
HALDIMAND COUNTY

Report PDD-10-2023 Grand River Notification Agreement Renewal - 2023

For Consideration by Council in Committee on February 28, 2023



OBJECTIVE:

To present the proposed updated Grand River Notification Agreement (GRNA) for Council's consideration and obtain Council's support to proceed with renewal of the agreement with the County as a party.

RECOMMENDATIONS:

1. THAT Report PDD-10-2023 Grand River Notification Agreement Review - 2023 be received;
2. AND THAT the amended Grand River Notification Agreement included as Attachment 1 to Report PDD-10-2023, be accepted;
3. AND THAT the Mayor be authorized to sign the Grand River Notification Agreement on behalf of the Corporation of Haldimand County for reasons set out in Report PDD-10-2023.

Prepared by: Shannon VanDalen, MCIP, RPP, Manager of Planning and Development

Respectfully submitted: Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

The Grand River Notification Agreement is a voluntary notification agreement between First Nations communities, various municipalities and provincial ministries. The agreement has been renewed on 5-year cycles since its enactment in 1996 and is set to expire in February 2023. A review team consisting of representatives of all the parties to the agreement have been working on a revised version of the document over the course of the last half year. The revised agreement is now complete and ready for presentation and consideration by the approval bodies of the various parties (e.g. Councils, Boards, Ministers). The revisions to the agreement are subtle and limited in number. They do not change the intent of the agreement in any way nor do they result in any increase in the obligations of or demands on staff time. Planning staff are supportive of the revised agreement and are recommending it for endorsement by Council.

BACKGROUND:

The Grand River Notification Agreement (GRNA or Agreement) is a notification Agreement between: Six Nations of the Grand River (elected Council); Mississaugas of the Credit First Nation; City of Brantford; County of Brant; Haldimand County; Grand River Conservation Authority; and Ontario (Province) to share information about matters of mutual interest. A few facts relating to the Agreement include:

- The Agreement first took effect on October 3rd, 1996, with this renewal representing the 5th extension;
- The Agreement is voluntary and is not legally binding;
- The Agreement remains in effect for a five (5) year period unless it is terminated sooner in accordance with the process laid out in the Agreement (last signing February 28, 2018);
- The Agreement does not contain any provision that would cause it to be extended automatically;
- The Agreement serves as an information exchange mechanism between the First Nation communities, municipalities and the other parties, and pre-dates more recent court decisions addressing matters of consultation and accommodation by the Crown; and
- Canada is currently not part of the Agreement and opted to not sign-on as part of 2013 agreement. Despite continued formal requests from the participating parties for Canada to re-engage and once again sign-on, the Federal government continues to reject these requests.

It is noted that the GRNA predates Supreme Court decisions that indicate that the Crown has a duty to consult and accommodate, which is considered a higher standard. To date, this has been interpreted as applying to the Province and Federal Government. As a result, the GRNA is supplementary to that duty as it applies to Ontario.

From the standpoint of sharing information with our neighbours about matters of potentially mutual interest, the Agreement is a positive tool. There is not a great amount of additional administrative work for staff or impacts on the various approval time frames created by the Agreement. Briefly, under the Agreement the County provides notification to the First Nations of the following:

- if considering adoption of a new official plan or amendment thereto;
- if considering a new zoning by-law or amendment thereto;
- if considering a plan of subdivision, condominium or consent to sever;
- if required to give notice under the *Environmental Assessment Act*;
- if required to give notice or seek permission from a conservation authority;
- if it has purchased or sold any land;
- if it proposes to declare land surplus;
- if it proposes to close a road permanently;
- if it has received an archaeological report; or
- if it is offering land for sale through public tender, advertising, or listing with realtor.

The relationship is reciprocated as First Nations provides notification to affected municipalities under the following circumstances:

- if the band council is considering or recommending the adoption of a new or amended land use plan for its Territory;
- if the band council is considering or recommending a change in permitted land use or zoning for a portion of its Territory;
- if the band council acquires or disposes of a fee simple interest or a leasehold interest with a term of twenty-one years or more in land, except in the case of leases of land within the First Nation's reserve to band members for residential use;
- if land is acquired in trust for the First Nation;
- if the band council is considering approval of the opening, alteration or closing of a waste disposal site, sewage treatment plant, recycling facility or waste management facility on its Territory;
- if the band council is considering approval of the construction or alteration of a septic bed or sewer system within the floodplain of the Grand River;
- if the band council is considering approval of an activity which would change a watercourse or change water drainage within its Territory; or

- if the band council is considering or recommending any of the following with respect to land held in trust for the First Nation: a change in land use, the opening, alteration or closing of a waste disposal site, sewage treatment plant, recycling facility or waste management facility; or any activity which would change a water course or water drainage.

In 2022, Haldimand County Planning & Development Division circulated approximately 94 planning applications (zoning and official plan amendments, plans of subdivision, site plan and consents) under the GRNA. Notices of minor variances do not need to be provided under the GRNA. In addition to this, the County also provides notice for other items as set out above and engaged in consultation in recent years regarding the Municipal Comprehensive Review for the Official Plan Update and Zoning By-law Consolidation. It is worth noting also that various County divisions routinely exceed the requirements of the GRNA in terms of information sharing and collaboration. One such example is the recent (early 2022) inclusion of Six Nations of the Grand River (elected Council) and Mississaugas of the Credit First Nation staff in the County's pre-consultation meeting process which is where various parties meet to discuss potential forthcoming development projects. This inclusion has proven to be a great relationship builder between staff of the two First Nations and County as well as providing an early opportunity for developers to connect and begin consulting on projects as it relates to First Nations interests.

The number of notices received annually from First Nations communities is very limited, due in large part to the limited amount of development activity that takes place. In the last 5 years the County has not received any notifications. This is due to the lack of development activity within the various categories noted above.

As noted above, the Agreement is set to expire in February 2023 and is set for renewal. While the municipality actively engages in consultation and engagement with both Six Nations of The Grand River (elected Council) and Mississaugas of the Credit First Nation, the Agreement is seen as an additional tool to utilize and incorporate into process to ensure that the relationship is mutually beneficial.

ANALYSIS:

A detailed review of the revised GRNA has recently been completed by all of the parties. All parties have had the opportunity to input and propose changes. The changes proposed have been largely housekeeping (see more detailed description below) and the base agreement remains relatively unchanged. Based upon the most recent Committee interactions, all parties are supportive of the content of the updated agreement. Further, all parties are now in the process of presenting the revised agreement to their respective approval bodies (Councils, Boards, Ministers, etc.). As noted above, the revised agreement does not propose any alterations to the (existing) intent, does not broaden the scope, and does not create any new obligations or revised notification processes for County staff. The only significant changes to the document are as follows:

- revisions within the agreement to recognize His Majesty the King – *in respect to the title change since the passing of the Queen*;
- recognition of the name of Mississaugas of the Credit First Nation (MCFN) – *removing "New Credit"*;
- inclusion of a clause relating to digital notifications – *i.e. email notifications and information*.

Further to the above, with the passage of time, 5-years since the agreement was last amended, some minor housekeeping changes are also required as they relate to the main document and the associated schedules. More specifically, revisions include:

- a number of name changes to Ontario Ministries (e.g. Ministry of Indigenous Relations and Reconciliation is now Ministry of Indigenous Affairs);
- changes to the position titles of contact persons within various Ontario Ministries; and
- change/update of contact information and addresses for various parties.

The above described revisions do not represent a fundamental shift in intent or change to the core content of the Agreement and are deemed by staff to be satisfactory.

Next Steps:

If Council endorses the revisions to the agreement, and renews its commitment to the agreement process, staff will send a copy of the associated resolution and the subject report to the Ministry of Indigenous Affairs (MIA) which serves as the lead and chair of the GRNA renewal project and renewal Committee respectively. It is anticipated that all parties will be completing their staff reports/renewal overviews with their respective Councils, Boards or Ministers over the course of this month. It is anticipated that MIA will circulate the final version of the agreement to all signatories in the spring (note: if any changes are made between now and the final version, staff would provide an overview of such to Council by way of a subsequent report). All signatories will sign the agreement upon receipt and send it back to MIA by both mail and e-mail. Once this process is completed, MIA will arrange for the Minister of Indigenous Affairs to sign the agreement on behalf of the provincial ministries, which will complete the renewal process.

While the GRNA is seen as a tool and foundation for engagement between First Nations, that takes place with only the elected Councils of Six Nations of the Grand River and Mississaugas of the Credit First Nation. There remains an overall lack of direction (from upper levels of government) or delegated responsibility to notify or consult with traditional or hereditary entities, within the Six Nations community in particular.

FINANCIAL/LEGAL IMPLICATIONS:

One of the provisions included within the Agreement indicates that the Agreement is without prejudice to any Party's legal rights or obligations and does not create any legal obligations, duties or rights. While the County is under no obligation to renew the revised GRNA, since the Region/County has participated in providing notice to First Nations for the last 26 years, cancelling that arrangement could jeopardize the relationship building that has taken place and continues to grow. Also, it is an opportunity for the County to gauge early on whether there are potential First Nations issues concerning proposals from the elected first nations council or administration. This may help Developers regarding their proposal.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: Yes

By-law: No

Budget Amendment: No

Policy: No

REFERENCES:

None.

ATTACHMENTS:

1. Grand River Notification Agreement.
2. Grand River Notification Agreement Schedule B.