

Métis Engagement and Consultation Guide: 2022-2023

Who are the Métis? Métis Nation of Alberta (MNA) and Métis Nation Region 3 (MNAR3)?

As per the Métis National Council, ‘Métis means a person who self-identifies as a Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation ancestry, and is accepted by the Métis Nation.’ Historic Métis Nation ‘means the Aboriginal people then known as Métis or half-breeds who resided in the Historic Métis Nation Homeland.’ Métis Nation ‘means the Aboriginal people descended from the Historic Métis Nation, which now comprised of all Métis Nation peoples and is one of the “Aboriginal peoples of Canada” as defined in s.35 of the *Constitution Act 1982*.’



In the past decade, the Métis population has nearly doubled. According to the 2016 Census, the Métis population (587,545) had the largest national increase of any of the groups over the 10-year span, rising 51.2% from 2006 to 2016. More than 96,865 Métis reside in Alberta, and as of January 2020, there were 42,868 Métis Albertans registered with the MNA.

Since its inception in 1928, the MNA has been the Métis Government and representative voice for Métis Albertans. Its geographical and legal boundaries comprise the entirety of the province of Alberta. Métis Nation Region 3 is the regional governance structure for the following areas: Calgary, Airdrie, Medicine Hat, Lethbridge, and Red Deer.

Distinction between Indigenous Engagement and Consultation in the Context of Municipal Project Development

As the City of Calgary moves towards active reconciliation, some projects, strategies or planning processes may require either engagement or consultation with the Métis Nation Region 3 (MNAR3). According to Legal Counsel, Corporate Commercial & Finance – Law Dept. (Feb 2022¹) the terms “engagement” and “consultation” are quite different in law and should not be considered interchangeably. These distinctions are important and should be considered by City staff when communicating with the MNAR3.

The following process map is intended to give a **high-level understanding** of Consultation vs Engagement. The map also provides important **procedural information** with respect to contacting the MNAR3 and must be followed to respect the Regional Consultation Protocols, established by the Métis Nation of Alberta. City of Calgary staff should consult the process map for each project. Carefully considering the correct approach will avoid confusion or misunderstandings; offering clarity to both


¹ A more fulsome understanding regarding the City’s Indigenous obligations can be addressed through the Law Department and the IRO.

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parties on how City policies planning and process’, and/or legal obligations will be applied while working together.

<p>Legal Consultation or Duty to Consult with the Métis Nation of Alberta</p> <p>Mandatory</p>	<p>Indigenous Engagement with the Métis Nation of Alberta</p> <p>Voluntary</p>
<p>What?</p> <p>“Consultation” or the “Duty to Consult” references a very specific legal process that arises to provide for a remedy when Aboriginal and treaty rights may be unjustifiably infringed because of a decision of the Crown. This includes the Métis Nation Region 3.</p> <p>In most cases if legal Duty to Consult is triggered, the appropriate parties will be notified by the Federal or Provincial governments.</p>	<p>What?</p> <p>Through its reconciliation activities the City may wish to consider “Engagement” with Indigenous peoples who may have a vested interest in an historical or contemporary project, policy, or strategy. This includes the Métis Nation Region 3.</p> <p>Such engagements should be logical, based in policy rationale, and are considered voluntary.</p>
<p>Why?</p> <p>Municipal governments often need to undertake formal Consultation in situations where a City project requires a decision of the Crown (i.e. federal or provincial permits or approvals) and that decision may unjustifiably infringe upon Aboriginal and/or treaty rights. This is because the Federal or Provincial government will often (but not always) delegate the consultation work to the municipality to carry out on its behalf.</p> <p>A “decision of the Crown” resulting in a Duty to Consult with Indigenous People is limited to decisions of the Federal or Provincial government, or their respective agencies/tribunals that have authority to make the decision that is believed/ may result in an infringement of an Aboriginal or treaty right (i.e. the decision to issue a</p>	<p>Why?</p> <p>The City’s on-going dialogue with Indigenous peoples is meant to build strong relationships, understanding and respectful and inclusive project results. This is how long-term relationships are built.</p> <p>Most of the City’s reconciliation work will be aligned with the White Goose Flying Report, as well as other reconciliation initiatives. Most if not all would qualify as voluntary engagement, without any specific legal requirements. Having said this, voluntary engagement should be thoroughly discussed prior to contacting MNAR3.</p>

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<p>pipeline permit or decision regarding the outcome of an environmental assessment process for instance).</p> <p>Currently municipal government decisions are not considered by the Courts to be “Crown” decisions that could give rise to the Duty to Consult independently of a Provincial or Federal decision.</p>	
<p>Is there an Impact to the Municipality?</p> <p>If consultation for a municipal project has not been delegated by the Crown for the City to do the substantive leg work, the City still requires a good understanding of the potential impact projects may have on Aboriginal and/or treaty rights because of the Crown decision that is required.</p> <p>The City also should understand the degree of consultation required (i.e. deep extensive consultation on one end of the spectrum or low-level Consultation requiring little more than notice at opposite end of the spectrum). This is because while the Crown has ultimate responsibility for the Consultation process, the project proponent will always bear the bulk of the risk should a court determine that consultation carried out by the Crown was not adequate.</p>	<p>Is there an Impact to the Municipality?</p> <p>While not all projects require voluntary engagement, impacts to the Municipality should be considered thoroughly, should engagement not be pursued as The City as a whole (including the Indigenous Relations Office) could face considerable reputational and relational damage. Some questions to ask are:</p> <ul style="list-style-type: none"> • Is engagement logical or based in policy rationale? • Will this project be presented to Council? Can the author address the section concerning risk in relation to Indigenous involvement? • Are there risks and political sensitivities that are involved that would be mitigated through engagement? • Does the project have space to include feedback from an engagement? • Has the MNAR3 previously declared an interest in a place, idea or project that is known/ documented?
<p>Infringement and Duty to Accommodate?</p>	<p>Infringement and Duty to Accommodate?</p>

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<p>If the formal Consultation process determines an “unjustified infringement”², this will give rise to the Crown’s Duty to Accommodate (i.e. provide some remedy for the infringements to restore a balancing of interests).</p>	<p>As engagement is voluntary, “unjustified infringement” or accommodation is not possible/ relevant.</p>
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MNA Regional Consultation Protocol

Once City of Calgary staff have determined the correct approach, the following Regional Consultation Protocols should be applied ³(Please add map and contact information pages 3-4).

Who: The Métis Nation of Alberta has six administrative Regions, and local councils that have entered Regional Consultation Protocols. The City of Calgary sits in Region 3. The protocols offer a streamlined approach to consultation with MNA citizens providing consistency and clarity for proponents and the Crown.

Why: To administer this approach, the MNA has created six Regional Consultation Offices (RCOs) tasked with facilitating consultation at the local, regional, and provincial levels. This approach is accepted by the Government of Canada which, on July 19, 2018, signed a Consultation Agreement with the MNA acknowledging its Regional Consultation Protocol Agreements as how to conduct consultation with the Métis Nation within Alberta.

How: The MNAR3 has an Elders Circle, consisting of six Métis Elders (3 male and 3 female) who will be approached. This group has been validated by the Region as qualified Métis Elders who are prepared to be involved in both Engagement and Consultation.



Notifications and negotiations must occur between the City of Calgary Business Units or project staff and the Regional Consultation Office (RCO) as facilitated by the Regional Consultation Coordinator. This standardized and streamlined process with a single point of access will ensure that both Consultation and Voluntary Engagement is completed through a validated process. Please contact the MNAR3 office **AT LEAST 1 month** in advance of your event or meeting to ensure that the Elders have time to determine interest and availability.

What Will Happen?

² The determination of whether the infringement of an Aboriginal or Treaty can be justified is based on whether the circumstances can meet the legal test known as the “Sparrow test”.

³ Please be advised that while City staff may contact the IRO Office for additional clarity, the office cannot by-pass the MNA Protocols by requesting Elders or other information outside of the established Protocols.

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1. Please contact: [Wynter Ducharme, Regional Consultation Coordinator, Métis Nation of Alberta @ 403-569-8800 or *WDucharme@metis.org*](#)
Please copy the iro@calgary.ca so we are aware of ongoing work.
2. Nicole will bring all requests to the Métis Elders group. THEY will decide who has the most knowledge and is willing to attend based on individual knowledge and requested information.
3. The Consultation/Engagement Coordinator will return your email with the Elder who will be attending as well as any additional requests for location, protocols, etc.