

# Town of Whitby

## Staff Report

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### Report Title: Follow Up Report for Proposed Amendments to Property Standards By-law # 6874-14, Hedge Heights

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**Report to:** Committee of the Whole

**Date of meeting:** June 5, 2023

**Report Number:** LS 06-23

**Department(s) Responsible:**

Legal and Enforcement Services

**Submitted by:**

Francesco Santaguida, Commissioner of Legal and Enforcement Services/Town Solicitor

**Acknowledged by M. Gaskell, Chief Administrative Officer**

**For additional information, contact:**

Andre Gratton, Manager of Enforcement Services

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#### 1. Recommendation:

1. That Report LS 06-23 be received for information; and
2. That Staff bring forward a by-law to amend Property Standards By-law # 6874-14, as amended, substantially in accordance with the draft bylaw in Attachment 1 to this Report LS 06-23.

#### 2. Highlights:

- At the Regular Council meeting on November 29, 2021, Council directed Staff to review the provisions of the Property Standards By-law regulating hedge heights and for Staff to recommend amendments to manage pests and vermin on private property.
- Staff prepared Report LS 04-22 in response to resolutions # 331-21 and recommended the removal of maximum height provisions for hedge in rear and side yards. Council asked staff to review best practices and consider other options related to the regulation of hedges in the Town.

- The current provisions of the Property Standards By-law restrict the maximum heights of hedges to 3.0 metres in rear and side yard of properties in the Town.
- Staff have reviewed the options and recommend amendments to the Property Standards By-law # 6874-14 (the “By-law”) to exclude trees that have not been sheared and allow variances to maximum hedge height in rear and side yards based on the assessment and professional opinion of a certified Arborist.

### **3. Background:**

At the Regular Council meeting on November 29, 2021, Council directed Staff through Resolution # 331-21 to review the provisions regulating hedge heights:

#### **Resolution # 331-21, Hedge Height Restrictions in the Property Standards By-law**

**That Staff review the provisions regulating hedges in the Property Standards By-law and report to Council by the end of Q1 2022 including considering the merit of amendments to eliminate hedge height maximums, except in instances where there are sightline concerns.**

Staff brought forward Report LS 04-22 in response to the above resolution and direction of Council. This report contained recommendations by staff to remove the maximum height restrictions for hedges in rear and side yards. The basis of this recommendation was included as part of Report LS 04-22, which included the following rationale:

1. The continuous Property Standards Appeals Committee (“PSAC”) challenges from local arborists;
2. The rigidity of the regulations in the By-law resulted in Staff ordering some vegetation to be cut down to their demise due to the existing height of the hedges at the time of enforcement; and
3. That 2 of the local regional municipalities with similar older residential subdivisions do not regulate the maximum height of hedges.

At the Regular Council meeting on March 7, 2022, Council directed Staff through Resolution # 70-22 to review the provisions regulating hedge heights,

#### **Resolution # 70-22**

**That Report LS 04-22 with respect to hedge heights, be referred back to Staff for a report to Council in Q2 to review and propose changes to the Property Standards By-law including the definition relating to hedges and best practices with respect to hedge heights restrictions and best**

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**practices with respect to the removal of hedge heights according to arborists.**

As per the direction of Council, staff sought the professional expertise of several Certified ISA Arborists for recommendations regarding best practices for the regulation of hedges.

**4. Discussion:****Historical overview of actions for hedges to date**

The By-law contains the following definition of a “Hedge”,

“hedge” means a line of three (3) or more closely planted bushes or shrubs planted in a manner that creates a significant barrier to light without the existence of large gaps, but shall not include living walls identified by the Town as acoustic barriers;

Based on staff’s review, the original intention of the definition and maximum hedge height was for maintenance of shrubs and bushes, which typically only grow to a maximum of 3 metres. If the intention of this section was to only regulate shrubs and bushes, and not trees, then this provision would not have presented challenges, as such shrubs and bushes would only require minor cutting/pruning. The Arborists who offered feedback noted heavy pruning/cutting of vegetation in excess of 6 metres (20 feet) to 50% of its height (3 metres) will likely destroy the vegetation.

Based upon a review of PSAC decisions and Property Standards Orders, it appears that vegetation that could be considered trees have been affected by this regulation and included within the Town’s definition of a hedge.

What can be considered a tree vs. a hedge has also been complicated by the fact that some species of “Cedars” are classified as trees, and others as shrubs. From the review of PSAC decisions and Property Standards Orders, it has become clear that the majority of the challenges regarding the regulation of hedge height to date revolve around “Cedars” being hedges or trees.

**Legal information on divisional trees/hedges established by Legislation, Common and Case Law**

Generally, it is a long-standing legal principle that a property owner can cut any branches or portion of a neighbouring tree that pass over the property line including airspace. As with any legal principle, there are exceptions where trees grow along a shared boundary line between properties, and in any case, care and caution must be exercised when trimming a tree so as not to damage the tree beyond recovery or destroy the tree. Before cutting or trimming any part of a tree,

residents are advised to familiarize themselves with their legal rights and responsibilities.

Trimming and pruning of trees which are not within the Town's lands or boulevards are private civil legal matters between individual landowners, and do not involve enforcement by the Town. The Town cannot grant permission for one landowner to enter onto another's lands to trim vegetation which may cross property boundaries, and the Town cannot order a landowner to address vegetation that is not within their land.

**Staff recommend that the Property Standards By-law is amended to account for trees which may act as a hedge.**

Staff have consulted with ISA Certified Arborists to assist in determining how to regulate hedges to account for vegetation that may be significantly taller than 3 metres. The results of these consultations are paraphrased and set out in the bullet points below.

- Reducing the height of tall, old, and well maintained hedges and/or clusters of trees, is not possible without causing significant damage, which often results in the loss of the hedge or trees(s)
- An inflexible hedge height does not allow for any professional assessment regarding the amount of reduction a well-established hedge can survive. While the goal is to reduce the overall height of the hedge, aggressive reduction often results in the decline and or loss of the tree or hedge that is being maintained.
- Using the term "shearing" to describe the maintenance of a hedge would be a prudent addition to the By-law to differentiate between a hedge and a group of trees planted closely together. Shearing is a trimming technique that removes the terminal buds of a shrub or small woody plant with the intent to create thicker foliage on the areas being sheared. As it states now, there are more trees than just Cedars that would apply to the definition of hedge, e.g., Pyramidal English Oaks, Beech, Hornbeam or Columnar Tulip trees etc.
- By-law provisions limiting hedge height should focus on proper maintenance and safety of trees and hedges on a property and contain an expanded definition of the difference separating trees and hedges.
- White Cedars are not considered a shrub. They are a tree and if given the space they have the growth potential of a tree. They should not be considered shrubs simply because they are planted closely.

Staff's intention is to allow for exceptions to the regulation where the enforcement officer has the benefit of a report from an ISA Certified Professional Arborist to determine whether trimming or cutting the hedge would lead to its demise.

Staff propose to modify the definition of hedge within the Property Standards By-law # 6874-14 to exclude trees (with the addition of the wording in bold). Additionally, staff propose to modify the provisions within the By-law which regulate hedges (Section 4.1.3. and 4.1.4.) to allow for a landowner to obtain a report from a professional arborist to determine whether the vegetation can be reasonably pruned and survive. See **Attachment # 1**.

### **Application of Property Standards By-law amendments to existing Property Standards Orders**

Should Council adopt the proposed amendments to the Property Standards By-law as per appended Attachment # 1, staff will utilize discretion in its application to existing Property Standards Orders which contain maximum hedge height deficiencies.

#### **5. Financial Considerations:**

There are no financial impacts associated with the proposed amendments to the Property Standards By-law.

#### **6. Communication and Public Engagement:**

Staff will update the consolidated version of the Property Standards By-law on the Town's website; Enforcement Services will provide education to residents about the amended provisions upon receipt of inquiries. Staff have contacted all persons on the interested parties listed and advised them of the Report being placed on the agenda.

#### **7. Input from Departments/Sources:**

Not applicable

#### **8. Strategic Priorities:**

The by-law amendments support the Corporate Strategic Plan objective to "continually improve how we do things by fostering innovation and focusing on making our processes better". Further, it is consistent with Council Goal # 9, "to remain the community of choice for families" as the amendments promote urban tree canopy and habitat for migratory birds, while reducing pest, vermin, and nuisance concerns on properties.

#### **9. Attachments:**

1. Attachment 1 – Proposed Property Standards By-law Amendments.