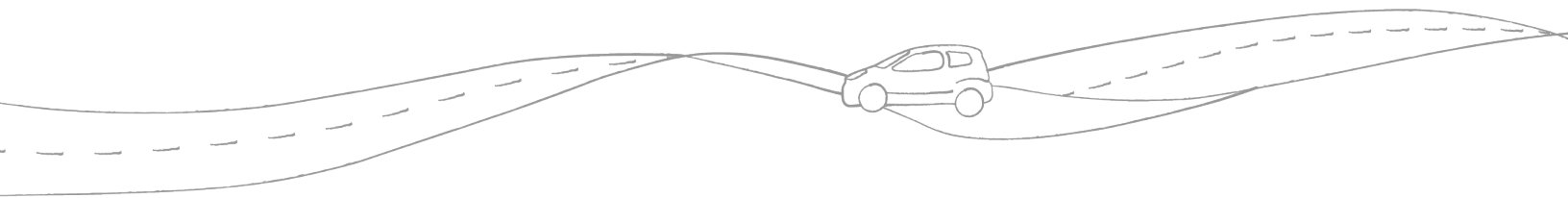# GNWT Responses to Recommendations and Key Lessons Learned

Tłı̨chǫ All-Season Road Environmental Assessment and Regulatory Processes

Une version française de ce document est disponible

The Department of Lands contracted a consulting team led by SLR Consultants to undertake an independent Lessons Learned exercise for the Tłı̨chǫ All-Season Road (TASR) environmental assessment (EA) on behalf of the Government of the Northwest Territories (GNWT). Via a situational analysis and interviews with GNWT staff and others who participated in the EA (including Indigenous governments and organizations, federal government staff, and staff of the Mackenzie Valley Environmental Impact Review Board and other resource management boards), SLR evaluated practices and procedures that the GNWT undertook during the EA. The GNWT has reviewed the complete report and has considered the lessons and suggestions identified in the report. The GNWT's responses to the four recommendations and the ten key lessons learned and are provided below.

Recommendations

1. The GNWT should review and revise its Project Assessment Policy in light of this "Lessons Learned" review, giving further clarity to the application and operationalization of a Whole of Government approach and other approaches relevant to future EAs and regulatory processes in which the GNWT is a proponent or Developer.

   The GNWT accepts this recommendation.

   Led by the Department of Lands, GNWT Departments commit to reviewing and proposing amendments to the Executive Council's Project Assessment Policy and/or developing associated implementation policies. The review will focus on, but not be limited to,

processes in which the GNWT is a proponent or developer. The GNWT notes that there is no fixed project structure that defines a single "Whole of Government" approach. However, the term is generally understood to refer to multiple Departments working together to come to solve particular problems or issues, and in this context, within phases of project development.

A Whole of Government project structure that includes input from multiple departments can be adjusted in response to the circumstances of individual projects. As discussed below in relations to Key Lessons #1 and #2, the GNWT accepts that a Whole of Government approach should not be the default for future GNWT projects, and that project development organizational structures should be reviewed and defined for each GNWT project, with the roles and responsibilities of each Department, within each phase, clearly defined and communicated for all projects anticipated to proceed through the environmental assessment process. The GNWT commits to embed robust approaches to transparency and evidence-based decision-making in its approaches to future GNWT projects, whether these are Whole of Government or other approaches. The review of the Project Assessment Policy will consider the Whole of Government concept, as well as other relevant approaches, and will develop a process for evaluating and determining the approach best suited to each individual GNWT project. The review will be coordinated through the Project Assessment Senior Management Coordinating Committee (PASMCC) and conducted in accordance with process conventions. The review is expected to be completed during the 19th Legislative Assembly.

2. The Project Assessment Branch, in collaboration with other GNWT departments involved in EAs should work towards incorporating lessons learned from the TASR Project and other projects into a set of "Best Practices" to guide the GNWT's involvement in future EAs and regulatory processes where it is a proponent. This should address key aspects of preparing and participating in EAs (as the two are different), including items such as referrals to the Review Board; internal organizational structures; internal and external communication approaches; allocation of internal resources; procurement techniques, typical schedules, deliverables and others. This would effectively be a "toolbox" for future GNWT infrastructure or other projects that the GNWT is the proponent. This could help maintain continuity and consistency in the GNWT's approaches to such matters well into the future.

The GNWT accepts this recommendation.

The development of a toolbox for GNWT projects that encompasses project development and delivery, environmental assessment and regulatory proceedings, and related matters encompasses a broad range of responsibilities that fall across a number of Departmental mandates. Led by the Department of Lands and coordinated through PASMCC, GNWT Departments are working together to implement this recommendation. Work is currently underway to develop the digital toolbox platform, scope the toolbox topic areas, identify leads for the topic areas, compile materials, including best practices and procedures, and to identify gaps within topic areas that will be prioritized.

The toolbox will include resources applicable to GNWT participation in EAs, as a party or decision maker, for both GNWT and non-GWNT projects, as well as resources related to GNWT projects proceeding through regulatory processes. GNWT Departments will work to link these materials into the shared GNWT 'toolbox' which is scheduled to be operational and available to all Departments before the end of 2021. The digital toolbox will be continually enhanced and improved. Where possible, the GNWT will also make these materials public on departmental websites. As of September 2021, many pieces of the toolbox have been identified, and work is underway to operationalize the toolbox.

3. GNWT management and staff should receive training regarding the management and technical requirements of the EA and regulatory process, particularly with respect to co-management processes and board style of decisions under the MVRMA. This is important given staff turnover and the long timeframe for EA processes.

The GNWT accepts this recommendation.

The GNWT currently provides environmental assessment (EA) and regulatory training to staff in all GNWT departments, through a variety of formats. GNWT also shares information internally about third-party training opportunities, including seminars and workshops provided by resource management boards, administrative law training available through the NWT Board Forum, and seminars and courses provided by professional groups such as the International Association for Impact Assessment. The GNWT Departments of Lands and Environment and Natural Resources collaborate with resource management boards and the Government of Canada to host the annual Mackenzie Valley Resource Management Act workshop, which supports informed participation by GNWT and other participants in MVRMA board processes.

The GNWT will continue to regularly update its training materials to reflect evolving processes and emerging concerns, and will engage with resource management boards and others as appropriate. GNWT Departments will also work to include training materials within the 'toolbox' recommended in #2. The Department of Lands is the lead for this recommendation.

4. Other participants in EA and regulatory processes in the NWT are encouraged to undertake similar "Lessons Learned" reviews to improve their own performances. They should be afforded the opportunity to contribute to the development of the GNWT's "best practices".

The GNWT accepts this recommendation.

The GNWT has participated in past lessons learned reviews conducted by other parties, and will continue to do so if invited. The GNWT will continue to welcome input from other parties on GNWT's best practices. The Department of Lands is the GNWT lead for this recommendation. No specific actions are planned in response to this recommendation; the GNWT is open to discussions with other parties at any time.

1. A "Whole of Government" (WoG) approach is not necessarily best suited to all projects where the GNWT is the proponent and should not be the default approach for future projects where the GNWT is a proponent.

   The GNWT accepts this lesson.

   As part of reviewing the Project Assessment Policy, the GNWT will review the Whole of Government concept, as well as other relevant approaches, and will develop a process for evaluating and determining the approach best suited to each individual GNWT project. This evaluation will take into account the nature of the project, the views of Indigenous governments involved in the project, the views of any co-proponents, the requirements of the relevant environmental assessment and regulatory regime(s), and other relevant factors. GNWT agrees that there is no default approach and commits to make public the approach and supporting rationale that is taken for any given project.

2. A WoG approach, particularly in the context of a public review process, cannot be successful without an explicit commitment to greater transparency and evidence-based decision-making.

   The GNWT is committed to greater transparency and evidence-based decision-making.

   This commitment extends both throughout the EA process and during the decision-making phase. The GNWT commits to being upfront in how it has organized itself for participation in EAs of future GNWT projects, and how the decision making will be handled. This will include, but not be limited to, meetings with potential parties during project planning, and correspondence on public registries explaining how the GNWT will be organizing its approach to EA and regulatory proceedings.

3. Developers need to plan for long time frames. They must be adaptable, accept change and plan accordingly.

   The GNWT accepts this lesson and has incorporated it into planning for future projects.

   Project planning tools and resources will be included in the toolbox.

4. Greater attention needs to be paid to internal organizational issues going into an EA process. Formal project management procedures need to be implemented to support major infrastructure projects with Project Agreements (or Project Charters), permitting risk assessment, resource requirements, schedules and deliverables and cost estimates.

   The GNWT agrees that having formal internal organization procedures in place prior to entering into an EA is best practice.
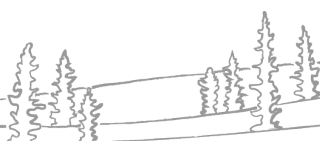
The GNWT notes that while some departments follow formal project management procedures for major infrastructure projects, these procedures might not be shared with all departments. The GNWT commits to improving the use of project management procedures. Project management tools and resources will be included in the toolbox.

5. The use of inter-departmental and inter-governmental Working Groups should be considered "best practice" in any EA process.

   The GNWT agrees with this lesson and will continue to use interdepartmental EA working groups for all EAs, including EAs of GNWT projects.

   The Terms of Reference for internal working groups will be included in the toolbox.

6. Roles and responsibilities for undertaking Section 35 consultations need to be clear and formalized to ensure consistent leadership and to avoid overlaps.

   The GNWT agrees with this lesson and will work to share more broadly its approach to Aboriginal consultation.

   The GNWT understands the importance of this clarity, especially when the GNWT is the proponent. The Department of Executive and Indigenous Affairs provides training and guidance to all GNWT departments on Aboriginal consultation. GNWT training and guidance materials and other tools to support meaningful and effective Aboriginal consultation will be included in the toolbox.

7. Early and meaningful engagement with IGOs plus the completion of the EA process under Section 5 of the MVRMA are important elements that serve to satisfy Aboriginal consultation obligations. Regular communications among the parties in an EA process, whether formal or informal, bi-lateral or multi-lateral, are valuable.

   The GNWT agrees with this lesson.

   The GNWT relies on the EA process to assist in meeting its Aboriginal consultation obligations and will continue to do so. The GNWT commits to early and meaningful engagement during planning of GNWT projects, and will continue to have regular communications with all parties during EAs of GNWT projects. For each GNWT project, early and meaningful engagement will be implemented based on existing GNWT guidance, the interests and protocols of the Indigenous governments affected by the project, and relevant resource management board policies and guidelines. The GNWT will continue to file engagement plans and records on board public registries, which is required under board guidelines. Tools to support effective consultation, engagement, and communication will be included in the toolbox.

8. The quality of information and the evidence provided to the Review Board during an EA process will be tested. The Developer should confirm that enough data and evidence is available to support the project and withstand public scrutiny.

The GNWT agrees with this lesson.

For future GNWT projects, the developer department(s) will continue to work with departmental experts to ensure data and evidence requirements are met. Tools to support review and testing of evidence will be included in the toolbox.

9. Firewalling is a legitimate tool under specific circumstances to support independent decision-making by responsible ministers.

The GNWT agrees with this lesson.

While firewalling is not the only process tool that may be implemented to support independent decision-making, it remains an option for responsible ministers. Decision support tools such as firewalls will be included in the toolbox.

10. A plan is needed for how the GNWT transitions from EA to the regulatory to implementation phases of a Project to maintain continuity in relationships and lines of communication.

The GNWT agrees with this lesson.

The GNWT commits to, as part of its response to Recommendation 2, developing a toolbox for GNWT projects that encompasses project planning, development and delivery, including transition from environmental impact assessment to regulatory proceedings. Roles and responsibilities pertaining to each phase of project development will be defined and communicated for each project.