

The Government of Newfoundland and Labrador's
Aboriginal Consultation Policy
on
Land and Resource Development Decisions
("The Policy")

April 2013

Policy Statement

The Government of Newfoundland and Labrador (NL) is committed to consulting Aboriginal organizations when NL contemplates making land and resource development decisions¹ that have the potential to adversely impact asserted Aboriginal rights or asserted treaty rights (together referred to as “asserted rights” or “asserted Aboriginal rights”).

While the Policy is aimed at projects / developments, NL intends to also consult Aboriginal organizations with asserted rights in Labrador on important wildlife management decisions, which might adversely impact those asserted Aboriginal rights.

NL will consult in accordance with any final comprehensive land claim agreement to which it is a party. This Policy will not apply in such cases.

Specifically, NL’s consultation duties to the Inuit of Labrador are set out in the Labrador Inuit Land Claims Agreement. NL will consult the Inuit of Labrador in accordance with that agreement.

Also, the Innu Nation has an asserted land claim which has been accepted for negotiation by both Canada and NL. Once a final land claims agreement has been concluded and is in effect, NL will consult the Innu of Labrador in accordance with that agreement.

This Policy will also apply to consultations with Aboriginal organizations asserting land claims in Labrador which have not been accepted for negotiation by NL, namely the NunatuKavut Community Council, Naskapi Nation of Kawawachikamach, and the Innu communities of Matimekush-Lac John, Uashat mak Mani-Utenam, Ekuanitshit, Nutakuan, Unamen Shipu and Pakua Shipi.

NL desires a practical consultation process that helps to ensure that land and resource development decisions minimize or, where reasonably practicable, eliminate potentially adverse impacts on asserted rights. NL also aims to maintain, foster and improve effective working relationships among Aboriginal organizations, project proponents and NL.

In particular, NL’s consultation process is intended to produce better communication, stronger relationships and easier resolution of issues among Aboriginal organizations, project proponents and NL. The Policy will provide a framework to develop effective Consultation Guidelines and department-, proponent-, and/or project-specific consultation procedures that address potentially adverse impacts on asserted rights. NL will endeavour to ensure the Policy is coordinated with measures that are or may be undertaken by the federal government.

¹ A land and resource development decision is an authorized use of land for resource development; a project proponent is a person proposing resource development that requires a decision by NL.

Because asserted Aboriginal rights are site-specific, not all Aboriginal organizations asserting Aboriginal rights in Labrador will be consulted on every land and resource development decision in the region.

Purpose of this Policy

This Policy will provide a framework for the development of Consultation Guidelines on land and resource development decisions, and will define the roles and responsibilities of all parties to a consultation.

This Policy provides for the creation and adoption by NL of a consistent approach to consultation that will be applied by NL departments and agencies involved in land and resource development decisions. This Policy is intended to define NL's role in the consultation process and to set out NL's expectations of Aboriginal organizations and project proponents.

NL's Consultation Model

NL will create Consultation Guidelines that specify how consultation regarding land and resource development decisions that may adversely impact asserted Aboriginal rights should occur in relation to specific activities such as mineral exploration, environmental assessment of resource developments and post-environmental assessment permitting. These Consultation Guidelines will also, when appropriate, identify processes for notifying Aboriginal organizations of any permitting decisions ancillary to land and resource development decisions that have the potential to adversely impact asserted rights on which consultation has already taken place.²

These Consultation Guidelines will implement the Policy, as will any additional department-, proponent-, or project-specific Aboriginal consultation processes. NL will consult appropriate Aboriginal organizations in the development of these Consultation Guidelines and Aboriginal consultation processes.

NL recognizes that Aboriginal organizations and project proponents may have established relationships that are mutually satisfactory. It is NL's intention that these existing relationships will be maintained, fostered and improved by this Policy, by the Consultation Guidelines and by other means.

² To the extent possible in a "Primary Permit", proponents should indicate the location, schedule, scale and scope of works intended to be authorized by a future ancillary authorization. This will allow the Province to confirm that Aboriginal organizations have been sufficiently notified of such ancillary activity. A copy of any ancillary permit will be sent to Aboriginal organizations upon issuance.

NL's Consultation Model requires proponents to bear the cost of the project. Since Aboriginal consultation is included as part of the project assessment, proponents are required to provide reasonably necessary capacity-funding to facilitate the provision by Aboriginal organizations of pertinent information on potential impacts of project specific activities on asserted Aboriginal rights and any required financial accommodation.

Guiding Principles

NL believes that by bringing the appropriate parties together in a timely manner the following principles will result in meaningful consultation. With this Policy, NL intends to provide a meaningful process through which Aboriginal organizations, project proponents and NL may be made aware of and consider the others' views, positions and perspectives before NL makes land and resource development decisions that have the potential to adversely impact asserted rights.

1. Consultation shall be meaningful and must be conducted in good faith by all consulting parties.
2. Consultation should be conducted with the objective of helping ensure that land and resource development decisions minimize or, where reasonably practicable, eliminate adverse impacts on asserted rights.
3. NL is ultimately responsible for the conduct of Aboriginal consultation, has the constitutional mandate to manage lands under its jurisdiction and must develop natural resources in accordance with provincial legislation.
4. Consultation will occur at the earliest possible occasion before land and resource development decisions are made that potentially adversely impact asserted rights.
5. While each party has different roles, the consultation process requires the participation of Aboriginal organizations, the project proponent and NL.
6. NL's consultation practices will be coordinated across Government by a lead department or agency.
7. A party is expected to provide pertinent information to the other parties and allow adequate time for the other parties to review it.
8. The nature of the consultation will depend on factors such as the nature of the activities involved, the extent of potentially adverse impacts on asserted rights and the communities affected.

9. Consultation will occur within timelines identified in any applicable Consultation Guidelines.
10. This Policy and any form of Aboriginal consultation conducted by NL or its delegates, does not constitute acceptance or recognition of asserted rights. The process of consultation does not create any Aboriginal or treaty rights.
11. Where appropriate and necessary, any consultation support or capacity required by a consulted party will be the responsibility of the proponent.
12. Any financial consideration in regard to accommodation of the infringement of Aboriginal rights will be the responsibility of the proponent.

NL's Responsibilities

NL will be responsible for ensuring that consultation conforms to the principles laid out in the Policy.

NL, when it delegates procedural aspects of consultation to a proponent, will remain responsible to ensure the delegated consultation is conducted in an effective manner by the proponent.

When NL decides not to delegate procedural aspects of consultation directly onto a project proponent, NL will consult directly with Aboriginal organizations on land and resource development decisions that have the potential to adversely impact asserted rights.

Consultation may occur in a number of forms. There may be general and relationship building consultations, project-specific consultation processes or consultations pursuant to Consultation Guidelines.

General Consultation and Relationship Building

NL will also pursue and foster consultation practices that are not related to any specific resource development but are intended to build relationships; to increase the flow of information among Aboriginal organizations, project proponents and NL; and to mitigate adverse impacts on asserted rights. NL will, as necessary, revise these consultation practices over time to ensure that existing circumstances and the views of the parties involved are considered in the consultation process on an ongoing basis. NL intends that these consultation practices will lead to more effective working relationships and partnerships among all parties. For example, NL will:

1. Organize sessions to share information with Aboriginal organizations about the roles and responsibilities of NL with respect to the regulatory processes involved in making land use decisions, approving resource development projects, and industrial development trends that have the potential to adversely impact asserted rights. NL will welcome the opportunity to attend information-sharing sessions initiated by Aboriginal organizations to learn from their experiences related to resource development, and other land use decisions.
2. Work with Aboriginal organizations to identify traditional uses of land that may be affected by land and resource development decisions.
3. Work with Aboriginal organizations to identify practical arrangements for implementing this Policy via subsequent Consultation Guidelines and other means.
4. Work with proponents to identify, on a case-by-case basis, those Aboriginal organizations with asserted Aboriginal rights within a proposed project area.

Project-Specific Consultation

While retaining authority to ensure the adequacy of a project proponent's consultation activities, NL will not necessarily engage directly in Aboriginal consultation on proposed resource development.

In many cases, NL will require project proponents, in accordance with this Policy and applicable Consultation Guidelines, to undertake procedural aspects of consultation and will expect project proponents, where practicable, to resolve any outstanding issues between the proponent and Aboriginal organization(s). This may include, where and when appropriate, any consultation supports or capacity funding reasonably required by Aboriginal organizations.

NL will develop compliance-monitoring mechanisms to ensure that the consultation conducted by a project proponent complies with this Policy and applicable Consultation Guidelines. Proponent-led consultation may form part of the record used by NL to determine whether it has satisfied the Crown's duty to consult. NL will advise Aboriginal organizations and proponents of the outcome of consultations via procedures to be set out in Consultation Guidelines.

NL may choose not to delegate any procedural aspect of consultation, and may instead choose to engage in consultation activities directly with an Aboriginal organization on a project.

On projects where NL consults Aboriginal organizations directly, applicable NL departments or agencies will:

1. Engage in meaningful consultation, keeping in mind applicable industry and regulatory timelines and the need for informed understanding among the parties. The consultation process will include gathering and assessing necessary information from the project proponent and Aboriginal organizations, assessing the potential for adverse impacts on asserted rights, and facilitating discussions between the project proponent and the Aboriginal organizations.
2. Maintain a record of the consultation process, including how concerns raised by an Aboriginal organization(s) have been considered.
3. Review all information provided during the consultation process and give full and fair consideration to the views of Aboriginal organizations. In particular, statutory decision-makers will document and consider methods to mitigate or, where reasonably practicable, eliminate, or otherwise address potentially adverse impacts on asserted rights.
4. Report on consultation activities to the relevant decision-maker, where the decision is to be made by an administratively independent decision-maker, such as the NL Public Utilities Board.
5. Advise Aboriginal organizations and project proponents in writing of the outcome of consultation activities.

NL's Expectations of Project Proponents

NL expects project proponents to work in good faith to engage in consultation with Aboriginal organizations based on principles of respect, open communication and co-operation. A project proponent proposing resource development is expected to consult and consider the views of the Aboriginal organizations whose asserted rights may be adversely impacted by the proposed development.

NL expectations of a project proponent are as follows:

1. Work with NL and Aboriginal organizations to identify practical arrangements to implement this Policy and any applicable Consultation Guidelines or Aboriginal consultation processes.
2. Provide sufficient, early notification; and timely, updated information to NL and to Aboriginal organizations to ensure they are reasonably informed about the

- project proponent's proposed activities. Information should include short-term and long-range land use or development plans for an area.
3. With reference to capacity and other community circumstances, discuss with Aboriginal organizations the most practical and appropriate method of consultation.
 4. Discuss with members of Aboriginal organizations who have knowledge and some decision-making authority the manner in which the project's proposed activities potentially adversely impact asserted rights.
 5. Consider the economics, technical details and background of the project, and determine how to reasonably mitigate or, where reasonably practicable, eliminate, or otherwise address adverse impacts on asserted rights. The project proponent is expected to make reasonable efforts to mitigate or, where reasonably practicable, eliminate potentially adverse impacts on asserted rights.
 6. Record and address issues or concerns identified by the Aboriginal organizations, and identify how potentially adverse impacts on asserted rights are to be mitigated.
 7. Upon request, make available to NL all of its documentation and other information related to the consultation activities, including but not limited to correspondence to and from Aboriginal organizations, minutes of meeting with Aboriginal organizations, details of site and community visits, and correspondence indicating the outstanding concerns of, or support for the project by, the consulted Aboriginal organization.
 8. While fully conforming to Newfoundland and Labrador benefits-related expectations, enter into a dialogue with Aboriginal organizations to address project-specific opportunities, with the goal of achieving a positive, sustainable, mutually beneficial outcome.

NL's Expectations of Aboriginal Organizations

Aboriginal organizations are expected to communicate openly and work in good faith with project proponents and NL to identify potentially adverse impacts on asserted rights.

NL expects Aboriginal organizations to:

1. Work with NL and the proponent to identify practical arrangements to implement this Policy and any project-specific Consultation Guidelines.

2. Once provided with notice of a project, in a timely manner but in any event no later than the timeframe specified in applicable Consultation Guidelines, clearly identify the specific asserted rights that are potentially adversely impacted by a land and resource development decision related to that project. This includes identification of project-specific effects on any relevant Aboriginal customs, practices or traditions and the geographic area in which they occur.
3. Respond to requests for comments and information from a project proponent or NL in a timely manner, but in any event no later than the timeframe specified in applicable Consultation Guidelines.
4. When raising concerns to a project proponent or NL about a proposed land and resource development decision, work with the project proponent and NL to find solutions or constructive approaches to address those concerns, where such may reasonably exist.
5. Upon request, share with NL any documentation and other information related to consultation activities.
6. Share traditional land use information with a project proponent and NL to help inform the land and resource development decision-making process.