

Appendix A presents a draft of these policies.

## 6.0 ENGAGING ABORIGINAL COMMUNITIES WITH RESPECT TO ARCHAEOLOGICAL RESOURCES

A series of recent events related to First Nations concerns with the prevailing development process in southern Ontario, have important implications for the City of Vaughan. Most notable among these are the ongoing controversies over a proposed residential development within the Town of Caledonia and the status of Six Nations claims regarding past treaty processes and land disposition within the Haldimand Tract, as well as the Ipperwash Inquiry. In York and Durham regions, there have also been a number of Environmental Assessment Act related projects that have highlighted the need to engage Aboriginal communities and have resulted in protocols for First Nations consultation.

The sources of the tensions that have arisen with regards to potential development impacts on First Nations rights are longstanding and complex and continue to be debated in the Federal and Provincial courts. In 2004, for instance, the Supreme Court of Canada released its decisions in the *Haida Nation v. B.C. and Weyerhaeuser* and *Taku River Tlingit First Nation v. B.C.* cases. These rulings have set out more clearly than ever the scope and extent of the Crown's duty to consult and, where appropriate, accommodate First Nations prior to development of Crown Lands. These rulings, which are applicable across Canada, noted that third parties, which include local governments, do not owe a duty to consult or accommodate First Nations peoples, as these duties rest solely with the Crown (Federal and Provincial governments). There has not yet been any decision as to whether local governments, as regulators exercising delegated Provincial powers, may also assume any portion of the Province's duty to consult. This must await future decisions; however, with the current trend towards "downloading" responsibilities from upper levels of government, municipalities will have a duty to enquire whether there has been adequate consultation.

Likewise, there is, as yet, no decision concerning municipally-owned or privately-owned lands. Nevertheless, it is clear that local governments should exercise caution in making any decision that could affect a First Nation and should take steps to consult with and fully inform itself of the practices and views of that First Nation. Indeed, in his recent letter of March 2009, the Deputy Premier George Smitherman strongly encouraged municipalities in their Growth Plan conformity work, to engage with Aboriginal communities to ensure they have an opportunity to participate in the process.

In the meantime, three relatively recent initiatives have helped to resolve the past problems of inadequate consideration of First Nations concerns with respect to land use planning and may be of direct relevance to future development planning in Vaughan.

The first of these was the consultation process developed for the Oak Ridges Moraine/Seaton Class EA. The consultation process was designed to involve the participation of all formal First Nation groups that are—or may potentially be—concerned with that Class EA process. A major positive outcome of the Seaton initiative, despite perceptions that some First Nations had not been consulted adequately, was that it provided an opportunity for the Wendat, Haudenasaunee and the Anishnaubeg Nations to come together and formalize their united interests in their archaeological and cultural heritage.

It is often assumed that the First Nation that is geographically closest to a given project is the most suitable group with whom to consult, particularly when the issues at stake are those of archaeological resources and human remains. However, the complex histories of the First Nations of southern Ontario, both before and after European contact and settlement, means that such assumptions can be simplistic and detrimental to the success of the entire consultation process. Often the archaeological sites that are to be

the focus of the consultation are of such antiquity that no conclusive identification of cultural affiliation to modern communities is possible.

Under circumstances of this sort there should be an effort to identify all groups that are appropriate (on cultural-historical grounds) to act as the designated descendants of those who occupied the project area in the past, and who are willing to participate and ensure that cultural heritage remains are treated in an appropriate and seemly manner. This identification process is best achieved through negotiation with a variety of communities in order that they may themselves arrive at the final decision.

In this way, ancient sites are represented by all of the First Nations together. In considering the archaeological resources of the Seaton lands, however, many sites were associated with the Huron-Wendat nation. Indeed, it was established that all confirmed Late Woodland village sites, which were occupied primarily by ancestral Huron, would be protected. This same cooperative approach has been used very effectively most recently in developing a protocol for Aboriginal consultation for the Southeast Collector Trunk Sewer Individual Environmental Assessment by York and Durham regions (project on-going).

Secondly, the final draft of the *Standards and Guidelines for Consultant Archaeologists* developed by the Ministry of Tourism and Culture was released in June 2009. This document includes a draft technical bulletin that requires Aboriginal consultation between Stages 3 and 4 archaeological investigations on Aboriginal sites and recommended consultation before Stage 2 and 3. The new Standards and Guidelines recognize that the Crown has a formal duty to consult with First Nations, where its actions may adversely affect an established or asserted treaty right. They also note that this consultation is separate from any consultation that archaeologists may need to undertake on behalf of their clients in the land development sector (whether municipal or private) with respect to cultural heritage resources.

The draft Standards state that “engagement” (meaning consultation) *must* take place:

- anytime field work uncovers human remains;
- whenever a consulting archaeologist intends to propose fieldwork following an alternate strategy for an archaeological assessment that departs from those laid out in the Standards and Guidelines (this must occur prior to reviewing the proposed strategy with the Ministry itself);
- when assessing the cultural value or interest of an archaeological site that is known or appears to have sacred or spiritual import, or is associated with traditional land uses, geographic features of cultural heritage interest, or Aboriginal oral histories;
- when deciding whether to protect Aboriginal archaeological sites of cultural heritage value or interest (e.g., sites with sacred or spiritual manifestations reflected in the archaeological record, Late Woodland villages, large lithic scatters or quarries, nineteenth century Aboriginal domestic sites, undisturbed sites, any site identified as being of interest on the part of an Aboriginal community).

**While these guidelines have not yet been finalized, such consultation is now expected by many First Nations and it will be important that the City of Vaughan ensure that such consultation has occurred in their jurisdiction. Access to archaeological information was one of the catalysts responsible for escalating the Caledonia dispute.**

Finally, in the fall of 2006, the Ministry of Municipal Affairs and Housing initiated a project to begin training its staff on Aboriginal heritage issues and to develop an approach to engage First Nations/Aboriginal groups on future land use planning initiatives. Further outreach to the Ministry’s



municipal clients and the development industry on the intersection of Aboriginal affairs and land use planning are also foreseen.

## **7.0 IMPLEMENTATION**

### **7.1 Introduction**

As discussed above, the role of municipalities in the conservation of heritage features is crucial. Planning and land use control are predominantly municipal government responsibilities and the impact of municipal land use decisions on archaeological resources is significant, especially since municipally-approved developments constitute the majority of land disturbing activities in the Province (Hansen 1984). Without adequate screening at a municipal level, the provincial government is unable to ensure protection for valued archaeological resources. Viewed from this perspective, archaeological protection cannot be implemented without municipal involvement.

The primary means by which cultural heritage resources are best protected is through the planning process. This requires the development of appropriate policies for the City of Vaughan and incorporation into the review process. The municipality also plays a crucial role in ensuring that the archaeological site protection measures of the *Ontario Heritage Act* are recognized and valued. The mapping prepared for this study is designed to be used by City of Vaughan staff to make decisions regarding requirements for archaeological resource assessments and/or monitoring in advance of development and/or site alteration.

Education is an important part of this process. While the public is generally supportive of environmental causes, we must also educate our community that the record of our cultural environment is slowly vanishing. As a science, archaeology often suffers from the attitudes and actions which result from public misconceptions about its motives, aims and methods. It is encouraging to note that when members of the public are made aware of archaeological sites, there exists a genuine interest not only in the pre-contact history and history of a City, but also in archaeology itself as an academic discipline. The City should support programs and endeavours related to involving the public in the investigation of the City's archaeological record.

### **7.2 Recommended Archaeological Resource Management Procedures**

The archaeological review procedure, as it relates to development, requires close co-operation between the Policy Planning and Urban Design Department, the Recreation and Culture Department, and other City of Vaughan Departments, the staff of the Programs and Services Branch (Culture Programs Unit) of Ministry of Tourism and Culture, as well as both the development and the archaeological/historical research communities. In the case of all land-use alterations, the determination of whether or not there is a need for archaeological assessment will form part of the pre-consultation process between the development proponent and the City prior to the submission of an application. This will be determined by evaluating whether the application (or any part of it) is situated within the zone of archaeological potential.

This archaeological procedure should also apply to municipal development and/or infrastructure projects that involve construction, erection or placing of a building or structure. In addition, other activities such as site grading, excavation, removal of topsoil, or peat and the placing and dumping of fill; drainage works, except for the maintenance of existing municipal and agricultural drains, should be subject to the same procedures.

