

SCHEDULE 2 – CUSTOM FAMILY ALLOTMENTS

Definitions and interpretation

1. (1) In this Schedule:

"applicant" means one or more Members who have applied to the Lands Department for a custom family Allotment in accordance with section 8;

"application" means an application for a custom family Allotment that complies with section 8;

"community meeting" means a meeting open to Members described at section 12;

"compliant application" means an application for which the Lands Department has confirmed complies with section 10(2);

"Custom Family Lands Resolution Committee" means the body established under section 3;

"Law" means the *Allotment and Custom Family Lands Law*;

"official plan" means a graphical description of boundaries of land prepared from the field notes of a survey confirmed under section 29 of the *Canada Lands Surveys Act*; and

"survey" means an official survey, as defined by the *Canada Lands Surveys Act* (1985).

(2) In addition to the terms defined at subsection (1), capitalized terms used in this Schedule may be defined in the Land Code.

(3) For certainty, the lower case form of "interest" used in relation to land does not mean a legal interest in land recognized under the Land Code.

(4) Unless otherwise specified, a reference in this Schedule to a section is a reference to a section of this Schedule.

(5) Unless otherwise specified, a reference in this Schedule to a subsection or paragraph is a reference to a subsection or paragraph of the section or subsection in which the reference occurs.

Application of this Schedule

2. This Schedule only applies to regulate the granting of custom family Allotments.

Custom Family Lands Resolution Committee

3. (1) Council establishes the Custom Family Lands Resolution Committee to:

(a) assess applications in accordance with section 14; and

(b) make recommendations on custom family Allotments to the Lands Management Advisory Committee in accordance with section 15.

(2) The Council must, by Resolution:

- (a) approve terms of reference for the Custom Family Lands Resolution Committee including eligibility requirements for membership, terms of office for its members, and quorum; and
- (b) appoint individuals to serve on the Custom Family Lands Resolution Committee.

Delegation

4. (1) Council delegates:

- (a) its authority to grant custom family Allotments to the Lands Management Advisory Committee; and
- (b) its administrative authority to administer this Law to the Lands Manager and the Lands Management Advisory Committee as provided in this Law.

(2) The Lands Manager may delegate their duties under this Law to Lands Department staff.

Basis for a custom family Allotment

5. The Custom Family Lands Resolution Committee's recommendation regarding an application under section 15(2) and the Lands Management Advisory Committee's decision to approve an application under section 17 will be based on the following factors in addition to any factors and guidance set out in a policy:

- (a) the applicant's historic attachment to the land or the applicant's interest in the land based on LNIB tradition;
- (b) LNIB family ties to the land;
- (c) improvements to the land including a residence;
- (d) a will, witnessed letter or agreement that indicates the intention of a Member regarding the land in question, even in the absence of the following:
 - (i) a registered Interest in the land at the time the will, witnessed letter or agreement was made, or
 - (ii) a determination made by Indigenous Services Canada regarding the validity of the will, witnessed letter or agreement;
- (e) whether any interest in the land was transferred to another Member;
- (f) oral testimony provided in accordance with this Schedule;
- (g) LNIB cultural perspectives and preferences regarding land holdings;
- (h) LNIB traditional protocols or family protocols regarding decision-making processes;
- (i) the amount of land or lot size requested and the amount or remaining LNIB Community Land;

- (j) whether the lands are or will be needed to meet the needs of LNIB such as community infrastructure or housing needs;
- (k) any order of a court having jurisdiction relevant to the land.

Call for applications

6. (1) Upon the Lands Management Advisory Committee's direction, the Lands Department will provide notice inviting Members to apply for a custom family Allotment within a specified portion of LNIB Community Land.
- (2) The notice under subsection (1) must be provided in accordance with section 7 and must include the following information:
- (a) a description and map of the LNIB Community Land for which the Lands Management Advisory Committee will consider granting custom family Allotments, and, where LNIB has sufficient information, the approximate location of distinct interests asserted by Members within the lands depicted in the map (without identifying any personal information related to an interest);
 - (b) the manner in which a Member may submit an application and the applicable deadline, which must be no less than 60 days after the date the notice is provided;
 - (c) a statement advising that the determination of custom family Allotments in the applicable area will be finally decided and that all Members with an interest in a custom family Allotment are advised to submit an application in accordance with this Schedule and any notices provided by LNIB;
 - (d) the name and contact information for LNIB staff who may answer any questions about the application form.
- (3) For certainty, applications will only be accepted from Members with interests related to the lands identified in the notice; once the Lands Management Advisory Committee has addressed all custom family Allotment applications submitted for a defined area in accordance with this Schedule, interests related to other areas of LNIB Community Land will be considered.

Providing notice

7. Notice to Members under this Schedule must be provided as follows:
- (a) in the LNIB newsletter;
 - (b) on the bulletin board in each of LNIB's office buildings;
 - (c) on the LNIB website;
 - (d) in the Merritt newspaper with the largest circulation; and
 - (e) on all active social media accounts for which LNIB administers.

Member's application

8. (1) A Member in good standing with LNIB may apply for a custom family Allotment by submitting to the Lands Department the applicable fee and an application that complies with subsection (2) before the expiry of the deadline set out in a notice provided under section 6(2).
- (2) An application for a custom family Allotment must be in a form approved by Council, comply with requirements in an applicable policy and contain the following information:
- (a) the applicant's full legal name, Member number and mailing address;
 - (b) a description and survey or sketch of the applicable land that complies with standards approved by Council;
 - (c) a description of the applicant's connection to the applicable land that relates to any relevant factors listed at section 5 and any materials that support the connection, which may include the types of documents listed at section 9;
 - (d) whether the applicant wishes to incorporate LNIB traditional protocols or family protocols in the submission of evidence supporting their application;
 - (e) information on any known Interests or rights held by third parties in or to the applicable land;
 - (f) a description of all structures and residential homes that exist on the applicable land;
 - (g) if the applicant proposes to construct on the land, describe the construction plans for the construction;
 - (h) evidence in a form approved by the Lands Department that shows the applicant is aware of the applicable costs and has sufficient funds to:
 - (i) provide Council with a legal description of the requested custom family Allotment that:
 - A. refers to a registered plan or official plan, and
 - B. shows legal access over the applicable land, unless Council grants an exception to the requirement to obtain legal access under section 17(2); and
 - (i) an acknowledgment that an application for a custom family Allotment of more than ten acres of land must receive Community Approval in accordance with section 19 before the Lands Management Advisory Committee will consider the application.
- (3) If more than one Member seeks to hold the same custom family Allotment, the application must contain the information required at subsection (2)(a) for all applicable Members.

Supporting evidence for application

9. Without limiting the types of written or oral evidence that may be submitted or provided in support of an application, an applicant may rely on the following types of evidence to help demonstrate a connection to the applicable land:
- (a) a will;
 - (b) a bill of sale;
 - (c) a land transfer agreement;
 - (d) other legal documents;
 - (e) a Resolution;
 - (f) minutes from a Council meeting;
 - (g) survey maps and reports;
 - (h) genealogical information connecting the application to the applicable land;
 - (i) oral history from the applicant transcribed in an affidavit;
 - (j) oral history from others with knowledge of the applicant's connection to the applicable land transcribed in an affidavit;
 - (k) without limiting paragraphs (i) or (j), an affidavit establishing connections between the applicant and the applicable land;
 - (l) evidence that the applicant (or their family) has lived on, worked, maintained or improved the land.

Preliminary Application Review

10. (1) Within a reasonable time following the expiry of the deadline set out in a notice under section 6(2), the Lands Department will review all applications received by the deadline in accordance with subsection (2).
- (2) The Lands Department must confirm that an application complies with the following conditions:
- (a) the applicant is a Member who is at least 18 years old at the time the application is submitted;
 - (b) the applicant is in good standing with LNIB;
 - (c) the application includes the information and documentation required under section 8.
 - (d) the requested custom family Allotment is located within LNIB Community Land;

- (e) the requested custom family Allotment and all proposed construction and development on the Allotment complies with applicable LNIB laws, by-laws, land use plans, environmental management plan, development plan and policies;
 - (f) the requested custom family Allotment and any proposed uses, construction or development does not overlap or is not inconsistent with known encumbrances, including any encumbrances identified on the applicable parcel abstract report, unless the holder for the known encumbrance has provided a written letter setting out that they agree to the Allotment; and
- (3) If an application complies with subsection (2), the Lands Department must:
- (a) conduct an archaeological assessment for the applicable land;
 - (b) determine if the requested custom family Allotment has within it a cultural heritage site or a culturally significant area identified by LNIB or as otherwise revealed in the archaeological assessment;
 - (c) determine if the requested custom family Allotment has legal access or if there are extraordinary circumstances that prevent it;
 - (d) determine any known environmental or heritage concerns with regard to granting the requested custom family Allotment; and
 - (e) conduct a site visit to the requested Custom family Allotment to assess the status of those lands.
- (4) Each Member identified in an application as an applicant must demonstrate individual compliance with subsections (2)(a) and (2)(b).
- (5) Subject to subsection (6), if an application for a custom family Allotment does not meet all conditions provided at subsection (2), the Lands Department must advise the applicant that they are not eligible for a custom family Allotment with reasons.
- (6) If the Lands Manager believes an applicant can resolve any non-compliance with subsections (2)(b), (2)(c), 2(e), or 2(f) within a reasonable amount of time, the Lands Manager may allow the applicant additional time to demonstrate compliance.
- (7) In exercising their discretion under subsection (6), the Lands Manager will account for the following:
- (a) the nature of the non-compliance with the applicable sections referenced under subsection (6);
 - (b) the importance of the Lands Management Advisory Committee having before them all applications for custom family Allotments for a given area;
 - (c) the need to administer an efficient and fair process to resolve applications for custom family Allotments;

- (d) the interests of other Members who have submitted compliant applications in a timely way; and
- (e) any other factors that the Lands Manager believes are relevant to their determination.

Member comments on applications

11. (1) Within 14 days from the Lands Department completing its review of applications under section 10(1), including an application that received additional time under section 10(6), the Lands Department must provide notice to Members advising of opportunities to submit comments on all compliant applications.

(2) Notice under subsection (1) must include the following information:

- (a) the date, time and location of a community meeting to be held at least twenty-one days from the date the notice is provided;
- (b) the manner in which a Member may provide written or in-person comments on an application to the Lands Department and the applicable deadline, which must be after a community meeting is held under section 12;
- (c) a map showing the boundaries of the land requested by each applicant;
- (d) the name of each applicant; and
- (e) any other information the Lands Department deems necessary.

Community meeting

12. (1) The Lands Department will hold a community meeting at which all compliant applications will be presented for review and discussion.

(2) Each applicant must attend the community meeting and, subject to subsection (3), be prepared to discuss their application and answer any questions from Members and Council.

(3) If an applicant is averse to public speaking, the applicant, who must be present at the community meeting, may designate a family member to discuss their application and answer questions on the applicant's behalf.

Referral to the Custom Family Lands Resolution Committee

13. (1) The Lands Department will refer all compliant applications to the Custom Family Lands Resolution Committee in accordance with subsection (2) within a reasonable time from the close of the comment period specified in a notice under section 11(2)(b).

(2) A referral to the Custom Family Lands Resolution Committee under section (1) must include the following for each compliant application:

- (a) a copy of the application including supporting materials submitted under section 8(2)(c);
- (b) a report confirming the application complies with the requirements at section 10(2);
- (c) the following information obtained under section 10(3):
 - (i) details regarding legal access to the requested Allotment, including if there are extraordinary circumstances that prevent it,
 - (ii) details of any known environmental concerns with regard to granting the requested custom family Allotment,
 - (iii) details of whether the requested custom family Allotment has within it a cultural heritage site or a culturally significant area identified by LNIB or as otherwise revealed in the archaeological assessment, and
 - (iv) the Lands Department's site visit observations;
- (d) a report summarizing Members' oral feedback
 - (i) obtained at a community meeting held under section 12, and
 - (ii) obtained through in-person meetings with the Lands Department before the expiry of comment period specified in a notice under section 11(2)(b);
- (e) copies of all written comments provided by Members to the Lands Department before the expiry of comment period specified in a notice under section 11(2)(b); and
- (f) a report specifying whether the applicant wishes to present oral evidence, including evidence of any witnesses, to the Custom Family Lands Resolution Committee and the manner in which the applicant plans to incorporate LNIB traditional protocols and family protocols in any presentation.

Custom Family Lands Resolution Committee review

14. (1) Within a reasonable time of receiving a referral under section 13, the Custom Family Lands Resolution Committee will review all materials provided and, in accordance with their terms of reference and any applicable policy, will determine the process that will be followed in their assessment of each application for custom family Allotment, which may include, but is not limited to the following:

- (a) invite an applicant and any witnesses identified by the applicant to a Custom Family Lands Resolution Committee meeting to:
 - (i) present evidence, and
 - (ii) answer questions posed by the Custom Family Lands Resolution Committee;

- (b) invite a Member to a Custom Family Lands Resolution Committee meeting to discuss their comments responding to an application provided at a community meeting or provided to the Lands Department;
 - (c) request a meeting with the Lands Manager to review any aspect of the referral;
 - (d) carry out a site visit to the applicable land.
- (2) If an application reveals overlapping land boundaries with one or more applications under review, without limiting the Custom Family Lands Resolution Committee's discretion:
- (a) the Custom Family Lands Resolution Committee may request multiple applicants and any relevant witnesses to:
 - (i) attend the same Custom Family Lands Resolution Committee meeting and participate in accordance with subsection (1)(a),
 - (ii) attend a site visit in accordance with subsection (1)(d); and
 - (b) the Custom Family Lands Resolution Committee may seek to mediate and resolve conflicts, including retaining an independent mediator to assist the Custom Family Lands Resolution Committee to meet this objective.

Custom Family Lands Resolution Committee recommendation

- 15.** (1) Within a reasonable time of the Custom Family Lands Resolution Committee completing its review under section 14, the Custom Family Lands Resolution Committee will do the following for each application:
- (a) consider the record provided under section 13(2) and all relevant evidence gathered under section 14;
 - (b) the factors provided at section 5; and
 - (c) make a recommendation on whether the Lands Management Advisory Committee should grant a custom family Allotment, and if so, the recommended boundaries for each custom family Allotment, which may deviate from the boundaries requested by the applicant.
- (2) The Custom Family Lands Resolution Committee's recommendation under subsection (1)(c) must include its reasons and be supported with the evidentiary record upon which its recommendation is based.

Referral to Lands Management Advisory Committee

- 16.** Upon receipt of the Custom Family Lands Resolution Committee's recommendation and evidentiary record under section 15(2), the Lands Department will refer the same to the Lands Management Advisory Committee in addition to the information and documents listed at section 13(2) to the extent they are not included as part of the Custom Family Lands Resolution Committee's evidentiary record.

Lands Management Advisory Committee decision

17. (1) At the next duly convened meeting of the Lands Management Advisory Committee following its receipt of a referral from the Lands Department under section 16, the Lands Management Advisory Committee must do the following for each application:
- (a) consider the Custom Family Lands Resolution Committee's recommendation, supporting documents and other information provided by the Lands Department;
 - (b) the factors provided at section 5; and
 - (c) approve or deny the application.
- (2) The Lands Management Advisory Committee may only approve an application if the requested Allotment has legal access or if the Lands Management Advisory Committee's approval is conditional on the applicant obtaining legal access, unless extraordinary circumstances exist, and the Lands Management Advisory Committee grants an exception to this requirement.
- (3) If the Lands Management Advisory Committee denies an application, it must provide, or cause to be provided, notice of its decision with written reasons to the applicant.
- (4) Subject to sections 19(4) and 20(4), the Lands Management Advisory Committee's decision under subsection (1)(c) is final.

Interim custom family Allotment

18. (1) The Lands Management Advisory Committee may only grant a custom family Allotment under section 20 if it first grants an interim allotment in accordance with this section.
- (2) Subject to section 19 [*proposed custom family Allotments that exceed ten acres*], if the Lands Management Advisory Committee approves an application, it will grant the applicant an interim allotment by passing a resolution that includes the following information:
- (a) the full legal name and Membership number of the applicant;
 - (b) a description and attached survey or sketch of the LNIB Community Land that is the subject of the interim allotment, the boundaries of which may deviate from the boundaries claimed by the applicant;
 - (c) a statement setting out the following:
 - (i) the applicant has been granted an interim allotment for the lands described under paragraph (b) and as described in the resolution, and
 - (ii) the Lands Management Advisory Committee will grant the applicant a custom family Allotment of the same lands if the applicant does the following within one year from the date of the resolution and at their own expense:

- A. provides the Lands Management Advisory Committee with a legal description of the requested custom family Allotment that refers to a registered plan or official plan that shows legal access over the applicable land, unless the Lands Management Advisory Committee grants an exception to this requirement under section 17(2), and
 - B. completes any other conditions identified by the Lands Management Advisory Committee.
- (d) a statement setting out that over the term that the interim allotment is in force, LNIB will not grant any Interest or license in or to the applicable land to another person without the written consent of the applicant;
 - (e) a statement setting out that if any one or more of the conditions set out in the resolution are not met within the one-year deadline:
 - (i) the interim allotment will expire, unless, where the Lands Management Advisory Committee believes there is a valid reason why the deadline should be extended,
 - (ii) LNIB will not be responsible to the applicant or any third party for losses, damages, liabilities or costs in relation to the applicant's failure to comply with the conditions in the resolution, and
 - (iii) upon the expiry of the interim allotment, LNIB will be free to grant Interests or licenses in or to the LNIB Community Land to which the application relates without the consent of, and without providing notice to, the applicant; and
 - (f) a statement setting out that the interim allotment must be registered in the Register.
- (3) As soon as practicable after the Lands Management Advisory Committee issues a resolution under subsection (2), the Lands Department must
 - (a) provide a copy of the resolution to the applicant; and
 - (b) provide notice of the resolution to Members.
 - (4) The Lands Management Advisory Committee may extend the timeline to comply with a condition imposed under subsection (2)(c) if it is satisfied there are reasonable grounds for the extension.

Custom family Allotment over ten acres

- 19.** (1) If the Lands Management Advisory Committee approves an application under section 17(c) for a proposed custom family Allotment that exceeds ten acres, the Lands

Management Advisory Committee must not grant an interim allotment under section 18(2) until Community Approval for the proposed Allotment is obtained.

- (2) The Lands Management Advisory Committee must direct the Lands Department to call a Meeting of Members to obtain Community Approval for an application referenced under subsection (1) within sixty days of the Lands Management Advisory Committee's approval of the application.
- (3) If Community Approval for an application referenced under subsection (1) is obtained, the Lands Management Advisory Committee must pass a resolution that complies with section 18(2), granting the applicant an interim allotment.
- (4) If Community Approval for an application referenced under subsection (1) is not obtained,
 - (a) the Lands Management Advisory Committee's approval for the application expires on the date the Meeting of Members is held; and
 - (b) the application will be referred back to the Custom Family Lands Resolution Committee under section 15 to propose new boundaries for the proposed custom family Allotment that does not exceed ten acres and that accounts for any feedback obtained by Members at the meeting.

Custom family Allotment decision

- 20.** (1) The Lands Management Advisory Committee may pass a resolution approving a custom family Allotment in accordance with subsection (2) if it is satisfied that the applicant has complied with all conditions imposed in its approval of an interim allotment under section 18(2).
- (2) A resolution approving a custom family Allotment must include the following:
 - (a) the full legal name and membership number of the applicant;
 - (b) a legal description of the custom family Allotment that refers to a registered plan or official plan;
 - (c) a list of all encumbrances on the custom family Allotment; and
 - (d) a statement setting out that the custom family Allotment will be registered in the Register.
- (3) If the Lands Management Advisory Committee approves a custom family Allotment under subsection (2), it must prepare, or cause to be prepared, a Certificate of Possession to be issued to the applicant specifying that it evidences a custom family Allotment that was granted in accordance with this Schedule.
- (4) If the Lands Management Advisory Committee determines that the applicant has not complied with all conditions imposed in the interim allotment granted under section 18(2), it must provide, or cause to be provided, notice to the applicant advising the following:

- (a) the interim allotment has expired;
 - (b) a custom family Allotment will not be issued; and
 - (c) setting out reasons for the decision.
- (5) The Lands Management Advisory Committee's decision under subsection (4) is final.
- (6) As soon as practicable after the Lands Management Advisory Committee issues a resolution under subsection (2), the Lands Department must provide notice of the same to Members.