

FINDING COMMON GROUND: EXPLORING THE RELATIONSHIP
BETWEEN REGIONAL LAND USE PLANNING AND DEVELOPMENT
ASSESSMENT IN THE YUKON



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Finding Common Ground: Exploring The Relationship Between Regional Land Use Planning And Development Assessment In The Yukon

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EXECUTIVE SUMMARY

Natural resource management in the Yukon is operationalized through a variety of collaborative management boards and committees on which Yukon First Nations and the territorial and/or federal governments each nominate appointees. This process is set out in comprehensive land claim agreements with Yukon First Nations through the signing of the Umbrella Final Agreement (UFA). Chapters 11 and 12 of the UFA call for the establishment of three important bodies for natural resource management; the Yukon Land Use Planning Council (YLUPC), planning commissions, and the Yukon Environmental and Socio-economic Assessment Board (YESAB), respectively. YLUPC is responsible for supporting regional land use planning, while individual planning commissions are responsible for preparing land use plans, and YESAB is responsible for development assessment (impact or environmental assessment) of individual projects. There are similarities in the overall mandates of YLUPC and YESAB, in that both relate in some form to reducing land use conflicts, promoting and utilizing the knowledge and experience of Yukon First Nations, and ultimately participating in the assurance that development in the Yukon will remain sustainable. Not surprisingly, there also exists both procedural and operational overlap between the two processes in information requirements and objectives.

Although a variety of factors, as described above, reflect the overall advantages and benefits of retaining a functional and explicit collaborative relationship, it is interesting to note that YLUPC, planning commissions, and YESAB remain largely removed from one another in their day to day operations. Both processes proceed independently of one another, and with the exception of limited legislated linkages through the UFA and the *Yukon Environmental and Socio-economic Assessment Act*, there is no formal interconnection or framework within which they can share ideas, data, or learn from one another in their efforts to achieve their mandates under the UFA.

This project initiates a discussion on the potential challenges faced in regional land use planning and development assessment in the Yukon, and makes tangible recommendations for clarity and collaboration. There were three main objectives of this project. First, a cross-jurisdictional scan was conducted in order to better understand the procedural relationship between the processes in select areas, including the Northwest Territories (NWT), Nunavut, Ontario, and British Columbia (B.C.). Secondly, relevant provisions under the UFA were reviewed so as to better understand the intent behind certain operations, and thirdly, this project applied an evaluation framework to assist in the identification of limitations and opportunities for greater collaboration and social learning in the existing regime.

These objectives were accomplished through a synthesis review and qualitative analysis of existing documentation available from a variety of open sources in the last 30 years, including primary research studies, legislation, process documents and guidelines, letters, periodicals, websites, and public documents. Documents were thematically and descriptively coded with both pre-determined and emergent codes in a qualitative data software program (NVivo), and the data was analyzed for relevance to the objectives and emergent themes were described.

The results of this project highlight several important findings. Overall, there are major legislative discrepancies in the Yukon as compared to other jurisdictions with similar foundational origins within

comprehensive land claim agreements, such as in the NWT or Nunavut. Of particular note is the lack of legislative authority for development projects to conform to a land use plan as well as the current disbandment of planning commissions once a land use plan has been recommended. These discrepancies result in uncertainties around the regional land use planning process generally and specifically to how it *may* apply to the development assessment process. Sources of uncertainty also stem from vague or unclear wording and intended flexibility within existing legislation, the lack of legislation altogether, as well as the procedural gaps that persist in the current planning and assessment regime. Currently, there remain potential challenges to achieving a truly collaborative relationship between the two organizations, largely as a result of financial and resource capacity discrepancies and a lack of decision making authority, however there are also significant incentives and opportunities for mutually favourable outcomes.

While at present, major sources of uncertainty do not appear to be providing for significant hindrances to the overall regional land use planning and development assessment regime, the results of this project suggest that the true test to how this procedural relationship will operate has yet to come. To date, the Yukon has completed two regional land use plans; the North Yukon Regional Land Use Plan in 2009 and the Peel Watershed Land Use Plan in 2019. The third regional land use plan slated to be completed is the Dawson Regional Land Use Plan, which is currently under development by the Dawson Regional Planning Commission and expected to be completed in 2023 (Government of Yukon and Tr'ondek Hwech'in Government, 2019). While there is some lived experience to be gleaned from the North Yukon and Peel Watershed land use plans, the overall remoteness and fairly minor development pressure experienced in both regions creates noteworthy limitations in our full contemplation of how these two processes will interrelate in the face of more substantial and political industrial pressure, such as is observed the Dawson planning region. As the Yukon moves forward with its rapid commitment to start up and complete all remaining regional land use plans in a timely manner (Yukon Liberal Caucus, 2021), it is important to pre-emptively work towards elevating our collective knowledge of potential challenges this will mean for the development assessment process, and relatedly, where we can increase opportunities for social learning between the two processes. This project concludes with offering general recommendations that could be considered by YLUPC, including changes that should be considered and/or sought in legislation and policy, initiatives for collaboration and social learning, and improvements in process.

Overall, this project aims to initiate an often silent dialogue on the challenges and opportunities associated with the current regime, such that discussions can begin to identify a collective way forward. It should be noted that this project remained limited to the extent to which it could fully and effectively glean meaningful observations from this procedural relationship as it focused only on existing documentation and did not employ any new collection of first hand experiences. In order to continue this important dialogue, a more in-depth analysis on the experiences of key players involved in both processes should be explored through the use of research interviews with the goal of gaining more primary and expressive qualitative data. This would offer a more fulsome and comprehensive review of these important objectives.

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STANDPOINT AWARENESS

Reflexivity is a process of coming to understand and account for one's own personal assumptions, socialization, privileges, power, biases and blind spots (Spangenberg, 2011). Importantly, reflexivity is about more than just acknowledging the viewpoint from which we see things, it is about reflecting on how that viewpoint has influenced our own interpretation of how we choose to observe, draw conclusions, and make recommendations about certain circumstances and situations. Together, this makes up our "standpoint", and each person's standpoint remains unique to their own set of influences, beliefs, history, and personal attributes (University of Saskatchewan, 2021). As a researcher in the sustainability sciences, it is critical that I practice reflexivity and examine how my individual standpoint has influenced the way in which I approached this project and evaluated the research question.

Notable attributes of my standpoint for this project predominately relate to where I call home and my employment experiences. I was born and raised in Dawson City, Yukon within the Traditional Territory of the Tr'ondëk Hwëch'in. I am a non-Indigenous settler of mostly Italian-Scottish heritage, and with the exception of living in Montreal to obtain my undergraduate degree, I have lived my entire life in the Yukon. I have worked previously for YESAB in the realm of development assessment and more recently I was employed by the Yukon Land Use Planning Council as a Land Use Planner for the Dawson Regional Planning Commission. I am currently a student of the School of Environment and Sustainability at the University of Saskatchewan, but also an employee of the Tr'ondëk Hwëch'in Government with responsibilities for implementing their rights and provisions under the Tr'ondëk Hwëch'in Final Agreement that among other things, pertain to land use planning within their Traditional Territory.

My relationship to this research question is highly influenced by these experiences and my familiarities with the processes, and importantly, my standpoint forms inherent biases and epistemological assumptions on the challenges and opportunities described in this report.

INTRODUCTION

The Umbrella Final Agreement (UFA) was signed in 1993 by the Government of Canada, the Government of Yukon, and the Council of Yukon First Nations (CYFN). The UFA represents a historic and comprehensive land claim agreement for Yukon First Nations from which all corresponding individual First Nation land claim and self-government agreements are born. Importantly, the UFA introduces a framework for the collaborative management of natural resources in the Yukon between Yukon Government and Yukon First Nations through the establishment of various boards and committees, including the Yukon Land Use Planning Council (YLUPC), regional planning commissions, and the Yukon Environmental and Socio-economic Assessment Board (YESAB) (CYFN a, 2021). Respectively, YLUPC and planning commissions are responsible for the support and undertaking of regional land use planning, and YESAB is responsible for the development (environmental or impact) assessment of individual project proposals in the Yukon. Specifically, the objectives, process, and desired outcomes of regional land use planning are described under chapter 11 of the UFA, whereas the objectives, process, and desired outcomes of development assessment are described in chapter 12. While both entities and their delegated procedural authority stem from the UFA, the process for development assessment and the roles and responsibility of YESAB are further spelled out in the *Yukon Environmental and Socio-economic Assessment Act* (YESAA), which reached legal assent in 2003. Conversely, regional land use planning does not have corresponding legislation.

A planning commission is made up of nominees from Yukon Government and Affected First Nations ('the Parties') within individual planning regions, which generally follow First Nation Traditional Territories in the Yukon. There are currently eight planning regions in the Yukon, and to date, there have only been two regional land use plans completed in the Yukon; the North Yukon Land Use Plan in 2009 and the Peel Watershed Land Use Plan in 2019 (YLUPC a, 2019). A planning commission is ultimately responsible for developing and recommending a regional land use plan to the Parties, who are then responsible for the approval of the land use plan and the eventual implementation of its provisions. YLUPC plays a critical support role in the process, with the specific mandate to make recommendations to Government and each Affected First Nation with respect to land use planning in the Yukon (YLUPC b, 2019). More broadly, YLUPC also assists individual planning commissions with human resources and facilitates a common understanding of the land use planning process. Their mission is to advocate for land use planning as a comprehensive means of addressing cultural, social, economic and environmental sustainability (YLUPC b, 2019).

YESAB is an independent arms-length body, responsible for the assessment responsibilities as defined under YESAA (YESAB a, 2021). There are three tiers to assessment under YESAA, including Designated Office evaluations, Executive Committee screenings, and Panel of the Board reviews. The vast majority of project assessments under YESAB are undertaken by Designated Offices, which are located in six different communities throughout the Yukon. The core purpose of YESAB to protect the environmental and social integrity of Yukon (YESAB b, 2021).

YLUPC, individual planning commissions, and YESAB share notable similarities in their overall purpose and structure. On an organizational level, all three entities represent a collaborative management

arrangement with members nominated from territorial and/or federal governments, CYFN or individual First Nation governments. Procedurally, they share information requirements and operational considerations, such as relying on transparent, fair, and public processes, and each process ends with a recommendation to government(s) rather than firm decisions. On a more technical level, regional land use planning and development assessment also involve the consideration of regional variations within the Yukon, must incorporate the knowledge and experience of Yukon First Nations, and are meant to ensure development remains ultimately sustainable in the Yukon. It is clear that the UFA envisioned the processes having consistent overall objectives, not only as described within their respective chapters, but also more generally in the opening clauses of the agreement itself, which apply to the implementation of the UFA in its entirety. This is exemplified in Table 1 below (Umbrella Final Agreement, 1993).

Table 1: Overview of Opening Clauses and Comparative Objectives in Chapter 11 and 12 of UFA

The parties to the Umbrella Final Agreement wish to recognize and protect a way of life that is based on an economic and spiritual relationship between Yukon Indian People and the land			
The parties to the Umbrella Final Agreement wish to encourage and protect the cultural distinctiveness and social well-being of Yukon Indian People			
The parties to the Umbrella Final Agreement recognize the significant contributions of Yukon Indian People and Yukon First Nations to the history and culture of the Yukon and Canada			
The parties to the Umbrella Final Agreement wish to enhance the ability of Yukon First Nations and Yukon Indian People to participate fully in all aspects of the economy of the Yukon.			
Chapter 11: Regional Land Use Planning		Chapter 12: Development Assessment	
11.1.1.4	To utilize the knowledge and experience of Yukon Indian People in order to achieve effective land use planning;	12.1.1.2	Provides for guaranteed participation by Yukon Indian People and utilizes the knowledge and experience of Yukon Indian People in the development assessment process;
11.1.1.3	To recognize and promote the cultural values of Yukon Indian People	12.1.1.1	Recognizes and enhances, to the extent practicable, the traditional economy of Yukon Indian People and their special relationship with the wilderness Environment;
11.4.5.7	Shall promote the well-being of Yukon Indian People, other residents of the planning region, the communities, and the Yukon as a whole, while having regard to the interests of other Canadians;	12.1.1.3	Protects and promotes the well-being of Yukon Indian People and of their communities and of other Yukon residents and the interests of other Canadians;
11.1.1.6	To ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development.	12.1.1.4	Protects and maintains environmental quality and ensures that Projects are undertaken consistent with the principle of Sustainable Development;

Notwithstanding above, there are also key differences between the two processes that should be mentioned. Notably, the processes occur at very different temporal and spatial scopes. Regional land use planning is meant to provide a higher level vision for a large expanse of land, making recommendations

for acceptable activities and associated intensity levels through recommended thresholds to development, and there is a strong emphasis on the need to review and adapt a land use plan as time goes on. In this way, a land use plan should represent a living vision of what is desired within a region, making statements on key values and objectives that must be maintained over time. Development assessment, on the other hand, is meant to determine if individual projects will contradict that vision or intent, and if they do, the process must make recommendations for appropriate mitigation measures. In this way, assessments are meant to identify and mitigate a more static review of socio-cultural and environmental impacts of proposed activities. These distinctions are critical, as while there are many ways in which the processes retain similarities in overall purpose and objectives, they will always have divergent roles and individual responsibilities as defined under the UFA.

Given the expanse of overlap between overall purpose, structure, objectives, and information requirements, however, it is noteworthy that the entities remain largely siloed in their day to day operations. Regional land use planning and development assessment generally proceed independently of one another, and with the exception of limited legislated linkages through the UFA and YESAA¹, there is no formal interconnection or framework within which they can share ideas, data, or learn from one another.

The completion of the North Yukon and Peel Watershed land use plans have offered glimpses into how the processes procedurally relate, however the remaining six to be completed (including the Dawson planning region) contain substantially more proposals for projects through their corresponding YESAB designated offices (YESAB c, 2021). As a result, it is important to work towards elevating our collective knowledge of potential challenges this procedural relationship will present moving forward, and what opportunities exist for greater collaboration and social learning.

This project stems from a partner agreement between YLUPC, the University of Saskatchewan School of Environment and Sustainability, and myself as a student in the Masters of Sustainability program. My role and responsibility on this project was to explore ways in which a more effective and integrated framework for communication and collaboration between regional land use planning and development assessment could be developed in the Yukon.

This report should be viewed as a starting place for this important work and not the finish line. This project begins to explore the particular limitations faced by YESAB, planning commissions, and YLUPC in reaching a truly collaborative arrangement, as well as identifies prospects where the organizations could

¹ When YESAB receives a project application in a region where a regional land use plan is *in effect*, YESAB shall request that the Regional Land Use Planning Commission for the planning region determine whether or not the Project is in conformity with the approved regional land use plan (UFA 12.17.1 / YESAA 44). Similarly, When YESAB receives a project application in a region where a regional land use plan is *under development* YESAB shall provide the Regional Land Use Planning Commission with the information it has on any Project in the planning region for which a review is pending and shall invite the Planning Commission to make representations to YESAB (UFA 12.17.2 / YESAA 45)

better rely on each other and the collective power of their mandates to achieve shared objectives. Specifically, the objectives of this project are as follows:

1. Conducting a cross jurisdictional scan in order to better understand the procedural relationship between impact assessment and land use planning outside the Yukon;
2. Examining the origins of the two processes, and whether or not there was intention for inter-relation, under the UFA;
3. Evaluating how the regime currently co-operates through the application of an adaptive co-management diagnostic framework (Manandhar & Clark, 2019); and
4. Identifying gaps and opportunities for strengthened collaboration between the two organizations and their processes.

PORTFOLIO OF WORKS

The portfolio of works for this project has been broken up into methodology, results, and discussion.

METHODOLOGY

SYNTHESIS REVIEW AND SCOPING

The search strategy employed for this project consisted of three steps. First, online databases JSTOR, Taylor and Francis, and Google were used to better understand the nature, type, and extent of available information on the research question using identified initial keywords, including: “land use planning”, “land planning”, “land use plan”, “impact assessment”, “co-management”, “natural resource management”, “YESAB”, “YLUPC”, “planning commission”, and “First Nation land claim agreements”. This initial keyword search allowed for a wide breadth of resources on the topic. Secondly, from this list additional search keywords were identified as the research parameters became more defined. As a result, secondary keywords included: “environmental assessment”, “development assessment”, “strategic environmental assessment”, “integrated resource management”, “co-governance”, “adaptive co-management”, and “land claims”. Thirdly and finally, the reference lists of each resource and journal article was scanned for additional insights into potential applicable resources. The type of evidence to be considered in this review included include “open” sources with maximum variation, including primary research studies, systematic reviews, guidelines, letters, periodicals, websites, and public documents. The timeframe of sources that was considered is 30 years (i.e. after 1991).

This scoping review was particularly relevant for the cross-jurisdictional scan of how land use planning and development assessment co-operate or procedurally relate in other regions. For this part of my project, an initial list of criteria to narrow down my search analysis was developed with my advisors. This identified the following parameters for the cross-jurisdictional scan: a) similar legislative context within a First Nation land claim agreement or through some other collaborative arrangement between First Nations and government(s), b) preferably a jurisdiction with at least one completed land use plan, and, c) preferably located in Canada. Based on advice from my project advisors on potentially relevant jurisdictions, the research focused on Northwest Territories, Nunavut, Ontario, Labrador, and British

Columbia (B.C.). The online search engines of JSTOR, Taylor and Francis, and Google were used with the identified key words above to research how the processes related in each jurisdiction. Eventually, this search was further narrowed down to the following areas as they remained the most relevant to the objectives of this project, they best fit the criteria, and/or information was readily available online: Nunavut, Northwest Territories, Atlin, B.C., and Far North, Ontario.

Following the cross-jurisdictional scan, I identified applicable resources for the evaluation of both the intent under the UFA as well as identifying and describing the current procedural relationship between the two processes. For this scoping review, the sources focused much more regionally within the Yukon itself and on the applicable organization's websites, including YESAB, YLUPC, Government of Yukon, CYFN, and related website (for example, the Yukon Mineral Development Strategy website). In addition, grey literature was reviewed, including newspaper articles and opinion pieces, by using the keywords in Google, as well as specific documents provided by YLUPC and YESAB. Finally, research efforts also included referencing the YESAB Online Database to review past projects in which the two processes were heavily interlinked (as determined by advise from my placement project advisor).

In total, I compiled 40 documents in the synthesis and scoping review that were used in the analysis. This does not include information sourced specifically from a webpage, such as individual organizational mandates, policy guidance documents, and in particular the YESAB Online Registry.

DATA ANALYSIS

Sources captured as per the synthesis review were downloaded and saved according to a strict naming protocol (year.title.lastname). I used NVivo qualitative data analysis software for the organization and analysis of sourced documents. This allowed me to track documents more easily, analyze the data via thematic and descriptive coding, and eventually retrieve key findings and references.

This project utilizes both deductive and inductive qualitative analysis coding. Deductive in that I had an original theory to dictate the research, and initial codes were developed to help organize the data into preliminary "nodes". This was primarily the exercise used for the cross-jurisdictional scan in which regions were already identified (codes included "legislation and process", "linkages", "staff resources", etc.) as well as the application of the diagnostic framework, as it contained pre-determined components to be analyzed from the data (codes included "starting conditions", "supporting conditions", "collaborative process", "outcomes", etc.). However, this project also exercised flexibility in what overall themes might emerge from the data. I used this type of inductive qualitative analysis to identify further foundational themes to the research (codes included "uncertainty", "lessons learned" and "reasons for improvement").

I also coded documents both descriptively and thematically, depending on the nature of the content being coded. For example, a descriptive code might be applied to "shared process" where both land use planning and development assessment have similar procedural requirements, whereas a thematic code might be applied to "process linkage", which likely captures linkages beyond procedural overlap but also general linkages between the two, such as where someone might have referred to the need for integrated resource management in the Yukon.

In total, I identified 39 codes in NVivo. Appendix A to this report includes a complete list of codes used for this project.

APPLICATION OF AN EVALUATION FRAMEWORK

In order to provide for a systematic and defensible review of the two processes, I utilized an evaluation framework originally designed to examine the effectiveness of different co-management arrangements (Plummer and Fitzgibbon 2004). The framework I applied for this project was developed by Manandhar & Clark (2019) for use in examining the co-management system between Yukon Energy Corporation and Champagne and Aishihik First Nations at the Aishihik Hydroelectric Power Generation Facility near Haines Junction, Yukon. While the concept of applying a framework like this to co-management arrangements is not new (Plummer & Fitzgibbon, Co-Management of Natural Resources: A Proposed Framework, 2004) (Plummer et al, 2017), the use of it in this project diverges slightly. In this project, I use the framework to examine how distinct-yet-related collaborative entities themselves (YESAB, YLUPC, and planning commissions) communicate and share decision-making, rather than how one co-management arrangement itself, functions. Nonetheless, it remains useful in this setting as it helped me to identify and describe the limitations as well as opportunities for greater collaboration and social learning.

The framework organizes co-management into “context”, “components” and “linking mechanisms”. Figure 1 below shows the conceptual adaptive co-management framework used in this project (Manandhar & Clark, 2019). Unlike previous co-management frameworks (Plummer & Fitzgibbon, 2004), this one contains a more fine-grained approach to evaluation by refining the components into various elements and variables that are more specific, including: “starting conditions”, “supporting conditions”, “collaborative process”, and “outcomes”. In practice, this results in a more detailed evaluation of the situation at hand.

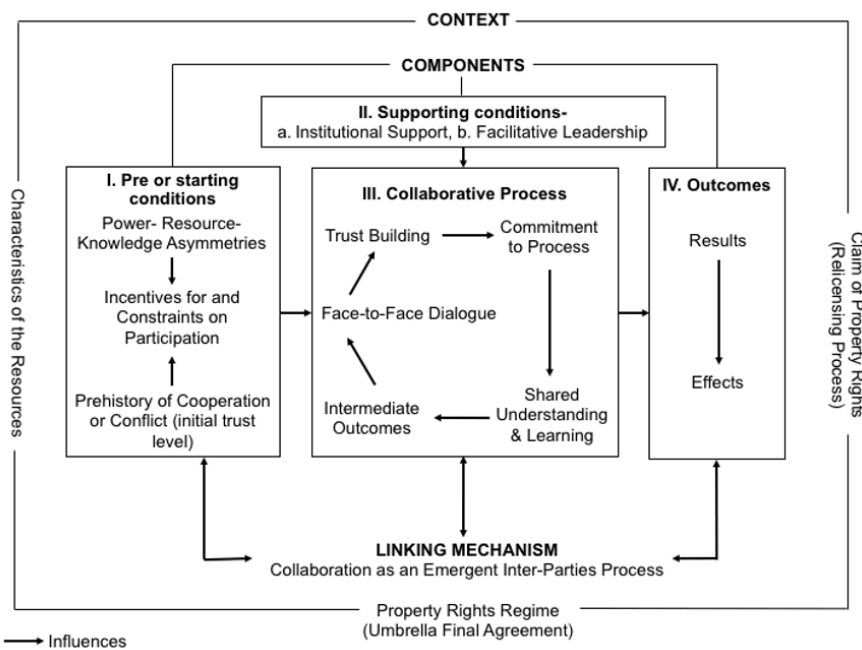


Figure 1: The conceptual adaptive co-management framework used to assess opportunities and limitations

Each component, element, and variable was given a pre-defined code in Nvivo and the data sourced from the synthesis and coding review was used to find relevant and applicable inputs. The inputs used for this project are listed in Table 2 below, adapted from Manandhar & Clark, 2019.

Table 2: Conceptual adaptive co-management framework

Component	Element	Variable
Starting Conditions	Power conditions	<i>Organization infrastructure</i>
		<i>Organizational status</i>
	Resource conditions	<i>Economic and human resources to participate</i>
	Knowledge conditions	<i>Knowledge to understand and address problems</i>
	Incentives to participate	<i>Financial or other means</i>
		<i>Stakeholder or participant expectations</i>
		<i>Interdependency / lack of other means</i>
		<i>Legal / regulatory requirements</i>
History of cooperation or conflict	<i>Social capital</i>	
	<i>Common vision</i>	
Supporting Conditions	Institutional support	<i>Participatory inclusiveness</i>
		<i>Clear ground rules</i>
		<i>Process transparency</i>
	Facilitative leadership	<i>Collaborative leader</i>
Collaborative Process	Communication and Negotiation	<i>Communication</i>
	Trust building	<i>Good faith effort</i>
		<i>Honesty</i>
		<i>Limited opportunism</i>
	Commitment to process	<i>Openness to explore mutual gains</i>
		<i>Shared action/ownership of process</i>
		<i>Trans active decision making</i>
		<i>Long-term institution-building</i>
		<i>Provisions with necessary resources</i>
	Shared understanding and learning	<i>Social learning</i>
Immediate outcomes	<i>Small wins</i>	
	<i>Strategic plans</i>	
	<i>Joint fact-finding</i>	
Outcomes	Results	<i>Resolution of conflict and/or agreement</i>
		<i>Codified statement of mitigation action</i>
		<i>New institutional arrangement</i>
		<i>Greater adaptive capacity</i>
		<i>Social and human capital</i>
		<i>Creative ideas for solving problems</i>
		<i>Changes in perception</i>
	<i>Engagement and learning across scales</i>	
	Effects	<i>Ecological sustainability</i>
<i>Human livelihood</i>		

Thematic analysis requires involvement and interpretation of data from the researcher (Guest et al., 2012). Once the data was coded to specific components, elements, and variables as described above, each dataset within each code was then further examined and explored to better understand overall meaning and make initial conclusions based on the findings. To make this work easier, a blank framework with each component, element, and variable was created and general findings from each were transcribed into the blank framework for easier reference and retrieval in overall analysis.

RESULTS

This section provides an overview of the results of this analysis, addressing the first three objective listed on page 9. The results section is further broken down into three sub-sections:

- Cross-Jurisdictional Scan
- Evaluation of the Intent under the UFA
- Functional Assessment of How the Two Processes Currently Co-operate

CROSS-JURISDICTIONAL SCAN

A cross-jurisdictional scan was executed in order to review how land use planning and development assessment (often referred to impact assessment or environmental assessment) interrelate in other regions of Canada. The parameters of this exercise were to focus on regions with a similar legislative context with ideally one land use plan approved under the process. These parameters were chosen because they provided for the most accurate and useful point of reference for comparing the procedural relationship between land use planning and development assessment in the Yukon.

Based on these parameters, this scan focused on Nunavut, Northwest Territories, Far North, Ontario, and Atlin, British Columbia. The procedural relationship between land use planning and development assessment in each of these regions is described in further detail below as well as key points summarized in Appendix B.

Nunavut

Nunavut was established as a territory through the *Nunavut Land Claims Agreement (NLCA)* in 1999 (Robinson, 2017). Article 11 of the NLCA provides Nunavut's foundation for regional or territory wide land use planning, and Article 12 provides for the development impact process. The *Nunavut Planning and Project Assessment Act (NUPPAA)* came into force in 2014 and provides for the legal mechanisms to enforce the land use planning and development assessment processes as described in Articles 11 and 12 of the NLCA (Dylan & Spencer, 2019). Under NUPPAA, the Nunavut Planning Commission (NPC) is responsible for identifying planning regions, setting planning objectives, and ultimately developing, implementing, and monitoring land use plans, whereas the Nunavut Impact Review Board (NIRB) is responsible for impact assessment. Members of both NPC and NIRB are nominated by the Government of Canada, the Government of Nunavut, as well as representatives from Regional Inuit Associations.

Land Use Planning

Under NUPPAA, land use plan development involves public consultation and the need for consideration of affected municipalities, interested corporations and organizations, residents and other interested persons. Similar to Yukon, the NPC can only recommend a land use plan, and the ultimate decision to accept a land use plan resides with the designated Inuit organizations, the government of Nunavut, and the government of Canada. However, final approval of a land use plan comes from the Government of Canada and Nunavut following the acceptance of the plan by all three parties. Following plan development, it is important to note that the NPC remains an active entity with responsibilities as per the NUPPAA, including the review of project proposals by proponents to determine if projects are in conformity with applicable land use plans, as well as performing annual reviews of plan implementation (NPC, 2020).

Development Assessment

The NPC determines whether a project that conforms to the plan (or that has received a minor variance or ministerial exemption) is exempt from screening under NIRB, or if it requires a screening due to cumulative impact concerns (NPC, 2020). The conformity check process is set out with procedural timelines and clarity, such that once the NPC determines if a project proposal is consistent with the terms and conditions of a land use plan, or if the activity proposed is prohibited, they prepare a letter outlining the results of the conformity determination (which may include any applicable terms, conditions, recommendations, or relevant information) and send it to the proponent and decision body. If the NPC determines that a project is in conformity with a land use plan, they have the added responsibility of verifying whether the project is exempt from screening under NIRB. If it is not, the project proceeds to NIRB for assessment.

Northwest Territories (NWT)

The *Mackenzie Valley Resource Management Act* (MVRMA) was enacted in 1998, and in fulfillment of Article 25 of the *Sahtu Dene Metis Comprehensive Land Claim Agreement*, with it came the establishment of an integrated resource management regime for public and private lands and waters that is focused around co-management (Mackenzie Valley Review Board, 2021). The Mackenzie Valley includes all of the NWT with only minor exceptions², and is made up of five regions: Gwich'in, Sahtu, Deh Cho, Akaitcho, and Tlicho or Wek'èezhii (NWT Board Forum, 2021). Under MVRMA, there are two planning boards established; the Gwich'in Land Use Planning Board and the Sahtu Land Use Planning Board (Planning Boards), and they are responsible for setting the objectives, preparing, and adopting, a land use plan. MVRMA also dictates the impact assessment process through the establishment of the Mackenzie Valley Environmental Impact Review Board (MVEIRB), which acts as the main instrument in the NWT for the environmental assessment and environmental impact review of developments.

² The Mackenzie Valley does not include the Inuvialuit Settlement Region and Wood Buffalo National Park.

Land Use Planning

Like the Yukon, land use plan development in NWT involves public consultation and Planning Boards can only make recommendations. Approval of a land use plan resides first with the First Nation, then the Territorial Government, and thirdly the Government of Canada. Similar to Nunavut, Planning Boards in NWT retain post-plan development responsibilities including monitoring for implementation of the plan as well as considering applications for exceptions to the plan (MVRMA s. 44). Also similar to Nunavut, the Planning Boards are responsible for determining conformity to a land use plan, but importantly, all bodies responsible for issuing licenses or permits for projects must do so in accordance with a land use plan (MVRMA s 46(1)). As such, plan conformity under MVRMA only requires the Planning Board to determine whether an activity is in accordance with a land use plan when the activity is referred to them by a First Nation, a regulatory body, or any person directly affected by an activity. More readily, the regulators make the conformity determination, which is heavily support and assisted by implementation guidance documents prepared by the Planning Board³. The Planning Board also retains responsibilities for plan implementation, monitoring, and the development of strategic plans. The ability to develop and implement a strategic plan is a distinction from the Yukon worth acknowledging. As indicated in their strategic plan, for example, the Sahtu Planning Board have the ability to continue improving and adapting the plan such that the land use plan evolves with regional changes (Sahtu Land Use Planning Board, 2021).

Development Assessment

Development assessment in NWT is conducted by the Mackenzie Valley Environmental Impact Review Board (MVEIRB). There are three steps to the environmental assessment process under MVEIRB, including a preliminary screening, and environmental assessment, and an environmental review (Mackenzie Valley Review Board, 2021). Projects are reviewed by a Planning Board, a proponent, or a regulator, prior to the preliminary screening by the regulator for conformity to a land use plan. If the project conforms, or if an exception or amendment is granted, the project can proceed to the preliminary screening stage. All proposed developments that require a license, permit, or other authorization must apply for and go through a preliminary screening, such that there is likely little overlap between land use planning and development assessment in NWT.

Far North, Ontario

The process for land use planning and development assessment in Far North, Ontario is not born out of a First Nation land claim agreement. Rather, the need for collaborative land use planning with local First Nations was an initiative of the provincial government in order to protect certain areas while allowing for economic development (Chetkiewicz & Lintner, 2014). As such, it remains a relevant process to review comparatively to the Yukon, and provides for lessons learned on procedural inadequacies not yet discussed from the other jurisdictions.

³ Implementation guide provides thorough criteria and interpretation of the conformity requirements of a land use plan that must be adhered to by both applicants and regulators in the issuance of permits (Sahtu Land Use Planning Board, 2013).

Far North is an area of northern Ontario that covers 43% of Ontario's land mass and is home to 31 First Nation communities. It is one of the largest, most intact, ecological systems on the planet, and retains significant economic prospects through mineral development along what has been termed the "ring of fire" (Wilkinson, 2012). Following calls to protect large intact ecosystems while also ensuring some economic development, the government of Ontario announced its vision for Far North in 2008. As part of this vision, the government made significant commitments to conservation to important ecological areas and to work collaboratively with First Nations in land use planning. In order to accomplish the vision, the *Far North Act* (FNA) was enacted in 2010. The purpose of the FNA was to provide for community-based land use planning in the Far North that sets out a joint planning process between First Nations and the Ontario government.

Land Use Planning

The overall approach as described in the FNA was to conduct land use planning in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in the federal "Constitution Act, 1982," including the duty to consult, and to support "the environmental, social, and economic objectives for land-use planning for the peoples of Ontario" (Wilkinson, 2012).

Under the FNA, joint planning bodies are established between a First Nation and a provincial Minister. The responsibilities of the joint planning body is to advise on the development, implementation and coordination of land use planning in the Far North on public lands (Wilkinson, 2012). Like Nunavut, NWT, and Yukon, joint planning bodies are intended to represent a co-management arrangement in which the membership is shared between First Nation and provincial government appointees. The planning body is comprised of a planning team that is supported by an advisory team, technical support and community advisory groups. Similar to other jurisdictions, land use plans are approved by the government of Ontario and the First Nation council.

Development Assessment

Development assessment in the Far North is legislated in the *Ontario's Environmental Assessment Act* (OEAA) and the *Canadian Environmental Assessment Act* (CEAA), 2012. The development assessment process does not stem from a land claim agreement. The greatest linkage between land use planning and development assessment under the FNA is the ability for the government of Ontario to "wave" certain environmental assessment requirements for forestry projects under the OEAA through a declaration order once a community-based land use plan has been approved (Government of Ontario, 2021). In theory, this could mean the presence of an approved community based land use plan could remove the need for certain environmental assessments, if the activity aligns with the allowable activities of the land use plan.

Importantly, the FNA also dictates several development activities that are not authorized to proceed until a community based land use plan is approved (unless the development was previously authorized)

(Wilkinson, 2012).⁴ There are, however, ways in which the government of Ontario can issue authorizations for certain activities to proceed, and there are also explicit activities that are listed that the lack of a community-based land-use plan does not restrict.⁵

Overall, the effectiveness of the FNA's ability to actually address sustainability has been heavily criticized as being an "uncoordinated resource development" approach, largely as a result of significant perceived gaps between land use planning and development assessment (Chetkiewicz & Lintner, 2014).

Atlin, B.C. and the Taku River Tlingit First Nation

The Taku River Tlingit First Nation (TRTFN), located in Atlin, B.C., has Traditional Territories in the Yukon Territories, northern British Columbia, and Alaska. In an effort to build a stronger collaborative relationship, the TRTFN and Province of B.C. signed on to a Framework Agreement for Shared Decision Making Respecting Land Use and Wildlife Management in 2008. Within this Agreement, both parties agreed to implement the 'New Relationship'⁶ which was to be one based on respect, recognition and accommodation of aboriginal rights and title (Taku River Tlingit First Nation and the Province of B.C., 2008). Within the Agreement, the Parties indicate that they intend to implement the provisions of the Agreement in a manner that fosters interim and long term reconciliation, including aboriginal and Crown title with the framework therein for shared decision making.

Land Use Planning

The Framework Agreement set the stage for government-to-government discussions related to land use planning, collaborative wildlife management planning, and the establishment of shared decision-making arrangements for the TRTFN and the province of B.C. (Taku River Tlingit First Nation and the Province of B.C., 2008). The Framework Agreement established the Joint Land Forum, made up of members from both parties, which ultimately developed the Wóoshtin wudidaa Atlin Taku Land Use Plan⁷, which was approved in 2011.

The plan is meant to define the scope of acceptable activities, including areas for protection from major industrial development due to their cultural, ecological, wildlife, or fisheries values; and, areas available for ecologically sustainable and culturally appropriate development (Taku River Tlingit First Nation and Province of B.C., 2011). The land use plan was approved in line with the Parties agreement to develop and implement the plan based on shared decision making. An important aspect of the implementation of the Wóoshtin wudidaa Atlin Taku Land Use Plan was the subsequent establishment of a standing Government-to-Government Forum that will guide and monitor implementation of the Land Use Plan, as

⁴ This includes: opening a mine in prescribed circumstances; commercial timber harvesting; oil and gas exploration/production; constructing or expanding electrical generation facilities, electrical transmission or distribution systems; and, all-weather transportation infrastructure.

⁵ This includes feasibility studies or similar assessments, including wind testing; activities associated with environmental clean-up; prospecting, mining claim staking, mineral exploration, or obtaining a mining lease or licence of occupation for mining purposes.

⁶ The New Relationship was originally agreed upon by the Parties in 2005 (Taku River Tlingit First Nation and the Province of B.C., 2008)

⁷ This land use plan remained heavily guided by a document created alone by the TRTFN in 2003, entitled *Hà Tlátgi Hà Khustiyyxh Siti: Our Land Is Our Future: Vision and Management Direction for Land and Resources*

well as introduce a dispute resolution process to handle any potential conflicts (Taku River Tlingit First Nation and Province of B.C., 2011).

Importantly, legal Orders in Council were established in 2009 and 2014 in order to implement the objectives and directions of the Wóoshtin wudidaa Atlin Taku Land Use Plan that pertained to prohibiting certain activities and enacting official “conservancies” to legally project important areas (Government of B.C., 2021).

Development Assessment

Environmental assessment in B.C. is legislated under the B.C. *Environmental Assessment Act* (BCEAA) and conducted by the Environmental Assessment Office (EAO), which is a neutral regulatory agency within the provincial government. Similar to Yukon, there is no legal requirement for development projects to conform to a land use plan under the BCEAA⁸. Rather, approved land use plans are matters that must be considered in the assessment process⁹. Specifically, section 25 of the BCEAA states that “*consistency with any land-use plan of the government or an Indigenous nation*” is a matter that must be considered in any environmental assessment (EAA s.25, 2018). Furthermore, if the EAO determines that a project will not have a significant adverse effect or a serious effect on an Indigenous nation of their constitutional rights, they are obligated to forward along, amongst other documentation, a report that addresses the consistency with any land use plan of relevance to the assessment (EAA s. 16, 2018).

Summary

The results of this cross-jurisdictional scan offer compelling points of comparison for the Yukon regime, as shown in Appendix B. Of particular note is the strong emphasis on integrated resource management in the NWT and Nunavut, as well as the presence of planning entities once a land use plan has been approved. Furthermore, in some jurisdictions, conformity to a land use plan remains a legal requirement of development. All of these factors are discussed in further detail below and again in the discussion section of this report.

AN EVALUATION OF THE INTENT UNDER THE UMBRELLA FINAL AGREEMENT

Evaluating the UFA and related material provides for an important reflection behind why certain provisions were written the way they were, and if they are currently being operationalized as intended. As discussed above, integrated resource management, discontinuance of planning commissions, and discretionary conformity are particular factors that result in both necessary and potentially complex

⁸ It is further stated in the Wóoshtin wudidaa Atlin Taku Land Use Plan that the plan does not substitute for any government-to-government engagement that may be required for the Environmental Assessment process (Taku River Tlingit First Nation and Province of B.C., 2011)

⁹ Where [YESAB] is reviewing a project and a Regional Land Use Planning Commission has determined pursuant to 12.17.1 that a project does not conform with an approved regional land use plan, [YESAB] shall consider the regional land use plan in its review, and make recommendations to the Decision Body that conform so far as possible to the approved regional plan (UFA 12.17.3)

relations between the processes of regional land use planning and development assessment in the Yukon. These are discussed in further detail below.

Integrated Resource Management

The UFA was signed by Yukon First Nations on the ultimate basis that it remain grounded in the *“spirit and intent”* of their cultural values and practices (Clark & Joe-Strack, 2017). This creates challenges in implementing the UFA, as certain provisions may elude to a far greater meaning than our very literal and western interpretation will allow. As such, Clark and Joe-Strack state, *“An integral aspect of this ongoing implementation challenge is the need to understand how to apply Western-style written policy developed from a First Nations-rooted vision of co-governance”* (2017). This is particularly relevant when considering the practice of *“integrated resource management”* as this is not a factor that has been made explicit throughout the current interpretation of the UFA.

Together Today for our Children Tomorrow was a foundational guiding and historic document that preceded Yukon First Nation land claim agreements (Yukon Native Brotherhood, 1973). It is the precursor to the UFA and helped pave the way to negotiations, and in it, Yukon First Nations honestly and emotionally describe the colonized and distressed world in which they find themselves, and the approach to settlement they would accept. Together Today for our Children Tomorrow pointed to a new way in the Yukon that would see *“the management of fish, fur and game be under control of joint authority representing the First and Wildlife Service, the Yukon Territorial Government and the Yukon Indian General Council”* (Yukon Native Brotherhood, 1973). There are no distinctions made between the separate boards and committees to actually do the work of this joint authority, these details present themselves later in the UFA through the establishment of the YLUPC, YESAB, Renewable Resource Councils, and other boards and committees. Rather, what Together Today for our Children Tomorrow focuses on is the need for joint authority and management between all parties, suggesting a strong intent for collaboration and joint management in the Yukon. This fact is further backed from quotes and expressions from the UFA Boards and Committees Forum held in 2017, in which participants express very clearly that the intent behind the UFA was to create an *“integrated land management framework”* for the Yukon (YLUPC, 2017).

What we see in the UFA, on the contrary, is a puzzle of various boards and committees with various responsibilities under this framework that remain fairly isolated and removed from each other’s day to day operations. There are exception to this, of course, in that the UFA does contain explicit provisions for *“integration”* and *“coordination”* throughout various chapters¹⁰, but the interpretation and implementation of these important provisions remains limited. Rather than thinking more broadly about the spirit and intent of the UFA, there is a strong desire to stick to the verbatim words of the agreement, which in reality leaves critical holes in the interpretation of process and responsibilities and overall objectives. In order to better align the UFA with its foundational purpose means reading it as a whole

¹⁰ One of the overall objectives of Chapter 11 is to ensure that *“social, economic, and environmental policies are applied to the management and protection of land, water, and resources in an integrated and coordinated manner so as to ensure Sustainable Development”* (UFA 11.1.1.6), and relatedly, planning commissions shall *“take into account that the management of land, water and resources, including Fish, Wildlife and their habitats, is to be integrated”* (UFA 11.4.5.8). There are other provisions outside of chapters 11 and 12 that speak to integrated resource management, specifically within the management of forest resources (UFA, 17.5.5.2; 17.5.5.3) and the protection of heritage resources (UFA, 13.1.1.8).

rather than its individual chapters and furthermore, it means accepting that what is described in the UFA “is the floor and not the ceiling” (Caddell, 2018). Importantly, this mean accepting that what was likely envisioned with collaborative and joint management was a more thorough and integrated system both between governments, but also between those intergovernmental boards and committees as established under the UFA, including planning commissions, YLUPC, and YESAB.

Discontinuance of Planning Commissions

To date, Yukon planning commissions are disbanded once their recommended land use plan is delivered to the Parties. This is contrary to many provisions within the UFA that speak to the potential role of planning commissions once a land use plan has been developed:

- The Yukon Land Use Planning Council shall convene an annual meeting with the chairpersons of all Regional Land Use Planning Commissions to discuss land use planning in the Yukon (UFA 11.3.5)
- A Regional Land Use Planning Commission may monitor the implementation of the approved regional land use plan, in order to monitor compliance with the plan and to assess the need for amendment of the plan (UFA 11.4.5.10);
- When YESAB receives a project application in a region where a regional land use plan is *in effect*, YESAB shall request that the Regional Land Use Planning Commission for the planning region determine whether or not the Project is in conformity with the approved regional land use plan (UFA 12.17.1);
- When YESAB receives a project application in a region where a regional land use plan is *under development* YESAB shall provide the Regional Land Use Planning Commission with the information it has on any Project in the planning region for which a review is pending and shall invite the Planning Commission to make representations to YESAB (UFA 12.17.2)

Based on these provisions, the UFA stipulates that planning commissions would retain responsibilities for determining plan conformity within the development assessment process, but also potentially for monitoring of plan implementation and plan variance. This is further recognized in implementation reviews of the UFA from 2007, which indicate, “*while we recognize there is an on-going role for the Commission after the Plan is completed, what role that is has yet to be determined*” (UFA Implementation Review, 2007). Further to this, the 1987 Land Use Planning Agreement, which is the precursor to chapter 11, provided for “*an ongoing monitoring function*” for planning commissions once they had produced their recommended land use plans (UFA Implementation Review, 2007).¹¹

Contrary to this intent, however, we see the duty and obligation to conduct conformity checks being designated to YLUPC¹² and the role of plan implementation falling exclusively to the Parties to determine.

¹¹ This agreement goes on to state that they did envision commissions having a reduction in the number of members and related duties, but nonetheless, they would “*continue to exist*”.

¹² 11.3.3.5 of the UFA states that the YLUPC shall make recommendations on “*such other matters as Government and each affected Yukon First Nation may agree*” (UFA 11.3.3.5). It is under this provision that the Parties have requested YLUPC conduct conformity determinations for the North Yukon and Peel planning regions

There are two critical factors that have likely led to this misinterpretation of the UFA; vague language within the UFA and operation precedent.

Vague Language within the UFA

For one, the language within the UFA in general, and specifically Chapter 11, has often been criticized for its vagueness on roles and responsibilities (Leach, 2011). For example, it specifies a number of things that the process should include, but does not define exactly what is required. Consequently, those provisions that deal with public participation, timelines, linkages to other processes, plan contents, monitoring, and plan review and amendment, are left largely for interpretation (Leach, 2011). This is particularly the case with the role and responsibility of planning commissions after they have developed their recommended land use plan, as well as the role of YLUPC in plan development and implementation. Overall, there is no clear path forward in how the planning commission, the Parties, and YLUPC are to work together towards the objectives of Chapter 11¹³ (Leach, 2011). Ultimately, this leads to a lot of uncertainty in plan implementation and importantly, uncertainty in what role and responsibility the planning commission plays once they prepare a land use plan.

Operational Precedent

Secondly, the parties for the first regional land use plan to be developed and approved under Chapter 11 in the Yukon may have set precedent in this regard, intentionally or not. The draft North Yukon Regional Land Use Plan (draft NYRLUP) was released by the North Yukon Planning Commission (NYPC) in October of 2007. Within it, the NYPC goes to great lengths to describe the different roles and responsibilities of several different bodies in plan implementation, including the Parties (Vuntut Gwitch'in Government and Yukon Government), Government of Canada, YESAB, and the NYPC, specifically (NYPC, 2007). The NYPC describe their role in post plan development for plan monitoring, providing for non-conforming uses and variances, conformity determinations, and ensuring long-term consistency with other planning and management practices. Importantly, the NYPC state that their presence would be optimal given the role they could play in ensuring the plan remained adaptive within a changing ecological and political environment and effective at achieving its ultimate objectives (NYPC, 2007).

Of particular note is the strong collaborative and ongoing relationship recommended between NYPC and YESAB, shown in Figure 2 below.

¹³ While a conformity determination by a planning commission is a *shall* clause under the UFA (12.17.1), the role of the planning commission in monitoring and plan amendment is *optional* (UFA 11.4.5.10). The use of the word “may” in 11.4.5.10 has left a lot up to interpretation, and that interpretation seems to differ between involved bodies (Leach, 2011)

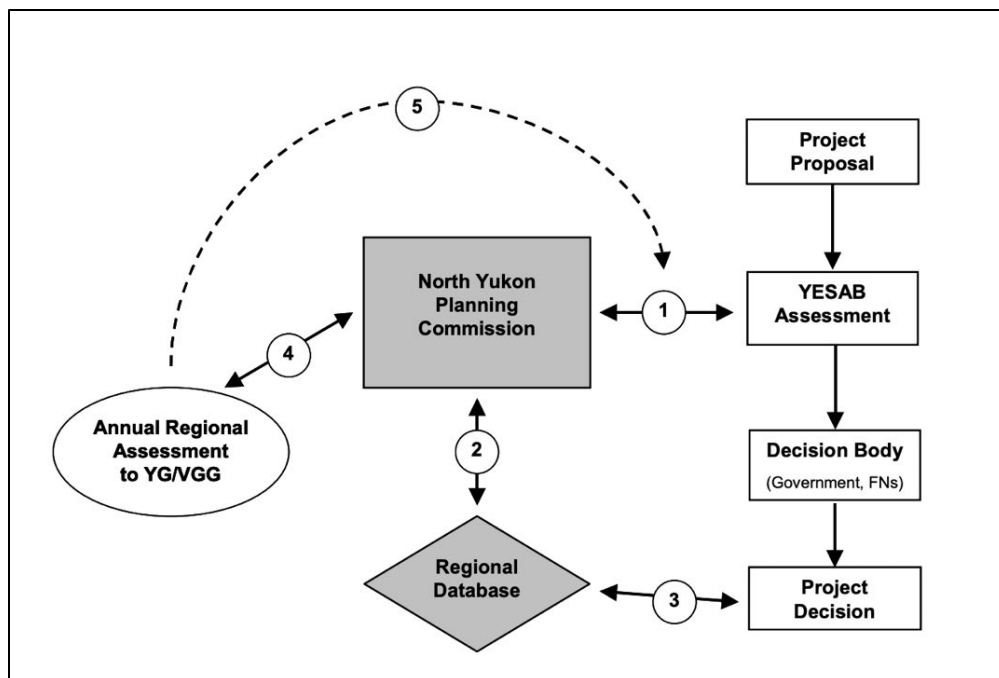


Figure 2: Draft North Yukon Regional Land Use Plan Implementation Structure: In the Draft NYRLUP, NYPC would play a lead role with YESAB in determining conformity to land use plans as well as developing and updating a ‘regional database’ that would be used to gather relevant information on projects, impacts, and changes to the planning region overtime (**North Yukon Planning Commission, 2007**).

Included in the Parties comments to the NYPC on their draft NYRLUP, however, is a strong recommendation to revise the implementation section such that it provides the Parties with the ultimate responsibility for plan implementation (Vuntut Gwitchin Government and Yukon Government, 2008). As a result, plan implementation in the final North Yukon Land Use Plan (NYLUP) does not describe any explicit role for the NYPC once they delivered their plan.¹⁴ Similarly, we also see this recommendation appear in the final Peel Watershed Land Use Plan (PWLUP), in which the Peel Watershed Planning Commission in the draft PLWLUP recommend an explicit role for themselves in plan conformity¹⁵, which is then removed entirely in the final PWLUP.

This progression suggests a precedent in which the Parties retain the ultimate responsibility for implementing land use plans and consequently, a drift towards less and less authority and requirement for a planning commission to exist post-plan development.

¹⁴ Instead, the final NYLUP suggests plan implementation falls primarily on the Parties to implement, although continues to mention that NYPC *may* be involved (Vuntut Gwitchin Government and Yukon Government, 2009).

¹⁵ In the Draft PWLUP the PWPC recommended they continue to exist for determining conformity for large project screenings through YESAB, as well as for reviewing plan amendments (Peel Watershed Planning Commission, 2009).

Discretionary Conformity

Another factor worth exploring further is the lack of a firm legislated requirement for development projects to follow land use plans. There are several relevant provisions within the UFA that speak to discretionary conformity:

- Where [YESAB] is reviewing a project and a Regional Land Use Planning Commission has determined pursuant to 12.17.1 that a project does not conform with an approved regional land use plan, [YESAB] shall consider the regional land use plan in its review, invite the relevant Regional Land Use Planning Commission to make representations to [YESAB] and make recommendations to the Decision Body that conform so far as possible to the approved regional plan (UFA 12.17.3).
- Where a Decision Document states that a non-conforming Project may proceed, the Project proponent may proceed with the project if permitted by and in accordance with Law (UFA 12.17.4).
- Any regional land use planning process in the Yukon shall provide for non-conforming uses and variances from approved regional land use plans in accordance with 12.17.0 (UFA 11.2.1.6).
- Government or a First Nation shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by [the Parties] (UFA 11.7.1 and 11.7.2)
- Nothing in 11.7.1 or 11.7.2 above shall be construed to require Government or a First Nation to enact or amend Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water, or other resources (UFA 11.7.3 and 11.7.4)

In all, it appears fairly certain that the UFA built in several provisions specifically to ensure conformity to a land use plan remains somewhat flexible. This can be deduced from the various provisions that make note that all entities involved, including YESAB, the Parties, and Decision Bodies are not obligated to guarantee development projects proceed in alignment with a land use plan. While this is contrary legislation in other jurisdictions (specifically NWT and Nunavut), allowing for discretionary conformity in the Yukon cannot be seen as going against the stated provisions of the UFA. In the discussion section of this report I reflect on potential reasoning for this provision and discuss limitations offered by it.

FUNCTIONAL ASSESSMENT OF HOW THE TWO PROCESSES CURRENTLY CO-OPERATE

Conducting a functional assessment of how the two processes currently co-operate was operationalized through the application of an evaluation framework. The framework includes consideration of several components with nested elements and variables, and is meant to provide a more systematic view of potential limitations and opportunities in the collaborative relationship.

Below each component has been summarized, and Appendix C has been included to show a complete analysis of each component, element, and variable examined for this project.

Starting Conditions: Power, Resource, and Knowledge Conditions, and Incentives to Participate

This component examines how YESAB and YLUPC are set out in legislation, or ultimately, the ground rules for how the processes are to interrelate. Also, how the organizations are set up through funding, human resources, and access to information.

YESAB and YLUPC have disproportionate financial and human resources, in that YESAB greatly outweighs YLUPC in both money received and human resources acquired. For example, YLUPC was to receive \$607,046 annually for fulfillment of its duties (Amendment to the Umbrella Final Agreement Implementation Plan, 2015) while YESAB receives \$6,217,344 annually as Canada's contribution (YESAB, 2020). This represents a 90% difference in annual funding received for both organizations. Similarly, we see significant variations in staff, with YESAB generally having 89% more staff than YLUPC (YESAB e, 2021) (YLUPC, 2020). Of course, their day to day operations and mandated responsibilities differentiate greatly. For one, YESAB is responsible for six regional district offices in addition to a head office located in Whitehorse, whereas YLUPC is housed out of one central office in Whitehorse. YESAB is also responsible for actually doing the development assessment work throughout these offices, whereas YLUPC remains in a support role to the active planning commissions with various responsibilities, and conducts conformity determinations for the North Yukon and the Peel. With the exception of potential limitations based on this funding discrepancy, they likely have the same opportunities for obtaining knowledge through existing avenues, such as conferences, courses, and meetings. Overall, it is important to acknowledge that both organizations likely face significant challenges achieving their own mandates based on limited capacity and resources. This likely plays a significant role in their ability to collaborate effectively and regularly.

Another key distinction is the existence of legislative backing. YESAB is dictated directly through YESAA, whereas YLUPC continues to remain legally dictated by the UFA alone. There is no regional land use planning act like there is for the development assessment process. As a result, there is also a distinction in how each organization's recommendations are to be received (YLUPC, 2016). Ultimately, both organizations remain as recommending bodies to government(s) and decision body(s), however YESAB retains legislated clarity and confirmation that decision bodies *must* respond to their recommendations¹⁶. This is not the case for YLUPC, which is mandated to make recommendations to Yukon Government and Affected First Nations on various land use planning items however the UFA does not dictate any response requirements (YLUPC, 2016).

Furthermore, resulting land use plans through the regional land use planning process remain simply a key policy document, they do not become legislated¹⁷, as has been previously discussed.

¹⁶ Under sections 74-76 of YESAA, a decision body shall give full and fair consideration to the recommendation provided by YESAB, and a decision body shall issue a decision document within a specified amount of time

¹⁷ With the exception of any legal Orders in Council that may be required to withdraw certain lands from mineral staking, exploration, and development, or to designate certain protected lands under territorial legislation, as determined by an approved land use plan.

Importantly, and regardless of distinctions above, both organizations have ample incentives to participate in a more collaborative relationship. This is evident through the various process linkages, legislated linkages, and similar information requirements, as well as more broadly by the overwhelming claim that the UFA was meant to provide for integrated resource management in Yukon (as described in conference proceedings from UFA Boards Gathering as well as inferred from specific provisions of UFA, including 11.4.5.8 and 11.1.1.6).

Supporting Conditions: Institutional Support and Facilitative Leadership

This component examines the existing ways in which there is support for the processes to collaborate and work on shared mandates and interests. This includes whether or not there is someone, or something, available to lead this collaboration.

Institutional support for integrating the two processes, in a legal sense, only exists through conformity checks and “invitations for Commission’s to provide comments” during the assessment of a project by YESAB (YESAA s. 45). This is the only legislated “check in” between the two processes and organizations. However, outside of this, both organizations have expressed internal institutional support as evident through communication by both YESAB and YLUPC, their occasional meetings, and their collaboration on certain conferences and presentations. Furthermore, both organizations have made a specific institutional claim of support via resolution for “*Whereas Chapter 11-Land Use Planning and Chapter 12-Development Assessment are part of the Umbrella Final Agreement and Yukon First Nation Final Agreements and were intended to work together to manage the lands of the Yukon*” (YLUPC, 2019). At present, however, there lacks a clear facilitative leader that can ensure the two processes remain collaborative.

Collaborative Process: Communication, Building Trust, and Opportunities for Social Learning

Various elements in this component are used to describe how the processes currently operate collaboratively and ways in which this collaboration could be improved.

Existing opportunities to collaborate and interrelate appear to be limited. There does not appear to be a clear collaborative process between the two processes with the exception of the conformity check process. There were no references to implicit or explicit commitments to truly collaborate, or appear to be any established process with necessary resources allocated. Rather, there is likely to be more intermittent and casual communication between Board members, leadership, and on the more technical level between staff.

Opportunities to gain a professional advantage over one another are limited for both organizations, such that they should trust each other to work in good faith and honestly. Social learning appears to occur, but it is narrow. For example, only one reference can be found to a meeting between YLUPC and YESAB in within all the documents reviewed (YLUPC, 2020), and furthermore there appears to have been only one UFA Boards Gathering held in 2017 (YLUPC, 2017). Transcripts from the UFA Boards Gathering are clear that there is an absolute advantage for these organizations to come together and to learn from one another and understand what each other does.

Outcomes: Results and Effects, both Tangible and Intangible at Various Scales

It is difficult to describe the results and effects of this collaborative relationship at this time, as it remains limited and at this point largely focused on the necessary conformity determinations and occasional meetings between the two organizations, and opportunities for information sharing during active planning regions with individual planning commissions. Ultimately, this collaborative initiative remains in-progress. The purpose of this project was to conduct a formative assessment rather than a summative assessment, and it is focused on identifying opportunities and limitations in context, starting conditions, and supporting conditions such that outcomes may become more favourable over time.

There is a real opportunity with this collaborative initiative to inform change, both in tangible terms as well as in less tangible terms. For example, tangible outcomes could be better recommendations and outputs from both processes, as they would be able to rely on each other's collective knowledge and understanding of complex resource management issues through individual experiences. This could lead to less tangible but equally important outcomes, such as building confidence in the resource management process from all involved, including proponents, stakeholders, members of the public, and governments, such that we move away from the "red-tape" culture of resource management in the Yukon that is often expressed by those trying to obtain licenses and permits. Similarly, a truly collaborative arrangement with explicit intentions and progressive outcomes could trigger greater collaboration from other UFA boards and processes.

DISCUSSION

The analysis above included a cross jurisdictional scan, an evaluation of the intent behind certain provisions of the UFA, and finally the application of an evaluation framework. Below, key takeaways from this combined analysis are described in more detail.

Overwhelmingly, this analysis identified uncertainty as a significant characteristic of the current regional land use planning and development assessment regime in the Yukon. This stems from several factors, including vague or unclear wording and intended flexibility in the language within existing legislation, the lack of legislation altogether, as well as the procedural gaps between land use planning and development assessment processes. As solutions, many references speak to added legislated and procedural clarity (Pettersson & Grzybowski, 2015) (YLUPC, 2016), as well as point to land strategies or regional strategic environmental assessment as potential tools to address uncertainty where there are gaps (Caddell, 2018) (YLUPC, 2019). There are also many references to the added certainty that is meant to be provided by land use plans to the development assessment process, however, for reasons described below, there remain several issues yet to be resolved within the regional planning and assessment regime under the UFA that would help facilitate the guidance and certainty envisioned.

LEGISLATION FOR, AND DISCRETIONARY CONFORMITY TO, LAND USE PLANS

The presence of adequate legislation is an important element for process clarity, transparency, and efficiency. In jurisdictions in which both the processes of land use planning and development assessment are described in greater detail and retain legal backing through legislation, the regime is likely to retain added clarity, transparency to land users, and ultimately efficiency in process. For example, NWT and Nunavut benefit from legislated clarity through the NUPPAA and the MVRMA, respectively. In contrast,

only YESAB retains added and separate legislation through YESAA, whereas land use planning in the Yukon has no distinct legislation to dictate its process and responsibilities outside of the UFA.

Similarly, the Yukon remains unique from those jurisdictions in that conformity to a land use plan remains discretionary. Having conformity be a legal requirement of a land use plan, and having the conformity determination occur prior to project assessment, creates added clarity, certainty, and consistency for all involved (proponents, assessors, regulators) in a natural resource management regime. There should be less conflict between a land use plan and any development project being assessed if conformity to a land use plan is a legislated requirement. Importantly, without legislated conformity, there are inevitable and unavoidable linkages between the processes of land use planning and development assessment, as is witnessed in the Yukon regime. YESAB's Assessment Methodology describes the way in which they consider land use plans under "standards, plans and policies" as contextual factors to a project when determining the significance of likely adverse effects (YESAB a, 2021). As such, if YESAB receives a project that does not conform to a land use plan, under existing legislation they must continue to assess it and bring it into conformity "so far as possible" in line with 12.17.3 of the UFA¹⁸. This guarantees a relationship between the organizations and offers the ability for projects to proceed that do not conform to approved land use plans, thus creating potential conflict and uncertainty for all in the process.

While the true motivation and reason behind this requires a more targeted and thorough analysis, one must assume that substantial mineral exploration and development interests in the territory, both historical and contemporary, remain significant motivators for government wanting the ultimate control over land use decisions in a mineral rich territory.

The Yukon Mineral Development Strategy describes the progression of mineral development in the North from a "Hinterland to Core" prior to the 1970's, a "Homeland to Core" beginning in the mid-1970's to 1999, and finally a "Globalized Homeland" from 1999 to now (Mineral Development Strategy Panel, 2021). Broadly speaking, this progression suggests a movement away from seeing the North as a "Hinterland", in which there is no acknowledgement of Indigenous people and their diverse cultures, languages, and traditions, to one of a "Homeland", in which we begin to acknowledge that the North is home to various Indigenous peoples with deep connections to the land. The UFA was signed in 1993, and as such, it was signed by the federal government during a short lived transition stage from Hinterland to the acknowledgment of Homeland. This stage saw a notable slowdown in resource development projects, and the beginnings of processes like environmental assessments prior to approving expansive development, however, we had not yet realized nor recognized the full value and deep connection of the north to the Indigenous peoples who lived here (Mineral Development Strategy Panel, 2021). The Yukon

¹⁸ The corresponding provision in YESAA is found in section 44(2), and 44(3), which state that YESAB must receive conformity determinations by planning commissions, and if projects do not conform, consider the regional land use plan and "invite the planning commission to make representations to it with respect to the project" and if they recommend it to proceed, "it shall, to the extent possible, recommend terms and conditions that will bring the project into conformity with the regional land use plan"

at that time remained a place of significant economic potential from mineral extraction for the benefits of Canada. While the UFA was a significant step towards reconciliation with Indigenous peoples who have called the Yukon home for millennia, the largely untapped mineral resources at that time likely played a significant role in the lack of legislated authority to land use plans developed under land claim agreements. Arguably, even to this day, while it has been 30 years since the signing of the UFA, First Nations continue to fight for shared management responsibilities within their Homeland in the face of significant promotion and advancement of mineral exploration and development by the territorial and federal governments.

Overall, without legislated conformity, the procedural linkages between the two processes are inventible. This is important because it adds emphasis to the need for the organizations to work towards developing and maintaining a relationship such that they can retain information sharing abilities, understand each other's responsibilities and policies, and ultimately work together towards achieving their shared responsibilities under the UFA.

The Timing of Conformity Determinations

It is also important to note the timing of conformity determinations, as they currently occur in the "seeking views and information" stage of the development assessment process¹⁹ rather than prior to, contrary to other jurisdictions. This offers the potential for extensions in the assessment process as conformity determinations may require project details that have yet to be submitted to YESAB. In these circumstances, YESAB will be required to seek additional information from a proponent, thus adding time and resources spent in the assessment.

DEVELOPMENT PROCEEDING PRIOR TO THE COMPLETION OF A LAND USE PLAN

Another factor that creates the potential for conflict and leads to uncertainty is the ability for projects to be proposed, assessed, and permitted, prior to the completion of a land use plan. This creates political touch points within the development assessment process as YESAB is tasked with working within their assessment framework with either a partial or recommended land use plan that has yet to be approved. For the most part, regional land use plans under development do not appear to form significant contributions to YESAB's determination of significance (YESAB f, 2021), yet, they often receive ample and repetitive calls to consider that the lack of a regional land use plan as evidence as to why a project should not be recommended to proceed, as is currently observed during project assessments in the Dawson Designated Office. This creates added confusion and distrust in the overall regime as a whole by all those involved.

The *Far North Act* offers some insights here as to an alternative arrangement, in that it makes specific mention of activities that are unauthorized to proceed prior to the completion of a land use plan (Wilkinson, 2012). In theory, this practice could alleviate many of the concerns brought forward with the Yukon's regulatory context, in which there are no restrictions on development guaranteed prior to

¹⁹ The YESAB Online Registry provides for a timeline of project assessments in which any conformity determination is shown to have been received by YESAB during their Seeking Views and Information period rather than during adequacy or even prior to the project being submitted to YESAB.

entering, or completing, a land use planning process. The greatest restrictions currently that can be granted by the Government of Yukon are for mineral staking withdrawals, and even that can difficult to achieve and there is no legislative requirement for them to do so (Fox, 2021) (CPAWS, 2020).

This is an important take away, as the Yukon Government is finally undertaking the necessary task of developing new legislation for the mineral management regime in the Yukon (Yukon Government, 2021). This was a provision on the signing of the UFA, yet at the time of devolution²⁰, the federal and territorial Government determined the best *short-term* approach would be to mirror federal legislation for mineral management in the Yukon, such that at present, the existing mineral management regime does not align with the UFA nor address significant modern issues faced by communities. This presents an opportunity for those developing the legislation to consider addressing certain gaps in the land use planning process such that the overall regime retains added clarity and certainty.

INVOLVEMENT OF A PLANNING COMMISSION POST PLAN DEVELOPMENT

The presence of a land use planning entity post-plan development creates added capacity for plan implementation, amendment, allowance of variances, monitoring, and review. While the UFA and corresponding YESAA dictate conformity determinations to be the responsibility of the planning commission itself, in reality, no previous commission is maintained post-plan development. This is in contrast to other jurisdictions, and in NWT and Nunavut specifically, these planning entities have legislated duties through the same legislation that created the land use plans and the development assessment process. In the Yukon, this role falls solely onto the Parties to the land use plan, who in turn have historically delegated the authority for conformity to the YLUPC.

The presence of a planning commission post plan development would ensure greater consistency between plan development and plan implementation, reducing any confusion over how the land use plan should be read, as well as provide greater clarity around what the intent behind each recommendation is. This is relevant to the development assessment process, as planning commissions could communicate directly with YESAB assessors and regulators throughout all stages of plan development and the implementation process, including any necessary discussions on conformity. Currently, however, the relationship between YESAB, planning commissions, and YLUPC is not bilateral throughout the entirety of the process. As a result, while YESAB may be able to develop and maintain a relationship with a planning commission during plan development, once the plan is approved, this collaborative relationship would have to switch gears to focus on YLUPC as well as the individual Parties for plan conformity and amendment. This creates added challenges for developing truly collaborative, effective, and long-standing relationships between the processes as different organizations retain different responsibilities at different times. Furthermore, having the Parties solely responsible for plan implementation increases the

²⁰ On April 1, 2003, the Yukon as a territory took over land and resource management responsibilities from the federal government, following negotiations that began in 1998 between the territorial and federal governments, and CYFN (Government of Canada, 2013). This is termed “devolution”, and prior to it, the Government of Canada, through the Department of Aboriginal Affairs and Northern Development, governed most natural resources in the territory.

potential for conflict and polarization between different worldviews and perspectives on land use. It also contradicts the exact purpose of Chapter 11:

“A fundamental premise behind the creation of the First Nation Land Claim agreement boards and committees is that government decision making would be influenced by recommendations from arms-length bodies with expertise in specific areas” (YLUPC, 2016).

This foundational element to the process is lost when we see the Parties taking ownership of plan review and amendment, rather than allowing the independent planning commission do this important work. Importantly, it also introduces the inherent and likely possibility for the original spirit and intent behind the land use plan and its recommendations to be lost in translation during implementation. Furthermore, both at the political and staff level, this introduces challenges and complexities in the way in which plans are implemented.

The Council of YLUPC includes 3 members, one nominee from CYFN and two from government (Umbrella Final Agreement, 1993). As a non-profit society working for all 14 Yukon First Nations, the CYFN is meant is not meant to represent or have the deep connection to one traditional territory or region within the Yukon²¹. On the contrary, individual planning commissions are made up of nominees that retain a much more in depth and living understanding of regional values and complexities than would be expected of both CYFN and the government nominees on YLUPC. This is in fact an explicit requirement under the UFA²². In the absence of the regionally knowledgeable planning commission, decisions are left to the YLUPC to decide when there are discrepancies and/or disagreements between a project and conformity requirements, whereas they are not necessarily fully equipped to do so.

On a more technical level, when a planning commission is disbanded so is the planning staff that supported it. As such, plan implementation, review, and amendment, will have to rely on planning staff from a government party or from YLUPC, all of which would not have the same breadth of understanding, knowledge, or capacity, as the land use planners hired for the planning commission, specifically.

In all, it is safe to say that the Yukon has diverged from the original intent behind Chapter 11 of the UFA for conformity, yet, conformity remains the only effective tool to actually bring the provisions of Chapter 11 to light. Given the overall significance of this chapter to the natural resource management regime in the Yukon, and in particular the significance of this chapter in providing Yukon First Nations with the rights to meaningfully participate in the management of public lands within their traditional territories, it is important to reflect on why it remains this way. If these procedural inadequacies are so restricting, and the Yukon has been operating with an approved land use plan since 2009, *why has it worked so far?*

To answer this, it is critical to understand that the only two regions with approved plans in the Yukon, the North Yukon region and the Peel watershed, are home to significantly less project assessments than the

²¹ CYFN is mandated to serve as a political advocacy organization for Yukon First Nations holding traditional territories, to protect their rights, titles, and interests (CYFN b, 2021)

²² Chapter 11 indicates that *“the majority of nominees...on a Regional Planning Commission shall be Yukon residents with long term familiarity with the region being planned”* (UFA, 11.4.4)

regions to come. For example, in 2019, YLUPC completed two conformity checks each in the North Yukon and Peel planning regions (YLUPC, North Yukon and Peel Conformity Checks , 2021), whereas 90 projects were submitted to the YESAB - Dawson District Office that were located in the Dawson planning region (YESAB Online Registry, 2021). There were 98% more project assessments in the Dawson planning region in 2019 than in either of the regions with approved land use plans. Once the Dawson plan is approved, this will represent a significant exceedance in the capacity of YLUPC to perform conformity checks with their existing resources. Similarly, the YLUPC office is located in Whitehorse and while that arrangement appears to work for the North Yukon and Peel regions, Dawson City is central to the Dawson planning region and may offer appropriate and efficient opportunities for decentralizing these tasks.

Ultimately, we have yet to see the full extent to which approved land use plans and the development assessment process interrelate and with that, the extent to which conflict may exist. Of course, there are exceptions to this overall observation. One project of particular relevance is the Northern Cross Oil and Gas Multi-Well Exploration program assessment, which may offer glimpse into the type of conflicts that are likely to progress as the approval of regional land use plans progresses throughout the Yukon.

The Northern Cross Oil and Gas Multi-Well Exploration Program: A Foreshadow

In 2014, Northern Cross (now Chance Oil and Gas) submitted a project proposal to the Dawson Designated Office of YESAB (YESAB, 2016). The project proposed to drill twenty wells for oil and gas extraction in the Eagle Plains basin (located in northern Yukon) over an area of up to 700 km² for approximately 10 years. The project was located in the North Yukon planning region, and as such, a conformity check was required during the development assessment process. While it was determined that the project ultimately conformed to the land use plan, it is evident from the conformity check that this was not an easy determination. For example, the report describes significant assumptions that had to be made pertaining to the proposed activities so as to determine conformity to the land use plan (YLUPC, 2014). The report is also explicit that there are critical elements to the plan that have yet to be implemented that remain relevant to the project, further complicating matters for the conformity determination.

Even with conformity, YESAB ultimately determined that they could not conclude the significance of adverse effects from the project on access to and use of caribou by Yukon First Nations, thus recommending the project go to another more complex screening (YESAB, 2016). Importantly, in this project assessment you see the development assessment process contemplating the conformity determination at a finer scale than ever before. YESAB indicated that the plan itself was limited in what it could provide the assessment of the project, in that it did not take into consideration the views of First Nations that were not identified as a party to the process, and that the selection of conformity parameters in the land use plan were inadequate factors for their purposes (YESAB, 2016).

There are four compelling observations that can be made from this project assessment. For one, the determination of conformity is based in some assumptive thinking on behalf of the body who determines it, thus creating added uncertainty and conflict between the intent of the land use plan and the implementation of its recommendations. Second, that a project assessment will always only use a land use plan for consideration and that conformity to a land use plan remains discretionary, and thirdly, even

within that consideration, there are overall limitations to its applicability. And, fourth and finally, YESAB was unable to determine significance due in part to the limited parameters the land use plan chose to use as indicators of acceptable change on the landscape, suggesting a procedural gap between the outcomes of a land use plan and the necessary inputs of the development assessment process.

While this project assessment appears to be the first time these processes diverged in this way, it will not be the last. With the Dawson regional land use plan slated to be next for approval, which is home to a strong and highly political natural resource based economy, and by far the busiest YESAB district office for project assessment (YESAB c, 2021), we will increasingly begin to see conflicts and procedural gaps between the processes. Moving forward, it will be important for YLUPC and YESAB to take the time to reflect on the full spirit and intent of Chapters 11 and 12 of the UFA, such that they can optimize the resources and capacity each organization contains towards implementing their mandates and obligations under this foundational land claim agreement.

FINDING COMMON GROUND

“There is a negotiation generation and an implementation generation. The implementation generation needs guidance from the negotiation generation” (UFA Boards and Committees Forum, 2017).

There remain important shortcomings within the overall framework of the regional land use planning and assessment regime in the Yukon, as described above. Notwithstanding, or more accurately because of this, there are real benefits for added collaboration, communication, and social learning between the two processes and organizations.

The application of the evaluation framework facilitated in the identification of potential limitations as well as opportunities for effective collaboration and social learning in the Yukon’s regional planning and assessment regime. As described in Appendix C, certain discrepancies in organizational funding, legislative backing, and procedural clarity for YESAB and YLUPC could form fairly significant barriers to establishing consistent and effective collaboration initiatives. Similarly, there is a lack of firm direction and/or leadership for who should begin and maintain such a relationship, even if it could be established. The processes also remain limited in the extent to which they can inform change in that they are both only recommendation bodies with already existing overwhelming day-to-day responsibilities.

Even still, the incentives to begin this difficult task are endless. For example, both regional land use planning and development assessment continue to show similarities in their information requirements and overall procedural outcomes. Both processes also benefit from adequate and informed data sets, and have separate but related responsibilities for data storage, analysis, and retrieval, are to have established timeframes for deliverables, and provide for adequate public participation and transparent methodologies. Procedurally speaking, both frameworks also must overall aim to reduce land use conflicts, and use the knowledge and experience of Yukon First Nations.

Beyond these tangible incentives, there exists the overall intent behind Together Today for our Children Tomorrow and the UFA to have an integrated and collaborative resource management regime in the

Yukon. This is something both organizations have expressed the need for themselves (YLUPC, 2019), yet the overall structure of how they can begin to implement this intent remains unknown. Achieving a truly collaborative integrated resource management regime is key to our efforts in implementing the UFA to its full spirit and intent, and for our collective responsibility towards true reconciliation in the Yukon.

TOWARDS A SOLUTION

This section is meant to provide an overview of general recommendations that could be considered by YLUPC in their efforts to work towards a more collaborative and effective relationship between land use planning and development assessment processes. However, it should be said that the overall hope of this report was to begin to describe the challenges and opportunities associated with the current regime, such that those involved can begin to identify a collective way forward. As these important discussions progress, these recommendations may become more fine-grained or obsolete, and as such, this list remains living, and is meant to represent a jumping off point for further consideration and analysis.

RECOMMENDATIONS FOR LEGISLATION AND POLICY

1. Conduct additional analysis on the role planning commissions were meant to play with plan conformity, implementation, monitoring, review, and amendment once a plan is approved

Under the UFA, planning commissions were meant to remain in existence post-plan development. While YLUPC has been able to fulfill the role of conformity, with the parties playing the overarching role of plan implementation, this solution is not sustainable nor effective for a variety of reasons. Moving forward, YLUPC should conduct additional analysis and related recommendations for a more successful regime that better aligns with the intent under the UFA.

2. Allow for further consideration on the need for a regional land use planning act, or how certain provisions could be added to successor resource legislation

Without distinct planning legislation it remains difficult to rely on a transparent and effective process for how land use plans should be developed and implemented, and the different roles and responsibilities of all entities in the process remains unclear. In the absence of a distinct regional land use planning act, YLUPC should look into what provisions could be considered for successor resource legislation such that the overall process benefits from clarity and trust.

3. Develop a response protocol for how Yukon Government and Yukon First Nations are to respond to recommendations by YLUPC, and seek approval of this protocol via Yukon Forum

Currently Yukon Government and Affected First Nations have no obligation to respond to, consider, or implement any of the recommendations brought forward by the YLUPC. This creates real challenges for YLUPC and its mandate to support and elevate the regional land use planning process in the Yukon. In the absence of legislative changes, a response protocol may help alleviate resources, increase transparency, and provide certainty to the process for all.

4. Revisit the land claim implementation plan and recommend areas for improvement for ensuring full alignment with the spirit and intent of the UFA for integrated natural resource management

It is clear that we have diverged from the spirit and intent of the UFA in the implementation of certain provisions of chapter 11. These inadequacies should be revisited such that we continually work towards ongoing and sincere implementation of these important agreements.

RECOMMENDATIONS FOR IMPROVED COMMUNICATION AND COLLABORATION

5. YLUPC and YESAB should develop effective and explicit commitments for collaboration, via strategic planning, project charter, an MOU, or otherwise, for discussing joint priorities and initiatives. This can be achieved through joint workshops and/or summits for the purposes of discussing the interface between land use planning and development assessment.

In order to work towards more explicit commitments for collaboration and social learning, the two organizations should first work to identify a project lead from each organization. The second step to initiating a more effective and collaborative relationship is to develop an agreement in which the priority topics are identified through the execution of various joint workshops, meetings, etc. An example of this is cumulative effects management, in which both organizations have made explicit comments on their joint role in the process, however this joint initiative would benefit from explicit commitments and work plans.

6. Initiative regular and meaningful dialogue with other UFA Boards and Committees, such as what was accomplished with the 2017 Yukon UFA Boards and Committees Forum. A potential outcome of this regular forum could be the development of a framework for integrated resource management in the Yukon, as described by the UFA.

The transcript from the 2017 UFA Boards and Committees Gathering offers incredible glimpses into the valuable and necessary discussions between different organizations as established under the UFA. Efforts should be made to have this gathering occur annually such that true social learning and joint implementation of the spirit and intent of the UFA can continue to progress. A potential outcome of this regular forum could be the development of a framework for identifying key players and their roles and responsibilities under the UFA, and a place to describe the explicit commitments and agreements between one another to work collaboratively together for the shared purpose of natural resource management in the Yukon.

An example to emulate for this is the NWT Boards Forum held annually in NWT. The NWT Board Forum was an initiative that began in 2004 in an effort to *“give organizations involved in land use planning, environmental assessment, land and water regulation and resource management an opportunity to learn from one another and to coordinate activities”* (NWT Board Forum, 2021). The purpose of the Forum is to improve and maintain effective lines of communication and share expertise.

RECOMMENDATIONS FOR IMPROVEMENTS IN PROCESS

There are various recommendations that are more technical and procedural in nature that could be implemented to create a more effective and collaborative environment between land use planning and development assessment. Overall, additional research could be allocated to identify common information requirements and ways of improving shared process through the ongoing relationship developed in recommendation #5 and #6 above.

7. Consider using consistent terms, definitions, and tools in both processes, as possible and appropriate, and look towards developing a shared geospatial data repository and database.

For example, certain terms used in both processes, like “values” and “significant”, could be consistently defined and applied. Similarly, the processes could utilize the same tools, like spatial databases, which would increase the potential for shared learning in applicability and use, trouble shooting, as well as increase proponent understanding of values on the landscape as well as the resource management concerns. Internally, consistency within the tools regional land use planning uses (like a consistent approach to land designation) would create added clarity and consistency in use for the development assessment process.

8. Seek approvals for modifying the timing of conformity determinations in the development assessment process.

Conformity determinations should occur prior to entering the development assessment process. This could look like an application process specifically submitted to the planning commission itself, or potentially using an online platform for proponents, YESAB, and regulators to use. If not separate, planning commissions should be given information during adequacy to make conformity determinations prior to the seeking views and information period. Implementing this recommendation is likely to reduce time requirements within the development assessment process from delays in obtaining necessary information for conformity determinations.

9. The YESAB Designated Office for which a regional land use plan is being developed should have a more formal guidance role for value, issue, and stakeholder identification during the plan development stage.

It is important that YESAB remain involved in the land use planning process during plan development. This will benefit both the planning commission and YESAB, in that the District Office located in the planning region would contain information of value to the planning commission, and that involvement during plan development will reduce confusion over plan recommendations during implementation and conformity. It is important that YESAB’s role remain as guidance and not steering or directing the process of developing the plan, but rather an avenue for social learning and information sharing between two important UFA boards and processes.

10. Continue to evaluate potential tools that exist through YESAA, as well as potential advantages offered by Regional Strategic Environmental Assessment or Land Use Strategies, in an effort to address gaps between the land use planning and development assessment processes

Outside of the conformity clauses, there are existing provisions within YESAA that could offer opportunities for improvements in the procedural relationship between regional land use planning and development assessment. These include sections 112 (cumulative effects studies), 110 (monitoring), and 103 (assessment of plans), which should continue to be looked into for solutions to procedural gaps (YLUPC, 2019) (YESAB d, 2021).

Strategic environmental assessments, generally, apply to policies, plans and programs, while regional plans primarily relate to land-use planning at a large scale (Atlin & Gibson, 2017). A subset of this is regional-strategic environmental assessment (R-SEA), which is often cited as a means for developing a more strategic level of decision making that can guide the next tier of planning and project assessment. The benefits of a robust R-SEA process as a means to meet both the objectives of a land use plan and impact assessment was a common theme in the literature review as well as specifically within the context of Far North, Ontario. Many have criticized the effectiveness of the *Far North Act*'s ability to actually address sustainability in greater depth, as there is no mechanism to address regional-scale issues and cumulative impacts (Chetkiewicz & Lintner, 2014). As a result, the land use planning and development assessment processes in Far North has been described as an “uncoordinated resource development” approach (Chetkiewicz & Lintner, 2014).

There are aspects of the Far North experience that warrant examination in the Yukon context. The scope and scale of R-SEA may capture procedural gaps between land use planning and development assessment such that the process is worth analyzing further for potential relevancy and efficacy in the Yukon.

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APPENDIX A: CODE LIST

Name	Description	Files	References
Collaborative Process	Where the two organizations communicate and learn from one another	1	2
Commitment to Process and Openness to Collaborate	Where there are commitments to work with one another and a show of good faith for collaboration, as well as whether or not there the necessary resources exist to have a truly collaborative relationship	4	10
Communication	Exchange of information between the processes and organizations.	3	7
Immediate Outcomes	Where there are small wins from accomplishing joint initiatives, or where strategic plans are established to work towards	0	0
Shared Understanding and Learning	Generally referring to social learning by sharing values, jointly implementing actions and reflecting upon feedback	1	5
Trust	Instances where trust may be lost in the process of collaborating when one party takes advantage of the other for their own gain	0	0
Cumulative Effects	Mention of cumulative effects and the need for integrated management that includes both processes and organizations	7	20
Distinctive Roles	Where the two organizations do not have shared objectives, mandates, or processes, or where one organization or process has been given added certainty or direction.	5	12
Example Projects	Projects assessed through YESAB that related strongly to land use planning in their significant determinations. Reviewing these helps to understand the historical conflicts or parallels.	4	4
Future Research	Documents, researchers, or websites to look into further	13	30
LUP References Not Pertaining to EA	Where land use planning has been referenced as assisting and/or working with other UFA boards or values, either directly linked through legislation or otherwise.	2	3
Other Jurisdictions - Certainty	Where other jurisdictions reviewed shown strengths and added certainty as compared to the Yukon	4	9
Other Jurisdictions - Legislation and Process	Where there is reference to other jurisdictions legislation and process for LUP and EA	10	29
Other Jurisdictions - Linkages	Where there has been reference to other jurisdictions either sharing information between processes or having some institutional arrangement as to information sharing	6	12
Other Jurisdictions - Integration	Where references in other jurisdictions speak specifically to integration of processes	4	16
Other Jurisdictions - Staff Resources	Where other jurisdictions refer to staff resources within the processes	1	1
Other Jurisdictions - Process	References to the Land Use Planning process in Ontario	1	1
Outcomes or Results	Where there are explicit outcomes (effects or outcomes) of a truly collaborative process	0	0
Effects	References to effects of collaboration	0	0
Results	References to results of collaboration	0	0
Potential Area For Improvement	References to where others have identified where the processes could be improved and/or where there is an opportunity to recommend greater integration	15	72
Process Linkage Between LUP and EA - Yukon	Reference to a legislative linkage and/or connection otherwise between the two processes and organizations	23	79

Name	Description	Files	References
R-SEA	References to Regional Strategic Environmental Assessment, either in Yukon or outside	1	3
Reasons for Improvement	References to why it is important to work together and/or better integrate the processes. These can be either because the UFA intended as much, or to reduce financial and resource needs on the organizations and processes. To increase efficiencies and effectiveness of resource management in Yukon.	9	46
Shared Information Requirements between LUP and EA - Yukon	Where there is reference to the two processes having shared information requirements.	6	14
Shared Objectives Between LUP and EA - Yukon	Where there is reference to the two processes having shared objectives (either through their mandates or otherwise).	5	16
Shared Process Between LUP and EA - Yukon	Where there are references to the two organizations sharing similar steps in their processes.	5	25
Starting Conditions	Starting conditions set the foundation of trust and ability to collaborative.	0	0
History of Cooperation and Conflict Between LUP and EA - Yukon	Instances (past projects, meetings, etc.) where the two organizations or processes have either worked well together (complemented each other) or resulted in conflict	0	0
Conflict	References to conflict in process relationship	2	4
Cooperation	References to cooperation in process relationship	1	2
Incentives to Participate	Interdependency and lack of alternative means for decision making / Legal regulatory needs	6	18
Knowledge Conditions	The capacity the organizations have for knowledge to understanding and addressing problems	2	4
Power Conditions	Organization infrastructure and status differences or similarities	4	6
Resource Conditions	The capacity for the organizations through economic and human resources to participate	5	11
Supporting Conditions	Where there is institutional support and a clear leader to ensure collaboration occurs and is productive towards meeting shared objectives	0	0
Facilitative Leadership	A collaborative leader or professional facilitator that promotes and protects the collaborative process	4	8
Institutional Support	Where there is either broad or specific institutional support for collaboration, either through clear ground rules and transparency throughout the process.	4	5
UFA Background - Spirit and Intent	References to the purpose of the UFA, and what the intention of it was as it pertains to integrated resource management	7	36
Uncertainty as a Result of LUP and EA - Yukon	Broadly for references to uncertainty in the UFA and within the processes established therein	19	42

APPENDIX B: CROSS JURISDICTIONAL SCAN RELATIVE TO THE YUKON

	Nunavut	Northwest Territories	Far North, Ontario	Atlin, B.C.	Yukon
<i>What legislation/policy/agreement dictates the process?</i>	Land Claim: Nunavut Land Claims Agreement (1999) Articles 11 (land use planning) and Articles 12 (assessment)	Land Claim: Sahtu Dene Metis Comprehensive Land Claim Agreement Article 25	No Land Claim	No Land Claim	Umbrella Final Agreement (1993) Chapters 11 (Land use planning) and Chapters 12 (development assessment)
	Planning: <i>Nunavut Planning and Assessment Act</i> (NPAA) (2014)	Planning: <i>The Mackenzie Valley Resource Management Act</i> (MVRMA) (1998)	Planning: <i>The Far North Act</i> (FNA) 2010)	Planning: Framework Agreement for Shared Decision Making Respecting Land Use and Wildlife Management (2008).	Planning: No Act or policy
	Assessment: <i>Nunavut Planning and Assessment Act</i> (NPAA) (2014)	Assessment: <i>The Mackenzie Valley Resource Management Act</i> (MVRMA) (1998)	Assessment: <i>Ontario's Environmental Assessment Act</i> (OEAA) and the <i>Canadian Environmental Assessment Act</i> (CEAA), 2012.	Assessment: <i>Environmental Assessment Act</i> (BCEAA)	Assessment: <i>Yukon Environmental and Socio-economic Assessment Act</i> (YESAA) (2005)
<i>Who develops a land use plan?</i>	Nunavut Planning Commission	Gwich'in Land Use Planning Board and the Sahtu Land Use Planning Board	Joint Planning Body	Joint Land Forum	Regional Planning Commissions
<i>Who determines conformity to the plan, conducts reviews, monitoring, and amendment?</i>	Conformity: Nunavut Planning Commission and/or all Regulators who issue permits or authorizations Implementation and monitoring: Nunavut Planning Commission	Conformity: The Planning Board and/or all Regulators who issue permits or authorizations Implementation and monitoring: The Planning Boards	Conformity: Not clear in legislation Implementation and monitoring: Joint Planning Body	Conformity: Not clear in legislation Implementation and monitoring: A standing Government-to-Government Forum guides and monitor implementation of the Land Use Plan	Conformity: YESAA states planning commission, in practice it is YLUPC Implementation and monitoring: the Parties to the region (Yukon Government and First Nation Governments)
<i>Who conducts developments assessment?</i>	Nunavut Impact Review Board	Mackenzie Valley Environmental Impact Review Board (MVEIRB)	Environmental Assessment Branch	Environmental Assessment Office (EAO)	Yukon Environmental and Socio-economic Assessment Board (YESAB)
<i>What are the conformity requirements?</i>	Conformity is required. All bodies that have authority under any federal or territorial law to issue licences, permits or other authorizations relating to the use of land or waters or the deposit of waste, shall carry out their powers in accordance with the land use plan	Conformity is required. All bodies responsible for issuing licenses or permits for projects must do so in accordance with a land use plan.	Conformity to a land use plan is not legislated. May be some ability to waive requirements of an environmental assessment based on an approved community based land use plan, if the activity aligns with the allowable activities of the land use plan.	Orders in Council were established in order to implement the objectives and directions of the Wóoshtin wudidaa Atlin Taku Land Use Plan. Conformity itself to a land use plan is not legislated. Approved land use plans are matters that must be considered in the assessment process.	Conformity to a land use plan is not legislated. Approved land use plans are matters that must be considered in the assessment process.

APPENDIX C: INITIAL OBSERVATIONS FROM APPLICATION OF THE EVALUATION FRAMEWORK

Component	Element	Variables (in a question format)	Initial Observations
Starting Conditions	Power conditions	<i>What are their organizational statuses, and do they have similar infrastructure? Are there any perceived or real power struggles between the two?</i>	<p>Both formed out of the UFA and have legislative backing, however YESAB is guided by a specific Act and YLUPC is not. Co-management boards run both organizations with associated EDs and staff, however YESAB is a bigger Board and with significantly more staff. YLUPC sits in a support role for the planning commissions, whereas as YESAB actually do development assessment.</p> <p>Both processes only make recommendations, however, in YESAA there are clear ground rules on what decision bodies must do with recommendations. This is not the case with YLUPC, in that there is no formal process for Government to respond to YLUPC recommendations.</p>
	Resource conditions	<i>Are there any financial or human resource discrepancies between the organizations?</i>	<p>The UFA Implementation Plan specifies YLUPC gets \$607, 046 annually for fulfillment of its responsibilities (Council of Yukon First Nations - Government of Canada - Government of Yukon, 2015). There is no equivalent data for YESAB, however YESAB's 2019-2020 annual report lists \$6,217,344 annually as Canada's contribution (YESAB, 2020).</p> <p>YLUPC has 3 council members, YESAB has 6 board members, and YLUPC has 4 permanent staff members, and YESAB has 43 (YESAB has 93% more staff)</p> <p>Overall, it is important to acknowledge that both organizations likely face significant challenges achieving their own mandates based on limited capacity and resources. This likely plays a significant role in their ability to collaborate effectively and regularly.</p>
	Knowledge conditions	<i>What is the knowledge capacity of both organizations? Do they have access to the same opportunities for training and social learning? Do they have the same capacity to understand and address problems?</i>	<p>YESAB would contain added corporate knowledge from past assessment, and contains local representation in each area they do assessment in, whereas YLUPC goes through high turnover of staff between active planning commissions and is largely based in Whitehorse, with planning commissions travelling to (or occasionally based in) remote communities when applicable.</p> <p>Both organizations participate in the Yukon or out of territory social learning opportunities through workshops, conferences, etc.</p>
	Incentives to participate	<i>Are their incentives for both organizations to rely on a collaborative approach to achieving their mandates? Similarly, are the two organizations so independent such that there is less incentive TO collaborate? What is the legal requirement to collaborate?</i>	<p>With the exception of a legal conformity check, the processes can operate interdependent of each other. However, there is incentive to participate collaboratively as they have similar goals, objectives, and roles, but at different scales. Both processes would likely benefit from better collaborative efforts. CE management is an example of this.</p> <p>An incentive to participate also comes from the UFA itself: UFA intended for more integrated resource management, and should be seen as "the floor not the ceiling" in how these relationships between different organizations and processes are set out.</p> <p>Furthermore, via resolution, YLUPC and YESAB as a participant explicitly acknowledge the need for them to "work together to manage the lands of Yukon" (YLUPC, 2019).</p>
	History or cooperation or conflict	<i>Are there successful examples of past cooperation, or any past conflict that would either increase or reduce the effectiveness of</i>	<p>North Yukon Plan and Northern Cross project shows conflict in conformity check and assessment interface. This shows some history of conflict that may have been resolved with greater collaboration and communication. Past</p>

		<i>collaboration? Successful cooperation increases social capital and vice versa.</i>	<p>cooperation is evident - Both organizations collaborate on CE management items and discuss ways to improve overall Yukon framework for CE management.</p> <p>Conformity with a LUP does not dictate approval of a project. There has not been any historical instance of official non-conforming projects being recommended to proceed by YESAB in the NY or Peel regions, although there is potential for Dawson, which could create conflict. From YESAB internal documents: “a non-conforming conclusion would not preclude YESAB from recommending that the project proceed, or proceed with terms and conditions”</p>
Supporting Conditions	Institutional support	<i>What are the ground rules for collaborating, and how transparent is the process? Is there broad institutional support for collaborating?</i>	<p>There is only one set and legal institutional linkage between the two processes, through conformity checks via the UFA and YESAA. Outside of that, the processes have no other set ground rules for collaboration. Both processes have independent ground rules for transparency, public participation, and lack decision making authority, but there is broad institutional support for collaboration, as indicated by previous document and collaboration through workshops, meetings, joint presentations, etc.</p> <p>YESAB has ground rules for conformity of LUPS: an approved LUP is considered in the “context” of YESAB assessment methodology in their determination of significance. The ground rules dictate consideration of conformity of a LUP, but conformity does not dictate approval.</p>
	Facilitative leadership	<i>Is there someone, or some other organization, that can act as a facilitative leader in order to keep collaboration effective and on track?</i>	Currently no clear leader in how collaboration can be initiated, but much of the effort seems to have stemmed from YLUPC (UFA Boards meeting, CE workshop, meetings with YESAB). Role could fall on ED’s or Chair of Boards, but this role is lacking. There are opportunities for the Yukon Forum or UFA Board Gathering to fill this role.
Collaborative Process	Communication	<i>Is there regular or consistent communication, dialogue, or exchange of information between the two organizations?</i>	There are occasional meetings between the two organizations (both at the board level and more technical between staff), participation at Yukon Forum and YT UFA Board Forum (happened once in 2017), and collaboration at workshops. Information is exchange in theory during active planning regions with planning commissions through the public comment period. Communication or exchange of information does not appear to be regular or consistent.
	Trust building	<i>Are efforts to communicate and collaborate done in good faith and honestly? Does either organization take advantage of the other (i.e. opportunism)?</i>	No reason not to trust – only mutual gains for each process if there is collaboration. There are currently no implicit or explicit commitments made to each other for working collaboratively or communicating.
	Commitment to process	<i>Are the organizations open to exploring mutual gains, can they take ownership of shared process and work together on joint “decision making”, in the long term?</i>	Both are open to explore mutual gains, as evident in various meeting documentation and through correspondence shared by each body, however, there are no real commitments to collaborate – each body acts in good faith but they lack the firm and explicit commitments to utilize each other’s knowledge and processes to find mutual gains. There are no set ‘provisions with necessary resources’ in that there are no formal and regular mechanisms to collaborate between the two processes
	Shared understanding and learning	<i>Do the two organizations share values and work together to jointly implement actions?</i>	Both organizations seem to occasionally meet to share values and learn from each other, and likely do take on individual tasks and report back from time to time (ex: staff had an opportunity to discuss options for geospatial data sharing between processes and what planners can receive from the YESAB online database). This is social learning, but it is minimal. There is no set group or process working on this together to achieve greater results
	Immediate outcomes	<i>Do the two processes look for small wins to build momentum? Do they work on shared objectives together such that there are immediate outcomes to collaboration?</i>	Could work off small wins between processes (example projects where the two processes could rely on each other for mutually beneficial outcomes?). Strategic planning could be a good opportunity for finding mutual gains.

Outcomes (theoretical)	Results	<i>What are the potential results of a more set collaborative framework and structure?</i>	<p>Could result in resolution agreement regarding shared responsibilities and collaborative process (i.e. MOU, working group), or a new institutional arrangements (new policy, an Act for LUP, a framework). Could also result in better recommendations from both organizations and as a result, public buy in to process with the appearance of working together to reduce burden on stakeholders/members of the public/governments. Could result in less time or “red tape” for either process.</p> <p>Realizing true integrated resource management as intended under UFA – movement towards better implementation in Yukon and reconciliation. Could also show growth is possible with better collaboration to other UFA boards, processes, etc.</p>
	Effects	<i>Thinking more long-term and outside the potential collaborative structure of the two organizations, what are the potential effects? (i.e. on sustainable development and human livelihoods)</i>	Sustainable resource uses, biodiversity protection, and maintenance of social-ecological systems and enhancement of human capital (e.g. skills, capacity), social capital (e.g. trust, relationships, working together), physical capital (e.g. infrastructure, community facilities), and sustainable economic development (e.g. improvements in economic opportunities for communities).