

Procedures for Crown Consultation with Aboriginal Communities on Mine Development Projects – Mineral Resources Division, Manitoba Science, Technology, Energy and Mines

The Government of Manitoba recognizes it has a duty to consult in a meaningful way with First Nations, Métis communities and other Aboriginal communities when any proposed provincial law, regulation, decision or action may infringe upon or adversely affect the exercise of an aboriginal right or treaty right of that Aboriginal community. This duty arises out of the recognition and affirmation of aboriginal and treaty rights under section 35 of the [Constitution Act, 1982](#).

Manitoba Science, Technology, Energy and Mines (the Department) has developed these Procedures for consultation with First Nations, Métis communities and other Aboriginal communities (collectively called “Aboriginal communities” in these Procedures) about mine development projects. The Procedures outline the approach that the Mineral Resources Division (MRD) of Science, Technology, Energy and Mines will use to carry out the Crown’s duty to consult about mine development projects.

In these Procedures, “consultation” means the duty of consultation of the Crown relating to the recognition of Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*. In these Procedures, references to “adverse effects” means “adverse effects on the exercise of aboriginal or treaty rights” and “affected Aboriginal community” means any Aboriginal community whose aboriginal or treaty rights may be infringed or adversely affected.

Objectives

The objectives of these Procedures are to:

- provide for a consultation process of a nature and scope that is commensurate with the potential level of effect on the exercise of treaty and aboriginal rights;
- clarify the roles of the Department and minerals industry in consultation; and
- establish a clear, certain, timely, and effective process for communication, information sharing and meaningful consultation with respect to mineral exploration and development.

Manitoba also views the consultation process reflected in these consultation procedures as helping to build positive relationships between the Government of Manitoba, Aboriginal communities and the minerals industry on issues related to mineral exploration and development.

It is important for the Crown and Aboriginal communities to actively participate in the consultation process in a full and timely manner. An effective consultation procedure should enable the Aboriginal communities to learn about the proposed mine

development, to advise of their concerns, if any, about potential effects of the mine development on the exercise of their treaty and Aboriginal rights and to exchange information about those concerns. The process should then enable those concerns to be considered by the Crown and addressed quickly and effectively, so that decisions about mine development activities may be reached in a timely way.

An effective consultation process will allow the Crown to make informed decisions about any potential effects on the exercise of treaty and Aboriginal rights without unduly delaying or discouraging investment in Manitoba's mineral resources resulting in mineral exploration and development activities, which benefit of all Manitobans, including Aboriginal people who live and work near areas of mineral exploration and mine development.

The Government of Manitoba's draft [Provincial Policy for Crown Consultation with Aboriginal Peoples](#) dated July 10, 2007 reflects the framework through which the Government is meeting its consultation responsibilities. These Procedures will be used by MRD to carry out consultation about mine development projects. These Procedures are expected to be reviewed and revised from time to time to reflect updates to the Provincial Consultation Policy and the Government's experience in carrying out consultation.

Consultation about Mine Development Projects

MRD is responsible for coordinating, on behalf of the Government, consultation about Crown decisions relating to mine development projects when the projects might adversely affect the exercise of treaty and Aboriginal rights. MRD will coordinate the participation in the consultation process of other Provincial departments responsible for the issuance of any provincial licences, work permits or other authorizations required for mine development projects. MRD will also coordinate the consultation with any environmental review processes.

It is expected that project proponents will engage with Aboriginal communities based on respect, open communication and co-operation. Proponents are expected to consider views of First Nations and Métis who could potentially be affected by their developments. Proponents should incorporate traditional use data into planning for their operations. It is expected that project proponents will plan their activities to avoid or mitigate adverse effects on the exercise of aboriginal or treaty rights of Aboriginal communities.

Authorizations

Mine development projects require a number of approvals from various departments including the issuance of a mineral lease and approval of a mine closure plan under [The Mines and Minerals Act](#) and a licence under [The Environment Act](#). A complete list of the authorizations required for various mine development projects can be found in the [Exploration and Mining Guide](#) on the MRD website.

Consultation Process

MRD will undertake an initial assessment of the mine development project and the Aboriginal communities that might potentially be affected by such mine development project. Where MRD considers that the exercise of aboriginal or treaty rights of an Aboriginal community might be affected, MRD will initiate consultation with that community. MRD will also consider any known views of any Aboriginal community in the initial assessment. MRD will, at an early stage, advise the company of the communities with which MRD initiates consultation and will also advise of any additions to or deletions from that list of communities.

In most cases, consultation on mine development projects will be guided by a consultation protocol. A sample of such a consultation protocol was developed by MRD. The [sample consultation protocol](#) may be modified as agreed by MRD and the Aboriginal community, to suit their particular concerns and circumstances, and is intended to provide the framework for how the consultation process will take place. The purpose of the framework provided by the consultation protocol is to establish a clear, certain, timely and workable consultation process. MRD proposes that the consultation protocol for a mine development project, based on the sample protocol, be finalized early in the Crown's consideration of the project and, ideally, in advance of receiving formal project applications from the proponent to allow for input from potentially affected Aboriginal communities.

A written consultation protocol is not required; however, if a written consultation protocol cannot be completed, MRD will seek to consult with affected Aboriginal communities on the basis of the principles in these Procedures and in the sample consultation protocol.

As discussed above, while the consultation process is discrete from environmental licensing processes, it is MRD's intent to coordinate as much as possible the Crown consultation process with the existing regulatory process for mine development projects, to avoid duplication and to facilitate information sharing. A consultation facilitator may be engaged by MRD to facilitate consultation on mine development projects.

The attached sample consultation protocol, developed by MRD, is to be used as a template for consultation protocols with Aboriginal communities about mine development projects. The sample consultation protocol is consistent with the Provincial Consultation Policy and will be used by MRD to provide for a consistent consultation process for various mine development projects.

ATTACHMENT 1 – Consultation Protocol Template

CONSULTATION PROTOCOL¹

Manitoba Science, Technology, Energy and Mines on behalf of the Crown (“Manitoba”) and the _____ First Nation (“the First Nation”) have developed this Consultation Protocol document as a framework for conducting a good faith consultation process respecting the _____ mine development project (“the Project”) being developed by _____ (“the Proponent”).

The consultation process will recognize that:

- The First Nation is signatory to Treaty No. ____ and has treaty rights under that Treaty and may have other aboriginal rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- Manitoba has prepared a draft “Provincial Policy and Guidelines for Crown Consultations with Aboriginal Peoples”, designed to guide consultations with First Nations and Aboriginal communities by all Manitoba Government departments. Manitoba is meeting with First Nations in Manitoba about the draft Policy and Guidelines. Manitoba intends to conduct consultations in a manner consistent with the draft Policy and Guidelines.
- This Consultation Protocol reflects the approach to consultation agreed by Manitoba and the First Nation for the Project and to the extent that this Consultation Protocol is inconsistent with the draft Policy and Guidelines, this Consultation Protocol will apply.

A Consultation Plan for undertaking the consultation is attached as Schedule “C” and forms an attachment to this Consultation Protocol.

Objective of Crown Consultations

Manitoba acknowledges that the Crown has a responsibility to consult in a meaningful way with First Nations before making a decision that might adversely affect the exercise of Treaty or Aboriginal rights of members of the First Nation and, where appropriate, to develop workable ways to address concerns of the First Nation about the potential effects.

The objective of the consultation is to meet that responsibility.

¹ This sample Consultation Protocol refers to a “First Nation”; the Protocol would be adapted to reflect the circumstances of non-First Nation Aboriginal communities.

Project

The proponent is proposing to carry out activities, technical and environmental studies and investigations, and possibly develop the project as described in Schedule “A” (“the Project”).

The consultation process under this Consultation Protocol will assist in providing information to be used by government decision-makers acting on behalf of the Crown.

The consultation process is to establish a clear, certain and timely process for communication, information sharing and consultation with respect to the adverse effects of the proposed Project on the exercise of aboriginal or treaty rights.

In this Protocol: references to “consultation” means the duty of consultation of the Crown relating to the recognition and affirmation of Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*; references to “adverse effects” or “effects” means adverse effects on the exercise of treaty and Aboriginal rights; references to “Aboriginal rights” includes known and reasonably asserted Aboriginal rights.

Consultation Principles

Manitoba and the First Nation will participate in consultations in good faith.

The consultation process will serve to inform decision making by the Crown at various stages of the consultation process.

During the consultation process, Manitoba and the First Nation will, subject to proprietary and intellectual property issues and reasonable confidentiality requirements, exchange all relevant information concerning the proposed Project and possible effects of those activities on the exercise of treaty and Aboriginal rights. They will each provide that information in a manageable and understandable format. This exchange of information will be undertaken in a transparent and timely manner.

Manitoba will listen in order to understand the First Nation’s concerns about adverse effects of the mine development project, document all concerns raised and, where appropriate to uphold the honour of the Crown, seek workable ways to substantially address the concerns raised by the First Nation.

The First Nation will be given a reasonable amount of time to prepare and express its views on information and issues raised by Manitoba or the project proponent at meetings or at community consultation sessions.

Manitoba will fully consider any views or concerns expressed by the First Nation in relation to adverse effects of the Project on the exercise of treaty and Aboriginal rights raised by the First Nation at meetings or at community sessions.

Manitoba will arrange for the proponent to be involved in the consultations to provide information and to assist in developing and implementing accommodation measures to minimize adverse effects where appropriate.

This consultation process will build on but not duplicate other processes in which the First Nation is involved in relation to the Project.

Consultation Plan

Consultation will proceed according to the Consultation Plan attached as Schedule “C”. The Consultation Plan may be amended or updated from time to time by Manitoba and the First Nation.

Consultation Support Costs

Manitoba will, where a budget for the costs is agreed to in advance, cover the reasonable costs of consultation based upon the Consultation Plan and schedule, including:

(a) Community consultation expenses

- Reasonable administration costs to facilitate the organization of the consultation in the community;
- Meeting room rental, refreshments, audio and visual aids, translation services; and
- Reasonable honoraria, at the request of the community, according to community custom or protocol, e.g. Elders participation.

(b) Travel expenses

- Where consultation activities take place away from the community, reasonable travel costs at government rates for one or more community representatives to travel to the meeting.

(c) Technical assistance or other expenses

- Reasonable costs for technical or professional assistance and other reasonable costs may be included where approved in writing in advance by Manitoba.

Manitoba will reimburse costs in accordance with the “Principles for Reimbursement of Costs” set out in Schedule “D”.

Information

To facilitate consultation and, where appropriate, accommodation, Manitoba and the First Nation will share relevant information in respect of the proposed Project.

Manitoba has provided preliminary information to the First Nation about the proposed Project listed in Schedule “E”.

Considering identified concerns of the First Nation

Manitoba will give full and fair consideration to the views and concerns expressed by the First Nation about potential adverse effects of the proposed Project on the First Nation’s treaty and Aboriginal rights in the consultation process. Manitoba will also give full and fair consideration to any information otherwise available to Manitoba about the rights and interests of the First Nation that may be affected by the proposed Project.

The rights and interests of the First Nation and its members that will be considered during the Consultation process under this Consultation Protocol include, but are not limited to the following:

{list of proposed rights and interests that First Nation wants to discuss during the consultation process}.

Addressing Effects

Manitoba and the First Nation will consider how adverse effects on the exercise of treaty and Aboriginal rights may be addressed and where appropriate will formulate workable means to address such adverse effects. In doing so, implications for other affected parties will be considered.

Manitoba and the First Nation recognize that accommodation measures include any action that may be taken by Manitoba or the Project proponent, whether or not they result directly from the consultation process under this Consultation Protocol and may include:

- (a) mitigation, economic benefits or compensation;
- (b) decisions by Manitoba about licences or authorizations, including:
 - i. decisions whether licences or authorizations should be issued, and
 - ii. decisions about any conditions that might apply to any licences or authorizations.

If it has determined that the Project could potentially adversely affect the exercise of treaty and Aboriginal rights, the Crown will identify any measures to address the adverse effects.

Copies of Materials

Manitoba will provide a written summary of meetings to the Chief and Council of the First Nation and copies of any relevant documents requested by Chief and Council.

Manitoba will provide the First Nation with a reasonable opportunity to review written summaries of meetings and other relevant documents submitted to the First Nation.

Proprietary Interests, Intellectual Property, Confidentiality and Privacy

Proprietary and intellectual property interests, privacy interests and confidentiality requirements of parties, including the confidentiality provisions of *The Mines and Minerals Act* will be respected in the consultation activities. MRD recognizes that companies have concerns about disclosure of proprietary information to competitors, and that companies may be under strict requirements imposed by securities legislation in relation to the timing of public disclosure of information, and those concerns and requirements are to be respected. MRD also recognizes that the First Nation has a proprietary interest in certain cultural and resource-harvesting information and has concerns and requirements in relation to disclosure and those concerns and requirements are also to be respected.

Timetable

Manitoba and the First Nation will agree on a timetable for completion of the consultation process, recognizing that the consultation process may be conducted in stages or phases as the Project develops over time. In developing the timetable, Manitoba and the First Nation will take into account the proposed timelines for activities by the proponent as long as those timelines do not affect the ability of Manitoba and the First Nation to consult effectively.

Reporting Outcomes

Following the completion of any consultation process, Manitoba will provide the First Nation with a written report of the consultation process and any decisions made, including the potential adverse effects of proposed activities on the exercise of aboriginal and treaty rights identified and any accommodation measures that were adopted.

Contacts

The following are the contact people for Manitoba for the purposes of this consultation:

Contact Name	Address	Phone	e-mail

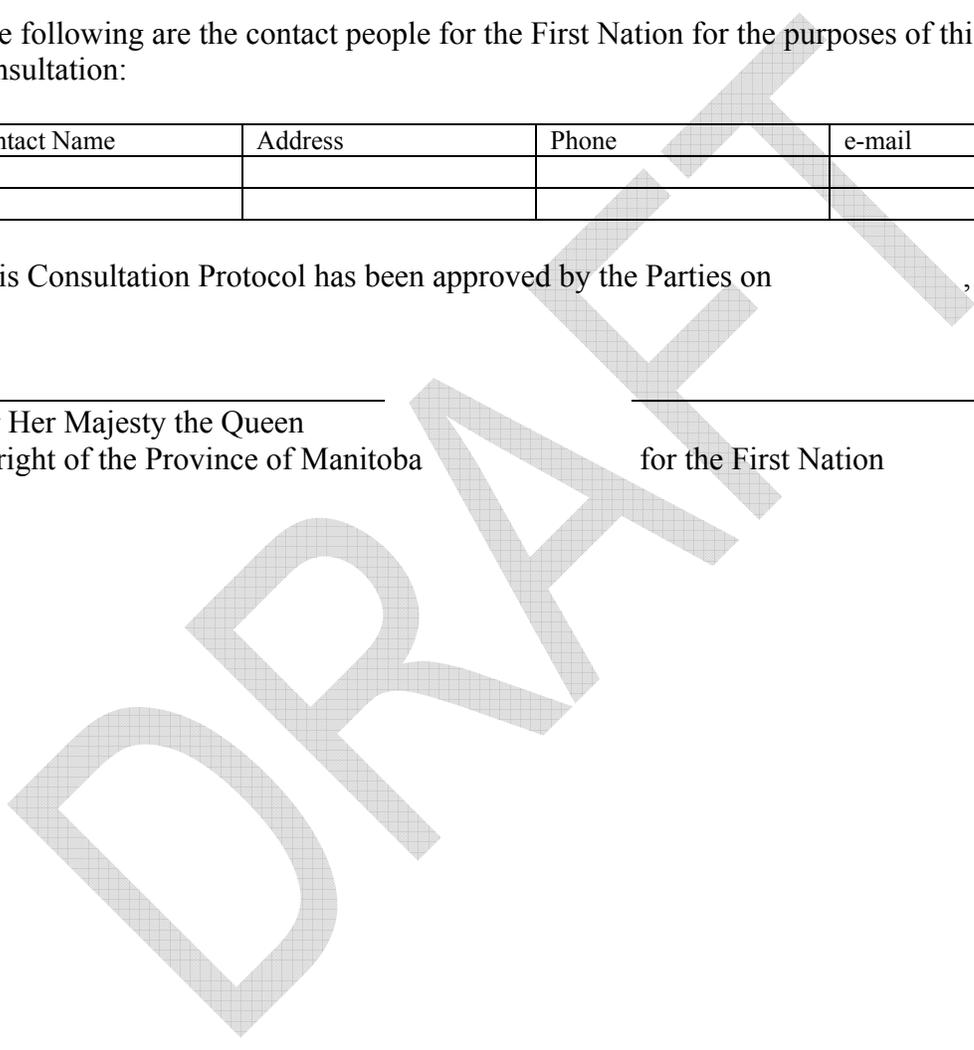
The following are the contact people for the First Nation for the purposes of this consultation:

Contact Name	Address	Phone	e-mail

This Consultation Protocol has been approved by the Parties on _____, 20 .

for Her Majesty the Queen
in right of the Province of Manitoba

for the First Nation



Schedule "A"
Description of Project

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**Schedule “B”
Map of Project**

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Schedule “C”

CONSULTATION PLAN

This Consultation Plan reflects the way in which consultation about the Project will take place between Manitoba and the First Nation. The Consultation Plan may be revised from time to time to reflect what is happening in the consultation process.

Consultation Steps

The following steps will be undertaken:

- Develop a framework for undertaking the consultations.
- Provide relevant information.
- Obtain technical, professional assistance, where required.
- Consider potential adverse effects.
- Identify issues and concerns.
- Identify potential alternatives to address effects.
- Formulate potential means to minimize adverse effects.
- Document the consultation including the decisions made by Manitoba and the considerations given to concerns raised by the First Nation.

Meeting Representatives

The following people have been identified as representatives of Manitoba:

list them

Manitoba may include legal advice and representation from Manitoba Justice in consultation activities where required. Manitoba may include other representatives in consultation activities, as considered appropriate.

The First Nation may include legal advice and representation from legal counsel in consultation activities where required.

The following people have been identified as representatives of the First Nation:

list them

Meeting Location(s)

Meetings may be held in person or by teleconference. Meetings held in person will take place in *name of community* or other suitable location agreed upon by Manitoba and the First Nation.

Meeting Notes

Meeting notes will be prepared by Manitoba for review and input by all meeting attendees no later than fourteen (14) business days after the meeting. The First Nation will review the meeting notes and provide comments within 14 days of receiving the meeting notes from Manitoba.

Meeting and Activity Schedule

The following is a timetable for consultation meetings and activities under this Consultation Protocol:²

Meeting 1 - Date *include date*, Location – To be determined

Proposed Agenda

- Review Consultation Protocol and Consultation Plan for undertaking the consultation.
- Discuss process for information sharing between Manitoba and the First Nation.
- Undertake a preliminary review of the First Nation's issues and concerns.
- Manitoba information-sharing presentation about the project:

Meeting 2 – Date on or before *include date*, Location – To be determined

Proposed Agenda

- Prepare timetable and work plan for consultation
- Discuss consultation costs
- Follow up on issues and concerns
- Follow up on undertaking required from earlier meetings

etc.

² This timetable is included as an example only. The specific timetable is to be developed with the involvement of the First Nation.

Schedule “D”
Principles for Reimbursement of Costs

Reimbursement of costs for activities under this Consultation Protocol approved by Manitoba will be made on the basis of the following understandings:

- (a) on a monthly basis, the First Nation will submit to Manitoba an accounting in agreed reporting format of monies expended in the immediately preceding month, with supporting documentation, including a summary of the outcomes or achievements of value to the First Nation that were accomplished as a result of the costs incurred by the First Nation;
- (b) The First Nation will detail the expenses for individual members for all meetings. Charges for services and incidental expenses will be claimed at agreed upon rates with necessary supporting information being supplied;
- (c) The First Nation will include with each accounting:
 - (i) invoices for the work of technical, professional and legal advisors which the First Nation has directed to be undertaken and which has been completed to the First Nation’s satisfaction; and
 - (ii) receipts for the travel expenses. Meals will be reimbursed at agreed rates. If ground transportation is used, the purpose of the expenditure, destinations, distance traveled and rate per kilometer;
- (d) reasonable travel time billed by professional advisors will be reimbursed by Manitoba;
- (e) all accountings submitted to Manitoba must be approved by the First Nation representative with authority for such purpose. Financial reports submitted to Manitoba will be accepted and used by Manitoba as the confidential business information of the First Nation, and, except as may be required by law, will not be released without the First Nation’s consent.

Schedule “E”

Information Provided by Manitoba to the First Nation

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