

Attachment #2 – Policy Directions Report – Submissions and Response Chart
Part 6 – Indigenous Peoples

Overview

This document provides written submissions in verbatim and staff responses on comments related to the Regional Official Plan Review (excluding IGMS/PGC which are included in the Preferred Growth Concept Report) from June 20th, 2020 to November, 30 2021. The policy directions referenced in the staff response column have not been endorsed by Regional Council.

The full Policy Directions Report Submission and Response Chart includes the following parts:

- Part 1 - Public Authorities
- Part 2 - Advisory Committees and Stakeholders
- Part 3 - Public Submission – June 2020 to September 2020
- Part 4 - Public Submission – October 2020
- Part 5 - Public Submission - November 2020 to November 2021
- Part 6 – Indigenous Peoples**
- Part 7 – Additional Submissions

The document is organized into four columns: 'No.', 'Source', 'Submission', and 'Response'.

The submissions are organized chronologically.

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Submissions & Responses

No.	Source	Submission	Response
1	Mississaugas of the Credit First Nation Email dated December 16, 2020	<p>December 15,2020</p> <p>Scott Macleod, Senior Planner Legislative & Planning Services Halton Region Scott.Macleod@halton.ca</p> <p>***BY EMAIL***</p> <p>Dear Scott,</p> <p>Re: Mississaugas of the Credit First Nation Engagement on Municipal Official Plan</p> <p>Thank you for contacting the Mississaugas of the Credit First Nation ("MCFN") for our input on the review and update of your municipality's Official Plan. We welcome the opportunity to be engaged in this process and to have our rights and interests better reflected in your Official Plan moving forward.</p> <p>As an Indigenous community, MCFN has inherent, Aboriginal, and treaty rights throughout our Territory, which includes the area that is covered by your Municipal Plan today. Our Aboriginal and treaty rights fundamentally entitle us to be sustained by our territory and include the responsibility to sustainably manage our Territory, including its lands, waters, and other resources, so that it can continue to sustain our community for generations to come.</p> <p>MCFN understands that sustainability, as well as measured, planned growth and development, are at the heart of Ontario's land use planning policies and Municipal Official Plans. Our input will help your Official Plan achieve these goals, while respecting MCFN's inherent, Aboriginal, and treaty rights.</p> <p>In our view, your Municipal Official Plan should include the following key elements in order for it to better recognize and respect our rights and interests:</p> <p>A clear acknowledgement of MCFN as the Indigenous people who are the traditional owners and continuing stewards of the lands, waters, and resources which make up what is the municipality's Official Planning area today;</p> <p>Acknowledgement of our Aboriginal and treaty rights throughout our Territory, including:</p> <ul style="list-style-type: none"> o Our ongoing stewardship of the lands, waters, and resources, and specifically our Aboriginal title to the waters, beds of waters, and floodplains within our Territory; o Our role in protecting MCFN's archaeological and cultural heritage resources including reference to our Archaeological Standards and Guidelines; o The importance of ensuring that our Territory can continue to sustain our people, spiritually, culturally, and economically, now and for generations to come; and 	<p>Regional staff met with the Mississaugas of the Credit First Nation ("MCFN") on several occasions throughout 2020 to 2021 to learn about MCFN's history, culture, as well as interests related to land, water, cultural heritage, and archaeological resources. Discussions also included matters (i.e., theme areas of interest) related to the ongoing Regional Official Plan Review.</p> <p>MCFN submitted the response documented in this chart outlining what they may like to see in Municipal Official Plans, such as the Halton Regional Official Plan. Regional staff acknowledges and thank MCFN for this submission and it continues to be considered as a part of the ongoing Regional Official Plan Review.</p> <p>Regional staff is working with other internal departments, such as Strategic Government & Policy Relations, to address the interests and issues that MCFN has raised and to ensure alignment with the Region's Indigenous Relationship Building Initiative. Regional staff is currently preparing a detailed response to MCFN's submission.</p> <p>Regional staff remains committed to continuing to engage with MCFN and other Indigenous Communities in Halton to ensure their rights and interests are addressed through the Regional Official Plan Review.</p>

A process for notification and ongoing engagement that reflects and respects our governance and decision-making role over land use planning and other decisions that have the potential to affect our Aboriginal and treaty rights or our Territory.

The MCFN Municipal Official Plan Input Document attached to this letter describes in detail how your Official Plan can include the key elements listed above. It also includes text that we recommend be inserted into your Official Plan in each of these areas. Similar to the Provincial Policy Statement which sets the minimum standards that Municipal Official Plans must align with to comply with provincial planning requirements, the key elements listed above represent our minimum standards for inclusion in all Municipal Official Plans within our Territory.

We created the MCFN Municipal Official Plan Input Document to help us streamline the process of providing input on Official Plans, in light of the numerous requests we have received from upper and lower tier municipalities recently. In particular, we view this as the beginning of our engagement together on this topic, and further meetings may be required in order to discuss this document and how your Official Plan can incorporate our proposed text. MCFN may require capacity support for our staff's preparation for and attendance at these meetings, depending on whether a more lengthy or intensive engagement together is required to address our concerns.

MCFN would be pleased to meet with you to discuss the attached document and how your Municipality's Official Plan can properly align with and respect our rights and interests. Please feel free to contact me directly at fawn.sault@mncfn.ca or 905-768- 4260 to set up a time when we can meet.

Sincerely,
Fawn Sault
Consultation Coordinator, MCFN Department of Consultation and Accommodation

Encls (2)
1. MCFN Municipal Official Plan Input Document
2. Letter to Minister Clarke

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DRAFT FOR DISCUSSION PURPOSES ONLY

**The Mississaugas of the Credit First Nation (“MCFN”)
Municipal Official Plan Input Document
December 16, 2020**

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Overview

The purpose of this document is to streamline MCFN’s participation in the review of Municipal Official Plans. It does this by providing language that can be inserted into your Official Plan to help guide municipal planning and better inform planners and developers about our rights and interests.

Similar to the *Provincial Policy Statement*, which sets the minimum standards that Municipal Official Plans must align with to comply with provincial planning requirements, these key elements represent our minimum standards for inclusion in all Municipal Official Plans within our Territory.

1. Recognition of MCFN and MCFN’s Territory as an Integral Component of the Planning Context

MCFN have Aboriginal and treaty rights over our Territory which spans much of southern Ontario and the area now known as the Greater Golden Horseshoe region. We are the original owners and stewards of the land to which your Official Plan will apply. Our community and our rights form an integral component of the regional context within which land use planning and planning decisions will occur.

The following language can be included in any introductory section in your Official Plan that describes the geographic and historical background within which municipal planning takes place: DRAFT FOR DISCUSSION PURPOSES ONLY

MCFN is an Indigenous community and Aboriginal people within the meaning of section 35 of the Constitution Act, 1982, with inherent, Aboriginal, and treaty rights throughout their Territory. As further outlined below, MCFN has treaty rights over some areas of their Territory and these areas are occasionally referred to as MCFN’s Treaty Territory. Other areas (such as the Rouge River Valley, and the waters, beds of

water, and floodplains) have never been subject to a treaty between MCFN and the Crown and so MCFN has Aboriginal title to these areas, which may be referred to as their Territory or Traditional Territory. For the purposes of this document, all of these areas are included within the definition of MCFN's Territory.

MCFN's Territory commences at Long Point on Lake Erie and extends eastward along the shore of the Lake to the Niagara River and down the River to Lake Ontario. It further extends northward along the shore of Lake Ontario to the Rouge River east of Toronto, then up the Rouge River to the dividing ridge. From the dividing ridge, it extends to the headwaters of the River Thames, then southward to Long Point, where it began. MCFN's Territory encompasses, among other places, present-day Kitchener, Niagara Falls, Hamilton, Toronto and City of Burlington, Town of Oakville, Town of Milton and the Town of Halton Hills, as well as the lands and waters between and surrounding these places. Moreover, MCFN are the original owners and stewards of the lands and waters that make up what is now known as the Greater Golden Horseshoe region. Their Territory has defined and sustained MCFN for countless generations and must continue to do so for generations to come.

Between 1781 and 1820, MCFN entered into various treaties with the Crown, establishing treaty rights throughout their Territory. In addition to treaty rights, MCFN has Aboriginal rights and title to the waters, beds of water, and floodplains in their Territory, including the lakebeds of Lake Erie and Lake Ontario, as well as Aboriginal title to their lands in the Rouge River Valley. In 2015 and 2016, MCFN requested to enter into negotiations with the governments of Canada and Ontario aimed at reconciling their Aboriginal title with the present-day use and occupation of their title land and waters by the Crown and the public. MCFN is currently engaged in negotiations with Canada to explore new approaches to understanding and implementing their rights and title.

Please see the attached MCFN Treaty and Traditional Territory map.

Note that text above refers to a map of MCFN Territory. We have provided you with a map of our Territory for you to include in your Official Plan to accompany the description above. The blue highlighted text above suggests how you can refer to this map in your Official Plan.

2. Having MCFN Rights and Interests Recognized in Official Plans

MCFN's rights and interests with respect to the lands, waters, and resources in our Territory should be explicitly acknowledged and accounted for in Municipal Official Plans and planning decisions.

The sections below describe how MCFN's rights and interests can be recognized and incorporated into your Official Plan.

a. MCFN stewardship and the protection of land and water

MCFN has a responsibility to be stewards of our Territory, and to sustain and protect our lands and waters for generations to come.

Where Municipal Official Plan deals with the natural environment, MCFN's stewardship responsibilities and our rights to actively protect land and water in our Territory for future generations should be recognized.

A description of MCFN's stewardship responsibilities for the lands, waters, and resources of our Territory, and MCFN's rights to protect the same for future generations, can be inserted into your Official Plan as follows:

Corresponding to and arising from MCFN's Aboriginal and treaty rights, MCFN has a responsibility to act as stewards of their Territory, including to sustain the lands, waters, and resources for the benefit of generations to come. MCFN's responsibility to act as stewards of the lands, waters, and resources must be considered in all development proposals.

Moreover, where your Official Plan addresses the management and protection of water, MCFN's title to waters, beds of waters, and floodplains should be recognized. A description of MCFN's title to waters, beds of water, and floodplains can be inserted in any such section as follows:

MCFN has Aboriginal title to the Rouge River Valley, and to the waters, beds of water, and floodplains within their Territory. These lands and waters have been used by MCFN for generations and were never surrendered by their ancestors to the Crown.

The rights that flow from MCFN's Aboriginal title are similar to those associated with fee simple title and include: the right to decide how the land or waters will be used; the right of enjoyment and occupancy of the lands and waters; the right to possess the land or waters; the right to the economic benefits of the lands and waters; and the right to protectively use and manage the land and waters for the future.

These rights must be considered and respected as a part of planning decisions that could affect MCFN's Aboriginal title to the waters and lands under water in the future.

b. Protecting our cultural heritage resources

MCFN's cultural heritage and archeological resources must be protected for the benefit of our future generations. As much of MCFN's Territory has been—and continues to be—subject to heavy urbanization and development, all of MCFN's cultural heritage resources are of utmost importance and require special care and consideration to protect and preserve for future generations.

Where your Official Plan addresses cultural heritage and/or archaeology, of if you consider developing a separate archaeological plan or strategy to support your planning activities, it should recognize the critical importance of our cultural heritage resources and refer to our *Archaeological Standards and Guidelines* which we developed specifically to help ensure that our rights and interests are protected. The following language can be used:

MCFN must be consulted on any work to that could potentially impact cultural heritage or archaeological resources within MCFN's Territory and to develop policies for the management of these resources following any identification. The extensive urbanization and development of MCFN's Territory that has occurred over the last several decades has resulted in the loss of countless archaeological and other cultural heritage resources. In light of this, any remaining resource or artifact is of the utmost significance to MCFN.

Specifically, archeologists, proponents, and others who are conducting archaeological assessment activities within MCFN Territory must refer to and follow MCFN's Standards and Guidelines for Archaeology.

These Standards and Guidelines guide engagement and involvement of MCFN in archaeological activities, including that by MCFN's Field Liaison Representatives. Adherence to MCFN's Standards and Guidelines facilitate the identification of MCFN cultural heritage resources and areas of particular significance, and will help ensure that MCFN history, culture, rights, and interests are properly protected.

c. Protecting our right to be sustained by our Territory

MCFN's Aboriginal and treaty rights fundamentally entitle us to share in the wealth and other benefits generated from our Territory. While the ways in which we are sustained by our Territory have changed over time and evolved to reflect more modern economies and realities, the importance of our Territory to our community and our right to be sustained by it—even while we work to sustain it—must continue into the future.¹

Where your Official Plan deals with economic growth and sustainability, MCFN's right to be sustained—economically, culturally, and spiritually—by our Territory should be acknowledged and incorporated. The following language can be used:

MCFN's Territory has defined and sustained the MCFN community for countless generations and must continue to be able to do so for generations to come in new and evolving ways. MCFN have Aboriginal and treaty rights over their Territory that include the rights to be sustained by their Territory—economically, culturally, and spiritually. These rights and responsibilities to be sustained by their Territory must be distinctly considered as a part of land-use management and planning decisions, including economic growth planning and opportunities for involving and providing benefits to the MCFN community.

3. Triggers for MCFN Engagement and Consultation

MCFN's Aboriginal and treaty rights entitle us to be consulted on planning decisions—such as development proposals—made under an Official Plan that could adversely impact our Territory or our rights and interests. Official Plans should therefore contain an explicit requirement to that effect. Where your Official Plan deals with consultation and engagement, a requirement that MCFN be consulted on planning decisions that may affect our rights and interests should be included. This will help to foster the constructive and co-operative relationship encouraged by the *Provincial Policy Statement* and the *Growth Plan for the Greater Golden Horseshoe*, and to ensure that we are properly consulted.² The following language can be used:

¹ The Supreme Court of Canada has recognized how this broader context—which for MCFN includes the intense urbanization and development of your Territory—must inform the scope of the duty to consult (and also therefore whether accommodation is required): “it may be impossible to understand the seriousness of the impact of a project on s. 35 rights without considering the large context. Cumulative effects of an ongoing project, and historical context, may therefore inform the scope of the duty to consult. This is not “to attempt the redress of past wrong. Rather, it is simply to recognize an existing state of affairs, and to address the consequences of what may result from” the project.” (See *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, at para 42)

2 See Government of Ontario, Provincial Policy Statement, 2020 (OIC No. 229/2020) at 5 and s 1.2.2, online: <https://files.ontario.ca/mmah-provincial-policy-statement-2020-accessible-final-en-2020-02-14.pdf>. And see Government of Ontario, A Place to Grow: Growth Plan for the Greater Golden Horseshoe (August 2020: OIC No. 641/2019 and 1244/2020) at 53 and 55, online (PDF): <https://files.ontario.ca/mmah-place-to-grow-office-consolidation-en-2020-08-28.pdf>.

Halton Region will engage and consult with MCFN, and partner with MCFN as appropriate, when considering planning matters, planning applications, and when making planning decisions that may affect MCFN's rights and interests, including but not limited to under:

- Section *[insert reference to section of Official Plan that speaks to MCFN stewardship]* and MCFN's responsibility as stewards of their Territory;
- Section *[insert reference to section of Official Plan that deals with MCFN's title to waters]* and MCFN's Aboriginal title to waters, beds of water, and floodplains in their Territory; and
- Section *[insert reference to section of Official Plan that speaks to cultural heritage and archeology, or to other archeology plan or policy]* and cultural heritage and archeological resources within MCFN's Territory.

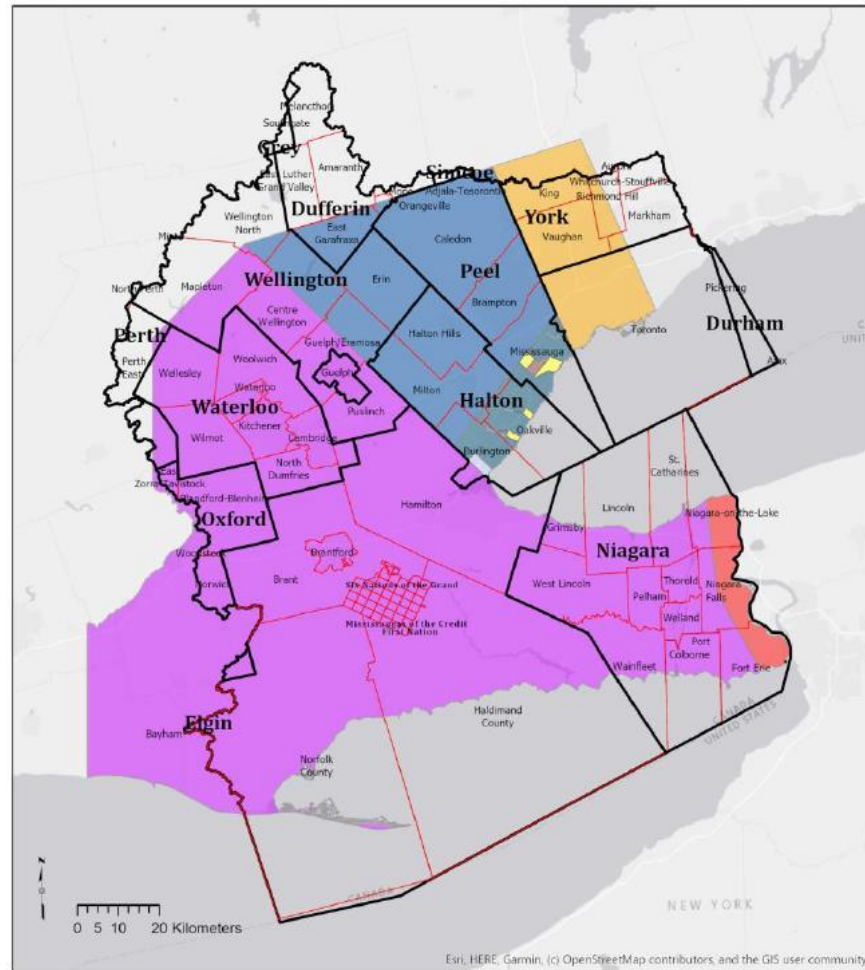
More specifically, public and private developers are required to give notice to MCFN's Department of Consultation and Accommodation at fawn.sault@mncfn.ca or 4065 Hwy. 6, Hagersville, ON, N0A1H0, whenever a development proposal may impact MCFN's rights and interests, including but not limited to their rights and interests with respect to stewardship, lands, waters, and archaeological or heritage resources.

Note that the blue highlighted text above indicates where you can refer to specific sections of your Official Plan that address MCFN's rights and interests.

4. The Consultation Process for Planning Decisions of Particular Concern

In addition to the proposed language above, the following basic process can be inserted into your Official Plan, which describes how MCFN will respond to notices from developers about development proposals that may impact our rights and interests.

Once MCFN has been notified by a developer of a development proposal, MCFN will conduct an initial assessment to determine if the proposal is of particular concern or interest and notify the developer as to its determination. If the proposal is of particular concern or interest to MCFN, MCFN will further specify a process to be followed for more fulsome consultation. MCFN may also specify a process for consultation on proposals of less concern. In most cases a consultation process for proposals of particular concern will involve, at a minimum, a meeting between MCFN and the developer to discuss project-specific processes, information and capacity needs, and how to proceed in a manner that will respect MCFN's rights and interests.



**UPPER AND LOWER TIER MUNICIPALITIES
WITHIN
MCFN TREATY LANDS AND TERRITORY**



- UPPER TIER MUNICIPALITIES
- LOWER TIER MUNICIPALITIES
- MCFN TERRITORY
- MISSISSAUGAS TREATY AT NIAGARA NO. 38 (1784)
- BETWEEN THE LAKES TREATY NO. 3 (1792)
- BRANT TRACT TREATY NO. 8 (1797)
- TORONTO PURCHASE TREATY NO. 13 (1805)
- HEAD OF THE LAKE TREATY NO. 14 (1806)
- AHTANCE TREATY NO. 19 (1808)
- TREATY 22 (1820)
- TREATY 23 (1820)