Yukon Land Use Planning Council

The Peel Decision and Beyond | Spring 2018 Gathering Event Summary

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1 Background & About This Document

On March 21, 2018, over 70 participants attended "The Peel Decision and Beyond" at the Westmark Hotel in Whitehorse; an event designed to discuss the implications of the Supreme Court of Canada's Peel Watershed ruling, First Nation of Na-Cho Nyäk vs. Yukon, 2017 SCC 58. The participants represented nearly 30 organizations and governments from the Yukon and beyond.

The event contained a series of presentations and facilitated discussions. The agenda can be found here. This document summarizes the presentations made by both speakers and breakout groups.

2 Welcome and Opening Remarks

Joe Copper Jack provided opening remarks and started by introducing himself in a traditional way.

"This morning on behalf of Chief Kristina Kane of the Ta'an Kwäch'än Council, it is my pleasure to welcome all of you to our traditional territory that is shared with the Kwanlin Dün First Nation. I would like to welcome you to this spring gathering on behalf of the Yukon Land Use Planning Commission. In 1900s at the height of the Klondike Gold Rush, Kishwoot recognized that we needed protection for the land and hunting grounds in the wake of the growing population. He petitioned Commissioner Ogilvie for a reserve and got only a small portion of that. He wrote to the Department of Indian Affairs demanding that overhunting be controlled, for land loss, and for impacts on wildlife. He recognized that our land needs to be cared for, and as First Nations people we believe that very strongly. Today we'll be talking about an important watershed – the Peel – the court ruling, and the importance of our agreements – in particular, Chapter 11.

Our lands have changed drastically since the Umbrella Final Agreement was signed. We'll look at lessons learned and consider them for a planning framework for the Yukon. There are many external forces. Climate change has landscapes changing beyond recognition. Animals are declining and moving to different regions. First Nations people are continuing to adapt to incredible changes to our lands. As First Nations people we have insights and perspectives that can contribute to land use planning. We know what's best for our traditional territories and have insights that can guide us. We are on the land every day, monitoring changes. Land Use Planning is a major priority for the north and it's critical that Traditional Knowledge and local knowledge be used in conjunction with modern science. Working with local communities, relevant sustainable strategies can be used for our lands."

Following Joe Copper Jack's opening remarks, Ta'an Kwäch'än elder **Julia Broeren** spoke the Baha'i Unity Prayer. This was followed by remarks from Yukon Land Use Planning Council Chair, **Pearl Callaghan**, who also introduced herself in a traditional way. Pearl spoke to the intent of the gathering.

"In my work life, I always want to think and work for seven generations. I think that involves a great deal of respect. We have to respect our future generations and be cognizant of them at all times in our vision and in our mandates. I have a deep love for our Creator and creation.

Land Use Planning is Chapter 11 of the Umbrella Final Agreement. We have three members under the Umbrella Final Agreement. Lois Craig, is the Yukon Government nominee. [Pearl reviewed Lois' bio.] We also have our federal appointee, Dennis Zimmerman. [Pearl reviewed Dennis' bio.] We have a wonderful staff team. Ron (Cruikshank), our Executive Director, has been with us for 19 years, Sam Skinner is our regional planner. Joe Copper Jack is our Senior Planning and Policy Advisor. Heidi Hansen, our Senior Financial Administrator, has been with Regional Planning for ten years. Duncan Martin is a young planner. We appreciate our dedicated staff.

To begin, I want to review our mandate."

Pearl Reviewed 11.3.3 of the UFA, which outlines the YLUPC mandate.

11.3.3 The Yukon Land Use Planning Council shall make recommendations to Government and each affected Yukon First Nation on the following:

11.3.3.1 land use planning, including policies, goals and priorities, in the Yukon;

11.3.3.2 the identification of planning regions and priorities for the preparation of regional land use plans;

11.3.3.3 the general terms of reference, including timeframes, for each Regional Land Use Planning Commission;

11.3.3.4 the boundary of each planning region; and

11.3.3.5 such other matters as Government and each affected Yukon First Nation may agree.

11.3.4 The Yukon Land Use Planning Council may establish a secretariat to assist the Yukon Land Use Planning Council and Regional Land Use Planning Commissions in carrying out their functions under this chapter.

11.3.5 The Yukon Land Use Planning Council shall convene an annual meeting with the chairpersons of all Regional Land Use Planning Commissions to discuss land use planning in the Yukon.

11.9.2 The Yukon Land Use Planning Council shall, on an annual basis, review all budgets submitted under 11.9.1 and, after Consultation with each affected Regional Land Use Planning Commission, propose a budget to Government for the development of regional land use plans in the Yukon and for its own administrative expenses.

After her review of the Yukon Land Use Planning Commission mandate, Pearl continued her presentation, focusing on the intent of the event.

"This event is to review the Peel Case and the impact.

There are no Regional Commission members at this gathering. This is unfortunate because there currently aren't any. We have potential members, but we have to get Regional Commissions working again.

As keepers of the process, we're back to working on Chapter 11. We're working in Dawson and anticipate a draft plan by 2020. We were working closely with First Nations in the Southern Yukon on developing boundaries and the implementation of the North Yukon Plan until these things were put on hold by the Peel. We recognize that the Peel is no longer on hold. We believe that there should be no more plans approved by only one of the parties as this is not in the spirit of the Agreements. We're happy to see this clarified in the ruling. We've been paying close attention to the spirit and intent of the agreements. There are questions and we're looking for help from the parties. We think a framework may help with this and this will be the focus of this afternoon.

We have the Yukon Forum this spring and the 2018-2019 review. We'll hear from speakers this afternoon who have or are developing Land Use Planning frameworks. Further agreement among the signatories should expedite the process (using a framework). The more we understand a party's needs the better we can assist you in implementation. The Peel case has had an immense impact on the process ever since. My dream is to have one completed regional plan before my term is up.

We need to figure this out amongst ourselves and stay out of court. I look forward to hearing from the legal panel, hearing from the jurisdictions that have frameworks, hearing from Minister Pillai, and from all of you."

Subsequent to Pearl's presentation, **Ron Cruikshank**, Director of the Yukon Land Use Planning Council provided a review of the Peel Planning process. The PowerPoint presentation can be found here.

Ron noted that there are remarkable differences between the Northwest Territories and Yukon. Mackenzie Delta Beaufort Sea Land Use Plan of 1991 contained a very large area of the Peel designated as "lands managed as to guarantee the conservation of the resources". There was some early planning work before the Peel Planning Commission was established. A Terms of Reference was developed, but never formally adopted. It

was referred to as “draft” throughout the life of the plan. As a result, the Supreme court identified the Council as an establishment body, which it is not.

“I enjoy working with Citizen planning commissions. This commission in the North Yukon really became a high-functioning planning commission. They produced “scenarios” and associated maps, a mixed-use strategy, protection strategy, and an open access mixed-use strategy. There was a lot of internal work that led to these. There was a lot of data crunching. In response to the scenarios, Tetlit Gwich’in wanted 100% protection and the others leaned toward protection, too. Yukon Government provided technical comments but no consolidated message. They did raise expropriation/compensation. The commission worked on the draft plan, trying to strike the balance that was apparent as far as accommodating the protectionist and development messages it was receiving. In response to draft plan, the Senior Liaison Committee did not respond to the draft plan, but the commission got responses from First Nations wanting full protection. Yukon Government provided non-political comments that were technical in nature. The draft didn’t go over well, so they shifted toward more protection with land management units open for development as the Recommended Plan, 2009.”

Ron reviewed the approval process so both parties could approve a recommended plan, talking about how Yukon Government’s modifications of the Recommended Plan were an important part of the plan. First Nations still called for 100% protection. The SLC clarified that there was no on-going role for the Commission (and others).

“There was an interim staking withdrawal. The Commission introduced a 2011 Final Recommended Plan. YG developed eight new plan principles and plan concepts and went to First Nations and attempted consultation. This is where things got challenging because they used new plan concepts and different zoning systems and that was quite different than the thinking that had occurred before that. We’re not sure what happened between the parties but the relationship and consultation requirements – we’re not sure what happened because we’re not one of them – and Yukon Government approved their own plan in 2014. This takes us to the court case. In January 2014, Na-cho Nyäk Dun, Tr’ondëk Hwëch’in, Yukon Conservation Society, and the Canadian Parks and Wilderness Society filed a Statement of Claim indicating that it wasn’t consistent with the Agreements. Justice Veale quashed the plan and allowed only limited modifications for whatever plan would be approved going forward and said the plan couldn’t be rejected.

Yukon Government appealed in 2015 and the courts rendered a decision that sent the process back to the point of breach (the modification stage) and said that rejection was possible. In 2016 there was now a new Liberal government but they went ahead with the court case, which takes us to December 1, 2017 when the Supreme Court of Canada returned the process back to the consultation on the Final Recommended Plan. There is now consultation to come: to approve, modify, or reject.

We've had a look at the ruling and there are some important themes. It says a lot more than "return to consultation"."

Ron identified the following themes:

- Role of the Courts
- Considering the "Treaty as a Whole"
- Collaborative Planning (Land Claim Governance). "I came from the NWT using the term "co-management". That wasn't well-received here, so we use "collaborative planning"."
- Nature of Changes to the Plan: "modification" and "changing circumstances"
- Nature and Impact of Consultation
- Nature of the Boards. "We now have a word for the politically-neutral bodies."

3 Implications of the Supreme Court of Canada's Peel Watershed Ruling: FNNND Vs Yukon, 2017 SCC 58: Legal Panel Discussion

The legal panel discussion was moderated by **Gary W. Whittle** of Whittle & Company:

"The purpose of the conference is two-fold: to examine the Supreme Court of Canada's decision to gain an understanding of the impact upon future Land Use Planning processes in the territory. This afternoon we'll look at lessons learned from planning done to date. We have a panel of three lawyers, all of whom who have written papers, all of which are included in the materials [with the exception of Mara's, which was not provided at the time]. They are not expressing opinions on behalf of their firms or clients. They are their own thoughts. Finally, nobody here may review the results of the panel discussion as legal advice. It is only a general discussion of certain matters and not legal advice."

Gary introduced the panelists, **John Olynyk** from Lawson Lundell, LLP, **Mara Pollock** of Pollock Law, and **Kyle Carruthers** of Tucker and Carruthers. The panelists were provided with the questions in advance and had a chance to review the questions prior to the event.

John Olynyk: I'd like to make three comments. First, Chapter 11 was negotiated in the late '80s. It was before the *Sparrow* Decision, before the *Haida Nation* decision came out so concepts like "Consultation" were not part of the conversation. The concept of the "Honour of the Crown" was not talked about routinely. The treaties were seen as a way of achieving certainty over lands and resources and responsibility for management. The Final Agreements use language not dissimilar from the "cede, release, surrender" provisions. The case law has changed significantly. One provision was added last-minute when the *Sparrow* decision came down. When looking at Chapter 11, it has to be read in the context of a negotiation that occurred before a lot of the current case law was developed. The case law has been layered on top and concepts like the Honour of the Crown have been imposed on the government and all parties have had to adapt.

There's a real emphasis in terms of transparency on government decision makers, who need to provide rationale for how decisions have considered First Nations' interests. The courts are saying we can't review a decision of the government in terms of how they've considered that if we haven't gotten that rationale from government.

Third, it becomes especially challenging in the field of land use planning because it takes decisions that governments used to make and forces express, conscious decisions to be made about competing resource values. So when you need to take land use allocation decisions and combine that with case law, taking into account views that are expressed and showing how and why government arrived at the decision it has made, it's going to be a new way for Land Use Planning Commissions, governments, and First Nations incorporating those perspectives, but you have to follow the process correctly and show how you've taken into account the views that were expressed, especially when it doesn't consider the views of all the parties in the process.

Mara Pollock: One of the interesting things for me while I was working at YESAB and this case was traveling through the courts, I was interested in this case to see how it might have implications for other boards and decisions. YESAB is reliant on land use planning. I was interested in the implications. YESAB is created under federal legislation. It is not a typical federal board or a typical Umbrella Final Agreement board or commission. It sits between those two entities. We've typically interpreted YESAA with a conventional statutory application. I was interested in how this might impact a potential interpretation of YESAA and how that might impact YESAB. To my mind it has an interesting potential on the future interpretation on this YESAA legislation because it has its roots in the Umbrella Final Agreement.

Kyle Carruthers: My focus has always been on the word "modify". We have words in law that are so open-ended and I thought at some point someone would need to settle this. In the courts of appeal, nobody weighed in on what that word meant. Going backwards, had the then-government proposed what it proposed at the end been proposed at the beginning, would that have been legal? We think of modification like a truck. You can put on a new tail pipe. Lift kit, etc. Lots of ways to modify a truck. Was the planning commission an advisory board or was it more of a collaborative decision-making process? What they gave us isn't perfect; when is something a minor modification and when is something more? But we know it doesn't mean a completely new plan.

Moderator, Gary Whittle: In the judgement, in the packages, the particular paragraphs or clauses have been highlighted for you. I will be reading from that, so you can read along with me. The first issue deals with the role of the courts. This case highlighted the role of the courts.
Paragraph 4 states, *"In my view, this proceeding is best characterized as a judicial review of Yukon's decision to approve its land use plan. In a judicial review concerning the implementation of modern treaties, a court should simply assess whether the challenged decision is legal, rather than closely supervise the conduct of the parties at each stage of the treaty relationship. Reconciliation often demands judicial forbearance. Courts should generally leave space for the parties to govern together and work out their differences."*

In paragraph 31, *"The following issues arise in this appeal:*

(a) What is the appropriate role of the court in these proceedings?
(b) Was Yukon's approval of its plan authorized by s. 11.6.3.2 of the Final Agreements?
(c) What is the appropriate remedy?

Paragraph 32 states: *"The nature of these proceedings informs the appropriate judicial role in resolving this dispute. As demonstrated by the remedies sought by the First Nations, and the powers set out in s. 8 of the Yukon First Nations Land Claims Settlement Act , these particular proceedings are best characterized as an application for judicial review of Yukon's decision to approve its land use plan. The First Nations submitted that Yukon's approval of its land use plan did not comply with the land use plan approval provisions of the Final Agreements, and they asked the trial judge to quash the plan on that basis. This type of remedy is available on judicial review (Rule 54 of the Rules of Court, Y.O.I.C. 2009/65; see also trial reasons, at para. 167). The role of the court is simply to assess the legality of the challenged decision. An application for judicial review does not invite the court to assess the legality of every decision that preceded the challenged decision.*

The court characterized it as an application for judicial review and that the role of the court is to assess the legality of the challenge decision and that it is not the appropriate judicial role to closely supervise the conduct of the parties at every stage of the relationship and that the courts play a critical role in protecting the rights of modern treaties and not to assess the compliance of the parties at each stage of the treaty implementation process, rather, to determine the legality.

Kyle Carruthers: I didn't put a whole lot of weight on that statement. The courts will be called upon to settle disputes from time-to-time. I think it was a subtle caution and the parties don't want to go to court either. It's expensive and cumbersome. I don't think it will have much bearing if matters end up in front of courts in the future.

Mara Pollock: I agree with Kyle. I think the Supreme Court of Canada has on many occasions told the parties to work it out and not come to court. That's what reconciliation is about. With respect to my interest, I thought it was interesting that the court raised a judicial review but didn't cover the standard of review or how that would work. In normal circumstances, the court would assess the standards. Was that because it came out of treaties? Given that YESAA's origins are in treaties, would they think about that differently because of the origin of the dispute. It seems like the Supreme Court of Canada will not get into the affairs or tell the particles what mechanisms they can use to reconcile. It will still assess whether or not the decision has been made within the constitutional limits.

John Olynyk: I agree with what's been said. The one distinction – perhaps this is what the Supreme Court of Canada has in mind – the courts have asked if Yukon Government made the right decision in the right point in the process. The court said we're only looking at the legality of this one decision to see if it was made correctly, but if you look at the *Beckman v. Little Salmon/Carmacks First Nation* decision in a consultation-type dispute, the court gets more involved in the consultation process. It didn't need to do that here and gave the parties a little more space on how to figure it out.

Moderator, Gary Whittle: What is this space for the parties to work together?

Mara Pollock: The court wanting to leave space for the parties… I believe that the mechanism is how parties decide their processes – the letter that was signed on how to deal with consultation (there were two signed). At one point that process was no longer being followed. The courts are trying to say that's how the parties should be going about planning, resource management, and any land-use management, and then follow the process the parties designed for themselves.

Kyle Carruthers: I think there's plenty of space in this process. Consultation, sending the initial plan, modifications, and final result. Maybe there could be more dialogue in the back-and forth. The process doesn't seem to have a lot for that, but I don't think I can add too much to what Mara said.

John Olynyk: I agree with Mara. The Agreements don't need to be read if they're being followed. Leave it to the parties to make sense of contemporary circumstances. Yes, disputes will arise, and the courts will read the agreements, but if you can work out your differences then you don't need to go to court.

Moderator, Gary Whittle: Is there a need to review provisions for conflict management in the Agreements or do we need to create new processes?

Kyle Carruthers: I don't think we need to. There's a lot of new case law on what consultation looks like. I don't think it necessarily needs to be in the Agreements. There doesn't seem to be a lot of process for dialogue between First Nations and the Commission or the Government and the Commission. Maybe something can be looked at there. Where reconciliation needs to happen, there's already a lot of law on that.

John Olynyk: I read into the Umbrella Final Agreement chapter on dispute resolution. Technically, it doesn't apply to this. It only applies when the parties agree to it. I'm not sure what it would have changed. I think there's a paradigm shift happening in terms of case law. I'm not sure that mediation or alternative dispute resolution would have resolved that. Just a dispute about process.

Mara Pollock: No additions.

Moderator, Gary Whittle: Interpretation of the treaties. The courts said it must be interpreted in terms of modern interpretations. Paragraph 37 – paying close attention to treaty objectives. In the context of land use planning in the Yukon, what can we take from these as appropriate interpretive tools?

John Olynyk: I think we have clear direction on the appropriate interpretive approach. First, read the chapter you're dealing with as a starting point. If there's uncertainty, look at the objectives. Most have objectives up front. The intentions can be used to interpret ambiguities. The concept of the Honour of the Crown and reconciliation pervades the

interpretation of the Agreements. What is the right thing to do from a reconciliation and Honour of the Crown perspective?

Mara Pollock: One of the interpretive sections, 2.6.6, talks about the Federal Interpretation Act which relates to federal legislation and Sections 12 and 13 talk about the preamble and how it can be used in interpretation. I think that was part of Section 2.6.6; the parties were relying on the Federal Interpretation Act to discuss how the intentions of the parties apply under those circumstances.

Kyle Carruthers: Lots of legal documents, statute, contract, treaty – We often have general statements in plain language relating to what are we talking about in the broadest sense. A lot of contracts and agreements have a provision that says you can't look to that language at the beginning that you can't interpret it, but you can ignore those provisions when you're talking about treaties. That's what I took from it.

Moderator, Gary Whittle: When we look at Paragraph 2 of the decision, collaborative, regional land use plan that was adopted by Canada, YG, FNs.

> "The Umbrella Final Agreement (UFA), a monumental agreement that set the stage for concluding modern treaties in the Yukon, established a collaborative regional land use planning process that was adopted in modern land claims agreements between Yukon, Canada, and First Nations. For almost a decade, Yukon and the affected First Nations participated in the process set out in these agreements to develop a regional land use plan for the Peel Watershed. Near the end of the approval process, after the independent Commission had released a Final Recommended Peel Watershed Regional Land Use Plan, Yukon proposed and adopted a final plan that made substantial changes to increase access to and development of the region."

Paragraph 48 talks about setting out a collaborative process.

> "Thus, I agree with the lower courts that Yukon's authority to "modify" a Final Recommended Plan is limited by the language of s. 11.6.3.2, with its requirement of consultation, as robustly defined, and by the objectives and scheme of the land use planning process, including the central role of the Commission and the rights of First Nations to meaningfully participate in the process. Chapter 11 sets out a collaborative process for developing a land use plan, and an unconstrained authority to modify the Final Recommended Plan would render this process meaningless, as Yukon would have free rein to rewrite the plan at the end. Interpreting s. 11.6.3.2 in the context of Chapter 11 shows that Yukon cannot exercise its modification power to effectively create a new plan that is untethered from the one developed by the Commission, on which affected parties had been consulted."

It's not restricted to Chapter 11 but refers to all boards and committees. In the context of Yukon land use planning, what can we take from the implications of describing the process as a collaborative planning process?

Mara Pollock: There are at least six different references that the court makes to collaborative land use planning, but the court also talks about management of public resources and meaningful participation in management of Settlement and non-settlement lands. The courts are saying that in all of the resource, land-use chapters, that this is a collaborative regime. First Nations governments in Yukon have agreed to manage and govern resources and lands together. In the end, I don't think collaborative land use planning is any different from co-management. I've looked at these regimes in different jurisdictions. They have different types of co-management not through treaty, but in Yukon these are constitutionally-protected documents and that's how the territory should be managed in my view.

Kyle Carruthers: I don't think there's a lot of distinction between collaborative and co-management. There are two views that were expressed in this process. The previous government viewed the body as advisory and Yukon Government would make a final decision. The Umbrella Final Agreement was a compromise in a sense where the First Nations gave up a larger volume of land in exchange for a seat at the table in these processes.

John Olynyk: That's right, Kyle. During the Umbrella Final Agreement negotiation, there was a dialogue about the amount of settlement land and other ways to ensure First Nations involvement. The boards and agencies were set up as a way to include that as a way to resolve that. When it comes to collaborative land use planning processes, it's the way to resolve that. Work together if you can, and if you can't, then have the discussion in a respectful, open and transparent manner and say why "Here's why the government needs to do this."

Moderator, Gary Whittle: How does that – the framing of it as a collaborative process – affect the Yukon Land Use Planning Council and other boards and agencies?

John Olynyk: Fish and Wildlife Management Boards, etc., make recommendations to their respective bodies, but I think the mindset of working collaboratively with those bodies and the land use planning councils is the overall theme.

Mara Pollock: I agree. YESAB is a unique entity and the collaborative process between the parties, they have their own independence and they participate in assessment in the Yukon as a board in a different way than do other boards and committees. It is one of those areas where I continue to think about how it might be different from the other boards and if YESAB feeds into that larger picture and if it, itself, stands a bit aside.

Kyle Carruthers: I don't think we can necessarily extrapolate to other boards and commissions. In the context of land use planning, there was an ambiguity and the court went outside of that. If the other sections have clear language, extrapolation isn't required.

Moderator, Gary Whittle: Modification. The Supreme Court of Canada was all about modification and the circumstances around modification. The case was about the

scope of the modification as it applies to non-Settlement plans. In the court's views, 11.6.3.2 authorizes Yukon to make modifications to the final plan based on ones it proposed earlier in the process or responding to changing circumstances. 11.6.3.2 does not authorize Yukon to change the final recommended plan so significantly as to reject it. Yukon Government can only make changes in good faith and with the Honour of the Crown. Yukon Government's failure to provide changes earlier in the process… [missing transcription]. Yukon has a right, not an obligation, to provide modifications. What can everyone gather here today take away from these statements?

Kyle Carruthers: This was the most important part of this decision: Putting scope on what a modification means, and it puts the planning commissions in the driver's seats. We still have to figure out what reject means. There will likely be more litigation in the future, depending on future governments. What this decision makes clear is that they can't do what the Yukon Party did, which was change the whole thing. I don't think we're done settling it because people can still disagree on what the scope of a minor modification is.

Mara Pollock: Land planning is a choice. Not mandatory. By voluntary agreement when they have agreed to it they have to follow it through. By getting into the process you know what you're getting into.

John Olynyk: An interesting question. [missing transcription] It's because the extensive modifications were proposed so late in the process. I think there's a lot of room for modifications earlier in the process.

At this point, event participants were invited to ask questions of the panelists.

Tim Gerberding on behalf of Tr'ondëk Hwëch'in: Is the Government of Yukon at liberty to now reject the plan?

John Olynyk: I believe they are. I have no information about whether or not that is being considered.

Kyle Carruthers: I agree.

Mara Pollock: John mentioned this a couple of times. Yes, however it will be with reasons, and they will need to be transparent. We didn't mention the definition of consultation that's in the agreements. In that way, governments – First Nations included – within reason have to explain how they have fully considered views.

Tim Gerberding: The government has said they would not reject the plan. The advice the appellants received was not the same as you've just offered. Under the circumstances, Yukon Government can't reject the plan unless there are some circumstances that have changed dramatically.

Mara Pollock: “Unless” is part of your statement. It’s not a simple yes or no answer. The advice you’ve been getting is clearly more-informed.

Ron Cruikshank: There are opportunities to reject portions of the plan earlier on in the process to weed out any sections of the plan they feel they would not approve earlier in the process. I have a question. I’d like to pick up on something that Kyle pointed out. Ideally, you have plans at the end points that the commission believes are the best or that the parties have sufficiently vetted or are approvable and of the whole planning process. What’s happening is that the commissions are being treated like a light switch, getting turned on and off. But what do you do with a commission during the consultation with the communities? What is their role at that stage where the parties have taken the plan on to do the consultation. I don’t think it makes sense to have the commissions turned off (no staff, reduced funding). I don’t think it makes sense if the commission isn’t somehow involved.

Kyle Carruthers: It would be nice if there was more tripartite dialogue between the governments and commission, so everyone could come to the table and make changes. We also have a problem with governments at all levels that change. There doesn’t seem to be a whole lot of flexibility beyond this process of: plan submitted, sent back, plan submitted again.

John Olynyk: I wonder if this isn’t one of those areas for parties to sort it out amongst themselves. Maybe there are some things the Umbrella Final Agreement doesn’t address but that the parties agree make sense. A Letter of Understanding or something like that.

Joe Jack: How do you see this as it pertains to implementation?

John Olynyk: You can’t only look to what’s written on the page. Maybe this is the difficult part is that you can’t always rely on what you thought you were getting in the agreement because things change. I think at one point, treaties were the end point in reconciliation, but now they’re saying they’re the framework that will lead to reconciliation as the parties figure things out between themselves. There won’t always be agreement, but implementation is part of a process and the courts are infusing these things into the interpretation.

Moderator, Gary Whittle: This leaves the door open for modification based on changing circumstances. In terms of changing circumstances, how will one go about determining what might be a changing circumstance?

Kyle Carruthers: I think that language is going to be fairly narrow. I can’t really think of a hypothetical that’s going to follow into that scope. Lands not withdrawn from staking and claims staked might be a changing circumstance, but I’m not sure what they’re alluding to.

Mara Pollock: Planning processes take time and you learn things. Ideas, interests, and values change and it allows the parties the freedom to be able to adapt to those circumstances whatever they might be. The court wanted to allow the reality of implementation to continue. That was left open so any government (First Nations as well) can address things that have changed from the beginning of the process.

John Olynyk: Perhaps they're referring to modifications at that point in the process as opposed to adapting the plan itself to changing circumstances when the plan exists.

Ron Cruikshank: The biggest changing circumstance affecting planners is a change in government. You often have occasions when one government wants to do one thing and the other doesn't. It doesn't sound as though you can use that…

Kyle Carruthers: Land use planning could theoretically be a big election issue. I don't see how you could divorce Land use planning from politics. A government that signs an international agreement has to live with it, so I think that would be a weak argument. If I was determined enough, I might take a shot at it.

John Olynyk: Governments retain the final decision-making.

Question: I'm from the NWT originally. Because this is a Supreme Court decision, what can other governments take away from this because this was a dispute specific to the Yukon but it affects the lay of the land regarding interpretive principles. What can other governments and First Nations take away from this?

John Olynyk: The narrow question is probably not going to have implications outside of the Yukon, but the interpretive themes like the Honour of the Crown, will.

Mara Pollock: Wherever there are more-general or override statements that relate to modern treaty interpretation, that's constructive to any modern treaty. Those principles and interpretive tools will be instructive and will have implications for the rest of the country.

Moderator, Gary Whittle: There are a number of papers in your package and some of the issues that have been raised from the floor and the panel through the questions that I've posed to them are dealt with them in these papers. Lawyers don't agree on a lot of things and this panel has. The last question has been addressed in the papers, as has Tim's question.

At the conclusion of the panel discussion and audience questions, workshop participants were led through a facilitated exercise where they were asked: In the wake of the Peel Ruling, what is one challenge you're facing or next step you're trying to figure out? Participants discussed in small groups.

4 Presentation on Chapter 11 Implementation: Progress and Challenges and Potential Solutions

Ron Cruikshank of the Yukon Land Use Planning Council and Lesley Cabott of Stantec made a presentation on progress, challenges, and potential solutions relating to the implementation of Chapter 11. The PowerPoint for the presentation can be found here.

Summary of Powerpoint presentation, Ron Cruikshank:

Progress prior to the Peel case occurring: North Yukon Plan Approved, Dawson Entering Draft Plan Stage; Northern Tutchone planning preparation ended over debate about legal vs non-legal agreement to establish commission and Southern Yukon boundary work underway

North Yukon success was achieved because of the idea "Planning Partners" (all those involved in planning the region) and the close working relationship between the NYPC and the Parties

Challenges:

- The Planning Regions of the Yukon needed to be agreed upon.
- Need a decision-making process for recommendations from the Council, What happens once a Council's recommendation is submitted to the parties? Nothing in Chapter 11.
- Peel conflict caused years of slowdown.
- We don't have any additional agreements about Chapter 11. The implementation plan review didn't yield much - 10 year review - there's no regional planning legislation or framework.
- There's a lack of clarity on roles and responsibilities in Chapter 11. Not clear about FNs that don't have settled agreements.
- Financial models have never been agreed to. Sub-regional/district has had very little work on that level.
- Were the Commission to exist only for a short time, produce the plans, and never to appear again? There's a fair bit about afterwards, like conformity checks and monitoring implementation, compliance, and assessing amendments.
- ***How the plans change over time is more important than how they were developed to begin with so this is an important question.***
- Commissions have struggled with their "politically neutral" nature as the approval bodies, which are political bodies that must approve the plans.
- The land designation system varied throughout the process. How the landscape and lands are divided up needs to be dealt with.

Planning succeeds if three things are in place:

1. The Commission becomes a "High Performing Agency" - learning to make decisions together;
2. The staff competently completes its work under the direction of the commission; and

3. Approval bodies together have respectful communication, harmonious relations and strive for consensus on the plan.

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Following Ron's presentation, Lesley Cabott began her presentation on land use planning challenges and potential solutions. The PowerPoint for the presentation can be found here.

Lesley reviewed the lens with which she views land use planning because, as a professional planner, she has some self-declared biases. Leslie has worked in the North including Labrador, as a municipal planner, in the private sector, and past Chair of the Yukon Land Use Planning Commission eighteen years ago. Regional planning comes from the Land Claims Agreements.

Leslie spoke to the research she conducted. Interviewers were conducted with 20 people, but that a larger sample would strengthen the work. Leslie explained that:

"Regional land use planning is difficult: There are a diversity of interests and large areas. Yukon's planning areas are the size of small countries on other continents. There's a lot of information and it's complex. Capacity (time, resources, money) is limited. There is uncertainty, but that also creates opportunities. One of those things is trust. There's huge support for planning. We heard that today. That's important to build on.

The Common Land Use Planning Progress Review (2015) was a moment in time when there was a lack of trust between the parties, the Peel was in the courts, Dawson was put on hold, and no regional planning was happening.

Our process was to examine the issues from past work/workshops. We looked at theories and processes, what worked and what didn't. We looked at other jurisdictions across the country including Alaska. We came up with 51 recommendations and 7 overarching recommendations.

The first is the approach, which is based on a comprehensive, rational process but should move to a strategic planning approach. Long-term vision and priorities, SWOT, interests and uncertainties. Comprehensive land use planning is at odds with the resources that are available and does not consider those.

A collaborative approach takes the evidence together with the values - asking residents, Yukoners, First Nations what's important and doing that collaborative, open, transparent planning is your collaborative evidence plan. Co-management is a governance structure. Collaborative planning is a way to plan.

The second is a Yukon Land Use Strategy as an overall planning framework. We have a mineral strategy, climate change strategy, tourism strategy. A strategy is needed to set clear priorities for planning to build trust and understanding.

Third, governments need to commit to planning. Regional planning was not meant to be pro-development or pro-protection. It's about striking the appropriate balance. If governments are committed to regional planning, it will identify the current needs and future priorities. Governments and the parties need to commit.

Fourth, the Yukon Land Use Planning Council needs to be the champion for regional planning. The parties have signed onto the Agreements but someone needs to guide and facilitate a common process. There was a leadership void. The Council should take on that leadership role (not a decision-making role).

Fifth, standardize the information-gathering that the parties can populate with information prior to planning and then the respective regions can augment that. (ex. with the indigenous planning processes that are happening where First Nations are taking leadership roles in gathering information, but templates and information gathering processes can be shared.

Sixth, there needs to be a clear and agreed-to understanding of the roles and responsibilities. All the players need to know how to "GROE" together (Goals, Roles, Obligations, and Expectations).

Seventh, a common planning framework and decision-making tools, processes and products are needed."

Leslie shared a diagram of a revised comprehensive land use planning process that includes tools.

"The plans should be similar and have similar land-use designations so that at the end of the day we will have these plans they should fit together.

These recommendations were from a moment in time and they haven't been workshopped. Land use planning is a passion of mine. I really think we can do this and do it together. These recommendations need to be shared with the broader Yukon."

5 A Planning Framework for the Yukon?

Three presentations were made regarding land use planning frameworks. One from Alberta, one from the Northwest Territories, and one introducing the concept of a land use planning framework for the Yukon. These presentations were followed by a facilitated session with workshop participants. The results of the facilitated session can be found in this document, below.

5.1 Alberta's Land Use Planning framework: Continually Improving the System

Jason Cathcart, Director of Regional Planning for the Government of Alberta presented on Alberta's land use planning framework. The PowerPoint presentation can be found here.

"I was invited to talk about Alberta's Land Use Planning and our successes and improvements since we started in 2008. Alberta is one of those provinces that goes through a lot of boom and bust. That causes a lot of stress on the natural and planning systems. We had not had a regional-type planning system since 1995. It was sort of a free-for-all. There was no consideration of cumulative impacts. We engaged in extensive consultation for developing a blueprint for growth without stopping growth, to get away from any-time, any-way, any-place development."

Six priorities were identified:

1. Strong communities and a plan for managing urban growth;
2. Clean air and water;
3. A transparent and consultative approach to planning that includes all Albertans (including Indigenous and Métis);
4. A diversified and value-added economy;
5. Healthy biodiversity; and
6. Ample opportunities for outdoor recreation and enjoyment of Alberta's natural beauty.

"We engage in extensive consultation. We developed a land-use framework. It's kind of our Bible and has a regional planning timeline. In December 2008, we released the framework with three major sections:

1. *A provincial vision*
2. *Provincial outcomes; and*
3. *Seven strategies to improve land-use decision-making in Alberta*

The vision is large enough to drive a truck through. It was hinged on the three legs of a stool (the provincial outcomes): A healthy economy, healthy ecosystems, and people-friendly communities with ample recreational and cultural opportunities.

They recreate heavily on the eastern slopes of the Rockies where we also get our drinking water. We needed to change something and provide a growth plan. It's based on seven strategies. In essence, strategies about creating:

1. *Seven regional land use plans;*
2. *A Secretariat and seven Regional Advisory Councils;*

3. *Cumulative effects, management of air, water and biodiversity;*
4. *Conservation and stewardship strategy on private and public lands (1/3 of which are under private title);*
5. *Efficient use of lands (public and private, providing private land owners with tools to minimize extent on the environment – like using common roads. Forestry companies would put in roads and energy companies would put in their own roads;*
6. *Continuous improvement through monitoring and reporting; and*
7. *Inclusion of indigenous peoples. We've seen a significant shift in the past few years, particularly with the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission so they can see their own voices in the process.*

Our regional plans are based on watersheds. The regions are allocated on a 50+1% allocation for municipalities (where they would be allocated). When we look at the South Saskatchewan Region, including Calgary, the Red Deer Region shares the same watershed, but we wanted to partition the population out a bit. Lower and Upper Athabasca are split because they're large. Lower Athabasca is Fort McMurray. The Peace is similarly subdivided.

Our regional plans establish l long-term vision for each region and aligns provincial policies at the regional level to balance economic, environmental, and social goals. They also establish monitoring, evaluation, and reporting commitments to assess progress.

We have a legislated system. The Alberta Land Stewardship Act (ALSA). They are government- approved plans that go to cabinet. I meet with ministries and the Land Use Secretariat in the development of the plans. It's a flowing-up-and-down system. It fits within a hierarchy. A regional interpretation of provincial policy and legislation. We do have sub-regional planning (Land Footprint Management Plan, Municipal, Caribou Range, etc.), then place-based rules, sectoral and operational plans. The lower plans take direction from the higher-level plans.

We have two on the ground at the moment. First is the Lower Athabasca Regional Plan. We got it wrong and had to do it again. We still didn't get it right. It is around Ft. McMurray dealing with the exceptional growth. The next is the South Saskatchewan Regional Plan. With the growth of Calgary's population, there is no water, so how do you allow growth when there is no water? How do you access trade water?

We've moved away from a linear system. We start with issues that are identified by government, cabinet or stakeholders, do a lot of pre-planning and consultation, then move into drafting to construct a draft plan (dictated by the Land Stewardship Act*), completion gets cabinet approval, then we implement with annual progress reports (although there's a delay in the system). The legislation calls for a 5-year audit. If it doesn't pass, back to consultation.* If *it passes, then we go to a 10-year review. This ends if plan is rescinded, redrafted/adapted, or it can carry on into an endless loop."*

5.2 Progress on the NWT Planning Framework

Darha Phillpot, Manager of Land Use Planning at the GNWT's Department of Lands, and Michael Mifflin, Senior Consultant on Land Use Planning spoke regarding the NWT framework for regional planning. A copy of their presentation can be found here. Darha began the presentation:

"We'll cover the NWT framework for regional planning, the status of planning and plans then Michael will speak to our efforts to advance planning. We have a Letter of Agreement (1984) between Canada and the GNWT which sets out the stage for regional planning in subsequent agreements and legislation. It has principles: Social, environmental, and economic well-being of northerners and all Canadians. It also speaks to roles and process. The second is the approved comprehensive land claim agreements (there are 3 completed). Each have approached planning slightly differently and have three-party approval model. The plans provide direction to both settlement and non-settlement lands. The Tłı̨chǫ approach is unique. The Federal Mackenzie Valley Resource Management Act *(MVRMA) operationalize the processes and concepts for planning. Some of the things the MVRMA speaks to are key steps and processes, content, approval, how it will unfold, and federal policy direction. They give the shape and legislative basis.*

The next document is Northern Lands, northern Leadership. A GNWT document that was developed on the eve of devolution which outlines GNWT's commitment to partnership in land use planning. The last instrument is the regional land use planning guidelines. The first thing we did post-devolution was clarify our internal processes to undertake a review and feed into the land use planning processes and how we manage our approval processes. This provides direction to GNWT employees and is communicated to partners.

Darha then spoke about the status of regional planning in the NWT.

"The Inuvialuit plan is completed. The Gwich'in plan is complete but we were unable to complete 5-year review. We had trouble getting reviews completed. Sahtu: Complete with the plan due for a 5-year review.

The Tłı̨chǫ do planning on their own lands and established a mechanism for establishing a way forward to do planning. Challenges include funding. Although planning is addressed in the Agreement, it's not an obligation in the claim. We're seeking funding. The working group has been used to have conversations about what the planning mechanism will look like.

In the Dehcho, there is a draft plan that has been proceeding in tandem with the land-claim negotiation since 2006. A Terms of Reference was established partway through the process. Issues include regional fragmentation. Also, implementation of a plan in advance of a final agreement.

Finally, there's the South-East NWT (Akaitcho and Metis Nation and other indigenous groups and inter-provincial transboundary). We've had conversations about how the NWT can move forward.

Michael Mifflin then began talking about his perspectives.

"I lived in Iqaluit for ten years. We're working outside of an established land claims context. When there is vagueness and a lack of direction, perhaps it's an opportunity. Areas in the NWT without completed land use plans include overlapping traditional territories. We're all going to have to advance regions at the same time at a pace at which parties are ready to come to the table. In Nunavut, existing land use plans were co-management, arms-length. Government and First Nations appoint representatives. Since devolution, there's been a move to co-governance as opposed to co-management. We've moved that conversation to land use planning.

The third factor is we started bringing Canada into this conversation. Canada is interested in co-governance and seem willing to invest in unique approaches to advancing land use planning. With the Tłı̨chǫ we're looking at building a business case for government-to-government land use planning.

Indigenous groups are seeking support from government to do their own traditional lands pre-planning work. Also, to build overall capacity for participating in land and resource management, environmental assessment, etc.

In the absence of the land claims structure, we need to develop a policy framework with our indigenous partners. It'll likely be intergovernmental Memorandums of Understanding or something like that.

The Sahtu and Gwich'in land use plans are due for renewal or past-due. There's some capacity issues with existing boards that we're going to need to address.

Rather than the typical jack-in-the-box approach where government goes away and creates a thing, we've been having an annual process where we bring everyone together to ask things. The first was "What are the needs for the NWT" and discussion about the Land Use Plan Policy Framework. The next year, we came up with engagement on what's next. In 2017, we engaged on land use planning in the South-East NWT where we got a signal on planning for traditional lands and building capacity. In 2018, we think we know where people want us to put our efforts so we're going to ask if we got it right.

We need everyone to help us figure out what our actions are going to be. There's interest in government-to-government planning so what do we need to agree on to be able to do that? How can we better direct capacity development funding? Everyone wants to be working from the same baseline information so we're working on sharing that data. We've been engaging the feds – we need them involved – but they want to

see a good business case. Darha pointed out that the Inuvialuit have dealt a lot with overlapping traditional territories and we want to learn what they did right (or wrong) to feed into planning.

5.3 Introduction: A Land Claim-Based Planning Framework for the Yukon?

Ron Cruikshank and Amy Ryder of Ryder Communications made a presentation regarding land use planning frameworks with the intention of asking if a land use planning framework might be appropriate for the Yukon.

Ron started with a brief introduction.

"The framework idea is a way of getting those ideas together and supporting the commissions and parties responsible for approving and implementing the plans. We don't have much. I've asked Amy if she could look at other jurisdictions."

Ron directed the participants to look in their information packages for a copy of Amy's work and for an example of a framework table of contents. The document can be found on page 69 here. Amy then began her presentation.

"This is just a starting point, not the actual framework. This is building on Lesley's work and one of the key recommendations. First, I started with a jurisdictional scan (13 jurisdictions), 32 different planning documents ranging from legislation, provincial/territorial strategies, regional strategies, Terms of Reference, cross-referenced with the Umbrella Final Agreement. How are the various components dealt with and how much effort goes into the foundational work and how can we apply that in the Yukon?

For a territorial framework we have an overarching starting point. We have the Umbrella Final Agreement. When commissions are established we have general and precise Terms of Reference. There's some overlap, redundancy, a few holes. A framework would spell out the legal authority and link to the Final Agreements. It would outline in greater detail planning processes, sub-regional processes, include non-settled First Nations, and provide the overall legal and historical context in the Yukon, as well as links to other plans (forestry, etc.).

At a regional level, this is really where the parties start getting organized around planning. It could take the form of a Letter of Agreement Memorandum of Understanding; some form of agreement to begin planning in a region, issues, resource information, and expected deliverables unique to that particular region. Also discussing the difference here, John Olynyk talked about getting a lot of the work done prior to the commission being established. Previously, it was up to the commission to do that. IF the parties can get together in advance, potentially a lot of time and money could be saved.

After this, then, potentially they're ready to begin planning and the commission can be established. Previously, we got the commission established first and then figured out

what needed to be discussed. The current timelines and budget that we have don't really allow the commissions to do the bulk of the work. Other jurisdictions do the bulk of the work up front. I find it's really proactive and allows for regional planning to come from a consistent approach as opposed to being reactive to whatever becomes the issue of the day.

There was a great comment about ambiguity and the Umbrella Final Agreement being an opportunity. I agree with that. We can take that uncertainty in the land claim and use it as something we can build on.

After Amy's presentation, workshop participants were invited to ask questions of the afternoon's presenters.

Question for Jason Cathcart: Any 10-year Reviews yet?

Jason: No 10-year reviews yet.

Question for Jason Cathcart: Do your councils continue once a plan has been submitted?

Jason: No, they do not. Their output is their deliberations. Upon submission, the Council is disbanded but we keep them in the loop. They're one of the first groups that knows a draft plan is hitting the streets. That differs from pre-1995 when there were permanent commissions. Depending on who you ask, a lot of municipalities were not happy with the permanent commissions.

Question: Regarding the Tłı̨chǫ Land Use Planning Process, I'm wondering if the court case that the Tłı̨chǫ lodged regarding the change to the Mackenzie Valley Resource Management Act (MVRMA) had any influence on the land use plan because that conservative decision by the federal government would have totally dismantled the MVRMA, co-management in the territories, and possibly land use planning. I'm wondering if the Tłı̨chǫ action had influence? The Tłı̨chǫ (and I'm part Tłı̨chǫ) have indigenous perspective and terminology that is different from the conformity model. I'm wondering how that's played out and if in the NWT you're willing to consider indigenous perspectives, terminology, and worldview in land use planning and if that's considered in your approach?

Darha Phillpot: The court action would not, in my opinion, affect the land use planning boards themselves, but if anything, it would have heightened the importance of planning. In terms of how planning has proceeded within Wek'eezhii, it really hasn't provided much direction as to "how", just that they could. Do people want planning in the area? Is there an appetite? If there is, then we need to work in partnership and what does that look like. If we jointly agree, then how do we adequately resource planning? The Tłı̨chǫ plan is very different. Zoning is quite different. We have yet to get into that type of discussion other than scoping. What is the process going to look like? Once

that's decided we'll scope out what the plan will look like. Ensuring that the Tłı̨chǫ way of life is protected is very important. What would planning for the rest of the region look like if we took Tłı̨chǫ Weneke'e. We have to scope it out first.

Question: Could you provide us with basic principles?

Michael Mifflin: The principles are done on a government-to-government basis. The council was created to deal with land use management in general for the territory. It's an inter-governmental agreement and the purpose was to work together to try and achieve consensus and that we'll have to respect each other's jurisdiction in moving forward. It'll have to be different in each region. We have to develop that in partnership.

6 Participant Feedback on a Potential Yukon Land Use Planning Framework

Following the formal presentations, participants were invited to form small groups for a series of facilitated exercises to explore the potential for a land use planning framework in the Yukon. It must be noted that the following summary reflects feedback as presented by the small working groups and is not intended to imply agreement by all participants at the event.

For the first exercise, individual participants were asked to identify one word that captured the biggest challenge facing land use planning in the Yukon. Participants were then asked if a land use planning framework could address that challenge. The results were as follows.

Challenge	Is a framework likely to address the challenge?
Accountability	Y
Capacity	Y
Certainty	?
Clarity	Y
Collaboration	Y
Communication	Y
Compliance	?
Consensus	Y
Consistency (2)	Y (2)
Continuity	Y
Dialogue (2)	Y/N
Direction	Y
Focus	Y
Funding	N
Good Faith	N
Governance	Y
Government Commitment	Y
Inherent	Y
Initiation of Plans	Y
Leadership	Y
Legislation	N
Logic	Y
Money (2)	N (2)
Outcomes	Y
Partnership (2)	Y (2)

Plans	Y
Progression	Y
Relationship	N
Resources	Y
Respect (2)	Y/N
Revenue	Y
Traditional Knowledge (2)	Y/N
Trust (2)	Y/N
Unified	Y
Withdrawals	N

29 participants (72.5%) felt that a Yukon Land Use Planning Framework would address the challenge they identified. 11 (27.5%) felt that a Yukon Land Use Planning Framework would not address the identified challenge. In some cases, participants who identified the same challenge disagreed as to whether or not the Framework would address the identified challenge, indicating that there are different interpretations about what a Framework might or might not do.

6.1 What should a Yukon Land Use Planning Framework Look Like?

To learn more about what participants would like to see in a land use planning framework, the participants formed small groups and were asked what a framework should look like. Their responses are summarized as follows:

1. **Framework Design.** The design of the framework (the process leading to the creation of the framework should have inclusive and broad initial input. All parties should be engaged in setting/developing the framework and technical advice should be sought in designing the framework. It was suggested that the framework draw on lessons learned from other jurisdictions, from the CEA Framework, and from the North Yukon Land Use Plan, which allowed for some experimentation and saw value in having an implementation committee. Annual forums can be used to provide direction on prioritizing and planning. The framework should be mutually agreed upon. There was a recommendation that the framework become a living document, building on the successes of previous planning and re-establishing trust.
2. **Purpose Clarity.** The framework should include a collaboratively-developed Vision (by the parties to the Final Agreements) and overarching principles that consider the global context and differing worldviews. This vision may include territorial-level and regional-level objectives. It is expected that a vision should provide clarity about the purpose and intent of land use planning.
3. **Foundation is UFA/Final Agreements.** The participants emphasized that the foundation of land use planning in the Yukon remain linked to Chapter 11 of the Umbrella Final Agreement and Yukon First Nations' Final Agreements and that the framework should be consistent with these agreements. The Vision, also, should be linked to Chapter 11 and its objectives. While it is recognized that

there are many tools to address land-use planning requirements in Chapter 11, there are also some gaps that a framework can help to fill and there should be discussion on alternate ways to achieve the Chapter 11 (and other Final Agreement) objectives. The foundation of the framework should also consider guidance from Supreme Court of Canada judgements. - Discussion on alternate ways to achieve Chapter 11 objectives (and other Final Agreement objectives). Finally, the framework needs to remember that Yukon First Nations have legislation and clear government powers and responsibilities and because of this legislative authority, the framework requires all Umbrella Final Agreement First Nations and Yukon Government's support.

4. **Consideration for Unsigned and Transboundary First Nations.** While the framework would have its roots in the First Nations' Final Agreements, participants expressed a desire for there to be provisions for transboundary First Nations and First Nations without Final Agreements. With respect to overlapping traditional territories, participants would like to see a defined process (including how to manage representation) to handle overlap, with defined planning regions.
5. **Clarity about Roles and Responsibilities.** Participants would like to see improved clarity with respect to roles and responsibilities. This role clarity includes the overall governance of land use planning in the Yukon, including the Yukon Land Use Planning Council (which would be responsible for ensuring the Resource Assessment Reports are ready for consideration by the commissions), the commissions (with the commissions removed from administrative matters like hiring and office management, and clarity about the role of the commissions after plans are completed), planners, other boards, and governments at every stage of the planning process. As a principle, the participants hope for a partnership or collaborative process with the parties being equal with shared accountability and shared risk/shared trust and the goal of achieving consensus between the parties. Ideally, the participants would like to see stability in the process despite political changes in government. Role clarity may also include:
    a. Clarified definitions (such "Consultation" and "Collaborative Management" or what a "development/conservation balance" mean);
    b. Clarified jurisdictions;
    c. Clarified expectations of participants (the parties and the public) and commitments by the parties/participants ("shalls", not "mays");
    d. Communication protocols between the parties, with clarity about how dialogue can take place between the commission and the parties and other boards, etc.; and
    e. Protocols about decision-making.
6. **Clarity on the hierarchy of land use planning.** Participants don't just want clarity on roles and responsibilities in land use planning, they want clarification on the hierarchy of land use planning. The participants would like to know how sub-regional and sector-specific management (i.e. caribou range planning or harvest restrictions) are linked to a regional plan, and if there will be opportunities for sub-regional planning (11.8.1) even if there is no regional plan in place. Participants would like more clarity on which planning tools are the most appropriate for each context (regional, sub-regional, local, etc.) and how they

"nest" with or relate to each other. Clarifying the hierarchy of land use planning should also recognize planning for traditional territories as an essential component of regional planning and should consider overlap and transboundary contexts. Finally, the framework should clarify linkages to YESAB (access management).

7. **Process Clarity.** The framework should clearly define the land use planning process and that this process should become the consistent, commonly-used approach – that that it must also contain some flexibility to balance specific needs. As part of the process, participants would like to see:
    a. **Pre-planning and analysis.** Some participants expressed their hope that a common framework could allow preliminary planning to proceed in multiple planning areas. This includes taking the time to understand barriers that prevent the parties from coming to the table (ex. overlap). It was suggested that a generic Terms of Reference or Letter of Agreement be developed for the appropriate parties, but that the Terms of Reference or Letter of Agreement should be flexible enough that it allows for adaptation and refinement at a regional level. This approach ensures that there is commitment by the parties;
    b. **Approaches to withdrawals.** Participants would like clarity about how land withdrawals should be conducted and when (ex. staking withdrawals, YESAB processes).
    c. **Timelines** should be included in the framework, with the timelines being mutually-established, realistic, and followed. The timelines should not be for how long a land use planning process should take, but how often land use planning should be undertaken (for example, every 5 years);
    d. **Agreement on the planning regions and approval of regional boundaries**, with the framework applying Yukon-wide (in Umbrella Final Agreement areas).
    e. **Financial and other resources** allocated to planning processes. Participants would like clarity about which parties are responsible for funding each aspect of the entire planning process, and that processes are identified for ensuring that funding is realistic, available, and sustainable. Furthermore, participants would like clarity about how to deal with funding shortfalls.
    f. **Clarity on Consultation.** The participants would like clarity on how to conduct effective public engagement and how to fulfill the legal duty to consult. This includes clarity about who leads Consultation/consultation processes and how consultation is incorporated into the planning process and final plan. There is a desire to ensure that there is effective and respectful dialogue with built-in check-ins throughout the process with the communities and parties at the right time, and also to ensure that consultation is ongoing (that is, not ending once the plan is approved). "Land Use Planning 101" was suggested to educate people who may engage in the process about how the land use planning works.
    g. **Clarity regarding reporting and information sharing.** The participants value transparency (monitoring, evaluation and reporting) and openness,

but this is tempered with a desire for protocol regarding confidential information (as certain Traditional Knowledge requires confidentiality, as an example). Clear reporting and communication includes defined roles and responsibilities and defined reporting processes.

h. **Clarity regarding the role of data and Traditional Knowledge.** Participants would like a better understanding of the interrelationship between scientific knowledge and Traditional Knowledge and how they will be used in planning. They would like a framework to clarify the role of data and minimum requirements for data/baseline data. There is a feeling that there is too much emphasis on Resource Assessment Reports but not enough emphasis on expert, local, and traditional knowledge.

i. **Decision-Making and Dispute Resolution.** The participants indicated that they would like land use planning to achieve consensus (with consensus being defined) and that a decision-making framework is required for consensus decision-making and collaboration. This may include co-management and co-governance – government-to-government decision-making – or the identification of a final decision-maker. The participants also felt that a dispute resolution process is needed, beyond Chapter 26 of the Final Agreements.

j. **Clarity on Post-Approval Processes.** The participants suggested that the framework include:
    i. Implementation planning
    ii. Commitment and guidance for implementation; and
    iii. Review mechanism and timelines

k. **Content Clarity.** The participants expressed a desire to have more clarity about the key components of land use plans, including:
    i. Common definitions and terms (co-governance, consultation, etc.);
    ii. Guidance on the levels of detail;
    iii. Direction on land uses and options for zoning/land designations (recommendations/guidelines), in a manner that ensures consistency, but also in a way that does not take away from the independence of the commissions;
    iv. Consideration for Traditional Knowledge and traditional use patterns;
    v. Having a series of outcomes/objectives and strategies to get there; and
    vi. Consideration of cumulative impacts and how a plan will address future scenarios.

6.2 What is required to make a decision about a Framework?

Participants were asked what they would want to have or see to help them make a decision about a Yukon Land Use Planning Framework. Their responses are summarized as follows:

1. **Jurisdictional Scan.** Participants would like to see examples from other jurisdictions and the frameworks they use as well as an accompanying analysis of challenges and opportunities. Testimonials from representatives in other jurisdictions about the efficacy of the frameworks would also be valuable. Finally, participants would like to know if any of the frameworks from other jurisdictions are consistent with the treaties.
2. **An Evaluation of Alternatives.** Evaluating other frameworks should not be the only analysis. Participants would like to clarify what problems are trying to be solved (from a variety of perspectives, beyond the Yukon Land Use Planning Commission and other parties) and if a framework is the best took for the job when, perhaps, there are other alternatives that should be considered.
3. **Scope of Framework.** Participants would like to know the scope of the framework. Is it Yukon-wide, regional, or something else? Scope also includes:
    a. The parties involved
    b. How issues are identified and prioritized
    c. Flexibility regarding regional differences
    d. What is the scope of the framework?
4. **Authority of Framework.** Participants would like to know what authority the framework might have. Questions include the framework's consistency with the Umbrella Final Agreement, case law, and legislation, and information on how it could be implemented or developed but still have legal authority.
5. **Process to Create Framework.** The process that is used to create the framework matter. Participants wonder who the planning partners are and how they (ex. the Umbrella Final Agreement First Nations and Yukon Government) will come together for the creation of the framework and ask if the Yukon Land Use Planning Commission is best placed to do this or if the responsibility lies elsewhere. Some wondered about how long it would take to create the framework and if developing a framework would slow down/stall land use planning processes in the Yukon (consuming resources, capacity, and time to develop the framework). There are also questions about who would have to approve the framework once it's completed. There were recommendations to host focus groups, other land use planning workshops, and to provide "what we heard" reports from events like the 2018 Spring Gathering.
6. **Framework Content.** To make a decision about the land use planning framework, participants indicated they would like to see:
    a. That the framework recognizes collaborative processes and the Yukon's unique context.
    b. Clarity with respect to roles and responsibilities (ex. role of the Commission, steering committees, etc.) during planning and after completion of the plan;
    c. What the process looks like (including review periods)

    d. How Traditional Knowledge, historic and traditional use, and indigenous planning are incorporated into the framework;
    e. How it connects to other processes (ex. YESAA, Forest Management Plans, etc.);
    f. How it connects to Acts/legislation;
    g. How it considers settlement lands/overlap;
    h. Dispute resolution mechanisms; and
    i. Implementation plans
    j. Pick and choose collaborative processes in other regions as framework content to consider recognizing Yukon is unique
7. **Resources.** Participants would like to see a framework include clarity and certainty about funding and other resources, so the framework can be implemented. This will require capacity planning.
8. **Anticipated Outcomes of a Framework.** Participants will, in part, make their decision about a framework based on the anticipated outcomes. Specifically, they have the following questions:
    a. Does it erode or diminish Chapter 11 of First Nations' authorities and decision-making?
    b. Does it erode the independence of commissions?
    c. Does it help to advance regional land use plans or other planning outputs (eg. policies)
    d. Are there timelines and are they focused?
    e. Is there a return on investment (i.e. is it worth the effort)?
    f. Is it implementable
    g. Does it address capacity gaps?
    h. Is it enforceable and can it be implemented consistently?
    i. Does it strengthen relationships/reconciliation by providing clarity, collaboration, and consensus building?
9. **Commitment to Framework.** Participants will be looking for a commitment by others to inform their own decisions about a Yukon Land Use Planning Framework. After the parties to the framework have been clarified (ex. Is it the Umbrella Final Agreement parties only?), is there a political commitment to the collaborative development of the framework? Are the parties committed to creative and open-minded solutions, options, and/or processes? A preliminary commitment (using letters of support, perhaps) have been suggested as a way to support the framework process.