



Seeking Your Views

A Discussion Paper On Improving Our Engagement Practices in the Northwest Territories

**Department of Indian Affairs and Northern
Development
Northwest Territories Region**

August 2004

- For Discussion Only -



Canada

CANADA'S VISION FOR THE NORTH

Canada's North has played an important part in the history and development of the country. Currently, the Northwest Territories (NWT) is reshaping itself in ways that will lead to greater responsibility for its people. A key feature of Canada's vision of the NWT involves promoting the quality of life and self-reliance of citizens. This includes the settlement of all outstanding land and resource matters and the completion of self-government agreements and devolution – leading to stable political, economic and social development. The anticipated outcomes are sustainable communities and healthy peoples, managing their own affairs, and achieving their cultural and social aspirations.

For DIAND, achieving Canada's vision of the North requires a constant process of building and maintaining the relationships it has with the people of the NWT. This paper seeks to improve how we engage with NWT people to achieve a better future.

TAKING STOCK OF OUR RELATIONS IN THE NWT

The Government of Canada is a key player in the reshaping of the NWT. Although there are a number of federal government departments with offices in the NWT, DIAND has the largest federal presence in the territory. It has responsibilities that include political development and legislative authority for environmental management and resource development. Because of DIAND's prominent presence in the NWT, it is often seen as the face of the federal government.

DIAND interacts constantly with the people, governments, businesses, institutions and organizations of the NWT. DIAND's broad range of responsibilities leads to diverse relationships with partners across and beyond the territory. Strong intergovernmental and inter-organizational links are important to DIAND as the foundation for planning, addressing mutual concerns, resolving issues, decision making and learning from experience. As the NWT continues to change and evolve, it is important to DIAND NWT Region that it understands the changing needs, issues and interests of all the people and organizations it works with.

Knowing the people and your partners is the foundation to managing a good operation. Mr. Francois Paulette, long-time Dene rights negotiator and respected advisor on Aboriginal affairs, addressed the participants of the Federal Council Northern Forum (October 9, 2003, Fort Smith, NWT) and spoke about the importance to the federal government in having strong relationships with its partners:

"Take the time to get to know the people, establish relationships, have one-on-one conversations over tea. ... It is important that the bridge between the Dene and the Crown be maintained through peaceful co-existence...Most importantly, it is vital that we be upfront, honest and truthful".

These are basic guidelines that should be reflected in all engagements between people. Taking the time to know and confirm the interests of others will ensure that DIAND plans and takes its actions from a foundation of respect, balance, integrity and fairness.

The linkage between Mr. Paulette's straightforward advice and the Regional Engagement Initiative is contained in *DIAND's Sustainable Development Strategy 2004-2006*. Theme 1 of the strategy focuses on "Consultation and Joint Decision Making". The department is committed in all regions of the country to establish collaborative processes to discuss common priorities.

The Regional Engagement Initiative is part of the department's expression of this commitment in the Northwest Territories.

PURPOSE OF THE REGIONAL ENGAGEMENT INITIATIVE

With the goal of providing better service, DIAND NWT Region is committed to improving its relationships in the NWT. We also have to better understand how we are engaging people in the various forms of information exchange, consultation and decision making the department carries out in the course of its normal practices.

This Discussion Paper is the first step in the development of a plan to refresh and refocus our approaches and practices for engagement and consultation. It presents a general overview of DIAND NWT Region activities, and the particular ways the department engages with people.

For the purposes of this paper, DIAND NWT Region engagement practices can be viewed in two parts:

- < ***Policy/Good Governance*** - *to promote good governance by creating opportunities for participation in the design and implementation of policy, procedures, programs and services; and to address responsibilities to Aboriginal peoples, the territorial government and the NWT public that relate to political*

- < development in the NWT; and
- < **Legal** - to comply with statutory and common law responsibilities, and to honour Crown obligations which relate to rights that flow from Section 35 of the Constitution.

We ask you to review this document and help us improve our practices in these areas.

DIAND will use the input received from submissions and discussions to develop a detailed profile of engagement issues and concerns. The department will publish a “*What We Heard*” document targeted for the end of 2004, and will then begin a second round of discussions to look at specific improvements that can be incorporated into engagement and consultation activities.

WHAT WILL THE REGIONAL ENGAGEMENT INITIATIVE ACHIEVE?

DIAND NWT Region anticipates a number of important products and outcomes from this initiative:

- < shared expectations on how we will work together;
- < greater consistency in determining the appropriate form of engagement in specific situations;
- < more effective, acceptable and timely decisions on DIAND operational issues;
- < better use of DIAND and others resources;
- < guidelines to structure our regional practices and operationalize our regional guiding principles (see Attachment One, *Draft Principles for Engagement and Consultation - NWT Region*);
- < improved methods of coordination (eg., scheduling, provision of information, documentation of stakeholder input, and sharing of best practices); and
- < a regional strategic plan to improve DIAND relations with Aboriginal and non-Aboriginal organizations.

WHO DOES DIAND ENGAGE WITH?

DIAND engages with many people and organizations in its normal business:

- < Aboriginal - governments, political and cultural organizations, and economic development corporations. The Crown has a special relationship with the Aboriginal peoples of Canada and, consequently, the focus of engagement or consultation can be different than that for stakeholders or the wider public;
- < Industry - sector associations, businesses, independent operators/entrepreneurs;
- < Public governments - Government of the Northwest Territories;
- < Regulatory agencies - Boards of the *Mackenzie Valley Resource Management Act* (MVRMA), *Canadian Environmental Assessment Act* (CEAA), and comprehensive claims;
- < non-governmental environmental organizations;
- < Other federal government departments; and
- < the general public.

IS THE ENGAGEMENT INITIATIVE RELATED TO THE PIPELINE PROJECT?

The Regional Engagement Initiative is intended to improve DIAND NWT region's overall engagement and consultation practices. It is not directly related to pipeline consultations. Consultation will be a significant feature of the Mackenzie Gas Project (MGP) and, consequently, the MGP will have its own consultation and engagement processes. The Northern Gas Project Secretariat (website: <http://www.ngps.nt.ca>) will facilitate public participation during environment assessment and regulatory review of the proposed project. The Regional Engagement Initiative will be completed by the end of the 2004-05 fiscal year, much earlier than pipeline consultations. It is anticipated, then, that the input received from the Regional Engagement Initiative will inform and support consultation around the pipeline.

CURRENT OPERATING CONDITIONS

The current operating conditions in the NWT are both dynamic and complex - especially with respect to engagement and consultation activities. In some cases, political and economic development and environmental stewardship are mutually supportive, while in other situations they may conflict with each other. Everyone is

faced with the challenge of balancing these objectives with their own unique needs and priorities. The following chart summarizes some key conditions and the implications for how we engage with our NWT partners:

Conditions	Implications for Engagement
<p><u>Scope and pace of development:</u> The NWT has been experiencing rapid and significant economic/resource development for approximately 10 years. Indicators suggest this trend will continue. Parallel to economic growth is the increasing concern about the environmental and social impacts of development.</p>	<p>Economic development leads to an increase in the volume of engagement activities in the NWT. Capacity (financial and expertise) remains an issue. Frequency of meetings creates additional demands on scarce department and partner resources. Coordination is required to moderate the impact of longer and more frequent meetings.</p>
<p><u>Changing political environment:</u> The political environment in the NWT is evolving. Along with unsettled land claims, various models of Aboriginal self-government are being negotiated. Devolution of federal authority over land & resource management is being negotiated. There is a lack of certainty around Impact Benefit Agreements (IBAs).</p>	<p>Roles and responsibilities of various stakeholders and partners are changing. There is uncertainty around the rules and/or expectations for engagement and consultation, especially in areas where there are unsettled Aboriginal rights. This affects everyone and requires time to establish an agreed basis for working together.</p>
<p><u>Multiple partners:</u> Multiple interests and objectives can come into play in resource development activities. It can be difficult to balance different interests and objectives.</p>	<p>Greater coordination is required for processes involving multiple interests. The time and resources of everyone may not be effectively used. Decision making is complex in accommodating and balancing different perspectives and objectives. Impasses create delays and frustration. Engagements and outcomes can be reactive in nature and guided by positions rather than interests.</p>

<p><u>Range of impacts:</u> Programs, services and projects – ranging from prospecting, to mine development, to mine re-mediation, to employment and economic development – can vary in their environmental, economic, and/or social impacts. Given the scale of activity, cumulative impacts are also an issue - this is an area where there is less overall policy direction. Communities are at the front line of impacts and seek to both benefit from and mitigate those impacts.</p>	<p>Socio-economic agreements from large projects like diamond mines can create precedent setting expectations. Different forms of engagement may be required to respond to different needs, scale of projects and opportunities.</p>
<p><u>Environmental concerns:</u> Increasing concerns about the significance of changing environmental conditions: e.g. climate change. Requires consideration that people and culture have strong and significant relationships to and impacts on the environment.</p>	<p>Inadequate models to analyze impacts and make decisions. Greater importance is placed on collective planning and joint decision making. Planning frameworks should be comprehensive and will require allocation of fiscal and professional resources over extended periods of time.</p>
<p><u>Complexity:</u> Aboriginal agreements and resource management legislation are intended to provide predictable operating conditions for environmental protection and development. However, the sum total of legislation governing resource development in the NWT is complex. On the national scene, there is a growing body of court judgements around consultation with respect to Aboriginal or Treaty rights.</p>	<p>A clear roadmap of legislative processes must be shared by everyone. Greater clarity is required regarding roles and responsibilities for consultation and engagement when Aboriginal and Treaty rights are at issue. Time frames in current legislation may not always be achievable (e.g. land use permits) adding to uncertainty.</p>
<p><u>Accountability:</u> As public and private sector investments increase in the NWT the issue of accountability at all levels rise accordingly.</p>	<p>Increasingly, a clear and documented rationale for decision making is expected. There is a growing demand that investments achieve their intended results whether those results are in the political, economic or social sectors.</p>

EMERGING ISSUES AROUND REGIONAL ENGAGEMENT

Given the complexity and dynamics of the NWT, DIAND NWT Region is undertaking the Regional Engagement Initiative to improve its approaches and practices for engagement. Here are several areas of concern:

- < *the increasing volume and complexity of regional engagement*

For Discussion Only

- and consultation activities and the resulting issues of consistency, capacity, coordination and “consultation fatigue”;*
- < the evolving case law about the “duty to consult” with Aboriginal peoples on Aboriginal and Treaty rights; and*
 - < the current priority to develop engagement and consultation protocols across a wide range of actors; examples of these initiatives include:*
 - the Government of Alberta Proposed First Nations’ Consultation Policy on Land Management and Resource Development (May 2004);*
 - First Nations of Quebec and Labrador Consultations Protocol (Assembly of First Nations of Quebec and Labrador, June 2003);*
 - E3 Best Practices Guidelines - Community Engagement (Prospector and Developers Association of Canada, March 2003); and*
 - Government of Canada Policy and Guidelines on Consulting and Engaging Canadians (draft for Discussion, September 2001).*

Considering that engagement approaches are important across the country and in the NWT, DIAND NWT is working to improve its practices in this regard.

SUMMARY OF DIAND ENGAGEMENTS IN THE NORTHWEST TERRITORIES

Currently, DIAND has many engagement activities and responsibilities in the NWT. We anticipate that these will increase over the next few years. The following chart describes the general areas of DIAND engagement responsibilities in the NWT and identifies the major current and future activities associated with those responsibilities:

Types of DIAND Engagement	Examples of DIAND Engagements & Consultations
Policy/Good Governance	Treaty relations; Land Claims and Self-government negotiations; Contaminated Sites Initiatives; Geology and Water services; Cumulative Effects Assessment and Management Framework; Band Development: Band Election Codes, Operating Procedures, and Band Financial Codes; Northern Economic Development; Protected Areas Strategy; Northern Non-renewable Resource Management Framework; Interim Resource Management Assistance (IRMA - for Bands and First Nations in unsettled areas only); Devolution; Interim Measures Agreements; Interim Resource Development Agreement (Dehcho only); Impact Benefit Agreements (where they involve DIAND- i.e. Dehcho, Tlicho); Intergovernmental Forum; and GNWT bi-lateral relations
Legal/Statutory	Land claims implementation; Crown obligations to consult when Aboriginal or Treaty rights/title may be affected due to land use decisions; Cumulative Impacts and Monitoring Program; Issuance of land leases, permits for mineral claims and oil/gas exploration; and Mine Inspections.

POLICY AND GOOD GOVERNANCE ENGAGEMENT PRACTICES

Many of DIAND NWT Region engagements come under the category of policy and good governance. While these engagements are not driven by legislation, they are nonetheless very important in addressing critical program responsibilities. Some of these engagements represent multi-year activities and commitments on the part of the region and other participants. Devolution and Aboriginal negotiations, and other political development activities, require highly structured engagements. Giant Mine, Colomac and other contaminated site remediation projects are examples of activities that have broad environmental and social impacts. High quality engagement results in better decision making. However, the benefit achieved must be greater than the cost to achieve it.

We seek your input and views about how we manage these engagements and your involvement.

LEGISLATIVE ENGAGEMENT PRACTICES

DIAND has responsibility for or participates in engagements and consultations defined by legislation. Legal obligations may arise by Treaty, contract, statute or common law. For instance, consultation is defined by land claims and the land use planning regimes and other requirements of those claims. Additionally, DIAND may participate in engagements and consultations associated with the *Mackenzie Valley Resource Management Act (MVRMA)*, the *Northwest Territories Waters Act*, the *Territorial Lands Act*, and other significant pieces of legislation. The various boards established under the MVRMA have a lead role in the engagements and consultations that relate to resource development proposals.

Another important aspect of engagement and consultation has to do with the emerging law around consultation and Aboriginal rights. Canada (the Crown) has a common law obligation to consult with Aboriginal groups and peoples of Canada. This is primarily a result of Section 35 of the Constitution, which recognized and affirmed the "existing aboriginal and treaty rights of the aboriginal peoples of Canada". Canada consults with Aboriginal groups to meet its legal obligations and to implement government policies. Where government activity or legislation impacts existing Aboriginal or Treaty rights under s. 35(1), governments are required to justify any infringement. Consultation will generally be one of the elements that a court will consider in deciding whether an infringement is justified. Consequently, an overall objective of government in consulting is to honour its Crown relationship with Aboriginal peoples by reconciling and balancing Aboriginal interests with the Crown's responsibility to manage the public interest. This is especially relevant in the NWT, where resource development occurs in the midst of land, resources and self-government negotiations and implementation.

Overall, DIAND is obligated to follow the engagement requirements contained in legislation. We seek your views on how DIAND can improve on its practices associated with its legislative responsibilities.

REASONS AND OBJECTIVES FOR DIAND ENGAGEMENTS

DIAND's reasons for engaging with people are found in its Crown and statutory obligations, along with federal policy and program objectives. Engagement is utilized to achieve a wide range of objectives:

- to support a wide range of activities proposed by DIAND partners;
- to provide information to people and organizations;
- to determine interests and/or positions on proposed activities;
- to collect information and/or advice for program or policy development, or decision making;
- to achieve support or agreement on proposed decisions;
- to involve people and organizations in joint decision making processes;
- to improve individual and organizational decision making; and
- to meet constitutional, common law, statutory, and/or policy commitments.

Can you suggest other objectives which could be included in the Regional Engagement Initiative?

WHAT KIND OF INPUT IS DIAND SEEKING? TOPICS AND QUESTIONS FOR DISCUSSION AND FEEDBACK

DIAND is interested in knowing how you view your relations and engagements with the department. We encourage your input into the engagement initiative.

The following subjects and questions outline the areas which DIAND is seeking input. You are encouraged to respond to any or all of the subject areas and questions.

Subjects for Consideration

- < overall relations with department;
- < coordination of engagement activities;

For Discussion Only

- < provision of information;
- < resources for engagement;
- < engagement processes around Aboriginal and Treaty Rights;
- < current rules, practices or guidelines; and
- < draft principles for engagement and consultation - NWT Region (attached).

Questions for Consideration

1. *What can DIAND do to improve its overall relationship with you and the people you represent?*
2. *How well does DIAND NWT Region keep you informed of engagement activities and issues?*
3. *Do you have reasonable opportunity to engage with DIAND NWT Region?*
4. *Are your concerns considered fairly in the decision making process relative to the interests of other parties?*
5. *Have you participated in engagements with DIAND that were satisfactory in meeting your interests and objectives? Which ones were they? What were the reasons for this success?*
6. *Can you suggest ways DIAND could better manage its practices (current guidelines, protocols, or rules)?*
7. *Do you feel there are inconsistencies with the current processes for consultation that are carried out to meet Crown obligations when Aboriginal or Treaty rights arise during environmental assessments, project approvals and land use management? Do you have suggestions on how they may be improved?*
8. *Would the implementation of some or all of the **Draft Principles for Engagement and Consultation-NWT Region** (listed in Attachment One) support your engagements? If so, how could we implement them?*

NEXT STEPS AND FEEDBACK

We want to hear from you to help us develop a plan. Your comments will be

For Discussion Only

carefully considered. There are a number of ways to respond.

1. Provide written comments by 30 October 2004, or
2. Meet with DIAND staff to discuss your interests and concerns. If you or the people you represent would like to meet and discuss engagement interests and issues, please contact DIAND's coordinator for this project at the address below:

Bernie Hughes
Senior Policy Advisor & Engagement Coordinator
Policy and Planning Directorate
P.O Box 1500
Yellowknife, NT, X1A 2R3
By telephone: 1 867 669 2422
By facsimile: 1 867 669 2736
By email to: HughesB@inac-ainc.gc.ca

Next Steps and Target Dates:

- | | | |
|----|--|-----------------------------------|
| 1. | Round #1 - Partner Input on Discussion Paper | September - November 2004 |
| 2. | "What We Heard" and "Proposed Improvements" Paper | November 2004 |
| 3. | Round #2 - Partner Input on "Proposed Improvements" | December 2004 - March 2005 |
| 4. | Regional Engagement Action Plan | March 2005 |

ATTACHMENT ONE

Draft Principles for Engagement and Consultation - NWT Region

These draft principals could be considered when DIAND is involved in engagements and consultations with Aboriginal representatives. However, the principles could also be considered for engagements and consultations with other people and organizations: e.g. industry, environmental organizations and the general public. There may be major initiatives or extraordinary situations where engagement and consultation could go beyond these principles.

1. The purpose of any engagement or consultation should be clearly explained to those being consulted, both in advance and at the time of the consultation, in a manner and format that is easily understandable and accessible.
2. Consultation and engagement efforts should be made in good faith whether they are related to our Crown obligations, to the provision of Aboriginal programs and services, or to our resource management responsibilities.
3. Consultation and engagement should be based on mutual trust, respect and a shared understanding of purpose. Consultation should be a two-way process, each party sensitive to and aware of each others needs.
4. Consultation must be consistent with consultation-related obligations and principles contained in respective comprehensive land claims agreements.
5. Consultation should be carried out as early as practical in the resource and environmental management decision-making process.
6. Consultation should occur early in any departmental policy development that may have significant impacts on Aboriginal peoples and their interests. In the case of policy related consultations, inter-departmental and intra-department consultations would normally occur prior to external consultations.
7. Consultation should be undertaken with representation from all potentially affected Aboriginal people, as well as with other affected or impacted parties.
8. Consultation needs to be effective, timely and meet applicable legislative time-lines. The design of consultation processes should consider the

For Discussion Only

needs of all partners, and all the costs to the federal government and participants in the consultation.

9. Consultation should inform decision-makers and those being consulted of a possible infringement of Aboriginal or Treaty rights which may be caused by a proposed activity or policy.
10. A variety of consultative and engagement methods can be used depending on the circumstance and nature of the proposed activity and the management decision.
11. Consultation processes should clearly define how the information will be used in decision-making.
12. Consultation related to a proposed activity should be coordinated or integrated, where possible, when several agencies are involved to improve efficiency and reduce confusion.
13. DIAND sponsored consultations should not be a substitute for the proponents of resource activities or regulatory agencies to undertake their own consultation.
14. There should be full and fair consideration of any views presented and an explanation of that consideration should be made available.