify all vegetation greater than 80mm DBH for individual Tree assessments and/or identify perimeter at canopy of woodland, groups or stands of vegetation; Identify trees & vegetation on adjacent property that may be impacted. Inventory shall include species, size and condition;
 - (ii) identification of all vegetation removals and identification of all protection measures for vegetation designated to be preserved; including an impact assessment to support vegetation removals and/or preservation measures;
 - (iii) provision of compliance monitoring and protection/mitigation specifications including all arboricultural requirements for Trees designated to be preserved during construction;
 - (iv) provision of post-construction performance monitoring and rehabilitation specifications;
 - (v) an estimate of the monetary replacement value of the Tree(s) as set out in the International Society of Arboriculture (“ISA”) Guide for Plant Appraisal or approved equal (to be completed by an Arborist) and financial compensation, paid to the Town based on the aforementioned ISA appraisal process for Tree(s)/vegetation lost or destroyed;
 - (vi) provision for replacement plantings at another suitable location on the property including provision of cash securities in an amount equal to one-hundred and twenty percent (120%) of the cost of replanting and maintaining the Trees for a period of two (2) years). Where restoration planting is not physically possible on the site for which the Permit is being issued, provision of a cash payment to the Town to be placed in the Town’s Tree Planting reserves for future Tree planting by the Town in an alternative location in the Town of Aurora;
- (b) the submission of a written undertaking and release to ensure that replacement plantings are carried out and maintained in accordance with landscaping and restoration plans approved by the Director; and/or
- (c) undertaking that the tree cutting work only occur under the supervision of an Arborist.

7.7 Permit Expiry Date

The Director, in his or her sole discretion and taking into account the work to be completed under the Permit, shall include an expiration date on the Permit which shall not exceed a one (1) year period. Council may wish to impose an expiration date on any Heritage Permit being issued by the Town. No further Tree Injury or Destruction that is allowed pursuant to the Permit may occur after the expiration date.

SECTION 8 APPEALS

8.1 An Applicant for a Permit or Heritage Permit may appeal to the Ontario Municipal Board under the following circumstances:

- (a) if the Town refuses to issue a Permit, within thirty (30) days after the refusal;
- (b) if the Town fails to make a decision on the Application, within sixty (60) days after the Application is received by the Director; or
- (c) if the Owner objects to a condition in the Permit or Heritage Permit, within thirty (30) days after the issuance of the Permit.

SECTION 9 SEVERABILITY

9.1 Severability

If a court of competent jurisdiction declares any provision, or any part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention of the Town in enacting this By-law, that each and every other provision of this By-law authorized by law, be applied and enforced in accordance with its terms, to the extent possible, according to law.

SECTION 10 ENFORCEMENT

10.1 Enforcement by Officer

Pursuant to subsection 436(1) of the *Act*, a Municipal Law Enforcement Officer may, at any reasonable time, enter and inspect any land to determine whether this By-law, a direction or order under this By-law, or an order made pursuant to section 431 of the *Act* is being complied with. Pursuant to section 438 of the *Act*, a Municipal Law Enforcement Officer may undertake inspections pursuant to orders issued pursuant to section 438 of the *Act*.

10.2 Inspection – Powers

For the purpose of an inspection carried out pursuant to subsection 10.1 of this By-law, a Municipal Law Enforcement Officer may:

- (a) require the production 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 and extracts; and
- (c) require information from any person concerning a matter related to the inspection; and alone or in conjunction with a person possessing special expert knowledge make examinations, measurements, take tests, samples or photographs necessary for the purpose of the inspection.

10.3 By-law - Order Issued

Where the Director or any Municipal Law Enforcement Officer is satisfied that a contravention of this By-law or a Permit/Heritage Permit issued under this By-law has occurred, the Director or Municipal Law Enforcement Officer may make an order setting out the particulars of the contravention and requiring the Owner or any other person to stop the Injury or Destruction of a Tree, or requiring work to be done to correct the contravention.

The order shall set out the following:

- (a) the name of the Owner, the municipal address and the legal description of the land or property that is the subject of the contravention;
- (b) reasonable particulars of the contravention;
- (c) what the owner or any other person must do to rectify the contravention;
- (d) a statement that if the work is not done in compliance with the order within a specified time period, the Town will have the work done at the sole expense of the Owner or any other person deemed by the Director, in his or her sole discretion, to be responsible for the Injury or Destruction of a Tree;
- (e) the date and time by which the order must be compliance with; and
- (f) information regarding the Town's contact person.

10.4 An order issued pursuant to subsection 10.3 may be served personally or by sending it by prepaid registered mail to the last known address of the Owner and, if known, to the last known address of any other person deemed by the Director, in his or her sole discretion, to be responsible for the Injury or Destruction of a Tree.

10.5 Where service of an order under subsection 10.3 is made by mail, it shall be deemed to have been effected on the fifth (5th) day after the date the order is mailed.

10.6 In the event that service cannot be carried out under subsection 10.4 of this By-law, the Director or Municipal Law Enforcement Officer shall place a placard containing the terms of the order in a conspicuous place on the property where the Tree(s) are situated and placement of the placard will be deemed sufficient service of the order on the Owner and any other person to whom the order is directed.

10.7 If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order:

- (a) 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 discontinue the contravening activity; and/or
- (b) do work to correct the contravention.

10.8 Wherever this By-law or a Permit/Heritage Permit issued under this By-law directs or requires any matter or thing to be done by any person, and such person has failed to complete the matter or thing, the matter or thing may be done by the Town under the direction of the Director or a Municipal Law Enforcement Officer at the Owner's sole expense. The Town may enter upon the land at any reasonable time for this purpose and the Town may recover the costs incurred by action or by adding the costs to the tax roll and collecting them in the same manner as taxes pursuant to section 398 of the *Act*.

10.9 Contravention- Offences

Any person who contravenes any provision of this By-law or an order issued pursuant to subsection 10.3 of this By-law is guilty of an offence. Pursuant to paragraph (a) of subsection 429(2) of the *Act*, all contraventions of this By-law or orders issued under subsection 10.3 of this By-law are designated as multiple offences and continuing offences. A multiple offence is an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-law. For greater certainty, when multiple Trees are

Injured or Destroyed, the Injury or Destruction of each Tree is a separate offence.

10.10 Contravention - Fines

On conviction of an offence under this By-law, a person is liable to a fine in accordance with section 429 of the *Act* and the following rules made pursuant to section 429 of the *Act*:

- (a) The minimum fine for any offence under this By-law is Five Hundred Dollars (\$500.00);
- (b) In the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be Five Hundred Dollars (\$500.00), and the maximum fine shall be Ten Thousand Dollars (\$10,000.00). The total of all of the daily fines for the offence may exceed One Hundred Thousand Dollars (\$100,000.00); and
- (c) In the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be Five Hundred Dollars (\$500.00) and the maximum fine shall be Ten Thousand Dollars (\$10,000.00). The total of all fines for each included offence may exceed One Hundred Thousand Dollars (\$100,000.00).

10.11 Special Fines - No Maximum

On conviction of an offence under this By-law a person is liable to a special fine in accordance with paragraph (d) of subsection 429(2) of the *Act*. The amount of the special fine will be the minimum fine as provided for in subsection 10.10 of this By-law to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of this By-law and/or order issued pursuant to subsection 10.3 of this By-law. Pursuant to paragraph 1 of subsection 429(3) of the *Act*, a special fine may exceed One Hundred Thousand Dollars (\$100,000.00).

10.12 Conviction of an Offence – Additional Remedy

Where a person is convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to plant or replant trees in such manner and within such a period of time as the court considers appropriate, including any arboricultural treatment necessary to re-establish the Tree(s) or have the Tree(s) re-established.

10.13 Presumption - Owner

If a contravention of this By-law or an order issued pursuant to subsection 10.3 of this By-law occurs, the contravention is presumed to have been committed by the Owner of the property on which the contravention has occurred unless otherwise proven by the Owner.

ARTICLE 11 REPEAL

11.1 Repeal

By-law Number 4474-03.D be and is hereby repealed in its entirety as of the effective date of this By-law.

ARTICLE 12 EFFECTIVE DATE

12.1 Effective date

THAT this By-law shall come into full force and effect on XXXX, 2012.

READ A FIRST AND SECOND TIME THIS XX DAY OF XXXX, 2012.

READ A THIRD TIME AND FINALLY PASSED THIS XX DAY OF XXXX, 2012.

GEOFFREY DAWE, MAYOR

JOHN D. LEACH, TOWN CLERK

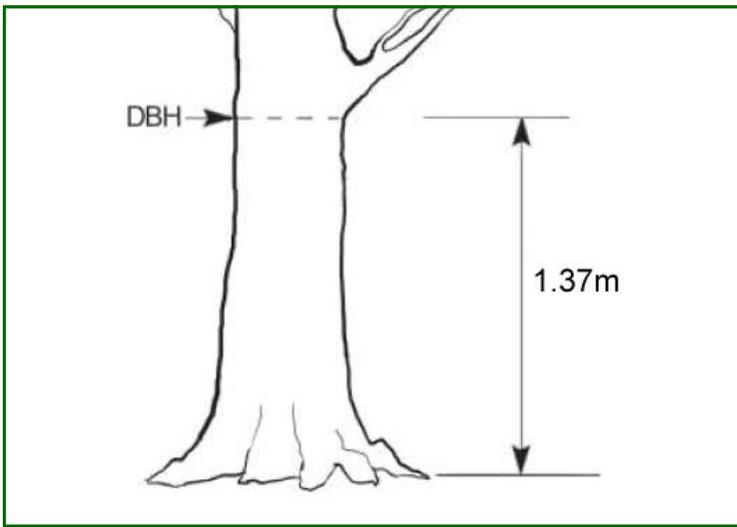
DRAFT

Measuring Tree Trunk Diameter At Breast Height (D.B.H)

You must obtain a Permit to Injure or Destroy (a) Tree(s) prior to the harm, damage, impairment or destruction of any tree in the Town of Aurora with a trunk diameter at breast height (DBH) of 20 cm or more. To determine the DBH, you must measure the diameter of the tree trunk at 137 cm (1.37 m) above ground level.

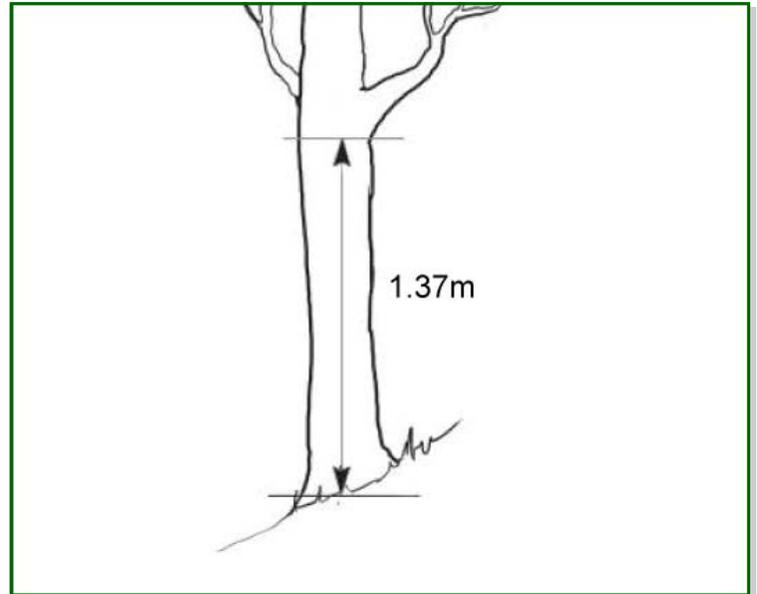
A Tree with a Single Straight Trunk

Simply measure a straight line 137cm (1.37m) from the ground up along the trunk



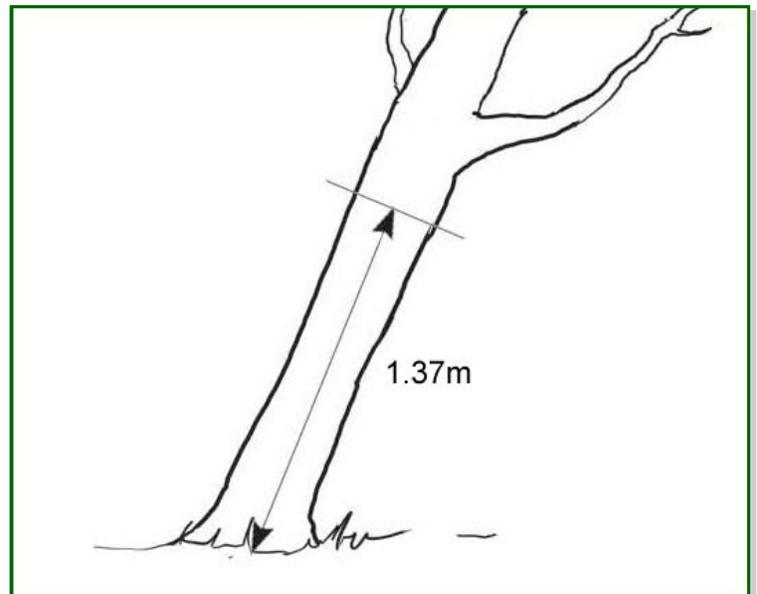
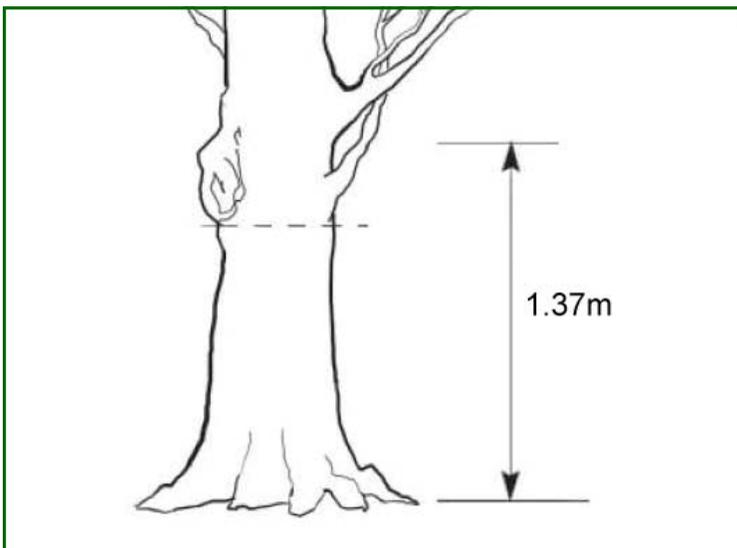
A vertically growing tree on a slope, or a leaning tree

Measure the diameter 137cm above the ground, at the mid-point of the trunk along the slope.



A Tree with Branches or Bumps

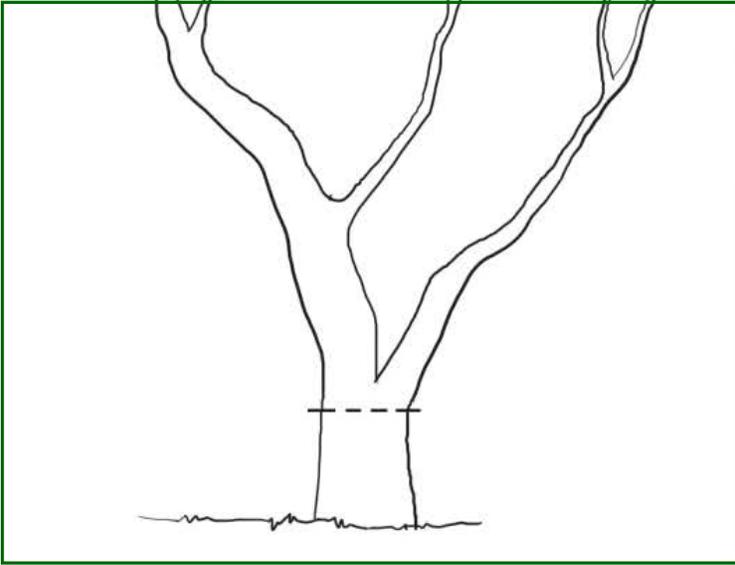
If a tree's branches or bumps interfere with the DBH measurement, take the measurement below the branch or bump



Measuring Tree Trunk Diameter At Breast Height Page 2

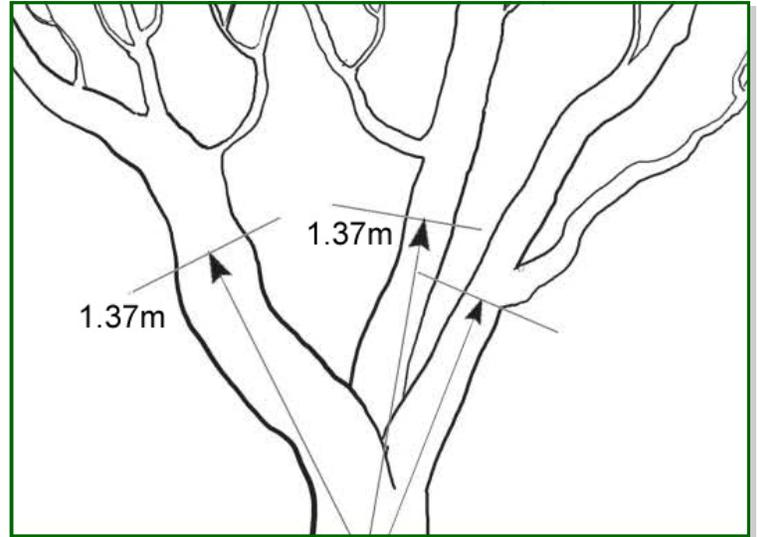
A Tree that forks below or near 137cm

Record the diameter at the narrowed part of the main stem below the fork.



A Tree that splits into several trunks close to ground level

Following the guideline to the left, measure the DBH of each trunk separately.



Where can I get more information about the Town of Aurora's Tree Preservation By-law?

Copies of the Town of Aurora Tree Preservation By-law are available from the Leisure Services department (Parks & Recreation Services) at the Municipal Offices located at 100 John West Way or on the Town of Aurora website:

www.aurora.ca

Anyone who contravenes any provision of the Tree Preservation by-law is guilty of an offence and subject to penalty

Measuring Tree Trunk Diameter

Minimum Diameter Measurements

Trees greater than 20 cm diameter at breast height will be expected to have the following minimum diameter measurements.

Typical Measurements

Height of Measurement above grade level - **3cm**

Trunk Diameter - **27cm**

