

Detailed Interpretation Issues: Chapter 11 and other relevant Chapters

We have identified clauses/terms where implementation has been difficult or where there have been differences in the interpretations of the agreements.

We have divided them of into five themes:

1. challenges with bringing about "**United Planning**" though Chapter 11,
2. challenges associated with "**Balancing Interests**",
3. "**Time frames/\$**" issues,
4. "**the Role and Power of Regional Planning Commissions**" and;
5. other "**Technical Issues**".

"**Legal**" indicates where some legal interpretation might be warranted

Our detailed Provisions Relevant to Land Use Planning Document was used for this analysis.

**PROVISIONS RELEVANT TO LAND USE PLANNING:
UMBRELLA FINAL AGREEMENT**

INTRODUCTION

The following information outlines the Chapters in the Final Umbrella Agreement that refer to land use planning or specifically to the Yukon Land Use Planning Council. All chapters that mentioned the words "land use" were selected and compiled in this document.

Relevant terms found in **both special provisions and the general terms** of the agreement were included. Chapters including such terms that may have implication on the activities of the YLUPC are: Chapters 11 (land use planning) , 2 (General Provisions), 12 (Development Assessment), Chapter 10 (Special Management Areas), Chapter 13 (Heritage), Chapter 16 (Fish and Wildlife), Chapter 17 (Forest Resources), Chapter 18 (Non-Renewable Resources), Chapter 22 (Economic Development Measures).

The importance of the term "Board" is also noted in many of these Chapters as the term "land use" may not be specifically mentioned but the presence of the term "Board" implies some type of obligation or responsibility be observed by Land Use Planning Commissions.

Each chapter with applicable clauses is included, the specific clauses are provided and a statement of the impact on the YLUPC is included at the end of each section.

CHAPTER 11

This is the specific Land Use Planning Chapter in the Final Umbrella Agreement. The entire chapter has been included below.

Chapter 11 – Land Use Planning

11.1.0 Objectives

11.1.1 The objectives of this chapter are as follows:

11.1.1.1 to encourage the development of a common Yukon land use planning process outside community boundaries;

11.1.1.2 to minimize actual or potential land use conflicts both within Settlement Land and Non-Settlement Land and between Settlement Land and Non-Settlement Land;

11.1.1.3 to recognize and promote the cultural values of Yukon Indian People;

11.1.1.4 to utilize the knowledge and experience of Yukon Indian People in order to achieve effective land use planning;

11.1.1.5 to recognize Yukon First Nations' responsibilities pursuant to Settlement Agreements for the use and management of Settlement Land; and

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.

Comment [R1]: Balancing Interests and United Planning: this complicated statement causes confusion with Commission and the Parties. It needs further delineation before it can be implemented.

11.2.0 Land Use Planning Process

11.2.1 Any regional land use planning process in the Yukon shall:

11.2.1.1 subject to 11.2.2, apply to both Settlement and Non-Settlement Land throughout the Yukon;

11.2.1.2 be linked to all other land and water planning and management processes established by Government and Yukon First Nations minimizing where practicable any overlap or redundancy between the land use planning process and those other processes;

11.2.1.3 provide for monitoring of compliance with approved regional land use plans;

11.2.1.4 provide for periodic review of regional land use plans;

11.2.1.5 provide for procedures to amend regional land use plans;

11.2.1.6 provide for non-conforming uses and variance from approved regional land use plans in accordance with 12.17.0;

Comment [R2]: Role/Power of RLUPC: is this the commission or Parties or YLUPC?

11.2.1.7 establish time limits for the carrying out of each stage of the process;

Comment [R3]: Role/Power of RLUPC see Chapter 12

11.2.1.8 provide for public participation in the development of land use plans;

Comment [R4]: Timeframes/S: lots of debate about timeframes between all involved.. Separate paper needed

11.2.1.9 allow for the development of sub-regional and district land use plans;

Comment [R5]: Legal: what are "official" sub-regional and district plans here in the Yukon

11.2.1.10 provide for planning regions which, to the extent practicable, shall conform to the boundaries of Traditional Territories;

11.2.1.11 provide, to the extent practicable, for decisions of the Yukon Land Use Planning Council and the Regional Land Use Planning Commissions to be made by consensus; and

11.2.1.12 apply to the process of establishing or extending National Parks and national historic parks and commemorating new national historic sites.

11.2.2 This chapter shall not apply to:

11.2.2.1 national park reserves established or national historic sites commemorated prior to Settlement Legislation, National Parks or national historic parks once established, or national historic sites once commemorated;

11.2.2.2 subdivision planning or local area planning outside of a Community Boundary; or

11.2.2.3 subject to 11.2.3, land within a Community Boundary.

11.2.3 In the event a Community Boundary is altered so as to include within a Community Boundary any land subject to an approved regional land use plan, the regional land use plan shall continue to apply to such land until such time as a community plan is approved for such land.

11.3.0 Yukon Land Use Planning Council

11.3.1 The Land Use Planning Policy Advisory Committee established by the "Agreement on Land Use Planning in Yukon", dated October 22, 1987, shall be terminated as of the effective date of Settlement Legislation and replaced by the Yukon Land Use Planning Council on the same date.

11.3.2 The Yukon Land Use Planning Council shall be made up of one nominee of the Council for Yukon Indians and two nominees of Government. The Minister shall appoint the nominees.

11.3.3 The Yukon Land Use Planning Council shall make recommendations to Government and each affected Yukon First Nation on the following:

Comment [R6]: Legal: if Council has the right to make recommendation, do the Government have a duty to ask for our recommendation before making a decision related to regional planning?

11.3.3.1 land use planning, including policies, goals and priorities, in the Yukon;

11.3.3.2 the identification of planning regions and priorities for the preparation of regional land use plans;

Comment [R7]: Role/Power of RLUPC: this indicates that YLUPC is to an advisory board and does not indicate an overseers role

11.3.3.3 the general terms of reference, including timeframes, for each Regional Land Use Planning Commission;

Comment [R8]: Technical: how are affected First Nations defined? By ownership of land or traditional territory? What about unsettled FNS?

11.3.3.4 the boundary of each planning region; and

Comment [R9]: Legal/Role/Power of Planning Commissions: can we simply have a Terms of Reference and not a General Terms of References if the claim references a General Terms of Reference and a Precise Terms of Reference?

11.3.3.5 such other matters as Government and each affected Yukon First Nation may agree.

11.3.4 The Yukon Land Use Planning Council may establish a secretariat to assist the Yukon Land Use Planning Council and Regional Land Use Planning Commissions in carrying out their functions under this chapter.

11.3.5 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.

11.4.0 Regional Land Use Planning Commissions

11.4.1 Government and any affected Yukon First Nation may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan.

11.4.2 Settlement Agreements shall provide for regionally based Regional Land Use Planning Commissions with one third representation by nominees of Yukon First Nations, one third representation by nominees of Government, and one third representation based on the demographic ratio of Yukon Indian People to the total population in a planning region.

11.4.3 The majority of nominees of Yukon First Nations and the majority of nominees of Government on a Regional Land Use Planning Commission shall be Yukon residents with a long term familiarity with the region or regions being planned.

11.4.4 Each Regional Land Use Planning Commission shall prepare and recommend to Government and the affected Yukon First Nation a regional land use plan within a timeframe established by Government and each affected Yukon First Nation.

11.4.5 In developing a regional land use plan, a Regional Land Use Planning Commission:

11.4.5.1 within its approved budget, may engage and contract technical or special experts for assistance and may establish a secretariat to assist it in carrying out its functions under this chapter;

11.4.5.2 may provide precise terms of reference and detailed instructions necessary for identifying regional land use planning issues, for conducting data collection, for performing analyses, for the production of maps and other materials, and for preparing the draft and final land use plan documents;

11.4.5.3 shall ensure adequate opportunity for public participation;

11.4.5.4 shall recommend measures to minimize actual and potential land use conflicts throughout the planning region;

11.4.5.5 shall use the knowledge and traditional experience of Yukon Indian People, and the knowledge and experience of other residents of the planning region;

11.4.5.6 shall take into account oral forms of communication and traditional land management practices of Yukon Indian People;

Comment [R10]: Legal: is it YLUPC's discretion to have secretariat or can the Parties impose a secretariat on the Council? This is first example of the "may clause" permissive or optional debate

Comment [R11]: Role/Power of RLUPC: is YLUPCs assistance upon request of a Commission or can we insist on assisting them? At what point is our assistance really taking over the process?

Comment [R12]: Legal: Would this in any way be time limited? What about YFNs without a land claim agreement? How are

Comment [R13]: Role/Power of RLUPC. This a "SHALL" clause so it is very important: Does this mean an office in the region or just people from the region?

Comment [R14]: Technical: how is population counted since census blocks are not planning regions

Comment [R15]: Timeframe/\$: big G Government means YG or Feds. Issues about the fact that the Feds are still a "behind the scene" force indicate an incomplete devolution of power. FN's/YG regularly debate the timeframe/budget for a commission. What happens if a commission does not prepare a plan within the timeframe?

Comment [R16]: Technical: how is adequate defined?

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;

Comment [R17]: Balance of Interests how is well being defined via a land use plan?

11.4.5.8 shall take into account that the management of land, water and resources, including Fish, Wildlife and their habitats, is to be integrated;

11.4.5.9 shall promote Sustainable Development; and

Comment [R18]: Role/Power of RLUPC: the Peel Planning Commission used another definition of Sustainable Development. in its process.

11.4.5.10 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.

Comment [R19]: Role/Power of RLUPC: Was this intended to be equivalent to "conformity" in Ch. 12 or "consistency" in Ch. 10?

Comment [R20]: Technical: What is the amendment process for a regional plan

11.5.0 Regional Land Use Plans

11.5.1 Regional land use plans shall include recommendations for the use of land, water and other renewable and non-renewable resources in the planning region in a manner determined by the Regional Land Use Planning Commission.

Comment [R21]: Role/Power of RLUPC: the issue here is how do we ensure that plan the commission submits is close to being approvable ?

11.6.0 Approval Process for Land Use Plans

11.6.1 A Regional Land Use Planning Commission shall forward its recommended regional land use plan to Government and each affected Yukon First Nation.

11.6.2 Government, after Consultation with any affected Yukon First Nation and any affected Yukon community, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying on Non-Settlement Land.

Comment [R22]: Legal: what would be the minimum legal requirements for this Consultation?

11.6.3 If Government rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons, or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:

Comment [R23]: Legal: this is a central question in the Peel lawsuit

11.6.3.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to Government, with written reasons; and

11.6.3.2 Government shall then approve, reject or modify that part of the plan recommended under 11.6.3.1 applying on Non-Settlement Land, after Consultation with any affected Yukon First Nation and any affected Yukon community.

11.6.4 Each affected Yukon First Nation, after Consultation with Government, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying to the Settlement Land of that Yukon First Nation.

11.6.5 If an affected Yukon First Nation rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:

11.6.5.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to that affected Yukon First Nation, with written reasons; and

11.6.5.2 the affected Yukon First Nation shall then approve, reject or modify the plan recommended under 11.6.5.1, after **Consultation** with Government.

11.7.0 Implementation

11.7.1 Subject to 12.17.0, Government 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 Government under 11.6.2 or 11.6.3.

11.7.2 Subject to 12.17.0, a Yukon 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 that Yukon First Nation under 11.6.4 or 11.6.5.

11.7.3 Nothing in 11.7.1 shall be construed to require Government 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.

11.7.4 Nothing in 11.7.2 shall be construed to require a Yukon First Nation to enact or amend laws passed pursuant to self-government Legislation to implement a land use plan or to grant an interest in, or authorize the use of, land, water or other resources.

11.8.0 Sub-Regional and District Land Use Plans

11.8.1 Sub-regional and district land use plans developed in a region which has an approved regional land use plan shall conform to the approved regional land use plan.

11.8.2 The provisions of an approved regional land use plan shall prevail over any existing sub-regional or district land use plan to the extent of any inconsistency.

11.8.3 Subject to 11.8.4 and 11.8.5, a Yukon First Nation may develop a sub-regional or district land use plan for Settlement Land and Government may develop a sub-regional or district land use plan for Non-Settlement Land.

11.8.4 If Government and a Yukon First Nation agree to develop a sub-regional or district land use plan jointly, the plan shall be developed in accordance with the provisions of this chapter.

11.8.5 If Government and a Yukon First Nation do not agree to develop a sub-regional or district land use plan jointly, only 11.8.1 and 11.8.2 of this chapter shall apply to the development of the plan.

11.9.0 Funding

Comment [R24]: Legal: this Consultation did not take place re: the Final Recommended Peel Plan. What happens if one side refuses to be Consulted?

Comment [R25]: What are Sub-regional and District Plans? There is no legislation defining these so when do we know when these clauses are applicable?

11.9.1 Each Regional Land Use Planning Commission, after Consultation with each affected Yukon First Nation, shall prepare a budget for the preparation of the regional land use plan and for carrying out its functions under this chapter and shall submit that budget to the Yukon Land Use Planning Council.

Comment [R26]: Timeframe/\$: there are lot of decision made after the Consultation with FN's takes place so the final budget is often not what the FN saw.

11.9.2 The Yukon Land Use Planning Council shall, on an annual basis, review all budgets submitted under 11.9.1 and, after Consultation with each affected Regional Land Use Planning Commission, propose a budget to Government for the development of regional land use plans in the Yukon and for its own administrative expenses.

Comment [R27]: Timeframe/\$: it says Council is to submit all budgets but does not say if we are to administer/monitor budget expenses of RLUPCs.

11.9.3 Government shall review the budget submitted under 11.9.2 and shall pay those expenses which it approves.

11.9.4 If Government initiates the development of a sub-regional or district land use plan by a planning body, the planning body established to prepare that plan shall prepare a budget for the preparation of the plan which shall be subject to review by Government, and Government shall pay those expenses which it approves.

CHAPTER 2 – General Provisions

Chapter 2 is the general provisions section of the Agreement. It sets out the relationship between the Yukon Government and Yukon First Nations and describes the tasks that each party will be responsible for. Highlighted also are the legal ramifications of a First Nation Final agreements, the process required to amend an agreement and the boards that are established in order to fulfill agreement mandates. Specifically included under the discussion of Board management are the issues of board composition and appointment, annual budget preparation, by-laws adoption for internal board management, and member removal processes.

PERTINANT CLAUSES

2.12.0 Boards

2.12.1 The provisions of 2.12.2 apply to the:

Enrollment Commission;

Yukon Land Use Planning Council;

Regional Land Use Planning Commissions;

Yukon Development Assessment Board;

Yukon Heritage Resources Board;

Yukon Geographical Place Names Board;

Comment [R28]: Role/Power RLUPC: note that YLUPC and RLUPC are separate Boards

Yukon Water Board;
Fish and Wildlife Management Board, including the Salmon Sub-Committee;
Renewable Resources Councils;
Dispute Resolution Board;
Surface Rights Board;
Kluane National Park Management Board; and
any other entity agreed to in a Yukon First Nation Final Agreement.

2.12.2 Unless otherwise provided in a Settlement Agreement, the following provisions shall apply to a Board:

2.12.2.1 a majority of the members nominated by Yukon First Nations or the Council for Yukon Indians, as the case may be, and a majority of the members nominated by Government shall be residents of the Yukon;

2.12.2.2 the Council for Yukon Indians or Yukon First Nations, as the case may be, and Government, shall put forward their nominees within 60 days of a request by the Minister;

2.12.2.3 appointments of Government nominees shall be made by the Minister as soon as practicable;

2.12.2.4 the Minister shall appoint as soon as practicable those persons nominated by Yukon First Nations or the Council for Yukon Indians, as the case may be;

2.12.2.5 in the event of a vacancy, the Board may discharge its duties with such members as have been nominated and appointed;

2.12.2.6 a member shall not be deemed to be in a position of conflict of interest solely by virtue of being a Yukon Indian Person;

2.12.2.7 members may only be removed for cause, provided however that, in addition to the grounds for removal for cause recognized generally in Law, a Board, may specify additional grounds in its procedures;

2.12.2.8 each Board shall prepare an annual budget for review and approval by Government and the approved expenses of the Board shall be a charge on Government;

2.12.2.9 each Board shall consider including in its annual budget funding to allow the Board to provide its members with cross cultural orientation and education, and other training directed to improving its members' ability to carry out their responsibilities, as well as funding for facilities to allow board members to carry out their responsibilities in their traditional languages;

Comment [R29]: Technical: does the Minister have to appoint the FNs nominated member?

2.12.2.10 each Board may adopt bylaws for its internal management and may make rules governing its procedures consistent with the Umbrella Final Agreement and with any Legislation establishing the Board;

2.12.2.11 appointments to a Board shall be for a three year term except that the term of initial appointments to a Board may, in the discretion of the nominating party, be less than but not exceed three years and any appointment replacing a member whose term has not expired shall only be for the unexpired portion of that term; and

2.12.2.12 members of Boards shall not be delegates of the parties who nominate or appoint them.

Comment [R30]: Role/Power of RLUPC; can YLUPC/Parties dictate Commission policies or monitor their consistency with their own policies? What is the legislation used to establish the Commissions and what does the Commission (or Council) need to be consistent with?

Chapter 2 Relevance to the Yukon Land Use Planning Council: SUMMARY OF SECTION

The Yukon Land Use Planning council is mentioned in this clause as being one of the Management Boards and the provisions that are included in 2.12.2 outline the responsibilities and protocol that Boards are to adhere to.

Generally, under the provisions outlined in section 2.12.2, the Yukon Land Use Planning Council (along with the other Boards mentioned) must ensure that:

- The majority of nominated Board members must (by both the Yukon government, Council for Yukon Indians or Yukon First Nations) be residents of the Yukon.
- Nominees must be put forth to the Minister within 60 days (not specified but might assume this means within 60 days of Board formation).
- The Minister should make the final decision regarding the appointment of both government nominees and those nominated by Yukon First Nations as soon as practicable.
- If there is a vacancy the Board may continue its activities with the remaining appointed members.
- No conflict of interest is associated with a member being a Yukon Indian Person.
- A member can only be removed for a cause that is legally recognized BUT a Board may also specify additional reasons removal in its procedures.
- Each board must prepare an annual budget that is to be read and approved by the government. Approved expenses of the Board are to be a “charge on the government”.
*** This could be read as saying that any expenses approved in the budget are then to be covered by the government*
- A board is able to include in their budget, expenses allocated towards the cross cultural orientation and education of its members. They may also include expenses for other types of Board education that may assist them in better carrying out their tasks. Also, funding can be allocated towards assisting members in completing tasks in their traditional language.
- A board may also adopt by-laws and additional rules to guide procedures to manage its members. They must be consistent with the Final Umbrella Agreement or Legislation that created the Board.
- Term appointments are for three years.
- Initial appointments may be for a shorter period but still have the three year maximum.
- Replacement members only fill the remaining portion of the unexpired term of the person they replaced.
- Conflict of interest: members appointed cannot be delegates of the parties that nominate or appoint them.

CHAPTER 12 – Development Assessment

Chapter 12 discusses the Development Application Process including the bodies that will guide the process, how the process will be implemented, monitored, enforced and funded. A five year review process is to be completed after enactment of the DAP legislation and interim measures prior to enactment are outlined.

Land use planning is specifically mentioned in this Chapter. Section 12.17 discusses the relationship between the development assessment process and land use planning.

Clauses Specifically Mentioning “Land Use”:

12.17.0 Relationship to Land Use Planning

12.17.1 Where YDAB or a Designated Office receives a Project application in a region where a regional land use plan is in effect, YDAB or the Designated Office, as the case may be, 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.

12.17.2 Where a Regional Land Use Planning Commission is preparing a regional land use plan, YDAB or a Designated Office, as the case may be, 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 Regional Land Use Planning Commission to make representations to the panel or the Designated Office.

12.17.3 Where a panel is reviewing a Project and a Regional Land Use Planning Commission has determined pursuant to 12.17.1 that the Project does not conform with an approved regional land use plan, the panel shall consider the regional land use plan in its review, invite the relevant Regional Land Use Planning Commission to make representations to the panel and make recommendations to the Decision Body that conform so far as possible to the approved regional plan.

12.17.4 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.

12.17.5 The Development Assessment Legislation shall set out the relationship between the issuance of a Decision Document for a Project that has not been assessed by YDAB and the grant of a variance from a regional land use plan or the amendment of the land use plan.

Comment [R31]: Role/Power of RLUPC: what about when the plan is in the approval process?

Comment [R32]: Role/Power of RLUPC: does the commission continue to exist after their plan is submitted?

Chapter 12 Relevance to the Yukon Land Use Planning Council: SUMMARY OF SECTION

Upon the completion of a development application, the Yukon Development Assessment Board (YDAB) reviews it to ensure that it conforms to required standards outlined in applicable approved regional land use plans. The YDAB will consult with the affected Regional Land Use Planning Council to ensure conformity. If the proposed development is not deemed do conform to an approved regional plan the review panel **may consider** the representations and information provided by the Regional Land Use Planning Commission when it presents its recommendations to the Decision Body. These recommendations only need to conform to the approved regional land use plan so much as is deemed possible by the review panel.

This statement seems to suggest that the Panel need only consider an approved regional land use plan as much as it deems necessary and that the document has little ability to substantially ensure that the Panel adheres to guidelines and suggestion put forth by the Regional Land Use Planning Commission in the approved plan. While this document may be persuasive its ability to ensure that non-confirming project application be rejected is unclear.

CHAPTER 16 – Fish and Wildlife

References made specifically to land use planning in Chapter 16 are found in the additional schedules that are included in two of the First Nation Final Agreements (**Carcross Tagish and Kwanlin Dun**). Both of these Schedules apply to the Southern Lakes Wildlife Coordinating Committee and are applicable due to the reference made in section 5.5 to Regional Land Use Planning Commissions and their duty to provide information and advice about the land use activities and land management practices in the area to the Coordinating Committee if asked to do so.

Clauses Specifically Mentioning “Land Use”:

5.5 The Coordinating Committee may provide advice to and seek input from renewable Resources Councils within the Southern Lakes Area, the Fish and Wildlife Management Board, and Regional Land Use Planning Commission in the Southern lakes Area, and other appropriate boards and government agencies on land use planning, land use activities and land management practices throughout the Southern Lakes Area.

Specific reference to land use planning is made in the **Tr’ondek Hwech’in** Final Agreement in Schedule B titled Forty Mile Caribou Herd Working Group:

3.1.1 How the Development Assessment Process, land use planning process, existing wildlife management plans, existing programs in respect of habitat protection , and such other programs and plans that may be relevant, could be used to address habitat protection in the Area

There are also a number of general clauses that while not specifically referring to “land use” planning do have an impact on land use planning commissions. These general references in Chapter 16 are noted below.

General Pertinent Clauses Relating to Land Use:

These clauses are important because they impact boards, which include the land use planning commissions.

16.6.0 Renewable Resource Councils

16.6.11 Each Council shall be granted status as an interested party to participate in public proceedings of any agency, board or commission on matters that affect the management and Conservation of Fish and Wildlife and their habitats within the relevant Traditional Territory for which that Council was established.

16.7.0 Fish and Wildlife Management Board

16.7.13 the Board shall have standing as an interested party to participate in the public proceedings of an agency, board of commission dealing with matters that affect the management and Conservation of Fish and Wildlife and their habitat in the Yukon

16.7.17 Salmon Sub-Committee

16.7.17.14 The Sub-Committee shall be granted as an interested party to participate in the public proceedings of any agency, board or commission dealing with matters that affect the management and Conservation of Salmon or their habitat in the Yukon.

CHAPTER 22 – Economic Development Measures

Chapter 22 does not contain any clauses that specifically refer to ‘land use’ in its general terms.

The **Vuntut Gwitchin** First Nations Final Agreement mentions land use planning in schedule A: Economic Measures, Part I.

5.5 Meetings required between Government and Vuntut Gwitchin First Nation with regard to land use planning for a planning region which includes any part of the Vuntut Gwitchin First Nation Traditional territory shall be held, to the extent practicably, equitably in the communities of the planning region.

The Chapter does, however, address the role of **Boards referred to in 2.12.1**, which applies to Land Use Planning Commissions. Specific clause numbers will vary in each Final Agreement but are addressed in all.

Pertinent Clauses (not found in general terms but in a Schedule)

For example, the **Champagne Aishihik** First Nation Final Agreement addresses Boards in Schedule A Part I section 5.0:

5.0: Boards

5.1 The Boards referred to in 2.1.2.1 and the Designated Office defined in 12.2.0. shall consider the inclusion of criteria for special aboriginal or local knowledge when establishing specifications for contract opportunities and job descriptions for any employment activities which a Board or a Designated Office may have

5.2 Nothing in 5.1 shall be construed to mean that a criterion for Champagne and Aishihik Person employment shall be the determining criterion in awarding any contract.

The following list outlines where each applicable “Board” section can be found in each of the First Nations Final Agreements:

- Vuntut Gwitchin Final Agreement Schedule A, Economic Measures, Part I, section 7.0.
- Nacho Nyak Dun Final Agreement, Schedule A, Economic Measures, Part I, section 6.0.
- Little Salmon Carmacks Final Agreement Schedule A, Economic Measures, Part I, section 7.0.
- Selkirk First Nation Final Agreement, Schedule A, Economic Measures, Part I, section 6.0.
- Tr’ondek Hwech’in Final Agreement Schedule A, Economic Measures, Part I, section 6.0.
- The Kwanlin Dun Final Agreement Schedule A Part I section 3.0.
- Kluane First Nations Final Agreement Schedule A, Economic Measures, Part I, section 8.0.
- Ta’an Kwach’an Council Final Agreement, Schedule A, Economic Measures, Part I, section 3.0.
- Carcross Tagish First Nation Final Agreement in Schedule A Part I section 8.0.
- Teslin Tlingit Council Final Agreement, Schedule A, Economic Measures, Part I, section 3.0.

In addition there are a number of clauses describing the importance of insuring and providing opportunities for First Nations groups to improve economic development in the Yukon and to assist them in creating self reliant income generating activities.

For example, in the Champagne and Aishihik First Nation Final Agreement in section **22.1.0** addressing the objectives of Economic Development Measures clause **22.1.1.1** states “to provide Yukon Indian People with opportunities to participate in the Yukon economy. Clause **22.2.1** goes on to further this statement by stating that “nothing in a settlement agreement shall be construed to prevent a Yukon First Nation or a Yukon Indian Person from accessing and making use of economic development programs of general application to a Yukon resident and a Canadian citizen”.

Additional relevant clauses might be in light of the above might be:

22.3.3.2 Access to employment and contract opportunities for Yukon Indian People generated as a direct consequence of the land and resource management regime set out in the Umbrella Final Agreement.

22.3.4 Unless otherwise agreed in a Yukon First Nation Final Agreement, participation of Yukon Indian People in contracts identified pursuant to 22.3.3.1 and 22.3.3.2 shall be on a competitive basis

22.3.5 unless otherwise agreed in a Yukon First Nation Final Agreement, participation of Yukon Indian People in employment opportunities pursuant to 22.3.3.1 and 22.3.3.2 shall be based on appropriate qualifications or experience.

Mention of Land Use in Special Provisions: Additional Applicable Chapters

A number of the Final Agreements also address land use issues in the Special Provision clauses in Chapters 9 (Settlement Land Amount), 14 (Water Management) and 16 (Fish and Wildlife) where the term “Land Use” is not addressed specifically in the original Chapter.

CHAPTER 10 – Special Management Areas

The term “Land Use” was found in the **general clauses** in Chapter 10 of all of the First Nation Final Agreements. The term is also present in a number of the Final Agreements where Special Management Areas included relevant special provisions.

Special Provision Clauses:

10.6.0 Relationship to the Land Use Planning and Development Assessment Processes

10.6.1 Special Management Areas established after the effective date of Settlement Legislation shall be:

10.6.1.1 consistent with land use plans approved in accordance with Chapter 11 - Land Use Planning; and

10.6.1.2 subject to the provisions of Chapter 12 - Development Assessment.

Comment [R33]: Role/Power of RLUPC: should Commission lead the identification of SMA or be the receiver of SMA ideas and consider them in light of other land use demands in the region

Chapter 10: Relevance to the Yukon Land Use Planning Council: SUMMARY OF SECTION

A number of the First Nations have designated particular sites as being Special Management Areas. This includes Carcross Tagish First Nation, Kluane First Nation, First Nation of Nacho Nyak Dun, Kwanlin Dun First Nation, Selkirk First Nation, Tr’ondek Hwech’in First Nation, and Vuntut Gwitchin First Nation.

Provision 10.6.1.1 seems to state that land use plans have some degree of control over Special Management areas established after Settlement Legislation has come into effect. These areas should conform to land use plans so far as Chapter 11 is concerned.

Provision 10.6.1.2, however, states that these Special Management Areas are to also meet the provisions outlined in Chapter 12. As discussed above, Chapter 12 seems to limit the ability for an approved regional land use plan and the associated Regional Land Use Planning Commission to have a direct influence on a project application. Review and final decisions are still to be made by YDAB or the Designated Office (the panel). They may request input regarding conformity from the Regional Land Use Planning Commission but it is not stated that they are required to implement or adhere to these recommendations.

So, while 10.6.1.1 seems to give some weight to the Regional Planning Commission and/or an approved regional land use plans, 10.6.1.2 seems to be able to limit the reach of their impact.

CHAPTER 13 – Heritage

Chapter 13 makes reference to land use planning and a number of the special provision sections found in this Chapter in many of the Final Agreements specifically address land use planning. The Final Agreements for Carcross Tagish First Nation, Champagne Aishihik First Nation, First Nation of Nacho Nyak Dun, Kluane First Nation, Selkirk First Nation, Ta'an Kwach'an Council, Teslin Tlingit Council Tr'Ondek Hwech'In and Vuntut Gwitchin First Nation each include a special provision in Chapter 13 that mentions land use. These Final Agreements have designated particular sites as heritage sites and have stipulated that particular special provisions apply to them.

Clauses Specifically Mentioning “Land Use”:

13.1.0 Objectives

13.1.1 The objectives of this chapter are as follows:

13.1.1.8 to identify and mitigate the impact of development upon Heritage Resources through integrated resource management including land use planning and development assessment processes;

13.8.0 Heritage Sites

13.8.1 Ownership and management of Heritage Sites in a Yukon First Nation's Traditional Territory shall be addressed in that Yukon First Nation Final Agreement.

13.8.2 Government and the affected Yukon First Nation shall consider the land use activities of other resource users in the management of interpretive and research activities at Heritage Sites.

13.8.3 Government and the affected Yukon First Nation shall institute a permit system for research at any site which may contain Moveable Heritage Resources.

13.8.4 Access to Designated Heritage Sites shall be controlled in accordance with the terms of site management plans which have been reviewed by the Board, and approved and implemented by Government or the affected Yukon First Nation.

13.8.5 Government and the affected Yukon First Nation, when controlling access to Designated Heritage Sites, shall consider:

13.8.5.1 the interests of permitted researchers;

13.8.5.2 the interest of the general public; and

13.8.5.3 the requirements of special events and traditional activities

Chapter 13: Relevance to the Yukon Land Use Planning Council: SUMMARY OF SECTION

These clauses give importance to the inclusion of land use planning principles in the development and maintenance of Heritage Resources. The management of the land use impact regarding the management of a particular historic site is mentioned in many Final Agreements

13.1.1.8 requires that land use planning activities be considered and/or used to reduce the impact that development might have on designated heritage sites.

13.8.2 suggests that both the Yukon Government and the impacted First Nation should take into account the needs or requirements of other resources users when managing their historic sites.

CHAPTER 17 – Forest Resources

Specific mention of the words “land use” are found in the **general text** in Chapter 17 of each of the First Nation Final Agreements.

Pertinent Clauses:

17.6.0 Relationship between Forest Resources Management and Other Processes

17.6.1 A Forest Resources Management plan and a forest fire management plan shall be consistent with any approved regional land use plans.

17.6.2 Yukon First Nations and Government shall manage, allocate and protect their respective Forest Resources in a manner consistent with any recommendations approved in accordance with Chapter 12 - Development Assessment.

Relevance to the Yukon Land Use Planning Council: SUMMARY OF SECTION

These clauses require all Forest Resource Management plans and forest fire management plans to be implemented in accordance with approved regional land use plans. The relevant Land Use Planning Commission would have the ability to require any applicable plans to be aligned with associated land use plans. The Yukon Development Assessment Board, through their Development Assessment process will most likely have the final say over and above what the approved regional land use plan dictates.

CHAPTER 18 – Non-Renewable Resources

References to “Land use” are made in the general text of Chapter 18 in each of the First Nation Final Agreements.

Clauses Specifically Mentioning “Land Use”:

18.2.0 Quarries

18.2.6 Unless otherwise provided in a Yukon First Nation Final Agreement, the following terms and conditions respecting a Quarry on Settlement Land identified under 18.2.2 or 18.2.5 shall apply:

18.2.6.1 Government shall have the exclusive use of Quarries and the right to take any Construction Materials required from such Quarries without the agreement of or compensation for such use or taking to the affected Yukon First Nation;

18.2.6.2 Government shall use a Quarry in accordance with commonly accepted land use standards and shall endeavour to minimize interference with other uses of the Settlement Land;

18.2.6.3 on ending its use of a Quarry, Government shall, if required by the affected Yukon First Nation, restore the Quarry in accordance with commonly accepted land use standards including, as appropriate, clean-up, drainage, erosion control, re-contouring, overburden replacement, and replanting of vegetation so that the Quarry will blend in with the local landscape and vegetation; and

18.2.6.4 where a dispute arises over the use or restoration of a Quarry by Government, either Government or the affected Yukon First Nation may refer the dispute to the Surface Rights Board.

Relevance to the Yukon Land Use Planning Council: SUMMARY OF SECTION

The reference to “land use” here does not directly impact or refer to a particular activity to be completed by the Yukon Land Use Planning Council or a regional land use planning commission. The reference to land use has meaning in regard to the type of standards that should guide the way in which a Quarry is used. No mention is made as to what commonly accepted land use standards entail or where such standards are acquired from.

It may be possible that the Government might approach the Yukon Land Use Planning Council for guidance on such matters but the above clauses don’t seem to impose any real obligations on the Council or the Commissions.

CHAPTER 14 – Water Management

The term “land use” was found in Chapter 14 in only one of the Final Agreements in Schedule A: Yukon River Watershed Management Working Group. The term is found in the Recommendations section. Its implications in regard to the Council and/or the Commissions are minimal. The working group is required to submit its recommendations for review to a number of Boards and Committees, the Regional Land Use Planning Commission for the effected area being one of these committees. Further comment on what the Working Group is to do with these review findings and comments is not discussed further.

Clauses Specifically Mentioning “Land Use”:

3.3 Prior to submitting its recommendations, the Working Group shall provide its proposed recommendations, for review and comments, to,

3.3.2 any Regional Land Use Planning Commissions established for the Area

CHAPTER 9 – Settlement Land Amount

The term “land use” was located in Chapter 9 on one occasion in a special provision section in the **Carcross Tagish** First Nation Final Agreement. This Final Agreement has included a Specific Provision section titled Designation of Private Land as Fee Simple Settlement Land.

Pertinent Clauses:

9.7.5.3: The application of compatible land use provisions in 25.0 of the Self-Government Agreement to the designated land.

Provision 25.0 in the Self-Government Agreement is titled Compatible Land Use. The section addresses the range of compatible land uses that are permitted and the processes that must be adhered to when addressing a land settlement issue.

The implications that these clauses have on the Land Use Planning Council or any of the Regional Land Use Planning Commissions. The land use provisions that are being referred to are addressed in section 25 of the self government agreement and do not need to be otherwise clarified.

