

AN OVERVIEW

**GWICH'IN INVOLVEMENT
IN ENVIRONMENTAL
IMPACT ASSESSMENT**



Introduction

The jurisdictional landscape in Canada is complex when it comes to Environmental Impact Assessments (EIA).¹ The need for EIAs was not anticipated in the Canadian Constitution when it was passed as the *British North America Act* in 1867 by the Westminster Parliament. Consequently, environmental issues have evolved to be an area of shared jurisdiction between the provinces and the federal government. As devolution has proceeded, giving territorial governments a greater role in the management of resources, EIA policy has similarly evolved.² Interestingly, EIA has become an area where the territorial processes are considered by many to be on the leading edge in Canada, given their design, which includes comprehensive and defined processes for the inclusion of Indigenous voices.

When there is a need for both a provincial and federal environmental assessments three processes are possible: they can be harmonized (“where there is co-ordinating application of the legislative frameworks prescribed by different jurisdictions so that, effectively, a project undergoes one review”);³ standardized (“involving multiple jurisdictions adopting the same EA process”);⁴ or excluded (“when the federal government assessment process does not apply within a specific region when in the presence of a newer claims-based EA process”).⁵ EIAs in the territories – Yukon, Northwest Territories, and Nunavut – all fall under the “excluded” category, as defined by Fitzpatrick and Sinclair.

¹ Note: This paper was prepared as background information for the Arctic Council’s Sustainable Development Working Group project on Good Practice Recommendations for Environmental Impact Assessment and Public Participation in the Arctic. For more information about the project, see: http://www.sdwg.org/wp-content/uploads/2017/03/Arctic_EIA_presentation_21.3.2017.pdf.

² For more information on devolution in the NWT, see: <http://devolution.gov.nt.ca/post-devolution-changes>; for Yukon, see: <https://www.theglobeandmail.com/opinion/you-say-you-want-a-devolution-in-yukon-its-reality/article10194668/>.

³ Patricia Fitzpatrick and A. John Sinclair. “Multi-Jurisdictional Environmental Assessment in Canada.” In *Environmental Impact Assessment: Practice and Participation*. Kevin S. Hanna (ed.) Toronto: Oxford University Press, 2016, p. 184.

⁴ Ibid, p. 183.

⁵ Ibid, p. 191.

The “rights” referred to in the above description of “exclusion” refer to the modern land claims agreements concluded between the Government of Canada, the territorial governments, and Indigenous peoples in the Canadian North.

The *Yukon Socio-Economic Assessment Act* (YSEAA)⁶ and the *Mackenzie Valley Resource Management Act* (MVRMA),⁷ which are the consequence of specific provisions of the modern land claims agreements, notably for Gwich’in Council International: the *Vuntut Gwitchin First Nation Final Agreement*⁸ and the *Gwich’in Comprehensive Land Claim Settlement*.⁹

This paper will provide a background on the Gwich’in land claims, as well as highlight unique aspects of Gwich’in involvement in the Environmental Impact Assessments emanating from these agreements. It will also seek to highlight areas where Gwich’in have contributed to innovative processes, procedures, and regulations related to the Environmental Impact Assessment space.

⁶ The full text of the Act is available at: <http://laws-lois.justice.gc.ca/eng/acts/Y-2.2/page-9.html#h-20>.

⁷ The full text of the Act is available at: <http://laws-lois.justice.gc.ca/eng/acts/M-0.2/>.

⁸ The full text of the Agreement is available at: <https://www.aadnc-aandc.gc.ca/eng/1293732501691/1293732545598>.

⁹ The full text of the Agreement is available at: <https://www.aadnc-aandc.gc.ca/eng/1427294051464/1427294299170>.

Environmental Impact Assessment Processes in Northwest Territories and Yukon

For an overview of the Yukon and NWT Environmental Impact Assessment regimes, the following resources are recommended:

1. D. Scott Slocombe, Lyn Hartley, and Meagan Noonan. "Environmental Assessment and Land Claims, Devolution, and Co-Management: Evolving Challenges and Opportunities in Yukon" in Environmental Impact Assessment: Practice and Participation. Kevin S. Hanna (ed.) Toronto: Oxford University Press, 2016.
2. Adam Chamberlain and Webnesh Haile. "Environmental Assessment and Environmental Impact Review in the Post-Devolution Northwest Territories." in Environmental Impact Assessment: Practice and Participation. Kevin S. Hanna (ed.) Toronto: Oxford University Press, 2016.

About Gwich'in Council International (GCI)

Gwich'in Council International (GCI) represents 9,000 Gwich'in in the Northwest Territories (NWT), Yukon, and Alaska as a Permanent Participant in the Arctic Council; the only international organization to give Indigenous peoples a seat at the decision-making table alongside national governments.

GCI's membership consists of two representative bodies in Canada: Gwich'in Tribal Council (GTC),¹⁰ who represents the beneficiaries of the Gwich'in Land Claims Settlement Act in NWT and the Vuntut Gwitchin First Nation (VGFN),¹¹ which is a self-governing First Nation in Old Crow, Yukon. GTC and VGFN are joined by seventeen Alaskan Native Villages.

GCI supports Gwich'in by amplifying our voice on sustainable development and the environment at the international level to support resilient and healthy communities.

GCI is a not-for-profit organization with an office in Whitehorse, Yukon. It has one full-time staff member and a volunteer Board of Directors.

About Vuntut Gwitchin First Nation

The Vuntut Gwitchin First Nation is a self-governing First Nation, whose membership of 450 largely resides in Old Crow. Old Crow is the only fly-in community in Yukon. As a self-governing First Nation, VGFN has responsibility for: executive functions, finance, natural resources, information systems, health and social services, human resources, education, and government services and housing.¹² VGFN is led by an elected chief and council.¹³

¹⁰ For more information about Gwich'in Tribal Council, see: <https://gwichintribal.ca>.

¹¹ For more information about Vuntut Gwitchin First Nation, see: <https://www.vgfn.ca>.

¹² Department of Economic Development (Yukon). "Vuntut Gwichin First Nation - Community of Old Crow". http://www.eco.gov.yk.ca/pdf/FN_Com_Profile_VGFN_LH_ed.pdf. (Accessed: 13 January 2016).

¹³ Vuntut Gwichin First Nation. "Chief & Councillors". <http://www.vgfn.ca/council.php>. (Accessed: 13 January 2016).

About Gwich'in Tribal Council

The Gwich'in Tribal Council was established in 1992 to represent Gwich'in in the Northwest Territories. The objectives of GTC are to:

1. Protect and preserve the rights, interest and benefits of the Gwich'in in reference to their use, ownership and management of lands, waters, and resources in the Gwich'in Settlement Area;
2. Retain, preserve and enhance the traditional and cultural values, customs and language of the Gwich'in in a changing society;
3. Develop and promote economic, social, educational and cultural programs that will enable the Gwich'in to become self-sufficient and full participating members in a global society;
4. Uphold the rights, interest and benefits of the Gwich'in in reference to the Constitution Act, Treaty 11 and the Gwich'in Comprehensive Land Claim Agreement; and
5. Receive, preserve and enhance the capital and the lands and other benefits transferred to the Gwich'in pursuant to the Gwich'in Comprehensive Land Claim Agreement signed on April 22, 1992.¹⁴

To support these objectives, GTC has also established the Gwich'in Settlement Corporation to invest the monies they received through their land claims agreement, as well as the Gwich'in Development Corporation. GTC is in the process of negotiating its self-government agreement, having reaching the Agreement-in-Principle stage in its negotiations with the Governments of Canada and the Northwest Territories.¹⁵

¹⁴ Gwich'in Tribal Council. "Gwich'in Tribal Council". <http://www.gwichin.nt.ca/gwichin-tribal-council/>. (Accessed: 13 January 2016).

¹⁵ For more information about self-government, see: <https://gwichintribal.ca/self-government>.

Background on the Land Claim Agreements

Some of the Gwich'in communities are parties to Treaty 11 (the last of the numbered treaties), which was signed between the Gwich'in of Tsiigehtchic (at the time known as Arctic Red River) and Fort McPherson in July 1921.¹⁶ Treaties were viewed as a nation-to-nation documents between Indigenous peoples and the Crown (the federal government of Canada), by the Indigenous signatories. In practice, the nation-to-nation relationship did not endure. Rather, the Government of Canada exerted colonial control, subjugating the signatories to the administration of the *Indian Act*.

In 1982, Section 35 of the *Constitution Act* (1982) enshrined Indigenous rights within the Canadian constitution. It reads:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.¹⁷

In the context of the rights recognized by section 35 and the fact that Gwich'in had never ceded their territory to the Crown, they negotiated modern land claims agreements. The inclusion of Indigenous rights within the Constitution also means that all laws proposed by all levels of public government in Canada must respect these rights.

¹⁶ For more information about Treaty 11, see: <http://www.aadnc-aandc.gc.ca/eng/1100100028912/1100100028914>.

¹⁷ Government of Canada. "Rights of the Aboriginal Peoples of Canada". <http://laws-lois.justice.gc.ca/eng/const/page-16.html>. (Accessed: 13 January 2016).

Section 35 also provided an avenue of redress through the courts, which since 1982 have continued to refine what these rights mean in practise. Through these judicial means, Indigenous peoples in Canada have successfully advocated for the right to be consulted, and where appropriate accommodated. This Crown "Duty to Consult and Accommodate" (aka, "the Duty to Consult" or "the Duty"), arises when the Crown is contemplating measures that would have an impact on established or asserted Aboriginal or Treaty rights. Increasingly governments in Canada recognize that "Canada [and other levels of government] ha[ve] statutory, contractual and common law obligations to consult with Aboriginal groups".¹⁸ While this continues to be an evolving area of law, as the Duty was only articulated by the Supreme Court of Canada in the *Haida*¹⁹ and *Taku River*²⁰ decisions in 2004, and the *Mikisew Cree* decision in 2005;²¹ a variety of consultation frameworks, guidances, and platforms have been created by both the territorial and federal governments since that time.

The negotiation of land claims between Yukon First Nations, the Government of Canada, and the Yukon Territorial Government took twenty-years, with the Umbrella Final Agreement signed in 1993. With settled land claims, Yukon First Nations have legally enforceable rights and if the governments fail to live up to those agreements, they can be enforced by the courts. The *Yukon Umbrella Final Agreement* gave \$242,673,000 in compensation to Yukon First Nations, as well as 41,595.22 square kilometres of land.²² While there are some commonalities to the land claims agreements, they are each a standalone agreement with unique elements. The Vuntut Gwitchin completed their specific land claim on May 29, 1993, with their fellow Gwich'in in the Northwest Territories having concluded their land claim the previous year on April 22, 1992.

¹⁸ Government of Canada. "Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011". March 2011. <http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675> (Accessed: 21 July 2017).

¹⁹ See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>.

²⁰ See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2190/index.do>.

²¹ See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do>.

²² See: https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/al_ldc_ccl_fagr_ykn_umb_1318604279080_eng.pdf.

In addition to the comprehensive land claims agreement, nations with settled land claims can negotiate a self-government agreement according to the provisions of the Umbrella Final Agreement. Self-government can give First Nations power over such things as the ability to:

- enact laws and regulations of a local nature for the good government of its Settlement Land and the people living on these lands, and for the general welfare and development of the ... First Nation;
- develop and administer programs in areas of ... First Nation responsibility for example, health and welfare and cultural programs;
- appoint representatives to Boards, Councils, Commissions and Committees as provided for in ... First Nation Final Agreements;
- make decisions on the use and management of Settlement Land;
- make contracts with people or other governments;
- form corporations (business organizations) and other such structures;
- borrow money; and
- decide what taxes should be in place, if any, on Settlement Land.²³

The Vuntut Gwitchin concluded their self-government agreement²⁴ in 1993 and the Gwich'in Tribal Council is currently in the process of concluding its self-government agreement, having reached the draft Agreement-in-Principle (AIP) stages and currently securing the endorsement of their communities for the Agreement.

The goal of self-government as announced by the GTC AIP is to provide, "... a practical means to implement the inherent right of self-government as close to the community level as is reasonably possible".²⁵ To shape their government, "the Gwich'in intend to reconcile traditional and customary forms of public government consistent with the Agreement and continue to participate in public government within the Gwich'in Settlement Area".²⁶

²³ Council of Yukon First Nations. "Understanding the Umbrella Final Agreement". <http://cyfn.ca/wp-content/uploads/2013/08/ufa-understanding.pdf>. (Accessed: 13 January 2016).

²⁴ See: <https://www.aadnc-aandc.gc.ca/eng/1100100030813/1100100030818>.

²⁵ Gwich'in Tribal Council. "Gwich'in Self-Government Negotiations: Agreement-in-Principle ROLLING DRAFT". April 2016, https://gwichintribal.ca/sites/default/files/rolling_draft_clean_version_consultation_draft_002.pdf. (Accessed: 21 July 2017).

²⁶ Ibid.

Consequently, a Gwich'in beneficiary participates in public institutions in the same way as any other citizen of the Yukon or Northwest Territories, and Canada, but for the areas provided for by the self-government agreement are able to access the services and programs offered by the Gwich'in Government in their areas of competence. The areas of competence include such things as culture and language, education, social housing, health, income assistance, marriage, wills, tourism, economic development, administration of justice, and taxation.

The *Gwich'in Comprehensive Land Claim Agreement* (1992) and the *Vuntut Gwitchin First Nation Final Agreement* (1993) also provide for the participation of GTC and VGFN in land use planning and the management of renewable resources. As a result, Gwich'in in both the Northwest Territories and Yukon have a role to play in Environmental Impact Assessments. Indeed, the regulatory regime in the NWT is the direct result of the comprehensive land claims agreements.

Resources:

1. Gwich'in Comprehensive Land Claim Agreement: <https://www.aadnc-aandc.gc.ca/eng/1427294051464/1427294299170>.
2. Vuntut Gwitchin Final Agreement: The full text of the Agreement is available at: <https://www.aadnc-aandc.gc.ca/eng/1293732501691/1293732545598>.

Gwich'in Co-Management of Resources and Environmental Impact Assessments

In the Northwest Territories, the co-management of resources sees the federal, territorial, and Indigenous governments all participating in the body responsible for Environmental Impact Assessments: the Mackenzie Valley Environmental Impact Review Board (MVEIRB).²⁷ The nine members of the Board, which are all appointed by the Minister of Indigenous and Northern Affairs (Federal), comprise an equal number of government (territorial and federal) and land claimant appointees. The nominations are submitted for the land claimant and territorial spots by their respective governments.

The MVEIRB reviews EIAs in their second stage. The first stage of an EIA - preliminary screening - is a quick review to determine whether there would be significant adverse impacts on the environment or whether the project might cause public concern. Preliminary Screening is carried out by the four land and water boards, one of which is the Gwich'in Land and Water Board.²⁸ The Gwich'in Land and Water Board's powers are not limited to Gwich'in lands set out in the land claims agreement, but extend to crown and private lands, as well.²⁹

The membership of the Gwich'in Land and Water Board is comprised of two members from Gwich'in Tribal Council (a member of GCI), one member is nominated by the Government of the Northwest Territories and one member by the Government of Canada.³⁰

²⁷ See: <http://www.reviewboard.ca>.

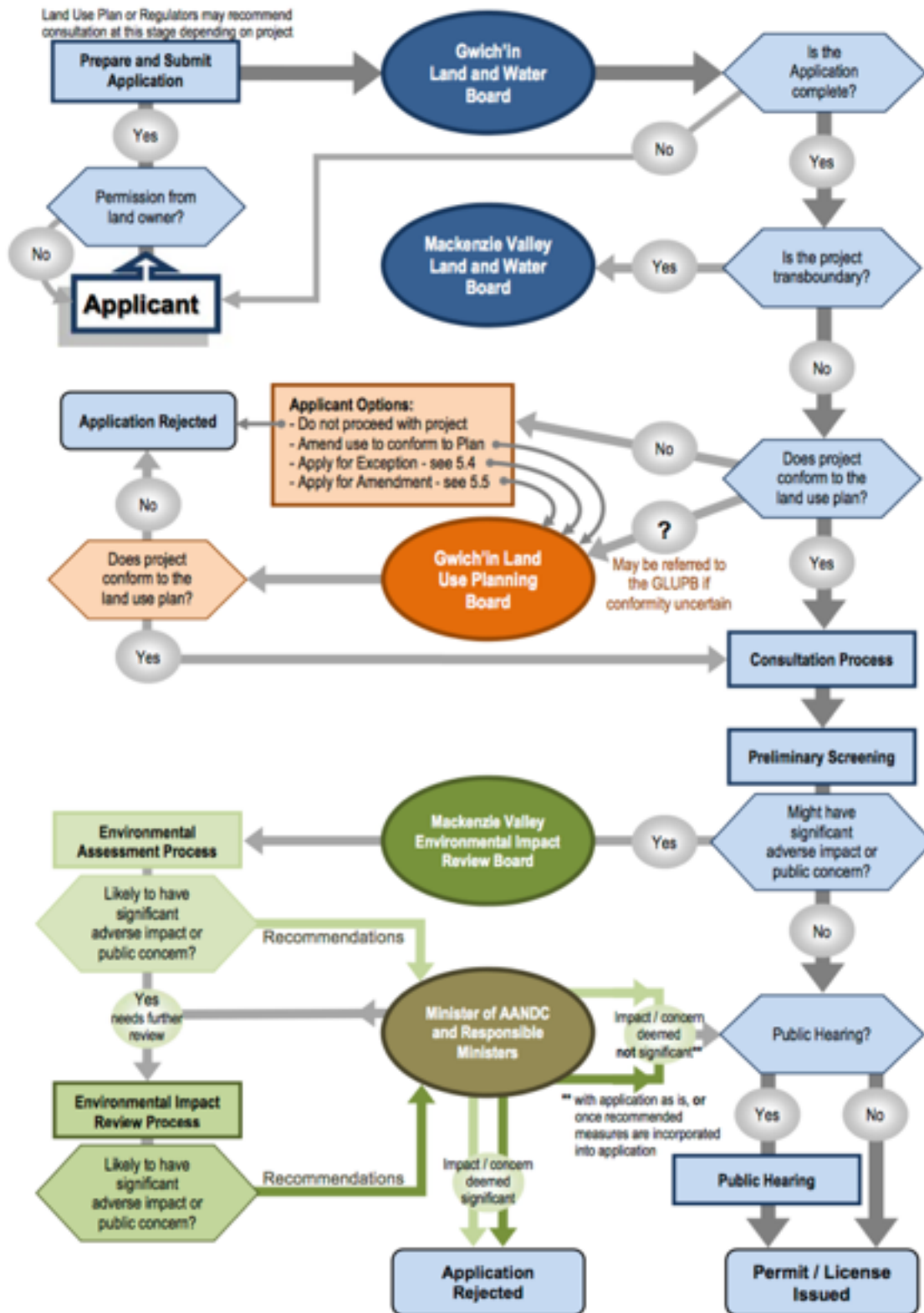
²⁸ See: <https://glwb.com>.

²⁹ Gwich'in Land and Water Board. "About Gwich'in Land and Water Board". <https://glwb.com/gwich/our-board>. (Accessed: 21 July 2017).

³⁰ Ibid.

Figure 1

FIGURE 17: GWICH'IN LAND AND WATER BOARD PROCESS



If the preliminary and secondary stages show that there is likely to be a significant adverse effect on the environment or raise considerable public concern, the MVEIRB makes one recommendation - emanating from the joint board of land claim governments, the territorial government, and a federal representative - to the Minister of Indigenous and Northern Affairs. The recommendations can take three forms: that the project proceed without amendment, that the project proceed with mitigative measures put in place, or that the project should not go forward.

Figure 1 above illustrates the process for approvals of projects through the Gwich'in/NWT approval process and demonstrates the inter-relationship between the various Boards that Gwich'in are involved with for regulating development in their area.³¹

The Mackenzie Valley Review Board - on which the Gwich'in designate a representative - is seen as a major driver for the development of SIA approaches in the region. Starting in the 2000s, it began to develop approaches for social and economic impacts, resulting in the *Socio-economic Assessment Guidelines*.³²

As, Parkins and Mitchell explain: "The guidelines help to identify 'valued components' of the human environment, appropriate indicators and sources of information to measure change, pathways by which change may likely occur, and mitigation and monitoring strategies that may be required to maximize benefits and minimize adverse impacts."³³ These guidelines also recognize that communities and governments also have an important role to play in social, economic, and cultural protection, in addition to the project developers, creating a more holistic approach.

³¹ Gwich'in Land Use Planning Board. "Nan Geenjit Gwitr'it T'agwàa'in / Working for the Land Gwich'in Land Use Plan". January 2015, <http://www.gwichinplanning.nt.ca/publications/lupd/January%202015%20Plan/Final%20Draft%20Revised%20Gwichin%20Land%20Use%20Plan%20January%202015.pdf>. (Accessed: 16 August 2017), p. 41.

³² See: http://www.reviewboard.ca/process_information/guidance_documentation/guidelines.php.

³³ Parkins and Mitchell, p. 128.

It is also significant to note that there is a divergence between practices in other Canadian jurisdictions and federally, and the MVRMA when it comes to determining which impacts are considered significant and therefore considered by the environmental impact assessment processes. It is argued that, "...very few impacts are ever deemed to be significant under this [the Canadian Environmental Assessment Act] process", whereas, "under the Mackenzie Valley Resource Management Act 1998, c. 25, significance is determined by the arm's-length, government-appointed board [MVRMB], charged with reviewing the developer's assessment report".³⁴ The Board, as mentioned earlier, includes a representative from the Gwich'in Tribal Council. Consequently, "Under this legislation [MVRMA], determining the impact is significant is necessary so that mitigation measures can be applied by the Mackenzie Valley Impact Review Board. Thus, most impacts are deemed significant in the Mackenzie Valley."³⁵

Resources:

1. Mackenzie Valley Review Board (MVEIRB). 2007. Socio-economic Impact Assessment Guidelines. http://www.reviewboard.ca/process_information/guidance_documentation/guidelines.php.
2. Canadian Environmental Assessment Agency (CEA Agency). 2013a. Introduction to the Canadian Environmental Assessment Act, 2012: Participant Manual. <http://publications.gc.ca/site/eng/429080/publication.html>.

³⁴ Fitzpatrick and Sinclair, p. 188.

³⁵ Ibid.

Gwich'in Land Use Plans

Figure 1 also demonstrates the role of the Gwich'in Land Use Planning Board,³⁶ which is responsible authority for developing the Gwich'in Land Use Plan,³⁷ as stated in the *Gwich'in Comprehensive Land Claim Agreement* and the *Mackenzie Valley Resource Management Act*. The plan is reviewed every five years and is an important instrument, because "According to the *Mackenzie Valley Resource Management Act*, all land use activities requiring authorisation must conform to the approved Gwich'in Land Use Plan. Gwich'in, government, and any other regulatory authorities have responsibilities to ensure conformity is met before issuing an authorization".³⁸

Conformity, means that all actors - Gwich'in, territorial and federal governments, and project proponents - must legally follow the Land Use Plan. This means that regulators - like the Gwich'in Land and Water Board - cannot issue a license or permit without the project first demonstrating that the proposed activities are in line with the Land Use Plan.³⁹

The Land Use Planning Board, like the Land and Water Board, has five members: two nominated by the Gwich'in Tribal Council, one by the territorial government, and one by the federal government, all of which are appointed by the federal Minister of Indigenous and Northern Affairs. Notably, they are to "serve the interest of the public rather than just representing the interest of their nominator".⁴⁰

The objectives from the land claim, which guide land-use planning include:

1. To recognize and encourage the Gwich'in way of life which is based on the cultural and economic relationship between the Gwich'in and the land (Section 1.1.3).

³⁶ See: <http://www.gwichinplanning.nt.ca>.

³⁷ For the full plan, see: <http://www.gwichinplanning.nt.ca/publications/lupd/January%202015%20Plan/Final%20Draft%20Revised%20Gwichin%20Land%20Use%20Plan%20January%202015.pdf>.

³⁸ Gwich'in Land Use Planning Board, p. 2.

³⁹ Ibid, p. 6.

⁴⁰ Ibid, p. 3.

2. To encourage the self-sufficiency of the Gwich'in and to enhance their ability to participate fully in all aspects of the economy (Section 1.1.4).
3. To provide the Gwich'in the right to participate in decision making concerning the use, management and conservation of land, water and resources (Section 1.1.7).
4. To protect and conserve the wildlife and environment of the settlement area for present and future generations (Section 1.1.8).
5. To integrate planning and management of wildlife and wildlife habitat with the planning and management of all types of land and water use in order to protect wildlife and wildlife habitat (Section 12.1.1f).⁴¹

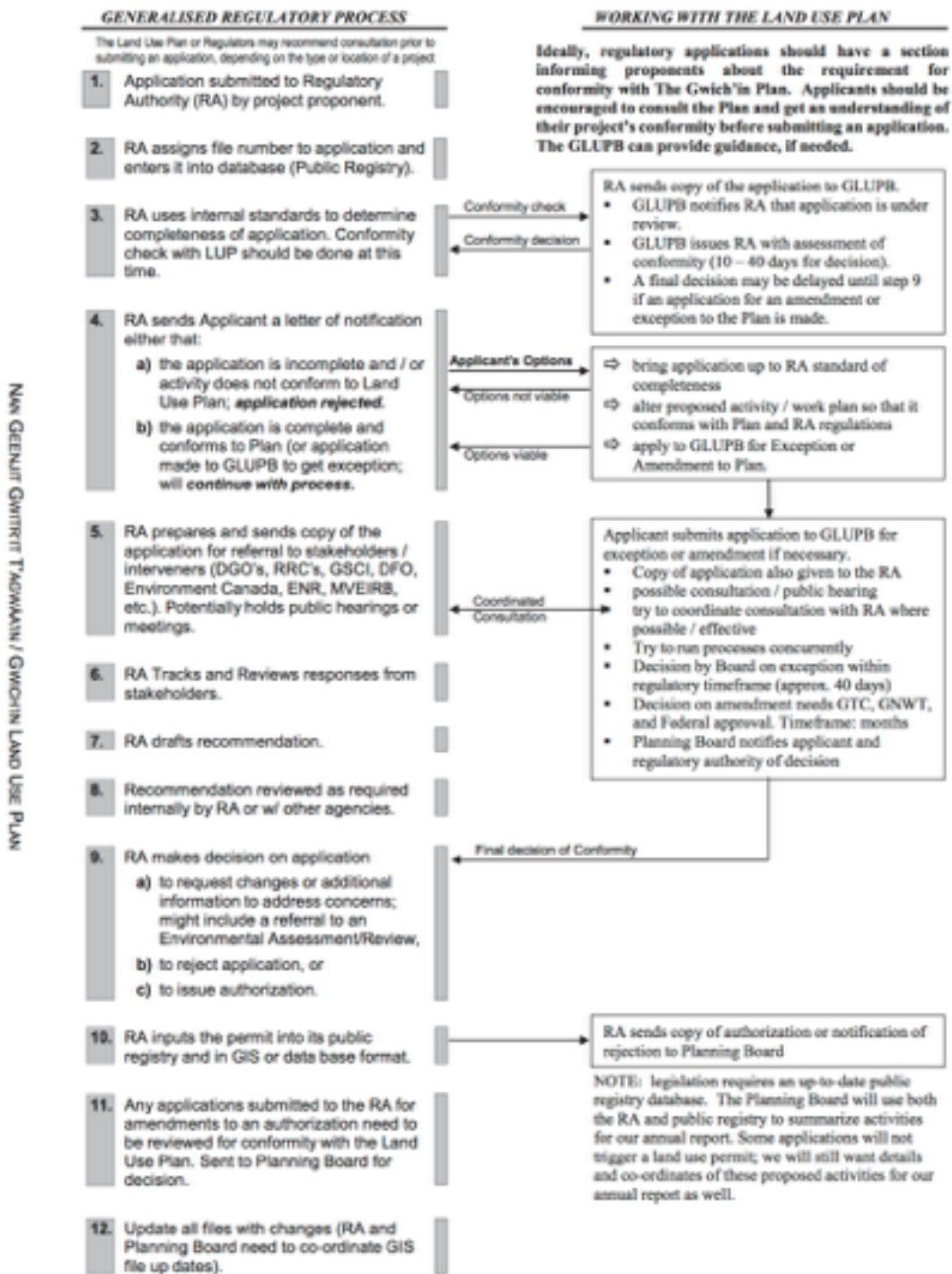
In addition, the land claim highlights in Section 24.2.4a that the purpose of land use planning is "to protect and promote the existing and future well-being of the residents and communities of the settlement area having regard to the interest of all Canadians".⁴²

⁴¹ Ibid, p. 3.

⁴² Ibid, p. 4.

Figure 2⁴³

Figure 20: Generalized Best Practices Regarding Conformity with the Land Use Plan



⁴³ Gwich'in Land Use Plan, p. 52.

Of interest for the discussion of “good practices in environmental impact assessments” is the designation under the Land Use Plan of “Conservation Zones/Gwich’in Heritage Zones.

Conservation/Gwich’in Heritage Zones:

are lands where the following new uses, and activities related to these uses, are not permitted, or have special considerations for conditional approvals.

1. oil and gas exploration and development (see section 4.7.2 (i) regarding pipeline development),
2. prospecting for, staking a claim for, or the development of mineral resources,
3. extraction or quarrying of substances regulated under the Territorial Coal Regulations, the Territorial Dredging Regulations, and the Territorial Quarrying Regulations (earth, peat, sand, gravel, shale, coal, etc.)
4. transportation (see section 4.7.2 (ii) regarding Highway extensions),
5. waste disposal,
6. communication,
7. power development, and
8. commercial tourism and commercial renewable resource activities including fisheries, forestry, and outfitting (see section 4.7.2 (iii) regarding outfitting and tourism).⁴⁴

In Yukon the land use planning process has proceeded differently with a regional and non-legally binding plan for the North Yukon. In 2009, the Vuntut Gwitchin approved the *North Yukon Land Use Plan*⁴⁵ in conjunction with the Government of the Yukon in keeping with section 11.6.0 of the *Vuntut Gwitchin First Nation Final Agreement*. The *North Yukon Land Use Plan* is a regional land use plan that provided for greater clarity for which areas are open to and which areas are exempt from oil and gas development. Although to date there has not been major oil and gas activities in this area, it is an area with moderate resources.

⁴⁴ Ibid, p. 118.

⁴⁵ Department of Energy, Mines, and Resources. “North Yukon Regional Land Use Plan”. June 2009, <http://www.emr.gov.yk.ca/rlup/pdf/north-yukon-regional-land-use-plan-no-maps.pdf>. (Accessed: 16 August 2017).

Resources:

1. Gwich'in Land Use Planning Board. "Nan Geenjit Gwitr'it T'agwàa'in / Working for the Land Gwich'in Land Use Plan". <http://www.gwichinplanning.nt.ca/publications/lupd/January%202015%20Plan/Final%20Draft%20Revised%20Gwichin%20Land%20Use%20Plan%20January%202015.pdf>.
2. Department of Energy, Mines, and Resources. "North Yukon Regional Land Use Plan". <http://www.emr.gov.yk.ca/rlup/pdf/north-yukon-regional-land-use-plan-no-maps.pdf>.

Species at Risk Act

Caribou are a resource of critical importance to Gwich'in, both from a cultural and economic standpoint.

The *Species at Risk Act (SARA)*⁴⁶ purpose is, "... to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened."⁴⁷

When it comes to the relationship between SARA and environmental assessments, it is important to take note of the joint Environment Canada and Parks Canada, *Species at Risk Act (SARA) Environmental Assessment Checklist*.⁴⁸ The Checklist acts as support tool for environmental assessments conducted the *Canadian Environmental Assessment Act (CEAA)*.

The relationship between Gwich'in Land Use Plan and SARA is such that:

These conservation measures [under SARA] are not related to the type of land use permits, water licences, or other authorizations subject to the Gwich'in Land Use Plan so no issues of conformance arise. If an area of critical habitat were identified for protection under SARA in a General Use or Special Management Zone however, it would be considered a non-conforming use because it restricts development in a multi-use zone. Since SARA restrictions are not applied lightly and are made through a highly consultative process, the Board would consider an amendment or exception to the land use plan in a timely manner to address any applications of SARA that might not conform to the Gwich'in Plan.⁴⁹

⁴⁶ For the full text of the Act, see: <http://laws-lois.justice.gc.ca/eng/acts/s-15.3/page-2.html#h-4>.

⁴⁷ Article 6 of the Species at Risk Act. <http://laws-lois.justice.gc.ca/eng/acts/s-15.3/page-2.html#h-4>. (Accessed: 16 August 2017).

⁴⁸ The full text of Checklist is available at: https://www.registrelep-sararegistry.gc.ca/virtual_sara/files/policies/SARA_EA_Checklist_0811_eng.pdf.

⁴⁹ Gwich'in Land Use Plan, p. 20.

Overlapping Areas With Other Rights Holders

It is significant to note that the Gwich'in and Inuvialuit agreements border one another and indeed Inuvik is home to both Inuvialuit and Gwich'in. While a part of Gwich'in Settlement Land near Aklavik overlaps with the Inuvialuit Settlement Region, Gwich'in regulatory boards do not have jurisdiction here, rather Inuvialuit governance institutions prevail.⁵⁰ Consequently, the *Inuvialuit Final Agreement* (IFA) is also of interest to Gwich'in in terms of Environmental Impact Assessments. It should be noted that, the IFA covers the entire Yukon North Slope region.⁵¹

⁵⁰ Ibid, p. 9.

⁵¹ For additional information on the Inuvialuit Final Agreement, see: <http://www.irc.inuvialuit.com/inuvialuit-final-agreement>.

Major Projects In or Affecting Gwich'in Areas

There are no active mines in the Gwich'in Settlement Area, but some prospecting and staking is taking place. There is discussion about building a highway through the Mackenzie Valley.

Gwich'in Tribal Council does not support either uranium mining or hydraulic fracturing in the GSA at this time. The Vuntut Gwitchin Government has similarly declared its lands to be "frack free" stating that, "Essentially the resolution [from the General Assembly] gave direction to council to oppose fracking until it's been proven 100 per cent safe".⁵²

There are two major issues that are of significance for "good practices in environmental impact assessment" occurring within or affecting Gwich'in lands: the Mackenzie Valley Pipeline and the ongoing legacy of the Berger Inquiry; and the Peel Watershed Land Use Planning controversy.

A) The Berger Inquiry

The Berger Inquiry was held from 1974-1977 in response to a proposed pipeline being built in the Mackenzie Valley to bring oil and gas from the Beaufort Sea to Alberta. The process has had a significant influence on the development of Environmental Assessments in Canada.

According to Gibson and Hanna:

⁵² Quoting Chief Joe Linklater. Jesse Winter. "Vuntut Gwitchin Declare Lands Frack Free, For Now". August 2013, <http://www.yukon-news.com/news/vuntut-gwitchin-declare-lands-frack-free-for-now/>. (Accessed: 16 August 2017).

The Mackenzie Valley Pipeline Inquiry, led by Mr Justice Thomas Berger, sets an international standard for critical and cross-cultural public assessment of proposed development options... The Berger Report (1977) assumes a prominent place in the Canadian environmental and resource management literature, indeed in the lexicon of environment and resource policy. While the model established by the Berger Inquiry is never used again in Canada, it influences subsequent deliberations and practice in environmental assessment. In essence, it creates expectations of what assessment process should be.⁵³

The Berger Inquiry was also influential for the development of Social Impact Assessments (SIA) in Canada. Parkins and Mitchell write:

Although federal legislation was slow to emerge in Canada, a more significant impetus in the development of SIA came in 1974 through a federal government inquiry into the proposed Mackenzie Valley Gas Pipeline from Yukon Territory to Alberta... According to Gamble (1978),⁵⁴ the Berger Inquiry was influential as a template for SIA for many reasons, in part because of the autonomy of the assessment process. Berger developed an approach to collecting information that was in tune with local culture and language within remote northern communities. For example, his commission visited all 35 communities along the Mackenzie River Valley, as well as other cities across Canada, holding meetings in local languages. Much of this local information was then given equal status with technical and external forms of expertise in the final decision. It was also the first major proposal for industrial development that was delayed and effectively overturned for social reasons. Since then, requirement for SIA have been introduced to many countries around the world.⁵⁵

⁵³ Robert B. Gibson and Kevin S. Hana. "Progress and Uncertainty: The Evolution of Federal Environmental Assessment in Canada" in *Environmental Impact Assessment: Practice and Participation*. Kevin S. Hanna (ed.) Toronto: Oxford University Press, 2016.

⁵⁴ See: D.J. Gamble. "The Berger Inquiry: An Impact Assessment Process." *Science* 199, 4334. P. 946-52.

⁵⁵ John R. Parkins and Ross E. Mitchell. "Social Impact Assessment: A Review of Academic and Practitioner Perspectives and Emerging Approaches" in *Environmental Impact Assessment: Practice and Participation*. Kevin S. Hanna (ed.) Toronto: Oxford University Press, 2016, p. 123.

Four decades later, the Pipeline remains unbuilt. As commodity prices fluctuate, the desire to renew the project waxes and wanes. The Gwich'in Land Use Plan takes a position on the future development of such a pipeline. It states that:

A pipeline corridor through any of the Gwich'in Conservation Zones will be considered to be a permitted use provided that this use complies with the following:

1. there is no reasonably feasible alternative to the proposed corridor through the conservation zone;
2. the proposed corridor must be the shortest possible through the zone, while avoiding the most sensitive ecological and cultural areas and ensuring Gwich'in traditional use activities in the area are not disturbed, or as otherwise agreed to and determined by processes under the Gwich'in Land Claim;
3. the proposed pipeline corridor development minimizes the area affected by the project, the intensity of disturbance, uses the best available technology to minimize environmental impacts and proposes no additional developments (for example gravel pits, access roads, camps, etc.) within the conservation zone;
4. the proponent can demonstrate to the Planning Board that meaningful consultation has been held with Gwich'in communities and affected parties on the pipeline corridor, construction, operation and abandonment.⁵⁶

Resources:

1. Berger, T.R. 1977. Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry. Ottawa: Supply and Services Canada. http://www.pwnhc.ca/extras/berger/report/BergerV1_complete_e.pdf.
2. Mackenzie Gas Project Joint Review Panel (MGPJRP). 2010. Mackenzie Gas Project: Our Journey to a Decision. http://www.reviewboard.ca/upload/project_document/EIR0405-001_National_Energy_Board_Reasons_for_Decision_Vol_1_Parts_1-2.PDF.

⁵⁶ Gwich'in Land Use Plan, p. 119.

3. Gibson, R.B. 2011. "Application of a Contribution to Sustainability Test by Joint Review Panel for the Canadian Mackenzie Gas Project". *Impact Assessment and Project Appraisal* 29, 3: 231-44. <http://www.tandfonline.com/doi/pdf/10.3152/146155111X12959673796209>.
4. Mackenzie Gas Project Joint Review Panel (MGPJRP). 2009. *Foundation for a Sustainable Northern Future*, <http://www.acee-ceaa.gc.ca/default.asp?lang=En&n=155701CE-1>.
5. Christensen, J., and M. Grant. 2007. "How Political Change Paved the Way for Indigenous Knowledge: The Mackenzie Valley Resource Management Act". *Arctic* 60, 2: 115-23. <http://pubs.aina.ucalgary.ca/arctic/arctic60-2-115.pdf>.
6. CARC 2007. *A Choice of Futures: Cumulative Impact Scenarios of the Mackenzie Gas Project*. Vancouver: Cizek Environmental Services. <http://www.carc.org/pubs/carc%20cumulative%20effects%20presentation%20to%20JRP%20.pdf>.

B) Peel Watershed

The Peel Watershed is the home of both the Teetl'it Gwich'in and Vuntut Gwitchin, as well as the Na-Cho Nyk Dan and Tr'ondek Hwech'in First Nations. Gwich'in have used the Peel Watershed for thousands of years and it remains to this day a largely untouched wilderness.

As stated earlier, the land claim agreements guarantee Gwich'in a decision-making role in land use planning in their territories, which includes the Peel Watershed. For seven years, Gwich'in participated in an appointed commission, undertaking extensive research and consultation to arrive at the Final Peel Watershed Land Use Plan in 2011. While, Gwich'in had originally advocated for 100% protection, the Land Use Plan reached an acceptable compromise of 20% of the Watershed being open to development. This plan was supported by a majority of the Yukon public, as well as both Gwich'in governments.

However, the Government of Yukon, under previous leadership, rejected the final plan at the last moment. Instead, it brought forth a new plan that would open 71% of the Watershed to development. Gwich'in governments actively opposed this decision, which was seen as a betrayal of the constitutional rights protected in the final agreements. As a result, they joined with CPAWS Yukon and the Yukon Conservation Society to take the Yukon Government to Court. The case was heard in front of the Supreme Court of Canada in March 2017 and the decision was released in December 2017.

The court was asked to rule on two questions: (1) What was the correct remedy for the Yukon government's derailment of the land use planning process? And (2) Can parties to a land use planning process reject a recommended plan at the final stage?

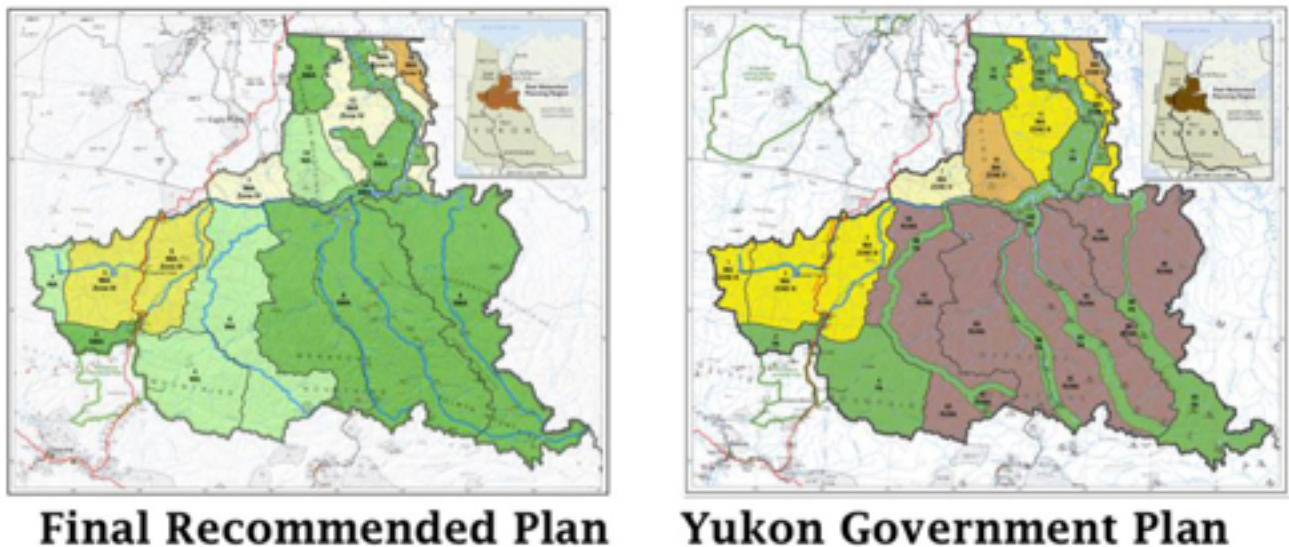
The Supreme Court of Canada ruled in an unanimous decision that the Yukon government must complete meaningful final consultations on the original land use plan. The ruling is seen to set a precedent for the future of land use planning in Yukon. Importantly, it also ensures that Land Claims Agreements are upheld, as well as that governments are working with First Nations in a spirit of reconciliation.

According to Chief Bruce Charlie of the Vuntut Gwitchin First Nation:

We have always been responsible stewards of our Traditional Territory even in the face of adversity and uncertainty. We are pleased that the Court agrees that the path towards reconciliation requires honourable implementation of the spirit and intent of our Final Agreements.⁵⁷

The court did not rule on the Yukon government's right to reject a land use plan. However, the ruling does provide guidance that limits the Yukon government's ability to modify or reject a plan at the final stage of the process.

Figure 3: Comparison of the Final Peel Watershed Land Use Plan and the Government of Yukon's Peel Watershed Land Use Plan⁵⁸



⁵⁷ Protect the Peel. "Landmark Supreme Court of Canada decision a victory of First Nations and environmental groups". December 2017, <http://protectpeel.ca/news/landmark-supreme-court-decision-is-a-victory-for-first-nations-and-environmental-groups> (Accessed: 28 March 2018).

⁵⁸ Protect the Peel. "Our Story". <http://protectpeel.ca/our-story/>. (Accessed: 16 August 2017).

Resources:

1. "Protect the Peel Goes to Ottawa" (Video) <https://youtu.be/ebTMKnhrKck>.
2. "Land Use Planning in the Peel" (Video) <https://youtu.be/BU9lmsLz5k>.
3. Peel Watershed Planning Commission (PWPC) 2011. Final Recommended Peel Watershed Regional Land use Plan. <http://planyukon.ca/index.php/documents-and-downloads/peel-watershed-planning-commission/plans/frpwlup/373-highlights-of-the-final-recommended-peel-watershed-land-use-plan/file>.