

**stqá?tk^wniwt sqilx^w (WESTBANK FIRST NATION)
ON-RESERVE ARCHAEOLOGY DIRECTIVE**

December 15 2022

WHEREAS *stqá?tkʷniwt sqilxʷ* (Westbank First Nation) has jurisdiction and authority over Westbank Lands, resources, and interests in Westbank Lands pursuant to the *i? sckʷt skc̓xipla?tət i? sc̓xənwiwʷtət* (Westbank First Nation Self-Government Agreement) effective April 1, 2005;

WHEREAS the use and development of Westbank Lands is subject to the Land Rules in Part XI of the *stqá?tkʷniwt i? Stkʷnkʷinplaʷs* (*Westbank First Nation Constitution*);

WHEREAS throughout the Westbank Lands there are significant Archaeological Resources;

WHEREAS under Part XV of the *i? sckʷt skc̓xipla?tət i? sc̓xənwiwʷtət* (Westbank First Nation Self-Government Agreement), Westbank has jurisdiction over culture and language which includes law- and policy-making authority concerning the management, preservation and protection of Archaeological Sites on Westbank Lands including the issuance of permits and licenses for excavation of Archaeological Sites;

WHEREAS *stqá?tkʷniwt sqilxʷ* (Westbank First Nation) affirms its sacred obligations and duties to their *səsfaws* and are solely responsible for the care and protection of the *səsfaws*;

WHEREAS when the *səsfaws* are found, *stqá?tkʷniwt sqilxʷ* (Westbank First Nation) takes immediate steps to exercise their right to protect them, so *stqá?tkʷniwt sqilxʷ* (Westbank First Nation) must have immediate access to the *səsfaws* and they must not be disturbed until *syilx λ̓x̓əx̓áap* (elders), Cultural Advisors, or their designated representatives have ensured that proper protocols have been observed and carried out; and

NOW THEREFORE, the *yí səxʷkʷinmaʷm* (Council) of *stqá?tkʷniwt sqilxʷ* (Westbank First Nation) adopts the following:

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PART I: DEFINITIONS AND INTERPRETATION

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Directive:

"Aboriginal Interests and Use Study" means a study that involves but is not limited to examination of past, present and anticipated future use of an area by *stqá?tkw̓niw̓t sqilxw̓* (Westbank) or *i? sqilxw̓ tí stqá?tkw̓niw̓t* (Westbank Members) and the collection of information and Traditional Ecological Knowledge about the area including but not limited to traditional use, traditional and modern environmental knowledge, cultural use, wildlife and plant habitat, and proposed future use;

"Accredited Archaeologist" means the Archaeology Supervisor and any Registered Professional Archaeologist with the British Columbia Association of Professional Archaeologists;

"Activity" means any Development, plan, grant, license, permit, amendment, approval, authorization, transfer, transaction, operation, Ground Disturbance, Subdivision, or other action or proposed action on Westbank Lands which may have an impact on an Archaeological Resource;

"Ancestral Remains" means human remains that are likely of Aboriginal ancestry and are not the subject of a police or coroner investigation, and includes *səsfaws*;

"Applicant" means a person proposing an Activity on Westbank Lands that is the subject of an Application;

"Application" means any application required to proceed with any Activity on Westbank Lands submitted in accordance with article 8.0;

"Archaeological Artifact" means any portable, physical evidence used, made or modified by humans, including tools, beads, and pottery;

"Archaeological Feature" means any non-portable element of an Archaeological Site, including but not limited to cultural depressions, roasting platforms, and culturally modified trees;

"Archaeological Impact Assessment" means a comprehensive archaeological study, involving full scale archaeological excavation;

“Archaeological Overview Assessment” means an office review of all relevant documents related to the proposed Activity to determine the potential impact on Archaeological Resources within the proposed Activity area;

“Archaeological Resource” means an Archaeological Site, Archaeological Artifact, Archaeological Feature, Ancestral Remains, Burial Site, or Cultural Heritage Material;

“Archaeology Research and Data” means all Studies, reports, records, field notes, pictures, maps and other information relating to known and suspected Archaeological Resources on Westbank Lands;

“Archaeological Site” means a geographical location where there are or may be Archaeological Artifacts or Archaeological Features;

“Archaeology” means the sub-discipline of anthropology involving the study of the human past through its material remains;

“Archaeology Agreement” means an agreement between an Applicant or a Developer and *stqá?tkʷniw̓t sqilxʷ* (Westbank) in the form required by *stqá?tkʷniw̓t sqilxʷ* (Westbank) from time to time, which may include terms and conditions regarding the completion of Studies, the provision of information by the Developer to the Archaeology Supervisor related to the Development, the protection of Archaeological Resources in the course of Development and costs of conducting and obtaining Studies and monitoring Ground Disturbance;

“Archaeology Intake Form” means a form submitted to the Development Services department by a Developer containing the information required by the Development Administrator and the Archaeology Supervisor from time to time;

“Archaeology Supervisor” means the person directed by the *stqá?tkʷniw̓t sqilxʷ* (Westbank) Director of Title and Rights to carry out the duties and responsibilities set out in this Directive, and includes their delegates;

“Burial Site” means a geographical location where Ancestral Remains or Funerary Objects are found or suspected to have been located, but does not include a cemetery as defined under provincial legislation;

“*yí səxʷkʷinma?m̓*” or “Council” means the governing body of Westbank elected pursuant to the *stqá?tkʷniw̓t i? Stkʷnkʷinpla?s* (*Westbank First Nation Constitution*);

“Cultural Advisor” means a Westbank Member of good character, credibility and reputation with knowledge of *syilx* culture and traditions;

“Cultural Heritage Material” means and includes cultural materials, areas of historical significance, cultural gathering sites, sacred and spiritual sites, medicinal plants, traditional foods, and traditional use areas;

“Developer” means a person who is in the process of applying for or who has received approval from Westbank for an Activity;

“Development” has the same meaning as in Schedule “B” - Zoning Regulation to the *WFN Land Use Law No. 2007-01*, as amended or replaced from time to time;

“Development Administrator” means the *stqá?tk^wniwít sqilx^w* (Westbank) Director of Development Services or their delegate;

“Development Services” means the *stqá?tk^wniwít sqilx^w* (Westbank) Development Services department;

“*łxəxłap*” or “Elder” means a Westbank Member aged 55 or over of good character, credibility and reputation with knowledge of *syilx* culture and traditions;

“Funerary Objects” means items that, as a part of a death rite or ceremony, are reasonably believed to have been placed with Ancestral Remains either at or after the time of death;

“Ground Disturbance” includes, but is not limited to

- (a) soil deposit or removal,
- (b) excavation,
- (c) tree removal,
- (d) landscaping,
- (e) environmental assessments,
- (f) development permits,
- (g) building permits,
- (h) servicing agreements,
- (i) installation of fencing,
- (j) geotechnical work or geotechnical testing, and
- (k) installation or modification of utilities;

“Preliminary Field Reconnaissance” means an initial field inspection of the area of a proposed Activity;

“*səsfaws*” means, in the *syilx* language, “ancient ancestors”;

“Sncewips Heritage Museum and Repository” means the location where *syilx* Archaeological Artifacts are collected, preserved and restored according to best museum practices;

“Study” means an Archaeological Overview Assessment, Archaeological Impact Assessment, Aboriginal Interests and Use Study, or Preliminary Field Reconnaissance on Westbank Lands;

“Subdivision” has the same meaning as in the *WFN Subdivision, Development and Servicing Law No. 2005-15*, as amended or replaced from time to time;

“*syilx*” or “*syilx* Peoples” means the communities of Okanagan Nation, including Westbank, sharing language, customs, traditions, experience, territory and resources at the time of first contact and presently;

“*syilx stilltallt*” or “*syilx* Title and Rights” means the Aboriginal title and rights held collectively by the *syilx* Peoples;

“Third Party” means any individual, corporation, firm, municipality, regional district, industry, society or non-governmental organization carrying on or proposing to carry on an Activity within Westbank Lands;

“Traditional Ecological Knowledge” means the body of knowledge built up by the *syilx* Peoples through generations of living in close contact with nature, and includes a system of classification, empirical observations about the local environment, and rules and views that affect resource use;

“*stqá?tkʷniwít sqilxʷ*” or “Westbank” means Westbank First Nation;

“Westbank Lands” means

- (a) the following Westbank Indian Reserves
 - i) Mission Creek (*sənχʷaqʷaʔstən*) Indian Reserve No.8 in British Columbia,
 - ii) Tsinstikeptum Indian Reserve No. 9 in British Columbia,
 - iii) Tsinstikeptum Indian Reserve No. 10 in British Columbia,
 - iv) Medicine Hill (*akʔ mʔimstn*) Indian Reserve No 11 in British Columbia,
 - v) Medicine Creek (*nmʔmsitkʷ*) Indian Reserve No. 12 in British Columbia, and
- (b) lands set apart by Canada in the future as lands reserved for the use and benefit of *stqá?tkʷniwít sqilxʷ* (Westbank), within the meaning of subsection 91 (24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

“WFN Heritage Investigation Permit” means a permit issued by the Archaeology Supervisor in accordance with article 14.0, in the form determined by the Archaeology Supervisor from time to time; and

“*i? sqilx^w t’l stqá?tk^wniwít*” or “Westbank Members” means persons who are members of *stqá?tk^wniwít sqilx^w* (Westbank) in accordance with Part III of the *stqá?tk^wniwít i? Stk^wnk^winpla?s* (*Westbank First Nation Constitution*).

- 1.2 Unless otherwise provided in this Directive, words, expressions and rules of construction used in this Directive have the same meaning as in the *stqá?tk^wniwít i? Stk^wnk^winpla?s* (*Westbank First Nation Constitution*), as applicable.
- 1.3 Words in the singular include the plural and words in the plural include the singular.
- 1.4 A reference to an enactment includes any amendment or replacement of it and every regulation made under it.
- 1.5 This Directive shall be consistent with and exercised in accordance with any relevant protocols or archaeological policies of the *syilx* Peoples.
- 1.6 The Archaeology Supervisor may delegate any of their duties in this Directive.

PART II: PURPOSE AND SCOPE

2.0 PURPOSE

- 2.1 The purpose of this Directive is to ensure the protection and conservation of Archaeological Resources on Westbank Lands.

3.0 GUIDING PRINCIPLES

- 3.1 This Directive and determinations of the Archaeology Supervisor are informed by the Westbank First Nation Comprehensive Community Plan and the following principles:
 - (a) *stqá?tk^wniwít sqilx^w* (Westbank) has a duty to manage, protect and preserve the Archaeological Resources within Westbank Lands;
 - (b) in accordance with Part XV of the *i? sck^w skč̣ipla?tət i? sc̣̣enwix^wtət* (Westbank First Nation Self-Government Agreement), *stqá?tk^wniwít sqilx^w* (Westbank) has jurisdiction over culture and language including with respect to the management, preservation and protection of Archaeological Sites on Westbank Lands including the issuance of permits and licenses for excavation of Archaeological Sites;
 - (c) *stqá?tk^wniwít sqilx^w* (Westbank) has sacred obligations and duties to the *səṣaws* and is solely responsible for their care and protection;

- (d) *stqá?tkʷniw̓t sqilxʷ* (Westbank) has a duty to i? *sqilxʷ* t̓ *stqá?tkʷniw̓t* (Westbank Members) to protect and preserve their archaeological resources on *syilx* traditional territory, and to protect and commemorate places of cultural and archaeological heritage;
- (e) the intention of *stqá?tkʷniw̓t sqilxʷ* (Westbank) is to have sustainable development practices, including with respect to Archaeological Resources;
- (f) all work on Westbank Lands must be carried out in a way that respects *stqá?tkʷniw̓t sqilxʷ* (Westbank) laws and customs;
- (g) Archaeological Resources must be handled in a culturally-sensitive manner;
- (h) the preferred method for protecting Archaeological Sites is to avoid any impacts to the site, but if that is not possible then Archaeological Resources are to be salvaged before they are impacted; and
- (i) in accordance with the duty to protect Archaeological Resources, information regarding sites of significant cultural or archaeological significance will not be disclosed to the public without careful consideration.

4.0 APPLICATION AND SCOPE

- 4.1 This Directive applies to all Activities, Archaeological Resources, Archaeology Research and Data, and all known, suspected and future discoveries of Archaeological Resources on Westbank Lands by any person.
- 4.2 This Directive establishes
 - (a) requirements with respect to the discovery of Archaeological Resources on Westbank Lands;
 - (b) a process with respect to the consideration of any proposed Activity on Westbank Lands that may impact an Archaeological Resource;
 - (c) guidelines for mitigating the potential impact on Archaeological Resources of any proposed Activity;
 - (d) a process with respect to the consideration and approval of archaeological research on Westbank Lands; and
 - (e) guidelines with respect to securing and storing Archaeological Resources and Archaeology Research and Data.
- 4.3 No person may carry out any Activity or a Study on Westbank Lands except through compliance with this Directive, and all applicable laws, policies and directives.

PART III: MONITORING AND DISCOVERIES

5.0 MONITORING AND INVESTIGATIONS

5.1 The Archaeology Supervisor is authorized and directed to, on an ongoing basis:

- (a) monitor and oversee known and suspected Archaeological Resources on Westbank Lands;
- (b) investigate suspected Archaeological Resources and report their findings, as appropriate, to the Director of Title and Rights and to *yí səx^{wk}wínmaʔm* (Council);
- (c) conduct Studies in accordance with this Directive in relation to any Development on Westbank Lands;
- (d) oversee the work of any archaeological personnel working on Westbank Lands;
- (e) prevent, mitigate, investigate and document any damage to Archaeological Resources;
- (f) inspect and monitor Activities in order to determine whether a person is in compliance with this Directive, and report their findings to the Director of Title and Rights and, where appropriate, to the Development Administrator; and
- (g) perform any other actions or duties related to Archaeological Resources in accordance with this Directive, and as directed by *yí səx^{wk}wínmaʔm* (Council) and the Director of Title and Rights.

6.0 DISCOVERIES - DEVELOPERS

6.1 Developers shall comply with all policies, procedures and training requirements of the Archaeology Supervisor from time to time with respect to discoveries of Archaeological Resources on Westbank Lands.

6.2 Each Developer shall ensure that

- (a) every worker on a Development site is familiar with the requirements of this Directive with respect to discoveries of Archaeological Resources; and
- (b) all discoveries of known and suspected Archaeological Artifacts, Archaeological Features, human remains, Ancestral Remains and Burial Sites on a Development site by any person are reported to the Developer immediately.

7.0 PROCESS FOR DISCOVERIES OF ARCHAEOLOGICAL RESOURCES

7.1 Where any person other than a Developer or a worker on a Development site discovers a known or suspected Archaeological Artifact or Archaeological Feature, human remains, Ancestral Remains or a Burial Site on Westbank Lands,

- (a) all work and activity in the area shall immediately cease;
- (b) the area of the discovery shall immediately be secured and protected and no items shall be disturbed, or removed from the site;
- (c) the person shall immediately notify the Archaeology Supervisor;
- (d) if the discovery involves known or suspected human remains, Ancestral Remains or a Burial Site, the person shall immediately notify the *səxʷlkam* (RCMP); and
- (e) the person shall follow any directions and comply with any requirements of the Archaeology Supervisor.

7.2 Where a Developer discovers or becomes aware of a known or suspected Archaeological Artifact or Archaeological Feature, human remains, Ancestral Remains or a Burial Site on a Development site,

- (a) all work and activity in the area shall immediately cease;
- (b) the Developer shall take immediate measures to secure and protect the area, at the cost of the Developer, and no items shall be disturbed or removed from the site;
- (c) the Developer shall immediately notify the Development Administrator and any on-site monitor of the *stqáʔtkʷniwít sqilxʷ* (Westbank) Archaeology Department;
- (d) if the discovery involves known or suspected human remains, Ancestral Remains or a Burial Site, the Developer shall immediately notify the *səxʷlkam* (RCMP);
- (e) the Development Administrator shall immediately notify the Archaeology Supervisor; and
- (f) the Developer shall follow any directions and comply with any requirements of the Archaeology Supervisor and the Development Administrator.

7.3 If an employee or agent of *stqáʔtkʷniwít sqilxʷ* (Westbank) discovers a known or suspected Archaeological Artifact, Archaeological Feature, human remains, Ancestral Remains or a Burial Site on a Development site,

- (a) all work and activity in the area shall immediately cease;
- (b) immediate measures shall be taken to secure and protect the area, at the cost of the Developer, and no items shall be disturbed or removed from the site;
- (c) they shall immediately notify the Archaeology Supervisor, the Development Administrator and workers on the Development site, if any;

- (d) if the discovery involves known or suspected human remains, Ancestral Remains or a Burial Site, they shall immediately notify the s̓əx̓w̓lkam (RCMP);
- (e) the Development Administrator shall immediately notify the responsible Developer; and
- (f) the Developer shall follow any directions and comply with any requirements of the Archaeology Supervisor and the Development Administrator.

7.4 If the Archaeology Supervisor determines that any immediate action is required to protect a known or suspected Archaeological Resource on Westbank Lands

- (a) on a Development site, the Archaeology Supervisor shall notify the Development Administrator of the required action, and the Development Administrator shall cooperate with all directions of the Archaeology Supervisor; or
- (b) on a site that is not a Development site, the Archaeology Supervisor shall notify any affected property holder of the required action, and the affected property holder shall comply with all directions of the Archaeology Supervisor.

7.5 Upon receiving a notification under paragraph 7.1(c), 7.2(c) or (e), or 7.3(c), the Archaeology Supervisor shall, as soon as practicable,

- (a) visit the site;
- (b) if the discovery may involve known or suspected human remains, Ancestral Remains or a Burial Site, commence an investigation to determine whether Ancestral Remains or a Burial Site have been discovered;
- (c) make a record of the location of the site and all Archaeological Resources within or near the site;
- (d) assess the potential significance of the site and any Archaeological Resources within or near the site;
- (e) conduct or obtain any Studies the Archaeology Supervisor determines are immediately required;
- (f) determine any actions, additional Studies or mitigative steps required to protect the site and any Archaeological Resources within or near the site;
- (g) determine whether to notify the provincial Archaeology Branch,

and the Archaeology Supervisor shall report their findings, requirements and recommendations to the Development Administrator where the report relates to a Development.

- 7.6 Where, after concluding an investigation under paragraph 7.5(b), the Archaeology Supervisor determines that Ancestral Remains or a Burial Site have been discovered on Westbank Lands, the principles at section 8.1 shall apply and the Archaeology Supervisor shall additionally determine the following:
- (a) whether the Ancestral Remains or Burial Site can remain where they were discovered, or whether they need to be relocated for their protection;
 - (b) where and how the Ancestral Remains or Burial Site shall be relocated, if relocation is recommended under paragraph (a);
 - (c) the size of the buffer to be created around the area in which the Ancestral Remains or Burial Site is located;
 - (d) any other required mitigative or protective measures, which may include the imposition of additional conditions, requirements, recommendations or restrictions on the Development, if any; and
 - (e) any recommendations or requirements regarding the amendment or revocation of permits in relation to any Development, if applicable,

and the Archaeology Supervisor shall report any findings, requirements and recommendations to the Development Administrator where the report relates to a Development.

- 7.7 The Development Administrator shall communicate any required actions and mitigative steps determined by the Archaeology Supervisor under this article to the Developer, and shall ensure that those actions or steps are carried out, at the cost of the Developer, in accordance with a new or revised Archaeology Agreement.
- 7.8 The Archaeology Supervisor shall communicate any required actions and mitigative steps determined under this article directly to any affected property holder where the site is not a Development site, and the affected property holder shall comply with all directions and requirements of the Archaeology Supervisor.
- 7.9 *stqá?tkw#niwt sqilx^w* (Westbank) has the right of first refusal to acquire any Archaeological Artifact or Archaeological Resource found on or originating from Westbank Lands.

8.0 PRINCIPLES REGARDING DISCOVERIES OF ANCESTRAL REMAINS AND BURIAL SITES

- 8.1 The following general principles apply to Ancestral Remains or Burial Sites found on Westbank Lands:
- (a) the Ancestral Remains and Burial Site shall not be moved or disturbed, subject to paragraph (c);

- (b) the Archaeology Supervisor may consult with a *ł̓x̓x̓ł̓ap* (Elder) or Cultural Advisor when investigating the site and determining required actions, as the Archaeology Supervisor deems appropriate;
- (c) if the Archaeology Supervisor determines that the Ancestral Remains or Burial Site are at greater risk by remaining where they were found, they shall be moved by a *ł̓x̓x̓ł̓ap* (Elder) or Cultural Advisor, or other person as determined by the Archaeology Supervisor, to a location within Westbank Lands as close as possible to where they were discovered, also as determined by the Archaeology Supervisor;
- (d) Funerary Objects shall remain in or with or be reburied in or with the Burial Site or Ancestral Remains, as appropriate;
- (e) the Archaeology Supervisor shall determine an appropriate buffer around the location of the Ancestral Remains or Burial Site; and
- (f) the Archaeology Supervisor shall implement other protective measures they determine necessary in the circumstances.

PART IV: APPLICATIONS

9.0 INITIATING AN APPLICATION

- 9.1 All Applications required by *stqá?tkʷniwít sqilxʷ* (Westbank) prior to proceeding with, or making amendments, alteration or modifications to, an Activity shall be submitted directly to Development Services.
- 9.2 Development Services shall communicate directly with each Applicant respecting all Applications referenced at section 9.1.
- 9.3 If the Applicant has in their possession reports or Studies regarding previous archaeological or environmental work or investigations on the site of the proposed work, they shall include those reports with their Application under section 9.1.
- 9.4 Development Services shall conduct an initial screening of all Applications referenced at section 9.1 and shall ensure that any Applicant that proposes any of the following shall submit a completed Archaeology Intake Form, in the form required from time to time by the Development Administrator and the Archaeology Supervisor, and the associated fee:
 - (a) Ground Disturbance;
 - (b) known Archaeological Resources in the area of the proposed work; or
 - (c) Activities on a site on which previous archaeological or environmental investigations have been conducted, and where any archaeology or environmental concerns remain.

9.5 The Development Administrator shall forward each Archaeology Intake Form they receive from an Applicant and any attached reports, Studies and other documents to the Archaeology Supervisor for review.

10.0 REVIEW BY ARCHAEOLOGY SUPERVISOR AND NEXT STEPS

10.1 Upon receipt of the documents forwarded under section 9.5, the Archaeology Supervisor shall review the Application and:

- (a) determine if further information is required from the Applicant in order to be able to fully consider the Application and obtain such information through Development Services;
- (b) determine if the proposed Development may impact a known Archaeological Site;
- (c) review any previous Study that has been conducted in the area where the Activity has been proposed, if any;
- (d) conduct an Archaeology Overview Assessment, unless the Archaeology Supervisor determines that one is not needed;
- (e) determine if there is or may be a need for further monitoring or investigation in the course of the Development;
- (f) determine if a Preliminary Field Reconnaissance or any further Study is required; and
- (g) review any other relevant information.

10.2 Upon completion of the review of an Application at section 10.1, the Archaeology Supervisor shall prepare a summary in accordance with section 11.1, and articles 11.0 and 12.0 shall apply.

10.3 If the Archaeology Supervisor determines that monitoring or any further Study or Archaeology work is required in relation to the proposed Activity, the Development Administrator shall require the Applicant to enter into an Archaeology Agreement with *stqá?tkw*niwt sqilxw* (Westbank) prior to obtaining a Development permit or proceeding with any Ground Disturbance.

10.4 After the Applicant enters into an Archaeology Agreement with *stqá?tkw*niwt sqilxw* (Westbank),

- (a) the Archaeology Supervisor may conduct or obtain a Preliminary Field Reconnaissance, if deemed necessary or advisable by the Archaeology Supervisor for any reason;

- (b) where the proposed Activity involves Ground Disturbance, or where the Archaeological Overview Assessment or Preliminary Field Reconnaissance suggests the presence of Archaeological Resources, the Archaeology Supervisor shall require the completion of an Archaeological Impact Assessment by an Accredited Archaeologist; and
 - (c) where the proposed Activity is located in an area the Archaeology Supervisor considers to be of archaeological or cultural significance, the Archaeology Supervisor may require that an Aboriginal Interests and Use Study is completed.
- 10.5 In reviewing or conducting any Study, the Archaeology Supervisor may request and review any additional information relevant to the Activity proposed in the Application.
- 10.6 As part of conducting or reviewing a Study, the Archaeology Supervisor shall examine the Application and may consult with *łxəxłap* (Elders), Cultural Advisors and *stqá?tkʷniwt sqilxʷ* (Westbank) officials.
- 10.7 As part of conducting or reviewing a Study, the Archaeology Supervisor may, among other investigations, consider or assess the impact of the proposed Activity on the exercise of *syilx stlltallt* (*syilx* Title and Rights) and whether there are any Archaeological Resources that would be adversely affected by the proposed Activity.
- 10.8 Where an Applicant obtains a Study directly as a result of a requirement of the Archaeology Supervisor in accordance with this Directive,
- (a) the Applicant shall ensure that the Study is completed by an Accredited Archeologist;
 - (b) the Applicant shall ensure that ownership of and copyright to the Study is assigned to *stqá?tkʷniwt sqilxʷ* (Westbank) in a form of agreement required or approved by the Archaeology Supervisor;
 - (c) prior to the completion of the Study, the Archaeology Supervisor shall be provided with an opportunity to review and comment on any proposed recommendations relating to the management of any Archaeological Resources identified during the course of the Study;
 - (d) the Applicant shall ensure the Study is submitted to the Archaeology Supervisor on completion; and
 - (e) the Archaeology Supervisor may accept the Study submitted under paragraph (d), or return the Study to the Accredited Archaeologist and require additional or modified work, which the Applicant shall ensure is completed,

and the Applicant shall be responsible for the costs of the Study and of the Archaeology Supervisor's time to review the Study.

- 10.9 For clarity, any amendment, alteration or modification to an active Application which proposes new or expanded Ground Disturbance that was not described in the original Application shall be forwarded by the Development Administrator to the Archaeology Supervisor and shall be treated as a new Application that is subject to all requirements of this Part.
- 10.10 For clarity, Part V does not apply where an Applicant obtains a Study in accordance with this article.

11.0 SUMMARY BY ARCHAEOLOGY SUPERVISOR

- 11.1 Upon review of an Application under section 10.1 and of any Study completed under article 10.0, the Archaeology Supervisor shall prepare a summary of the following:
- (a) any known or suspected Archaeological Resources that may be subject to adverse impacts as a result of the proposed Activity;
 - (b) any other relevant information in relation to the proposed Activity or the Study which the Archaeology Supervisor wishes to include;
 - (c) recommendations and requirements, if any, regarding any actions that need to be taken to preserve or protect any Archaeological Resources in the course of a Development;
 - (d) whether any further Study or monitoring of Ground Disturbance is required; and
 - (e) whether a Development permit should be refused or an Application should be re-submitted with amendments.
- 11.2 The Archaeology Supervisor shall forward the summary prepared under section 11.1 to the Development Administrator.
- 11.3 All Studies, and all information, research and reports created as a result of any Study, unless otherwise specified in writing, shall be the property of *stqá?tk^wniwt sqilx^w* (Westbank).

12.0 PROTECTION OF ARCHAEOLOGICAL RESOURCES

- 12.1 Following the receipt of a summary under article 11.0, the Development Administrator shall ensure that any requirements of the Archaeology Supervisor are carried out, including but not limited to
- (a) requiring the Applicant to enter into an Archaeology Agreement;
 - (b) the completion of further Studies in accordance with article 10.0;

- (c) keeping the Archaeology Supervisor informed about the commencement of Activities on the Development Site, in order that monitoring of Ground Disturbance by the Archaeology Supervisor can take place, as needed;
- (d) the incorporation of requirements into the Development permit; and
- (e) the re-submission of an Application for the Development with amendments to protect or avoid Archaeological Resources,

at the cost of the Applicant.

- 12.2 The Archaeology Supervisor may carry out a post audit of a Development and may at any time monitor Ground Disturbance and Activities to ensure that the Developer has complied with all of the terms and conditions of any permit, approval or requirement respecting Archaeology.

13.0 COSTS RELATING TO APPLICATIONS

- 13.1 All the costs of *stqá?tk^wniwt sqilx^w* (Westbank) in relation to each Application, including but not limited to costs incurred to complete, supervise and review a Study, time spent to review and comment on a Study by the Archaeological Supervisor, and the costs of monitoring an Activity, shall be paid by the Applicant.
- 13.2 Upon completion of Archaeology work by the Archaeology Supervisor in relation to an Application or a Development, where the fees for that work have not been pre-paid, the Applicant will be invoiced for fees owing in accordance with the Archaeology Agreement.

PART V: WFN HERITAGE INVESTIGATION PERMITS

14.0 WFN HERITAGE INVESTIGATION PERMIT

- 14.1 A person who wishes to conduct or obtain a Study or any other archaeological research on Westbank Lands, which is not being completed in the context of an Application under Part IV, shall submit a written application to the Archaeology Supervisor for a WFN Heritage Investigation Permit, and provide sufficient information for the Archaeology Supervisor to fully consider the proposed Study or research, as well as any information and documents reasonably requested by the Archaeology Supervisor.
- 14.2 A person shall not proceed with a Study or research under section 14.1 unless the person has received a WFN Heritage Investigation Permit from the Archaeology Supervisor, which Permit may include requirements, directions, time limits and conditions in relation to the Study or research.
- 14.3 The holder of a WFN Heritage Investigation Permit shall ensure that all persons engaged in the Study or research are familiar with this Directive, with any requirements,

directions or conditions of the Archaeology Supervisor, and with any other applicable policies, directives and laws.

- 14.4 Prior to the completion of any Study in accordance with this article, the holder of the WFN Heritage Investigation Permit shall
- (a) provide the Archaeology Supervisor with an opportunity to review and comment on the Study; and
 - (b) ensure that any comments of the Archeology Supervisor are incorporated into the Study.
- 14.5 The holder of a WFN Heritage Investigation Permit shall provide the Archaeology Supervisor with the following, in a format approved by the Archaeology Supervisor
- (a) a schedule of any Ground Disturbance planned in the course of the Study or research;
 - (b) electronic copies of all interim and final Study or research reports;
 - (c) electronic copies of all field notes, pictures and maps relating to the Study or research;
 - (d) an agreement providing ownership rights or a perpetual licence to use the Study, research reports and any other information provided to the Archaeology Supervisor in relation to the WFN Heritage Investigation Permit; and
 - (e) a summary of the archaeological research completed,
- and shall comply with all reasonable requests of the Archaeology Supervisor in the course of the Study or research.
- 14.6 The Archaeology Supervisor may at any time inspect any Study or work being conducted on Westbank Lands in accordance with this article, and, for clarity, may monitor any Ground Disturbance.
- 14.7 Upon completion of a Study or research under this article, the holder of a WFN Heritage Investigation Permit shall return the Study or research site to the condition it was in prior to the Study or work.
- 14.8 The holder of a WFN Heritage Investigation Permit shall pay all reasonable costs of the Archaeology Supervisor incurred in relation to the Study or research in accordance with this article.

PART VI: OTHER PERMITS, LICENSES AND ASSESSMENTS

15.0 OTHER PERMITS, LICENSES AND ASSESSMENTS

- 15.1 Where a proposed Activity on Westbank Lands requires a permit, license or assessment under federal or provincial legislation, nothing in this Directive exempts any person from the application of that legislation.
- 15.2 For greater certainty, nothing in any federal or provincial legislation prevents or precludes the application of this Directive.

PART VII: FEES AND CHARGES

16.0 FEES AND CHARGES

- 16.1 The Archaeology Supervisor may establish, correct, revise and update the terms of any fees or other documentation that complement and support this Directive, and may post notice of the same on the website of *stqá?tkʷniw̓t sqilxʷ* (Westbank) and make a copy available for viewing free of charge at the administrative offices of *stqá?tkʷniw̓t sqilxʷ* (Westbank).
- 16.2 Where fees and costs are payable in accordance with this Directive, they shall be paid within 30 days of the issuance of an invoice by *stqá?tkʷniw̓t sqilxʷ* (Westbank).
- 16.3 Notwithstanding anything in this Directive, fees may be waived for *i? sqilxʷ t̓l̓* *stqá?tkʷniw̓t* (Westbank Members) in relation to any Activity proposed or undertaken with respect to their primary residences.

PART VIII: SECURING ARCHAEOLOGICAL RESOURCES AND DATA

17.0 SECURING ARCHAEOLOGICAL RESOURCES AND ARCHAEOLOGY RESEARCH AND DATA

- 17.1 Unless otherwise recommended or required by the Archaeology Supervisor, any Archaeological Artifacts discovered by or returned to *stqá?tkʷniw̓t sqilxʷ* (Westbank) shall be held in the Sncewips Heritage Museum and Repository.
- 17.2 The Archaeology Supervisor shall ensure that *stqá?tkʷniw̓t sqilxʷ* (Westbank) keeps and maintains an electronic database of all Archaeology Research and Data.
- 17.3 Wherever possible, the Archaeological Supervisor shall ensure that *stqá?tkʷniw̓t sqilxʷ* (Westbank) has ownership rights to any Archaeology Research and Data produced or collected regarding Archaeological Resources.
- 17.4 Where appropriate, the Archaeology Supervisor shall notify the Province of a known Archaeological Site.

PART IX: CONFIDENTIALITY

18.0 CONFIDENTIALITY

- 18.1 An Applicant may, from time to time, indicate that information provided to the Archaeology Supervisor in relation to an Application is confidential and should not be disclosed.
- 18.2 *stqá?tkʷniwít sqilxʷ* (Westbank) shall not disclose or use for any purpose other than the purposes set out in this Directive any confidential information relating to an Application which it acquires from the Applicant without the written consent of the Applicant.
- 18.3 An Applicant shall treat as confidential all Traditional Knowledge, including information concerning *syilx stlltalt* (*syilx* Title and Rights), which it acquires from *stqá?tkʷniwít sqilxʷ* (Westbank) as a result of reports and Studies created and information shared in accordance with this Directive, and shall not disclose or use any such information for any purpose other than the purposes set out in this Directive except with the written consent of *stqá?tkʷniwít sqilxʷ* (Westbank).
- 18.4 *stqá?tkʷniwít sqilxʷ* (Westbank) may choose not to disclose information to Applicants, Developers or the public regarding sites of significant cultural or archaeological significance.

PART X: IMMUNITY AND INDEMNIFICATION

19.0 IMMUNITY

- 19.1 No action for damages lies or may be instituted against present or past *yí səxʷkʷínma?m* (Council), or employees, servants or agents of either *stqá?tkʷniwít sqilxʷ* (Westbank) or *yí səxʷkʷínma?m* (Council):
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - (b) for default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 19.2 Section 19.1 does not provide a defence if:
- (a) *yí səxʷkʷínma?m* (Council), employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.

19.3 *stqá?tkʷniw̓t sqilxʷ* (Westbank), present or past *yí səxʷkʷinma?m̓* (Council), or i? *sqilxʷ* t̓l *stqá?tkʷniw̓t* (Westbank Members), employees, servants or agents of *stqá?tkʷniw̓t sqilxʷ* (Westbank) or *yí səxʷkʷinma?m̓* (Council) are not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Directive or any other *stqá?tkʷniw̓t sqilxʷ* (Westbank) law or policy, or from the neglect or failure, for any reason or in any manner, to enforce this Directive or any other *stqá?tkʷniw̓t sqilxʷ* (Westbank) law or policy.

19.4 All actions against *stqá?tkʷniw̓t sqilxʷ* (Westbank) for the unlawful doing of anything that:

- (a) is purported to have been done by *stqá?tkʷniw̓t sqilxʷ* (Westbank) under the powers conferred by this Directive or any *stqá?tkʷniw̓t sqilxʷ* (Westbank) law or policy; and
- (b) might have been lawfully done by *stqá?tkʷniw̓t sqilxʷ* (Westbank) if acting in the manner established by law,

shall be commenced within six months after the cause of action first arose, or within a further period designated by *yí səxʷkʷinma?m̓* (Council) in a particular case, but not afterwards.

19.5 *stqá?tkʷniw̓t sqilxʷ* (Westbank) is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to *stqá?tkʷniw̓t sqilxʷ* (Westbank), within two months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse; and
- (b) *stqá?tkʷniw̓t sqilxʷ* (Westbank) has not been prejudiced in its defence by the failure or insufficiency.

20.0 INDEMNITY

20.1 *stqá?tkʷniw̓t sqilxʷ* (Westbank) shall indemnify any member of *yí səxʷkʷinma?m̓* (Council), officer or employee of *stqá?tkʷniw̓t sqilxʷ* (Westbank) against any claim for damages against them arising out of the performance of their duties or responsibilities under this Directive, and in addition shall pay legal costs incurred in a court proceeding arising out of the claim, provided such claim is not a result of dishonesty, gross negligence, or malicious or willful misconduct on the part of the member of *yí səxʷkʷinma?m̓* (Council), officer or employee.

20.2 Where indemnity under this Directive is or may be claimed by a member of *yí səxʷkʷinma?m̓* (Council), officer or employee of *stqá?tkʷniw̓t sqilxʷ* (Westbank), that

member of *yí səxw'k'winma?m* (Council), officer or employee shall immediately upon receipt forward to the Director of Operations of *stqá?tk'niwt sqilxw* (Westbank) every Writ, Statement of Claim, letter or other document or advice and advise of any communication both verbal and written relating to a claim against them in respect of which indemnity is or may be claimed under this Directive.

20.3 Where indemnity under this Directive is or may be claimed by member of *yí səxw'k'winma?m* (Council), officer or employee of *stqá?tk'niwt sqilxw* (Westbank), that member of *yí səxw'k'winma?m* (Council), officer or employee shall not:

- (a) voluntarily assume any liability or settle any claim except at their own cost and in such case no indemnification shall be paid in relation thereof; or
- (b) interfere with *stqá?tk'niwt sqilxw* (Westbank) in any negotiation, settlement or in any legal proceedings with respect to such claim,

and whenever requested by *stqá?tk'niwt sqilxw* (Westbank), that member of *yí səxw'k'winma?m* (Council), officer or employee shall:

- (c) aid in the securing of information and evidence and the attendance of witnesses and shall themselves, where required by *stqá?tk'niwt sqilxw* (Westbank), give evidence; and
- (d) cooperate with *stqá?tk'niwt sqilxw* (Westbank) in the defense of any action or proceedings or in the prosecution of any appeal taken by *stqá?tk'niwt sqilxw* (Westbank) on their behalf.

20.4 Compliance by members of *yí səxw'k'winma?m* (Council), officers or employees of *stqá?tk'niwt sqilxw* (Westbank) with the provisions of section 20.3 constitutes a condition precedent to *stqá?tk'niwt sqilxw* (Westbank)'s responsibility to indemnify them as provided in this Directive.

20.5 This Part applies to any existing claim for damages against a member of *yí səxw'k'winma?m* (Council), officer or employee of *stqá?tk'niwt sqilxw* (Westbank) arising, initiated or outstanding prior to the adoption of this Directive.

PART XI: GENERAL

21.0 GENERAL PROVISIONS

21.1 Nothing in this Directive obligates *stqá?tk'niwt sqilxw* (Westbank) to consent to any Activity on Westbank Lands.

21.2 Consent by *stqá?tk'niwt sqilxw* (Westbank) to any Activity on Westbank Lands, including consent granted following review of an Application, does not alter, reduce or in any way diminish any legal claim made by *stqá?tk'niwt sqilxw* (Westbank) or the *syilx* Peoples to Westbank Lands or to prejudice, limit or restrict any legal or other positions taken or that

may be taken by *stqá?tkʷniwít sqilxʷ* (Westbank) in any court, tribunal or administrative proceedings, treaty negotiations or otherwise.

- 21.3 Nothing in this Directive restricts or limits the right of *stqá?tkʷniwít sqilxʷ* (Westbank) to establish a process for consideration and evaluation under this Directive or other policy or *stqá?tkʷniwít sqilxʷ* (Westbank) law of a proposed Activity on Westbank Lands.
- 21.4 Notice of this Directive shall be posted on the website of *stqá?tkʷniwít sqilxʷ* (Westbank) and a copy of the Directive shall be available for viewing free of charge at the administrative offices of *stqá?tkʷniwít sqilxʷ* (Westbank) and available for distribution at a nominal charge.