



Date: April 23, 2019

To: Chair Sherry Senis & Members of the Committee of Adjustment

From: Jeannette Thompson, Secretary-Treasurer

Subject: Archaeological Assessments

Status: For Information

Recommendation

That the report of the Secretary-Treasurer regarding Archaeological Assessments be received for information.

Information

Circulation Request

Williams Treaty First Nations have requested to be circulated on applications under the Planning Act. As such, the Township is circulating all applications under the Planning Act to Williams Treaty First Nations and locally, to Curve Lake First Nation. Further, locally Curve Lake First Nation is being invited to any relevant pre-consultation meetings.

Legislated Responsibility

The Provincial Policy Statement (PPS) is issued under the authority of Section 3 of the Planning Act and provides province wide policy direction on matters of provincial interest related to land use planning and development. When decision-makers exercise any authority that affects a planning matter, the Planning Act requires that they "*shall be consistent with*" the PPS. Where a provincial plan is in effect, planning decisions must conform or not conflict with the provincial plan.

As it relates to the Township's legislated responsibility related to the completion of an archaeological assessment, the Provincial Policy Statement provides direction:

2.6. Cultural Heritage and Archaeology

2.6.2 Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.

2.6.3 Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development

and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

2.6.5 Planning authorities shall consider the interests of Aboriginal communities in conserving cultural heritages and archaeological resources.

Applications for Minor Variances are regulated by the Ontario Planning Act. As a Minor Variance application is an application under the Planning Act, the Committee of Adjustment is compelled to make planning decisions that conform with the PPS.

The County has, for many years required archaeological studies for Planning Act applications related to larger developments (plans of subdivision and condominium. Moving forward, to achieve compliance with the PPS and MTCS smaller developments and zoning By-law amendments must also consider the need for an archaeological study.

Please note that the PPS does not apply to applications for building permits. The CBO does not have to have regard for the PPS when considering applications for building permits.

Checklist for Evaluating Archaeological Potential

The Ministry of Tourism, Culture and Sport (MTCS) has created a checklist (attached) to assist non-specialists (e.g. Approval Authorities) in determining when an archaeological assessment is required. The **requirement to complete an assessment is triggered when:**

- There are known archaeological sites within 300 metres of the subject lands
- There is Aboriginal or local knowledge of archaeological sites on or within 300 metres of the subject lands.
- There is Aboriginal knowledge or historically documented evidence of past Aboriginal use on or within 300 metres of the subject lands.
- There is a known burial site or cemetery on the property or adjacent to the property.
- The property has been recognized for its cultural value.
- Areas of the property **have not** been subject to a recent, extensive and intensive disturbance.
- Within 300 metres of a present or past water source.
- There is evidence of two more of the following on the property; *elevated topography, pockets of well-drained sandy soil, distinctive land formations, resource extraction areas, early historic settlement, early historic transportation routes*

Township staff sought clarification from MTCS related to interpretation of components of the check list referred to above, ***specifically areas subject to extensive and recent disturbance.***

The MTCS criteria # 8 asks:

*Has the **entire** property (or project area) been subjected to recent extensive and intensive ground disturbance?*

*If **yes** to the preceding question, do not complete the checklist. Instead, please keep and maintain a summary of documentation that provides evidence of recent disturbance.*

An archaeological assessment is not required.

Note: Recent is defined as after-1960

That is, if the entire property has undergone extensive, significant ground disturbance recently (MTCS defines recently as since 1960) then no assessment is required.

When is an Assessment **Not** Required

Staff posed the question to MTCS, as to whether or not an assessment would be triggered if the proposal included an addition to an existing structure – as there may be evidence of recent disturbance. MTCS has indicated that “*recent extensive and intensive ground disturbance*” would be considered as the complete removal of the topsoil and extension into the subsoil. This would typically include basements or deeply excavated foundations. It can typically be expected that there will be substantial disturbance for at least several metres around more recent construction (typically from the use of modern machinery). In this case, we would be able to check **Yes** to MTSC criteria # 8, and an assessment **would not be required.**

When is an Assessment Required

MTCS has also indicated that for older construction (prior to 1960), it is likely that substantial impacts to the soil are confined to the footprint of the building. According to MTCS, this is often seen in older cottages or rural houses dating to the early 20th century or earlier. In this case, there may often be intact topsoil within one metre of the building footprint. Therefore in this case, we would check **No** to criteria # 8, and an assessment **would be required.** Further, it has been clarified that if new construction on a different part of the lot is being proposed, an assessment **would be required.**

If an assessment is required: MTCS has indicated that in the case of applications for minor variances, consents or site plan applications they are advising licensed consultant archaeologists that they carry out 'limited' assessments such that the **entire lot or property does not have to be assessed** as required by MTCS Standards and Guidelines. ***MTCS is recommending that the area required to be assessed is the area to be impacted plus a buffer of 10 metres i.e not the entire property.***

Recent Application

If we apply the above criteria to the applications which have recently been flagged as requiring archaeological assessments, the following result would have occurred.

A-02-19 – Gadd - 2538 Taylor Lane, Smith Ward

Minor Variance permits the construction and expansion of a new deck attached to a dwelling constructed in 1969. In this case, given the clarification provided above by MTCS, we could have checked **yes** to MTCS criteria # 8 and an assessment **would not** have been required. The applicant / agent opted to move forward with a construction method that did not create soil disturbance, therefore the condition has been deemed satisfied.

A-03-19 – Wilson - 267 Arnott Drive, Ennismore Ward

Minor Variance permits the re-development of a waterfront lot. In this case, given the clarification provided above by MTCS, we could have checked **no** MTCS criteria # 8 and an assessment **would have** been required. This assessment has recently been completed and the property has been cleared for construction. Curve Lake First Nation has expressed their gratitude for the completion of the assessment.

A-58-18 – Annan - 992 Nicholl's Boulevard – Smith Ward

Minor Variance permits the construction and expansion of a new deck attached to a dwelling constructed in 1969; and the replacement of a septic system with a holding tank. After seeking clarification from Peterborough Public Health, it was determined that the holding tank was being replaced where the current septic system is located. In this case, given the clarification provided above by MTCS, we could have checked **yes** to MTCS criteria # 8 and an assessment **would not** have been required. As noted, PPH provided clarification that there would be no excavation, therefore the condition has been deemed satisfied.

A-06-19 – Cotter - 1464 Kingfisher Drive – Ennismore Ward

Minor Variance permits the construction of a garage on the subject lands. As this is new construction elsewhere on the property, and given the clarification provided above by MTCS, we could have checked **no** to MTCS criteria # 8 and an assessment **would**

have been required. This has been placed as a condition of the minor variance decision.

Steps Moving Forward

Similar to past changes that have impacted minor variance applications (e.g. Natural Heritage System conditions), Staff felt that it was important to provide guidelines / resources to assist applicants to address conditions. As such, Township Staff and Curve Lake First Nation Staff have discussed potential ways to manage applications which may require archaeological assessments.

Therefore, we are presently working with the First Nations (at the County and Township levels) to:

- 1) Determine in what instances the First Nations should be pre-consulted: Typical situations include:
 - Within 300 metres of a waterbody / waterway
 - Within 120 metres of any wetland
 - Within proximity of known archeological sites
- 2) If an application falls within the above-noted areas, Township staff will relay this information to the property owner; and recommend that they seek advice from Curve Lake First Nation Staff. Curve Lake Staff are agreeable to be included on the contacts portion of the application checklist and are willing to meet with individual property owners / developers to discuss potential concerns.
- 3) Township Staff are coordinating with Curve Lake staff to develop typical conditions that would be used under different scenarios.
- 4) Township Staff are exploring alternate methods of construction which would not include excavation (i.e. utilizing helical piles for decks).
- 5) Township Staff are revising application Guidelines to reflect the requirements for an assessment using the MTCS Checklist and clarification as noted above.

Attachment

- MTCS Checklist

Jeannette Thompson

Jeannette Thompson, BSc, MCIP, RPP
Secretary-Treasurer, Committee of Adjustment