

The Crown or its designate shall provide all necessary financial or other resources required by Aamjiwnaang in order to effectively participate in all aspects of the consultation.

All discussions must be undertaken in good faith, and all alternative options must be available, including a “no-activity” option if the impacts of the decision or development are expected to cause undue infringement on Aamjiwnaang’s rights, title, or people.

Aamjiwnaang must be prioritized in any strategic level decisions, before operational decisions are undertaken. Resources and time must be provided to Aamjiwnaang in order to conduct the necessary studies or reviews to better understand the potential impacts or infringements that may occur as the result of an activity.

## **5. Anticipated Outcomes:**

It is the desired hope that all consultations will result in fair and mutually beneficial meetings that are conducted in good faith, without prejudice, and designed to incorporate Aamjiwnaang into the decision making process. It is further expected that the Crown and Proponents must accommodate and/or mitigate any activity that may infringe on Aamjiwnaang’s Aboriginal title, rights, or interests.

Common types of Accommodation include, but are not limited to:

- Modification of the project, including scope, scale, or technology changes
- Employment
- Joint Ventures
- Co-management of resources
- Joint land use planning
- Training
- Limiting resource extraction and harvesting
- Conservation measures
- Hunting access
- Environmental protections and ongoing monitoring
- Alternate land arrangements
- Relocation
- Alternative food source compensation
- Equity in companies
- Preferential contracts for services
- Community-use buildings
- Financial compensation
- Compensatory damages for past infringements or impacts

- Other arrangements

## **6. Responsibilities of Each Party**

### **6.1 Crown**

The Crown is responsible to:

- Respect and uphold the treaty and aboriginal rights enshrined in the Constitution Act, 1982 related to First Nations.
- Consult with and seek accommodate for Aamjiwnaang whenever there is an activity that may or will impact the treaty and aboriginal rights of the community.
- Work with Aamjiwnaang on a government-to-government basis.
- Uphold the honour of the Crown.
- Consider and give reasonable consideration to Aamjiwnaang rights and interests.

### **6.2 Proponent(s)**

The Proponent is responsible to:

- Recognize that Aamjiwnaang is a level of government that seeks to uphold the treaty and aboriginal rights held by Aamjiwnaang community members.
- Ensure that good faith consultation and flexibility guide relations with the Aamjiwnaang community with an aim to seeking mutually beneficial solutions.
- Recognize that an activity cannot be permitted within Aamjiwnaang's traditional territory without consultation and accommodation with Aamjiwnaang.
- Recognize that the duty to consult rests with the crown and that any decision or agreement reached must ultimately be made on a government to government basis.
- Provide contact persons and all information in a timely manner to ensure that good communication is the cornerstone of effective and transparent consultation.
- Provide adequate details and information about the project and any associated timelines or project schedules.

### **6.3 Aamjiwnaang**

Aamjiwnaang is responsible to:

- Provide information to Proponents and the Crown when asked related to the Aboriginal Rights and Treaty Rights asserted on or near the activity under discussion.
- Provide contact person(s) for whom inquiries could be made regarding the status and execution of the consultation process of Aamjiwnaang.
- Represent the views of community members at all times.

- Make a reasonable effort to provide Aamjiwnaang members with adequate notice of all major projects and time allowances for comments.
- Monitor compliance by all parties of the consultation and accommodation process.
- Operate in good faith and with a desire to seek mutually beneficial outcomes wherever possible.
- Provide information and guidance in order to ensure that activities are undertaken with consideration of the land-use principles and potential impact on sites of cultural, spiritual, or heritage interest.

## **7. Funding and Capacity to meet Consultation Needs:**

The Crown is responsible for providing funding and capacity to enable First Nations and Proponents to hold meaningful discussions about activities and for both parties to understand the issues at stake. This funding is critical for the consultation process in order to proceed without delays.

Proponents must recognize that the Aamjiwnaang First Nation often does not have the internal capacity or resources necessary to meet all consultation goals without outside funding. Proponents must recognize that Aamjiwnaang does not receive adequate resources to undertake all consultation requests received. Proponents may be asked to provide capacity for various portions of the consultation process.

Consultation needs are often extensive, including:

- Hiring Aamjiwnaang members to review and meet with proponents.
- Hiring outside experts or staff to provide critical analysis.
- Completion of third-party reviews of Environmental Assessment documents or Legal agreements.
- Travel, accommodation, and other honoraria.
- Administrative costs.
- Other costs.

The necessity of consultation and accommodation and the lack of capacity of Aamjiwnaang requires proponents to meet many of the capacity and consultation costs associated with the process to ensure the meeting of deadlines and deliverables in a timely manner. Costs may also rise or decrease depending on the size, scope, and community involvement necessary to hold adequate and good faith consultations. Proposed budgets will be developed and shared with the proponent throughout the process.

## 8. General Consultation and Accommodation Steps

The following outlines the general process of consulting and accommodating Aamjiwnaang.

**1. Initial Contact:** Notice of a proposed project or decision is made to Aamjiwnaang. Any notice must be submitted to the Chief, the Council, and the Health and Environment Committee. Proponents must submit adequate information and details about the proposed activity including:

1. The appropriate contact person and his or her contact information
2. Reference maps of the proposed project site or area
3. Information about the activity and potential impacts in plain language format, including potential impact on resources and land
4. Information on the anticipated economic impact on Aamjiwnaang and on surrounding communities
5. The timeframe or activity schedule with critical dates identified
6. Information about the potential impacts on treaty or aboriginal rights

**2. Information Sharing:** Following an internal review, a response will be sent to the proponent, indicating the next steps and the appropriate contact person at Aamjiwnaang. This will likely take one of three forms:

1. More information is required from the proponent or the Crown to adequately assess the proposal
2. At this time Aamjiwnaang is not interested in entering into a full consultation process, however the proponent should continue to inform Aamjiwnaang throughout the process, especially if there are any changes in scope or expected impact.
3. Aamjiwnaang is considering entering into a full consultation process and requires more information and capacity.

**3. Pre-Consultation:** If the response is to consider entering a full consultation process, the Proponent will be asked to provide more information and attend meetings. Details of the process, budget, and information required will be discussed. This stage in the process will lead to one of three responses

1. More information is required from the proponent or the Crown to determine whether there are potential or real impacts on constitutional rights or title issues.
2. At this time Aamjiwnaang is not interested in entering into a full consultation process, however the proponent should continue to

inform Aamjiwnaang throughout the process, especially if there are any changes in scope or expected impact.

3. Aamjiwnaang requires the proponent or Crown to enter a full consultation process.

4. **Consultation:** If the response following pre-consultation is 3, the proponent may be asked to sign a consultation agreement or memorandum of understanding. This agreement will identify the process and requirements to complete the consultation and accommodation process, and may include:

1. A request for more information, including plain language summaries
2. A request to participate in meetings with Chief and Council, the Health and Environment Committee, the community as a whole, or other groups as required.
3. A request for capacity to undertake the necessary review of the proposal, including expert legal, technical, or other advice
4. A request to undertake more studies, or to expand on existing studies.

Following the consultation process, an internal analysis of the potential or real impacts will be undertaken. The results of this analysis will determine whether there is a need to progress to the next step, accommodation and mitigation.

5. **Accommodation and Mitigation:** Following the further studies and analysis undertaken in step 4, Aamjiwnaang will negotiate with the proponent or Crown to determine the requirement to develop mitigation strategies or accommodations for the potential or real impacts.
6. **Reconciliation:** Following the end of the consultation process, Aamjiwnaang will provide a response to the Crown and proponent indicating that the consultation process has been completed, and whether the interests and rights of Aamjiwnaang have been accommodated. The response may include agreeing to the proposal as described, agreeing to the proposal with conditions and accommodations, agreeing to abandon or postpone the proposed project, or no agreement.

## 9. Dispute Resolution

In order to avoid resorting to the court system, if at any point throughout the consultation process the parties feel that an agreement cannot be reached they may opt to pursue a dispute resolution process.

Any dispute resolution process must be:

- conducted in a manner where Aamjiwnaang has equal decision making power;
- conducted in an impartial and mutually acceptable manner; and
- conducted in a timely manner.

The process of consultation shall cease for the duration of a dispute resolution process.

The Crown, Aamjiwnaang, and the Proponent must be parties to any dispute resolution process.

If the parties required in a dispute resolution by subsection 15.4 deem it appropriate they may agree to grant standing to any Aamjiwnaang Member or party in a dispute resolution.

A third party may receive standing in a dispute resolution.

A dispute resolution process may be sought where the end result of the consultation process is 'no agreement.'

## **10. Existing Activities Affecting and Impacting Aamjiwnaang**

The Crown must work with Aamjiwnaang to review past decisions about activities undertaken in Aamjiwnaang's traditional territory and reserve lands that were made without honourable consultation and accommodation and continue to affect and impact Aamjiwnaang in the present.

The Crown or Third Parties must inform Aamjiwnaang about existing activities undertaken by the proponent or Crown in the traditional territory or reserve lands of Aamjiwnaang when proposing any new activities or changes to existing uses.

## **11. Review and Amendment**

Aamjiwnaang shall review this policy regularly on at least an annual basis.

Ongoing consultations are not affected by this policy that began before the signing date unless agreed upon by all parties.

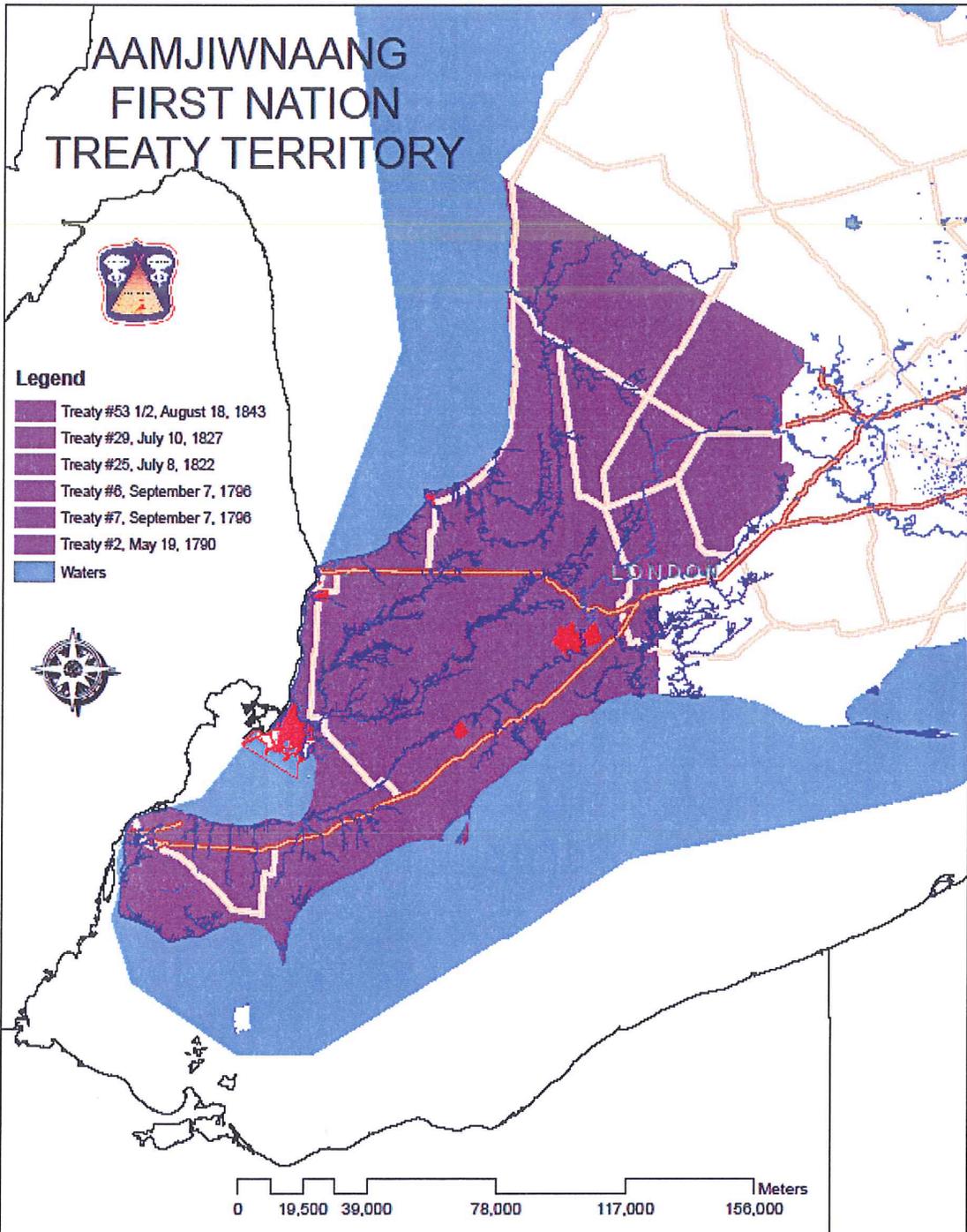
This agreement was approved on June 22, 2010 . The First Nation reserves the right to establish new procedures, fees, or consultation measures at any time.

# AAMJIWNAANG FIRST NATION TREATY TERRITORY



## Legend

- Treaty #53 1/2, August 18, 1843
- Treaty #29, July 10, 1827
- Treaty #25, July 8, 1822
- Treaty #6, September 7, 1796
- Treaty #7, September 7, 1796
- Treaty #2, May 18, 1790
- Waters





## **F. 2 Six Nations Elected Council**

## **Appendix**