

Regional Land Use Planning

Guidelines on what to expect from the
Government of the Northwest Territories – 2016



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COMMON TERMS

Amendment	A change to an approved land use plan that requires the sequential approval of all three approval authorities.
Approval Authority	Defined by s.43 of the <i>Mackenzie Valley Resource Management Act</i> , these are the parties responsible for approving land use plans and amendments. It includes the First Nation, the territorial government, and the federal Minister of Indigenous and Northern Affairs Canada.
Conformity Determination	A legally binding decision made by a land use planning board on whether a proposed land use complies with the approved land use plan.
Criteria	Standards used to assess a land use plan, amendment, or an exception (where asked for advice or information from the planning board).
Exception	A one-time allowance granted by a planning board to a land user to waive a condition or requirement of a land use plan.
The GNWT's Interdepartmental Land Use Planning Working Group (Working Group)	A forum for interdepartmental communication and coordination on regional land use planning issues. This Working Group: <ul style="list-style-type: none">• reviews and approves existing land use plans• develops and approves amendments to land use plans• tracks the GNWT's implementation of land use plans• develops proposed GNWT land use planning policies• interfaces with the Department of Lands' Securities and Project Assessment Branch when projects are subject to land use plans <p>The Working Group develops a cohesive voice for the GNWT regarding plan approvals and implementation. The Terms of Reference for the Working Group ensures that rules of engagement are consistently applied and observed.</p>
Land Use Plan	Land use plans define where certain activities can take place and provide broad criteria to help evaluate and screen project proposals as part of regulatory permitting processes. They are also used to assign special areas for protection and areas designated for development.
Planning Board	A “planning board” means the Sahtù or Gwich'in Land Use Planning Board established by articles 36 and 38 of the <i>Mackenzie Valley Resource Management Act</i> .
Planning Partners	Includes, but is not limited to: Land use planning boards, Aboriginal governments and organizations, the GNWT, the federal government, communities, non-government organizations, special-interest groups, and other regulatory boards.

EXECUTIVE SUMMARY

Regional land use planning is an ongoing process in the Northwest Territories (NWT). The Government of the Northwest Territories (the GNWT) considers regional land use plans to be the primary instruments to define where and how certain land use activities can take place.

Why is land use planning important?

The purpose of land use planning is to protect and promote the existing and future well-being of NWT residents and communities, having regard for the interests of all Canadians.

The GNWT has demonstrated its commitment to land use planning in the *Land Use and Sustainability Framework*. The GNWT also created a unit within the GNWT dedicated to land use planning, the Department of Lands' Land Use Planning Unit.

Land use plans allow us to better and more effectively manage our lands and resources. Plans help create certainty for where and how development can take place.

Purpose of the Guidelines

Our planning partners for *Mackenzie Valley Resource Management Act* land use plans are the main audience for these Guidelines. The Guidelines specify the GNWT's criteria and decision-making processes for land use plans, so they are also applicable to any land use planning process where the GNWT's input is sought as either a reviewer or approver.

Many aspects of land use planning in the NWT remain under negotiation. The Guidelines do not provide guidance on related negotiation issues like boundaries for a regional land use plan, financial commitments to develop and implement plans, the sequence in which land use plans are completed, or who leads planning processes. The Guidelines are written with the understanding that plans are authored by a planning board or other body and that the GNWT acts as a planning partner, approval authority, and implementer.

The Guidelines have three parts:

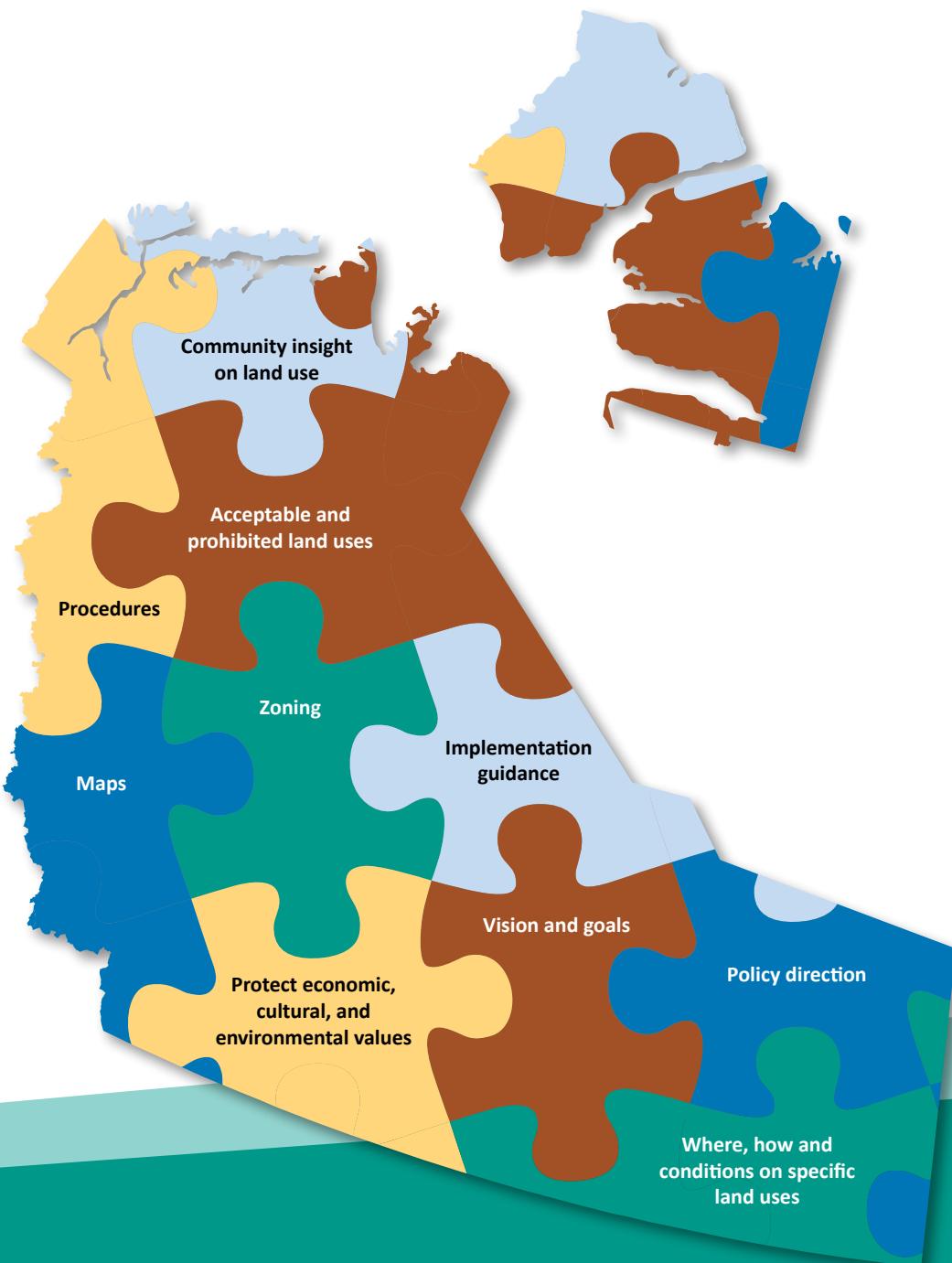
- 1.0 **Introduction:** Provides context for regional land use planning in the Mackenzie Valley, a background on the process of land use planning, and a summary of existing plans and processes.
- 2.0 **Review and approval of land use plans:** Explains the role of the GNWT in plan approvals, departmental roles and responsibilities, communications, and the list of criteria for review.
- 3.0 **Implementing approved land use plans:** Describes the GNWT role in implementation, departmental roles and responsibilities, and communications.

The development of the GNWT's land use planning program is an ongoing process. The Guidelines will be updated as the program evolves, and as the GNWT participates in land use planning processes and plan implementation. As changes are made to the Guidelines, the GNWT will provide an updated version on our website and will inform planning partners.

1.0 INTRODUCTION

Land use planning is a process of making informed decisions about the future use of lands, waters, and other resources. Land use plans use the best available information in a transparent and accountable manner to achieve a defined vision and goals for the planning area. Land use plans are statutory requirements in some settlement areas flowing from land claim agreements. Once

approved, plans are legally binding pursuant to s. 46 of the *Mackenzie Valley Resource Management Agreement*. Plans are subject to periodic reviews as per s.50 of the *Mackenzie Valley Resource Management Agreement*. In areas without final agreements, land use plans may be advisory in nature, or implemented through other mechanisms like legislation or policy direction.



1.1 What does a land use plan do?

A land use plan has many different functions, which may include:

- developing maps and policy direction
- identifying what land use activities are allowed, where, and under what conditions
- setting out rules for the conservation, development, and use of land, water, and resources
- prohibiting or allowing land use activities, such as oil and gas development, mining, commercial tourism, or forestry
- creating conservation zones to protect ecological values or traditional and cultural use
- providing direction or guidance for land and water use activities, such as bulk water removal, waste management, transportation, and infrastructure development
- establishing regional zones and broad criteria to help evaluate and screen project proposals as part of regulatory permitting processes

Zones in land use plans identifies areas:

- well suited for industrial development
- that can support industrial development while respecting specific cultural or ecological values
- where, for cultural or ecological reasons, development is prohibited

1.2 Land use planning in the Mackenzie Valley, Northwest Territories

To date, land use planning in the Mackenzie Valley has occurred on a regional basis according to settlement region boundaries. Where claims are complete, such as in the Gwich'in and Sahtù settlement areas, land use planning is carried out according to final agreements and legislation. The process to complete those land use plans is set out in the *Mackenzie Valley Resource Management Act*. The Act calls for land use plans to be reviewed and revised every five years.

In the Dehcho, land use planning is underway pursuant to the *Dehcho First Nations Interim Measures Agreement*. There is currently no planning underway in the GNWT's North Slave Administrative Region (excluding the Wek'èezhìi Management Area) or in the GNWT's South Slave Administrative Region (excluding portions of the Dehcho) where land claim agreements have not been concluded. However, the GNWT is developing a process and strategy for completing land use plans in these regions. For public lands in the Wek'èezhìi Management Area, the GNWT is working with planning partners to finalize a planning process.

The Inuvialuit Settlement Region does not fall under the management of the *Mackenzie Valley Resource Management Act*. However, the Inuvialuit have developed and implement non-legally binding Community Conservation Plans.



Figure 1 – The Sahtu and Gwich'in Land Use Plans are two plans implemented under the *Mackenzie Valley Resource Management Act*.

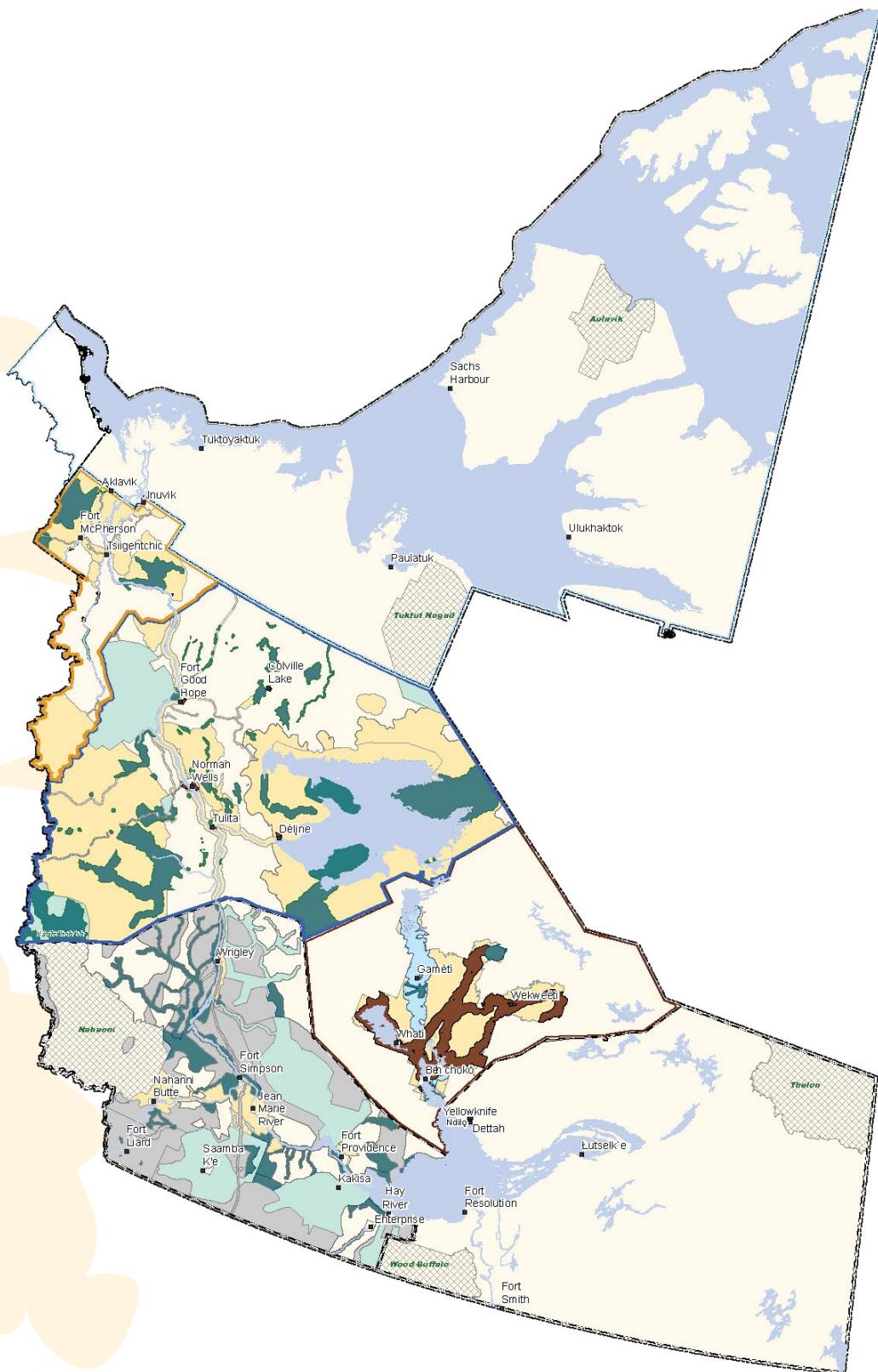
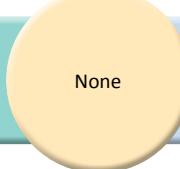
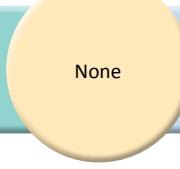


Figure 2 – Map of Land Use Planning in the Northwest Territories

Table 1: Overview of regional land use planning in the Mackenzie Valley (2016).

Region and Guiding Legislation	Land Use Plans	Planning Partners
Gwich'in Settlement Area Gwich'in Comprehensive Land Claim Agreement <i>Mackenzie Valley Resource Management Act</i>	 <u>Land Use Plan approved in 2003</u>	Gwich'in Tribal Council Gwich'in Land Use Planning Board Government of the Northwest Territories Government of Canada
Sahtu Settlement Area Sahtu Dene and Métis Comprehensive Land Claim Agreement <i>Mackenzie Valley Resource Management Act</i>	 <u>Land Use Plan approved in 2013</u>	Sahtu Secretariat Incorporated Sahtu Land Use Planning Board Government of the Northwest Territories Government of Canada
Dehcho Dehcho First Nations Interim Measures Agreement	 Draft Interim Land Use Plan completed in 2016	Dehcho First Nations Dehcho Land Use Planning Committee Government of the Northwest Territories Government of Canada
Tłı̨chǫ Tłı̨chǫ Final Agreement <i>Mackenzie Valley Resource Management Act</i>	 <u>Approved Tłı̨chǫ Wenek'e (Land Use Plan on Tłı̨chǫ Lands) in 2013</u>	Tłı̨chǫ Government
Wek'èezhii Management Area Tłı̨chǫ Final Agreement <i>Mackenzie Valley Resource Management Act</i>	 None	Tłı̨chǫ Government Others under discussion
North Slave Administrative Region (excluding Wek'èezhii)	 None	To be determined
South Slave Administrative Region (excluding Dehcho)	 None	To be determined

2.0 REVIEW AND APPROVAL OF LAND USE PLANS

The GNWT is responsible for review and approval of regional land use plans under the *Mackenzie Valley Resource Management Act*.

Types of review and approval include:

- a new land use plan
- an amendment to a plan, or
- a revised plan undergoing a five-year plan review

2.1 GNWT roles

The GNWT's Department of Lands is mandated to coordinate the GNWT's participation in planning processes.

As a planning partner, GNWT departments will provide:

- the best available information, data, and expertise in a timely manner to the planning boards
- an analysis of planning options
- technical and policy advice on draft plans
- advice on the GNWT's legislative authority to implement land use plans

As an approval authority, the GNWT will:

- put forward its priorities and interests
- contribute to setting the vision and goals for the region

The GNWT will also:

- fulfill the GNWT's legal consultation responsibilities where a decision to approve or amend a land use plan could have an adverse impact on an asserted or established Aboriginal or treaty right
- take into account a land use planning board's consultation process and ensure that the Crown's legal duty to consult is met

Table 2: Summary of the GNWT's departmental roles during a planning process.

Department(s)	Role(s)
Lands (Land Use Planning Unit)	<ul style="list-style-type: none"> Coordinate the GNWT's involvement Provide expertise on planning process and practice Chair and Secretariat for Interdepartmental Working Group
Headquarters Representatives from core departments*: Lands, Environment and Natural Resources, Industry, Tourism and Investment, Transportation (*occasionally Education, Culture and Employment)	<ul style="list-style-type: none"> Participate early in defining vision, goals, and plan options Review and comment on plans Communicate interests in planning region Communicate implementation interests Provide legislative requirements and considerations Review plans based on mandate and technical considerations of the department
Regional Offices of core departments: (Lands, Environment and Natural Resources, Industry, Tourism and Investment, Transportation)	<ul style="list-style-type: none"> Regional guidance on a plan's vision and goals Review and comment on plans Provide practical, region-specific advice and insight
All departments (generally)	<ul style="list-style-type: none"> Review and comment on mandate-specific items
Justice	<ul style="list-style-type: none"> Provide legal advice and legal opinions
Aboriginal Affairs and Intergovernmental Relations	<ul style="list-style-type: none"> Provide advice on how plans relate to land claim implementation Provide advice when a plan may impact the rights of adjacent Aboriginal governments or organizations Provide s.35 consultation advice
Executive	<ul style="list-style-type: none"> Provide advice and analysis on Cabinet submissions
Issue-specific departments: Education, Culture and Employment, Industry, Tourism and Investment, Municipal and Community Affairs, Public Works and Services, Finance, Transportation	<ul style="list-style-type: none"> Provide issue-specific guidance towards plan development Provide guidance on a plan's vision and goals Analyze financial implications of plan implementation prior to Cabinet or Financial Management Board submissions Contribute as needed to amendments or five-year reviews
Health and Social Services	<ul style="list-style-type: none"> Observer role Occasional input to case-specific issue as requested by the Working Group or a planning partner

Descending Role

2.2 Criteria

The GNWT considers economic, cultural, and environmental issues when developing and approving land use plans. Criteria are the standards by which the GNWT will assess a land use plan. The GNWT has nine criteria it applies to review and approve new land use plans, amendments, and revisions. The criteria are purposefully general since every planning process is different and requires flexibility.

The criteria were developed through a combination of:

- the GNWT's participation in the Sahtù and Gwich'in planning processes
- the Gwich'in five-year review process
- a jurisdictional analysis
- applying accepted principles of planning practice

Table 3: The GNWT's nine criteria for approving land use plans.

Criteria	Key Question(s)
Mandate	Is the plan scoped within the parameters of the applicable comprehensive land claim agreement, legislation, and/or process terms of reference under which the process was established?
Process	Did plan development follow comprehensive and appropriate methods?
Clarity, Readability, and Accuracy	Is the plan clear? Is it practical? Is it free of errors?
Flexibility	Is the plan flexible enough to adapt to unique circumstances not contemplated during plan development?
Value-added	Does the plan add value to and fulfill an appropriate role in the regulatory system?
Regulatory and Legislative Fit	How well does the plan fit with existing legislation, policy, and regulatory processes?
Ease of Implementation	Can the plan be implemented as written?
Transboundary Consistency and Coordination	Is the plan consistent with or complimentary to other plans in the Mackenzie Valley? NWT? Other jurisdictions? Communities?
GNWT Interests	How well does the plan align with the interests and priorities of the GNWT?

2.3 GNWT Approval

The process to review and comment on a plan is similar in most instances. However, the time the GNWT requires to follow due process depends on factors like planning board deadlines, the complexity of the documents, the level of interdepartmental and/or intergovernmental conflict, or schedule interruptions (for example: holidays, elections, hunting seasons).

When developing land use plans, planning bodies may seek government review, comment, and/or approval, on the following:

- process/methodology
- vision and goals
- background information/research
- foreseeable land uses/issues papers
- land use options to achieve the stated vision and goals
- draft plan (there may be more than one draft prior to the final)
- final draft to be submitted for approval

For documents that require the GNWT's approval, the GNWT follows the review and approval process outlined on the following page. This process is based on the principles of consensus government and, subsequently, ensures that all departments are adequately engaged.

The GNWT is committed to completing this process in the shortest period possible. The GNWT strives to complete reviews within three months of receipt of a document, except for final plan approval (which may be longer or shorter depending on the number of previous reviews).



An overview of the GNWT's internal process for approval of land use planning documents:



2.4 Communication and coordination

Effective communication and coordination is essential to meet the Land Use and Sustainability Framework principles of being coordinated, collaborative, and transparent. This section provides information on how the GNWT will meet these principles.

Public meetings and hearings

The planning boards sometimes call public hearings and meetings. Hearings and meetings are a vital part of the process for gathering information and informing the

public of choices at hand. The GNWT will attend and participate in all hearings and public meetings. The Land Use Planning Unit coordinates the GNWT's participation.

Communications between planning partners

The GNWT will communicate and collaborate with other approval authorities to discuss, address, or seek clarity on technical and substantive issues as they arise during review of a land use plan or proposed amendment.



3.0 IMPLEMENTING APPROVED LAND USE PLANS

Implementation of land use plans is a shared responsibility in the NWT. The GNWT implements approved land use plans with actions that further a plan's vision and goals, and decision-making aligned with conditions in the plans. The GNWT's roles and responsibilities in implementing land use plans include:

- 1) **As an approval authority and land manager:** Once a plan is approved, the GNWT will implement the plan when issuing rights and authorizations related to land, water, and resources. In addition, the GNWT will make reasonable efforts to complete all actions directed to the GNWT. However, that does not imply a commitment to additional government funding. While conditions or conformity requirements are legally binding, any additional recommendations identified in land use plans are advisory in nature so the GNWT will consider implementing the recommendations wherever feasible and appropriate.

2) **Issuer of rights and authorizations:**

Four departments issue rights and authorizations in accordance with approved land use plans: Department of Lands; Department of Environment and Natural Resources; Department of Industry, Tourism and Investment; and Department of Transportation.

3) **Inspection and enforcement of permits, licences, and leases:**

Post-devolution, the GNWT enforces conditions set-out in land and water authorizations.

4) **Authority referral for conformity:**

The GNWT has the authority to refer a proposed activity to the planning board to determine whether a land use activity is in line with the approved land use plan.

5) **Proponent applying for rights and authorizations:**

The GNWT, like any proponent, incorporates approved land use plans into project applications to ensure that proposed land use activities conform to the plan.

3.1 Key implementation activities

Land use plans are legally binding. The following organizations must follow land use plans:

- the GNWT when issuing rights and authorizations related to land, water, and resources
- regulators such as the Mackenzie Valley Land and Water Board when issuing authorizations for the use of land, water, deposit of waste, and resources related to the development of those rights
- land corporations that issue rights to settlement lands

The Tłı̨chǫ Plan only applies to Tłı̨chǫ lands. The Tłı̨chǫ Government must grant land access for any use before a regulatory application is filed and bears the bulk of the responsibility for ensuring conformity of any proposed land use. Regulators may still have some implementation responsibilities through terms and conditions they attach to authorizations to implement land protection directives, but they will not have to assess conformity.

GNWT departments that implement approved land use plans:

Land (surface and subsurface) Dispositions

- Lands
- Industry, Tourism and Investment

Licensing and Permitting

- Environment and Natural Resources
- Industry, Tourism and Investment
- Education, Culture and Employment
- Transportation

Enforcement

- Lands
- Environment and Natural Resources
- Industry, Tourism and Investment

Government as Proponent

- Department leading proposed project
(Example: Department of Transportation leading development of a new public highway)

3.2 Steps to assessing conformity with a land use plan

1. Best practice is that a proponent should seek advice from the applicable planning board(s) to ensure that their application conforms as much as possible to the plan.
2. When a proponent submits an application for a GNWT authorization, the GNWT will ensure conformity with a plan before issuing the authorization. Each department will include a conformity check in their process prior to issuing rights, dispositions, or authorizations for the use of land or water.
3. The GNWT may formally refer the application to the planning board for a conformity determination. While the planning boards only do conformity determinations if referred, they are open to enquiries and dialogue to assist regulators and proponents to make their own assessments in instances where the questions are straightforward.
4. For transboundary situations, the rules of each region apply. For instance, if an authorization crosses between the Gwich'in and the Sahtù regions, the Gwich'in plan rules govern for the portion of the project within the Gwich'in Settlement Area, and the Sahtù plan applies to that portion within the Sahtù Settlement Region. If between the Sahtù and Dehcho, the Sahtù plan applies for the Sahtù portion, and standard regulatory procedures apply in the Dehcho.

5. When a land use plan has specific conditions, the relevant department must address the conditions and identify how they can be implemented through the authorization process.
6. If an application does not conform, the GNWT may inform the proponent that they have three options for proceeding:
 - amend the application to conform
 - apply to the relevant planning board for an exception
 - apply to the relevant planning board for an amendment

3.3 Inspection and enforcement of permits, licences, and leases

The GNWT's Regional Superintendents are responsible for the enforcement of permits and licences related to oil and gas, and to mineral development. The Department of Lands enforces most land use permits. The Department of Environment and Natural Resources is responsible for water licences, wildlife, and timber permits. The Department of Industry, Tourism and Investment is responsible for tourism permits and licences.

Inspectors ensure compliance with licences, permits, leases, and other instruments that are issued in conformity with plans. In addition, conditions can be attached to a licence or permit to reflect the requirements of the plan. How a plan is written will affect how effectively it can be implemented and enforced. Inspectors ensure that terms and conditions issued to meet conformity with a plan are met.

3.4 Government as proponent

The onus is on all proponents to demonstrate in their applications that the proposed land use conforms to all applicable requirements of a plan (zoning, conditions, etc.).

When the GNWT is a proponent, the proponent department will concurrently:

- seek information within the GNWT to support the application
- seek advice from the applicable planning board(s) to ensure they are meeting the intent of the plan(s)

3.5 Approval authority

The GNWT is not just a key participant in planning processes in the Mackenzie Valley, but also an approval authority. The Ministerial signature on a plan indicates the government's level of commitment to the plan. Beyond legally-binding compliance with plans, the GNWT also commits to make efforts to:

- implement the actions and recommendations that fall within its jurisdiction
- prepare themselves for future five-year reviews so that plans are updated and improved by lessons learned
- evaluate the overall effectiveness of a plan as it relates to other land management initiatives

PLANNING AHEAD...

These Guidelines set clear criteria and establish expectations for planning partners. The Guidelines are part of the GNWT's strategic framework for land use planning that is currently under development.

Land use plans are purposefully designed to be living documents. Land use changes over time, as do priorities and perspectives, and new information can become available.

In developing a first generation plan there is considerable uncertainty. As such, the GNWT will continue to work with planning partners to innovate and improve how the GNWT reviews and implements land use plans.

For more information about these Guidelines or land use planning in the Northwest Territories, please contact:

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