

EXECUTIVE SUMMARY

Introduction

Land claim agreements signed in the Yukon created the Common Land Use Planning Process (planning process) that envisioned the Yukon and First Nations governments working together to complete regional land use plans for the entire Yukon Territory. To date, the planning process has struggled in fulfilling this vision.

The client for this research project is the Yukon Land Use Planning Council (the Council). The Council is an independent agency that assists the planning process by making recommendations to the Yukon government, the respective affected First Nation(s) government(s) and regional Commissions as they conduct regional planning in the Yukon. The planning process is the method currently supported by the Council and used by regional Commissions to complete regional land use plans.

The objectives of this report are to capture the knowledge and experience of those involved in the Peel Watershed planning process that took place between 2002 and 2014. Gathering this knowledge will contribute to improving the planning process in the Yukon, where past successes and challenges inform improved future applications or applications in other jurisdictions.

In the short term, this report is intended to contribute to the successful completion of regional land use plans in the Yukon, which in the long run may provide greater certainty for a multitude of users and reduce the prevalence of land use conflicts. The study has been designed to assist the Council in reviewing the Peel Watershed planning process and addresses the following research questions:

How do participants of the Peel Watershed planning process describe their experiences during the planning process?

Sub questions include:

How do participants of the Peel Watershed planning process describe challenges they experienced during the planning process?

What were some of the strategies experienced by participants that facilitated the planning process?

What improvements did participants recommend for future planning processes?

Background

The planning process in the Yukon was initiated because of land claims negotiations that began in 1973. After 20 years of discussions between the governments of Canada, Yukon and the Council of Yukon First Nations, a major agreement called the Umbrella Final Agreement was signed in 1993. By signing individual land claim agreements, both the Yukon government and the respective First Nation(s) government(s) agreed to work collaboratively towards developing regional land use plans.

While the Yukon Territory has few people for its size, roughly 33,900 people or 0.07 persons/sq. km, there are often conflicts between different land uses, and/or anticipated future conflicts between multiple users, for example, between tourism outfits and mining operations. In the Yukon, regional land use planning Commissions are called upon to balance and reach consensus on a common vision for a planning region.

The planning process involves: commission start up, information gathering, plan development and plan approval and implementation. Throughout the planning process, regional Commissions are required to consult with the public and ensure adequate opportunity for public participation, as well as solicit the knowledge and traditional experience of Yukon First Nations peoples and other residents of the planning region. The timeline given to the regional Commission (once established) to recommend a land use plan to the Yukon and First Nations government(s) is three years.

The Council was created under the provisions of Chapter 11 of the Umbrella Final Agreement. Their mandate is to act as a source of information and guidance for regional Commissions and both the Yukon government and the respective First Nations government(s) (the Parties) throughout the planning process. This project will assist the Council, the Parties and future regional Commissions to ensure that successful components and experiences from the Peel Watershed planning process are duplicated in future planning processes and alterations are made to components requiring improvement.

The Peel Watershed planning region encompasses 68,042 km² or roughly 14% of the Yukon Territory and is situated in the Northeast of the Yukon. The Peel Watershed is one of North America's largest ecosystems undisturbed by human development. There are no permanent communities within the planning region, and the majority of the region (97.3%) is crown owned or non settlement land. The remaining 2.7% is settlement land and is divided between four First Nations: the Tr'ondëk Hwëch'in First Nation, Na-Cho Nyak Dun First Nation and Vuntut Gwitchin First Nation of the Yukon, as well as the Tetlit Gwich'in Council based in the Northwest Territories. The Gwich'in Tribal Council is the democratically elected government of the Gwich'in and is in charge of managing the land controlled by the Gwich'in. The Government of Yukon, the First Nation of Na-Cho Nyak Dun, the Tr'ondëk Hwëch'in, the Vuntut Gwitchin First Nation, and the Gwich'in Tribal Council are the Parties involved in the Peel Watershed planning process.

Between 2004 and 2011, the Peel Watershed Planning Commission (the Commission) was responsible for developing and recommending a final regional land use plan for the Peel Watershed planning region. Once the regional Commission has completed a land use plan it recommends the plan to the Yukon government and affected First Nations for approval and then the Commission disbands. The Yukon government and First Nations governments have the option to accept, reject or modify the plan as it applies to their respective land bases. The Commission submitted the Final Recommended plan to the Parties in July of 2011. Since the submission of the Final Recommended plan in 2011, the Yukon government has modified the Final Recommended Plan and in January 2014 approved an alternative land use plan on crown owned land. The First Nation governments involved have approved the plan on their respective settlement lands released by the Commission.

For the purposes of this report the main focus of the review is on the planning process events from the production of the general terms of reference by the Parties starting in 2002 to the Commission's release of the Final Recommended Plan in 2011. By examining this critical time period this project aims to assist the Council, the Parties and future regional Commissions in ensuring that successful components and experiences from the Peel Watershed planning process are duplicated in future land use planning processes and alterations are made to components requiring improvement.

Literature Review

A literature review was conducted to identify the common challenges and barriers encountered by stakeholders undergoing regional land use planning initiatives, as well as strategies for overcoming these barriers. The sources of information used to inform this literature review include books, journal articles, an academic thesis and government publications. The review focused on collaborative planning which is a leading paradigm for environmental planning and resource management in Canada, the United States and Australia.

While there is no universal definition of collaborative planning, the literature reveals several common characteristics. First, collaborative planning involves a range of stakeholders representing a cross section of organizations and interest groups. Second, collaborative planning engages the participants in face to face negotiations in an effort to achieve consensus on problems, goals, and proposed actions. Third, collaborative planning requires a sustained good faith effort to meet the interests of all stakeholders and a commitment to problem solving. Finally, collaborative planning utilizes alternative dispute resolution concepts such as principled negotiation and consensus building as a means to resolve issues amongst competing stakeholders.

The collaborative planning process can be broken down into three phases: pre-negotiation, negotiation and post negotiation. During pre-negotiation, stakeholders come together to agree on a process and collect information required for the process. In the negotiation phase, the interests of the stakeholders are identified, options are generated and a decision is reached through consensus. In the post-negotiation phase, the plan agreement is ratified and implementation begins.

Strengths and weaknesses of the collaborative planning model are discussed. The generation of social and intellectual capital were commonly cited benefits. Authors assert that systemic power imbalances, members or agencies not participating in good faith and conflicting epistemologies (particularly between Indigenous and western paradigms) pervade many collaborative planning processes and other co-management processes, rendering them ineffective.

A successful planning process relies on following key design and management principles, such as establishing clear policy direction, ensuring inclusive representation, providing sound process management and dispute resolution opportunities. Ten process considerations and strategies are outlined that can contribute to the effectiveness collaborative planning and other land use planning approaches.

Methodology

The research methodology for this study was qualitative and used key informant interviews to gather information on the challenges or barriers that participants experienced during the Peel Watershed planning process. The interviews were also used to determine factors that facilitated the planning process and to gather participant recommendations to improve the planning process.

A purposeful sampling strategy was employed for this study within four groups of key informants: The Commission (members and staff), the Council (members and staff), Yukon government representatives and First Nations government representatives. All participants were involved with the planning process to varying degrees and were well positioned to provide insights and knowledge on the challenges and facilitating factors of the planning process. Furthermore, these participants were able to provide useful recommendations to improve the overall planning process. A total of 28 participants were invited for an interview. Eighteen interviews were conducted for a response rate of 64%. Those who declined did so because of time constraints. A standardized open ended approach to the interviews was taken whereby participants were asked to describe challenges,

facilitating factors they experienced during key stages of the planning process as well as recommendations to improve certain stages and the overall planning process. The responses were arranged and interpreted using a thematic analysis approach that entailed an iterative process of reading, coding, determining themes and patterns and categorizing the interview data with the purpose of capturing the phenomenon of participants' experiences of the planning process.

Interview Findings and Discussion

Overall, participants indicated that factors posing challenges outweighed factors facilitating the planning process, leaving much room for improvement. Many interview participants felt that the lack of commitment by the Parties and the Commission to the general terms of reference made the ground rules and the roles and responsibilities for the planning process unclear. A lack of training and orientation for Commission members and others involved, uncertain policies and procedures, and a precise terms of reference that confused the planning process were other reported deficiencies that challenged the process during the Commission start up stage.

During the information gathering stage participants experienced a number of challenges. The most commonly cited issues were that the process took a long time and that governments were not being proactive in forwarding information to the Commission. Incorporating First Nations' knowledge and worldviews into the planning process as well as working with non-standardized information were also seen as challenges by many participants.

During the plan development stage a commonly cited challenge was that there were inadequate opportunities for the public, stakeholders and the Parties to become involved in the Commission's decision making and that there were not adequate opportunities for these groups to resolve issues and negotiate agreements. It was noted by many participants that throughout the plan development stages it was very difficult to create a land use plan that was mutually agreeable to the Parties, the stakeholders and the public. Fourteen interview participants felt that the Final Recommend plan reflected the issues and interests that were raised and two interviewees felt that it did not because the plan was not ratified by all Parties.

Throughout the planning process the Commission worked with stakeholders, the public and the Council through consultations, meetings, communication and other participatory means. During many of these events participants recounted positional based arguments being forwarded by the public and the stakeholders and that many of these events were not as productive as they could have been. Many Commission and Council members found it difficult to engage with the mining and oil and gas industry throughout the planning process and felt that their input was generally lacking. For the most part, the communication between those involved needed improvement. Many participants in this study were concerned that the Peel Watershed planning process has left the Parties, stakeholders and the public disillusioned with the planning process and anticipate that no one will readily initiate another planning process until outstanding issues are resolved and ground rules are determined and established for future planning processes.

Recommendations

The following nine recommendations could be implemented at the outset or during future planning processes in the Yukon. Some of the recommendations could be implemented for current regional planning exercises in the Yukon such as the Dawson planning process which is in the plan development stage. The findings from this project would suggest that these recommendations could address the components of the planning process that need the most improvement.

1. Modify the general terms of reference
2. Create additional training and orientation opportunities
3. Planning Commission develop a work plan
4. Governments proactive throughout the planning process
5. Modify information gathering workshops, consultations and public events
6. Modify incorporating First Nations' knowledge
7. Modify plan development stage
8. Include a comprehensive implementation section
9. Council champion the process

Conclusion

Participants in this project shared their experiences with the Peel Watershed planning process and provided a number of recommendations that echo the existing literature and can be utilised by the Council, regional Commissions and Yukon and First Nations government(s) to improve the planning process. This report emphasizes the need for the planning process to be updated in a number of key areas such as through building commitment and agreement amongst the Parties at the front end of the process by establishing a comprehensive general terms of reference; by introducing a mechanism for the Parties and stakeholders involved to negotiate, build consensus and resolve issues and by ensuring that the Council and Commissions reach a working relationship whereby the Council supports the work of the Commission throughout the planning process.

The Yukon has a long history of failed land use planning attempts if the Council, Commissions and the Parties can work towards adopting the recommendations in this project then perhaps they can look forward to a more coordinated, efficient and effective planning process.