

**To:** Chair and Members Economic Development and Planning Committee (PED07132(a))

**From:** Tim McCabe
General Manager Planning and Economic Development Department

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**Date:** November 13, 2007

**Re:** Rural Official Plan Update (PED07132(a)) (City Wide)

**Council Direction:**
At its meeting of November 6, 2007, the Economic Development and Planning Committee requested an update on the Rural Official Plan.

**Information:**

**Planning Act Process to Date:**

The Rural Hamilton Official Plan (Rural OP) was adopted by Council on September 27, 2006. The Plan was then forwarded to the Province for approval. On May 8, 2007, the Economic Development and Planning Committee dealt with proposed Provincial modifications to the Rural OP (Report PED07132). Council's position was then forwarded to the Ministry.

From May until August, 2007, Provincial staff was reviewing their position on the Official Plan and performing due diligence to determine if there was a need to engage with First Nations on the Rural OP. In August 2007, City staff was made aware that the Province had deemed it necessary to communicate with First Nations on the Rural OP.

In addition, a new Haldimand Official Plan, a new Norfolk Official Plan and the Five-Year Review / Official Plan update from the City of Brantford are also before the Province for approval. They have deemed it necessary to communicate with First Nations on all of these Official Plan documents.
On September 13, 2007, letters were sent from the Province to Six Nations Elected Council, the Haudenosaunee (the Six Nations Traditional Council) and the Mississaugas of the New Credit Elected Council. These letters were intended to make these groups aware of all of the planning documents before the Province for approval. Copies of the Plans were also provided. All three (3) First Nations have indicated that they would like to meet with the Province.

On October 29, 2007, Provincial and Municipal staff from all four (4) municipalities met with the Elected Council of the Mississaugas of the New Credit. During the meeting no concerns with the Hamilton Official Plan were raised, however, the Province has invited written comments.

A second meeting has been scheduled with the Lands and Resources Department staff of the Six Nations Elected Council. The meeting will take place on November 26, 2007.

The Province is in the process of setting up a meeting with the traditional Council of Six Nations, the Haudenosaunee. Provincial staff is optimistic that this meeting can be scheduled this month.

**Provincial Duty to Consult:**

Under the Planning Act, the requirement to circulate First Nations is limited to Official Plan approvals dealing with lands within one kilometer of a Reserve. Therefore, under this legislation, the requirement to consult was not triggered for the Rural Hamilton Official Plan.

Notwithstanding the requirements of the Planning Act, the Province has a duty to engage First Nations. Based on the Constitution Act (1982) and Supreme Court decisions (e.g., Taku River decision, 2004), where the Crown has knowledge of an adverse impact, or a potential adverse impact on an aboriginal right or treaty right, the Crown has a duty to consult. Treaty rights and aboriginal rights are protected by Section 35 of the Constitution Act (1982). (Source: Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal Rights and Treaty Rights, June 2006).

While there are no land claims within the Rural Area of Hamilton, there are claims with respect to treaty rights. The Nanfan Treaty (July 1701) granted hunting rights to Six Nations. This treaty covers all lands under the jurisdiction of the City of Hamilton. Also, the First Nations are considered groups with interest with respect to archaeology within the limits of the City.
Conclusion:

Staff is working very closely with the Province to ensure timely First Nations involvement and ultimately approval of the Rural OP. We have impressed upon the Province the urgency of approving the Rural OP. Unfortunately, the Province is not able to give us a firm commitment for approval given the consultation process. Once the consultation process has been completed, the Province has committed to expeditiously approving the Rural OP.

Tim McCabe
General Manager
Planning and Economic Development Department

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