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Mackenzie Valley Land and Water Board NEWSLETTER

JAN 2020

WELCOME TO OUR READERS!

We are pleased to announce that the newsletter of the Mackenzie Valley Land and Water Boards (Gwich'in, Mackenzie Valley, Sahtu, and Wek'èezhì Land and Water Boards) has officially relaunched!

This is the second edition. This digital newsletter will be sent out four times a year to bring you the latest news, informative articles, and other items we think might be of interest. The intent of the newsletter is to further our commitment to outreach, education and knowledge-sharing. Our hope is that this newsletter reaches anyone interested in what the LWBs do; including, proponents, community members, educators, youth, elders, and anyone else who has an

interest in the land and water of the Mackenzie Valley.

In this issue you will find pertinent information on Engagement and Consultation of the LWBs, including the process and identifying impacts to Aboriginal and Treaty Rights and the required depth of consultation, as well as ruling on adequacy of Crown Consultation.

If you have any questions or wish to connect with one of the Boards regarding what is going on in that region specifically, we invite you to check out the last page in the newsletter where you will find contact details for each of the Land and Water Board offices,

including information on how to reach the Executive Director for each of the Boards.

We hope you enjoy our second edition of the newsletter, and that you find it informative and helpful. We welcome your feedback, suggestions, and insights on anything you see here, as well as things you would like to see included in upcoming issues. Please forward your comments or questions to Tanya Lantz, Community Outreach Coordinator, MVLWB, at tlantz@mvlwb.com.

Mavis Cli-Michaud
Chair, MVLWB



VISION

Current and future generations benefit from the active management and protection of the natural resources within the Mackenzie Valley.

MISSION

We regulate and manage the use of the land and water and deposit of waste in the Mackenzie Valley through fair, effective, inclusive, and transparent processes. Through the *Mackenzie Valley Resource Management Act*, we enable “the conservation, development, and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of the Mackenzie Valley.”

MANDATE

In exercising its powers, the Board must consider the importance of conservation to the well-being and way of life of the Aboriginal peoples of Canada to whom section 35 of the *Constitution Act* (which provides constitutional protection to the Aboriginal and Treaty Rights of Aboriginal peoples of Canada) applies and who use an area of the Mackenzie Valley. The Board must consider any traditional knowledge and scientific information that is made available to it in its decision-making process.

The Land and Water Boards of the Mackenzie Valley Engagement and Consultation Policy

The Engagement and Consultation Policy (the Policy) guides the work of the Boards and sets out expectations for proponents to ensure obligations for meaningful engagement and consultation with all affected parties, including Indigenous groups, are met and clearly communicated.

The Boards' Engagement and Consultation Policy requires:

- Proponents to initiate dialogue and engagement planning with affected parties in advance of submitting applications to the Boards, to identify concerns and potential impacts, address concerns raised, and ensure appropriate levels of engagement occur over the life of the project.
- The Boards to consult with affected parties throughout a proceeding to ensure they can contribute meaningfully toward the assessment of impacts and proposed mitigations.
- The Boards to assess and rule on, if necessary, the adequacy of Crown Consultation before issuing final decisions.

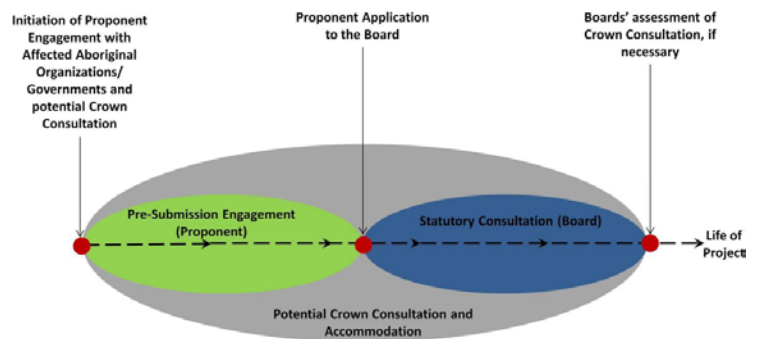
The Boards' decisions regarding implementation of the policy are guided by the following principles:

- **Shared Responsibility:** Processes are coordinated and reflect the shared responsibilities of proponents, the territorial and federal governments, Indigenous governments, and the Boards.
- **Appropriate Disclosure:** All relevant information for an application is made available in a timely, understandable, and culturally-appropriate manner.
- **Inclusiveness:** Anyone potentially affected by an application should be given the opportunity to be heard.
- **Reasonableness:** Proponents, affected parties, the Boards, and the Crown must be reasonable when setting expectations for Engagement and consultation processes and be willing to enter into these processes in the spirit of cooperation.

The Policy communicates the Boards' requirement for proponents to include with their application an engagement record, which documents engagement activities, and an engagement plan, which sets out the plan for engagement over the life of the project. The Policy also sets out the approach used by the Boards to assess proponent engagement, carry out required consultation, and rule on adequacy of Crown Consultation.

The full Engagement and Consultation Policy can be found on the Boards' [websites](#) under Resources; Policies and Guidelines. The Boards have also produced guidelines, discussed in the next section of this newsletter, for applicants and holders of land use permits and water licences, to help them understand how to adhere to the Boards' engagement requirements.

The relationship between Proponent Engagement, the Boards' Statutory Consultation, and Crown Consultation throughout the regulatory process:

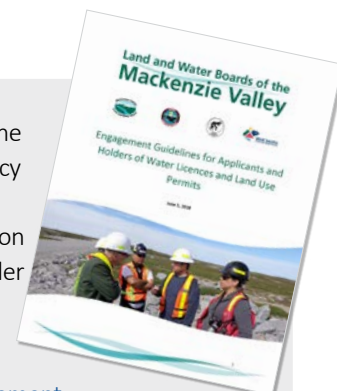
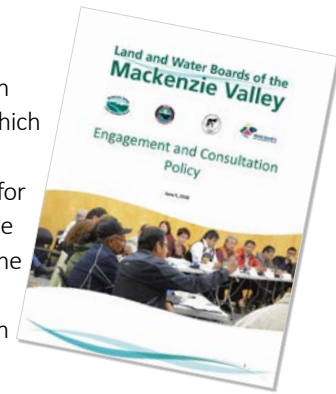


The Land and Water Boards of the Mackenzie Valley Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits

The Boards' Engagement Guidelines are a companion to the Engagement and Consultation Policy, and were designed to assist proponents in understanding how to conduct and plan for engagement, and communicate these activities to the Boards in their applications. The Guidelines contain a step-by-step guide to meeting the Boards' engagement requirements. They also contain appendices detailing engagement best practices, types of engagement approaches based on the kind of authorization being sought from the Boards, sample templates for an engagement record and plan, and other helpful information. The Guidelines are an essential tool for proponents, and for anyone who wants to

better understand how the Boards' Engagement Policy is implemented. The full Guidelines can be found on the Boards' [websites](#) under Resources; Policies and Guidelines.

[Appendix B of the Engagement Guidelines](#) contains a helpful table providing guidance on what level of engagement is expected by the Boards for different types of requests and authorizations.



Board Consultation Procedures



What is the process?

While specific procedures may vary between Boards, Board consultation policies are consistent and are outlined below. The Crown has been requested to notify parties and the Board about whether it intends to rely on the Board's regulatory process to discharge its consultation obligations in whole or in part.

Distributing applications for review and comment

To ensure timely notification of each application before a Board, applications are posted on the Public Registry. Boards will carry out consultation with parties by distributing copies of applications for land use permits and water licences for comment using the Online Review System. The Boards use distribution lists to notify all potentially affected parties. As opposed to pre-submission engagement carried out by the applicant, statutory consultation carried out by the Boards is much broader and more comprehensive in terms of geographic scope.

Other considerations, including downstream impacts to water, are critical to answering the question, "Who may be potentially impacted?". The Boards rely on different tools, including those provided by the Crown, such as the geo-pdf NWT Land Information Related to Aboriginal Groups, to further assist with identifying potentially affected parties.

Timelines for land use permit notification and review periods are set by the Board to ensure compliance with the timelines established in the Mackenzie Valley Land Use Regulations. Interim Measures Agreements are also a factor that can affect these timelines. Within 42 days of a land use permit application being deemed complete, the Board must decide whether to issue, refer the application to environmental assessment (EA), conduct further study, or refuse to issue the application as provided for in legislation.

For water licence applications, the Board is required to make a decision on a type A or a type B application within nine months, excluding applicant time, after notice of the application has been made (see sections 72.18 and 72.19 of the MVRMA, and subsections 47(1) and 48(1) of the *Waters Act*). According to the legislation, the application is considered to be made on the day the Board is satisfied that the

application is in the appropriate form, and contains all of the required information (see sections 72.21 of the MVRMA, and section 49 of the *Waters Act*). In practice, this is normally the date on which the application is deemed complete; however, when the Board renews or amends a licence on its own motion, the nine-month timeline begins on the day that a notice has been posted in the appropriate newspaper.

Any time that the application is with the applicant, or is undergoing an EA, environmental impact review (EIR), or an examination of impacts on the environment that stands in lieu of an EIR, it is not counted as part of the nine-month time period (see subsections 72.22(1) and 72.22(2) of the MVRMA and section 50 of the *Waters Act*). To allow all parties access to all information before the Board respecting applications, all copies of applications, distribution notices, and review comment submissions received by Boards are placed on the Public Registry.

Preliminary screening

Once notification and public review periods for an application are complete, all new applications are subject to a preliminary screening, unless specifically exempted, to determine if they might have significant adverse environmental impacts or be a cause of public concern. If, in the course of a public review, an affected party raises concern regarding a potential impact on the environment or to an established Aboriginal or Treaty Right, the Boards will, prior to making a screening decision, need to assess the potential impact of the application in this context. Once potential adverse impacts of the project have been identified (including those that may impact an established or asserted right), the Boards have a number of options (remedies), including: ruling to stop the process and conduct a public hearing or further investigation under paragraph 22(2)(b) of the Mackenzie Valley Land Use Regulations in cases of a land use permit application; issuing a permit or licence with conditions that can adequately address (mitigate) adverse impacts to established or asserted rights; referring the project to environmental assessment if the development is likely to have a significant adverse impact on the environment or might be a cause for public concern (which includes concerns raised regarding impacts to rights); or refusing to issue the permit or type B water licence, or not recommending the issuance of a type A water licence until appropriate accommodations are considered.

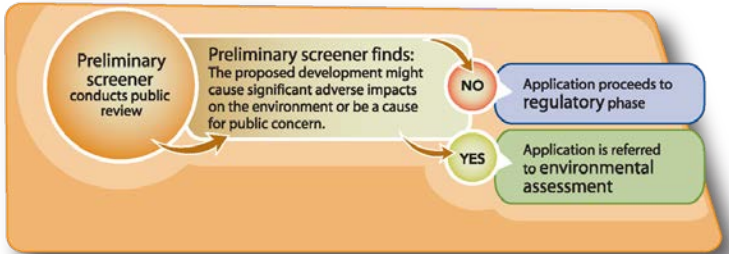
Conducting public hearings

Boards will carry out public hearings when required. The Board may consult with specific parties prior to public hearings by holding pre-hearing conferences or technical sessions. To ensure best practices for consultation within the public hearing process, Boards will: ensure adequate notice is provided; use a variety of methods to advertise public hearings to ensure all affected parties are properly notified; make best efforts to hold public hearings in the community or communities that will be most affected; exercise flexibility for methods of contribution made by affected parties (e.g., videotape, audio, etc.); and make best efforts to ensure that translation and plain language materials are provided at the public hearing.

Drafting water licences and land use permits

To enable the participation of parties in the development of water licence and land use permit conditions the Boards consult with parties by distributing draft water licence and land use permit conditions for review and comment prior to a final decision by a Board on issuance to ensure they reflect the concerns raised through evidence presented to it in the course of a screening process.

Preliminary Screening



Post-issuance permit and licence management

To ensure transparency and informed participation in the ongoing management of water licences and land use permits, the Boards will consult with parties in the review of submissions required under conditions of land use permits/water licences (e.g., management plans, closure and reclamation plans, design drawings for proposed modifications of structures, etc.). For submissions addressing complex subject matters, this may include the coordination of workshops and technical sessions to ensure informed participation. When considering amendments to land use permits or water licences on the Boards' own motions, suspensions, or cancellations, the Boards will consult with parties to ensure their views are provided, become part of the public record, and be considered in Board decisions. To ensure best practices for consultation during the post-issuance and licence management phase, the Boards will: ensure adequate notice is provided; use a variety of methods to advertise workshops and/or technical sessions to ensure all stakeholders are properly notified; make best efforts to ensure that translation and plain language materials are provided if required; and conduct technical sessions, workshops, and other meetings with respect to review of submissions for ongoing management and administration of water licences and land use permits (e.g., monitoring and management plans, closure and reclamation).

Identifying Impacts to Aboriginal Rights and Required Depth of Consultation

What are the triggers?

If potential for adverse impacts to Aboriginal and/or Treaty Rights arise in the normal course of Engagement or during a statutory proceeding, the Board and the federal and territorial governments may also need to consider additional questions that are unique to an Aboriginal group's right to exercise their practices, traditions, and customs that are distinct to their cultural identity and protected under treaties and/or under section 35 of the Constitution Act. While potential for adverse impacts to rights will differ from group to group, general examples of impacts of this nature could include, but are not limited to:

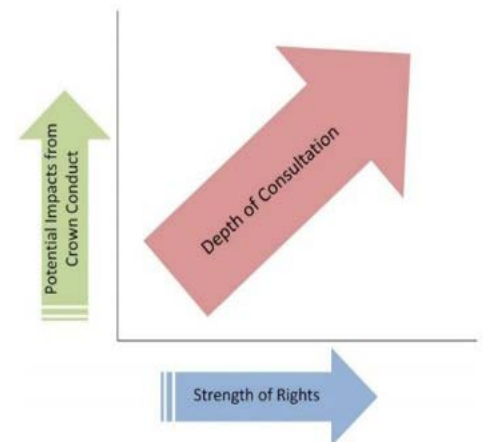
- proximity to community sites (or traditional village sites) and reserve lands;
- closeness to commercial trapper cabins or cabins for traditional economic practice; traditional transportation corridors such as known trails used to access hunting and trapping areas;
- cultural meeting zones;
- sites of cultural significance – grounded in stories and oral history;

- archaeological potential, which may be determined by:
 - quantitative modeling;
 - culturally significant area – oral history;
 - traditional use study data;
 - village sites or known travel sites;
 - and proximity to known archaeological sites;
- the Project's potential contribution to cumulative effects;
- location and proximity to high use harvesting lands;
- and proximity to special habitat or areas frequented by important or threatened animal species.

These types of potential impacts alongside the Aboriginal Organization/Government's individual strength of claim are used to determine where the duty to consult lies along the spectrum and the depth of consultation that will be required in each particular case (see below). Strength of claim is an initial review of potential and established Aboriginal and Treaty Rights claims (including title and interests) and an in-depth legal assessment with supporting ethnohistorical studies.

When a Proponent is engaging with an affected Aboriginal Organization/Government, it is important to understand these types of impacts, to document any assertions raised, and to follow up with the Crown and the Board. More information can be found in [Appendix A of the Engagement and Consultation Policy \(2018\)](#).

Identifying Impacts to Aboriginal Rights and required depth of consultation



Guides to the Land Use Permitting and Water Licensing Processes

The Boards are in the process of updating the Guide to the Land Use Permitting Process and drafting a new Guide to the Water Licensing Process (the draft Guides). The draft Guides were sent out for public review during the fall of 2019, and a large number of comments were received. The draft Guides reflect applicable legislation; current Board policies, guidelines, and best practices; and the Boards' recently updated Water Licence and Land Use Permit Application Forms.

Standard Water Licence Conditions

The Standard Water Licence Conditions were approved for public distribution in December 2019 and are currently undergoing final legal review and editing. The Standard Water Licence Conditions Team, consisting of LWB staff, expects to finalize both the public and staff versions in February 2020. The document will include a summary of responses to review comments. These Standard Water Licence Conditions are those that are commonly used in licences recently issued by the Boards and/or are linked to standard requirements set out in guidelines issued or adopted by the Boards. They are not a comprehensive list of all the conditions that may be included in licences issued by the Boards, and not all conditions will be included in all licences. At this time, many of the Schedules in water licences which provide the detailed information requirements associated with some conditions, are not included.

2020 Environmental Audit

The Land and Water Boards are in the process of responding to recommendations outlined in the draft 2020 NWT Environmental Audit (2020 Audit). Environmental audits are required under the Sahtu, Gwich'in, and Tłı̨chǫ land claim agreements and the *Mackenzie Valley Resource Management Act*. They are conducted at least every five years by an independent body named the NWT Environmental Audit Team and provide an opportunity for all parties to provide input about how the regulatory system is protecting the environment. For more information about environmental audits and the status of the 2020 Audit, please click [here](#).



CONTACT DETAILS FOR THE LAND AND WATER BOARDS OF THE MACKENZIE VALLEY

Mackenzie Valley Land and Water Board

P.O. Box 2130
4922 - 48th Street
7th Floor YK Centre Mall
Yellowknife, NT X1A 2P6
Main office: (867) 669-0506
Executive Director:
Shelagh Montgomery
(867) 766-7457
smontgomery@mvlwb.com

Gwich'in Land and Water Board

P.O. Box 2018
105 Veterans Way
Inuvik, NT X0E 0T0
Main office: (867) 777-4954
Executive Director:
Leonard DeBastien
(867) 777-4954, ex. 2
L.Debastien@glwb.com

Sahtu Land and Water Board

Box 1
Fort Good Hope, NT X0E 0H0
Main office: (867) 598-2413
Executive Director:
Paul Dixon
(867) 598-2413 ext. 222
paul.dixon@slwb.com

Wek'èezhii Land and Water Board

Wekweètì Office
Box 32
Wekweètì, NT X0E 1W0
Main Office: (867) 713-2500

Yellowknife Office
#1-4905 48th Street
Yellowknife, NT X1A 3S3
Main office: (867) 765-4592
Executive Director:
Ryan Fequet
(867) 765-4589
rfequet@wlwb.ca

