

Land and Water Boards of the Mackenzie Valley



Engagement and Consultation Policy Update Workshop Summary Report June 9 and 10, 2021

Mackenzie Valley
Review Board



Introduction

The Land and Water Boards of the Mackenzie Valley (Gwich'in, Sahtu, Wek'èezhii, and Mackenzie Valley Land and Water Boards) and the Mackenzie Valley Environmental Impact Review Board (MVEIRB) are working toward the development of a joint Engagement and Consultation Policy. The joint policy will update the existing MVLWB [Policy](#), which MVEIRB [adopted](#) on an interim basis, and expand the policy to include MVEIRB environmental assessment and environmental impact review processes.

As part of early engagement efforts to inform the policy, the Boards sought early feedback in Fall 2019,¹ held one-to-one meetings beginning in Fall 2019 through to Summer 2021, and hosted virtual workshops on June 9 and 10, 2021. Organizations that were engaged either via one-to-one meetings and/or were invited to participate in the workshop are listed in Appendix 1. The June 9 workshop focused on Consultation Roles and Responsibilities, and Indigenous Governments and Organizations, and representatives of the Governments of Canada/NWT were invited. The June 10 workshop focused on Proponent Engagement and Board Procedures, and Indigenous Governments and Organizations, representatives of the Governments of Canada/NWT, and Industry organizations/representatives were invited. The workshop topics and format were informed by the feedback received prior to that date. This Report has been circulated for input to all attendees of the workshop. The final draft reflects parties' comments, summarizes what we heard at the workshop, and informs Policy drafting.

What we heard

Consultation Roles and Responsibilities

There was lengthy discussion and clarification around respective roles and how consultation is carried out by the Boards and the Governments of Canada/NWT². Questions centered on differentiating between the Boards' and the Governments of Canada/NWT's responsibilities, what the Governments of Canada/NWT rely on in the Board's processes, and how they assess the adequacy of those processes and the consultation therein, as well as how the Boards and Governments of Canada/NWT determine who is consulted. Participants noted the need for the Policy to further clarify between engagement, Board consultation, and Government of Canada/NWT consultation, and the need for a better understanding of how the Boards' regulatory and EIA processes assist the Governments of Canada/NWT in fulfilling their duty to consult.

Beyond the formal roles and obligations of the Boards and Governments of Canada/NWT, participants shared ideas for improving consultation and decision-making. Among them were moving towards more flexible consultation approaches that rely on community protocols; this may include things like engagement and consultation planning and communities selecting representatives to participate in hearings. Other ideas to improve consultation were to include a validation step before final ministerial decisions, whereby Indigenous Governments and Organizations (IGO's) and communities can review draft conditions and measures following a Board recommendation and incorporate consensus-building strategies into decision-making. Overall, the theme of these conversations came down to more active involvement of IGO's in decision-making.

Participants discussed the need for all parties to have a clearer sense of what their responsibilities are, and for those that have fiduciary responsibilities to be at the table and to fully understand Indigenous

¹ Initial communication about the intent to develop a joint policy on Engagement and Consultation was done by email to all users of the Boards online review system (ORS) on August 14, 2019.

² This is commonly referred to as "Crown Consultation", however, parties indicated their opposition to this term during engagement on the Policy.

Peoples' views and perspectives. Parties recommended that the Policy should align with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the *Truth and Reconciliation Commission of Canada: Calls to Action*.

Expectations for Applicant Engagement

Participants discussed engagement requirements for applicants and holders of land use permits and water licences (herein referred to as “applicants”), focusing on community expectations and how to improve early engagement for both applicants and communities. While there was a general consensus on the importance and value of early engagement in communities, a number of challenges emerged in the discussions, including applicant capacity and matching project scope to the level of engagement required, and balancing the benefits of early engagement (dialogue, relationship-building) and the engagement “load” on communities. Some solutions brought forward included defining engagement triggers or requirements by development type (to increase certainty for applicants), more active involvement from the Boards in facilitating applicant engagement, and potential government funding for engagement.

Despite the challenges, the conversations highlighted the importance of early engagement for enabling dialogue and understanding of local perspectives and history, that early engagement should be happening in the early “ideas” phase, and the importance of collaborative project planning. The willingness to engage and come to communities remains foundational for fostering positive relationships and collaboration. Of note was also the importance of developing the engagement approach *with* communities and following local protocols whenever possible, and the need for verification and agreement on engagement records and plans. Regional engagement approaches were discussed to improve efficiency but recognized the challenges of engaging with diverse IGO and municipal governments with different interests and priorities, as well as leadership and political structures. Parties suggested that the Boards should consider different engagement requirements for certain types of proponents (e.g., potential exemptions for IGO proponents) and that any engagement should be in consideration of the scope, scale, and context of the Project.

The topic of Traditional Knowledge (TK) was discussed at length. Parties voiced the importance of local protocols for TK (e.g., ownership, use of TK, and agreements) and starting the discussion about the use of TK early in the ideas phase of a project.

Capacity Challenges

Capacity was an obvious issue for IGO's, from the very beginning where the government is asking IGOs to identify the potential infringement on rights, to trying to obtain funding for a review, to having the people, technical, and financial capacity to participate in the review, to trying to work in a regimented schedule. It was emphasized that reliable long-term funding and support is essential.

Participants questioned how IGO's can identify the scope of the duty to consult if there is not capacity to do so. Participant funding for environmental assessment was acknowledged as a positive step but participants voiced significant concerns with the lack of consistent and reliable funding to participate in Land and Water Board processes, which make up the large majority of required day-to-day regulatory involvement for IGOs. Further, there is a funding gap with “front-end loading” of engagement despite the Governments of Canada/NWT's reliance on it and the Board's engagement requirements.

Participants also noted that there is no control over the timing of applications, the timelines for review, and that there are competing demands on their limited resources including other internal and external initiatives, policies, and processes. Participants noted the strong need for more collaboration between

federal and territorial consultation activities to reduce consultation fatigue. Participants recognized that all parties need to work together in a combined effort to make sure the most important things get sufficient attention, and that engagement and involvement should match the scale of the project.

Participants commented that the lack of comments does not always mean a lack of concern or impacts – a community not being engaged in an optimal way could result in their comments and perspectives being lost. This further underlined the importance of engagement and consultation planning with communities and tailoring the approach to the specific needs of each.

Participants also suggested a more efficient and collaborative approach to engagement such as regional strategic assessments/regional mineral development strategies and multi-project engagement approaches to reduce consultation fatigue and mitigate capacity issues.

Communication and Support

IGOs noted that they do not know which government (e.g., federal, or territorial) departments to speak with for questions about consultation and rights infringement, and funding/resources questions and issues. Industry participants noted that it is sometimes difficult to determine the appropriate community contacts for engagement. Suggestions included the Boards housing an online contact list that is regularly maintained to update changes, taking a more active role in facilitating proponent engagement, and having a dedicated Board staff as a central contact for the Boards that would do more regular and systematic check-ins and updates that are coordinated (multiple projects/initiatives for efficiency), and assist with training new staff on Board processes.

Most parties seem to agree that plain language and Indigenous language resources (e.g., interpretation services) are very important. Participants also recommended that more Board-organized community education opportunities occur. These may include workshops in advance of hearings, regular coordinated updates on all files and activities, and a dedicated Board engagement staff for regular coordinated engagement check-ins/updates and to help with training new staff and providing resources on the Boards' processes. Participants remarked that it can be frustrating when engagement and the engaged parties are too broad and emphasized the importance of speaking with the right local people early and understanding their concerns. The importance of Board accountability and transparency for decisions (e.g., how, and where issues were resolved and how comments were considered) was also noted.

Next Steps

Board staff will be drafting updates to the Policy considering input heard during all engagement to date. A public review of the updated Draft Policy is anticipated for Fall 2021. If parties have additional comments about the Policy, please reach out to Board staff at any time.

Appendix 1: Organizations engaged via one-to-one meetings and/or were invited to participate in the June 9 and 10 workshop.

Acho Dene Koe First Nation (ADKFN)
Akaitcho IMA Office
Aklavik (Ehdiitat) RRC
Athabasca Dëne Sų́íné
Canadian Northern Economic Development Agency (CANNOR) - Northern Projects Management Office
City of Yellowknife
Colville Lake Renewable Resources Council
Crown-Indigenous Relations and Northern Affairs Canada/Government of Canada
Deh Gáh Got'ie Dene First Nation
Dehcho First Nations (DFN)
Déljnę Got'ine Government
Déljnę Renewable Resources Council
Dene Tha' First Nation
Deninu Kų́é First Nation (DKFN)
Fort Good Hope Renewable Resources Council
Fort McPherson (Tetlit) RRC
Fort Norman Metis Land Corp
Fort Resolution Métis Government (FRMG)
Ghotlenene K'odtineh Dene (formerly Manitoba Dëne Sų́íné)
GNWT (ITI)
GNWT (Lands)
Gwich'in Renewable Resources Board
Gwich'in Tribal Council
Inuvik (Nihtat) RRC
Kaska Dena Council (BC)
K'atl'odeeche First Nation (KFN)
Kitikmeot Inuit Association
Łíídlj Kų́é First Nation
Łutselk'e Dene First Nation (LKDFN)
Mining Association of Canada (MAC)
Nę K'ə Dene Ts'jł Forum
Ni Hadi Xa
Norman Wells Renewable Resources Council
North Slave Metis Alliance
NWT Chamber of Mines and industry representatives
NWT Métis Nation (NWTMN)
Sahtu Renewable Resources Board
Sahtu Secretariat Inc. (SSI)
Salt River First Nation
Smiths Landing First Nation
Tjchq Government
Town of Hay River
Tsiigehtchic (Gwichya Gwich'in RRC)
Tulita Renewable Resources Council
Wek'èezhì Renewable Resources Board
West Point First Nation
Yellowknives Dene First Nation (YKDFN)