

Lower Nicola Decision-Making Policy and Process – August 19, 2015

We have a responsibility to past, present, and future generations of our people to steward our lands and resources, advance our Title and Rights, and protect our culture and way of life. One of the ways we accomplish this is through how we make decisions in a manner that reflects our worldview and values, is consistent with our laws and teachings, and is based on comprehensive information reflecting both traditional knowledge and the contemporary approaches and insights.

This policy identifies how we make decisions regarding the lands and resources of our Territory. It identifies the core principles, structures, and processes we use to help ensure the best decisions are made in a manner that respects our cultural identity. It makes clear our expectations for how the Crown and third parties who wish to use our lands and resources will engage with us, the information they will provide, and the steps and stages that we will go through to render our decision.

The Crown is encouraged to work with us to discover how to harmonize respective policies and processes, advance reconciliation, and build mutual effectiveness and efficiencies. Third parties are encouraged to learn about the policy, and be prepared to play their role in its implementation.

We encourage everyone to review this policy, speak to us and learn about it, and to work with us to develop collaborative pathways for its use and implementation.

Foundations

Our decision-making policy and process has number of foundations that have informed its development, and influence the manner in which it is applied and implemented.

Our Relationship with our Territory: Our relationship with our Territory is governed by our laws and teachings that have been passed on to us from generation to generation. This relationship is an integrative one, expressing the cultural, social, economic, and spiritual dimensions of our existence. Our ways of living are built around our fundamental relationship with all of the beauty and abundance of our Territory, and ensuring respect for that relationship is a foundation for how we make decisions.

The Well-Being of our People: We always work to ensure the well-being of all generations of our People into the future. This means that all decisions need to be looked from a range of perspectives that considers cultural, social, economic, and spiritual factors.

Standards of UNDRIP and Aboriginal Title and Rights: The *United Nations Declaration of the Rights of Indigenous Peoples* as well as Aboriginal Title and Rights protected by section 35 of the *Constitution of Canada*, including as defined by *Tsilhqot'in*, recognizes our relationship to our Territory, including standards of consultation, accommodation, and consent. These standards are upheld by this Policy, and must be met.

Advancing Reconciliation: This Policy is part of how we are working to advance true reconciliation, and through its implementation working to achieve reconciliation is a central objective. Reconciliation must be grounded in knowledge, understanding, and recognition of who we are, our relationship to lands and resources, our Title and Rights, and how the future can be built together in a collaborative way.

Structures

We have a number of structures in place that play a role in decision-making, and ensure that this policy is implemented and applied in an appropriate manner. Key structures include the following:

Lower Nicola Community: Our community is central to our decision-making process. Depending on the nature of the decisions to be made, the community may be involved in a wide range of ways, including community updates, community meetings, formal community engagement processes, establishment of community committees for certain projects, and ratification votes.

Elders and Knowledge Keepers: Elders and knowledge keepers are called on to provide their expertise in various ways in the decision-making process. These may include providing input and guidance on a particular decision, providing critical information about a particular area, value, or proposal, or participating in necessary field work and the appropriate articulation of traditional use information.

Chief and Council: One of the responsibilities of our Chief and Council is to make decisions regarding proposals and by the Crown and third parties for the use of our lands and resources. Committees or working groups of Council may also play direct roles in the process of reviewing and evaluating applications.

Referrals Department: Our Referrals department is responsible for the administrative implementation of this policy, including ensuring that requests for decisions by the Crown and third parties are being processed through to a decision stage, and co-ordinating community involvement as appropriate.

Technical Experts: Through the Referrals Department, we utilize necessary technical experts to inform our decision-making and ensure our decisions are made on the basis of comprehensive information gathering.

Process

Our decision-making process has the following steps. The Crown is encouraged to work with Lower Nicola to identify ways to harmonize respective processes, advance reconciliation, and build greater effectiveness and efficiency. Third Parties are encouraged become familiar with the process and its expectations, and to work closely with Lower Nicola in the implementation of the policy with respect to their application.

1. **Pre-Application Engagement:** Lower Nicola expects those wishing to use our lands or resources to contact us at the earliest possible time when forming a concept for potential land or resource use. This should be well before any formal application is developed or submitted to Lower Nicola. The purposes and opportunities of this early engagement may include the following:

- To review this policy, and answer questions about it;
- To develop initial relationships;
- To conduct preliminary identification of the types of technical and study work that may be required;
- To discuss fees and costs associated with the application of the policy to the concept.

Early engagement can result in more effective and efficient implementation of this policy.

Pre-application engagement should be initiated with the Referrals Department Manager:

Dave Caswell, RPBio

tluc@lnib.net

250.378.5157

2. **Submitting an Application:** An application for use of lands and resources should be submitted to the Referrals File clerk at fileclerk@lnib.net and cc'd to referrals manager (tluc@lnib.net)

In order to initiate an Application, the Crown or a Third Party must provide Lower Nicola Indian Band with a written submission containing sufficient information for Lower Nicola Indian Band to fully consider the Activity, which at a minimum will contain:

- the name, telephone number, and address of the person making the Application;
- the location of the land where the Activity will occur;
- clearly drawn or reproduced referenced maps of the area where the Activity will occur (Shapefiles are preferred);
- a complete description of the Activity including a description of the land and resources involved and a description of the current and anticipated value of the Activity;
- all reports, studies, assessments, and background information relating to the Activity including any with respect to archaeology, ethnography, traditional use, or the environment;
- the commencement date and period of time for which the Activity will take place.

In addition to the above information, where a Third Party has made an Application to the Crown to carry out an Activity, a copy of that Application must be submitted to the Referrals Clerk by the Crown.

Further supporting information may be required including:

- what steps have been taken to determine the impact on Aboriginal title and Aboriginal rights in the area where the Activity will take place;
- information as to the anticipated social benefit for the Lower Nicola Indian Band;
- information as to the anticipated economic benefit for the Lower Nicola Indian Band; and other information as may be requested by the Lower Nicola Indian Band.

3. **Preliminary Evaluation:** Once an application is received the Lands and Resources Department will complete a preliminary evaluation of the application. The purposes of the preliminary evaluation include:

- To identify the categories of additional information that may be required for full review of the application;
- To identify any immediate, high-level, and preliminary significant challenges with the proposed land and resource in the application
- To identify the likely steps that may be followed internally for the processing of the application, including the nature of community participation, and the role of committees and working groups of Council

- To identify the likely human, technical, and financial resources needed for the review of the application.

The amount of time for completing a preliminary evaluation will vary depending on the size and complexity of the evaluation. In some cases, Lower Nicola will communicate with proponents and/or the Crown during and upon completion of the preliminary evaluation. This may include opening dialogue about securing the necessary resources to support the review of the application, and in some instances completing protocols, mou's, or agreements regarding the process moving forward.

Depending on the nature of the application and the result of the preliminary evaluation it is possible that Lower Nicola will move directly to making a decision based on the preliminary evaluation.

4. **Information Gathering:** Based on the outcome of the preliminary evaluation, further information gathering may be undertaken. In some instances this may include gathering and compiling of traditional knowledge as it relates to the area or resources engaged by the application, further technical assessment to information consideration of potential impacts and infringements, and studies to better understand environmental, social, technical, economic, or cultural dimensions of the application.

During this stage there may also be various forms of community involvement and engagement.

5. **Consultation and Negotiation:** Based on the nature of the application, outcome of the preliminary evaluation, as well as the information gathering that take place, direct dialogue with the proponents and/or Crown in the form of consultation and/or negotiations may take place. This may range from a discussion, to extensive engagement over a long period of time. Such dialogue may also include the development of particular measures to address issues, the development of conditions and understandings, and the completion of formal agreements. During this stage there may also be various forms of community involvement and engagement.

6. **Decision:** A decision will be made by Lower Nicola Chief and Council at the end of the process. In general, the decision may take one of three forms (1) rejection of the application; (2) consent to the application on the basis of certain conditions being met; (3) consent to the application. It is also possible in some instances that Chief and Council will issue a decision that the processing of the application could not be completed. This might be for any number of reasons – including, for example, failure of full or proper information to be provided or incomplete studies or answers to questions.

Factors

There are a number of factors that Lower Nicola considers in its decision-making process. Some of the key factors that may be considered in the process are the following:

Protection of cultural, heritage, social, community, spiritual, and economic values and interests: Lower Nicola always considers how an application interacts with and potentially impacts critical values and interests of Lower Nicola that relate to our way of life. Applications will be assessed from perspectives that reflect and incorporate our worldview, traditional knowledge, and relationship to our Territory. This may involve the completion of traditional knowledge and use studies consistent with community and traditional protocols, particular mapping projects, interviews and information gathering with Elders and community members, and the development of impact assessments that integrate traditional and contemporary information.

Relationship to our Title and Rights: Our Title and Rights must be respected and accommodated. Through our decision-making process the potential impacts and infringements are assessed and analyzed, and our decisions are grounded in ensuring that our Title and Rights are protected and advanced for the benefit of future generations. This may include considering a wide range of conditions, agreements, understandings or measures regarding the project and its relationship to our Title and Rights.

Duration, Scope, and Location in the Territory: The nature of the presence of a proposed project in our Territory is an important consideration in our decision-making. Certain areas of our Territory raise particular sensitivity concerns and may be inappropriate for certain types of projects. Similarly, the size (e.g. what size of landbase does it utilize?) and duration of a project (e.g does it result permanent or long-term disturbance?) will be considered in determining whether a proposal may be approved and on what conditions.

Comprehensiveness and Appropriateness of Information: At the heart of our decision-making process is ensuring the comprehensive information is utilized to support a principled decision to be made. The main categories of relevant information include (1) Lower Nicola traditional knowledge (2) contemporary scientific and technical information meeting the highest standards (3) guidance and input from Elders and community members. These categories of information – while distinct – must be used and analyzed in an integrative matter. Collectively they are essential to informing a sound assessment of the potential impacts and benefits of a proposed project for Lower Nicola, including understanding the relationship of the project to our Title and Rights.

Impacts and benefits for future generations: The use of the lands and resources of our Territory, and the decisions we make, are guided by a focus on ensuring the cultural, social, economic, and spiritual well-being of future generations of our people. This means that we view every application from a long-term and holistic perspective that considers the cumulative impacts and benefits of a project for many generations to come. At the same time, we work to ensure that decisions are not made for short-term expediency or

based on limited rationale or justification, and will always seek clarity on how a proposed project will relate to our collective people. Consideration may be given to how certain conditions, agreements, understandings or measures may relate to impacts and benefits into the future.

Map of Territory

