

POLICY 7. Expropriations by ᑭᓱᓴᓴ

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Under construction, not yet approved by Chief and Council.

Purpose

The objectives of this policy are to:

- (a) ensure that a consistent and equitable framework is followed by ᑭᓱᓴᓴ in acquiring interests in ᑭᓱᓴᓴ lands by way of expropriation; and
- (b) set out when and how ᑭᓱᓴᓴ may acquire interests in ᑭᓱᓴᓴ lands pursuant to both section 14 of the *ᑭᓱᓴᓴ Amended Land Code* and the *ᑭᓱᓴᓴ Expropriation Law*.

This policy applies where interests in ᑭᓱᓴᓴ lands are acquired by ᑭᓱᓴᓴ. This policy applies to ᑭᓱᓴᓴ, Council, the Lands Department, and the Lands Committee.

Roles and Responsibilities

Role of Council

Council is responsible for the following, in addition to what is laid out in Policy 1:

- (a) enacting a law setting out the rights and procedures for expropriation;
- (b) ensuring that prior to initiating a proposed expropriation, good faith efforts are made by ᑭᓱᓴᓴ to acquire the interest or licence by mutual agreement;
- (c) determining whether a proposed expropriation is reasonably necessary in the circumstances;
- (d) authorizing, by Band Council Resolution, the initiation of expropriation proceedings;
- (e) approving expropriation documents;
- (f) authorizing, by Band Council Resolution, a member of Council or another authorized signatory to sign expropriation documents; and
- (g) approving compensation amounts related to expropriated lands.

Role of the Lands Department

The Lands Department is responsible for the following in addition to what is laid out in Policy 1:

- (a) ensuring that the requirements in this policy are complied with;
- making recommendations to Council on the expropriation of an interest or licence in ᑭᓱᓴᓴ

lands

(b) at the direction of Council, ensuring that expropriation agreements are executed, provided to the appropriate interest holder, and filed with the First Nation Lands Registry in accordance with Policy 2; and

(b) at the direction of Council, assisting with expropriation proceedings.

Role of the Lands Committee

The Lands Committee may assist the Lands Department and Council with any matter related to an expropriation and may perform duties and functions as directed by either Council or the Lands Department.

It is the responsibility of the Lands Committee to respond to all requests from the Lands Department or Council, and where necessary to consult with members on a proposed expropriation.

The Lands Committee may make recommendations to Council on matters related to expropriations.

Characteristics of an Expropriation

The characteristics of an expropriation are:

(a) it may be either:

(i) by way of an expropriation agreement between ᑲᓱᓱᓱ and an interest holder, or

(ii) forced by ᑲᓱᓱᓱ;

(b) ᑲᓱᓱᓱ is obligated to pay the interest holder just, timely and adequate compensation;

(c) the rights and privileges of the interest holder become and are absolutely vested in ᑲᓱᓱᓱ; and

(d) if at any time the expropriated land or any part of such land is found to be unnecessary for the purpose for which the same was expropriated, or if it is found that a more limited interest only is required, the ᑲᓱᓱᓱ may abandon the land or any part of such land and the abandoned land will revert to the allotment holder.

Legal Interests Involved in an Expropriation

The nature of the legal interests involved in an expropriation varies depending on the status of the proposed expropriation lands and the interest holders affected.

Persons who may be interest holders include:

(a) a registered allotment holder;

(b) any person who has an estate or interest in the land, such as a lease, licence, permit, easement or other agreement granting the rights to use, occupy or access the land;

(c) any person who has a lien, charge, mortgage or encumbrance on the land; and

(d) any person in actual occupation of the land.

Legal Authorities

The relevant authorities are:

(a) paragraph 6(1)(j), and sections 26(2) and 28 of the *First Nations Land Management Act*;

(b) sections 5.1, 5.2, 13.3 and 17.1 to 17.8 of the Framework Agreement;

(c) section 14 of the *ᑲᓱᓱᓱ Amended Land Code*; and

(d) the *ᑲᓱᓱᓱ Expropriation Law, XXXX*.

Paragraph 6(1)(j), and sections 26(2) and 28 of the *First Nations Land Management Act*

Sections 5.1, 5.2, 13.3 and 17.1 to 17.8 of the Framework

Section 14 of the *ḥaqam Amended Land Code* states:

14.11 The resolution of disputes concerning the right of the ḥaqam to expropriate shall be determined in accordance with Part 8.

Prospective *ḥaqam Expropriation Law*, sets out the rights and procedures for an expropriation by ḥaqam

Policy

Requirement for Acquisition Needs Assessment

Prior to considering the need for an expropriation, Council must obtain from the Lands Department an acquisition needs assessment that sets out:

- (a) a comprehensive description of the community purpose or works to which the proposed expropriation relates;
- (b) the area and location of the proposed expropriation lands;
- (c) the reasons why the expropriation, rather than a lesser interest, is necessary for achieving the community purpose or completing the works to which the proposed expropriation relates;
- (d) a list of all authorizations that will be required to achieve the community purpose or complete the works to which the proposed expropriation relates, including any:
 - (i) building, construction or other permits,
 - (ii) re-zoning and changes to *ḥaqam Community Land Use Plan, 2016*, and
 - (iii) environmental assessments,
- (e) an inventory of current ḥaqam assets and ḥaqam community lands;
- (f) an assessment of whether the community purpose or works to which the proposed expropriation relates can be economically met through the use of existing ḥaqam assets and ḥaqam community lands;
- (g) an inventory of all land instruments, interests and rights that are being proposed for expropriation;
- (h) a description of any alternatives to the proposed expropriation, such as obtaining a lease of land from an allotment holder and the costs associated with such alternatives; and
- (i) an estimated budget for:
 - (i) the costs associated with the proposed expropriation; and
 - (ii) the costs associated with achieving the community purpose or completing the works to which the proposed expropriation relates in the event that the proposed expropriation is effected.

Restrictions on Council's Power to Approve of an Expropriation

Prior to approving an expropriation, Council must confirm that:

- (a) the acquisition needs assessment indicates the expropriation is reasonably necessary to achieve the community purpose or complete the works to which the proposed expropriation relates;
- (b) the costs associated with the acquisition of all land instruments, interests and rights that are proposed for expropriation are pre- approved in ḥaqam's annual budget or multi-year financial plan; and

(c) Council has provided authority for the appropriate person(s) or body(ies) to initiate and undertake legal surveys, appraisals, negotiations, expropriations, legal and other such related activities, as may be required.

Band Council Resolution: Approving a Proposed Expropriation

A Band Council Resolution that approves a proposed expropriation must include the following:

(a) [to be developed];

Mandatory Elements of an Expropriation Agreement

An expropriation agreement between ᑭᓄᓄᓄ and an interest holder must address, at a minimum, the following:

- (a) the names of the parties to the expropriation agreement, being ᑭᓄᓄᓄ and the interest holder;
- (b) a legal description of the ᑭᓄᓄᓄ lands to which the expropriation relates, that refers to a registration plan or official plan;
- (c) details of the community purpose or works to which the expropriation relates and the estimated length of time for which the expropriated lands are required to fulfill such community purpose or works;
- (d) a clear articulation of the terms agreed to by the interest holder and ᑭᓄᓄᓄ for an expropriation of the interest holder's rights and interests in ᑭᓄᓄᓄ lands;
- (e) the interest holder's rights and interests in those ᑭᓄᓄᓄ lands being expropriated and a statement that those rights and interests will transfer to ᑭᓄᓄᓄ, free and clear of all encumbrances;
- (f) the date and time of the transfer to ᑭᓄᓄᓄ of the interest holder's rights and interests;
- (g) that the interest holder will finalise agreements with third parties with regard to all encumbrances to the satisfaction of ᑭᓄᓄᓄ;
- (h) that the interest holder agrees to accept a specified dollar amount as final compensation for the acquisition of the interest holder's lands by ᑭᓄᓄᓄ, with details of all adjustments made to the compensation. Furthermore, that ᑭᓄᓄᓄ must provide the interest holder with an independent appraisal report for the expropriated interest or licence to confirm the adequacy of the compensation;
- (i) the method of payment and the date on which ᑭᓄᓄᓄ will make the compensation payment to the interest holder;
- (j) that ᑭᓄᓄᓄ will pay all costs related to the expropriation, including the costs of the interest holder obtaining independent legal advice; and
- (k) that ᑭᓄᓄᓄ will ensure any environmental requirements are met.

Band Council Resolution: Expropriation Agreements

A Band Council Resolution that approves an expropriation agreement must include the following:

- (a) reference to the expropriation agreement between the interest holder and ᑭᓄᓄᓄ, which must be attached as an appendix to the Band Council Resolution;
- (b) reference to independent appraisal of land value information, which must be attached as an appendix to the Band Council Resolution;
- (c) if applicable, a copy of the environmental assessment completed by ᑭᓄᓄᓄ attached as an appendix to the Band Council Resolution;

- (d) a copy of the legal land description and survey for the expropriated lands attached as an appendix to the Band Council Resolution;
- (e) a statement of the total compensation package to be paid to the interest holder; and
- (f) a copy of satisfactory evidence to ᐃᓐᓗᓂᓐ that the interest holder has obtained independent legal advice with respect to the execution of the expropriation agreement, attached as an appendix to the Band Council Resolution.

Method of Compensation Payments

Where ᐃᓐᓗᓂᓐ pays compensation to an interest holder, that payment must be made by way of certified cheque to the interest holder.

Process

[to be completed once the *ᐃᓐᓗᓂᓐ Expropriation Law, XXXX* is enacted]

Resources

Besides this policy, consult the following resources:

- (a) the *Framework Agreement*;
- (b) the *Individual Agreement*;
- (c) the *First Nations Lands Management Act*;
- (d) *ᐃᓐᓗᓂᓐ Amended Land Code*;
- (e) *ᐃᓐᓗᓂᓐ Expropriation Law*;

