

# Lands Sector Update

Allotment and Custom Family Lands Law  
October 30, 2024

# Presentation

1. Allotment and CP Criteria
2. Allotments from Community Lands
3. Schedule 1: Residential Allotments of Community Land
4. Schedule 2: Custom Family Allotments
5. What We Heard from the Community (LNIB Traditional Holdings Project – Phase 1 Report)

# Allotment vs Certificate of Possession (CP)

**Allotment** means: (Land Code)


- a) lawful possession of LNIB Lands allotted to a Member by the Council and approved by the Minister pursuant to section 20(1) of the *Indian Act*,
- b) the Interest of a Member held pursuant to a location ticket issued under section 20(3) of the *Indian Act*, or
- c) equivalent tenure issued under this Land Code;

**Location Ticket** – a document issued under the *Indian Act*, 1880 or any statute relating to the same subject matter, which is evidence of a person's lawful possession of reserve lands, and is synonymous with CP as defined in the *Indian Act*;

**Certificate of Possession (CP)** – documentary evidence of a First Nation member's lawful possession of reserve lands.

- Like a Certificate of Indian Status or Status Card

# Certificate of Possession (CP)

 **LOWER NICOLA INDIAN BAND** Number 403047587

**CERTIFICATE OF POSSESSION**  
(Issued pursuant to Part 4 Section 20.6 of the Lower Nicola Indian Band Land Code)

This is to certify that, as of the date hereof, according to the First Nations Lands Register

[REDACTED]

of the Lower Nicola Indian Band is entitled to possession of:

The Whole of LOT [REDACTED],  
Nicola Mameet IR No. 1,  
in the Province of British Columbia  
Shown on Plan of Survey No. 110521 CLSR  
in the Canada Lands Survey Records

Dated this day of 2022  
under Registration No. 4037474


\_\_\_\_\_  
Brandi O'Flynn  
Lower Nicola Indian Band Lands Manager

Dated this day of 2022  
under Registration No. 4037474

\_\_\_\_\_  
William Bose  
Lower Nicola Indian Band Councilor,  
Lands, and Estates Portfolio Holder

Dated this day of 2022  
under Registration No. 4037474

\_\_\_\_\_  
Stuart Jackson  
Lower Nicola Indian Band, Chief

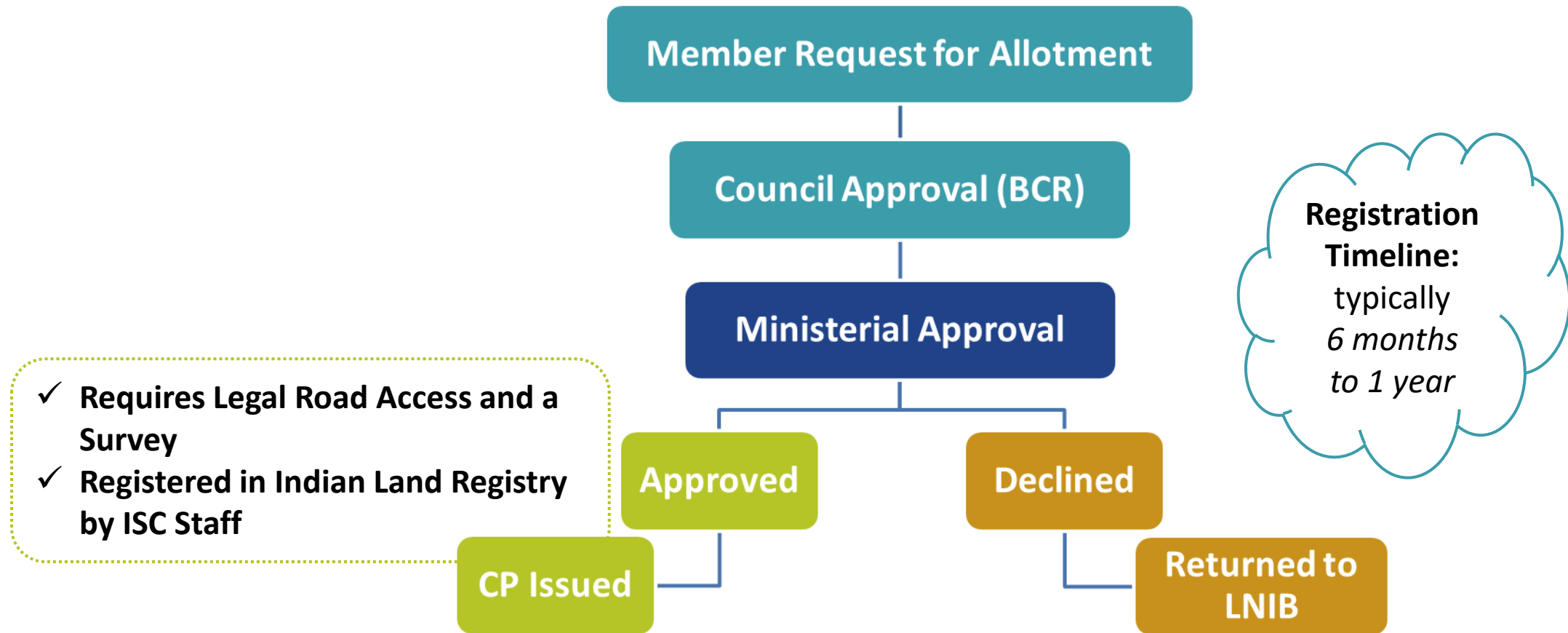
 **LOWER NICOLA INDIAN BAND** Number 403047587

[REDACTED]

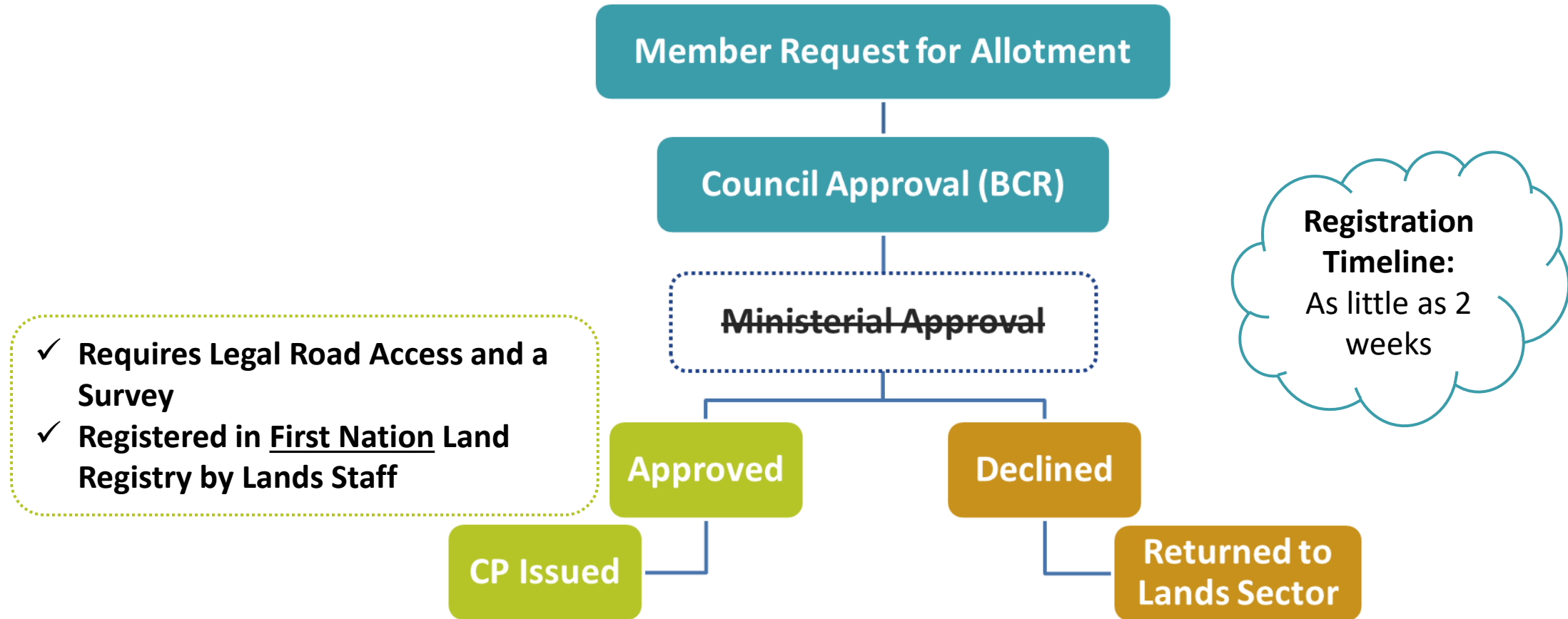
**CERTIFICATE OF POSSESSION**

**NOTE:**  
The parcel of land covered by this Certificate of Possession is subject to any instruments registered in the First Nations Lands Register and subject to any defects, errors or omissions.

# Allotment Criteria under the *Indian Act*



# Allotment Criteria under the *LNIB Land Code*



# Overview of the Allotment and Custom Family Lands Law



# Responsibilities of Allotment-holder



Ensuring all uses comply with all laws, policies and orders and all applicable federal or provincial laws and regulations



Insuring and maintaining the land



Insuring, maintaining and repairing structures, including residential homes



Managing and monitoring any Interests or Licences granted (e.g. lease or permit)



Complying with any additional conditions imposed in the Band Council Resolution (BCR)



# Allotments Approved by Council at Recommendation by LMAC

Housing Allotments

Land Exchange with Member

Allotment After Foreclosure

Residential Allotments

# Housing Allotments from Community Land



**Housing Allotments related to housing agreements**



**Requirements:**

Payout portion of a CMHC mortgage

Satisfy rent-to-own housing agreement obligations

# Housing Allotments from Community Land

Cancelling Allotment to participate in housing program:

- LNIB will provide a loan or mortgage guarantee in exchange for the Member's Allotment as security
- Member's Allotment is cancelled until the loan or mortgage has been paid in full
- Member receives a new Allotment for the same land if the Member complies with all the terms of the housing agreement

# Council Allotments from Community Land

## Exchange of LNIB Community Lands

- Grant an Allotment of LNIB Community Land to a Member in exchange for their Allotment lands

## Requirements:

- Best interest of LNIB
- Land exchanged is of equal size or value
- Notice posted on website
- Compliance with laws and a general land use plan

# Council Allotments from Community Land

## Allotment after a foreclosure (repossession)

- Member's Allotment reverts to LNIB due to the Member defaulting on a mortgage
- Council will grant the Allotment to another Member from the same family as the defaulting Member if the family member pays the amount that was owing under the mortgage in addition to any costs or fees set by Council
- If there is not a qualifying Member from the defaulting Member's family to receive the Allotment, Council will sell the Allotment for fair market value in addition to any costs or fees set by Council.

# Council Allotments from Community Land

## Limitations on size of Allotment

- A grant of an Allotment in Community Land must not exceed the size of one-half acre except if a Land Use Plan permits a larger lot size for a specific area within LNIB Land
- Limit not applicable to Custom Family Allotments

# Cancelling and Transferring Allotments

Council may correct or cancel an Allotment in the following situations:

- The Allotment was issued or allotted in error, by mistake or by fraud
- By agreement with the Allotment-holder

# Dispute Resolution

A person may file a notice of dispute in relation to the following matters:

A dispute regarding the boundaries of an Allotment

A dispute between two persons, or between a person and LNIB in relation to the possession, use or occupation of an Allotment, unless such dispute relates to the transfer of an Allotment following the death of an Allotment-holder

A dispute regarding the existence of an Allotment

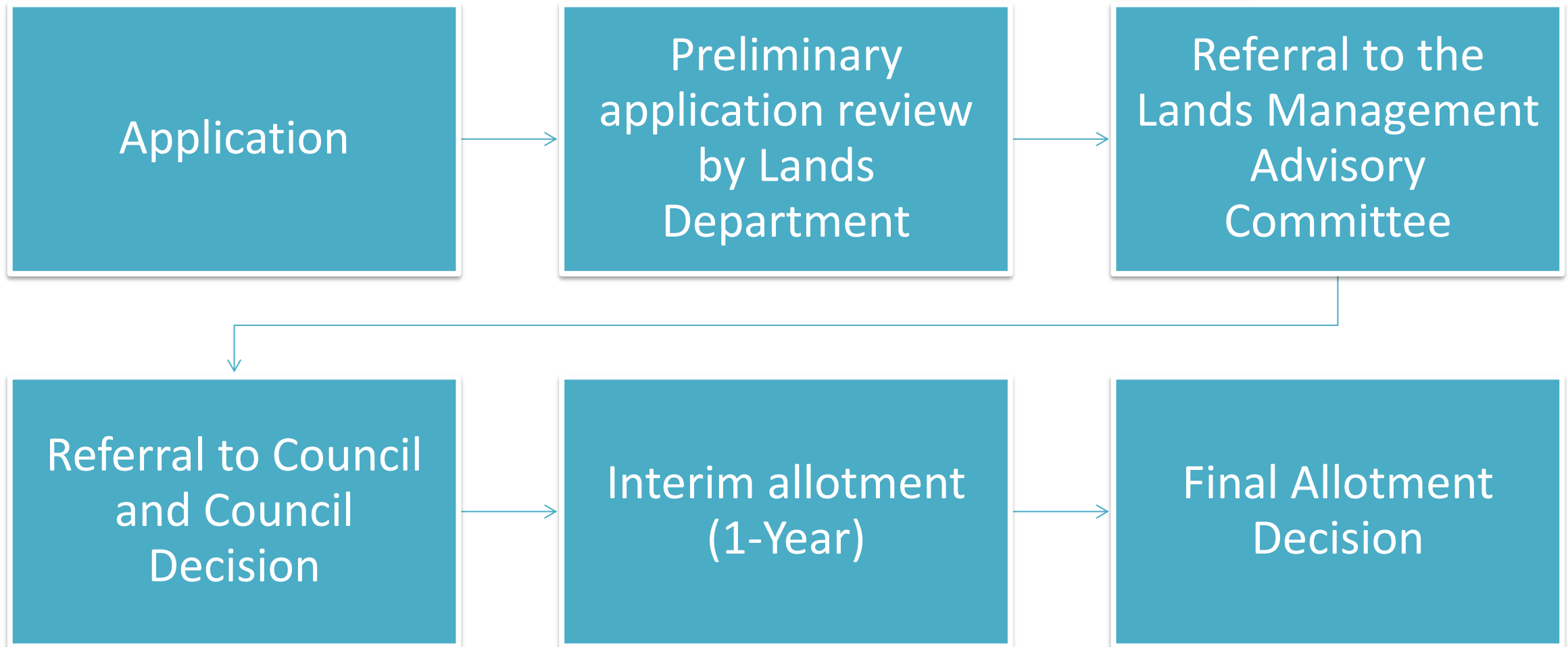
Dispute regarding the cancellation of an Allotment



# Schedule 1: Residential Allotments of LNIB Community Land



# Residential Allotment Process



# Residential Allotment Restriction

A Member is not eligible to apply for a residential Allotment if the Member holds an existing Allotment that is used for residential purposes

# Exception to Restriction

Council may approve exception if recommended by LMAC:

- if a Member requires their parent to be a co-applicant for the Allocation despite the parent already holding an Allotment that is used for residential purposes
- if a Member jointly holds an Allotment but there is not sufficient space for all the holders to live on the application land
- if a Member who is selling their Allotment applies for a new Allotment before their existing Allotment is sold

# LMAC Review and Recommendation



Within a reasonable time of receiving an application, the LMAC will review all materials provided and will make a recommendation on whether Council should grant an Allotment



The LMAC's recommendation must include its reasons.

# Council Decision



Council may only approve an application if:

The requested Allotment is consistent with the best interests of LNIB

The requested Allotment has legal access



If Council denies an application, it must provide, or cause to be provided, notice of its decision with written reasons to the applicant



Council's decision is final.

# Interim allotment

Applicant has 1 year to complete the following conditions at their own expense:

- Complete a legal survey
- Submit construction plans for approval by Council
- Provide Council with name of contractor who will be constructing the home
- Obtain all relevant permits
- Construct the residential home
- Install servicing
- Remain in good standing with LNIB

# Interim allotment

If conditions not met within required timeframe:

Interim allotment expires

Requires a new application to continue or request an extension be approved by Council

LNIB is free to grant a new Interest or License for the same lands, e.g. a new Allotment



# Final Allotment

- Council may grant an Allotment if Council is satisfied that the applicant has complied with all conditions imposed in Council's approval of an interim allotment
- A Certificate of Possession will be issued to the applicant specifying that it evidences an Allotment that was granted

# Schedule 2: Custom Family Allotments



# What are Family Lands?



LNIB has a Custom Land Allocation Practice



Typically, a lack of written documentation regarding:

Use and occupancy

Community discussions & decisions for land use

Land transactions between Members



May arise from an incomplete allotment process or missing criteria



No legal protection under the Land Code, not an Allotment or CP due to missing criteria



Are Legally LNIB Community Land or Band Land according to the Land Code

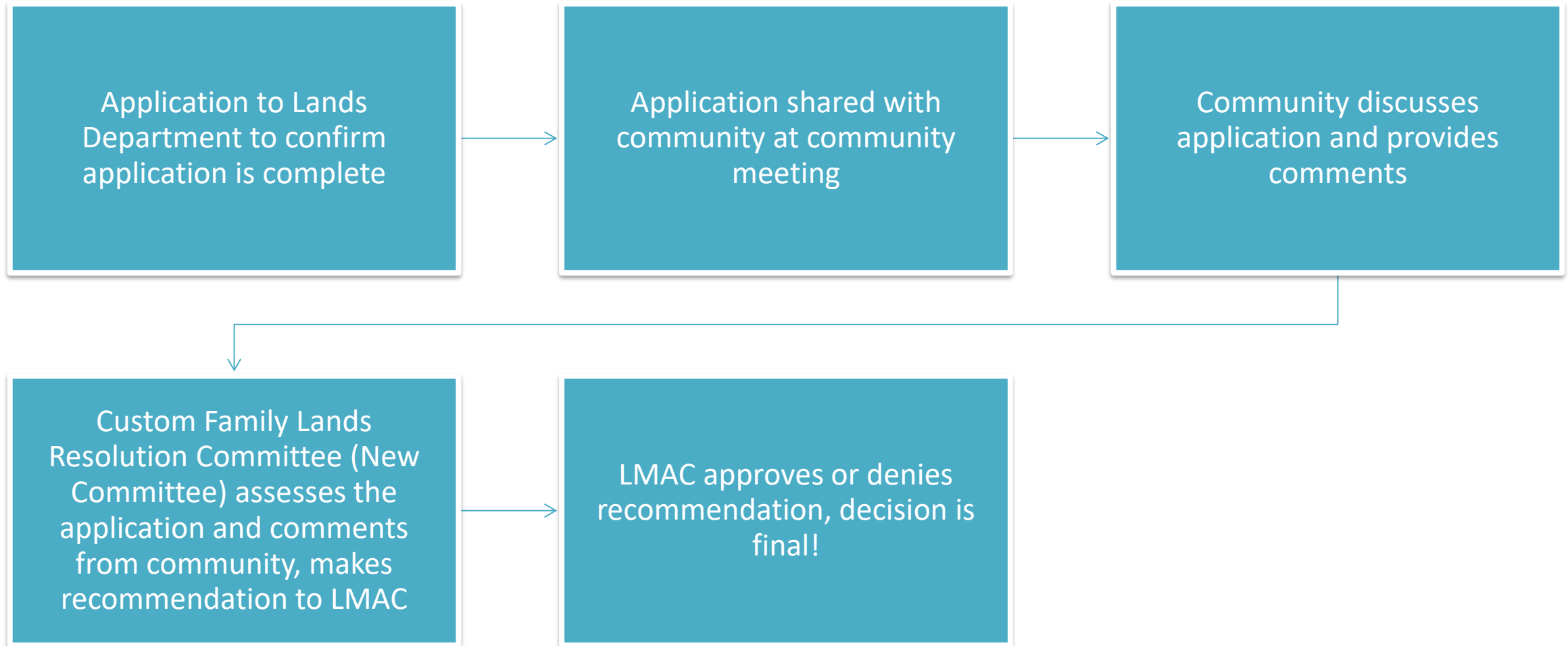


# Family Lands

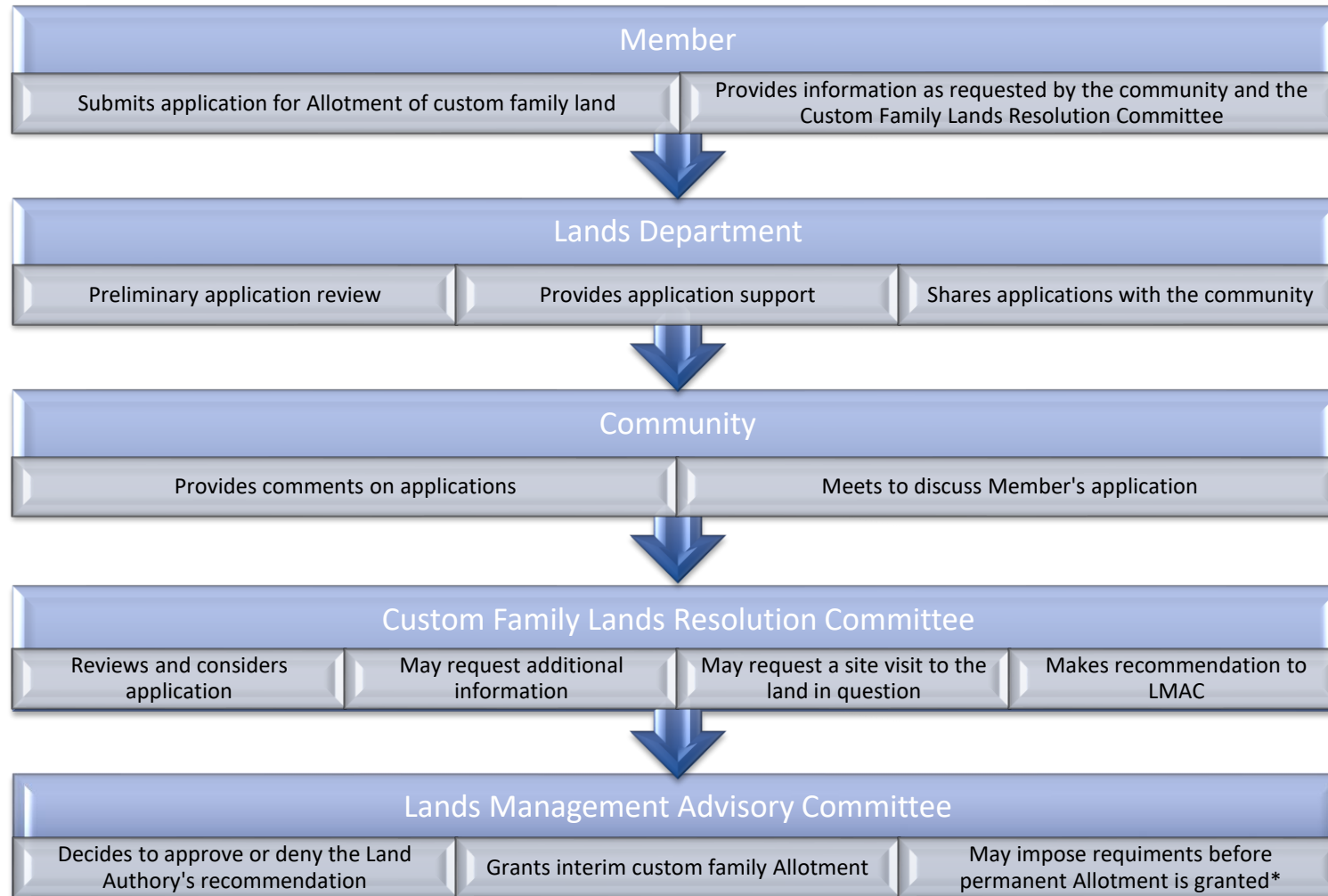
## Some Reasons for Incomplete Allotments:

- No Approved BCR's
- Invalid BCR's
  - No quorum, conflict of interest, etc.
- Not approved by Minister
- Not registered in the Indian Lands Registry
- Incomplete documents
- No legal survey or no legal road access

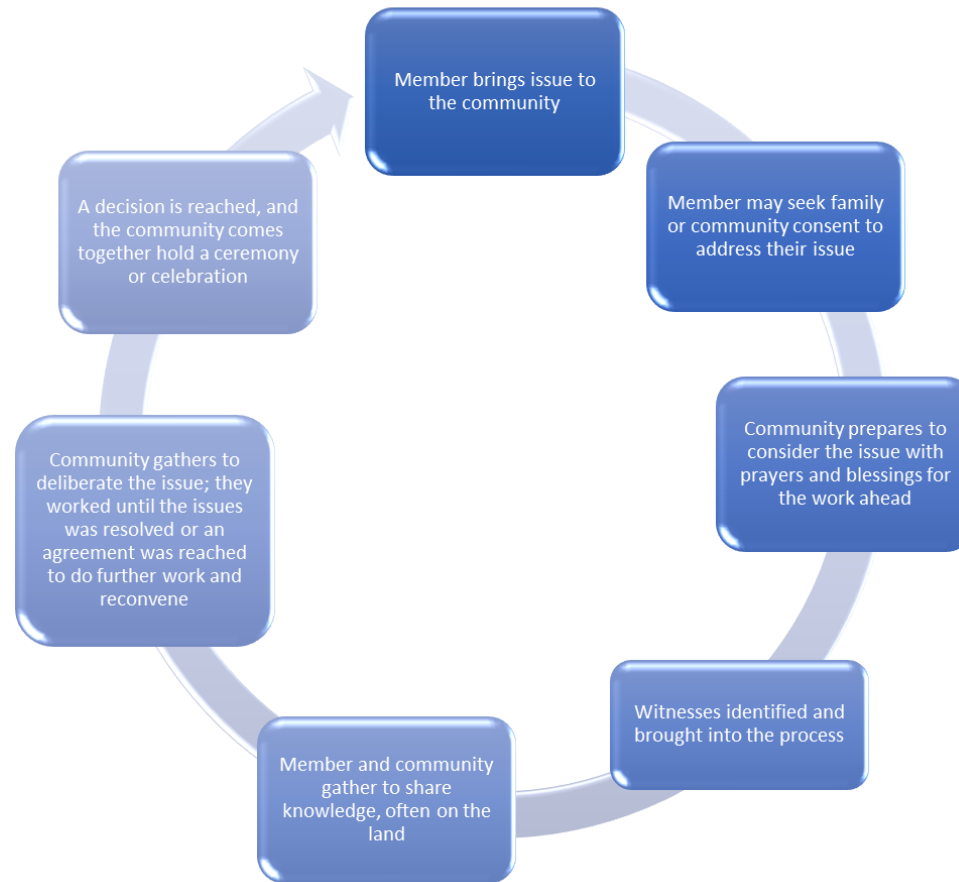
# Custom Family Allotment Process



# Custom Family Allotment Process



# Traditional Decision-Making Process



# Basis/Considerations for a Custom Family Allotment

- The applicant's historic attachment to the land or the applicant's interest in the land based on LNIB tradition
- LNIB family ties to the land
- Improvements to the land including a residence
- A will, witnessed letter or agreement that indicates the intention of a Member regarding the land in question
- Whether any interest in the land was transferred to another Member
- Oral testimony provided in accordance with this Law
- LNIB cultural perspectives and preferences regarding land holdings
- LNIB traditional protocols or family protocols regarding decision-making processes
- The amount of land or lot size requested and the amount or remaining LNIB Community Land
- Whether the lands are or will be needed to meet the needs of LNIB such as community infrastructure or housing needs
- Any order of a court having jurisdiction relevant to the land



# Supporting Evidence for Application

- A will
- A bill of sale
- A land transfer agreement
- Other legal documents
- A Band Council Resolution (BCR)
- Minutes from a Council meeting
- Survey maps and reports
- Genealogical information connecting the application to the applicable land
- Oral history from the applicant transcribed in an affidavit
- Oral history from others with knowledge of the applicant's connection to the applicable land transcribed in an affidavit
- An affidavit establishing connections between the applicant and the applicable land
- Evidence that the applicant (or their family) has lived on, worked, maintained or improved the land

# Call for Applications by LMAC

- Invite Members to apply for a Custom Family Allotment within a specified portion of LNIB Community Land
- Notice will include:
  - A description and map of the LNIB Community Land, the approximate location of distinct interests asserted by Members (if known) within the lands depicted in the map
  - The application deadline will be no less than 60 days after the date of the notice
  - Statement advising that all Members with an interest in a Custom Family Allotment are advised to submit an application
  - The name and contact information for LNIB staff who may answer any questions about the application form

# Notice



LNIB newsletter



Bulletin board in each  
of LNIB's office  
buildings



LNIB website



Merritt newspaper  
with the largest  
circulation



All active social media  
accounts for which  
LNIB administers

# Community Review of New Applications



Enables a practice of openness, transparency, and allows the community to be witness



Notice to Members advising of opportunities to submit comments on all applications for Custom Family Allotments



All applications will be presented for review and discussion



Each applicant must attend the community meeting and be prepared to discuss their application and answer any questions from Members and Council



# Referral to Custom Family Lands Resolution Committee

---

Application and supporting documents

---

Report summarizing the Members' oral feedback

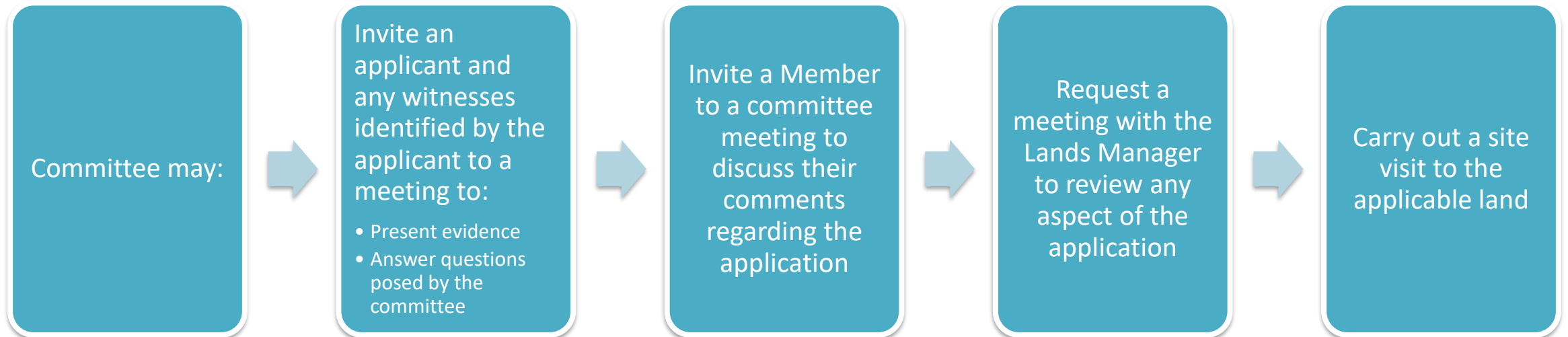
---

Copies of all written comments provided by Members

---

Report specifying whether the applicant wishes to present oral evidence, including evidence of any witnesses 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



# Custom Family Lands Resolution Committee Review

If an application reveals overlapping land boundaries with one or more applications under review the committee may:

- request multiple applicants and any relevant witnesses to:
  - attend the same committee meeting and participate
  - attend a site visit
- seek to mediate and resolve conflicts, including retaining an independent mediator to assist the committee to meet this objective

# Custom Family Lands Resolution Committee Recommendation

1

Consider the application package and all relevant evidence gathered

2

Consider the basis or considerations for a Custom Family Allotment

3

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

4

Recommendation must include its reasons and be supported with the evidentiary record upon which its recommendation is based



# Lands Management Advisory Committee Decision

- Committee must do the following for each application:
  - consider the Custom Family Lands Resolution Committee’s recommendation, supporting documents and other information provided by the Lands Department
  - Consider the basis or considerations for a custom family Allotment
  - approve or deny the application
- If the LMAC denies an application, it must provide, or cause to be provided, notice of its decision with written reasons to the applicant
- The LMAC’s decision is final

# Interim Custom Family Allotment



Granted by LMAC by resolution and applicant has 1 year to complete the following conditions at their own expense:



Complete a legal survey



Complete an environmental assessment, if required



Any other conditions identified by the Lands Management Advisory Committee

# Interim Custom Family Allotment



If conditions not met within required one-year timeframe:



The interim allotment will expire, unless there is a valid reason why the deadline should be extended



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



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

# Custom Family Allotment over Ten (10) Acres



IN ADDITION TO APPROVAL FROM LMAC,  
THE APPLICATION REQUIRES  
COMMUNITY APPROVAL BY A VOTE  
PURSUANT TO THE LAND CODE



A COMMUNITY MEETING WILL BE  
SCHEDULED WITHIN 60 DAYS OF THE  
DECISION BY LMAC



COMMUNITY APPROVAL REQUIRES 10%  
OF THE ELIGIBLE VOTERS TO VOTE AND A  
MAJORITY OF THE ELIGIBLE VOTERS THAT  
VOTE, TO VOTE IN FAVOR OF THE  
CUSTOM FAMILY ALLOTMENT



IF NOT APPROVED, THE APPLICANT(S)  
MAY RESUBMIT AN APPLICATION FOR A  
CUSTOM FAMILY ALLOTMENT UNDER 10  
ACRES

# Final Custom Family Allotment

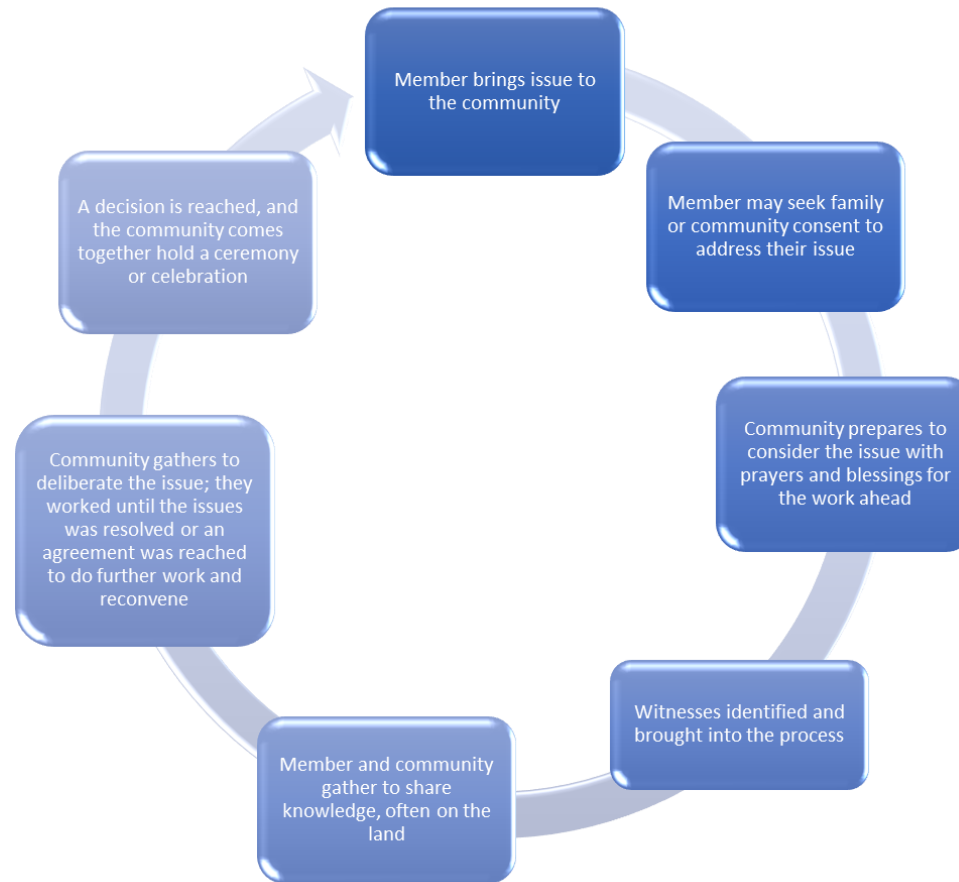
---

LMAC may grant a Custom Family Allotment if LMAC is satisfied that the applicant has complied with all conditions imposed in LMAC's approval of an interim allotment

---

A Certificate of Possession will be issued to the applicant(s) specifying that it evidences a Custom Family Allotment that was granted

# Traditional Decision-Making Process



# Additional Drafting Required

- Composition of Custom Family Lands Resolution Committee
- Custom Family Lands Resolution Committee Terms of Reference

# Family Engagement Opportunities

- November to December
  - Weekly afternoon sessions on Wednesdays at 1:30 pm
  - Weekly evening sessions on Wednesdays at 5:00 pm
- Sign up for follow up sessions with Justice Cisco, 250-378-5157, [justice.cisco@lnib.net](mailto:justice.cisco@lnib.net)



# Questions/Discussion



# Custom Family Allotment Process

## Custom Family Lands Resolution Committee

- A new recommending body comprised of community Members to consider evidence of custom family land holdings.
- The composition of this new recommending body will be determined through discussions with the community and with the Lands Department.
- It will aim to be inclusive and include a diverse representation of community Members and be more aligned with LNIB traditional decision-making processes.

# Custom Family Allotment Process

## Custom Family Lands Resolution Committee

- In the past, community decision processes involved hearing from community Members with evidence and knowledge about the issue at hand and giving thoughtful consideration to this evidence before making a decision.
- Often, community Members were called to give witness and provide oral testimony.
- Good decisions were made when community Members trusted the decision-makers and could see how traditional laws and protocols were reflected in the decisions.

# Custom Family Allotment Process

## Custom Family Lands Resolution Committee

- Today, it is just as important that community Members have trust in the people and decision-making process.
- Community Members must be able to trust that applications and evidence they submit for custom family Allotments will be fairly considered by a Committee that understands and applies traditional protocols and values and has a deep understanding of the contemporary land issues facing LNIB and the need to balance individual and family land ownership with sustainability and the community good.

# Custom Family Allotment Process

## **Delegation of decision-making authority to LMAC for Custom Family Allotments**

- In line with preferences expressed by community Members during Phase 1 of the Traditional Holdings Project, as well as reflecting the historic role of Chief and Council as mediators who relied on trusted advisors to assist in the resolution of issues and make decisions.
- This arrangement provides space for the LNIB Chief and Council to participate in meetings and discussions about custom family land Allotments, and to provide advice and counsel.

# Custom Family Allotment Process

## Delegation of decision-making authority to LMAC for Custom Family Allotments

- It introduces transparency to the process and provides additional measures to involve diverse community voices into decision-making.
- It is also consistent with the LNIB 2020-2023 Strategic Plan under Moving Forward Together and in Goal Statement #2 that states: *“Identify scenarios where “other decisionmakers” may more appropriately ensure impartiality on traditional land issues.”*

# Custom Family Allotment Process

## Delegation of decision-making authority to LMAC for Custom Family Allotments

*LNIB Strategic Plan 2023 - 2028*

*Strategic Priority 9: Lands*

*1. Land Ownership (Certificate of Possession)*

- *Create a procedurally fair and transparent process for land ownership on reserve including family lands.*

The Land Code allows the Council to delegate decision-making authority to LMAC only. The delegation cannot be provided to another committee unless the Land Code is amended.

# What We Heard from the Community

## LNIB TRADITIONAL HOLDINGS PROJECT – PHASE 1 REPORT





# What We Heard from the Community

LNIB TRADITIONAL HOLDINGS PROJECT – PHASE 1 REPORT (157 Pages)

- Given past unsuccessful attempts by the Band to review and make decisions about unregistered traditional holdings, community members participating in community meetings and interviews for this study were asked about their preferences for a decision-making body to review and make recommendations on allotment applications.
- This was a difficult question for the community to answer and members carefully considered different options for who they would trust to make these important decisions.

# What We Heard from the Community

LNIB TRADITIONAL HOLDINGS PROJECT – PHASE 1 REPORT (157 Pages)

1. The potential for conflicts of interests among decision-makers was the most significant concerns expressed by community members. All families interviewed shared examples of times in the past when they perceived conflicts of interest affected decision-making about their lands.
2. Community members are reluctant to continue with the current system where decisions about allotments are made by Chief and Council.

# What We Heard from the Community

LNIB TRADITIONAL HOLDINGS PROJECT – PHASE 1 REPORT (157 Pages)

3. Community members trust LNIB Elders as knowledge holders who follow community protocols and customs for making and fair decisions. However, they also recognized that Elders are not immune from conflicts of interest where decisions may impact their own families. Other members worry that Elders charged with making allotment decisions could face hostility from other community members, a situation that has played out in the past.

# What We Heard from the Community

LNIB TRADITIONAL HOLDINGS PROJECT – PHASE 1 REPORT (157 Pages)

4. Some community members favour an independent decision-maker, but also recognized that decision-makers from outside the community would not have the cultural knowledge to make decisions informed by LNIB protocols and customs. They also would not be accountable to the community in the same way that LNIB-based decision-makers would be. While some mentioned the Land Committee established in previous processes, no specific feelings for or against that Committee were expressed.

# What We Heard from the Community

LNIB TRADITIONAL HOLDINGS PROJECT – PHASE 1 REPORT (157 Pages)

5. There was general agreement among community members in favour of a decision-making body comprised of a mix of community members, Elders, Councilors, LMAC and an independent reviewer.
6. More than one family group said that they would not accept any decision under the Allotment Law that resulted in the loss of any of their traditional holdings.
7. There is tension between a desire for a carefully considered, politically neutral, multi-table decision process, and a quick and efficient process.