
HALDIMAND COUNTY

Memorandum CAO-M03-2021 Addition to Reserve

For Consideration by Council in Committee on March 2, 2021



To: Mayor Hewitt and Members of Council
From: Craig Manley, MCIP, RPP, Chief Administrative Officer

At its meeting of December 14th, 2020 Council reviewed a letter from the Six Nations of the Grand River (Attachment 1) and directed staff to report back on recent changes to the Federal Addition to Reserve (ATR) process including any implications for the municipality.

Authority:

The authority for a First Nations to initiate either the creation of a new reserve or to add land to an existing reserve is provided in the Federal Addition of Lands to Reserves and Reserve Creation Act which was introduced in December 2018 but did not come into force until August 27th, 2019. This legislation augments a 2016 Addition to Reserve Policy Directive that was put in place to standardize the process and to have a consistent assessment and implementation of proposals to add to reserve lands.

For a First Nation who wants a certain piece of land to become part of their reserve, they are required to get the Federal Government to agree to do this. This is because a reserve is a parcel of land where legal title is held by the Crown (Government of Canada), for the use and benefit of a particular First Nation. The ATR process is the Federal Government's way of managing these requests. Under the new legislation, all Additions to Reserve are administered via the Federal Department of Indigenous and Northern Affairs (INAC) and will be approved by Ministerial Order rather than by Governor in Council, which is intended to result in more timely decisions.

Basis for an ATR:

There are three categories of Addition to Reserves:

1. Legal obligations and agreements: where there is a legal obligation or a legal commitment by the Government of Canada to contemplate reserve creation;
2. Community additions: where a First Nation with an existing reserve needs additional reserve land for purposes such as to accommodate community growth, economic development or to use/protect culturally significant sites;
3. Tribunal decision: where a First Nation seeks to acquire land with compensation awarded through a tribunal process.

The ATR process provides for Community Additions – where a First Nation with an existing Reserve needs additional Reserve land for any of the following purposes:

- a. residential, institutional, recreational uses, to accommodate community growth;
- b. use or protection of culturally significant sites (such as burial grounds, archaeological, or ceremonial);
- c. economic development;
- d. geographic enhancements to improve the functioning of existing Reserve base.

The current legislation provides that land can be added adjacent to the existing reserve land (contiguous) or separated from the existing reserve land (non-contiguous). An Addition to Reserve can be added in rural or urban settings. In general the Proposed Reserve Land should normally be located within a First Nation's Treaty or Traditional Territory.

In order for an ATR proposal to move forward, the following criteria must be satisfied:

- there are no significant environmental concerns
- best efforts have been made to address any concerns of municipal and provincial or territorial governments
- the proposal is cost-effective and any necessary funding has been identified within operational budgets
- third party issues, such as leases and licenses have been identified and addressed
- public access concerns have been addressed

Process:

The process to undertaking an ATR under the new legislation involves 4 steps. ATR's initiated before the new legislation have the option of continuing under the previous framework or following the new one. Substantially, the changes are minor. The steps are as follows:

1. Initiation – the elected Council of the First Nation submits an application to the Regional Office of INAC. This is to be supported with a proposal document outlining the following 12 elements:
 - a. ATR policy area – which type
 - b. Location
 - c. Title information / purchase offer
 - d. Proximity to Local Government
 - e. Mineral Rights
 - f. Preliminary Environmental review
 - g. Transactional costs and funding source
 - h. Benefits and impacts
 - i. Other interests
 - j. Existing encumbrances – i.e. easements
 - k. Services required
2. Assessment and Review – once the documentation is provided to INAC it reviews it for completeness and alignment with the Addition to Reserve Policy Directive. If there is missing or inadequate information the process stalls until it is addressed. Once it is determined to be complete INAC may issue a 'Letter of Support' which is a conditional approval to move to the next stage of the process subject to accommodation and/resolution of third party interests. The 'Letter of Support' is a new step with the intent to help streamline the process by identifying issues that need to be resolved before reserve creation up front. During Stage 2 First Nations are encouraged to informally consult and meet with Local Governments to address any local issues.
3. Proposal Completion – the development and implementation of a work plan by the First Nation to complete all the tasks necessary to finalize the ATR. The work plan addresses the following areas:
 - a. Legal matters such as surveys
 - b. Environmental studies

- c. Consultation with other First Nations, the Federal and Provincial Government
- d. Address third party interests – i.e. access, mineral rights, encumbrances
- e. Special circumstances
- f. Notice/discussions with impacted municipal government regarding services, by-laws, planning and tax loss matters.

When a Reserve is created or lands are added to Reserve within or adjacent to local government boundaries, municipalities no longer levy property taxes nor are they required to provide services on Reserve lands. In addition, Local Governments may request that a one-time payment may be negotiated between the First Nation and the Local Government to offset the difference in property tax revenue. As noted earlier, a municipality does not have a veto power under the ATR and the test is that best efforts have been made to address any concerns of municipal governments. Ultimately, INAC makes the decision in this regard.

The First Nation and INAC are to meet annually to review the status of the work plan. When all the criteria are met the First Nation informs INAC and submits all supporting documentation.

- 4. Granting of Reserve Status – Final review of documentation by INAC, preparation of a recommendation to the Minister, land transferred to the Crown and Ministerial approval.

ATR Proposals in Haldimand County

There are several outstanding ATR proposals that impact Haldimand County as follows:

Six Nations of the Grand River: (See Attachment 2)

Part of Lot 5, Concession 6, on the west side of Plank Road (otherwise known as Highway No. 6), Geographic Township of Oneida, now in Haldimand County, known as the Robinson Property, containing 113 acres more or less;

Part of Lots 3 and 4, Concession 6, on the west side of Plank Road (otherwise known as Highway No. 6), Geographic Township of Oneida, now in Haldimand County, known as the Hewer Property, containing 95 acres more or less; and,

Part of Lot 6, Concession 5, on the west side of Plank Road (otherwise known as Highway No. 6), Geographic Township of Oneida, now in Haldimand County, known as the Zwick Property, containing 135.258 acres more or less;

Mississaugas of the New Credit: (See Attachment 3)

Part of Lots 27 and 28, Range West of the Plank Road in the Geographic Township of Oneida, Haldimand County containing approximately 16.99 hectares (42 acres)

Current County Position:

Haldimand Council has considered these proposals in the past (MNC – 2011, SN – 2014) and has passed resolutions indicating it is not in support of them as for the following reasons:

- a. The lack of any indication of the future use of the property and its relationship to the planning framework and impact on the Hagersville and Caledonia communities and natural environment ;
- b. The ability of the First Nations Elected Council to enforce any land use restrictions that may be desired for the proper development and use of the subject land if it is added to reserve status;

- c. The impact of the loss of existing and future assessment to Haldimand County resulting in the transfer of jurisdiction to reserve status;
- d. The impact of future development of the subject lands on the local and Provincial transportation network and how such impacts will be addressed and mitigated.“

In recognition that the final decision lies with the Federal Government Haldimand Council further resolved:

“Should the Federal Government decide to approve the requested Addition to Reserve that it be conditional upon the following:

- a. At the time the addition to reserve is approved all property taxes are paid in full;
- b. The County and the First Nation have successfully negotiated and executed an agreement that provides reasonable compensation from existing and future development that will be caused by the addition of lands to the reserve to allow the municipality to adjust to the loss of revenue over time;
- c. That the County and the First Nation have negotiated and entered into an agreement outlining a planning framework for the future use of the subject lands mutually agreeable to both parties that addresses the following matters:
 - i. The nature, scale, form and layout of future development to be undertaken;
 - ii. The technical matters to be addressed including transportation, environmental, servicing, economic impact and land use compatibility issues to be considered;
 - iii. An approval process that involves Haldimand County in the review and commenting on the adequacy of any proposal and supporting studies;
 - iv. The requirement to obtain Ministry of Transportation access permits for any access or upgrade to existing access from Highway 6;
 - v. The measures to be put in place to ensure that only the approved forms of development will occur.
- d. That the First Nation Elected Council commit in writing to implementing a land use control mechanism such as zoning and commit to enforcing the removal of any use not in compliance with permitted uses and specifically to prohibit smoke shops on the subject lands.
- e. For Six Nations only - an agreement be entered into between Haldimand County and the Six Nations of the Grand River Elected Council regarding maintenance of 5th Line, west of Highway 6, Oneida and Oneida Road, west of Highway 6, Oneida to ensure adequate road maintenance for the County-controlled roads and any existing privately owned properties enveloped by the lands to be added to the Reserve.
- f. For Mississauga’s of the Credit only – Council advise it has serious concerns about the acceptability and safety of access to and from the plaza at Highway 6 and First Line relating to both the existing access and incremental impact of any further development that may occur as a result of any Addition to Reserve along this highway corridor and that a meeting of the parties be convened to resolve this concern before any Addition to Reserve is considered.”

Finally, in 2014 Council passed the following general resolution regarding ATR's:

“THAT the Council of the Corporation of Haldimand County will not support the further erosion of Haldimand County land, boundaries or tax base, as well as the loss of planning and regulatory controls of any land within the County as a result of such land being either purchased/transferred/negotiated as treaty land, conversion of land to Reserves and/or land held in trust for such purpose.”

Current Status of ATR Proposals:

Currently the foregoing resolutions remain in force and none of the ATR proposals have been completed.

Staff and the Mayor met with the Elected Chief of the Mississauga's of the Credit in June 2017 to outline the County's position. No agreement was reached, the County's objections remain and subsequently the MNC has communicated to the Federal Government that it believes it has used its best efforts as required to allow the ATR to proceed. At this time there has been no communication from either the MNC nor INAC regarding the status of the ATR proposal.

Similarly, in October 2017 County Staff met with staff from the Six Nations and INAC representatives to review a very preliminary proposal to develop the Zwick and Hwer lands for a solar farm and whether the County would consider supporting the use. Staff provided technical input but indicated that the matter would need to be presented to Council. No further communication on this matter was received until the attached October 2020 notification letter was provided. At this time there has been no communication from either the MNC nor INAC regarding the status of the ATR proposal.

Conclusion:

The County's role in the ATR process is limited and the County has formally expressed its position on all of the outstanding proposals in the County. Ultimately, it is up to INAC to determine if any ATR is to be permitted. Should any future ATR be proposed, the Federal approval process includes a requirement to notify and consult with the County.

ATTACHMENTS:

1. Letter dated October 20, 2020 from Chief Mark Hill, Six Nations of the Grand River Elected Council
2. Location Map – Six Nations of the Grand River
3. Location Map – Mississaugas of the New Credit