



## YUKON LAND USE PLANNING COUNCIL

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Dear Minister and Peel Watershed First Nation Chiefs:

**Re: Yukon Government's consultation on the Peel Watershed Planning Commission's  
*Final Recommended Peel Watershed Regional Land Use Plan and the New Plan Concepts***

The Yukon Land Use Planning Council (the Council) has read the "What We Heard Report" that summarizes the results of the Government of Yukon's consultation on the Peel Plan. The author has done a remarkable job in capturing and representing the key themes and differing perspectives. The document is well written, balanced and appropriately qualified.

The challenge to the Parties, and this is well documented through the themes identified in the summary, is that the consultation results reaffirm the extent of the polarization and disconnect between respondent perspectives. Finding common ground to move forward on a regional land use plan for the Peel region in particular and regional planning in general is the issue. The "What We Heard" summary reinforces our concern that "courageous leadership" will be required to restore public confidence in, and credibility of, regional planning as a governance tool; trust in the process itself; and understanding of the role of the commissions in plan preparation. The consultation report clearly demonstrates a public perception that the Government of Yukon did not follow either the spirit or intent of the rules established in Chapter 11 of the Umbrella Final Agreement and hijacked the process. Whether that is true or not is largely irrelevant at this point.

A conclusion needs to be reached on the Peel one way or another, and the Parties as a whole have to determine what it will be.

From the Council's perspective, we need to find a way forward that restores public confidence, meets our collective obligations under the UFA, and gets the regional land use planning program back on track. To put it bluntly, the Peel Plan has become a boat anchor and a lightning rod for division on a number of fronts. A clear vision of what all Yukoners collectively want to accomplish through the regional planning process together with statesmanship, mediation, creativity and sound planning principles are required for successes in regional planning in the Yukon. The present situation is untenable for all.

For example, there is already a spillover effect on the Dawson Commission's work. They are expected to finish their plan within the next fiscal year. Requests for government policy clarification regarding the Yukon Government's 8 planning principles introduced in the Peel debate at the 11<sup>th</sup> hour go unanswered. Other First Nations want to start regional planning and the Peel is consuming resources, time and energy that should be expended on moving their interests forward. Specifically, how can First Nations without final agreements participate in regional plan processes where there is an overlap with a First Nation with a final agreement? They are not party to the legislative framework for planning set out in Chapter 11 of the UFA.

The Peel is also a distraction for industry and undermines Government efforts to demonstrate that the Yukon is a good place to invest. Land use certainty, clear rules and an effective land use administration system based on best practices is a goal shared by all.

The Council believes that the regional land use planning program is in trouble. A number of negative precedents may have been set that undermine the trust and public confidence required to sustain an effective land use planning program. Policy and operational changes are required.

The following are some examples:

**Concern # 1: The approval process did not follow key sections of the Letter of Understanding that the Parties agreed to in January of 2011.**

In January of 2011, the Parties signed a Letter of Understanding (LOU) that delineated the process that would lead to a decision by the Parties regarding the Final Recommended Plan.<sup>1</sup> A

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<sup>1</sup> In the First Nation of Nacho Nyäk Dun, TH and VGFN Final Agreements, one of the "Whereas Clauses" indicate that the Parties wish to achieve certainty with respect to their relationship with each other. Agreements between the Parties after the settlement of the land claims are common and necessary to complete the implementation of the agreements. Therefore, the LOU is consistent with the ongoing work of defining relationships as the land claim agreements that are being implemented. If the Parties cannot execute follow-up agreements such as the LOU, the implementation of the agreements are jeopardized.

process, timeline and approach to consultation was reached but not followed. Council applauded the Parties for developing the Letter of Understanding as a mechanism to move forward in a timely manner. It provided clarity on how the Parties would proceed with this critical step, working together in a respectful manner during the approval process. However, as we near the end of approval process, many key aspects of this agreement apparently were not realized.<sup>2</sup>

The lack of commitment to the LOU implementation has resulted in the reduction of trust between the Parties, hampering future communication and harming relations. It is now unlikely that there will be other such “handshake” agreements, and more formal, costly and time-consuming legal agreements can be expected. The cooperative spirit of the LOU is consistent with the land claim agreements, but appears to have been lost during this approval process.

**Concern # 2: The development and release of Plan Principles was done independent of any consultation with First Nations or input from the Council.**

The Council has continually reminded commissions that, while they are independent bodies, their sole focus is to produce an “approvable” Regional Plan. Commissions understand that, but the quid pro quo is that they expect the Parties through the process to be clear on their expectations. They also want to ensure these plans are not only signed off but also actually implemented. Performance measurement and public accountability are not unreasonable expectations of commissions or the public at large given the time and energy they have invested.

The Council is also a resource to the Minister and can provide independent advice or act as a sounding board on questions of program implementation. It is unfortunate that communication has deteriorated at a time when it could be most useful. The Council’s mandate, agenda and focus is very straightforward. We want to see regional land use plans completed and implemented across the Yukon in a timely manner within budget.

It would have been helpful if the Yukon Government had stated its preferred planning principles earlier in the process. These could have been developed with dialogue with the First Nation and with assistance from the Council. There were several occasions in the Commission’s planning process when the Yukon Government could have identified its Planning Principles:

- when the Commission’s Terms of Reference was being developed (with agreement with the FNs);
- when the Parties submitted their “Issues and Interests” to the Commission, and when they reviewed the resulting report.
- when the Commission released its “Statement of Intent” and its own Principles;

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<sup>2</sup> YLUPC Internal Review, Implementation of the Letter of Understanding, Peel Approval Process

- when the Yukon Government was commenting on the Scenarios Options, and Draft Plan and/or,
- when the Yukon Government was provided the opportunity to propose modifications to the Recommended Plan.

As Principles are foundational statements used to base a plan or planning process upon, having these come out at the end of the process jeopardizes any work done prior to their release.

**Concern # 3: The proposed modifications were not based on consultation outcomes but cobbled together with little “supporting evidence as to their validity”.**

The land claim agreements indicate that the Parties would base their modifications primarily upon the outcomes of the consultations with the communities (Yukon Government) and dialogue with each other on the Final Recommended Plan.

However, the Yukon Government introduced potential modifications before consultation with the public. As noted in the Consultation Report, this is arguably inconsistent with the spirit and intent of the land claim agreement. It “obfuscated the consultation process” certainly as envisioned in the LOU. The rationale behind the concepts and legitimacy of the proposed new land use categories struck many as illogical, vague and even naïve. This is unfortunate because it meant that the ideas themselves did not end up getting fair consideration.

**Concern #4: It is desirable that the Land Designation System used across all Yukon Regional Plans should be relatively consistent in terms of definition and application. The approved North Yukon Regional Land Use Plan provided a guide to build upon.**

Council continues to encourage the Parties to apply a generally consistent land designation system throughout the Yukon. This allows the regional plans to be “pieced” together as seamlessly as possible like pieces of a jigsaw puzzle. One of the reasons this is difficult is the absence of an overall vision for the Yukon as a whole supported by appropriate legislation and policy. This is also reflected in the consultation summary themes through terms like “balance” and seeing the “big picture”.

The proposed land designation system associated with the New Plan Concepts has a *Wilderness Corridor* as a *subset* of a *Wilderness Area*. Not only is this simply confusing, the use of the word “wilderness” as a part of the title of an area where development is allowed (roads, mines, etc.) is misleading. It does not provide the clarity of intended use associated with a good land designation system. While an operational definition of wilderness is not provided in these plan concepts, the Yukon Government’s State of the Environment Report from 1999 does provide a spatial definition of wilderness that could serve as a way of defining, measuring and managing

wilderness in the Peel and elsewhere in the Yukon.<sup>3</sup> Using the language of the North Yukon land designation system would be a more accurate representation of the intended use of areas in the Peel region.

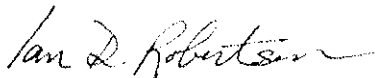
In addition, the Yukon Government's Principle # 1 indicates that there are areas in the Peel that deserve "the highest level of protection available". None of the plan concepts really meets this standard. Within the spectrum of the types of protected areas available, time limited land withdrawals are not the highest level of protection. .<sup>4</sup> Either the plan concepts should be changed or the wording of the Principle should be altered.

Finally, YLUPC would like to remind the Parties that the Council was created to provide recommendations and advice regarding regional planning matters. As such, the Parties can request that the Council make recommendations on "matters as Government and each affected Yukon First Nations may agree" (Clause 11.3.7). The Parties could have utilized this clause to assist with issues that have arisen in the planning and subsequent approval process.

To reiterate, Council believes the negativity that has enveloped the Peel is undermining the credibility of the regional land use planning program. The present situation is untenable for all.

Statesmanship, mediation and creativity are required by all Parties based on sound planning principles and a clear vision of what all Yukoners collectively want to accomplish through the regional planning process.

Sincerely,



Ian D. Robertson  
Chair, YLUPC

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<sup>3</sup> The State of Environment Report defined wilderness as existing beyond a set distance from roads/developments, an operational definition also used elsewhere to map wilderness. There should also be consistency between zoning definitions and monitoring and measuring metrics used during plan implementation.

<sup>4</sup> During the YPAS, YG produced a document that showed the spectrum of Protected Areas. The International Union for the Conservation of Nature also has a system for evaluating Protected Areas based upon the level of protection they provide. There is no designation in the New Peel Concepts that would align with the highest level of protection envisioned internationally.