

Vegetative Buffer – Summary of Questions & Answers
On behalf of the Hastings Highlands Interlake Association
Updated: Feb 25, 2022
For Distribution: Mar 1, 2022

This meeting was initiated by Kamaniskeg Lake Property Owners' Association (KAPOA) and Interlake Association and organized by John Jardine, Municipal Planner, Municipality of Hastings Highlands
Feb 25, 2022 9:30 – 11:00am

Attended by: Kerra Wylie (Kamaniskeg Lake Property Owners' Association)
Bonny McCleery Scanlan (Lake St. Peter, Interlake Environment Education)
Tom Scanlan (Lake St. Peter, Interlake Land Use Planning committee)

In addition to the below questions discussed with John, refer to the FAQ's on the "Have Your Say Hastings Highlands" webpage for a summary of the changes introduced by draft Zoning Bylaw Amendment 2022-005 to amend Comprehensive Zoning Bylaw 2004-035, and other items not discussed here. The infographics at the same location make very clear what is, and is not, allowable.

[Draft Amendments to Bylaw 2004-035 Comprehensive Zoning Bylaw - Municipality of Hastings Highlands](#)

History – John provided a brief history of prior attempts to regulate the vegetative buffer. A proposed Bylaw to introduce a 30 metre buffer in 2014/2015 was made under the Planning Act. It was determined that the Municipal Act has better tools available for enforcement and regulation.

The next attempt to protect shorelines in 2020 was made under the Municipal Act and introduced by Council. It was overturned in 2021 (May – July timeframe).

The zoning bylaw that governs how land is used has been in place since 2004. The Official Plan of the County of Hastings was updated in 2018 (section 5.4 - how to develop properties on lakes and watercourses), and it is a requirement of the Planning Act for municipalities within the County to amend their zoning bylaws to conform with the Official Plan. The official plan should be updated every 5-10 years, but it had not been updated since 2002 (to 2018). In addition to aligning with the County of Hastings Official Plan, Hastings Highlands is proposing this latest version of the vegetative buffer amendment to align with policy recommendations and guidance from the Ontario Provincial Government and recommendations from other organizations that are proponents of lake health.

The proposed Bylaw will amend the current zoning requirement to conform with the Official Plan.

The existing vegetative buffer bylaw (15 metres) has been in place since 2004, and it includes no exceptions such as is proposed in the current amendment. Under the current bylaw, a waterfront owner cannot build a building (or any other structure) within the 30 metres of the high water mark (with minor variance exceptions per below). The changes introduced here are to increase the vegetative buffer to 30 metres and allow a lesser of 75 linear foot /25% waterfront frontage to conduct some alterations/changes.

This is being introduced under the Planning Act (amending zoning bylaw), not the Municipal Act. The Municipality is not just “bringing this back again”. Appeals of the amendments are to be directed to the Ontario Land Tribunal.

Q & A: 30 Metre Buffer Allowable Activities:

1. What is allowable for brush and tree clearing and trimming within the 30 metre buffer from the high water mark? Can dangerous trees, unwanted brush or tree species, or flammable brush be removed (i.e., fallen trees).

John: Generally speaking, the area must be maintained in a natural condition unless there is a specific safety concern, so no amount of clearing and removal is allowed. Leave brush and fallen trees, do not mow lawn, encourage natural vegetation only. Residences contained within (versus set back from) the 30 metre buffer are a special consideration, these would be treated differently for concerns such as dangerous trees, flammable brush, etc. Contact the municipality to review your case (see below on how to do that).

2. Will a permit be required to remove or trim brush and trees within the 30 metre buffer area for specified or allowable purposes, and is there a cost to this permit?

John: The Municipality recommends contacting them to meet with the bylaw enforcement officer to review the property for what can be done and/or discuss over the phone (pictures are helpful). Do this through a Customer Service Request on the website (response commitment is maximum 10 days, but usually 2 business days). Notes would be put on file to address future issues. No permit is required.

3. Are there qualification requirements for anyone conducting trimming or clearing activities in the 30 metre buffer area? Can the homeowner perform permissible trimming and clearing?

John: Not anticipating a requirement at this time for an arborist, etc.

Q&A: Lesser of 75 Linear Foot/25% Waterfront Allowable Activities:

1. Why is this exception clause being included in the bylaw amendment? Is it to accommodate the waterfront owners' access to the waterfront, view of the water, elimination of dry brush surrounding their residence (per the Ont Government and Firesmart Canada, homeowners are encouraged to eliminate brush, trees and other vegetation that could spread fire within a safety zone of 20 metres of their residence), dangerous trees, ticks, etc.? Does this clause allow the homeowner to clear the necessary trees in front of (or surrounding in the case where residences are contained within 30 metres of the water) their residence within the 30 metre vegetative buffer?

John: This exception clause comes from the official plan so the original reason for this concession is not known, but it is consistently found in other municipalities where a vegetative buffer has been introduced. It is primarily to provide access to water, as the current zoning bylaw is not realistic (it doesn't even allow a path to the shoreline). Technically speaking, homeowners have carte blanche ability to do what they want in this portion of their

waterfront, there are no restrictions from clearing, trimming, mowing grass, establishing access to waterfront, etc. However, the municipality strongly encourages all waterfront owners to maintain natural vegetation, where possible, in an effort to improve water quality, reduce shoreline erosion and provide essential habitat for land and water species. The frontage identified under this clause is recommended to be contained as a continuous area, however, it may be non-contiguous to allow for separated access (for example, where a boat launch is contained in a different location from the residence waterfront dock).

2. Clauses 3, 4, and 5 of the bylaw states that "a natural vegetative buffer strip 30 metres (98.4 ft.) in width shall be maintained" for LSR, LSRI, and WR Zones – is this to be interpreted that the lesser of 75 linear foot / 25% of frontage exemption applies only to new projects and does not apply to existing properties?

John: The frontage exemption applies to those specified zones in addition to existing developed and undeveloped properties. The 30M buffer vegetative buffer is a general zoning requirement, regardless of whether the area is developed or undeveloped.

3. How is the lesser of 75 foot/25% frontage section of property to be identified in which brush and tree trimming and clearing is allowable in front of a waterfront residence? Must it be directly in front of the residence or can it be any lesser of 75 foot linear / 25% frontage section of the waterfront property? What about in the case where there is no residence on the property (undeveloped property)?

John: Recommends that you reach out to the Municipality if property is undeveloped (pre-consultation form) to present a site plan for future building, septic and waterfront clearing (within the lesser of 75 feet / 25% frontage area) activities. Trailers and tents are only permitted if the landowner has been issued a building and septic permit.

We did not otherwise discuss how the waterfront owner might be required to identify the area in which disruption to the natural vegetation is allowed. I believe it's incumbent on the waterfront owner to ensure that the total disrupted area, whether continuous or not, is within permissible limits.

4. Are permits required to trim or clear brush and trees within the lesser of 75 linear foot/ 25% frontage section of property?

John: No permits are required, same as for the 30 metre buffer zone, but reviewing your site plan with the municipality is recommended.

5. Why is the lesser of 75 linear foot / 25% frontage allowable area for trimming and clearing not listed as a key component of the property tax mail insert under "Proposed Amendments in Bylaw 2022-005 ("Vegetative Buffer")? Especially as this concession probably addresses a large majority of waterfront owners' concerns?

John: This exception clause was left out of the insert to allow space to include the most concerning and restrictive requirements, as there was a word count limit. We discussed that

the infographic on the municipal website (follow the link above) provides a more visible and educational description of what is allowed, and we will direct concerned individuals to it in addition to the FAQ's that John has provided on the "Have Your Say Hastings Highlands" webpage.

Other Bylaw Considerations for the Homeowner:

1. Documentation of the problem: Is there a documented trend across Hastings Highlands waterways that indicates a decline in lake health (i.e., Lake Partner Program measurements)? If not, why otherwise is this bylaw amendment again being pursued after twice being proposed and removed (i.e., is this a compliance requirement with Ontario Government and/or Hastings County plan)?

John: The bylaw's introduction is not based on specific measurements of lake health / water quality. It's a proactive rather than reactive approach to addressing water quality and lake health. See "History" above for balance of the response.

2. Does Hastings Highlands have documented examples of other municipalities that have enforced a similar bylaw requirement that has improved lake health? Are there examples of municipalities that have chosen to educate waterfront owners instead of enforcing via bylaw that have been equally successful?

John: Yes, the Municipality has looked at other municipalities to learn from what they have done in the past – Haliburton County, Tudor and Cashel are specific examples. The Hutchison Report from Haliburton is referenced in the Dec 1st council meeting minutes (there is also a link in the upcoming Mar 2nd council meeting agenda) – it's a comprehensive report supporting the need for a vegetative buffer.

3. Should waterfront owners take photos of the existing 30 metre buffer area prior to the bylaw coming into effect, to validate what brush and trees were already trimmed or removed, and any permitted structures or site alterations that already exist (for grandfathering purposes)?

We did not specifically discuss this question, but any submissions to the Customer Service Request portal that are accompanied by photos will be more easily addressed over the phone with the municipality, versus an in-person visit.

4. Please clarify grandfathering: Could waterfront owners who have previously cleared areas exceeding that allowable in the bylaw amendment (2022-005) be disallowed from continuing to keep the entire waterfront area in the same condition? Will they be required or encouraged to take steps to encourage naturalization?

John: Grandfathering under the Planning Act is otherwise described as Legal Non-Conforming, meaning it does not match current zoning. Minor variances provide for exceptions (4 test questions i.e., size & depth of lot, slope of lot, etc.). This is complicated – there is currently a 15 metre vegetative buffer requirement. Onus is on the waterfront owner to prove that the waterfront was clearcut before 2004. Any permits requested to make building changes will be required to restore a natural vegetative buffer. Or if complaints are received. But generally

the municipality won't be out looking to find properties that are not in compliance, their focus will be on education. The municipality has an existing Shoreline Health Working Group to educate the public, and they are looking for best practices to accomplish this.

Additional note (post discussion) – the FAQ's address grandfathering strictly in relation to the existence of Legal Non-Conforming structures (i.e., buildings) within the updated buffer area and do not address the grandfathering of cleared trees and other natural vegetation within the same area. There is no specific guidance regarding what is expected to be initiated or ceased if the area is already cleared and/or vegetation is being kept trimmed within the newly established buffer area.

5. How will the Vegetative Buffer bylaw be enforced and what will be the penalties for activities conducted within the 30 metre buffer area that are deemed not allowable?

John: The same penalties as per the zoning bylaw will apply, new enforcement and penalties specific to this amendment are not being introduced. John will have to defer to the bylaw officer. Typically, the municipality will try to work with the waterfront owner to remediate. As with any other bylaw infraction where refusal to comply occurs, the case could go to court.

6. There are additional waterfront structures used by waterfront property owners besides those specifically identified in the bylaw (docks, boat launches and boat houses) including but not limited to: waterfront decks (that don't extend into the water), sheds, retaining walls and saunas. Will waterfront property owners be required to obtain permits for those structures not specifically indicated in the bylaw that reside within the 30 metre buffer zone, even where the structures themselves might not meet the requirements for permits currently?

John: Retaining walls are not in conformity, they are not a natural vegetative buffer (that provides erosion and sediment control). Same with docks at the waterfront unless they are within the 75 linear foot / 25% footage area. For sheds, saunas, decks and other structures not named in the bylaw – a waterfront owner is required to obtain a minor variance for any structure installed close to water, regardless of whether that structure requires a building permit.

7. Concerns have been raised that again this bylaw is being read in Council and presented at open houses prior to the arrival of most seasonal residents to the area. Currently access to one of the open houses is virtual, will this allow residents to interact with presenters in a manner that ensures that their voice is heard equally to those who attend the in-person open house?

John: This process has been underway since December. The municipality has done it's best to provide multiple forums for all concerned residents of Hastings Highlands to provide their input. The virtual open house allows for anyone to attend, regardless of where they are residing. The in-person open house is situated just prior to the Easter long weekend when seasonal residents are often in the area. Written comments (Have Your Say) are included in Council meetings and will be reviewed, digested and responded to with forethought, so consequently, this is the best way to raise a concern to Council.

Tom: It was discussed that the open house in the past was chaotic, requiring Council to be more prepared this time.

8. Is there a plan to increase funding to the appropriate department in anticipation of shoreline buffer enforcement costs?

John: The Customer Service Request process may circumvent the bylaw officer needing to attend every property in question, thus, reducing costs. Otherwise, this question will be answered over time. There are no anticipated changes currently. The current bylaw officer is only employed on a part time basis.

9. Given that a continuing and pervasive reason for lake health decline is due to unmaintained septic systems, where is Hastings Highlands sitting regarding mandatory septic inspection and upgrade?

John: Council was looking into a septic re-inspection program (several options were proposed by Martin Cox, CBO, on Nov 6, 2019), but it was overturned by Council (January 19, 2022 - Regular Meeting of Council, Operations and Planning Minutes - Discussion took place that this was one of the older pending items that were not likely to be acted upon as this council term draws to a close). There is nothing in the works right now. Septic upgrade and inspection are only reviewed during development applications (new or upgrades) at this time.

Bonny: This is still on the 5-year plan list of issues to address. The Interlake Association plans to bring this forward as an election question, it is an area of significant concern.

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