

Town of Whitby

Staff Report

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Report Title: Follow up re Prohibited & Regulated Animals By-law Exemption Request for Nova's Ark – 7505 Cedarbrook Trail

Report to: Choose an item.

Date of meeting: December 11, 2023

Report Number: LS 12-23

Department(s) Responsible:

Legal and Enforcement Services

Choose an item.

Choose an item.

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

1. Recommendation:

1. That Council does not grant an exemption to the Town's Prohibited and Regulated Animals By-law #7392-18, as amended, for the lands known municipally as 7505 Cedarbrook Trail, Whitby and the facility operating as "Nova's Ark".

2. Highlights:

- This matter has been the subject of a previous report to Council, LS 16-21, which outlines the extensive background to this request. The previous report is included as Attachment 4 to this report.
- Nova's Ark has submitted Official Plan and Zoning By-law Amendment applications for a 4.0 hectare (10 acres) parcel located on the east side of Cedarbrook Trail, north of Columbus Road West, municipally known as 7505 Cedarbrook Trail.
- The *Planning Act* applications for the subject land are to permit a private, therapeutic, education and recreational facility for people of all ages and abilities, and to permit the construction of an additional building for education and programming purposes.

- Prior to obtaining an Official Plan and Zoning By-law amendments, staff recommend that Nova's Ark must obtain an exemption to the Prohibited and Regulated Animal by-law #7392-18, as amended (the "**PRA By-law**"), for the animals owned by Nova's Ark which are in contravention of the PRA By-law.
- Staff from Enforcement Services inspected the property on June 16, 2023, which revealed that Nova's Ark had an inventory of 355 animals, 74 which are contrary to the PRA By-law.
- The remaining 281 animals are permitted to be kept on the property as per permitted uses under the Town of Whitby Zoning By-law #1784 and as the PRA By-law.
- Staff do not recommend granting an exemption to the PRA By-law due to safety concerns with the prohibited animals, based on consultations with other zoo and other animal welfare organizations.
- Should Council grant an exemption, Staff recommend that the exemption be subject to the conditions set out in Attachment 3.

3. Background:

Nova's Ark

Nova's Ark is a registered charity providing individualized programming with a variety of animals for individuals of all ages and abilities. A more detailed background to this report can be found in Report LS 16-21 (Attachment 4). More details about Nova's Ark's services and mission can be found here: <https://novasark.ca/our-mission/>. According to the Nova's Ark website, the charity has been in operation since at least 2005.

In 2021, staff from Enforcement Services responded to a formal complaint about Nova's Ark owning/harboring prohibited or exotic animals contrary to the PRA By-law.

In 2021, Staff attended with inspectors from the Ontario Provincial Cruelty Investigations Department to conduct an inspection. The inspection revealed that Nova's Ark had an inventory of 397 animals. 118 of the animals kept at Nova's Ark are contrary to the Town's Prohibited and Regulated Animal By-law. The remaining 279 animals are permitted to be kept on the property as per the Town's Zoning By-law #1784 or as the PRA By-law.

Nova's Ark submitted a request for an exemption to the PRA By-law, which was considered by the Committee of the Whole on September 27, 2021. Committee passed the following motion:

That consideration of Staff Report LS 16-21 be referred to Staff to allow additional time to consult with Nova's Ark about the conditions listed in Option #2 of Report LS 16-21 based on public submissions received at the Committee of the Whole meeting on September 27, 2021, and that Staff be directed to report back to Committee of the Whole;

Steps Taken Since Report LS 16-21

Per Committee's Direction, staff have reviewed all public submissions. Additionally, staff met with industry professionals to understand the requirements for keeping the multitude of animals on site.

Staff have received materials from Nova's Ark related to emergency procedures and an emergency response plan for the facility. Staff have also been advised that upgrades have been completed and that a security professional has reviewed the enclosures and have completed a risk audit. Staff have not independently verified whether these measures are in place.

In May 2023, Nova's Ark provided an updated inventory of the animals present on the property, which is attached to this Report as Attachment 1. While the total number of animals was slightly reduced from 398 in 2021 to 355 in 2023, and the number of prohibited animals has decreased from 118 to 74 there were 5 new animals in 2023 that would not have been otherwise permitted under the PRA By-law. The full list of prohibited animals is included in this Report as Attachment 2. Further, the Official Plan Amendment and Zoning By-law Amendment Applications have not progressed since October 2021, as the resolution of the exemption is a condition to proceeding with those applications.

The Town issued an order on July 13, 2023, requiring that the animals prohibited under the Prohibited and Regulated Animals By-law be rehomed by January 12, 2024.

4. Discussion:**Staff do not wish to close Nova's Ark, but have concerns with the animals that pose the greatest threat to public safety**

Staff do not intend for Nova's Ark to cease operations within the Town; however, several animals remain which cause staff concern for public safety (see Attachment 2).

Despite to the ability to possess and harbour these animals, some carry risk and liability to the patrons based on varying factors such as temperament and age. The risks that these animals pose include potential bites, kicks, scratches and trampling of patrons of Nova's Ark.

These concerns are heightened given the additional residential growth expected in the area around Nova's Ark in Brooklin. With additional residents expected around the facility, the potential for interactions between residents and animals increases, and in the event of an escape, there would be a greater number of residents at risk who live closer to the facility. This was the case with the recent escape of a kangaroo in Oshawa, and the kangaroo quickly headed towards population centres in Oshawa.

Staff have sought information and advice from industry professionals

After reviewing the information received through public submissions, staff sought the advice and recommendations of industry professionals regarding the potential safety risks that may exist with the 74 animals which are contrary to the PRA By-law. This information was gathered for the purposes of informing the Town of Whitby Council on

all potential risks needing to be considered before granting an exemption. Industry professionals noted concerns with high-risk reptiles such as Iguanas, Monitors and Boas in addition to the Wolves, Foxes and other non-domestic animals located at the facility.

Staff received written submissions from four (4) agencies: Toronto Zoo, Reptilia, Zoocheck and World Animal Protection Agency. Industry professionals noted risk of bites, scratches, kicks, and serious harm that may be a risk to patrons of Nova's Ark. Industry professionals also provided programming and protocols suggestions including a rotation system for animals to minimize risk for Nova's Ark.

Staff do not recommend an exemption to the PRA By-law

Based on staff's review of the materials received to date, as well as the recommendations and information provided by industry professionals, and the materials set out in the Confidential Memorandum accompanying this report, staff recommend that an exemption to the PRA By-law should not be granted.

Staff are cognizant of the exceptional programs that Nova's Ark provides for the community and persons of all abilities. Despite this work, staff continue to recommend that certain animals not permitted under the PRA By-law are re-homed due to the potential human safety risk posed by the animals. Interactions between people at the facility and/or human safety risk should the animal escape into the community are a significant concern for staff.

This is especially concerning to staff given the future residential growth that will occur in the Village of Brooklin, including the area surrounding the property at 7505 Cedarbrook Trail. The population growth in the area increases the potential human safety risk in the event of a potential escape, as we've recently seen with the Kangaroo that escaped captivity in Oshawa. Per some of the public comments we received, Nova's Ark currently houses more animals than some zoos within Canada. Although operations differ, acknowledging that Nova's Ark may be more of a therapeutic centre, the property contains animals which are typically found at a zoo.

Should Council grant an exemption to the PRA By-law, Staff recommend that conditions be placed on the exemption

Staff have received notice of a motion seeking to grant an exemption to Nova's Ark from the PRA By-law. Should Council wish to grant an exemption to the PRA By-law, staff have drafted a set of conditions that would assist in mitigating the Town's liability for the ongoing operation of the facility. Those conditions are primarily based upon the conditions in the motion and are included in this Report LS 12-23 as Attachment 3.

Based on the motion drafted, and should Council wish to proceed with granting an exemption to the PRA By-law, staff suggest the following motion be adopted by Council:

BE IT RESOLVED THAT THE RECOMMENDATIONS IN REPORT LS 12-23 BE AMENDED AS FOLLOWS:

1. Council grant an exemption to Nova's Ark from the Town's Prohibited and Regulated Animals By-law #7392-18, as amended, solely for their facility

- at 7505 Cedarbrook Trail, Whitby subject to the conditions set out in Attachment 3 to Report LS 12-23;
2. This exemption is a one-time exemption for Nova's Ark and does not apply to the replacement or addition of animals that would otherwise be prohibited under the Prohibited and Regulated Animals By-law;
 3. Should Nova's Ark fail to comply with the conditions set out in this motion for an exemption to the Prohibited and Regulated Animals By-law, the Commissioner of Legal and Enforcement Services/Town Solicitor (or designate) may bring a report to Council to revoke the exemption;
 4. The Commissioner of Legal and Enforcement Services/Town Solicitor write to Nova's Ark notifying the facility of Council's exemption to the Prohibited and Regulated Animals By-law #7392-18, as amended, and the conditions under which the exemption was granted, including the possibility of a revocation of the exemption; and
 5. That staff be directed to bring an amendment to the Prohibited and Regulated Animals By-law #7392-18, as amended, to codify this exemption and conditions for the December 18, 2023 Council meeting.

5. Financial Considerations:

The staff recommendation in Report LS 12-23 does not have financial implications for the Town. If the recommendations are amended, the Town may need to retain external expertise to peer-review the materials submitted by Nova's Ark.

6. Communication and Public Engagement:

This matter has been extensively discussed at Council and notice of this matter was sent to those who had indicated that they were interested in updates on this matter.

7. Input from Departments/Sources:

The Planning Department was consulted in relation to existing zoning permissions and pending residential developments. Input was also received from external agencies as outlined in this report.

8. Strategic Priorities:

This report generally advances Strategic Plan Pillar 1, Objective 1.1, which directs the Town to improve community health, safety, and well-being. This report also advances the Strategic Plan Pillar 4, Objective 4.4 by ensuring fiscal accountability and responsibly plan for growth. In particular, Action 4.4.1 directs the Town to deliver services that respond to community needs while balancing the impact to taxpayers.

By ensuring that animals that pose a danger to human health and safety are not permitted on-site, this responds to the community concerns while ensuring that the Town mitigates liability to the extent possible to minimize impacts to its taxpayers.

9. Attachments:

Attachment 1 – Livestock Inventory Provided by Nova's Ark as of May 2023

Attachment 2 – List of Animals Not Permitted under Prohibited and Restricted Animals By-law #7392-18, as amended

Attachment 3 – Recommended Conditions for an Exemption to the Prohibited and Restricted Animals By-law #7392-18, as amended

Attachment 4 – Staff Report LS 16-21: Prohibited & Regulated Animals By-law Exemption Request for Nova's Ark – 7505 Cedarbrook Trail