



FIRST NATIONS, INDIGENOUS & ABORIGINAL CONSULTATION

**Town of Midland Official Plan Review
INTERIM REPORT**



Town of Midland – Official Plan Review

FIRST NATIONS/ABORIGINAL CONSULTATION

BACKGROUND

The Province, in its 2014 Provincial Policy Statement (PPS), introduced new policies regarding Métis and First Nations and created obligations for municipalities to address Aboriginal and Treaty Rights as part of local planning processes. The 2014 PPS contains the following new sections:

- 1.2.2 *Planning authorities are encouraged to coordinate planning matters with Aboriginal communities*

- 4.3 *This Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982*

While the term “Aboriginal Communities” is not defined by the PPS and the term “Duty to Consult” is not included, the revisions in the 2014 PPS create obligations for municipalities similar if not identical to the “Duty to Consult” for both the Federal and Provincial governments.

Until the new PPS came into effect on April 30, 2014 there was very little in the way of legislation, policy or guidelines regarding municipalities’ Duty to Consult. Not much has changed. The *Planning Act* does not include a “Duty to Consult” as part of the list of Provincial interests in Section 2 of the *Act*. However, the *Act* does define First Nation and includes First Nation in the definition of a “public body”. The *Planning Act* also permits Council to enter into agreements with First Nations to vary or waive the prescribed notice requirements under the *Act* for any planning application.

The common law legal obligations on both the Federal and Provincial governments as direct representatives of the Crown have crystallized over the past 15 years through a series of Court Decisions including those of the Supreme Court. *Haida Nation v. British Columbia* (2004), *Taku River Tlingit First Nation v. British Columbia* (2004), *R v. Powley* (2003), *Mikisew Cree First Nation v. Canada* (2005), and *Daniels v. Canada* (2016) are among the Court Decisions that have provided clear direction regarding the



Crown's Duty to Consult and, where appropriate, accommodate Aboriginal and Treaty Rights.

Both the Federal and Provincial governments have prepared guidelines for the use of their own Departments, Ministries and agencies in fulfilling its Duty to Consult. The Federal Government prepared updated Guidelines in March of 2001 titled "Aboriginal Consultation and Accommodation" and the Province released a "Draft Guidelines for Ministries on Consultation with Aboriginal Peoples related to Aboriginal Rights and Treaty Rights" in June 2006. Both guidelines are available online, although the Provincial guidelines remain draft. Neither guideline addresses specifically the unique requirements of local municipalities but provide background and context on the Duty to Consult, consultation guidelines and guiding principles, and directives for Federal and Provincial ministries and agencies.

The purpose of this Report is to review the approach the Town has taken as part of the Official Plan Review (**OPR**) Project to meet the requirements of the 2014 Provincial Policy Statement and to meet the Town's Duty to Consult. As reported in the Municipal Monitor¹, Dr. Yale Belanger of the Department of Political Science at the University of Lethbridge stated that "*Municipalities will likely find themselves increasingly engaged in these types of conversations over the coming years because, although there is a long history in Canada of federal and provincial negotiations with Indigenous communities for the most part, when it comes to municipal and Aboriginal engagement, we're really at the beginning stages of relationship development.*"

There is currently no active land claims impacting the Town of Midland (The Coldwater-Narrows Land Claim was settled in 2012) and there are no First Nation reserve lands within the Town of Midland or that directly abut the Town of Midland. There are no First Nation Reserves within 1 kilometer of the Town; the closest reserve is Beausoleil First Nation (Chimnissing) which is 25 kilometers from Midland. However, the Beausoleil First Nation has a direct interest and relationship with the Community of Midland and does own lands within the Town. The Georgian Bay Council of the Métis Nation of Ontario has a historic presence in the area and a local office in Midland.

The Georgian Bay Native Friendship Centre has also been in the Community for 30 years and it continues to function as the educational/cultural/spiritual/social centre for indigenous and aboriginal residents that live and work in Midland.

¹ Q4, 2006. Pg. 14.



In the 2006 Census, a total of 1415 residents in Midland self-identified as Aboriginal and 1100 residents self-identified as Métis.

TOWN'S PREVIOUS APPROACH TO ABORIGINAL CONSULTATION

The Town undertook a passive approach to consultation with Indigenous and Aboriginal Communities in 2008 as part of its **OPR** at that time. The Town wrote to 8 First Nations at the commencement of the 2008 OPR requesting their input into the process and asking how the First Nations/Métis Nation wished to participate in the **OPR**. The Town corresponded with the Beausoleil (Christian Island), Huron-Wendat (Montreal), Shawanaga (Nobel), Mnjikaning (Rama), Nawash (Warton), Georgina Island (Sutton West), Wahta (Bala), Nipissing (North Bay) First Nations and did not follow up with the First Nations if they did not contact the Town. The Town also did not follow-up after Discussion Papers were circulated for comment. This approach, which treated First Nations similar to any other commenting agency, was standard practice at the time.

2015 OPR FIRST NATION AND ABORIGINAL CONSULTATION

As a result of the higher obligation as set out in the 2014 PPS, the Town determined to be much more active in its consultation process with First Nations, Indigenous Communities and Organizations, and the Métis Nation of Ontario. The scope of work for the "Duty to Consult" has and will be the direct responsibility of Staff, with input and guidance of the **OPR** Steering Committee, Council and our Planning Consultant. The fundamental principle underlying the Town's approach to its Duty to Consult as part of the 2015 **OPR** is based on a "government to government" relationship that obligates the Town to follow up with the First Nations/Indigenous/Métis Communities, undertake direct contact, meetings and presentations with each nation that indicated a willingness to participate in the **OPR** in this fashion. Invitations to attend Town events as part of the **OPR** are not considered consultation in 2016.

RELATIONSHIP BUILDING TO DATE

Notice of the OPR commencement was sent to the Chippewa Tri-Council (the Chippewas of Rama, the Chippewas of Georgina Island and the Beausoleil First Nation) and the Huron-Wendat First Nation and to the Georgian Bay Council of the Métis Nation of Ontario. Direct meetings and presentations have been arranged and attended by Staff to provide background and context to the various stages and documents of the **OPR** to date, and to establish a consultation relationship in addition to seeking input and



comments. Multiple meetings at various stages of the OPR process have been held with the Beausoleil First Nation Council on Christian Island, with the Huron-Wendat First Nation (via email and telephone) and by direct presentation and consultation with the Georgian Bay Traditional Territory Consultation Committee of the MNO at their Midland offices.

Two presentations have also been made to the Board of the Georgian Bay Native Friendship Centre at their offices in Midland.

Meetings and Presentations – To Date

| With | Date | Location | Subject |
|--------------------------|--------------------|-----------------------------|--|
| GBTCC – MNO ¹ | November 26, 2015 | Midland MNO Offices | Duty to Consult and OPR Project and Work Plan & Schedule |
| GBTCC - MNO | February 16, 2016 | Midland MNO Offices | Vision Report |
| Beausoleil First Nation | April 5, 2016 | Christian Island | Duty to Consult and OPR Project and Work Plan & Schedule and Vision Report |
| GBNFC ² | June 13, 2016 | Friendship Centre - Midland | Duty to Consult and OPR Project and Work Plan & Schedule and Vision Report |
| Beausoleil First Nation | September 27, 2016 | Christian Island | Planning Issue & Direction-Recommendation Reports |
| GBNFC | November 23, 2016 | Friendship Centre - Midland | Planning Issue & Direction-Recommendation Reports |

1. Georgian Bay Traditional Territory Consultation Committee – Metis Nation of Ontario (GBTCC – MNO)
2. Georgian Bay Native Friendship Centre (GBNFC)

The Town, separate but related to the OPR Project, has established an Aboriginal Relations Ad-Hoc Committee of Council to establish a consultation relationship with each First Nation and Metis Nation and to more importantly broaden the government-to-government relationship with Aboriginal and Indigenous Communities.

COMMENTS TO DATE

Preliminary comments have been received from the Huron-Wendat First Nation, Beausoleil First Nation, Métis Nation of Ontario and from the Board of the Georgian Bay



Native Friendship Centre. These comments have been incorporated into the Vision Statement Report, the Planning Issue Reports or will be incorporated into the first Draft of the new Official Plan. The following is a brief summary of the comments received to date:

Huron-Wendat

- First Nation has a great interest in the OPR as Midland is part of their ancestral lands.
- Many archaeological sites of high importance and future development decisions should consider the importance of their cultural heritage and resources.
- Town should establish new policies for the protection of heritage resources
- Town should consider developing an Archaeological Master Plan

Beausoleil First Nation

- Treaty and Aboriginal Rights of the BFN should be recognized in the OP
- Beausoleil members have a long standing and close relationship with Midland; it is where they shop, bank, go to high school, etc.
- A closer relationship between the Town and the BFN should be developed, including such endeavors as having both Youth Committees work together

MNO

- Terms should correctly differentiate between First Nations and Métis Nation and the full range of Aboriginal and Indigenous communities.
- OPR should acknowledge on-going obligation to consult on planning matters and accommodate, where appropriate.

Native Friendship Centre

- Town should ensure that all of its planning including for festivals and events, recognize the Indigenous Peoples/Aboriginal Peoples' history and culture in the area and continued presence within the Community.
- The Friendship Centre has been in the Community for 30 years and it functions as the educational/cultural/spiritual/social center for the indigenous and aboriginal residents of Midland needs to be recognized and promoted.



COMMITMENT TO CONTINUED CONSULTATION

The Town, as part of its OPR project, has committed to meet its consultation obligations in a direct manner with each of the critical Indigenous/Aboriginal Communities and Organizations in preparing a new Official Plan.

While notices of Community Consultation events will be provided, the Town will continue to meet and consult directly with each of the Beausoleil First Nation, Huron-Wendat First Nation, Métis Nation of Ontario, and the Georgian Bay Native Friendship Centre as an integral part of the broader OPR Community Consultation and Engagement exercise.