

THE CORPORATION OF THE CITY OF CAMBRIDGE

BY-LAW 23-105

Being a by-law to regulate the destruction or injuring of trees on private property

**WHEREAS** sections 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “Municipal Act”), as amended or replaced from time to time, provide that a municipality has broad authority, including the authority to pass by-laws respecting the economic, social and environmental well-being of the municipality;

**WHEREAS** section 135 of the Municipal Act provides that a local municipality may regulate the destruction or injuring of trees;

**WHEREAS** section 436 of the Municipal Act provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law passed by the municipality, a direction or order of the municipality or an order made under section 431 has been complied with;

**WHEREAS** section 444 of the Municipal Act provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which a contravention occurred to discontinue the contravening activity;

**WHEREAS** section 445 of the Municipal Act provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which a contravention occurred to do work to correct the contravention;

**WHEREAS** section 446 of the Municipal Act provides that if a municipality directs or requires a person to do a matter or thing, the municipality may provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person’s expense, and the municipality may recover the costs of doing the matter or thing from the person by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

**WHEREAS** section 425 of the Municipal Act authorizes a municipality to pass a by-law providing that a person who contravenes a by-law of the municipality is guilty of an offence;

**WHEREAS** section 429 of the Municipal Act authorizes a municipality to establish a system of fines for the offences under a by-law;

**WHEREAS** section 431 of the Municipal Act provides that if any by-law of a municipality is contravened and a conviction is entered, in addition to any other remedy and to any penalty

imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted and, in the case of a by-law described in section 135, requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate;

**WHEREAS** section 391 of the Municipal Act authorizes a municipality to impose fees or charges on persons for services or activities provided or done by or on behalf of it;

**AND WHEREAS** the Council of the City approved General Committee Report CSD/15-24 Urban Forest Plan (2015-2034) and Emerald Ash Borer Action Plan on June 16, 2015, which recommends the implementation of a private tree by-law within the context of promoting and preserving the City's urban forest,

**NOW THEREFORE BE IT RESOLVED THAT** The Corporation of the City of Cambridge enacts as follows:

### **Definitions**

1. For the purposes of this by-law:

“applicant” means an owner of a tree, or an owner's authorized agent, who applies for a permit;

“arborist report” means a technical report prepared by a qualified tree professional which details specific and accurate information about trees, including, but not limited to, location, species, size, condition, structural integrity, disease, infestations and vitality, and identifies the nature of work to be undertaken as well as appropriate tree protection and preservation measures to be implemented in accordance with the City's Engineering Standards and Development Manual;

“authorized agent” means an arborist, authorized in writing by an owner to make an application for a permit to injure or destroy a tree;

“boundary tree” means any tree where the trunk, from where it connects to the roots to where it branches out into limbs, bisects the boundary between two or more properties;

“City” means the The Corporation of the City of Cambridge;

“DBH” means the diameter of a tree, outside the bark, at breast height, where breast height is measured from the existing grade of the ground adjoining the base of the trunk:

- (a) for a trunk rising straight and vertically from the ground with a horizontal grade, 1.37 metres above that grade,

- (b) for a trunk rising straight and not vertically from the ground with a horizontal grade, 1.37 metres along the centre axis of the trunk from that grade,
- (c) for a trunk rising straight and vertically from the ground with a non-horizontal grade, 1.37 metres along the centre axis of the trunk from that grade, and
- (d) for a trunk rising not straight, 1.37 metres along the centre axis of the trunk from that grade,

and where the diameter is:

- (e) for a tree with a single trunk, the diameter of that single trunk, and
- (f) for a tree with two or more trunks, the diameter of the largest trunk;

“destroy” means to directly or indirectly, remove, ruin, uproot or kill a tree, whether by accident or by design, and whether by cutting, burning, girdling, interfering with its water supply, applying chemicals, puncturing, or compacting, regrading or resurfacing within its drip line, including, but not limited to, through construction activities or any other activity, but does not include maintenance pruning, and “destruction” has the corresponding meaning;

“Director” means the City’s Director of Operations, Infrastructure Services, or their designate;

“Fees and Charges By-law” means that by-law of the City enacted pursuant to section 391 of the Municipal Act, imposing fees or charges on persons for services or activities provided or done by or on behalf of the City, as amended and passed from time to time;

“good arboricultural practice” means the proper implementation of maintenance, renewal and removal activities known to be appropriate for individual trees to minimize detrimental impacts on urban forest values, and includes maintenance pruning;

“heritage tree” means a tree that is identified as a heritage attribute or part of a protected landscape within a property that is designated under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended, or located within a heritage conservation district designated under Part V of the *Ontario Heritage Act* and contributes to the heritage character of the district or landscape;

“hoarding” means a fence or similar structure used to enclose land, trees and other vegetation in order to protect trees or other vegetation;

“Imminent hazard” means a tree which is destabilized or structurally compromised to an extent that an immediate danger of death, injury or structural damage exists, including, but not limited to hazards or damage to infrastructure that cannot be addressed without adversely affecting the health of the tree;

“injure” means to cause, directly or indirectly, whether by accident or by design, damage or harm to a tree, which has or is likely to have the effect of inhibiting or terminating its growth, whether by cutting, burning, girdling, interfering with its water supply, applying chemicals, puncturing, or compacting, regrading or resurfacing within its drip line, including, but not limited to, through construction activities or any other activity, but does not include maintenance pruning, and “injuring” has the corresponding meaning;

“invasive” means any tree that is classified as prohibited or restricted as defined in the *Invasive Species Act, 2015*, S.O. 2015, c. 22, or any tree that is listed as a noxious weed as defined in the *Weed Control Act*, R.S.O. 1990, c. W.5;

“landscaping, replanting and replacement plan” means a plan which identifies the location, species and size of existing trees, trees to be planted or replaced and other landscaping elements on land and provides details regarding planting methodology and timing;

“lot” means a parcel of land having specific boundaries that is capable of legal transfer;

“maintenance pruning” means the pruning or removal of tree branches in accordance with good arboricultural practice, as specified by the International Society of Arboriculture, including for purposes of removing dead limbs, maintaining structural stability and balance and encouraging natural form, but limited to the appropriate removal of no more than one-third of the live branches that make up the leaf-bearing crown of the tree within a three-year pruning cycle, or as appropriate for the specific tree species, in order to maintain the health of the tree;

“Municipal Act” means the *Municipal Act, 2001*, S.O. 2001, c. M.25, as amended or replaced from time to time;

“officer” means a municipal law enforcement officer appointed by Council to administer and enforce by-laws of the City and includes an employee of the City’s Forestry Section;

“Order” means a work order issued in accordance with section 25 of this by-law or an order to discontinue activity issued in accordance with section 23 of this by-law;

“owner” means the registered owner on title of the land or the agent of the registered owner;

“permit” means a permit to destroy or injure a tree issued pursuant to this by-law;

“Planning Act” means the *Planning Act*, R.S.O. 1990, c. P.13, as amended or replaced from time to time;

“private tree” means any tree where the trunk, from where it connects to the roots to where it branches out into limbs, is located entirely on private property, and includes a boundary tree bisecting the property line between two or more private lots;

“qualified tree professional” means a professional holding one of the following qualifications:

- (a) Registered Consulting Arborist (RCA) with the American Society of Consulting Arborists (ASCA),
- (b) Board Certified Master Arborist or Arborist Municipal Specialist with the International Society of Arboriculture (ISA),
- (c) Registered Professional Forester (RPF) as defined in the *Professional Foresters Act, 2000*, S.O. 2000, c. 18,
- (d) Certified Arborist with the International Society of Arboriculture (ISA), or
- (e) Qualified Tree Risk Assessor with the International Society of Arboriculture (ISA);

“Region” means the Regional Municipality of Waterloo and “Regional” has the corresponding meaning;

“Regional Conservation of Trees in Woodlands By-law” means By-law No. 08-026 of the Regional Municipality of Waterloo, as amended or replaced from time to time;

“Replacement Tree Planting Reserve Fund” means the fund managed by the City for the purpose of planting trees on public property within the City of Cambridge;

“Site Alteration By-law” means that by-law of the City enacted pursuant to section 142 of the Municipal Act regulating the placing and dumping of fill, the removal of topsoil and/or the alteration of grade of the land, as amended and passed from time to time;

“tree” means a self-supporting woody plant which will reach a height of at least 4.5 metres at maturity; and

“Zoning By-law” means that by-law of the City enacted pursuant to section 34 of the Planning Act, as amended and replaced from time to time.

## **Prohibition**

2. No person shall, within the geographic limits of the City, without first obtaining a permit required pursuant to this by-law, destroy, injure, or cause or permit the destruction or injury of any private tree having a DBH equal to or greater than 20 centimetres.

**Exemption**

3. This by-law does not apply where its provisions are in explicit conflict with the provisions of provincial, federal or Regional legislation.
4. Notwithstanding the generality of section 3, this by-law does not apply to the injury or destruction of trees:
  - (1) undertaken by or on behalf of a municipality or local board of a municipality;
  - (2) that are classified as invasive;
  - (3) undertaken under a license issued pursuant to the *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25;
  - (4) by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. S.29, to engage in the practice of cadastral surveying or his or her agent, while making a survey;
  - (5) for the purposes of satisfying a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51, or 53, respectively, of the Planning Act or of a requirement of a site plan agreement or subdivision agreement, which has been entered into under those sections;
  - (6) for the purposes of satisfying a condition to a development permit authorized by regulation made under section 70.2 of the Planning Act which has been issued by the City, or as a requirement of an agreement under the regulation which has been entered into;
  - (7) 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, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
  - (8) 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;
  - (9) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
    - (i) that has not been designated under the Aggregate Resources Act or a predecessor of that Act, and
    - (ii) on which a pit or quarry is permitted land use under a by-law passed under section 34 of the Planning Act;
  - (10) performed in accordance with the provisions of the Regional Conservation of Trees in Woodlands By-law;
  - (11) performed in accordance with a normal farm practice carried on as part of an agricultural operation, as so determined by the Normal Farm Practices Protection

Board, pursuant to the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1, as amended or replaced from time to time;

- (12) carried out pursuant to a forestry development agreement pursuant to, or deemed to be pursuant to, the *Forestry Act*, R.S.O. 1990, c. F.26, as amended or replaced from time to time, or measures to prevent, retard, suppress, eradicate or destroy an infestation by a forest tree pest, taken by an officer pursuant to the said *Forestry Act*;
- (13) for which a site alteration permit is required pursuant to the City's Site Alteration By-law, including the removal of 10 or more trees; and
- (14) carried out by the Grand River Conservation Authority.

5. Where an exemption set out in s. 4 is required by law, namely subsections 4(1) and (3) through (9), the exemption shall be strictly construed.

### **Permit Requirement**

6. A permit is required for the injuring or destruction of a private tree with a DBH equal to or greater than 20 centimetres, except where:
- (1) the private tree to be removed is dead, provided that a request for the removal of the tree is submitted to the Director prior to the removal of the tree, including a photo, description of location, species and DBH of the tree to be removed and the Director, in their sole and unfettered discretion, approves the request;
  - (2) the private tree is injured for the purpose of maintenance pruning as determined by a qualified tree professional;
  - (3) the private tree is located on a rooftop garden, interior courtyard, solarium or in a nursery;
  - (4) the private tree is an imminent hazard to any person, building, structure, utility service or vehicle and an assessment made by a qualified tree professional confirming that the private tree is an imminent hazard has been submitted to the Director before the removal of the tree; or
  - (5) the injury or destruction of the private tree is required in an emergency situation, as determined by the Director in their sole and unfettered discretion, in which case the owner shall submit a description of the situation and photos to the Director within 48 hours of the injury or removal of the private tree.

### **Permit Application**

7. A property owner, or the owner's authorized agent, may apply for a permit to injure or destroy a private tree. The application shall include the following information and material:
- (1) a completed private tree permit application form;

- (2) the consent in writing to the injuring or destruction of the tree by all of the owners of the property on which the tree is located;
  - (3) if the tree to be injured or destroyed is a boundary tree, the consent in writing to the injuring or destruction of the tree of all owners of the applicable abutting property;
  - (4) an arborist report containing the following information:
    - (i) a plan (or plan of survey) and photograph, satisfactory to the Director in their sole and unfettered discretion, showing:
      - (a) the location, species, DBH and condition of each tree to be destroyed or injured, and
      - (b) the location, species, DBH and condition of each tree to be retained,
    - (ii) the purpose for the destruction or injuring of each of the trees;
    - (iii) the nature and method of the proposed destruction or injury of each of the trees;
    - (iv) the nature and method of the protection of each of the trees to be retained, including when required by the Director in their sole and unfettered discretion, a tree protection plan identifying the location, species and DBH of retained trees on the land and the tree protection measures, including barriers and hoarding, to be implemented to avoid destruction or injuring of, and to protect, each of the trees that are to be retained;
  - (5) consent by the owner of the lot to entry upon the lot by the City for the purpose of reviewing the application; and
  - (6) payment of the fees required.
8. Where in the sole and unfettered discretion of the Director, additional information is necessary to evaluate the application, the Director may require the applicant to submit such additional information within a specified period of time.
9. Where the applicant has failed to submit the documentation required by the Director, or has failed to complete the application to the satisfaction of the Director within twelve months of the date that the application is received by the Director, the Director may deem the application to be abandoned.
10. When deciding whether to issue a permit, the Director may consider one or more of the following criteria:
  - (1) the condition and species of the tree to be injured or destroyed;
  - (2) the location of the tree to be injured or destroyed;
  - (3) the reason or reasons for the proposed destruction or injuring of the tree;



- (4) the preservation of retained trees on the lot;
  - (5) the protection and preservation of ecological systems and their functions, including, but not limited to, the protection and preservation of native flora and fauna when a significant number of tree removals are considered and are an integral part of a contiguous natural forested area;
  - (6) erosion, flood control and sedimentation of watercourses;
  - (7) interference with natural drainage processes;
  - (8) whether the tree to be injured or destroyed is a heritage tree; and
  - (9) consistency with the City of Cambridge Urban Forest Plan 2015-2034, and the Cambridge Urban Forest Canopy Assessment, as amended or replaced from time to time.
11. The Director may issue a permit subject to conditions, including, but not limited to, any one or more of the following:
  - (1) that the injuring or destruction of a tree occur in a specified manner;
  - (2) that the retention of a tree occur in compliance with a plan for tree preservation and replanting approved by the Director, including any hoarding to be provided around the trees to be retained;
  - (3) that a monetary contribution to the City's Replacement Tree Planting Reserve Fund be made in compensation for each tree to be injured or destroyed, which shall be calculated in accordance with Schedule "A" attached hereto, or that a new tree be planted to replace each injured or destroyed tree and maintained to the satisfaction of the Director in accordance with landscaping, replanting and replacement plans approved by the Director;
  - (4) that the destruction or injuring of a tree be carried out by or under the supervision of a qualified tree professional;
  - (5) that specified measures be implemented to mitigate the direct and indirect effects of the destruction or injuring on other nearby trees, land, water bodies or natural areas; and
  - (6) any other condition that the Director considers, in their sole and unfettered discretion, to be reasonably consistent with good arboricultural practice.
12. Where the Director has imposed the planting of a replacement tree as a condition to the issuance of a permit, the Director may require that:
  - (1) a replanting plan be submitted to the Director that is satisfactory to the Director, in their sole and unfettered discretion; and

- (2) a written undertaking by the owner be provided to carry out the replacement planting in accordance with the approved replanting plan.

### **The Permit**

13. Following receipt of a complete application, the Director may issue a permit for destroying or injuring trees, where the Director is satisfied that the applicant has complied with, or will comply with, the requirements of this by-law.
14. Any permit issued by the Director pursuant to this by-law expires twelve months from the date on which it was issued by the Director.
15. The owner of the land to which the permit applies shall ensure that the permit is posted in a conspicuous location on the property at least five (5) days prior to the injuring or destruction of the tree, and shall ensure that the permit remains posted until the injuring or destruction is complete.
16. A permit is, and remains at all times, the property of the City and may not be transferred without the prior written consent of the Director.
17. Where the Director refuses to issue a permit, the applicant shall be informed in writing of the refusal. The decision of the Director is final.
18. The Director may revoke a permit where, in the opinion of the Director:
  - (1) the permit was issued on mistaken, misleading, false or incorrect information;
  - (2) the permit was issued in error;
  - (3) the owner requests, in writing, that the permit be revoked;
  - (4) the owner fails to comply with the conditions of the permit; or
  - (5) the owner fails to comply with the provisions of this by-law.
19. Where the Director has revoked a permit:
  - (1) neither the owner nor the applicant shall be entitled to a refund of any fees paid to the City in relation to the permit; and
  - (2) the owner shall immediately cease all operations being conducted under the authority of the revoked permit.
20. The issuance of a permit under this by-law does not relieve any person from the necessity to obtain any other licence or permit or with complying with any other applicable law, or to obtain

any consent from the owner of adjoining lands as a result of the application of civil or common law principles.

### **Replacement Trees and Fund Contributions**

21. Where a payment to the Replacement Tree Planting Fund or the replacement of trees is required as a condition of the issuance of a permit, the amount of the payment or amount of replacement trees to be planted shall be calculated in function of the number of trees to be removed, in accordance with Schedule "A" of this by-law.

### **Inspections**

22. An officer may enter upon any land at any reasonable time for the purposes of carrying out an inspection to determine whether or not the following are being complied with:
- (1) this by-law;
  - (2) an Order made under this by-law;
  - (3) a term or condition of a permit issued in accordance with this by-law; or,
  - (4) an order made under section 431 of the Municipal Act.

### **Order to Discontinue Activity**

23. Where the Director or an officer is satisfied that a contravention of this by-law has occurred, the Director or officer may make an Order 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 cease the contravening activity.
24. An Order under section 23 shall set out:
- (1) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
  - (2) the date by which there shall be compliance with the order.

### **Work Order**

25. Where the Director or an officer is satisfied that a contravention of this by-law has occurred, the Director or officer may make an Order requiring the person who contravened this by-law, or who caused or permitted the contravention, to do work to correct the contravention.
26. An Order under section 25 shall set out:
- (1) reasonable particulars of the contravention adequate to identify the contravention and the location of the Property on which the contravention occurred or is occurring; and
  - (2) the work to be done and the date by which the work must be done.

**Service of Order**

27. An Order under this by-law may be served:
- (1) personally, in which case it shall be deemed to have been served on the date of that personal service,
  - (2) by sending it by mail to the last known address of the person being served, in which case it shall be deemed to have been served on the fifth day after the date it was mailed, or
  - (3) by posting it on the owner's property.

**Remedial Action**

28. If a person is required under an Order made pursuant to this by-law to do a matter or thing, then in default of it being done by the person so required to do it, the matter or thing may be done at the person's expense under the direction of an officer.
29. The City may recover the costs of doing a matter or thing under section 28 from the person required to do it by adding the costs to the tax roll for the subject land and collecting the cost in the same manner as property taxes.
30. The amount of the costs shall constitute a lien on the subject land upon the registration, in the proper land registry office, of a notice of lien.
31. The lien shall be in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date payment is made.

**Enforcement**

32. Every person who contravenes any of the provisions of this by-law or who fails to comply with an Order issued pursuant to this by-law is guilty of an offence and, pursuant to section 429 of the Municipal Act, all contraventions of this by-law are designated as continuing offences.
33. Without limiting the generality of section 32, when multiple trees are destroyed or injured, the destruction or injury of each tree is a separate offence.
34. Every person, excluding a corporation, who is convicted of an offence, is liable to a fine not exceeding Twenty-Five Thousand Dollars (\$25,000.00) for the first offence and a fine not exceeding Fifty Thousand Dollars (\$50,000.00) for a subsequent offence.
35. Every corporation that is convicted of an offence is liable to a fine not exceeding Fifty Thousand Dollars (\$50,000.00) for the first offence and a fine not exceeding One Hundred Thousand Dollars (\$100,000.00) for a subsequent offence.

36. In addition to the fine amounts set out in sections 34 and 35 of this by-law, for each day or part of a day that an offence continues, the maximum fine shall be Ten Thousand Dollars (\$10,000.00). The total of all daily fines for the offence is not limited to One Hundred Thousand Dollars (\$100,000.00).
37. If a person is convicted of an offence under this by-law, the potential for economic advantage acquired by or that accrued to the person as a result of the commission of the offence may be considered an aggravating factor for sentencing purposes which may attract a special fine and the maximum amount of the special fine may exceed One Hundred Thousand Dollars (\$100,000.00) or such other maximum amount permitted by the Municipal Act.
38. Upon conviction for an offence under this by-law, in addition to any other remedy and to any penalty imposed by this by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:
- (1) prohibiting the continuation or repetition of the offence by the person convicted; and
  - (2) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate, which correction may include:
    - (i) the planting or replanting of any tree or trees destroyed or injured;
    - (ii) the planting of any replacement tree or trees in a specified location and within a specified period of time;
    - (iii) the application of any silvicultural treatment that may be necessary to establish or re-establish the tree or trees or replacement tree or trees; or
    - (iv) in lieu of planting or replanting, payment to the Replacement Tree Planting Fund in accordance with this by-law.

### **Severability**

39. If a court of competent jurisdiction declares any provision or provisions or part or parts of any provision or provisions of this by-law to be invalid, illegal, unenforceable or of no force and effect, it is the intention of Council in enacting this by-law that the remainder of the by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

### **Schedules**

40. The Schedules attached to this by-law form part of this by-law.

### **Short Title**

41. The short title of this by-law is the "Private Tree Preservation By-law".

**Repeal**

42. By-law 124-18 is hereby repealed as of the date that this by-law comes into force.

**Coming into Force**

43. This by-law shall come into full force on January 1, 2024.

**ENACTED AND PASSED** this 28<sup>th</sup> day of November 2023

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MAYOR

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CLERK

**SCHEDULE “A”****Tree Replacement and Cash-in-Lieu Requirements**

<b>DBH of Tree Removed</b>	<b>Number of Replacement Trees* Required</b>	<b>Cash-in-Lieu Required</b>
<20cm	<b>0</b>	<b>\$0</b>
20 – 30cm	<b>1</b>	Fee prescribed by the City's Fees and Charges By-law for <b>1 tree</b>
31 – 40cm	<b>2</b>	Fee prescribed by the City's Fees and Charges By-law for <b>2 trees</b>
41 – 70cm	<b>3</b>	Fee prescribed by the City's Fees and Charges By-law for <b>3 trees</b>
>70cm	<b>4</b>	Fee prescribed by the City's Fees and Charges By-law for <b>4 trees</b>

\*Replacement trees must be of a 7-gallon or greater pot size and 20 millimetres or greater in diameter.