

Fixing Land Use Planning in the Yukon Before It Really Breaks: A Case Study of the Peel Watershed

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Abstract: For eight years, the Yukon Government and four First Nation governments—the First Nation of Na-cho Nyak Dun, the Gwich'in Tribal Council, the Vuntut Gwitchin First Nation, and the Tr'ondëk Hwëch'in First Nation—have been working to create a land use plan for the Peel Watershed in northeast Yukon, Canada. This paper analyzes publicly available data on the decision-making process led by the Yukon Government following submission of a final recommended land use plan by the Peel Watershed Planning Commission. We argue that the Yukon Government failed to effectively reconcile different perspectives and values through the decision-making process. Using an analytical framework from the policy sciences, we contend that it is not the polarizing nature of these perspectives that has caused land use planning for the Peel region to break down; rather, it is a broken decision-making process that to date has failed to secure the common interest. This failure has left many of those involved in the Peel region's land use plan with the perception that their voices are no longer being heard in this process. We describe how these fractures occurred and present a number of recommendations that could improve the decision-making process for the Peel Watershed land use plan, with application for future such processes elsewhere in the Yukon.

Introduction

In 1993, an historic agreement was signed by the Government of Canada, the Government of Yukon, and the Council for Yukon Indians, creating a blueprint for the fourteen individual First Nations in the Yukon to negotiate Final Agreements and setting out how they would begin to self-govern. This Umbrella Final Agreement (UFA) laid out a process for land use planning in the territory, a process intended to manage how settlement and non-settlement lands¹ should be used by different stakeholders in order to minimize conflicts between them (Executive Council Office 2008). Two

decades later, land use planning is still in its early stages of development, with territorial and First Nation governments learning about the process as it is carried out. For the past eight years, the Yukon Government (YG) and four First Nation governments have been working to create a land use plan for the Peel Watershed in northeast Yukon (figure 1). Throughout this planning process, individuals, groups, organizations, and both Yukon and First Nation governments have expressed different, often conflicting, viewpoints on what this plan should look like. For many of those involved, this issue has been extremely polarizing to the extent that some see opposing views as irreconcilable. These differences relate to the varying social, cultural, economic, and ecological values of the Peel region, the weight that these values are given by various participants, and expectations about the land use planning process itself. It is ultimately up to the policy process to navigate these differences and find a land use plan that maintains sufficient values for the benefit of present and future generations.

Land use planning in the Yukon is overseen by a territory-wide Land Use Planning Council, operating as a government-to-government process between territorial and First Nation governments that are signatories to the UFA (Peel Watershed Planning Commission 2011b). Regional land use planning commissions are temporary bodies whose mandate is to develop and recommend regional land use plans to the territorial and First Nation governments involved (“the Parties”), which are responsible for plan implementation on territorial and First Nation settlement lands respectively. There are currently eight proposed planning regions. Of these regions, only the North Yukon land use plan (Vuntut Gwitchin traditional territory) has been approved and is being implemented (Yukon Land Use Planning Council 2013a).

The Peel Watershed Planning Commission was constituted in 2004, and included as its Parties the First Nation of Na-cho Nyak Dun, the Gwich’in Tribal Council, the Vuntut Gwitchin First Nation, the Tr’ondëk Hwëch’in First Nation, and the Yukon Government (PWPC 2011a). The Peel Commission had a board as well as a technical working group, both comprised of representatives of the Parties. Its mandate ended in 2011 when the Commission presented its Final Recommended Plan (the Plan) to the governments. This Plan was adopted by the four First Nation governments, but the YG chose not to accept the Plan and unilaterally embarked on a second series of consultations and related activities (table 1), causing considerable public controversy within the territory. At the time of writing, the YG had concluded its consultations and released a feedback document,³ but had not made a final determination about approving, rejecting, or modifying the Plan.

Our analysis focuses on the YG's activities following the Commission's submission of the Final Recommended Plan. First, this article provides a

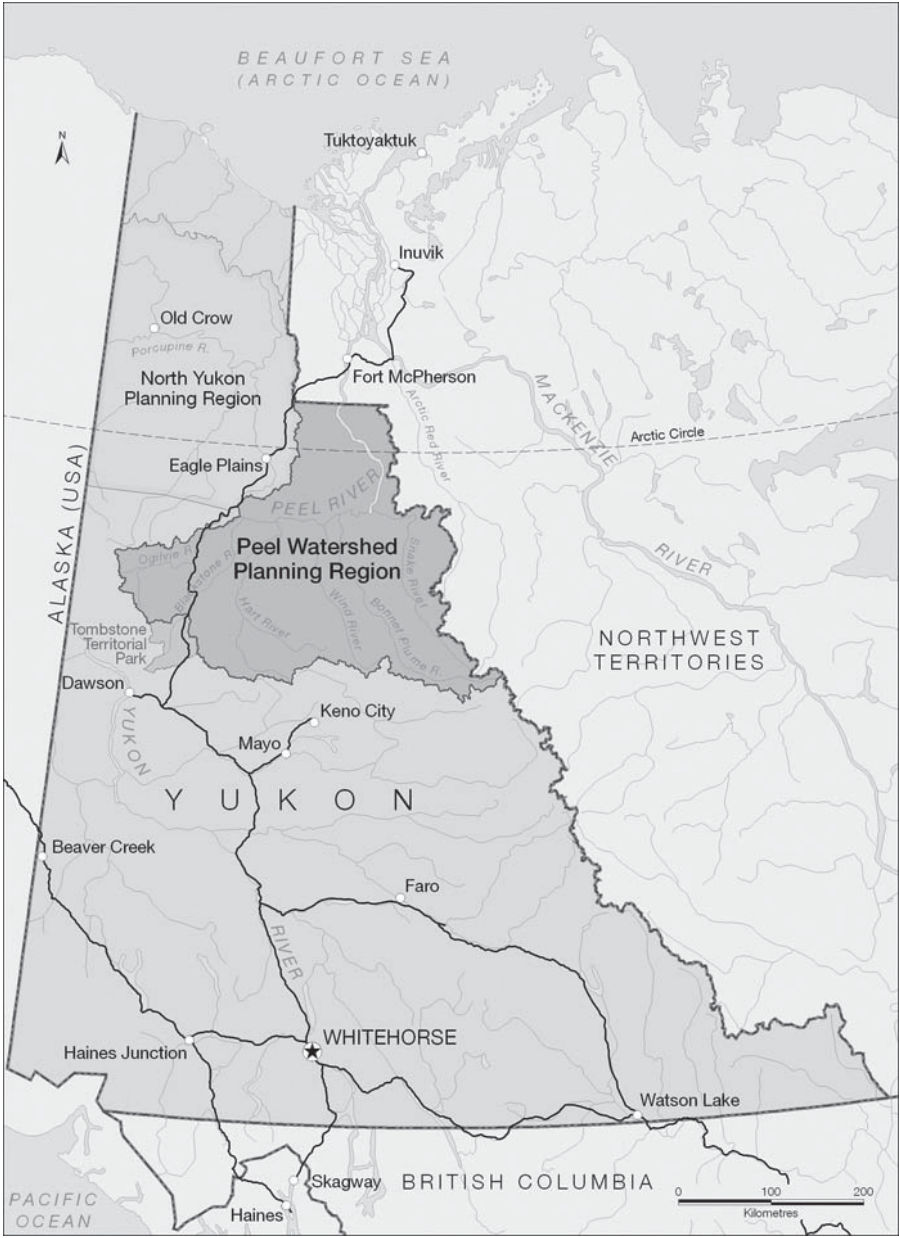


Figure 1. Map of the Peel Watershed planning region (YLUPC 2007).

background to and overview of land use planning in the Peel Watershed. The article then briefly maps out how the perspectives and values of different groups were affected by the YG's decision-making process, and then analyzes this process by measuring it against set criteria. This is followed by projections of how decision making may be affected in the future, and finally by several recommendations for how the issues that have been identified might be addressed. While we acknowledge that there are limitations to concentrating on such a small time period within a much larger process (figure 1), we think that an analysis of this time frame offers important insights into where fractures in the decision-making process have occurred. In this situation, we define the problem as a failure to effectively engage and reconcile different perspectives and values through the YG-led decision-making process for the Peel Watershed land use plan. We believe that a sufficiently high-performing decision process should be able to achieve such a reconciliation, as evidenced by approval in 2009 of the North Yukon Land Use Plan.

Using an analytical framework from the field of the policy sciences (Lasswell and McDougal 1992; Clark 2011), we aim to understand why this particular policy process has deviated so significantly from its originally intended course, as well as what effects its outcomes will have for the region and land use planning in the Yukon more generally. It is our intention to use this analysis to derive insights and recommendations for broader application to the regional land use planning process as it proceeds elsewhere in the Yukon. Applying this approach requires understanding how our individual and collective standpoints on the issue have been shaped by past experiences, backgrounds, and beliefs. The two lead authors are students in the School of Environment and Sustainability at the University of Saskatchewan, and the other two authors are faculty. Kiri Staples has a background in international development. She relates to the issue through her experiences growing up in the Yukon and having spent time in the Peel Watershed region. Manuel Chavez-Ortiz's area of expertise is in economics. His relationship to the Peel issue is influenced by an interest in Indigenous rights, based on comparing his experiences in and knowledge of Canada and Mexico. Both M.J. Barrett and Douglas Clark have lived in the Yukon and are passionate about issues of environment and effective, inclusive decision making.

Table 1. Key events for the Peel Watershed land use planning process

Date	Event
	First Nations have long governed and followed beliefs and traditions that rely on the lands and resources of the Peel Watershed, including passing on knowledge, hunting, fishing, trapping, and harvesting.
2004	Land use planning in the Peel begins with the formation of the Peel Watershed Planning Commission (PWPC 2011a).
2008	Draft Recommended Plan released by the Peel Commission, followed by further consultations and revisions (PWPC 2011a).
2009	A revised Recommended Plan for the Peel Watershed by the Peel Commission is released, followed by further review (PWPC 2011a).
2011	Final Recommended Plan by the Peel Commission released in July (PWPC 2011a); accepted by the four First Nations involved (Ronson 2013a).
2012	YG announces intentions to modify the Final Recommended Plan and soon after presents eight core principles to guide decisions on how to regulate land use in the Peel, then proposes new land use designations for the region (YG 2013).
2013	YG-led consultation with communities and general public on the Final Recommended Plan and proposed land designations ends on February 25, consultation specifically with First Nations continues after this deadline (YG 2013).

Methods

This analysis utilizes an interdisciplinary problem solving framework of the policy sciences (Lasswell and McDougal 1992; Clark 2011) to gain insight into the Peel Watershed land use planning process. This framework allows a policy process to be mapped in such a way that helps logically organize and understand information and generate practical solutions to policy problems. The model is broken down into three interrelated categories: social process (understanding how individuals and groups interact), decision process (how decisions are made), and problem orientation (how specific problems are analyzed and solutions developed) (Clark 2011). This approach is useful for natural resource management issues such as the Peel Watershed because it addresses the complexity of these issues, integrating “scientific” and “non-scientific” variables.

We reviewed documents prepared by the Peel Watershed Planning Commission, including the Final Recommended Plan; correspondence between the Parties; as well as websites, blogs, and videos of relevant groups

and institutions such as the Yukon Land Use Planning Council, various YG departments and First Nation governments, and a number of stakeholder organizations. To supplement this information, several of these groups were contacted by phone or email. We also reviewed articles published from three major news media sources (*CBC*, the *Yukon News*, and the *Whitehorse Star*²) between the time the Final Recommended Plan was submitted and the time of writing this article.

Context

The Peel Watershed covers an area of 67,431 square km—see figure 1 (PWPC 2011a). In addition to its lack of permanent human settlements, the region contains valuable natural resources ranging from fish and wildlife populations to gas, oil, and mineral deposits. This diversity of resources supports various interests and industries including hunting and trapping, wilderness tourism, and mining activities. The YG manages 97.3% of the land in the region. The remaining 2.7% is split between four First Nations: the Tr'ondëk Hwëch'in, Na-Cho Nyak Dun, and Vuntut Gwitchin First Nations of the Yukon, as well as the Tet'it Gwich'in First Nation based in the Northwest Territories (PWPC 2011a). Yukon First Nations citizens also have various hunting and trapping rights within their traditional territories⁴ that fall within the Peel Watershed.

For these First Nations, the Peel area has had physical, intrinsic, and spiritual value for thousands of years (Peepre 2007); their cultures and traditional economies depend on the area's healthy environment (PWPC 2011). Despite this, the government's relationship with First Nations in the territory is grounded historically in colonial policies that systematically denied First Nations their right to be full citizens in their own land (Horne 2010). For decades, First Nations were excluded from the state's decision-making processes, despite significant efforts on the part of First Nations to have their voices heard. It was not until the UFA was signed in 1993 that federal, territorial, and First Nations⁵ authorities agreed upon a framework for land claims negotiation. Nadasdy (2003) suggests that this process of land claims negotiation has been one of the most significant factors shaping Aboriginal–state relations in the Yukon. Moreover, this relationship will continue to change as self-government agreements are implemented through processes such as land use planning.

When the Peel Commission submitted the Final Recommended Plan for the Peel Watershed to the Parties in 2011, each had the opportunity to accept, reject, or modify it. While the four First Nation governments all accepted the Plan, the YG suggested modifications to it, arguing the land designations

within the Plan “are polarized and focus on either end of the spectrum. There is nothing in the middle to address multiple users of an area” (YG 2013). The government’s specific concerns with earlier drafts of the Plan related to issues of complexity and implementation, but most significantly it called for a better balance of conservation and development interests (Department of Energy Mines and Resources, Government of Yukon 2011). Because the only other regional land use plan to date was approved by all Parties, it was unclear to many of those involved how the Peel land use plan would proceed in light of this disagreement. Thus, when the YG released its own set of guiding principles and management scenarios, and then began consulting the public on these plans, as well as on the Final Recommended Plan, the decision-making process underwent a dramatic shift. The following sections provide an analysis of the effects this had on those involved and ways in which the decision-making process broke down.

Social Process

The interaction of every individual and organized interest in society—in other words, the social process—constitutes the context of every resource problem, and neither the problems nor the decision-making processes necessary to solve them can be understood unless their context is known. (Clark 2011, 32)

One of the primary factors that has shaped the Peel Watershed planning process is the diversity of perspectives that have been expressed. The key participants in this process, including individuals, groups, and institutions, each bring their own set of beliefs, opinions, values, and strategies for influencing the decision process. Determining how these perspectives overlap or conflict can be difficult, as they are not monolithic but change over time and have internal differences. In the context of the Peel, the range of perspectives being voiced has often been presented by media, politicians, organizations, and individuals as “polarizing,” with conservation on one side and development on the other. While the presence of these divergences may be a cause for conflict, it is up to those leading the decision process to find a way to reach common ground within these differences (Clark 2011). Moreover, claiming rationality and balance in resource management discourse, while demonizing dissent, is an effective tactic to delegitimize alternative views and ideas; this prevents a full and unbiased realization of the common interest, and making any common ground much harder to discern (Davidson and Mackendrick 2004). As will be discussed in the following section, breakdown within the decision-making process following

the submission of the Final Recommended Plan has meant the common interest has yet to be fully realized. This concern has been voiced by the Yukon Land Use Planning Council: “finding common ground to move forward on a regional land use plan for the Peel region in particular and regional planning in general is the issue” (YLUPC 2013b).

Central to the different perspectives that participants hold are values. Values are “the things and events in life that people desire, aim at, wish for, or demand” (Clark 2011, 25). In the policy sciences framework, values are broken down into eight categories: power, wealth, knowledge and information, skill, well-being, affection, respect, and ethical conduct (Chen 1989; Lasswell and McDougal 1992).⁶ These values are typically distributed unevenly within a community, but their distribution is by no means static; they can be deprived or encouraged (Clark 2011). Considering how different individuals and groups perceive the values that are encouraged by the status quo and the values they seek from future decisions is an important part of understanding decision processes. This understanding is particularly relevant to the Peel Watershed issue.

When the YG received the Final Recommended Plan from the Peel Watershed Planning Commission, the distribution of values among the participants involved was significantly altered. By taking over from the Peel Commission and leading a new consultation process, the YG markedly increased its own power to determine the outcomes and effects of land use decisions. As the Parties ultimately have the right to accept, reject, or modify the Final Recommended Plan, this shift in power was anticipated. However, the response by First Nation governments, numerous advocacy groups (e.g., Canadian Parks and Wilderness Association, Wilderness Tourism Association of Yukon), and the Yukon Land Use Planning Council to the changes in the decision process that followed indicates an unexpected shift in the distribution of values. Each of these participants expressed a sense of loss of standing—effectively diminishing their own values of power, respect, and well-being. Previously, these groups felt that their perspectives and demands had influence in the decision process through the Peel Commission’s consultations. However, the YG’s subsequent activities sparked the concern among various governments and stakeholders that decisions were being made without their input or engagement. Collectively, these losses reflect the perception of an acute deprivation of respect on the part of the Yukon Government. This issue is analyzed further in the next section.

Decision-Making Process

According to Clark (2011) “natural resource policy and management is most usefully conceived as a process of decision making, and it is this process that must be upgraded to achieve better conservation and management” (57). The decision process in the policy sciences framework is broken down into seven stages. First, information-gathering (“intelligence”); second, debate over different courses of action (“promotion”); third, setting guidelines or making rules for action (“prescription”); fourth, beginning to put guidelines into action (“invocation”); fifth, implementing and finalizing the course of action (“application”); sixth, evaluating the course of action (“appraisal”); and finally, modifying or ending the course of action (“termination”) (Clark 2011). This process is not necessarily a linear one. In the context of land use planning for the Peel Watershed it has been cyclical, at times with more than one stage being carried out at once (figure 2). One trend that is immediately evident within this process is the lack of implementation. In the past eight years, decision makers have cycled between suggesting courses of action, getting feedback on these plans, and then changing the course of action. This reflects not only the complexity of decision making, but the challenge of finding agreement on an effective and rational course of action.

Our analysis will focus on the “promotion” stage of the YG’s decision process. In theory, “promotion should consist of active, open debate about what to do” (Clark 2011, 62). Following the submission of the Final Recommended Plan, the YG’s “promotion” stage consisted of three main activities: the creation of eight “guiding principles,” the suggestion of new land designations, and consultation meetings in affected communities. While there were other promotion activities occurring alongside these events, such as protests by special interest groups, petitions, and letters to the editor written by concerned individuals, our analysis is focused on the main activities led by the YG (see figure 2). As figure 2 illustrates, there is a distinct shift from the Peel Commission’s decision process to the YG decision process. It is this shift and the ways in which these stages were carried out that have led to fractures in the overall decision process.

The policy sciences framework offers a number of standards to which each stage of the decision process should be held (Lasswell 1971). The promotion stage should be rational (likely to solve the problem), comprehensive, effective, and have the capacity to integrate different perspectives to find common ground. The YG decision process fails to meet two of these standards in particular. First, the activities within this process are lacking in comprehensiveness. Despite the fact that the YG outlined a number of suggestions for land designations, this was done only after the

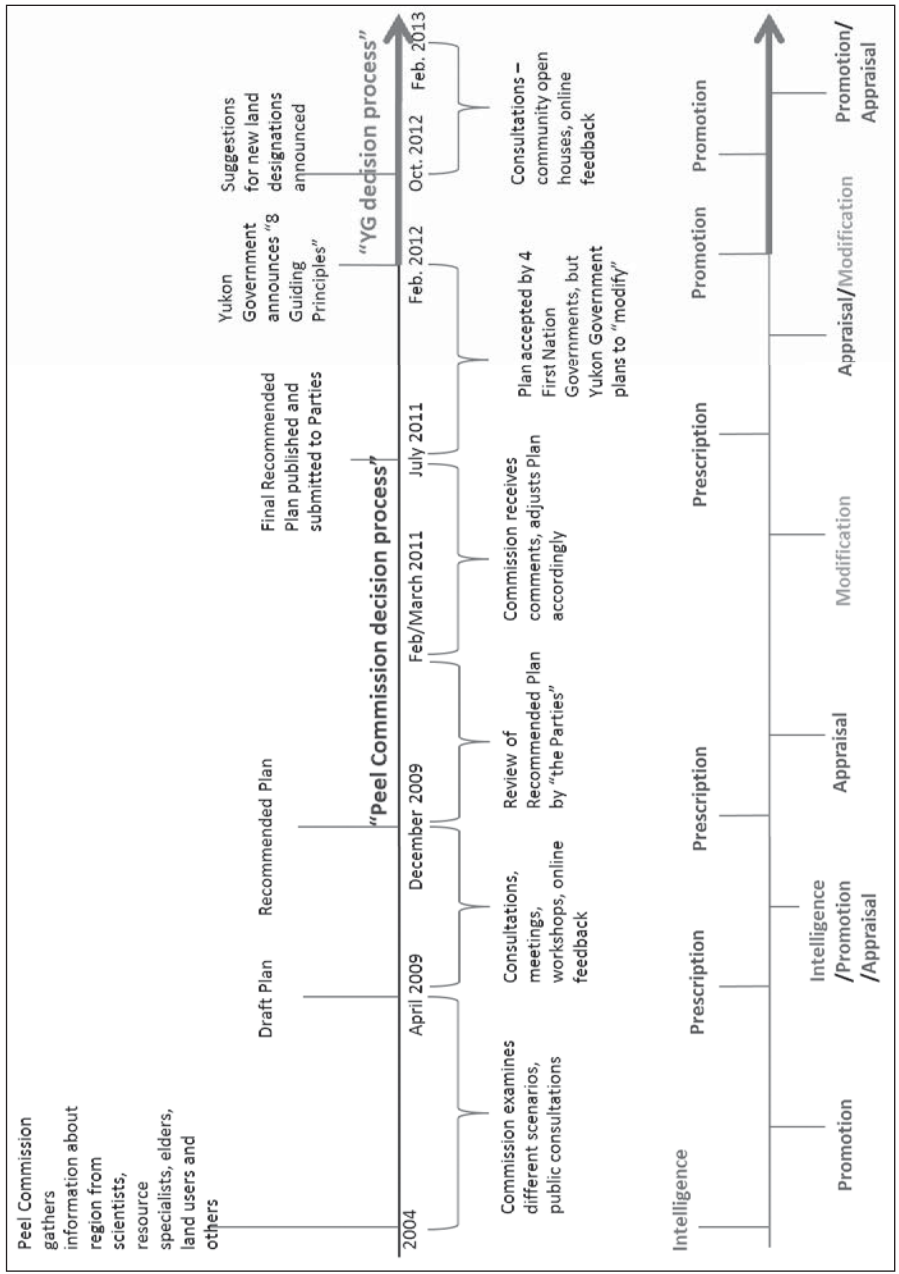


Figure 2. Decision processes related to the Peel Watershed land use plan.

Final Recommended Plan was submitted. At no point during the Plan's development did the YG offer such specific feedback. As the Yukon Land Use Planning Council stated in its review of the Final Recommended Plan, "First Nations have made their preferences and position clear; the Yukon Government has not" (YLUPC 2011). As a result, the activities led by the YG following the Plan's submission lacked the depth and social license that is gained by a comprehensive, government-to-government decision-making process. The failure of the YG's actions is demonstrated by the way in which key participants responded to events in the YG's promotion stage. For example, when the eight "guiding principles" were first announced, leaders within the four First Nation governments involved in the planning process described being "blindsided," "disturbed," "taken aback," and "stabbed in the back" (Tobin 2012a). Similarly, the Yukon Land Use Planning Council had no involvement in the creation of the new land designations, despite the organization's central role in the land use planning process as mandated under the UFA. Such responses are not indicative of a comprehensive or inclusive process. Moreover, the exclusion of these groups has fostered the perception amongst others in the broader public that decisions were being made by a few individuals behind closed doors (Ronson 2012; Cruikshank 2012). This perception has in turn led many to question the efficacy of the regional land use planning process as a whole (YLUPC 2013b). While at the time of writing the YG has not yet reached a final decision, these concerns reinforce the need for an active, open debate throughout the entire decision process.

The second standard that the YG decision process failed to meet at the promotion activities stage is the standard of effectiveness. Effectiveness can be measured in several ways. First, the decision process must meet the community's expectations (Clark 2011). In the context of promotion, these expectations include not only what participants want to see in terms of a policy outcome, but also how discussions and debates are carried out. The YG decision process has focused on policy outcomes by attempting to meet various expectations for policy content. This has been done using the language of "balancing" environmental and economic values. Not only is this a narrow definition of the concept of values, but it ignores the fact that values can be deprived and encouraged through the very process of decision making. In a participatory process like land use planning consultations, the various values that participants expect to see recognized are identified through active community engagement. Instead, there are numerous participants that perceive their values being denied, as discussed in the social process section. Thus, instead of focusing on the process of how

decisions are made, the YG focused on the content of the decision, resulting in the deprivation of values that participants had expected to be upheld. This offers insight into the importance of understanding participant values for community engagement within decision-making processes such as land use planning.

A second measure of effectiveness at the promotion stage is whether or not it will harmonize or conflict with the rules already in place at the community level (Clark 2011). In the context of the Peel region, the answer to this question is still unclear. Concerns have been raised by First Nation governments and others that the YG's activities following the submission of the Final Recommended Plan violate the terms of the UFA (YLUPC 2013b). While the UFA is not in itself legally enforceable, its provisions are bound by law within each First Nation's Final Agreement (Executive Council Office 2008). According to the YG, the promotion activities it has been undertaking have been in line with the UFA. The YG Peel consultation website stated: "The Parties are now at the stage of conducting consultations with the public and each other as per the land use planning process outlined within the Umbrella Final Agreement" (YG 2013).

However, the four First Nation governments involved have argued that the YG has undermined the UFA and years of co-operative planning by modifying the Final Recommended Plan without consulting First Nations (Tobin 2012a). The Tr'ondek Hwech'in First Nation stated:

Our position is that it is not open to the government of Yukon to propose a new land use designation system or any of the new concepts advanced by the Government as part of the final round of public and intergovernmental Consultation required by our Final Agreement. Chapter 11 sets out the procedure to be followed. The introduction of sweeping new proposals at this stage of the Peel land use planning process undermines the process set out in Chapter 11. In our view, advancing these new proposals at this time amounts to a rejection of the constitutionally protected process set out in our Agreement. (Tr'ondëk Hwëch'in 2012, 5)

Moreover, whatever the YG's aims were, the general public has echoed this concern. Citing a report that summarized the results of the YG-led consultations, the Yukon Land Use Planning Council wrote that "the consultation report clearly demonstrates a public perception that the Government of Yukon did not follow either the spirit or intent of the rules established in Chapter 11 of the Umbrella Final Agreement and hijacked the process" (YLUPC 2013b). If the Peel Watershed planning process is to

meet standards of effectiveness, Yukon and First Nation governments need to jointly set the criteria for how the spirit and intent of the UFA can be met within land use planning. This should happen at the first stages of regional planning, when setting out the General Terms of Reference, rather than retroactively by one Party. Land use planning is a government-to-government process, and addressing this issue is all the more important given the central significance of the UFA to the Aboriginal–state relationship.

Our analysis of the YG decision-making process has indicated a number of ways in which this process has failed to secure the common interest, leading to the perception amongst participants that they no longer have standing within land use planning for the Peel. The issues that have been identified here highlight an underlying concern regarding the establishment of acceptable standards for decision making. These concerns are largely related to issues of engagement in decision making: how groups are invited into and can stay involved in the decision process, expectations around how participants' values are promoted or denied in this process, and how relevant agreements and legal obligations for participant consultation are interpreted and fulfilled. Addressing these issues and establishing "ground rules" are particularly important in the Yukon given the early stage of the land use planning process in the territory. With only one land use plan being implemented so far, the decision process guiding the Peel Watershed region will likely play an important role in shaping how future land use plans unfold elsewhere in the territory.

Addressing these concerns is particularly relevant for northerners in light of the historical and political context of Aboriginal land claims and self-government agreements in the Yukon. Yukon Aboriginal groups have worked for decades to secure a voice in the management of the lands and resources that fall within their traditional territories. While this process has been successful in many ways, it has not been without a cost. Nadasdy (2003) points out that the very act of participating in the Western governance structures created by land claims negotiations has required Yukon First Nations to fundamentally change their way of life to adopt the language and organization of Western bureaucracies. This point further reinforces the importance of understanding how values can be realized, denied, or changed by decision-making processes. Land claims negotiation in the Yukon has required both First Nation and territorial governments to allow for some give and take in the realization of their desired values. As land use planning in the Peel Watershed demonstrates, this work of balancing the loss of certain values with the recognition of others is a difficult and delicate process. Some scholars have argued that Aboriginal groups have had to compromise their

values too much to work within Western systems of knowledge. Alfred (2007) argues that when attempts by Aboriginal people to confront colonial legacies take place within a Western legal and economic framework, both the means and the ends of that struggle will be ineffective as they are inconsistent with Aboriginal teachings. In the context of the Yukon, this raises questions as to how effective the UFA will be as a framework for First Nations in their struggles to implement self-government. And yet, the relationship between territorial and First Nations governments is one that necessarily continues to evolve. Whether fractures in the decision-making process will cause this relationship to break down or be resolved remains to be seen.

Projections

In the Peel Watershed land use planning process, the need for an effective land use plan will become even more pressing as ecological, economic, social, and policy trends progress. While specific environmental changes are difficult to predict, the Peel Commission has stated that “climate trends and climate variability are expected to have a major influence on the Peel landscape” (PWPC 2011a, 2–9). Economic conditions affecting the Peel region are also difficult to accurately forecast. Although there has been a ban on staking new mineral claims in the Peel Watershed in effect since 2010 (Tobin 2012b), the potential development of resource extraction industries in this region in the future is dependent on international mineral, oil, and gas markets. While the Yukon Territory as a whole is expected to experience further growth in the mining industry in terms of both output and employment (Kerr 2013), the extent to which this would affect mining in the Peel largely depends on the outcomes of the land use planning process. The Peel Commission has predicted that the Eagle Plains basin⁷ is the most likely of the three oil/natural gas reserves in the region to be developed in the near future (PWPC 2011). According to Francis and Hamm (2011), oil and gas development in the Eagle Plains basin will likely generate significant economic benefits as well as pose potential ecological risks. Wilderness tourism and big game hunting in the Peel region have the potential to grow as well (PWPC 2011a). Taken together, these trends indicate the economic value of the Peel Watershed is likely to increase, and so too will the need to determine how to manage growing economic values in relation to social and ecological ones. We predict that unless the identified flaws in the decision process are addressed, the Peel Watershed debate will only continue to be drawn out, with different participants, perspectives, and values repeatedly coming into conflict.

There are three possible courses of action that could be taken by the YG in regards to the Peel region: it can reject, accept, or modify the Peel

Commission's Final Recommended Plan. Rejecting the Plan outright would come at a high cost, both financially and politically. The YG spent \$1.6 million in producing the Final Recommended Plan (Pope 2012), and dismissing it would likely further erode the public's faith in the land use planning process, a perception that has already begun to trickle into the public conscience (YLUPC 2013b). Furthermore, several of the First Nation governments involved in the Peel region's land use plan have expressed an intention to take the YG to court should it reject the Plan, citing a breach of the UFA (Ronson 2012).

Accepting the Final Recommended Plan may come at a financial cost as well. Miners with existing claims that interfere with the proposed protected areas may have to be compensated for their losses. Some have suggested that these potential lawsuits and reparation payments for miners expropriated from the region would be overwhelming, although the actual costs remain unknown (Ronson 2013c). Nonetheless, accepting the Final Recommended Plan may encourage the general public, as well as key stakeholders, to have faith in the land use planning process as capable of bringing together various participants into a compromise. This is not to say that all of those involved agree with the Final Recommended Plan, which proposes 80% protection for the region. Many First Nations involved were calling for total conservation, while the Yukon Chamber of Mines has called the Plan "too restrictive" (Ronson 2013a). However, a 2009 survey indicated that 78% of Yukon residents want more than half of the Peel Watershed protected from development, and 55% want anywhere from three-quarters to complete protection (Munson 2009). The Final Recommended Plan would therefore be relatively satisfactory to many Yukoners.

Recommendations

At the time of writing it seems most likely that the YG will choose the third course of action outlined above—modifying the Final Recommended Plan. Not only have the government's activities to date reflected this intention, but it has been explicitly stated by a government spokesperson that the YG "is in no way rejecting the final Peel plan ... we are modifying it" (Sander-Green 2012). For this reason, we propose there are three relatively immediate ways that the process of modifying the Final Recommended Plan may still be improved. The recommendations we make here are by no means a blueprint for creating an effective land use plan. However, they do offer options for improving the decision-making process for land use planning at a structural level. These recommendations could also be applied to future land use planning processes.

First, the process for establishing the “ground rules” for making decisions within land use planning needs to be clarified and made authoritative. Unilateral reworking of guiding principles and land use classifications is provocative, corrodes participants’ trust, and is unlikely to lead to outcomes in the common interest. Standards for community engagement, too, need to be made clear and they need to be understood by all participants involved in the decision process from the very beginning. This is central to improving how these individuals, groups, and governments communicate. An example of how this could be done has already taken place in the Yukon with the publication of the “Quick Reference Guide to Effective and Respectful Engagement Practices with Yukon First Nation and Communities” (Yukon Chamber of Mines 2013). This document is the product of collaboration between the Yukon Chamber of Mines, Na-cho Nyak Dun First Nation, and Tr’ondek Hwech’in First Nation. It outlines how working relationships between the mining industry and Yukon First Nations can be improved when mineral exploration or development is taking place (Yukon Chamber of Mines 2013). This is a significant first step, but such initiatives need to reach further to include territorial governments, community-level groups and institutions, and the broader public. Such an initiative should be led by the Parties, as they are ultimately responsible for the land use planning process, yet could be facilitated by a third-party group already involved in land use planning such as the Yukon Land Use Planning Council.

Second, the “ground rules” for addressing disagreement between the Parties within land use planning need to be established, starting at the beginning of the planning process. As the Peel Watershed case demonstrates, the way in which the YG went about making modifications to the Final Recommended Plan after it was submitted has come at significant political cost. In order to prevent such an outcome in the future, the Parties need to be clear about their position and expectations throughout the land use planning process. For example, had the YG presented its “core principles” and suggestions for new land designations during the drafting of the Final Recommended Plan, it would have been easier for the Peel Commission to weigh these criteria against those of the other Parties. Instead, the Peel Commission had to work with what information it was given, without knowing the level of land protection that the YG would find acceptable. In the future, there also needs to be a more clearly defined process for dealing with conflict between First Nations and Yukon governments over a final land use plan that is submitted by a regional planning commission. This process should be agreed upon by the governments involved, and set out in the General Terms of Reference at the beginning of the planning process.

Third, if the Final Recommended Plan for the Peel Watershed is to be modified, then mapping participant values would enable the implementing Parties to calibrate, communicate, and publicly-justify their actions. Key groups, institutions, and government representatives involved in the issue should be brought together to delineate the different values that they currently have and hope to achieve in the future through the planning process (Wilkinson et al. 2007). Such an activity would allow these groups to find common ground and would encourage all Parties' decision makers to pay closer attention to how the decision process affects the eventual distribution of these values (Brunner et al. 2002). Identifying common ground within participant values may be the starting point required to improve the social and decision processes that take place within land use planning, and experience in the southwest Yukon shows that common ground can be identified even in the presence of controversy (Clark 2010). Once again, this exercise needs to occur at the beginning of the planning process, actively involve all of the Parties, and its outputs genuinely applied in subsequent decisions. For the Peel Watershed region in particular, it would make sense at this point in the planning process for such an exercise to be led by the Yukon Land Use Planning Council.

In the longer term, there needs to be greater attention paid to establishing mechanisms for effective implementation of land use plans. There would be benefits to establishing an external body that harmonizes different perspectives and values to find areas of overlap as land use plans are implemented. That role was previously filled by the Peel Watershed Planning Commission during the pre-implementation phases of the decision process. This might take the form of reinstating the Peel Commission to perform an annual review or expanding and more fully resourcing the Yukon Land Use Planning Council. During the YG's decision process there were a number of external "promotion" stages occurring in addition to the YG's own activities (e.g., the "Protect the Peel" campaign⁸). The Peel Commission offered an independent arena for these activities to occur in the same space so that those involved could work more closely to find common ground. Because of this, the Peel Commission suggested maintaining an external body similar in structure to the commission once the land use plan was implemented. This would allow the Plan to be continually reviewed, ensuring the different voices within the public were still being heard, and common ground still being found—or at least sought—between them (D. Loeks, Peel Watershed Planning Commission Chair, personal communication, January 28, 2013). This suggestion was ultimately rejected because the Parties argued that implementation was their responsibility (Department of Energy Mines

and Resources, Government of Yukon 2011). In light of the current state of polarity in participants' perspectives within the Peel planning process, this idea should be revisited.

Conclusions

There are undoubtedly a number of different and, at times, conflicting perspectives and values being promoted by groups and individuals involved in Yukon land use planning. That is to be expected in a diverse and democratic society. However, in the context of the Peel Watershed, the decision-making process led by the YG has to date failed to navigate such differences with sufficient regard for the common interest of Yukoners and the legitimate special interests of First Nations and other stakeholders. This failure has left planning process participants with the perception that they have been denied both respect and the ability to have their voices heard within land use planning for the region. Our analysis of the YG's decision process and its immediate outcomes to date highlights key deficiencies in the comprehensiveness and effectiveness of the process. In short, this process did not involve active, open debate—a crucial part of how decisions should be made in a democratic natural resource management context. Further, control over key parameters of the process was seized by a single participant when the Final Recommended Plan appeared not to reflect this participant's own desired distribution of values. Addressing these problems will be necessary in order for the resulting land use plan, as well as future land use plans, to find common ground with those involved and affected by it. The pressure to address these issues will only increase as economic, ecological, and political trends in the Yukon progress, and the need for adaptive, effective planning increases.

The focus of our analysis has been on the activities of the YG following the submission of the Final Recommended Plan in relation to the rest of the planning process, rather than the foundational work of the Peel Watershed Planning Council. This emphasis illuminates how, in the absence of sufficient constitutive safeguards, one of the Parties involved can fundamentally transform the way in which decisions are made. A broader investigation of the entire span of events would no doubt add further insights, as would a more detailed examination of differing perspectives on the process and its eventual outcomes. The practice of regional land use planning guided by the UFA is still in early stages of its development, but planning processes will necessarily be informed by previous efforts. The Peel process is not the first regional land use planning effort to flounder in the Yukon. The Greater Klwane Land Use Plan—not part of the UFA-mandated process described

here—was prepared in 1991 but never formally adopted (Duerden et al. 1996; Danby and Slocombe 2005; Smith 2003). It is vital, then, that constructive lessons are drawn from the Peel process, and perverse lessons (Ascher 2001) avoided.

As a cautionary case study, land use planning in the Peel Watershed region offers a number of lessons for future land use decision-making processes. These are largely constitutive in nature; i.e., they are decisions about how the technical planning decisions will eventually be made (Lasswell 1971). As such, improvements to how these parameters of planning processes function are critical leverage points where far-reaching improvements can be made. Clarifying ground rules early and giving authority to them would minimize opportunities for arrogation of power by Parties seeking to advance special interests at the expense of the common interest. Establishing a similarly authoritative means for resolving conflicts about adoption of a final plan would offer the greatest chances that a plan's hard-won policy prescriptions for achieving the common interest are acted on. Common ground between parties can be more precisely delineated through systematic clarification of participant and stakeholder values, moving the discourse away from the parties' positions and towards their actual interests (Fischer and Ury 1981). Specifying mechanisms for implementation and appraisal within plans will likely be important and should be done in a manner that preserves the parties' authority and control, yet creates a sustained commitment to justifiable, rational, and feasible implementation in the common interest. The Yukon and all its inhabitants deserve no less.

Acknowledgements

We sincerely appreciate the time and co-operation of the individuals and organizations in the Yukon that took time to talk with us and answer our questions. Suggestions from three anonymous reviewers greatly improved the content of this manuscript.

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Notes

1. Settlement lands are areas managed by First Nations under their respective land claims agreements, whereas non-settlement lands refer to public lands managed by the Yukon Government (Peel Watershed Planning Commission 2011a).
2. Access to many of the *Whitehorse Star* articles online are limited to subscribers; as such, only the articles available to those without a subscription were included in this analysis.
3. This feedback document can be found at www.peelconsultation.ca.
4. Traditional Territory is “the area claimed to have been traditionally used and occupied historically by a particular First Nation” (Horne 2010, 5), as set out in Chapters 1 and 16 of the Umbrella Final Agreement.
5. In our discussions of land claims agreements in the Yukon, we use the term “Aboriginal” to include both First Nations and Inuit peoples. For example, our references to “First Nation” land claim agreements would not include the portion of the Inuvialuit Settlement Region that lies in the Yukon, whereas the phrase “Aboriginal” land claim agreements would.
6. There are, however, many different ways to classify values. The policy sciences provide just one way to do so.
7. Most of the basin lies in the North Yukon planning region, but a portion of it overlaps with the Peel Watershed.
8. The “Protect the Peel” campaign was led by a coalition of advocacy groups that through various means, such as demonstrations and petitions, lobbied the Yukon Government to accept the Final Recommended Plan.

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