



Federation of Saskatchewan Indian Nations

FEDERATION OF SASKATCHEWAN INDIAN NATIONS

CONSULTATION POLICY

1. PURPOSE

- 1.1 To address the manner in which the Federation of Saskatchewan Indian Nations (FSIN) will consult with First Nations and define the roles, responsibilities of all parties.
- 1.2 To address the manner in which the FSIN will be consulted when working with First Nations, Crown agencies, private agencies, businesses and organizations, people and communities and defines the roles, responsibilities of all parties;
- 1.3 To produce better communication, stronger relationships;
- 1.4 To ensure that the honour of the Crown is upheld by ensuring a government discharges its obligation to consult and, if appropriate, accommodate First Nations' interests; and
- 1.5 To produce easier accommodation and resolution of issues between the FSIN, the First Nations, Crown agencies, private agencies, businesses and organizations, people and communities.

2. POLICY

- 2.1 The FSIN shall consult with First Nations where an issue arises or could arise that may affect, hinder or infringe on rights of affected parties.
- 2.2 The FSIN shall consult prior to representing the priorities and interests of First Nations to external governments.
- 2.3 The FSIN shall consult broadly with its member First Nations at all stages of its work and accommodate as necessary.

3. DEFINITIONS

- 3.1 The FSIN *Interpretation Act* shall apply to this policy.

- 3.2 For the purposes of this policy:
- 3.2.1 "Consultation" means a process of notice, two way communication, dialogue and negotiation among various groups, but does not necessarily include concurrence or approval;
 - 3.2.2 "Accommodation" means reconciliation or settlement of opposing views.;
 - 3.2.3 "Federation of Saskatchewan Indian Nations" or "FSIN" means a Commission, Secretariat, Institution or other body established according to or resulting from FSIN legislation; and
 - 3.2.4 "First Nation" means First Nation, First Nation government, and/or First Nation's community,

4. SCOPE

- 4.1 This Policy applies to the FSIN.
- 4.2 This Policy shall be used in all consultation processes the FSIN is involved in unless there is a pre-existing process devised by a member First Nation.

5. JURISDICTION AND NON-DEROGATION

- 5.1 Nothing in this policy shall be construed to derogate from First Nations' Inherent right to self-determination and the right to implement their own governance processes.
- 5.2 Nothing in this Policy shall be construed so as to abrogate or derogate from the protection provided for existing First Nation or Treaty rights of the First Nation peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.
- 5.3 The FSIN cannot be a consulting body on behalf of First Nations unless specifically mandated.

6. GUIDING PRINCIPLES

- 6.1 The FSIN shall ensure that its Consultation processes will be tailored to the purposes pursued, outcomes desired, people involved, and available time and resources. The following principles will guide the FSIN in all its public Consultations:
 - 6.1.1 Consultation must be conducted in good faith;
 - 6.1.2 Consultation will occur before decisions are made;

- 6.1.3 Consultation will be given adequate time to consider the questions presented for Consultation, within the timelines it has been given to fulfill its research mandate on particular topics;
- 6.1.4 Adequate and sufficient resources shall be made available for consultation to occur;
- 6.1.5 The objectives and scope of Consultations will be clearly communicated before Consultation begins. The steps in the Consultation process and the role of the Consultation in the FSIN's overall approach to the issues involved will be explained to participants at the outset;
- 6.1.6 The FSIN shall communicate to participants the feedback it has received and how it has used that feedback;
- 6.1.7 The FSIN seeks to conduct its Consultations in a climate of mutual respect. The methods used will be adapted to the intended participants, the purpose of Consultation, and the available resources;
- 6.1.8 The FSIN will attempt to remove barriers to participation in Consultations by providing common background information to all participants, using plain language in its documents, and choosing locations that are accessible and appropriate to the participants. It will also, where appropriate, use alternative formats and media, provide some financial support, make information available in requested languages, and attempt to offer interpreters and simultaneous translation;
- 6.1.9 The FSIN will attempt to ensure that in selecting methods of Consultation these costs will be weighed against the intended purpose and outcomes of the Consultation.

7. STANDARDS

- 7.1 The FSIN shall conduct each Consultation in accordance with the Consultation Guidelines, appended as Schedule 1.
- 7.2 For each Consultation initiative, the FSIN will develop a plan which shall include, among other items, the following elements:
 - 7.2.1 Identify the objectives of the specific Consultation;
 - 7.2.2 Develop an action plan setting out roles and responsibilities, including financial resources, both internally and with the participants;
 - 7.2.3 Ensure that the values, interests, knowledge and contribution of participants are considered in a meaningful way;
 - 7.2.4 Identify in advance what information will be needed to support the Consultation process and how this will be shared with First Nations, and other persons who may be affected;
 - 7.2.5 Determine how communications will be managed before, during and after the Consultation process; and
 - 7.2.6 Identify evaluation and feed-back mechanisms.

- 7.3 The FSIN shall maintain a Consultation Register as part of its annual planning process. Among other things, the Consultation Register will identify initiatives that are currently, or may become, subject to public Consultations.
- 7.4 Consultations shall be conducted in a public manner. For each Consultation initiative, the FSIN will ensure that all written submissions and minutes of meetings with First Nations, and other persons who may be affected, as well as summaries of minutes of working groups and task forces are made available to affected parties.
- 7.5 Progress reports and the results of the Consultations will be shared with First Nations, and other persons who may be affected, in a timely fashion and summarized in the final report and in other ways as appropriate.

8. CONSULTATION METHODS

- 8.1 The FSIN shall employ various methods of Consultation and adapt these to the objectives of the Consultation. Among those that will normally be used by the FSIN are:
- 8.1.1 Large scale face-to-face Consultations;
 - 8.1.2 Small group Consultations/focus groups;
 - 8.1.3 Discussion paper with written input;
 - 8.1.4 Questionnaires;
 - 8.1.5 Interviews;
 - 8.1.6 Internet discussions;
 - 8.1.7 Surveys;
 - 8.1.8 Public opinion polling; and/or
 - 8.1.9 as directed by First Nations.

The above are more clearly outlined in Schedule 2.

- 8.2 In each instance, the FSIN shall choose one or more of these methods so as to maximize the efficiency and effectiveness of its Consultation processes according to the guiding principles outlined above.

9. EXCEPTIONS

- 9.1 In some cases, the FSIN may not have the ability to consult to the extent as provided within this policy. This may occur in the following circumstances:
 - 9.1.1 Where finances do not allow for the ability to consult to the extent as provided within this policy, the Auditor General and/or Treasury Board may direct Consultation occur within their direction; and
 - 9.1.2 Where a First Nations direction is to the contrary.

10. REQUESTS FOR CONSULTATION

- 10.1 The FSIN shall ensure that upon receipt of a request to conduct consultations on behalf of a third party, including First Nations, Crown agencies, private agencies, businesses and organizations, people and communities, that the FSIN shall abide by the following principles:
 - 10.1.1 The Executive Member(s) in charge of the affected portfolio(s) shall determine what time frames, if any, need to be complied with. If a time frame is spelled out, then the FSIN, shall ensure that the letter is discussed at the next appropriate commission meeting and/or Legislative Assembly and that a mandate is received or the request is declined.
 - 10.1.2 The Executive Member(s) in charge of the affected portfolio(s) shall ensure that adequate resources are available to conduct meaningful consultation as provided for within this Policy. If adequate and sufficient funds are not available, direction with the appropriate commission and/or the Auditor General and/or Treasury Board may be required;
 - 10.1.3 The Executive Member(s) in charge of the affected portfolio(s) shall be responsible for providing copies of all data to the appropriate commission and the centralized Consultation Register.
 - 10.1.4 The Executive Member(s) in charge of the affected portfolio(s) shall fully canvass the concerns of the First Nation in order that they can be communicated to the third party in an effective manner, including documenting and confirming any dialogue, written or spoken in writing;
 - 10.1.5 The Executive Member(s) in charge of the affected portfolio(s) shall ensure that all documentation surrounding the Consultation is maintained and accessible to the affected parties;
 - 10.1.6 The Executive Member(s) in charge of the affected portfolio(s) shall ensure that if accommodation measures are required resulting from consultation, any measures are based on discussions with the affected

parties. If required, FSIN shall facilitate discussions surrounding accommodation measures between affected parties; and

10.1.6 The Executive Member(s) in charge of the affected portfolio(s) shall follow up with any matters based on the discussions and ensure that all time frames are properly diarized for completion or follow-up.

11. AUTHORIZED REPRESENTATIVES

11.1 The FSIN shall ensure that a chief or a person is duly mandated by resolution from the appropriate commission or Chiefs in Assembly to act as the Authorized Representative in discussing matters with third parties or to responding to correspondence from third parties on various matters.

11.2 The Authorized Representative shall have authority to meet with third parties, however, he/she shall have no authority to enter into agreements or informal arrangements, whether verbal **OR** written, with third parties unless authorized and mandated to do so by the appropriate commission or Chiefs in Assembly, by powers exercised at a duly convened meeting.

12. ACCOMODATION

12.1 The FSIN shall attempt to address and accommodate the concerns of a First Nation.

12.2 Accommodation will be reviewed on a case-by-case basis.

12.3 While the Crown's duty to accommodate varies according to the circumstances of each issue, accommodation measures shall be based upon dialogue with the affected parties.

13. REVIEW AND DISPUTE RESOLUTION

13.1 In the event a First Nation deems meaningful Consultation has not occurred by the FSIN and/or a third party, the First Nation shall bring their concerns to joint Executive Council and Indian Government Commission, which shall review and determine if further information or review is required.

13.2 If further review or information is required, the joint Executive Council and Indian Government Commission shall appoint an Independent Body to review the facts of the Consultation and bring back to joint Executive Council and Indian Government Commission for final determination, and if required, remedies.

13.3 The Independent Body shall consist of external technicians, including legal counsel, financial experts and other members at large who can provide assistance in the review.

- 13.4 In the event a concern is brought forward, such Consultation and/or any results stemming from such Consultation shall be suspended until the review is completed, unless otherwise directed by the First Nation or joint Executive Council and Indian Government Commission.

14. RETENTION METHODS

- 14.1 Consultation is a fact specific consideration and since consultation is one factor that is taken into account in determining whether the Crown is justified in infringing First Nation and Treaty rights, First Nations need to approach all discussions cautiously and with a view that all discussions with the Crown may ultimately be presented as evidence in a Court to determine whether the Crown is justified in infringing a First Nation's Treaty or First Nation rights or First Nation title and document, confirm and retain all dialogue.
- 14.2 All records and other efforts by the FSIN relating to the Consultation process shall be retained with the Consultation Register.

15. AMENDMENTS

- 15.1 This Policy may be reviewed and amended from time to time by motion of the joint Executive Council and Indian Government Commission.
- 15.2 Amendments shall be in force immediately upon ratification by the joint Executive Council and Indian Government Commission unless otherwise stated.

16. INTERPRETATION IN THE EVENT OF DISPUTE

- 16.1 In the event of dispute or disagreement arising from the interpretation of any term, condition, word or procedure in this Policy, the matter will be referred to the joint Executive Council and Indian Government Commission for a decision that shall be final and binding on all parties.

SCHEDULE 1

FSIN CONSULTATION GUIDELINES

Generic Internal Process

Phases	Questions to Guide the Process	Notes
Pre-Consultation – Deciding to consult		** Are Saskatchewan First Nations principles of governance understood before proceeding with the consultation? Does the community require an “awareness” session prior to the consultation phase?
	1. What is the aim of this process?	1. Is it to exchange and gather information? Provide information to influence decision-making? To define community priorities? True consultation requires influence over decision making before the decision has been made
	2. Does the issue require consultation?	2. The answer should be definitive. (yes/no) The overall aim of consultation is determining choice of structures and processes.
	3. How will First Nations learn about the process?	
	4. How will the issue impact Saskatchewan First Nations in the short and long term?	
	5. Is a consultation committee needed?	5. The process should start as early as possible. All parties need to be kept informed of developments throughout the process.
	6. If so, who will be a members of the consultation committee? How will committee membership be decided?	
	7. Are there financial and human resources available for effective consultation?	

Phases	Questions to Guide the Process	Notes
	8. Is all the required information provided to help the community make informed decisions?	8. Transparency and disclosure are crucial to an effective and informed decision making process.
	9. How will the information collected be used?	
	10. Is there enough time allowed to plan, collect and analyze the feedback for informed decision making?	10. Sufficient time is required to incorporate, where needed, follow up sessions (such as to review reports to ensure accuracy).
	11. How will the parties involved be kept informed? Is there a communications strategy?	11. Newsletters, newspaper articles, tribal council and First Nation (band) meetings, telephone, e-mail, letters by mail, posters, etc.
	12. Is there a way that the parties can come together and make major changes to any part of the process if required?	
	13. How will the process be monitored and evaluated?	
	14. Who will make the final decision and why?	
	15. How will the decision be made?	15. In the past, First Nations communities made decisions through traditions and consensus building. Consensus building was a way to reach general agreement on the solution to the issue. Consultation process must respect First Nations decision making processes inherent in their governance structures.
	16. How will the decision be communicated?	
Planning for Consultation - Preparing to consult – design of the process and review of		The goals and objectives of the consultation must be clear and consistent with the standards set out by Saskatchewan First Nations.

Phases	Questions to Guide the Process	Notes
background information	1. What forum is provided for the consultation? What type of forum is appropriate?	1. What methods will be most appropriate for gathering information? Focus groups, community meetings, telephone interviews and conferencing, survey questionnaire with written or oral responses, sub-committees, boards, committees, etc.
	2. What type of information is needed? Are the questions to be answered by the participants clear and is there opportunity to give additional comments on the issue?	
	3. Is the information provided to First Nations people relevant and easy to understand? Is the information written and/or spoken in the First Nations language of the participants?	
	4. Who is being consulted?	4. Depending on the issue – the participants may be chosen because of their age, gender, job duties, role in the community, technical expertise, political position, on reserve, urban, economics, geography, education, clans/family groups, etc.
	5. Who will coordinate the arrangements with the participants (contacting community leaders, arranging meetings, determining places, dates, time, advertising, meals, etc.)	
	6. Are First Nations cultural and spiritual protocols and practices respected and included in the process?	6. Have the cultural and spiritual protocols been adhered to prior to the process beginning? Are there safeguards in place protecting indigenous/traditional knowledge?
Consultation – Gathering responses	1. Is feedback from hard to reach First Nations people required?	1. How will the isolated, elderly and disabled be able to give their feedback?
	2. How will feedback be collected from isolated First Nations people and communities?	2. Who will make sure the process is successful?

Phases	Questions to Guide the Process	Notes
	3. Is sufficient time given/allocated for a successful consultation process?	
Post Conclusions – Analyze responses and make conclusions and decisions	1. What conclusions can be drawn from the responses?	1. The final decision must show that the feedback from the participants has been taken into account and seriously considered so as to potentially affect the outcome of the decision and/or accommodate the concerns raised. Participants need to know that their feedback was used and was taken seriously. This will encourage them to participate in other consultations.
	2. How was the feedback used in making the decision?	
	3. How will it be communicated to the participants?	
	4. Is there an effective evaluation of the process? If so, how will the results be used to improve future consultative projects?	
	5. Are there any remedial measures, after consultation has been conducted and a decision made, which would allow First Nations to pursue an appeal if they feel the decision does not reflect their input?	

Generic External Process

Phases	Questions to Guide the Process	Notes
Pre-Consultation – Deciding to consult		** Has the Government Body and other third parties acknowledged the rights of Saskatchewan First Nations? Does the community require an “awareness” session prior to the consultation phase?
	1. What is the issue? Is this question needed?	1. Initial contact for commencing consultation lies with First Nations Chief and Council. The process should start as early as possible. All parties need to be kept informed of developments throughout the process. Can this note go with Q. 2?
	2. What is the purpose of the consultation?	
	3. Has the Government attempted to delegate its consultation responsibility to a third party?	
	4. Have the governments met to discuss the process/issue?	
	5. Are Saskatchewan First Nations assured that the Government of Canada or any third party has considered every possible alternative and that the alternatives do not negatively impact their Treaty or Aboriginal rights?	
	6. How will the issue(s) impact on First Nations inherent and Treaty Rights?	
	7. Are Saskatchewan First Nations peoples fully informed about the purpose for the consultation, the goals and objectives of the consultation, and how the proposed decision or action impacts Saskatchewan First Nations peoples?	7. How will the issue impact Saskatchewan First Nations in the short and long term? What will it mean for First Nations title, land, peoples, rights, and existing relationships and activities?
8. Is the process transparent?		

Phases	Questions to Guide the Process	Notes
	9. Have the Governments or third parties collected and shared <u>all</u> necessary information with Saskatchewan First Nations? Is all information disclosed?	9. Has a literature review been conducted and presented to the First Nations? This is critical and must be done at the earliest possible stage in the consultation process.
	10. Have Saskatchewan First Nations been provided with the time and resources to participate in a meaningful way? Are there financial and human resources available for effective consultation?	
	11. Is a consultation committee needed?	
	12. If so, who will be members of the consultation committee? How will committee membership be decided?	
	13. Are Saskatchewan First Nations involved in the monitoring and evaluation of the implementation of the solution? How?	
	14. Is there enough time allowed for planning, collecting and analyzing the feedback for informed decision making?	
	15. How will the parties involved be kept informed? Is there a communications strategy?	15. Newsletter, newspaper articles, tribal council and band meetings, telephone, e-mail, letters by mail, posters, etc.
	16. Is there a way that the parties can come together and make major changes to any part of the plan if required?	
	17. Who will make the final decision and why?	
	18. How will the decision be made?	18. In the past, First Nations communities made decisions through consensus. Consensus building was a way to reach general agreement on the solution to the issue. Consultation process must respect First Nations decision making processes inherent in their governance structures.
19. How will the decision be communicated?		

Phases	Questions to Guide the Process	Notes
	20. How will the First Nations affected learn about the process?	
	21. How will the information collected be used?	
Planning for Consultation - Preparing to consult – design of the process and review of background information		The goals and objectives of the consultation must be clear and consistent with the standards set out by Saskatchewan First Nations
	1. What methods will be most appropriate for gathering information?	1. Focus groups, community meetings, telephone interviews and conferencing, survey questionnaire with written or oral responses, sub-committees, boards, committees.
	2. What type of information is needed?	
	3. Is the information provided to First Nations people relevant and easy to understand? Is the information written and/or spoken in the First Nations language of the participants?	
	4. Who is being consulted?	4. Depending on the issue – the participants could be chosen because of their age, gender, job duties, place in First Nations societies, technical, political, on reserve, of-reserve, economics, geography, education, First Nation culture, social status, First Nation community, rural, urban
	5. Who will coordinate the arrangements with the participants (contacting community leaders, arranging meetings, determining places, dates, time, advertising, meals, etc.)	
6. Are the questions to be answered by the participants clear and is there opportunity to give additional comments or raise concerns on the issue?		

Phases	Questions to Guide the Process	Notes
	7. Are First Nations cultural and spiritual protocols and practices respected and included in the process?	7. Have the cultural and spiritual protocols been adhered to prior to the process beginning? Are there safeguards in place protecting indigenous/traditional knowledge?
Consultation – Gathering responses	1. Is feedback from hard to reach First Nations people being collected?	1. Are the responses given reflected in the conclusion drawn?
	2. Is the monitoring of the process efficient and effective?	2. How will the hard to reach, elderly and disabled be able to give their feedback? Are Saskatchewan First Nations involved throughout the monitoring of the process?
Post Consultation - Analyze responses and make conclusions and decisions	1. What conclusions can be drawn from the responses gathered?	1. Has the feedback of Saskatchewan First Nations been used in a full and meaningful way in the decision making process?
	2. How was the feedback used in making the decision?	2. Are the participants notified about the decision and a full explanation as how the participants' feedback was used?
	3. How will it be communicated to the participants?	
	4. Is there an evaluation of the process? If so, how will the results be used to improve future consultative projects?	
	5. Are there any remedial measures, after consultation has been conducted and a decision made, which would allow First Nations to pursue an appeal if the decision does not reflect their input?	
	6. How are Saskatchewan First Nations involved in the evaluation of the process?	
	7. How are Saskatchewan First Nations involved in the implementation of the solution?	

SCHEDULE 2

1. Large scale face-to-face consultations

Anywhere from about 25 people up to about two hundred people meet face-to-face in one location.

Often a conference format: can include private deliberations, plenaries and small group discussions, using a combination of presentations, question-and-answer sessions, discussion, report back.

Many other possible formats, depending on the purpose and participants (e.g. telephone conferences can be used to link groups of people in different communities).

2. Small group consultations and focus groups

Anywhere from 3 to about 25 people meet face-to-face.

Variations can include: one-time session, an ad hoc working group, round table, teleconferences, video conferences, etc.

Tends to be focused on a specific issue, sector or region.

Targeted group consultation.

Focus groups: specifically deliberative focus groups using representative, scientific sampling of population, with an objective to reaching consensus and advice as a final outcome.

3. Discussion paper with written input

A background paper is prepared and circulated widely to a large number of groups and individuals.

Interested participants respond in writing: letters, briefs, or, if provided, a questionnaire format, a completed response form.

4. Brief questionnaire

A very short update on a specific matter (e.g. 1 or 2 pages) is prepared, plus a brief questionnaire to solicit input on the issue.

A questionnaire is circulated widely to a large number of groups and individuals. Interested participants complete the questionnaire.

5. Internet Discussions

A discussion on a specific question or issue is set up.

The background information on the topic and asks some key questions is outlined.

Any interested group or individual with access to the Internet can contribute their thoughts and ideas.

6. Public Opinion Polling

A national polling company is retained to obtain a broad sampling of public opinion on certain issues.