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| Council Policy No.:                                      | CP2022-007                 |
| Council Policy Name:                                     | First Nations Consultation |
| Date Approved by Council:                                | June 15, 2021              |
| Date revision approved by Council:                       | June 21, 2022              |
| Related SOP, Management Directive, Council Policy, Forms | Consolidated Notice By-law |

### Policy Statement and Rationale:

Consultation between the federal government and provincial government and First Nations is enshrined at section 35 of the Constitution. The City of Kawartha Lakes is a corporate creature of provincial statute, specifically the Municipal Act, 2001. Through various provincial statutes, such as the Planning Act and its related provincial plans and policy, and the Environmental Assessment Act, the provincial government has indicated how municipal consultation is to occur with First Nations, and when.

Case law, being decisions of the courts on consultation, has directed that:

1. It is to occur during the planning stage, not following the planning stage, of a process. Consultation occurs earlier in the planning process than does public consultation, and in line with consultation of affected provincial and federal government entities (MNRF, Conservation Authorities, etc.); and
2. Is to be meaningful engagement, with a willingness to change plans based on feedback.

Each First Nation is a separate, sovereign, one-tier government (unlike the Canadian government, which is broken into federal and provincial governmental entities, and municipal governments, being created by provincial statute). The First Nations signatories to Treaty 20 and the “Williams Treaties” each contracted with the British Government to enable the British (and later, the Canadian) government to obtain ownership of the ceded land in exchange for reserve land and – in the case of the numbered treaties, allowed the First Nations to share the land on the same basis that

each of the First Nations shared the land with each other. This was ownership in common.

Treaty 20 and the “Williams Treaties” apply to all of the land in the City of Kawartha Lakes.

The Williams Treaty First Nations commenced litigation against the Canadian federal government and the parties settled the litigation in 2018. The federal government paid the Williams Treaty First Nations financial compensation, as well as recognized the First Nations rights to hunt, fish and harvest from provincial and federal lands and waters within this area.

### **Scope:**

This policy applies to consultation in the course of:

1. City-initiated capital projects that fall under the environmental assessment requirements of the Environmental Assessment Act and require public consultation;
  - a. Construction of a new road within 300 m of a water body or another area with potential to have archaeological resources, or has a known archaeological site as identified by the City’s Heritage Officer;
2. Rezoning and/or redesignating land, or subdividing land per the process set out in the Planning Act, Growth Plan for the Greater Golden Horseshoe and Provincial Policy Statement, both in the context of a site-specific privately-initiated rezoning/ redesignation and/or subdivision of land and in the context of a City-initiated rezoning and/or redesignation (both site-specific and comprehensive/ City-wide);
3. Construction of a petition drain pursuant to the Drainage Act.
4. Site alteration, or movement of fill, necessitating a fill permit within 300 m of a water body or another area with potential to have archaeological resources, or has a known archaeological site as identified by the City’s Heritage Officer, where an Indigenous artefact or the historical remains of an Indigenous person are discovered.
5. City-initiated capital projects being in-water or shoreline works along the Trent-Severn Waterway, necessitating a permit from Parks Canada.
6. Discovery of a potential Aboriginal burial ground or burial site (as defined within the Funeral, Burial and Cremation Services Act) or other archaeological sites containing First Nations artefacts;

7. Program-specific service plans developed by the City that include Provincial expectations of Metis or First Nation consultations;
8. Creation of City Policy relating to natural and cultural heritage resources;
9. Repatriation of First Nations artefacts and remains; and
10. Sharing of archival information pertaining to Indigenous persons.

## Definitions:

**“City”** means the Corporation of the City of Kawartha Lakes.

**“Drainage Act”** means the Drainage Act, R.S.O. 1990, c. D.17, as further amended or replaced from time to time.

**“Environmental Assessment Act”** means the Environmental Assessment Act, R.S.O. c. E.18, as further amended or replaced from time to time.

**“Funeral, Burial and Cremation Services Act”** means the Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33, as amended or any successor thereof;

**“Ontario Heritage Act”** or **“the Act”** means the Ontario Heritage Act, R.S.O. 1990, c.o.18, as amended or any successor thereof.

**“Planning Act”** means the Planning Act, R.S.O. 1990, Chap. 13, as amended or any successor thereof; **“Growth Plan for the Greater Golden Horseshoe”** or **“Growth Plan”** means that version of the Provincial planning document by that name, amended to 2020, as further amended or replaced from time to time.

**“Potentially-Impacted First Nations”** or **“First Nations”** means the Treaty First Nations within the Williams Treaty area, being the following First Nations:

- Alderville First Nation
- Beausoleil First Nation
- Curve Lake First Nation
- Georgina First Nation
- Hiawatha First Nation
- Rama First Nation
- Mississaugas of Scugog Island First Nation

It may also include First Nations outside of the Williams Treaty area who have an interest in certain matters, such as archaeology.

**“Provincial Policy Statement”** or **“PPS”** means that version of the Provincial planning document by that name, amended to 2020, as further amended or replaced from time to time.

**“Treaty”** means contract.

**“Unbroken Shoreline Road Allowance”** refers to shoreline road allowances that have not had portions of the shoreline road allowance sold into private ownership.

**“Water Bodies”** or “water body” means “navigable water” as defined under the Canadian Navigable Waters Act, R.S.C., 1985, c. N-22 , specifically: a body of water, including a canal or any other body of water created or altered as a result of the construction of any work, that is used or where there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes, or as a means of transport or travel for Indigenous peoples of Canada exercising rights recognized and affirmed by section 35 of the Constitution Act, 1982, and

- (a) there is public access, by land or by water;
- (b) there is no such public access but there are two or more riparian owners; or
- (c) Her Majesty in right of Canada or a province is the only riparian owner.

**“Williams Treaties”** means Treaty 20 and the Williams 1923 Treaties, signed between the Treaty First Nations within the Williams Treaty area and the British Government prior to Confederation.

## **Policy:**

### **Capital Projects per the Environmental Assessment Process**

City-initiated capital projects that fall within the purview of the Environmental Assessment Act require consultation at the project outset. This may include, for an example, the case where a private individual is issued a license to construct a road on a City road allowance. This example is by no means exhaustive, but illustrates an unexpected application of the Environmental Assessment Act.

### **Invitation to Consult**

The City of Kawartha Lakes will consult with Potentially-Impacted First Nations, in accordance with its obligations set out at section 5.1 of the Environmental Assessment Act, by sending each First Nation a Notice of Commencement of the Environmental Assessment process, at commencement of projects where consultation is required per the Environmental Assessment Act, as may be amended from time to time. The Notice

will invite the recipient to provide written or verbal comments, questions or concerns to identified members of the project team and will invite the recipient to an Open House. The Notice will ask the recipient to identify any barriers to effective consultation. If identified, the City will attempt to address those barriers: for example, an Open House may be held on video conferencing in addition to live attendance to accommodate the attendance of First Nations who would otherwise have to travel a distance to attend.

### **Meaningful Consultation**

When feedback is received, the City will make a meaningful and significant attempt at accommodating the concerns of the First Nations. It is expected that the City will meet with the First Nation to discuss how to resolve any issues. If an initial meeting does not resolve the conflict, then a series of meetings and correspondence constituting meaningful dialogue will occur.

### **Report to Council**

In the final report for Council's consideration, it will be explained how the feedback shaped the ultimate recommendations, and whether or not the First Nation(s) is/are satisfied with the recommendation. If the First Nation(s) is/are unsatisfied, the report will explain why the First Nation(s)' interests could not be addressed to their satisfaction.

### **Construction in Proximity to Water Bodies or in areas with Archaeological Potential**

If development is proposed (in the context of development under the Planning Act, the construction of an agricultural drain under the Drainage Act, or the movement of fill per the City's Fill By-law) in an area which may contain archaeological resources or have archaeological potential (i.e. within 300 metres of a water body or another area with potential to have archaeological resources, or has a known archaeological site as identified by the City's Heritage Officer), the City/ developer, as the case may be, is required to conduct an Archaeological Assessment. The assessment must be completed by a qualified Archaeologist in accordance with the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) standards. For more information, see 'Criteria for Evaluating Archaeological Potential' –Form 0478E, located on the MHTSCI website.

The Archaeologist, if he/she determines that a find has uncovered an Aboriginal burial or an Indigenous artefact shall contact all Potentially-Impacted First Nations to provide an opportunity for input, as they have identified they require consultation prior to submission of any archaeological report to the MHSTCI, and they also wish to be engaged at Stage 1-2 for participation in on-the-ground fieldwork and to offer any Indigenous Knowledge that may be pertinent for the Stage 1 report. Reference should be made to the Curve Lake First Nation Archaeological Protocol.

## **Development of Land per the Planning Act**

The City of Kawartha Lakes will circulate the Curve Lake First Nation on every preconsultation application and all Potentially-Impacted First Nations on every planning application, excluding minor variances to the zoning by-law and applications for the severance of land.

## **Meaningful Consultation**

When feedback is received, the City will make a meaningful and significant attempt at accommodating the concerns of the First Nations. It is expected that the City will meet with the First Nation to discuss how to resolve any issues. If an initial meeting does not resolve the conflict, then a series of meetings and correspondence constituting meaningful dialogue will occur.

## **Report to Planning Advisory Committee**

In the final report for Planning Advisory Committee's consideration, it will be explained how the feedback shaped the ultimate recommendations, and whether or not the First Nation(s) is/are satisfied with the recommendation. If the First Nation(s) is/are unsatisfied, the report will explain why the First Nation(s)' interests could not be addressed to their satisfaction.

## **Construction of an Agricultural Petition Drain pursuant to the Drainage Act**

The Drainage Act requires the City's, via its Drainage Engineer, to consult with the Potentially-Impacted First Nations when embarking upon the petition drain process, and the City undertakes to do so consistent with the obligations as more fully set out in that Act.

## **Meaningful Consultation**

When feedback is received, the City will make a meaningful and significant attempt at accommodating the concerns of the First Nations. It is expected that the City will meet with the First Nation to discuss how to resolve any issues. If an initial meeting does not resolve the conflict, then a series of meetings and correspondence constituting meaningful dialogue will occur.

## **Report to Council**

In the report for Council's consideration, it will be explained how the feedback shaped the ultimate recommendations, and whether or not the First Nation(s) is/are satisfied

with the recommendation. If the First Nation(s) is/are unsatisfied, the report will explain why the First Nation(s)' interests could not be addressed to their satisfaction.

### **Movement of Fill (Site Alteration) in Proximity to Water Bodies or in areas with Archaeological Potential (Indigenous Interest Identified)**

If site alteration is proposed in an area which may contain archaeological resources or have archaeological potential (i.e. within 300 metres of a water body or another area with potential to have archaeological resources, or has a known archaeological site as identified by the City's Heritage Officer), the City/ developer, as the case may be, is required to conduct an Archaeological Assessment. This requirement, in the case of terrestrial works, is per the City's Fill By-law 2019-105. In the case of in-water works and shorelines adjacent to the Trent-Severn Waterway, this may be a requirement of obtaining a permit from Parks Canada.

The assessment must be completed by a qualified Archaeologist in accordance with the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) standards. For more information, see 'Criteria for Evaluating Archaeological Potential' –Form 0478E, located on the MHTSCI website.

If the Archaeologist finds an artefact or remains of Indigenous origins, the Archaeologist shall contact all Potentially-Impacted First Nations to provide an opportunity for input, as they have identified they require consultation prior to submission of any archaeological report to the MHSTCI, and they also wish to be engaged at Stage 1-2 for participation in on-the-ground fieldwork and to offer any Indigenous Knowledge that may be pertinent for the Stage 1 report. Reference should be made to the Curve Lake First Nation Archaeological Protocol.

### **Meaningful Consultation**

When feedback is received, the City will make a meaningful and significant attempt at accommodating the concerns of the First Nations. It is expected that the City will meet with the First Nation to discuss how to resolve any issues. If an initial meeting does not resolve the conflict, then a series of meetings and correspondence constituting meaningful dialogue will occur.

### **Budget**

City/ developer to budget for archaeological work as part of the project.

## **Creation and Amendment of Policy and Plans with the Potential to Impact First Nations**

The City will consult with First Nations when developing corporate policies, studies and plans which have the potential to impact First Nations and First Nations interests. This include the development of policies and plans which address the following issues:

- Land use planning
- Natural resource management
- Protection and management of watersheds, shorelines, and ecosystems
- Cultural heritage resource management, including archaeology

Program-specific service plans developed by the City that include Provincial expectations of Metis or First Nation consultations will follow this policy in those consultations.

## **Invitation to Consult**

The City of Kawartha Lakes will consult with Potentially-Impacted First Nations by sending each First Nation a notice outlining the purpose and scope of the policy, study, or plan that is being contemplated. The Notice will invite the recipient to provide written or verbal comments, questions or concerns to identified members of the project team and will invite the recipient to a meeting. The notice will alert the First Nations regarding any public meetings related to the proposed policy, study, or plan. The Notice will also ask the recipient to identify any barriers to effective consultation. If identified, the City will attempt to address those barriers: for example, meetings may be held on video conferencing in addition to live attendance to accommodate the attendance of First Nations who would otherwise have to travel a distance to attend.

## **Meaningful Consultation**

When feedback is received, the City will make a meaningful and significant attempt at accommodating the concerns of the First Nations. It is expected that the City will meet with the First Nation to discuss how to resolve any issues. If an initial meeting does not resolve the conflict, then a series of meetings and correspondence constituting meaningful dialogue will occur.

If requested by the First Nations, the City will provide a draft copy of the policy, study, or plan to the First Nation for review and commenting prior to the presentation of the final document to Council.

### **Report to Council**

In the final report for Council's consideration, it will be explained how the feedback shaped the ultimate recommendations, and whether or not the First Nation(s) is/are satisfied with the recommendation. If the First Nation(s) is/are unsatisfied, the report will explain why the First Nation(s)' interests could not be addressed to their satisfaction.

### **Discovery of Aboriginal Remains or Artefacts**

The City will consult with First Nations when remains or artefacts are discovered as part of City projects, either as part of an archaeological assessment or unexpectedly. The First Nations will identify their interest and level of participation in the archaeological process and the required level of consultation depending on the find. When remains or artefacts are uncovered which are related to non-indigenous settlement, the City may notify First Nations for information. Any archaeological work will follow provincial legislation and guidelines related archaeological investigations and relevant City policies. The City will also adhere to the Curve Lake First Nation Archaeological Protocol and other documents from First Nations related to archaeological work.

### **Discovery of Burials**

Burials discovered as part of an archaeological assessment or as unexpectedly as part of a City project will follow the requirements under the Funeral, Burial and Cremation Services Act and the Ontario Heritage Act. The City and its consultant archaeologist will consult with First Nations as part of the archaeological assessment to determine the cultural affiliation of the burial and the ultimate disposition of the site. When a burial is found unexpectedly, a work stoppage will occur in order to alert the coroner to determine forensic interest and undertake an archaeological assessment as per the MHTSCI guidelines and to consult with First Nations.

If the burial is determined to be an Aboriginal burial ground (as is defined through the Funeral, Burial and Cremation Services Act) through the archaeological investigation, the City will consult with the First Nation(s) to determine interest in the site, temporary housing of the remains, and reinternment. The City will enter into a site disposition agreement with the relevant First Nation(s).

## Discovery of Artefacts

When First Nations artefacts are uncovered as part of an archaeological assessment or unexpectedly as part of a City project, the City will follow the requirements outlined in the Ontario Heritage Act. The City will contact relevant First Nation(s) to alert them of the find. If the site has the potential to contain First Nations artefacts, the City, through its consulting archaeologist, will contact First Nations to invite them to participate in the archaeological assessment. When an artefact is found unexpectedly, a work stoppage will occur in order to undertake an archaeological assessment as per the MHTSCI guidelines and to consult with First Nations.

The City will work with the relevant First Nation(s) to determine the preferred care, treatment, and final location of any artefacts.

## Spirit and Intent of the Policy

It is recognized that this policy may not be comprehensive. Where a particular situation is not covered by this policy, the City will adhere to the spirit and intent of this policy.

## Revision History:

Proposed Date of Review:

| Revision | Date          | Description of Changes                                                                 | Requested By |
|----------|---------------|----------------------------------------------------------------------------------------|--------------|
| 0.1      | June 15, 2021 | Initial Release                                                                        |              |
| 0.2      | June 21, 2022 | Inclusive of consultation. Additional discussion with Curve Lake First Nation required |              |