

**From:** [Sarah Elsass](#)  
**To:**

[Redacted content]

**Cc:** [Development of Joint Policy on Engagement and Consultation](#)  
**Subject:** August 14, 2019 7:10:08 PM  
**Date:**

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To Distribution:

**Re: Development of joint policy on engagement and consultation by the Land and Water Boards of the Mackenzie Valley (Gwich'in, Sahtu, Wek'èezhìi, and Mackenzie Valley Land and Water Boards) and the Mackenzie Valley Environmental Impact Review Board (collectively "the Boards").**

Engagement and consultation are central to the permitting, licensing, and environmental impact assessment processes in the Mackenzie Valley. Under the *Mackenzie Valley Resource Management Act* (MVRMA), the Boards must:

- ensure that the concerns of Indigenous people and the general public are taken into account, and
- have regard for the protection of the social, cultural, and economic well-being of residents of the Mackenzie Valley and the well-being and way of life of the Indigenous peoples.

The Boards take these responsibilities very seriously and recognize the value of meaningful engagement and consultation. The principles of shared responsibility, appropriate disclosure, inclusiveness, and reasonableness guide the Boards' practices and decisions in relation to engagement and consultation (see section 1.5 of the [MVLWB Engagement and Consultation Policy](#) (*MVLWB Policy*; 2013) and the Review Board's [Interim Policy Statement](#)).

The Boards, proponents, the Crown, and affected parties all have responsibilities related to engagement and consultation. When everyone does their part, meaningful engagement and consultation reduces conflict and encourages strong projects that are supported by and will benefit the people of the Mackenzie Valley.

***A joint engagement and consultation policy for the Boards***

The Land and Water Boards of the Mackenzie Valley and the Mackenzie Valley Environmental Impact Review Board are pursuing the development of a joint engagement and consultation policy to:

- **update** the existing *MVLWB Policy* to reflect experience over the past several years and emerging best practices; and
- **expand** the policy to include environmental assessment and impact review.

A joint policy would affirm the Boards' shared principles and present a consistent policy for their processes. It is envisioned that the joint policy will cover the roles of the Boards, the Board's expectations for project proponents, and the interface between Board processes and overall Crown Consultation.

***Next steps in development of a joint engagement and consultation policy***

The Boards are beginning work on a draft joint policy document and are anticipating a public review period during Fall 2019. During the public review period, the Boards will organize engagement sessions to provide opportunities for discussion and direct input from interested parties.

For now:

1. **Parties who wish to do so can provide early input**, for example: based on parties' experience in regulatory processes, are there specific gaps in the current policy, key principles that should be added, high level topics that should be added or updated, opportunities for consistency with other policies, or major considerations for expanding the policy to include environmental

assessment and impact review? (Please note that there will be time for detailed discussions during the public review of the draft joint policy and that implementation details are/will be described separately in Board guidelines).

2. **The Boards would like to hear how parties wish to be engaged** during the public review period.

If you would like to provide this type of early input, please do so by **September 30<sup>th</sup>, 2019** so that the Boards can consider it as we develop a work plan for the joint policy and initiate drafting.

**Please contact:**

Stacey Menzies  
Policy and Planning Officer  
Mackenzie Valley Environmental Impact Review Board  
(867) 766-7060

Tanya Lantz  
Community Outreach Coordinator  
Mackenzie Valley Land and Water Board  
(867) 766-7452

*About the Boards*

Under the MVRMA, the Boards are created to regulate the use of land and water and the deposit of waste and to conduct environmental impact assessment in the Mackenzie Valley. The Land and Water Boards regulate the use of land and water and the deposit of waste through the issuance and management of land use permits (permits) and water licences (licences) and also conduct preliminary screenings as part of the environmental impact assessment process. The Review Board conducts environmental assessments or impact reviews for proposed developments that might have a significant adverse impact on the environment or might cause public concern (such as major projects or projects in sensitive areas).

Masi,

**Sarah Elsasser, Ph.D., PMP**

Senior Regulatory Policy Advisor

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**From:** [Terence Hughes](#)  
**To:** [Stacey Menzies](#)  
**Cc:** [tlantz@mvlwb.com](mailto:tlantz@mvlwb.com)  
**Subject:** Development of Joint Policy on Engagement and Consultation  
**Date:** August 15, 2019 3:46:21 PM

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Good Afternoon,

Given often times the Land and Water Boards would be deciding on the administrative outcomes of the decisions of the Review Board does a joint policy make sense? The scale and scope of what is required during an environmental assessment or impact review should be very different from what is required from a LUP or WL from a Land and Water Board derived from the more rigorous process. If the goal of joint engagement and consultation policy is to delineate the types of engagement and consultation activities appropriate for each regulatory process then the exercise could add value. Given that consultation is the duty of the "Crown" the current policy states very little on the Crown's role. It specifically lacks detail on how the Board will seek information on how Crown aspects of consultation were completed by various Crown entities. It speaks only to the Boards ability to making a decision and/or recommendation. A proponent can fulfill its obligations to consult, but still has risk the Crown has not fulfilled its portion.

Thanks,

Terence Hughes

Regulatory and Community Affairs Advisor

Paramount Resources Ltd.

Phone: 403-206-3859



October 1, 2019

Larry D. Innes  
Direct: (867) 675-5801  
File Reference: 74477

Stacey Menzies  
Policy and Planning Officer  
Mackenzie Valley Environmental Impact Review Board

Tanya Lantz  
Community Outreach Coordinator  
Mackenzie Valley Land and Water Board

Via email: smenzies@reviewboard.ca

Via Email: tlantz@mvlwb.com

Dear Ms. Menzies and Ms. Lantz:

RE: **Development of joint policy on engagement and consultation**

This letter is further to the requests of the Land and Water Boards and the Impact Review Board ("the Boards") for early input on the development of a joint policy on engagement and consultation that will update and expand their existing policies to address the role of the Boards, project proponents, and the relationship between Crown consultation obligations and the Board processes established under the *Mackenzie Valley Resource Management Act* ("MVRMA").

On behalf of our clients, the Kátł'odeeche First Nation ("KFN") and the Dehcho First Nations ("DFN"), we are pleased to provide some early input into the development of the new joint policy ("the Joint Policy") on engagement and consultation, in the expectation that this will assist the Boards to develop and frame the workplan and budget for this process.

Our comments are organized under three headings. First, we identify gaps in the current Board policies, as well as steps that need to be taken to address them. We then address the principle of free, prior and informed consent as the major policy issue that needs to be addressed in this review and in the updated Joint Policy, and finally to the co-development and co-drafting process that we believe should be followed in undertaking this important review.

## **1. Are there specific gaps in the current policy?**

Currently, the Land and Water Boards operate under the *Mackenzie Valley Land and Water Board (MVLWB) Engagement and Consultation Policy and Guidelines* (MVLWB Policy).<sup>1</sup> The Review Board operates under an *Interim Policy Statement: Engagement and Consultation in Environmental Assessment and Impact Review*.<sup>2</sup> As the Boards recognize that their existing policies are outdated and does not reflect current legal developments, there are several key gaps that need to be addressed in the existing policy framework as a result of the significant evolution of Canadian law concerning consultation and accommodation with Indigenous peoples, as well as the adoption by Canada of the *United Nations Declaration on the Rights of Indigenous Peoples* (the “UN Declaration”).

We note the following gaps as a basis for more through and meaningful consultation and co-development with Indigenous governments and organizations (“IGOs”) in the forthcoming Joint Policy process.

### ***The Boards are directly involved in fulfilling the Crown’s duty to consult***

The leading Supreme Court of Canada (SCC) cases, *Clyde River (Hamlet) v. Petroleum Geo-Services Inc. (Clyde River)*<sup>3</sup> and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc. (Chippewas)*<sup>4</sup>, affirmed that appropriately empowered regulatory bodies play a significant role in fulfilling or discharging the Crown's duty to consult and accommodate Indigenous rights-holders:

The Court's jurisprudence shows that the substance of the duty does not change when a regulatory agency holds final decision-making authority in respect of a project. While the Crown always owes the duty to consult, regulatory processes can partially or completely fulfill this duty.<sup>5</sup>

Given that Land and Water Board decisions are intended to be “final and binding” except in some limited instances<sup>6</sup>, and that the Review Board is broadly obligated to carry out consultations in respect to the impacts of a development<sup>7</sup>, it is clear that the Boards are all directly implicated in fulfilling the Crown’s duty to consult. Accordingly, the Boards play a significant role in giving full effect to the process of reconciliation and fair dealing that is at the heart of the purpose of s. 35 of the *Constitution Act 1982*.<sup>8</sup>

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<sup>1</sup> Mackenzie Valley Land and Water Board, *Engagement and Consultation Policy* online: <<https://mvlwb.com/sites/default/files/documents/wg/MVLWB%20Engagement%20and%20Consultation%20Policy%20-%20May%202015.pdf>>

<sup>2</sup> Mackenzie Valley Review Board, *Interim Policy Statement: Engagement and Consultation in Environmental Assessment and Impact Review*, online: <[http://reviewboard.ca/sites/default/files/news/files/interim\\_policy\\_statement\\_on\\_engagement\\_and\\_consultation\\_0.pdf](http://reviewboard.ca/sites/default/files/news/files/interim_policy_statement_on_engagement_and_consultation_0.pdf)>

<sup>3</sup> *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, [2017] 1 S.C.R. 1069 [*Clyde River*].

<sup>4</sup> *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, [2017] 1 S.C.R. 1099 [*Chippewas*].

<sup>5</sup> *Clyde River*, paragraph 1.

<sup>6</sup> MVRMA, s. 67.

<sup>7</sup> MVRMA, s. 123.1.

<sup>8</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (CanLII) paragraph 32.

The Joint Policy must be updated to reflect this responsibility, and provide the necessary procedural safeguards to ensure that the Board's duties to consult and accommodate are discharged in a manner that is commensurate with the nature of the Indigenous rights that are potentially at issue, and the degree of any adverse effect of the proposed projects or approvals that may come before the Boards.<sup>9</sup>

***It must be made explicit when and how the Boards intend to fulfill the duty to consult and accommodate***

The language in the current Board policies are not explicit in describing how the Boards will fulfill their duty to consult and accommodate IGOs. This is a significant gap. The SCC was clear in *Clyde River* that guidance is required:

... the honour of the Crown requires a meaningful, good faith consultation process (Haida, at para. 41), where the Crown relies on the processes of a regulatory body to fulfill its duty in whole or in part, it should be made clear to affected Indigenous groups that the Crown is so relying. Guidance about the form of the consultation process should be provided so that Indigenous peoples know how consultation will be carried out to allow for their effective participation and, if necessary, to permit them to raise concerns with the proposed form of the consultations in a timely manner.<sup>10</sup>

Accordingly, the Joint Policy must provide, at a minimum, directives to ensure effective participation by IGOs in the consultation with the Boards prior to a regulatory decision or environmental assessment determination by the Boards. Further, the processes must provide meaningful consultation not only on the proposed project or approval, but on any proposed accommodation measures. This must be explicit in the Joint Policy.

Legally, the standard that must be met is clear: where the proposed Crown action might adversely affect an Aboriginal right in a significant way, the Honour of the Crown will require meaningful accommodation in order to avoid irreparable harm.<sup>11</sup>

The Joint Policy will need to be clear on how IGOs will be involved in the development of accommodation measures, and ensure that Board procedures are fully compliant with the law when it comes to ensuring that IGOs are fully engaged in determining what constitutes "meaningful accommodation" among the various alternative measures that could be adopted in respect of a particular project review or permitting decision.

***The responsibility to uphold the honour of the Crown is upheld remains with the Crown***

Additionally, the respective responsibilities of the Boards and the Ministers will need to be clarified in the Joint Policy. The law is clear that:

... the Crown always holds ultimate responsibility for ensuring consultation is adequate. ... Where the regulatory process being relied upon does not achieve adequate consultation or accommodation, the Crown must take further measures to meet its duty. This might entail filling

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<sup>9</sup> *Haida Nation*, paragraph 39; *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650, paragraph 36.

<sup>10</sup> *Clyde River*, paragraph 23.

<sup>11</sup> *Haida Nation*, paragraph 47.

any gaps on a case-by-case basis or more systemically through legislative or regulatory amendments. Or, it might require making submissions to the regulatory body, requesting reconsideration of a decision, or seeking a postponement in order to carry out further consultation in a separate process before the decision is rendered.<sup>12</sup>

We note that given the role of the Land and Water Boards as final decision-makers, those Boards are fully responsible as the Crown decision-maker for the adequacy of their consultation and accommodation.

When it comes to the Review Board, the current process whereby Canada and the GNWT undertake separate “s. 35 Crown consultations” following the conclusion of a Review Board process as a prelude to Ministerial decision-making on the recommendations is less than satisfactory for several reasons.

In all cases, the separate “s. 35 Crown consultation” process is seen—rightly or wrongly—as bringing political considerations that can potentially outweigh the independent, evidence-based and procedurally fair Review Board process. Given that consultation occurs throughout the process, there is not a clear justification for this separate step, particularly when the recommendations put forward by the Review Board reflect consensus between the Board and the IGOs on what should constitute adequate consultation and accommodation.

We make recommendations below on how to bridge the potential gap between the Review Board and the responsible Ministers and Indigenous governments following an environmental assessment or environmental impact review by adopting policies which promote collaborative consent. In our view, the Joint Policy should promote a seamless process of consultation and accommodation in which ultimate decision-makers (the responsible Ministers or Indigenous governments with jurisdiction) are engaged with the Board and participating IGOs throughout the review. Separate procedures should be reserved for situations where there is a serious dispute about the adequacy of consultation and accommodation that must be resolved before project approvals can proceed.

***Project approvals cannot proceed where the duty to consult remains unfulfilled***

It is also clear that the Joint Policy will need to clearly contemplate circumstances in which a decision cannot be made by the Boards because the duty to consult remains unfulfilled. As noted in *Clyde River*:

...where the Crown's duty to consult an affected indigenous group with respect to a project under COGOA remains unfulfilled, the NEB must withhold project approval. And, where the NEB fails to do so, its approval decision should (as we have already said) be quashed on judicial review, since the duty to consult must be fulfilled prior to the action that could adversely affect the right in question...<sup>13</sup>

The Joint Policy will need to take into account how the adequacy of consultation and accommodation will be assessed, both in circumstances in which the Boards are final decision-makers, and in circumstances where the Review Board or a review panel has made a recommendation in an environmental assessment or environmental impact review of a proposed development. The Joint Policy will need to provide clear guidance to Board members, as well as to proponents, IGOs and responsible

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<sup>12</sup> *Clyde River*, paragraph 22.

<sup>13</sup> *Clyde River*, paragraph 39.

Ministers, concerning the process by which the Boards will fulfill this important role, and how disputes concerning the adequacy of consultation and accommodation will be resolved.

***The Boards must be neutral arbitrators and not give rise to a reasonable apprehension of bias***

The Joint Policy must also clearly set out the responsibilities of the Boards to be neutral arbitrators in circumstances where they are considering the adequacy of Crown consultations. In circumstances where a Board is a final decision-maker (i.e., where a decision on a permit is being made by a Land and Water Board following a hearing) the potential for conflicts of interest on the part of the relevant Board must be considered and addressed. The Joint Policy must provide clarity on what steps and procedural safeguards the Boards will take to avoid the appearance of an apprehension of bias when they are considering the adequacy of consultation and accommodation. As noted in *Clyde River*:

When the [Board] is called on to assess the adequacy of Crown consultation, it may consider what consultative steps were provided, but its obligation to remain a neutral arbitrator does not change. A tribunal is not compromised when it carries out the functions Parliament has assigned to it under its Act and issues decisions that conform to the law and the Constitution. Regulatory agencies often carry out different, overlapping functions without giving rise to a reasonable apprehension of bias.<sup>14</sup>

***The Boards should adopt the UN Declaration as the framework for consulting IGOs***

Finally, the Joint Policy must address the implications of Canada's adoption of the UN Declaration on a range of issues. We note that the recent Expert Panel Review of Environmental Assessment Processes report to the federal Minister of Environment and Climate Change directly considered and addressed the implications of Canada's adoption of the UN Declaration, and made findings and recommendations on how UN Declaration should be applied to impact assessments:

There are many opportunities to reflect the principles of UN Declaration within IA legislation, processes and procedures. These principles are a natural fit with the goal of increasing Indigenous participation and consultation, especially with respect to addressing impacts to Aboriginal and treaty rights and interests. Reflecting these principles within IA would also contribute toward the broader goal of reconciliation with Indigenous Groups.<sup>15</sup>

The Expert Panel Report also cited a number of UN Declaration principles that should be more generally incorporated in policy and legislation, including the:

- Right to self-determination (Articles 3, 4, and 5)
- Right to participate in decision-making and maintain institutions (Articles 18, 19, 34 and 40)
- Right to set own priorities and strategies (Article 23)
- Right to make decisions over traditional territory (Articles 26 and 29)
- Right to free, prior and informed consent (Article 32)
- Right to culture (Articles 8, 11, and 25)

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<sup>14</sup> *Chippewas*, paragraph 34.

<sup>15</sup> Expert Panel Review of Environmental Assessment Processes, *Building Common Ground, A New Vision for Impact Assessment in Canada, The Final Report of the Expert Panel for the Review of Environmental Assessment Processes*, Her Majesty the Queen in Right of Canada, as represented by the Minister of Environment and Climate Change, 2017 [Expert Panel Review], page 28.

- Right to maintain and protect Indigenous knowledge (Article 31)
- Right to financial assistance (Article 39)<sup>16</sup>

In broad terms, the UN Declaration provides a normative framework against which the current Board policies can be evaluated, and a range of considerations that can be reflected in the updated Joint Policy.

Significantly, the UN Declaration speaks to the central importance of free, prior and informed consent (“FPIC”). FPIC is fundamentally about mutual respect, trust and collaborative decision-making between public governments and IGOs.

We address FPIC in detail in the following section of this submission.

## **2. High level topics that should be added or updated in the Joint Policy?**

Building on our outline of the key gaps in the first section of this submission, we note the central importance of FPIC. This is a major gap in the existing policies, and filling this gap must be a priority for the Joint Policy development process.

### ***The Joint Policy must address Free Prior and Informed Consent***

The Expert Panel Report sets out four fundamental principles for impact assessments that in our view apply broadly to all aspects of Board process: they must promote transparency, inclusiveness, be informative and meaningful.

The Expert Panel recommended that impact assessment should be fundamentally based on collaborative consent, where Indigenous Peoples are deemed to be decision-makers on par with other levels of government.<sup>17</sup> The Expert Panel also directly addressed the “veto” question, noting that:

...free, prior and informed consent (FPIC) is not necessarily a veto but a process of mutual respect, trust and collaborative decision-making grounded in the recognition of Indigenous Peoples as equal partners.<sup>18</sup>

This will require the Joint Policy to promote, in what the Federal Court in *Tsleil-Waututh* described as “considered, meaningful two-way dialogue...that should lead to a demonstrably serious consideration of accommodation. The Crown must be prepared to make changes to its proposed actions based on information and insight obtained through consultation.”<sup>19</sup>

We also note that British Columbia has formally adopted FPIC within their renewed EA process.<sup>20</sup> The regulatory Boards in the Northwest Territories have often been seen as a leaders in effective engagement and consultations with Indigenous peoples, but British Columbia has now set a new national bar.

<sup>16</sup> Expert Panel Review, page 29.

<sup>17</sup> Expert Panel Review, page 30.

<sup>18</sup> Expert Panel Review, page 28.

<sup>19</sup> *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, paragraphs 564-565.

<sup>20</sup> Bill 51 – *Environmental Assessment Act*, online: <<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/progress-of-bills>>. Royal Assent received 28 Nov 2018, not yet in force.

We recommend the BC Environmental Assessment Office publication on *Addressing Free, Prior and Informed Consent within the context of UN Declaration and Environmental Assessments* ("BC EAO Policy") to the Boards for their consideration in developing the Joint Policy.<sup>21</sup>

The BC EAO Policy sets out how their new environmental assessment process will implement the UN Declaration and FPIC:

...it is designed to ensure that any decision taken on the question of consent by an Indigenous nation is free, prior and informed. Respectful of their own Indigenous laws, traditions and right of self-determination, a key objective of the new EA process is to create the opportunity for Indigenous nations to make a decision on consent. It is an objective that proponents, the Province and Indigenous nations should be working to achieve. The new EA process facilitates that objective throughout the process.

Significantly, the BC EAO Policy provides formal opportunities for Indigenous Nations to provide their consent at key points throughout the EA process, including any exemptions from the EA, terminations from the process, and the final decision by Ministers as to whether or not to issue an EA approval, and requires Ministers to consider consent or lack of consent of any participating Indigenous Nations prior to deciding whether or not to issue an EA approval.

In our view, the Joint Policy should adopt these best practices, and seek to integrate collaborative consent-building as the default approach for developing Board decisions and making recommendations. As noted by the Expert Panel, this will require appropriate accountability mechanisms to ensure that where collaborative consent is not achieved, all decision-makers are required to act reasonably and responsibly in efforts to narrow the issues in dispute, and to ensure that the responsibilities of all parties are upheld:

Collaboration with all parties, especially Indigenous Groups, is key to the success of IA processes in general. Consent should therefore be provided under a collaborative framework which would include dispute resolution processes at decision points. Parties would have various options available to them to review the reasonableness of all decisions, including the reasonableness of Indigenous Groups withholding their consent. This is consistent with the responsibilities and limitations associated with any jurisdiction (i.e., federal or provincial governments) and does not hinder or otherwise compromise the right to FPIC.<sup>22</sup>

We recommend that above considerations as high-level objectives that should be integrated into the Joint Policy.

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<sup>21</sup> British Columbia Environmental Assessment Office, *Free, Prior and Informed Consent within the context of UN Declaration and Environmental Assessments*, British Columbia Environmental Protection and Sustainability, online:<[https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/environmental-assessment-revitalization/documents/free\\_prior\\_informed\\_consent\\_in\\_an\\_ea\\_context.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/environmental-assessment-revitalization/documents/free_prior_informed_consent_in_an_ea_context.pdf)>

<sup>22</sup> Expert Panel Review, page 29.

### 3. How parties wish to be engaged during the public review period?

Finally, we recommend three goals for the policy development process:

1. Ensuring that the Board's policies, processes and procedures for consultation and accommodation are updated so that they reflect developments in Canadian law and the UN Declaration;
2. Adopting "collaboration, cooperation and consent" as the core values of the Joint Policy, informing the processes and procedures deep consultation and direct participation by IGOs in the decision-making processes adopted by the Boards.
3. Enabling IGOs to fully participate in Board processes, including addressing resourcing and funding gaps.

These goals cannot be achieved with consultation after the Joint Policy is substantively developed by Board staff—collaboration will be required at the outset. IGOs will need to be meaningfully engaged with the Boards in co-developing and co-drafting the new Joint Policy.

As a model for co-development and co-drafting, we recommend consideration of the process adopted by the GNWT to develop the new territorial protected areas and mineral resource legislation. IGOs were engaged from the outset of those processes in setting priorities, framing objectives, and iteratively developing the draft legislation. This was not a "stakeholder consultation exercise" – IGOs participated on a government-to-government basis. Drafts were only put out for public review once a significant degree of consensus on the core elements of the proposals.

KFN and DFN propose that the Joint Policy drafting process proceed in a similar manner. We suggest that the initial work be done through a process involving the Indigenous governments, Canada, the GNWT and the Boards, with a view to developing the goals, objectives and key elements of the Joint Policy proposals prior to broader public engagement.

This approach will help ensure that the process of developing the Joint Policy reflects the outcomes that our clients desire: the recognition of IGOs as equal partners in Board processes, working together in mutual respect, trust and through collaborative decision-making to carry out our respective responsibilities to ensure that the concerns of Indigenous peoples and the general public are taken into account so that the protection of the social, cultural, and economic well-being of residents of the Mackenzie Valley and the well-being and way of life of Indigenous peoples can be achieved.

We would be pleased to discuss this further with the Boards so that the workplans and budgets for this process will reflect the scope of the engagement that will be required.

Sincerely,



OLTHUIS KLEER TOWNSHEND LLP  
per: Larry D. Innes

cc: Chief April Martel, Kát'odeeche First Nation  
Grand Chief Gladys Norwegian, Dehcho First Nations

# Land and Water Boards of the Mackenzie Valley



## Engagement and Consultation Policy Update Workshop Summary Report June 9 and 10, 2021

Mackenzie Valley  
**Review Board**



## **Introduction**

The Land and Water Boards of the Mackenzie Valley (Gwich'in, Sahtu, Wek'èezhii, and Mackenzie Valley Land and Water Boards) and the Mackenzie Valley Environmental Impact Review Board (MVEIRB) are working toward the development of a joint Engagement and Consultation Policy. The joint policy will update the existing MVLWB [Policy](#), which MVEIRB [adopted](#) on an interim basis, and expand the policy to include MVEIRB environmental assessment and environmental impact review processes.

As part of early engagement efforts to inform the policy, the Boards sought early feedback in Fall 2019,<sup>1</sup> held one-to-one meetings beginning in Fall 2019 through to Summer 2021, and hosted virtual workshops on June 9 and 10, 2021. Organizations that were engaged either via one-to-one meetings and/or were invited to participate in the workshop are listed in Appendix 1. The June 9 workshop focused on Consultation Roles and Responsibilities, and Indigenous Governments and Organizations, and representatives of the Governments of Canada/NWT were invited. The June 10 workshop focused on Proponent Engagement and Board Procedures, and Indigenous Governments and Organizations, representatives of the Governments of Canada/NWT, and Industry organizations/representatives were invited. The workshop topics and format were informed by the feedback received prior to that date. This Report has been circulated for input to all attendees of the workshop. The final draft reflects parties' comments, summarizes what we heard at the workshop, and informs Policy drafting.

## **What we heard**

### ***Consultation Roles and Responsibilities***

There was lengthy discussion and clarification around respective roles and how consultation is carried out by the Boards and the Governments of Canada/NWT<sup>2</sup>. Questions centered on differentiating between the Boards' and the Governments of Canada/NWT's responsibilities, what the Governments of Canada/NWT rely on in the Board's processes, and how they assess the adequacy of those processes and the consultation therein, as well as how the Boards and Governments of Canada/NWT determine who is consulted. Participants noted the need for the Policy to further clarify between engagement, Board consultation, and Government of Canada/NWT consultation, and the need for a better understanding of how the Boards' regulatory and EIA processes assist the Governments of Canada/NWT in fulfilling their duty to consult.

Beyond the formal roles and obligations of the Boards and Governments of Canada/NWT, participants shared ideas for improving consultation and decision-making. Among them were moving towards more flexible consultation approaches that rely on community protocols; this may include things like engagement and consultation planning and communities selecting representatives to participate in hearings. Other ideas to improve consultation were to include a validation step before final ministerial decisions, whereby Indigenous Governments and Organizations (IGO's) and communities can review draft conditions and measures following a Board recommendation and incorporate consensus-building strategies into decision-making. Overall, the theme of these conversations came down to more active involvement of IGO's in decision-making.

Participants discussed the need for all parties to have a clearer sense of what their responsibilities are, and for those that have fiduciary responsibilities to be at the table and to fully understand Indigenous

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<sup>1</sup> Initial communication about the intent to develop a joint policy on Engagement and Consultation was done by email to all users of the Boards online review system (ORS) on August 14, 2019.

<sup>2</sup> This is commonly referred to as "Crown Consultation", however, parties indicated their opposition to this term during engagement on the Policy.

Peoples' views and perspectives. Parties recommended that the Policy should align with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the *Truth and Reconciliation Commission of Canada: Calls to Action*.

### ***Expectations for Applicant Engagement***

Participants discussed engagement requirements for applicants and holders of land use permits and water licences (herein referred to as “applicants”), focusing on community expectations and how to improve early engagement for both applicants and communities. While there was a general consensus on the importance and value of early engagement in communities, a number of challenges emerged in the discussions, including applicant capacity and matching project scope to the level of engagement required, and balancing the benefits of early engagement (dialogue, relationship-building) and the engagement “load” on communities. Some solutions brought forward included defining engagement triggers or requirements by development type (to increase certainty for applicants), more active involvement from the Boards in facilitating applicant engagement, and potential government funding for engagement.

Despite the challenges, the conversations highlighted the importance of early engagement for enabling dialogue and understanding of local perspectives and history, that early engagement should be happening in the early “ideas” phase, and the importance of collaborative project planning. The willingness to engage and come to communities remains foundational for fostering positive relationships and collaboration. Of note was also the importance of developing the engagement approach *with* communities and following local protocols whenever possible, and the need for verification and agreement on engagement records and plans. Regional engagement approaches were discussed to improve efficiency but recognized the challenges of engaging with diverse IGO and municipal governments with different interests and priorities, as well as leadership and political structures. Parties suggested that the Boards should consider different engagement requirements for certain types of proponents (e.g., potential exemptions for IGO proponents) and that any engagement should be in consideration of the scope, scale, and context of the Project.

The topic of Traditional Knowledge (TK) was discussed at length. Parties voiced the importance of local protocols for TK (e.g., ownership, use of TK, and agreements) and starting the discussion about the use of TK early in the ideas phase of a project.

### ***Capacity Challenges***

Capacity was an obvious issue for IGO's, from the very beginning where the government is asking IGOs to identify the potential infringement on rights, to trying to obtain funding for a review, to having the people, technical, and financial capacity to participate in the review, to trying to work in a regimented schedule. It was emphasized that reliable long-term funding and support is essential.

Participants questioned how IGO's can identify the scope of the duty to consult if there is not capacity to do so. Participant funding for environmental assessment was acknowledged as a positive step but participants voiced significant concerns with the lack of consistent and reliable funding to participate in Land and Water Board processes, which make up the large majority of required day-to-day regulatory involvement for IGOs. Further, there is a funding gap with “front-end loading” of engagement despite the Governments of Canada/NWT's reliance on it and the Board's engagement requirements.

Participants also noted that there is no control over the timing of applications, the timelines for review, and that there are competing demands on their limited resources including other internal and external initiatives, policies, and processes. Participants noted the strong need for more collaboration between

federal and territorial consultation activities to reduce consultation fatigue. Participants recognized that all parties need to work together in a combined effort to make sure the most important things get sufficient attention, and that engagement and involvement should match the scale of the project.

Participants commented that the lack of comments does not always mean a lack of concern or impacts – a community not being engaged in an optimal way could result in their comments and perspectives being lost. This further underlined the importance of engagement and consultation planning with communities and tailoring the approach to the specific needs of each.

Participants also suggested a more efficient and collaborative approach to engagement such as regional strategic assessments/regional mineral development strategies and multi-project engagement approaches to reduce consultation fatigue and mitigate capacity issues.

### ***Communication and Support***

IGOs noted that they do not know which government (e.g., federal, or territorial) departments to speak with for questions about consultation and rights infringement, and funding/resources questions and issues. Industry participants noted that it is sometimes difficult to determine the appropriate community contacts for engagement. Suggestions included the Boards housing an online contact list that is regularly maintained to update changes, taking a more active role in facilitating proponent engagement, and having a dedicated Board staff as a central contact for the Boards that would do more regular and systematic check-ins and updates that are coordinated (multiple projects/initiatives for efficiency), and assist with training new staff on Board processes.

Most parties seem to agree that plain language and Indigenous language resources (e.g., interpretation services) are very important. Participants also recommended that more Board-organized community education opportunities occur. These may include workshops in advance of hearings, regular coordinated updates on all files and activities, and a dedicated Board engagement staff for regular coordinated engagement check-ins/updates and to help with training new staff and providing resources on the Boards' processes. Participants remarked that it can be frustrating when engagement and the engaged parties are too broad and emphasized the importance of speaking with the right local people early and understanding their concerns. The importance of Board accountability and transparency for decisions (e.g., how, and where issues were resolved and how comments were considered) was also noted.

### **Next Steps**

Board staff will be drafting updates to the Policy considering input heard during all engagement to date. A public review of the updated Draft Policy is anticipated for Fall 2021. If parties have additional comments about the Policy, please reach out to Board staff at any time.

**Appendix 1: Organizations engaged via one-to-one meetings and/or were invited to participate in the June 9 and 10 workshop.**

Acho Dene Koe First Nation (ADKFN)  
Akaitcho IMA Office  
Aklavik (Ehdiitat) RRC  
Athabasca Dëne Sų́íné  
Canadian Northern Economic Development Agency (CANNOR) - Northern Projects Management Office  
City of Yellowknife  
Colville Lake Renewable Resources Council  
Crown-Indigenous Relations and Northern Affairs Canada/Government of Canada  
Deh Gáh Got'ie Dene First Nation  
Dehcho First Nations (DFN)  
Déljnę Got'ine Government  
Déljnę Renewable Resources Council  
Dene Tha' First Nation  
Deninu Kų́é First Nation (DKFN)  
Fort Good Hope Renewable Resources Council  
Fort McPherson (Tetlit) RRC  
Fort Norman Metis Land Corp  
Fort Resolution Métis Government (FRMG)  
Ghotlenene K'odtineh Dene (formerly Manitoba Dëne Sų́íné)  
GNWT (ITI)  
GNWT (Lands)  
Gwich'in Renewable Resources Board  
Gwich'in Tribal Council  
Inuvik (Nihtat) RRC  
Kaska Dena Council (BC)  
K'atl'odeeche First Nation (KFN)  
Kitikmeot Inuit Association  
Łíídlj Kų́é First Nation  
Łutselk'e Dene First Nation (LKDFN)  
Mining Association of Canada (MAC)  
Nę K'ə Dene Ts'jł Forum  
Ni Hadi Xa  
Norman Wells Renewable Resources Council  
North Slave Metis Alliance  
NWT Chamber of Mines and industry representatives  
NWT Métis Nation (NWTMN)  
Sahtu Renewable Resources Board  
Sahtu Secretariat Inc. (SSI)  
Salt River First Nation  
Smiths Landing First Nation  
Tjchq Government  
Town of Hay River  
Tsiigehtchic (Gwichya Gwich'in RRC)  
Tulita Renewable Resources Council  
Wek'èezhì Renewable Resources Board  
West Point First Nation  
Yellowknives Dene First Nation (YKDFN)

**Reviewer Comments and Proponent Responses: Public Review June 15 - September 8, 2022**

Project: Draft LWB Engagement and Consultation Policy (Update)

Board: Mackenzie Valley Land and Water Board

Organization: MVLWB

Organization	ID	Topic	Reviewer Comment	Reviewer Recommendation	LWB Staff Response
GNWT-Lands - Dr. Melissa Pink	1	Cover letter ☒	GNWT's covering letter ☒	☒	n/a
GNWT-Lands - Dr. Melissa Pink	2	General ☒	The word "engagement" is sometimes capitalized and sometimes not. ☒	Recommend choosing a spelling and using it consistently throughout this policy. ☒	The appropriate revisions have been made.
GNWT-Lands - Dr. Melissa Pink	3	General ☒	The words Crown, Government of the NWT, GNWT, federal and territorial government, and Government of Canada, etc. are used interchangeably. The word government is sometimes capitalized and sometimes not. ☒	Recommend using one consistent term for Government of the NWT/GNWT/territorial government, one consistent term for Government of Canada/federal government, and being very clear and intentional about referring to the Crown rather than to government(s). Recommend using consistent capitalization throughout the document. ☒	The recommended revisions have been made.
GNWT-Lands - Dr. Melissa Pink	4	General ☒	The words "LWB(s)" and "Board(s)" are used interchangeably. ☒	Recommend using one wording/spelling and using it consistently throughout the document for clarity. ☒	The recommended revisions have been made.
GNWT-Lands - Dr. Melissa Pink	5	General ☒	The words "regulatory process" and "regulatory proceedings" are used interchangeably. ☒	For clarity, recommend using one term consistently throughout the document. A definition should also be added. ☒	The recommended revisions have been made.
GNWT-Lands - Dr. Melissa Pink	6	General - review process ☒	The document does not include a section indicating how frequently the document will be reviewed. ☒	Recommend adding a section setting out the LWBs' review and update process. ☒	The recommended revisions have been made (section 1.3)
GNWT-Lands - Dr. Melissa Pink	7	General - status of guidelines ☒	The document and accompanying ORS review item do not discuss how changes to the Policy will affect the LWBs' <i>Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits</i> . The GNWT understands from LWB staff that the LWBs intend to circulate proposed revisions to the Guidelines in 2023, after the approving an updated Policy. ☒	Recommend communicating to reviewers the proposed next steps for the LWBs' <i>Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits</i> . ☒	The process for the the Guideline update (anticipated 2023) will be communicated with the Policy update.

GNWT- Lands - Dr. Melissa Pink	8	Definitions - Applicant	The definition specifies "a person".	Can the applicant also be an organization? (Noting this definition is the same as in the LUP application guide).	The current definitions for 'applicant,' 'licensee,' and 'permittee' are consistent with the definitions in the LWBs' Rules of Procedure and with the way the prohibitions (licencing and permitting criteria) are written in the legislation, which states that "no person shall," without a licence/permit (as the case may be), carry out the activities listed. The legislation does not define licensee or permittee, but does not appear to limit the term 'person' to individuals, so this distinction is not necessary, and this definition has not been revised.
GNWT- Lands - Dr. Melissa Pink	9	Definitions - Application	It is unclear if storage authorizations are included in the definition of land use permit.	The Boards should clarify if storage authorizations are included in the definition of land use permit.	Storage Authorization applications would be included in the definition of "application". The definitions for land use permit and water licence are irrelevant to the document since it focuses on application and submissions as well as permittees and licensees. The definitions for permit and licence have been removed for simplicity.
GNWT- Lands - Dr. Melissa Pink	10	Definitions - Engagement plan	This definition uses the singular for the word party.	Recommend considering using the plural, parties.	The definition has not been changed as an Engagement Plan is required for each affected party.
GNWT- Lands - Dr. Melissa Pink	11	Definitions - "Indigenous Government/Organization"	The reference to "a Tłıchǫ First Nation" should be changed to "the Tłıchǫ First Nation".	Change "a Tłıchǫ First Nation" to "the Tłıchǫ First Nation".	Text has been revised.
GNWT- Lands - Dr. Melissa Pink	12	Definitions - Indigenous Government/Organization	The definition includes both "a Tłıchǫ First Nation" and "the Tłıchǫ Government".	Provide an explanation as to why both Tłıchǫ First Nation and Tłıchǫ Government are included (perhaps in a footnote).	This explanation has not been provided in the Policy as it reflects definitions from the MVRMA (i.e. "First Nation", Tlıcho First Nation", and "Tlıcho Government").
GNWT- Lands - Dr. Melissa Pink	13	Definitions - new	The words authorization and submission are used throughout this policy but are not defined.	Recommend adding a definition for " submission" and "authorization" or changing "authorization" to "licence and permit" throughout the policy.	terms have been clarified. "Authorization" has been generally changed to "licence and permit" in the document (except for one instance when referring to other non-LWB authorizations).



GNWT- Lands - Dr. Melissa Pink	14	Definitions - new	The terms Traditional Knowledge and Traditional Knowledge agreements are used repeatedly but no definitions are provided.	The Boards should consider adding definitions for these terms or refer the reader to the <i>Mackenzie Valley Environmental Impact Review Board's Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment</i> , which the LWBs have adopted on an interim basis.	A link to the LWBs' communication of interim adoption of the Review Board TK Guideline and a link to the TK Guideline have been included.
GNWT- Lands - Dr. Melissa Pink	15	1.0 Introduction	The Introduction starts with valuable background information, but the purpose of the document is not clear from the first page.	It is recommended to move Section 1.1 ahead of the background information in the introduction to capture the attention of readers.	Text has been revised.
GNWT- Lands - Dr. Melissa Pink	16	1.0 Introduction - Description of the NWT's location page 8	The introduction notes that "Canada's Northwest Territories (NWT) is located north of the 60th parallel, above Saskatchewan, Alberta, and eastern British Columbia, between the Yukon and Nunavut". While visually on a map the NWT is above the provinces, it is more accurate to describe it as north of the provinces instead of above.	Change the first sentence in the introduction to read "Canada's Northwest Territories (NWT) is located north of the 60th parallel, north of Saskatchewan, Alberta, and eastern British Columbia, between the Yukon and Nunavut".	The Introduction has been revised to address other comments and this comment is no longer applicable.
GNWT- Lands - Dr. Melissa Pink	17	1.0 Introduction - Last sentence of first paragraph page 8	This sentence could be misinterpreted as indicating that self-government agreements exist everywhere that land claims have been resolved.	Replace "and resource and self-government agreements are in place," with "and lands and resources agreements are in place".	The Introduction has been revised to address other comments and this comment is no longer applicable.
GNWT- Lands - Dr. Melissa Pink	18	1.0 Introduction - First sentence of second paragraph page 8	The second paragraph has a sentence that contains "...which was influenced by the land claims...". It does not include clear information on the links between Land Claim Agreements and the MVRMA.	The text stating "was influenced by" should be replaced with "resulted from".	Text has been revised.
GNWT- Lands - Dr. Melissa Pink	19	1.0 Introduction - First sentence of second paragraph page 8	The term "land claims" is not the best term to use in this sentence.	Replace "land claims" with "lands and resources agreement".	Revised to include this text.
GNWT- Lands - Dr. Melissa Pink	20	1.0 Introduction - Second sentence of third paragraph page 8	By including only what is set out in s. 114(c) of the MVRMA, this sentence could be read to imply, inaccurately, that this is the only reason for establishing an environmental assessment process.	This sentence should instead indicate that one purpose of Part 5 of the MVRMA is to do what is set out in s. 114(c).	Text has been revised.
GNWT- Lands - Dr. Melissa Pink	21	1.0 Introduction - Third paragraph page 8	This paragraph should refer to evaluation of impacts and establishment of appropriate mitigation and compensation measures under parts 3 and 4 of the MVRMA in addition to part 5. Given the lack of reference to parts 3 and 4 of the MVRMA, this paragraph inaccurately implies that all or almost all evaluation of impacts and establishment of appropriate mitigation and compensation measures occurs under part 5.	Add that in addition to carrying out the preliminary screening under part 5, LWBs also evaluate impacts as part of their process, under parts 3 and 4 of the MVRMA, in determining the conditions to include in a LUP/WL, and potentially compensation, to provide appropriate mitigation and, if applicable, compensation.	Text has been revised.
GNWT- Lands - Dr. Melissa Pink	22	1.0 Introduction - Third paragraph page 8	The words "development proposals" and "development" are not defined in this policy.	Recommend adding the definition of "development" from the MVRMA in the definition section.	The LWBs more typically use the word "project" instead of the EA-process term "development". Definition has been revised in line with more recent LWB guidance.
GNWT- Lands - Dr. Melissa Pink	23	1.0 Introduction - First sentence of first full paragraph on page 9	The deleted first sentence in the text above this paragraph should be the first sentence as it sets out a very important point in a clear way. The current first sentence should be moved to be the second sentence as the parties involved need to first be clarified/set out.	Make deleted first sentence in text above the first sentence of this paragraph "In meeting these objectives, the Boards...with respect to the issuance of LUPs and WLs" and make current first sentence "Given the collaborative system...meaningful involvement of affected parties" the second sentence of this paragraph.	Text has been revised.

GNWT-Lands - Dr. Melissa Pink	24	1.0 Introduction - First sentence of first full paragraph on page 9	A reference to traditional knowledge/Indigenous knowledge is missing.	After "the LWBs endorse the development of plans and protocols for land use and consultation/engagement," recommend adding reference to traditional knowledge/Indigenous knowledge.	References to traditional knowledge have been added to section 2.1. A link to the LWBs' communication of interim adoption of the Review Board TK Guideline and a link to the TK Guideline have also been included.
GNWT-Lands - Dr. Melissa Pink	25	1.0 Introduction - First sentence of first full paragraph on page 9	The meaning of "the collective roles in reconciliation" is not clear.	Recommend clarifying the meaning of "the collective roles in reconciliation".	A footnote describing the meaning of reconciliation has been added.
GNWT-Lands - Dr. Melissa Pink	26	1.0 Introduction - First paragraph second sentence page 9	It is unclear what is meant by "LWBs endorse the development of plans and protocols for land use and consultation/engagement by Indigenous Governments/Organizations."	Do the Boards want community specific engagement by applicants or are the Boards expressing support for efforts by IG's and IO's to develop their own plans and protocols? Recommend clarifying the meaning of this sentence.	This sentence has been removed as it is redundant and inferred from the sentence which accompanied it: "The LWBs encourage applicants to follow locally-developed protocols and to mutually develop agreed-upon engagement approaches with affected Indigenous governments/organizations well in advance of project planning". This sentence is now located in the Applicant Engagement section.
GNWT-Lands - Dr. Melissa Pink	27	Footnote 9 page 9	There are better references than the one used in the policy: <a href="https://www.fin.gov.nt.ca/sites/fin/files/icat/module-2/story_content/external_files/GNWT_rrr_english_brochure.pdf">https://www.fin.gov.nt.ca/sites/fin/files/icat/module-2/story_content/external_files/GNWT_rrr_english_brochure.pdf</a>	Recommend changing to GNWT's Approach to Consultation with Aboriginal Governments and organizations: <a href="https://www.eia.gov.nt.ca/sites/eia/files/aboriginal_consultation_approach.pdf">https://www.eia.gov.nt.ca/sites/eia/files/aboriginal_consultation_approach.pdf</a> . Note that the title of this document predates the GNWT's current use of the term "Indigenous."	This reference has been updated.
GNWT-Lands - Dr. Melissa Pink	28	1.0 Introduction - Second last paragraph page 9	With regards to "government reliance on board processes," the complete ORS consultation wording is not included in the Policy and is not discussed. The ORS consultation wording is important because it communicates to each reviewer, for every LWB proceeding, how consultation will be addressed.	Recommend including the complete ORS consultation wording in the Policy, and briefly explaining the process by which it was developed. Could cite the GNWT's October 20, 2020 letter to the Board chairs and the Boards' November 5, 2020 communique. These are more relevant references than footnote 10, which concerns government's approach to consultation during the MVEIRB process, which is not the subject of the Policy.	The reference has been updated with the LWB communique and GNWT letter. Correspondence with the Government of Canada about this wording was done via email.
GNWT-Lands - Dr. Melissa Pink	29	Figure 1	The duty to consult and accommodate should be in the LWBs' quarter of the figure too, as it is clear that they have this duty for all LUPs and WLS issued given the <i>Hamlet of Clyde River</i> and <i>Chippewas of the Thames</i> Supreme Court of Canada decisions.	The duty to consult and accommodate should be in the LWBs' quarter of the figure too, as it is clear that they have this duty for all LUPs and WLS issued given the <i>Hamlet of Clyde River</i> and <i>Chippewas of the Thames</i> Supreme Court of Canada decisions.	See response to GNWT-65.
GNWT-Lands - Dr. Melissa Pink	30	Figure 1	The LWBs' quarter should not refer to specific affected parties.	Recommend changing "Indigenous Peoples and the general public" to "affected parties".	Revised.

GNWT- Lands - Dr. Melissa Pink	31	Figure 1	As the Crown is not the final decision maker for LUPs and type B WLs with no hearing, and can only approve or not approve type B WLs with a hearing and type A WLs, the Crown is not involved in consultation and accommodation other than assessing adequacy where ministerial approval is required and, as set out in <i>Hamlet of Clyde River /Chippewas of the Thames</i> , having the ultimate responsibility to ensure the duty to consult and accommodate is fulfilled.	Replace reference to "duty to consult and accommodate" in Crown quarter of figure with "assess adequacy of consultation and accommodation if applicable + ultimate responsibility to ensure duty to consult and accommodate fulfilled."	See response to GNWT-65.
GNWT- Lands - Dr. Melissa Pink	32	Figure 1	It is unclear what is meant by "long-term and stable resources".	Recommend clarifying what is meant by resources. Does this mean financial resources?	Text has been removed from figure, but has been clarified in the text. Footnote in body of text further explains the capacity issue. The LWBs have communicated about the Northern Participant Funding program - readers can access letter dated November 30, 2021 from the MVLWB to the Minister of Northern Affairs here: <a href="http://registry.mvlwb.ca/library/Areas of Operations/Collaboration/LWB Letter to CIRNAC Minister - NPFP (Nov 30_21).pdf">http://registry.mvlwb.ca/library/Areas of Operations/Collaboration/LWB Letter to CIRNAC Minister - NPFP (Nov 30_21).pdf</a>
GNWT- Lands - Dr. Melissa Pink	33	Figure 1	The word IGO in the applicant quarter should be removed.	Recommend removing "for IGO". As stated in the paragraph above the title for Figure 1, the diagram is for the "meaningful consultation with all affected parties, including Indigenous Peoples in the Mackenzie Valley", not only for IGOs.	The figure has been revised.
GNWT- Lands - Dr. Melissa Pink	34	Figure 1	The word "development" is not defined in this policy.	Recommend adding the definition of "development" from the MVRMA in the definition section.	The LWBs have been using project for consistency and to reduce confusion instead of the more EA-process related definition of development. The definition in the Policy has been updated to a more relevant definition for project.

GNWT- Lands - Dr. Melissa Pink	35	1.1 Purpose and Objectives - Second Bullet ☒	It should be clarified that the second bullet refers to both Board Statutory Consultation and Crown Consultation. ☒	Indicate, in a footnote or otherwise, that the reference to "consultation" refers to both Board Statutory Consultation and Crown Consultation. ☒	This bullet is intended to refer to LWB Consultation (not Crown consultation). As described in Section 2.0: The LWBs' policy is to apply consultative approaches throughout a regulatory proceeding, which assists affected parties to contribute meaningfully towards the assessment of impacts on the environment and the establishment of appropriate mitigations; informs the LWBs' decisions in relation to licences and permits; and meets the LWBs' statutory responsibilities; and this may include assessing and ruling on the adequacy of Crown consultation, in the case where the LWB is the final decision-maker.
GNWT- Lands - Dr. Melissa Pink	36	1.2 Authority - First Sentence ☒	There is no reference under this heading to the section of the MVRMA that gives the LWBs the authority to create and amend this policy. ☒	Specify that s. 65 of the MVRMA gives the LWBs the authority to create and amend this policy. ☒	Text has been revised in section 1.2.
GNWT- Lands - Dr. Melissa Pink	37	1.3 Application ☒	There is no information on how the LWBs consider an applicant's past performance when applying the requirements of the engagement policy. ☒	Recommend adding a description of how the LWBs consider an applicant's past performance when applying the requirements of the engagement policy. Does an applicant with a longstanding good relationship with affected parties get treated differently than a new applicant or an applicant with a "bad" track record? ☒	The LWBs believe that applicants would inherently benefit if they have developed positive existing relationships, since conducting engagement for future applications and submissions would likely be more successful. The LWB uses the evidence provided to them during the course of a proceeding to make its decision.
GNWT- Lands - Dr. Melissa Pink	38	1.4 Guiding Principles - Accessibility bullet ☒	"Accommodates" should be changed to "accommodate". ☒	Change "accommodates" to "accommodate". ☒	"Accomodate" has been updated to "addressed" given the potential confusion with the former.
GNWT- Lands - Dr. Melissa Pink	39	1.4 Guiding Principles - Inclusiveness bullet ☒	The document acknowledges that "capacity challenges may exist" but does not propose solutions. ☒	Recommend adding some potential solutions - should the applicant provide funding? Should the applicant take additional time when there are capacity concerns? ☒	Text has been revised. The LWBs also note that they are taking additional steps to take more action about the general issue of capacity challenges such as working with all parties on identifying solutions (e.g. LWB Outreach Strategy, MVRMA workshop series). Further addressing this topic will also be considered during engagement on the Engagement Guideline update. For example, specific suggestions heard during engagement on this policy include: reminders to applicants and governments to be cognizant that people/communities may not be able to be on the same schedule, that government and company staff are being paid to do that engagement whereas community members may not be, that certain actions (e.g. providing dinner at evening meetings or resources for childcare) may make it easier for people to participate.

GNWT-Lands - Dr. Melissa Pink	40	1.4 Guiding Principles - Reasonableness bullet	It is unclear what is meant by "reasonable resources".	Recommend clarifying what is meant by reasonable resources. Does this mean financial resources?	Text has been clarified.
GNWT-Lands - Dr. Melissa Pink	41	1.4 Guiding Principles - Reflection bullet pages 12-13	Section 1.4 outlines the principles that guide the Land and Water Boards' decisions on any matter related to engagement and consultation. One of the guiding principles is reflection and under this heading it is stated that "Parties should work together to determine whether and how recommendations from affected parties can be incorporated. Applicants, licensees, and permittees should explain how engagement has been reflected in applications and submissions". Further to what is being proposed in the draft [policy, parties should be able to see how the Land and Water Boards have used information provided by parties on engagement and consultation in the Land and Water Boards' decision making.	Expand the bullet on reflection to include a commitment from the Land and Water Boards to reflect in their Reasons for Decisions the ways in which information provided by parties on engagement and consultation were included in the Land and Water Boards' decision making.	Section 2.2 describes the LWB statutory consultation approach. A bullet has been added to section 2.2 to clarify that the LWBs issue and make available written reasons for decision which details the factors considered by the Board, including aspects related to engagement and consultation.
GNWT-Lands - Dr. Melissa Pink	42	1.4 Guiding Principles	Adaptive management is not defined. The GNWT notes that adaptive management is defined and discussed in other LWB documents.	Recommend defining adaptive management in this document.	This definition is not fundamental to this Policy. It is included in other LWB documents (e.g. LWB AEMP Guideline).
GNWT-Lands - Dr. Melissa Pink	43	2.0 LWBs Approach - First sentence of final paragraph	As LWBs are always responsible for fulfilling Crown Consultation for any LUP or WL, it is not appropriate for this sentence to refer to what occurs if "there is evidence that the Crown's duty to consult and accommodate has not been met".	This sentence should be reframed to indicate what LWBs will do if there is, or how the LWBs will avoid there being, any potential for Crown Consultation (including accommodation) by the applicable LWB to be inadequate.	Additional detail has been added (section 2.3). The Policy also notes (footnote) that additional guidance regarding the assessment of adequacy of Crown consultation may be developed at a later date.
GNWT-Lands - Dr. Melissa Pink	44	2.0 LWBs Approach - First paragraph	The second and third bullet of the first list may be difficult if engagement is early enough that these concerns are not known. Wording needs to reflect that the goal of the entire engagement process is to achieve these 5 bullets, but that it may not be possible to get to each of them at each engagement session.	It is recommended to replace, "1. To require applicants to initiate dialogue and engagement planning early with affected parties, particularly affected Indigenous Governments/Organizations, well in advance of an application with the goal of:" With "1. To require applicants to initiate dialogue and engagement planning early with affected parties, particularly affected Indigenous Governments/Organizations, well in advance of an application, throughout the application and over the life of the project with the goal of:"	Bullet 3 has been revised to address the comment.

GNWT-Lands - Dr. Melissa Pink	45	2.0 LWBs Approach - under #2 page 13 ☒	<p>Section "2.0 LWB's Approach" item #2 (page 13) proposes changes which remove reference to the <i>Waters Act</i> and their regulations. However, similar to the MVRMA, the <i>Waters Act</i> contains statutory responsibilities that LWBs meet through applying a consultative approach. A reference to the <i>Waters Act</i> should be included in this section. It should also be clarified that the text is referring to the <i>Waters Act</i> and not the <i>Northwest Territories Water Act</i>.</p> <p>The proposed deletion, which GNWT disagrees with, is highlighted below:          "To apply consultative approaches throughout a regulatory proceeding, which assists affected parties to contribute meaningfully towards the assessment of impacts on the environment and the establishment of appropriate mitigations; informs the LWBs' decisions in relation to licences and permits; and meets the LWBs' statutory responsibilities pursuant to the MVRMA and the NWT Waters Act and their regulations.;" and" ☒</p>	The original text should be maintained with a revision to change the reference from the "NWT Waters Act" to the "Waters Act". ☒	Text has been revised.
GNWT-Lands - Dr. Melissa Pink	46	2.0 LWBs Approach - under # 2 page 13 ☒	The term "consultative approaches" is technical and could be simplified. ☒	Recommend changing to "a problem solving approach". ☒	This change has not been made but the policy provides more explanation about the LWBs' statutory consultative role.
GNWT-Lands - Dr. Melissa Pink	47	2.0 LWB Approach/2.1 Applicant Engagement ☒	<p>The first bullet in Section 2.0 reads "To require applicants...". Section 2.1 starts off with "It is the LWBs' expectation"</p> <p>These two statements conflict in that it is either a requirement or an expectation of the LWBs. ☒</p>	Alter the language in Section 2.0 and 2.1 to be consistent. Suggest using language that communicates a recommendation or best practice rather than a requirement. ☒	The Policy clarifies that early engagement is a requirement.
GNWT-Lands - Dr. Melissa Pink	48	2.1.1 Submission requirements under Engagement Record page 13 ☒	Sometimes applicants can face difficulties with potentially affected parties when attempting to engage (i.e., cancellations of agreed-to-meetings, changes to expectations, not providing comment within a reasonable amount of time, etc.). Not knowing how the Boards propose to address these situations, if they arise, decreases certainty for applicants. ☒	It would be beneficial to explain how the Boards consider situations where these difficulties arise. ☒	Additional text has been added. Further addressing this topic will also be considered during engagement on the Engagement Guideline update.
GNWT-Lands - Dr. Melissa Pink	49	2.1 Applicant Engagement - second last paragraph of this section (re best efforts) page 14 ☒	This policy does not provide information on the LWBs expectations' for disputes or what to do in the situation where an affected party refuses to engage. The related guidelines also do not speak to this point. ☒	Recommend adding some information on the expectations of LWBs for dispute resolution and what to do when an affected party refuses to engage. ☒	Revised and added text in section 2.1.1.
GNWT-Lands - Dr. Melissa Pink	50	2.1.1 Submission requirements under Engagement Plan page 14 ☒	<p>The wording "type and circumstances of a proposed project" is inconsistent with other wording in this policy.</p> <p>The wording "Examples are also provided to guide applicants working on smaller scale projects that likely require just one permit and which will likely have low or negligible impacts, versus larger projects that will require multiple permits and licences over a longer period of time and could have the potential for higher level impacts" is redundant. ☒</p>	Recommend changing to "based on the type of Board Authorization and scale of a proposed project (See Appendix B of the Guidelines for examples)." and deleting: "Examples are also provided to guide applicants working on smaller scale projects that likely require just one permit and which will likely have low or negligible impacts, versus larger projects that will require multiple permits and licences over a longer period of time and could have the potential for higher level impacts." ☒	Scalability has been identified as a major issue with reviewers (e.g. see June 2021 Engagement Policy Workshop Report). The text has been retained to ensure readers understand that engagement depends on the scale of the project.

GNWT-Lands - Dr. Melissa Pink	51	2.1.1 Submission requirements under Engagement Plan page 14-15	The last line of the first paragraph in this sections states: "It is important that the Engagement Plan be completed in collaboration with affected parties." 1) It would be helpful for applicants if the LWBs define "collaboration". This term can be subjective and also holds particular meaning in the field of public participation. 2) The phrase states that collaboration is important but does not provide further rationale or reasons. As indicated in the third paragraph of the same section, projects differ in scope. Some projects, such as linear infrastructure, can have multiple affected parties at differing levels of involvement and, consequently, differing engagement levels. As such the extent to which affected parties participate in the development of an engagement plan varies. It would be helpful if the LWBs indicate this in this section. As phrased, the statement also leaves a question as to whether there is a consequence for "non-collaboration".	1) Suggest defining what is meant by "collaboration". 2) Suggest qualifying the statement by using language such as, "to the extent feasible/possible" or "at an appropriate level" or similar language that reflects that "collaboration" may differ as projects vary in scope and scale.	The text has been updated to provide more detail about the expectation for collaboration. Considering this aspect is included in the Guidelines as well, this can be revisited during the Guideline review/update process.
GNWT-Lands - Dr. Melissa Pink	52	2.1.2 Assessment of Applicant Engagement under #1 page 14	It may be subjective to determine who the "appropriate parties" are.	Recommend modifying "appropriate" with "potentially affected" for consistency of wording throughout this policy.	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	53	2.1.2 Assessment of Applicant Engagement under #3 page 14	Regarding the Boards' assessment of the results of engagement, sometimes issues raised by parties are not matters that can be addressed by an applicant. The process would be more transparent if information was provided to applicants on how this assessment is done and the implications for the permitting process.	For greater certainty for applicants, and for transparency in the process, it is recommended to include information on how the Boards assess the reasonability of any issues being raised by an affected party.	The text has been clarified.
GNWT-Lands - Dr. Melissa Pink	54	Footnote 19 page 14	The period at the end of the first sentence of the footnote should be changed to a comma.	Change the period at the end of the first sentence of this footnote to a comma.	The text has been clarified.
GNWT-Lands - Dr. Melissa Pink	55	2.1.2 Assessment of Applicant Engagement - first paragraph, second sentence page 15	This sentence refers to the "Record and the Plan" which is an abbreviation that has not been previously defined.	Recommend changing to "the engagement record and the engagement plan".	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	56	2.1.2 Assessment of Applicant Engagement - first paragraph page 15	The wording "other parties" is unclear.	Recommend modifying "other parties" with "affected parties".	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	57	2.1 Applicant Engagement and 2.2 LWB Consultation	The second paragraph of both of these sections includes multiple instances of the term "Traditional Knowledge".	The flow of the second paragraph could be improved through revision or use TK as an abbreviation.	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	58	Figure 2	The diagram has text on a diagonal which is reducing readability.	It is recommended that the diagram be modified to be easier to read, such as moving the green portion to the bottom, having the yellow arrow point down and the yellow text boxes be altered to have horizontal text.	The figures have been updated.

GNWT-Lands - Dr. Melissa Pink	59	2.2 LWB Consultation - second paragraph page 19	Paragraph 2 of this section references Traditional Knowledge.	A reference to the Boards' upcoming TK policy or guideline should be included here, along with any resources to consider in the meantime such as the MVEIRB <i>Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment</i> (2005).	A link to the LWBs' communication of interim adoption of the Review Board TK Guideline and a link to the TK Guideline have been included.
GNWT-Lands - Dr. Melissa Pink	60	2.2 LWB Consultation - third bullet page 19	The bulleted list has "conducting public hearings".	To avoid confusion, a note should be included on when hearings are and are not held.	This is intended to be a general list and several of the elements are specific to certain situations, therefore the text has not been revised.
GNWT-Lands - Dr. Melissa Pink	61	2.2 LWB Consultation - fifth bullet page 19	The bulleted list of procedural elements that form part of the LWBs' consultation approach includes "Managing permits and licences after they have been issued". Compliance and enforcement is not mentioned in this list.	Recommend including compliance and enforcement in this list, and noting that GNWT and CIRNAC have compliance and enforcement responsibilities.	This list is intended to outline the LWBs' consultation approach, therefore the text has not been revised.
GNWT-Lands - Dr. Melissa Pink	62	2.2 LWB Consultation - sentence above Table 1 page 20	In the description ahead of Table 1 the document says "The formal obligations are listed here but the Board notes that meaningful engagement and consultation is, most importantly, best practice." This is also included as footnote 26.	The wording "most importantly" seems unclear. Does it apply to best practice or meaningful? Recommend deleting "most importantly", not to indicate that it isn't important, but to make the sentence clearer. Recommend deleting footnote 26.	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	63	Table 1	Table 1: In "Focus of Discussions" and "who is engaged/consulted" rows, the term "Indigenous rights" is used.	Indigenous should be changed to Aboriginal rights, as this is legal terminology. Recommend changing to "potential adverse impacts to asserted or established Aboriginal and/or Treaty rights".	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	64	Table 1	Table 1: In "Goal" row, the term "Reconciliation" is used.	Recommend changing "Reconciliation" to "Reconciliation, including accommodation, where appropriate, of potential adverse impacts to asserted or established Aboriginal and/or Treaty rights".	The text has been revised, but to reflect LWB position that accommodation is not encompassed by reconciliation, but is its own legal requirement.
GNWT-Lands - Dr. Melissa Pink	65	2.2 LWB Consultation - Paragraph on page 19-20	The LWBs' view that they do not have a constitutional duty to consult and accommodate is inconsistent with the Supreme Court of Canada decisions in Hamlet of Clyde River and Chippewas of the Thames. The SCC's determination in Hamlet of Clyde River that the NEB, as a board with all procedural and remedial powers to fulfill the duty to consult and accommodate, must conform to s. 35(1) of the Constitution Act, 1982 also applies to the LWBs as the LWBs have such those same powers. The quote from Hamlet of Clyde River included in footnote 25 in isolation does not accurately reflect the key parts of the SCC's decision. The Hamlet of Clyde River and Chippewas of the Thames decisions likely make the quote from Tseil-Waututh Nation outdated and an incomplete indication of the current law.	Change this paragraph to indicate, consistent with the SCC's Hamlet of Clyde River and Chippewas of the Thames decisions, that a LWB must fulfill the duty to consult (through its process) and, if appropriate, accommodate (through inclusion of appropriate condition(s)) for Crown Consultation for every application for a LUP or type B WL with no hearing.	The original comment and recommendation was requested to be updated by GNWT following conversations between GNWT staff/legal and LWB staff/legal. The text of the policy has been clarified to reflect the final LWB position.

GNWT-Lands - Dr. Melissa Pink	66	2.2 LWB Consultation - Paragraph at bottom of page 20 ☐	A LWB must for every LUP and type B WL application with no hearing assess adequacy of consultation and, if appropriate, accommodation and fulfill the Crown's duty to consult and accommodate prior to issuing a permit or licence or submitting a licence for ministerial approval. If it is the final decision maker, a LWB must also take these steps for any proceeding relating to a matter that has the potential to have adverse impacts on any asserted or established Aboriginal and/or treaty rights. This paragraph inaccurately implies that a LWB is not necessarily responsible for fulfilling the Crown's duty to consult and accommodate for every LUP and type B WL application with no hearing and applicable proceedings; only that the LWB assesses adequacy. ☐	Change this paragraph to indicate that a LWB must fulfill the Crown's duty to consult (through its process) and, if appropriate, accommodate (through inclusion of appropriate condition(s)) for every LUP and type B WL application with no hearing and any proceeding relating to a matter that has the potential to have adverse impacts on any asserted or established Aboriginal and/or treaty rights if a LWB is the final decision maker prior to issuing or submitting to the Minister for approval, in addition to assessing adequacy of consultation.	The original comment and recommendation was requested to be updated by GNWT following conversations with LWB staff and legal. Text of policy has been clarified to reflect the final LWB position.
GNWT-Lands - Dr. Melissa Pink	67	2.2 LWB Consultation - Paragraph at bottom of page 20 ☐	This paragraph is not reconcilable with the first two sentences of the paragraph from pages 19-20. In those sentences, the LWBs take the position that they have no constitutional duty to consult. Yet, in the paragraph at the bottom of page 20, the LWBs seem to acknowledge, at least for type A WLs and type B WLs with a hearing, that the only way that the constitutional duty to consult can be fulfilled is through proponent engagement and the LWB's process. The determination by the SCC in Hamlet of Clyde River, that a board with sufficient powers, such as an LWB, must conform to s. 35(1) of the Constitution Act, 1982 logically follows.	As per the two rows above. ☐	Original comment updated following conversations with LWB staff and legal. Text of policy has been clarified to reflect LWB position.
GNWT-Lands - Dr. Melissa Pink	68	2.2 LWB Consultation - Paragraph at bottom of page 20 ☐	It is unclear what the criteria the Boards use to assess if the Crown's duty to consult and accommodate has been met. ☐	To increase certainty and transparency for proponents, please include the criteria that the Boards use when assessing if the Crown's duty to consult and accommodate has been met. ☐	Text has been added indicating that the Board will rely on its Rules of Procedure and may develop additional guidance, if needed.
GNWT-Lands - Dr. Melissa Pink	69	Figure 3 ☐	In the sentence at the bottom of the figure, the caption, including the wording "might rely" is inaccurate. ☐	Change "might rely" to "rely on the LWBs' procedures, including engagement information filed by applicants, to fulfill the duty to consult". ☐	Text has been revised.
GNWT-Lands - Dr. Melissa Pink	70	Definitions and acronyms ☐	Engagement plan - "over the life of the project." Applicants are not to just "go over" the project but plan precise engagements steps throughout the project. ☐	Recommend changing the term "over" with "throughout". ☐	Text has been revised to use "throughout" rather than "over".
GNWT-Lands - Dr. Melissa Pink	71	Purpose and objectives 1.1, page 11 ☐	Submission requirements for applicants, permittees, and licensees and holders of permits and licences pertaining to early (pre- submission) and ongoing "life-of-Project". ☐	Please specify a timeline/timeframe/days/months prior to submitting an application. ☐	Guidance about submission timelines is provided in the LWB guidance for applications.
GNWT-Lands - Dr. Melissa Pink	72	Guiding Principles 1.4 page 12 ☐	"Building good relationships involves mutual respect, openness". ☐	Suggest using "Building positive relationships". ☐	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	73	Guiding Principles 1.4 page 12 ☐	"processes in the spirit of cooperation". ☐	Suggest adding in "and respect" to the end of the sentence. ☐	The text has been revised to include 'respect'.
GNWT-Lands - Dr. Melissa Pink	74	LWBS" Approach 2.0, first bullet page 13 page 12 ☐	Re: "identifying concerns and potential environmental impacts", recommend including the term "adverse" before environmental impacts. Impacts can be adverse or beneficial; it is the adverse effects that are harmful to the people and surrounding environment. ☐	Recommend rewording as "identifying concerns and potential adverse environmental impacts". ☐	The text has not been revised. The determination of whether an impact is adverse or beneficial is subjective and is up to the affected party.

GNWT-Lands - Dr. Melissa Pink	75	Applicant engagement 2.1 - first paragraph page 13	The word "ideas" is vague in: "It is the LWBs' expectation that every applicant initiates dialogue early during the ideas /planning stages.."	Recommend using another term besides "ideas," such as the "discovery, or findings, or exploration reports, or sample testing." Recommend using wording that is more specific to project phases and that triggers the initiative/planning portion for applicants to move forward with a project.	The text has been revised.
GNWT-Lands - Dr. Melissa Pink	76	Submission Requirements 2.1.1 - Engagement Plan page 14	"(e.g. projects with more potential impacts will typically require more engagement than others)".	Recommend adding the term "adverse" before impacts for consistency with other comments.	The text has not been revised. The determination of whether an impact is adverse or beneficial is subjective and is up to the affected party.
GNWT-Lands - Dr. Melissa Pink	77	Submission Requirements 2.1.1 - Engagement Plan, page 15	The following sentence does not specify that it refers to adverse impacts: "licences over a longer period of time and could have the potential for impacts."	Recommend changing the sentence to "licences over longer periods of time and could have the potential for <b>adverse</b> impacts."	The text has not been revised. The determination of whether an impact is adverse or beneficial is subjective and is up to the affected party.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	1	Map - Page 3	There is a missing accent on the map depicting the Sahtú management area.	It is recommended to add the accent on the "u" in Sahtú.	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	2	General	It might be beneficial to the reader to have consistent terminology and spelling throughout the document - e.g. Indigenous <u>p</u> eoples and Indigenous <u>P</u> eoples are both used.	It is recommended that "Indigenous peoples" be used, as typically "peoples" is not capitalized and that the word Aboriginal be capitalized (see pg.8)	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	3	Definitions: Boards (LWBs) - Page 4	This detailed information is elsewhere in the body of the text and in footnote 4.	It is recommended that a simpler definition such as: <i>The Land and Water Boards of the Mackenzie Valley established by the Mackenzie Valley Resource Management Act (MVRMA), including the Mackenzie Valley, Gwich'in, Sahtu, and Wek'èezhii Land and Water Boards</i> be used for this section.	The footnote definition has been removed and the details retained in the definitions section.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	4	Definitions: Board statutory consultation - Page 5	Adding board here miss the message that <u>a</u> ll parties who need to consult as per CLCA and MVRMA must abide by this statutory consultation process/definition	it is recommended that just statutory consultation be used here.	The text has not been revised as the statutory consultation referred to in this Policy applies only to the LWB.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	5	Definitions: Engagement Plan - Page 5 ☐	It would be good to specify engagement between the applicant and affected parties (as in the two preceding definitions) in this definition, so as not to confuse other types of engagement planning (e.g. Review Board is now doing engagement planning with parties to EAs). It should be noted that engagement should be an integral part of the closure and reclamation activities. ☐	It is recommended that "engagement between the applicant and affected parties" be added. ☐	The text has been clarified.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	6	Definitions: Crown Consultation <b>footnote 1</b> - Page 5 ☐	It is confusing to have a definition in the footnote, especially a long one. The definition of Crown consultation is sufficient for the purpose of the document. ☐	It is recommended that the definition of the Crown be removed from the footnotes of this page. Should the board wish to define the Crown it is suggested that the following sentence be added to the end of the "Crown Consultation" definition: the Crown's common law duty to consult and accommodate regarding adverse impacts to established or asserted Aboriginal[2] and Treaty Rights protected by section 35 of the Constitution Act, 1982, generally in respect of decisions of the executive branch of the government. ☐	The rationale for including the text in the footnote was to address comments made during engagement regarding issues with the term "the Crown", however, the term has been retained for legal clarity. Interested parties may access resources such as: <a href="https://www.canada.ca/en/canadian-heritage/services/crown-canada/about.html">https://www.canada.ca/en/canadian-heritage/services/crown-canada/about.html</a> for more information about where the term "the Crown" originates from.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	7	Definitions: Aboriginal and Treaty Rights - Page 6 ☐	It might be worth noting in the definition the legal aspects and that these rights are recognized and affirmed by Section 35 of the Constitution Act, 1982. ☐	it is recommended that consideration be given to including reference to section 35 and that footnote 2 be moved to this section and be amended to read: The rights recognized and affirmed under s 35 of <i>the Constiution Act</i> . ☐	The footnote has been updated to include that "Aboriginal and Treaty Rights are recognized and affirmed by s35 of the <i>Constitution Act</i> ".
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	8	Definitions: Indigenous Government/Organization - Page 6 ☐	The acronym IGO is used in the document which may be confusing as the acronym was not included in the definitions nor is it explained elsewhere. ☐	It is recommended that the acronym be included with the definition of Indigenous Government/Organization ☐	The acronym "IGO" has not been included in the document. Please refer to response to AKDFN-3.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	9	Definitions: Life of Project ☐	A definition for "Life of project" is not included in this section nor is it defined elsewhere in the document. This would be helpful for readers to understand what the term is and all that it includes when encountering this term throughout the document. ☐	It is recommend that a definition for "life of project" be developed to be included in this section. ☐	The text has been revised to include a description of life of project (includes all phases of the project from construction and operation through closure and reclamation). Figure 2 and 3 have also been added to explain this concept.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	10	Introduction: 2nd para footnote 4 - Page 8 ☐	Whereas Part 3 establishes regional boards it is Part 4 that establishes them as regional panels of the MVLWB ☐	It is recommended that the typo be corrected. ☐	The applicable text has been removed from the footnote since it is found in the definition (Boards).
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	11	Introduction : 5th paragraph - Page 9 ☐	This paragraph should be revised and expanded on with information from section 2.2 (as it provides information about the different roles and types of consultation). ORS language should be used here when referencing submissions and reliance on the board process. ☐	It is recommend information from section 2.2 LWB Consultation be moved here (Please note the comments and recommendation regarding section 2.2 below).  Please consider using the following: <i>The Crown relies on the Board's process as the primary means to fulfill its duty to consult with Indigenous Peoples and, if appropriate, accommodate potential adverse impacts to asserted or established Aboriginal and/or Treaty rights resulting from any decisions by the federal government, territorial government, or Board</i> and adding: <i>For example, the Crown has provided notification of their reliance on the Boards' processes (see examples) and the collaborative nature on territorial and federal consultation.</i> ☐	Reference to the LWBs' Online Review System wording has been included as a footnote.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	12	Introduction : footnotes 8 to 10 - Page 9 ☐	Footnotes 8 to 10 could be revised to include ORS language as well as a reference to relevant jurisprudence. Footnote 25 does include reference to jurisprudence; some of this information could be brought up into body of the policy (e.g. that the Crown does not delegate responsibility to the Board).  We note that the Principles referenced in Footnote 9 do provide overall guidance and speak to reconciliation objectives; it does not provide specific details regarding Crown consultation. ☐	Similar to above, the inclusion of references to the ORS language is recommended, as well as adding references to relevant jurisprudence: (Clyde River (Hamlet) v. Petroleum Geo-Services Inc. [2017] 1 R.C.S. 1069, 2017 SCC 40. <a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/16743/1/document.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/16743/1/document.do</a> ) Consider referencing CIRNAC site on Crown consultation: "Government of Canada and the duty to consult " ( <a href="https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810">https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810</a> ) ☐	Reference to ORS wording, Clyde River case, and CIRNAC Crown consultation resource have been included.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	13	Intorduction: Fig 1 Section on "The Crown" - Page 10	Canada recognizes the importance of adequate funding as it relates to engagement and consultation, however it is recomended that the scentence "provision of long term and stable resources" be amended to reflect the shared responsibility between Canada, the GNWT, and proponents.	It is recommended that "provision of long term and stable resources" be removed and replaced with "Duty to consult and accommodate, which may include the provision of resource."	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	14	Intorduction: Fig 1 Section on "The LWB" - Page 10	It should be noted that the LWBs fulfill their responsibility through consultation processes.	It is recommended that the diagram be revised to Include consultation under the LWB section.	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	15	Purpose and Objectives: General comment - Page 11	Although this is an introduction to the main part of the policy paper, it would be helpful to make quick links (quick reference) to tables elsewhere in the document that speaks to consultation vs engagement.	Please consider adding reference(s) to tables in document that define differences between consultation and engagement (e.g. definitions table and Table 1 )	Acknowledged. The LWBs will consider quick links for documents.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	16	Purpose and Objectives: 1st bullet - Page 11	Best not to use "pre-submission engagement", which is the term used by YESAB for the process before an Executive Committee screening. We note that making the change here may require updating the Guidelines to be consistent. We note our comment is consistent with one made by the LWBs.	It is recommended that "(pre-submission)" located after "early engagement" be deleted.	Engagement on the Policy revealed concerns about engagment being treated as a "checkbox". The term "pre-submission engagement" has been changed to "early engagement" to emphasize this imprtance of engagement happening as early as possible with the goal of relationship-building and collaboration and not simply to satisfy a requirement.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	17	Authority: General comment - Page 11	This section could be expanded upon. Information on where/how the LWBs have the authority for setting policy could be noted here. In addition there is merit to referencing consultation obligations that are set in comprehensive land claim agreements and self-government agreements.	It is recommended that information from Section 2.2 LWB Consultation e.g., "Section 3 of the MVRMA provides that any power or duty to consult under the MVRMA must be exercised by (i) providing to the party to be consulted detailed notice of the matter, a reasonable period to prepare its views, and an oppportunity to present those views to the party with the power or duty to consult, and (ii) considering, fully and impartially, any views presented by the party consulted." and reference to section to 106 of the MVRMA be moved to this section.	The relevant text throughout the Policy has been revised.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	18	Authority: Footnote 11- Page 11 ☐	The footnote references the UN Declaration provided and we note although UN Declaration provides guidance it is the UN Declaration Act that contains legal requirements. (Consultation on Action Plan for UN Declaration currently taking place.) In addition to the UN declaration and TRV recommendations, the UN Declaration Act should be noted. ☐	It is recommended that reference to UN Declaration <u>Act</u> be included in the footnote. ☐	This reference has been added.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	19	Guiding Principles : Relationship - Page 12 ☐	The sentence "Engagement should precede and continue during planning" seems incomplete. Relationships should be established before a project is being considered and continue through the entire life of a project. ☐	It is recommend that the concept "through the entire life of a project" be added to highlight that the relationship goes beyond the planning stage. ☐	This text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	20	Guiding Principles : Accessibility - Page 12 ☐	It is unclear how the LWBs will support parties. ☐	Please consider adding details on what this support could entail. ☐	Additional details and links to other Board guidance has been provided.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	21	Guiding Principles: Last Paragraph - Page 13 ☐	"access to vital local and Indigenous knowledge" This wording implies that this knowledge is something to collect and take away from engagement for use. There are many nuances around ownership of this information and the context in way this information should be used. ☐	It is recommended that "access to vital and local Indigenous knowledge" be replaced with "include local and Indigenous Knowledge that may be shared"... ☐	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	22	LWBs' Approach: 1st line- Page 13 ☐	The 1st line should reflect the subtitle ☐	It is recommend "approach" be added and "policy" be deleted so the sentence reads <i>The LWBs' approach to engagement and consultation is</i> ☐	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	23	LWBs' Approach: 3rd line- Page 13 ☐	There needs to be acknowledgement that not all concerns may be considered "addressed" by all parties. ☐	Recommend adding note to this effect e.g. it is possible that not all parties will agree that concerns have been addressed. ☐	The text has been revised. Parties may wish to consider this topic during the Guideline update as well.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	24	Applicant Engagement : 2nd paragraph - Page 13	Additional information would be useful e.g. links to TK policies and it would be beneficial to add where/how to find existing protocols, etc.	It is recommended that reference to Traditional Knowledge policies or guidelines be added to this section and that a brief note on where applicants can seek these policies/guidelines/protocols in addition to reaching out to IGOs/communities be included.	A link to the LWBs' communication of interim adoption of the Review Board TK Guideline and a link to the TK Guideline have been included.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	25	Submission Requirements: Engagement Plan - Page 14-15	The use of "completed" in the last sentence could be interpreted as meaning affected parties are responsible to implement the plan. The use of "completed" in the last sentence should be	It is recommended that "completed" be replaced with "developed".	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	26	Submission Requirements: Engagement Plan - Page 15	There is merit in encouraging parties to do more than the minimum recommendations set out in the guidelines.	It is recommended that text could be added to encourage developers/proponents to engage beyond the minimum that is indicated in the Guidelines.	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	27	Assessment of Applicant Engagement: 1st paragraph - Page 15	The paragraph implies that when the record and plan are signed by parties the LWBs will consider the plan complete and no further assessment is needed. On the other hand if the documents are not signed it may be seen as incomplete and the LWBs will undertake an assessment against the criteria.	it is recommended that this paragraph be reworded so as not to make a completeness judgment on the basis of signatures, especially as the LWBs only encourage and not require review and sign off.	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	28	Assessment of Applicant Engagement: Footnote 20- Page 15	The reminder that "all parties" will be reviewing and commenting on all parts of the application is too important to be a footnote.	It is recommended that the info in this footnote be added to the body of the document.	The text has been relocated to the body of the Policy.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	29	Engagement Requirements Figure 2 - Visual - Page 17	This is an odd looking visual and the parts seem disjointed	Please consider using a different diagram for figure 2.	Figures have been updated.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	30	LWB Consultation: 1st paragraph general - Page 18	The first paragraph might be more readable as a bulleted list.	It is recommend that this paragraph be revised into a list format.	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	31	LWB Consultation: 2nd paragraph - Page 18	Clarity on the meaning of "the intention of communities" in this context could be helpful. Might be worth giving Traditional Knowledge its own subsection (2.2.1), and expanding .	Suggest using content from the MVEIRB's TK guidelines, which we understand have been adopted by the LWBs and having a new subsection, for this topic.	This text has been updated. In addition, a link to the LWBs' communication of interim adoption of the Review Board TK Guideline and a link to the TK Guideline have been included.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	32	LWB Consultation: Consultation - Page 19	This section is mostly about Board exercises but could be expanded to show consultative components.	It is recommend to amend the 2nd bullet by adding that this "includes a public review" to show that there is a consultative component. It is recommended to add to the fourth bullet any participatory/opportunities for input (e.g., public reviews of management plans) to make this more relevant to the Board's consultation approach.	The text has been revised.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	33	LWB Consultation: Duty to consult - Page 19 and footnote 25 [2]	<p>The first three sentences could be re-written to reflect consultation differences without the "constitutional" debate - more of a shared understanding.</p> <p>It is also recommended to the reference to case law (Clyde River) and the long legal explanations be removed (footnote 25).</p> <p>The term "best practices" is used throughout the document and in this paragraph. It could be worthwhile to define / provide some context to the term in the context of the policy.</p>	<p>Suggested rewording for para 5: In the LWBs' view, their <u>The LWB's</u> responsibility to consult is statutory and distinct separate from the Crown's constitutional duty to consult. Although tThe Government of Canada and the GNWT have however indicated that they rely on the Boards' processes to discharge its duty, LWBs the do not have a constitutional duty to consult. Rather, the LWBs have an obligation to conduct statutory consultation, for the purposes of fulfilling their statutory mandates.[1] Table 1 describes the differences between applicant engagement, LWB consultation, and Crown Consultation. The formal obligations are listed here but the Board notes that meaningful engagement and consultation is, most importantly, best practice. <u>Given the Government of Canada and the GNWT's reliance on the LWB's processes, it is essential that Indigenous Groups participate actively in the LWBs' processes by sharing any evidence, concerns and views with respect to the potential impacts the issuance of a permit or a license would have on their s. 35 asserted or existing rights.</u> [2]</p>	The Policy has been revised to emphasize the importance and benefits of mutual engagement/consultation.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	34	LWB Consultation: Table 1- Page 20 [2]	The type of consultation obligation is not necessary to not in the first row under Applicant, Board or Crown. This information is noted specifically in the 2nd row. Recommend deleting the type of consultation in the first row of the table. [2]	It is recommended that "engagement", "statutory" and "consultation" be deleted so the 1st row will have "Applicant", LWB" and "Crown" heading columns 2,3 and 4. [2]	The text has been revised.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	35	LWB Consultation: Table 1 discussion- Page 20 [2]	The legal terms <u>Aboriginal</u> and Treaty rights should be used in the last 2 columns and should include "potential impacts", "asserted" and "established". [2]	For consistency with legal definition and references noted elsewhere in document, it is recommended that "Potential impacts to asserted or established Aboriginal and/or Treaty rights" replace "Indigenous and/or Treaty rights" in last 2 columns (for LWB and Crown consultation). [2]	The text has been revised.

Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	36	LWB Consultation: Table 1 goal- Page 20	Reconciliation is the ultimate goal of Crown consultation but details on more immediate goals should be included in the Crown column.	Meeting reconciliation objectives, and fulfilling legal duty to consult obligations with the Indigenous peoples of Canada by ensuring concerns and potential impacts are considered in decision-making.	More detail has been provided.
Canadian Northern Economic Development Agency (CanNor) - Tyla Ahluwalia	37	LWB Consultation: Figure 3- Page 21	This Figure gives the impression that Crown's Consultation is secondary or separate to the process rather than integrated throughout and overarching.	Suggestr using the ORS language in the figure ie The Crown relies on the Board's process as the <b>primary means</b> to fulfill its duty to consult with Indigenous Peoples. The ultimate responsibility for discharging the duty to consult rests with the Crown and, where necessary, the Crown may engage in additional consultation.	The Policy includes additional detail about the Crown's duty to consult.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	1	1.0 Introduction (pages 8-9)	The process must have regard to "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, 1982 applies and who use an area of the Mackenzie Valley". The importance of conservation to the well-being and way of life of Indigenous Peoples of Canada cannot be defined and limited by Western science.	The overall process must also promote engagement approaches that prioritize Indigenous knowledge, languages, research methodologies, and ways of knowing across all levels of land and resources management, monitoring, and regulation.	Text emphasizing the benefits of early engagement and collaboration has been added.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	2	1.0 Introduction (pages 8-9)	"Meaningful consultation" Meaningful consultation can only be defined by the bilateral relationship of the Indigenous Government and Crown. A blanket statement describing meaningful consultation is aspirational and not generally useful unless accompanied by a description of how it will be fulfilled.	Consultation is a Duty of the Crown. Meaningful consultation must acknowledge requirements under section 35 of the <i>Constitution Act</i> , however, this policy must also recognize obligations for consultation outlined in Section 3 of the <i>Mackenzie Valley Resource Management Act</i> , and Section 7 of the <i>Waters Act</i> .  These legislative requirements for consultation, however, should only reflect the minimum level of consultation, with meaningful consultation being defined by direct bilateral discussions with an affected Nation.	Additional text added to help clarify.

Acho Dene Koe First Nation (ADKFN) - Scott Mackay	3	Figure 1. Shared responsibility for meaningful involvement of affected parties (page 10) [2]	"IGO participation" [2]	IGO to a degree dilutes Indigenous Governments as true governments. In some instances, an Indigenous Government Organization may better reflect the governmental structure. As a result, it is recommended that the term Indigenous Governments be used over Indigenous Government Organizations, or acronyms of IG/IGO be used concurrently. [2]	The Policy has been revised to refer to "Indigenous Governments" rather than "Indigenous Governments/Organizations". In addition to comments made here during the Policy update, the Board has also generally heard similar comments. For example, please refer to the Summary Report for the Sept. 28 & 29, 2022 MVRMA Workshop where Tim Heron states: "Many refer to our Indigenous governments as Indigenous organizations but we are a government and we would like to be treated as one. We would like to start seeing a government to government approach – if you have an idea, come talk to us about it because we may want to be a part of the action, too." (MVRMA Workshop Summary Report, page 16).
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	4	Figure 1. Shared responsibility for meaningful involvement of affected parties (page 10) [2]	Indigenous Governments/Organizations [2]	This figure does a great job of conveying the responsibility of individual entities but does not demonstrate the need for interagency cooperation, information-sharing, transparency, and/or information-sharing and accountability between various cooperators (LWBs, the Crown, etc.) A lack of information-sharing between federal and territorial governing bodies will often place an unnecessary burden on Indigenous Governments to duplicate limited technical capacity in the review of documentation and submission of evidence to both GNWT and the LWBs. [2]	The figure and figure title have been revised to emphasize this.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	5	1.1 Purpose and Objectives- (page 11) [2]	"life-of-Project" engagement / "procedures during regulatory proceedings" [2]	The life of a project must include all stages until the land is returned to its original condition. Please integrate post-closure monitoring and/or follow-up into this process, and the role of cooperating parties to provide oversight and compliance. [2]	Text has been added to the definition of Engagement Plan and Section 2.0.

Acho Dene Koe First Nation (ADKFN) - Scott Mackay	6	1.2 Authority (page 11) ☐	"in the spirit of Reconciliation" ☐	A definition of and/or strategy for Reconciliation can be developed with Indigenous Peoples that defines priorities and scope for NWT while making explicit reference to the roles and responsibilities of cooperating parties, as well as the commitments the LWBs will make in advancing Reconciliation in collaboration with their respective Indigenous partners. ☐	Additional text has been added.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	7	1.4 Guiding Principles: Accessibility (page 11) ☐	"Accessibility" This seems to imply that consideration of particular culture(s), language(s), and traditions of affected parties is an accessibility issue rather than the ethical best practice of knowledge translation and information-sharing across linguistic, cultural, economic, social, and political barriers-all of which can be considered a long-term priority and responsibility for the MVLWB and GNWT. ☐	The short-term objectives of this Engagement and Consultation Policy can be reinforced with long-term goals related to Indigenous inclusion and knowledge translation across linguistic, cultural, economic, social, and political barriers in NWT. ☐	Further work by the LWB is being done via their Outreach Strategy.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	8	1.4 Guiding Principles: Accessibility (page 12) ☐	"in a meaningful way and accommodates their individual needs" ☐	Meaningful engagement and individual accommodations can be defined in a practical manner if linked directly to the abovementioned Reconciliation definition/strategy through planned action and impact implemented, monitored, and evaluated by individual LWBs. ☐	Further work by the LWB is being done via their Outreach Strategy.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	9	1.4 Guiding Principles: Reflection (page 12) ☐	"adaptive management" ☐	"Adaptive management" approaches can also be used to integrate and promote Indigenous knowledges, languages, research methodologies, and ways of knowing across all levels of land and resources management, monitoring, regulatory oversight and compliance. Defining "adaptive management" in a manner that mobilizes future generations through intergenerational communication and engagement with Indigenous partners will lead to increased cooperation and sustainability. ☐	Noted. It is important that parties discuss their roles and expectations with regard to adaptive management during engagement. Suggest this topic could be discussed in more detail during the Engagement Guidelines update.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	10	2.0 LWBs' Approach (page 12) ☐	"identifying concerns and potential environmental impacts" and "planning for closure and reclamation, monitoring, and mitigation design" ☐	Indigenous Knowledge and Knowledge Keepers/ Holders should be engaged throughout to develop culturally and ecologically relevant methodologies for identifying environmental concerns, monitoring impacts, site closures and reclamation, as well as the development and implementation of mitigation strategies. Also, please integrate post-closure monitoring and/or follow-up into this process. ☐	The text has been revised.

Acho Dene Koe First Nation (ADKFN) - Scott Mackay	11	2.1 Application Engagement (page 13) ☒	"allows for Traditional Knowledge to be incorporated early into a project" The term "incorporate" implies that Traditional Knowledge that is shared as part of the regulatory process is ad-hoc or supplementary to plans and information rooted in western Science. ☒	We recommend that instances where Traditional Knowledge is to be incorporated be re-written to reflect the parity and value that it brings to the regulatory process and project planning. Additionally, please elaborate in greater detail, and provide firmer guidance on when and how Indigenous Knowledge(s) will be made a priority in a project. For additional guidance, hypothetical examples could be provided to demonstrate both best AND worst practices. ☒	The text has been revised. This topic should also be revisited with respect to Board TK Guidance.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	12	2.1.2 Assessment of Applicant Engagement (page 14) ☒	"the LWB will also assess: 3. The achieved results of applicant engagement: any issues that were raised and how those were addressed or if they remain unresolved." ☒	Any issues raised must be documented and shared in a transparent manner and followed by the development of potential mitigation strategies (including a budget for implementation) in cooperation with concerned Indigenous Governments. ☒	Text has been added to clarify that Board decisions are documented in publicly available Reasons for Decision.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	13	2.1.3 Ongoing Engagement Post-Issuance of Permits and Licences - Figure 2. (pages 15 to 16) ☒	Figure 2. illustrates applicant engagement requirements before an application is made and during the life of the project. ☒	Please integrate post-closure monitoring and/or project follow-up into life of project cycle. ☒	The text has been revised.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	14	2.2 LWB Consultation (page 20) ☒	Figure 3. Engagement and consultation in relation to the regulatory process. ☒	Please add final phase in the regulatory process that promotes intergenerational accountability and transparency with future generations through post-closure monitoring and compliance of project site(s) after life of the project. ☒	The text has been revised to clarify life of project includes closure and reclamation.
Acho Dene Koe First Nation (ADKFN) - Scott Mackay	15	General ☒	Consultation and Engagement Plan ☒	Consultation and engagement will always identify research and information gaps out of scope for individual project engagements. It is recommended that a template or section of this policy and process be developed to monitor and document gaps in available information. Where information gaps are noted, it is essential that the Proponent support affected Indigenous Governments develop an understanding of the risks associated with those information gaps and develop a plan to address these gaps. The monitoring and documentation of information gaps can be integrated into the Proponent's Consultation and Engagement Plan. ☒	This topic is relevant to the Engagement Guideline update.
Tlicho Government - Jessica Pacunayen	1	General Comment ☒	We have found the existing policy and guidelines valuable and the key changes generally make sense. Beyond that, at this time we provide only a couple of comments below. ☒	n/a ☒	n/a

Tlicho Government - Jessica Pacunayen	2	Weghàà Eleyatitseedi ☒	For Tlìchò Government (TG), it is important for proponents to be informed about and follow the expectations of the Boards and current engagement best practices. For specific approaches to engagement for a given project or situation, proponents need to seek and act on direction from the indigenous government or organization they are engaging. TG has prepared and is finalizing its own engagement document, "Weghàà Eleyatitseedi". The purpose of the Weghàà Eleyatits'eedi is to provide direction to proponents and external governments in their consultation and engagement with the Tlìchò Government and the four communities of Behchokò, Whati, Gamètì and Wekweètì in relation to new and existing developments.	For your information and reference. At this time, TG recommends proponents reach out to the TG about the latest version of the Weghàà Eleyatitseedi. ☒	The LWBs look forward to including this document as a resource on their websites.
Tlicho Government - Jessica Pacunayen	3	Satisfaction with Engagement ☒	n/a ☒	What is the Board's expectation/protocol/policy if affected parties are not satisfied with the engagement conducted prior to application as well as during the life of the project? Will these details be included in another document? ☒	This has been addressed in section 2.1.2.
Deline Got'ine Government - Todd Slack	1		The policy reads much more formally, much more dense, with stronger legal undertones. The less legible body seems to move from a guidance/aiding perspective to a rules or legal minimum. ☒	I'd encourage the boards to consider the users of this policy as much as their own interests. The document needs to be accessible to have best results. This is not a manifesto - its a policy intended to guide engagement and relationship building - if it's not readily usable to the residents and developers of the Mackenzie Valley then we're off to a bad start.  Please consider a more open format/presentation and use of figures (and improving the ones that are there to convey greater meaning). ☒	The introduction and figures have been revised.
Deline Got'ine Government - Todd Slack	2		It should be noted that all of this engagement work is being done on top of the previously existing responsibilities. It can be immensely valuable, but unless the resourcing expands in an equivalent manner, it becomes another empty opportunity - frustrating real participation more than encouraging it. Collectively, we cannot simply keep turning the screw, asking for more to be done without providing additional resources. ☒	☒	The LWBs agree with this point. Additional text has been included to attempt to further address capacity issues. This topic can also be considered for the Guideline update. The LWBs also continue to work with all parties on this important issue, particularly through their Outreach Strategy.
Deline Got'ine Government - Todd Slack	3		Just as an example of the tenor of the text - the introduction does not particularly introduce the topics as much as push the reader into the deep end. If the desire was to keep it blunt and short, that's one option. However, it's worth thinking on the multiple audiences that this policy is intended to inform. ☒	The introduction does not need to be plain languaged, but nor should it be complex reading. ☒	The Introduction has been revised.

Deline Got'ine Government - Todd Slack	4		<p>Following the third paragraph, sections 114 and 115 of the MVRMA should be included. The quote here only relates to one of purposes of engagement - you're diluting the message on what we are all trying to do at this stage - it's not simply about conservation (that's more directly linked to s.35, the big C Consultation). Setting the scope of the engagement is important and shows its foundation in the purpose and principles of the Impact Assessment under the MVRMA regime.</p> <p>Lastly, this allows for linkages to be drawn later in the document, if you properly set the foundation here. ☒</p>	Include/discuss s.114 and 115 of the MVRMA ☒	The text has been revised.
Deline Got'ine Government - Todd Slack	5		What is the distinction between applicants and permittees or licensees. ☒	Perhaps these should be defined terms ☒	A footnote clarifying that a licensee or permittee may also be an applicant has been added.
Deline Got'ine Government - Todd Slack	6		Moving the authority section burdens the introduction ☒	consider keeping here, after you've provided the purpose. ☒	The original authority section has been retained.
Deline Got'ine Government - Todd Slack	7		"Co-ordinated processes" ☒	If engagement and consultation is a coordinated process, who is the coordinator? If there is a coordinator, do they not bear an onus in achieving the purpose as they are coordinating not just a process, but a process that should have some purpose? The board should consider more coherent or consistent language - what are the expectations of the co-ordinator and the co-ordinated? ☒	The Policy is intended to outline the LWB role in consultation and expectations for other parties. There is no specific coordinator identified. Additional details could be considered during Guideline development.
Deline Got'ine Government - Todd Slack	8		There should be some discussion beyond just recognizing that there may be challenges. What happens when these challenges prevent meaningful engagement and consultation. ☒	What recourses does the Board require of the parties with responsibility when real capacity challenges exist? ☒	The text (section 2.1.2) has been revised to expand on the situation where engagement is challenging.
Deline Got'ine Government - Todd Slack	9		There should be some clarity on the consequences of not following or adhering to these guiding principles. The carrot is simple - that engagement and consultation is secured and a better project (for all) is the result. The stick is more nebulous and places all of the burden on the engaged party who almost certainly will be at a disadvantage with regard to resources. ☒	In the absence of good faith adoption of these principles, the Board should make clear that it will ensure that appropriate engagement and consultation will take place, with obvious consequences to the project proceeding. ☒	Text (section 2.1.2) has been revised to expand on the situation where engagement is challenging. Additional text about the benefits of engagement has also been added.

Deline Got'ine Government - Todd Slack	10		Perhaps as part of bullet 4, or as an individual item, there should be explicit direction to include closure commitments. This extends beyond the directed "planning for closure" - whereas planning for closure is a nebulous and soft discussion, Goals and Objectives - drawn from other Board policy - provide clarity and distinction on what the promises being made are. Having witnessed many closure planning processes in the NWT, the promises and commitments at the initial stages are the critical step that proponents refer to when seeking to establish the standards they will abide by. Thus, treating those matters with equal distinction and importance in the engagement is fair. ☐	Provide Closure Goals and Objectives as part of the engagement ☐	The text has been revised.
Deline Got'ine Government - Todd Slack	11		There is no direction that the parties produce a collaborative engagement report. ☐	There should be a requirement to allow the engaged party to review and confirm/dispute the engagement record in a timely manner (not say as a round-up several years after the event) ☐	The Policy notes that all parties have the opportunity to provide input on the contents during the proceeding.
Deline Got'ine Government - Todd Slack	12		That the guidelines provide scalable minimum suggestions on the level of engagement is good, but with this should be a continual focus on outcomes and achievement. Box checking engagement is the scourge of real relationship building - and continued, overarching and renewed focus on what we are intending to achieve is far more important than minimum efforts. ☐	Provide note that the minimum outcomes are the guiding factor, not the minimum effort. ☐	The Policy has been revised (e.g. Guiding Principles) to put more emphasis on the relationship-building aspect as opposed to check-box engagement. Future Guideline update can consider additional details about this.
Deline Got'ine Government - Todd Slack	13		Discussion of signed engagement submission ☐	It's not clear what this means - in practice or in a literal sense. Is this the Board's community verification step? If so, where is it outlined? Include in Definition ☐	Assessment (including details regarding signed submissions) is found in section 2.1.2.
Environmental Monitoring Advisory Board - EMAB EMAB	1	MVLWB Engagement Policy - evaluation ☐	Evaluation of outcomes of a policy can be useful in ensuring it achieves its objectives. The proposed policy does not include an evaluation component. ☐	The MVLWB Engagement and Consultation Policy should include an evaluation component, with an emphasis on participation of Indigenous communities and organizations in the reviews of projects that take place on their traditionally used territory. The intent would be to collect information on participation, and any obstacles, to support potential policy amendments that would help to increase the participation of Indigenous communities and organizations. ☐	Additional details about review and update of the Policy have been added. Further, the LWBs' draft Outreach Strategy and workplan includes goals and objectives to include community participation in evaluating LWB policies etc.
Environmental Monitoring Advisory Board - EMAB EMAB	2	EMAB Covering Letter - comments on draft MVLWB Engagement and Consultation Policy ☐	EMAB Covering Letter - comments on draft MVLWB Engagement and Consultation Policy ☐	EMAB Covering Letter - comments on draft MVLWB Engagement and Consultation Policy ☐	Additional details about review and update of the Policy have been added. Further, the LWBs' draft Outreach Strategy and workplan includes goals and objectives to include community participation in evaluating LWB policies etc.
Pine Point Mining Limited - Veronica Chisholm	1		Section 2.2 ☐	Please provide examples where Ministerial approval is not required and the Board, as the final decision-maker, would need to determine the adequacy of the Crown's duty to consult and accommodate. ☐	Additional text has been text (i.e. reliance on Rules, potential for additional guidance to be developed).