

Sustainability and Indigenous Interests in Regional Land Use Planning: Case Study of the Peel Watershed Process in Yukon, Canada

by

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Author's Declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners. I understand that my thesis may be made electronically available to the public.

Abstract

Canada's northern territories, including the Yukon, are facing significant social, economic, political and ecological change. Devolution processes and comprehensive land claim agreements with self-governing First Nations have given rise to new land and resource decision making processes, including Regional Land Use Planning (RLUP). Project level Environmental Assessments (EAs) have been a main tool for governments to meet some of their fiduciary responsibilities to Indigenous peoples under Section 35 of Canada's Constitution and to mitigate potentially adverse environmental impacts of non-renewable resource development projects. However, project level EAs are ill-equipped to address cumulative effects, regional conservation needs, broad alternatives and overall sustainability considerations central to Indigenous interests. RLUPs, if designed and authorized to guide project planning and assessment, are a more promising tool for addressing these interests, but how well they can serve both sustainability and Indigenous interests is not yet suitably demonstrated.

RLUP processes established under comprehensive land claim agreements with First Nations in the Yukon enable cooperative decision-making about the future of the territory, including the pace and scale of non-renewable resource development and regions set aside for conservation. A qualitative case study of the Peel Watershed planning process was undertaken for the purposes of this thesis. The case embodies the tensions and challenges associated with RLUP in the Yukon to date; two competing plans were developed for the region and the case culminated in a decision by the Supreme Court of Canada in December 2017.

In this thesis, an analytical framework is developed and subsequently applied to the Peel Watershed Planning Commission and the Yukon Government plan for the Peel Watershed in order to evaluate their potential effectiveness in meeting sustainability and First Nations interests. The framework was built through attention to case and context specified criteria, responding to broad generic sustainability requirements (as established by Gibson et al. 2005), an initial set of challenges and opportunities identified through a literature review of sustainability and Indigenous interests in northern resource development, and more specific regional challenges and opportunities for attention from the case context as well as over 30 semi-structured interviews with key stakeholders involved in RLUP for the Peel Watershed.

Evaluation of the plans according to criteria contained in the analytical framework indicate that the land use plan prepared by the Peel Watershed Planning Commission fully met a majority of the criteria

(77%) while the plan prepared by the Yukon Government fully met only 3%. The Peel Watershed case points to tensions between two competing visions for the territory, embodying “conservation versus development” conflicts. Key stakeholder interviews confirmed these tensions while pointing to broader issues of power, authority and interpretation of comprehensive land claim agreements between the Yukon Government and First Nations. The Yukon Party Government decision to substantially modify the plan developed by an independent planning body demonstrated a narrow interpretation of its responsibilities and went against the spirit and intent of the Umbrella Final Agreement and the associated RLUP process. Procedural areas for improvement were revealed, applying to both future planning for the Peel Watershed and other Yukon planning regions. These include needs for reconsideration of the Yukon’s current open staking policies and regulations, early consultation and engagement applying cross-cultural communication methodologies, more appropriate planning timelines and budgets, clarification of the role of Regional Planning Commissions, transparent planning process participation in good faith to avoid the conflicts and tensions associated with the Peel process and finally, the need for a territorial protected area strategy to guide future RLUP processes.

Major contributions of this research include the case-specified analytical framework, which offers a novel approach for holistically addressing both sustainability and First Nations interests in resource development processes. The case study of the RLUP process for the Peel Watershed and subsequent evaluation of the associated regional plans also represent substantive contributions. Application of the framework facilitated the identification of several practical policy implications and recommendations for the Yukon generally, for future RLUP initiatives for the Peel Watershed as well as additional planning processes in the Yukon established under the Umbrella Final Agreement.

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Dedication

I dedicate this thesis to my Bubbie, Shirley Rae Feldman.

I would also like to dedicate this work to those who are working tirelessly to make the world a more equitable and sustainable place. You inspire me. Thank you.

Table of Contents

Author’s Declaration	ii
Abstract.....	iii
Acknowledgements.....	v
Dedication	vi
Table of Contents	vii
List of Figures	x
List of Tables	xi
List of Boxes	xii
List of Acronyms.....	xiii
Chapter 1 : Introduction	1
1.1 Problem Context.....	2
1.2 Objectives and Research Questions.....	5
1.3 Key Definitions	5
1.3.1. Sustainable Development and Sustainability.....	6
1.3.2. Indigenous Interests.....	6
1.3.3. Traditional Knowledge (TK).....	7
1.3.4. Resource Development.....	8
1.3.5. Environmental Assessment (EA).....	9
1.3.6. Regional Land Use Planning (RLUP)	10
1.4. Research Design	12
1.4.1. Sustainability Assessment Specification	12
1.4.2. Selection of Peel Watershed as Case Study.....	13
1.4.3. Role of the Researcher.....	13
1.4.4. Limitations.....	14
1.5. Thesis Structure.....	15
Chapter 2 : Sustainability and Indigenous Interests in Northern Resource Development. 17	
2.1 Sustainability in Resource Development	18
2.1.1. Sustainability and Non-Renewable Resource Development.....	23
2.2 Indigenous Interests and Resource Development	27
2.2.1. Indigenous Interests in Regional Land Use Planning (RLUP).....	31
2.2.2. Indigenous Interests in Environmental Assessment (EA).....	37
2.3. Northern Canadian Resource Development	41
2.4. Chapter Summary and Challenges and Opportunities for Attention	47
2.5. Initial Framework	49

Chapter 3 : Research Design and Case Study Methodology	51
3.1 Research Methods.....	51
3.2 Sustainability Assessment Specification	53
3.3 Case Study Selection.....	55
3.4 Semi-Structured Interviews	57
3.4.1. Sampling and Recruitment	57
3.4.2. Sample Representativeness.....	59
3.4.3. Ethics Review	60
3.4.4. Interview Procedure.....	61
3.5. Data Analysis.....	62
3.5.1. Transcription and Coding	62
3.5.2. Plan Evaluation.....	63
3.6. Limitations	64
3.7. Chapter Summary.....	64
Chapter 4 : Regional Land Use Planning for the Peel Watershed	66
4.1 History of Regional Planning in the Yukon under Chapter 11	68
4.1.1. North Yukon.....	68
4.1.2. Dawson Region.....	70
4.1.3. Peel Watershed	73
4.2 Litigation for the Peel Watershed.....	84
4.3 Implications of The First Nations of Nacho Nyak Dun et al. v. Yukon	86
4.4. Chapter Summary and Challenges and Opportunities for Attention	91
Chapter 5 : Key Stakeholder Perceptions of Sustainability and First Nations Interests in Regional Land Use Planning for the Peel Watershed, Yukon	93
5.1 Perceptions of Sustainability Interests in Regional Land Use Planning.....	94
5.1.1. Planning for Sustainability.....	96
5.1.2. Planning and Mining.....	98
5.1.3. Relationship Between Planning and Assessment	99
5.2 Perceptions of Yukon First Nations Interests in Regional Land Use Planning	99
5.2.1. “The Agreements need to be interpreted as the floor and not the ceiling”: Sovereignty, Self- Determination and Co-Management in the Yukon.....	100
5.2.2. Implications of Mining on First Nations’ Interests.....	102
5.2.3. Cross-Cultural Communication and Engagement.....	104
5.3 Lessons from the Peel Watershed Planning Process.....	107
5.3.1. Peel Watershed Planning Commission Process was Appropriate.....	108
5.3.2. Procedural Areas for Improvement.....	109
5.3.3. Conflict in the Peel	112
5.4. Chapter Summary and Challenges and Opportunities for Attention	113

5.5. Revised Framework	114
Chapter 6 : Evaluation of Regional Land Use Plans for the Peel Watershed	117
6.1 Revised Framework	117
6.2 Plan Evaluation.....	118
6.3 Challenges	121
6.3.1. Socio-ecological system integrity.....	121
6.3.2. Livelihood sufficiency and opportunity.....	121
6.3.3. Equity.....	122
6.3.4. Socio-economic civility and democratic governance	123
6.3.5. Respect for and inclusion of Indigenous worldviews	123
6.3.6. Precaution, adaptation and integration.....	124
6.4. Opportunities	125
6.4.1. Socio-ecological system integrity.....	125
6.4.2. Livelihood sufficiency and opportunity.....	126
6.4.3. Equity.....	126
6.4.4. Socio-economic civility and democratic governance	127
6.4.5. Respect for and inclusion of Indigenous worldviews	128
6.4.6. Precaution, adaptation and integration.....	128
6.5. Strengths and Limitations of the Framework	128
6.6. Chapter Summary.....	130
Chapter 7 : Conclusion.....	131
7.1. Thesis Conclusions.....	131
7.2. Implications.....	133
7.2.1. Theoretical Implications	133
7.2.2. Implications for Policy	134
7.2.3. Implications and Areas for Improvement of RLUP in the Yukon under Chapter 11	136
7.3. Directions for Future Research	138
7.4. Final Concluding Remarks.....	139
References.....	141
Appendix A: Executive Summary	160
Appendix B: Criteria Simplification Methodology	168
Appendix C: Interview Guide.....	170
Appendix D: Plan Evaluation Matrix.....	171
Appendix E: Gryzbowski (2014) Recommendations	181

List of Figures

Figure 1: Framework Development Outline.....	16
Figure 2: Conceptual Framework	18
Figure 3: Three pillars approach to sustainability.....	19
Figure 4: Nested model of sustainability.....	20
Figure 5: Yukon Planning Regions.....	67
Figure 6: Historic placer mining activity in the Dawson City region (Google maps 2018).....	72
Figure 7: Traditional Territories of Yukon First Nations.....	74
Figure 8: Organization of Peel Watershed Planning Commission.....	81
Figure 9: Sustainable Development as represented by the PWPC.....	125

List of Tables

Table 1: Substantive and Governance Challenges and Opportunities for Sustainability and Indigenous Interests in Northern Resource Development.....	47
Table 2: Overview of Research Design.....	52
Table 3: Distribution of Participants by Sector	59
Table 4: Template of Table Used to Code Data (Based on Silverman and Patterson, 2015).....	63
Table 5: Chronology of Regional Planning for the Peel Watershed	74
Table 6: Emerging Case Study Challenges and Opportunities for Attention.....	92
Table 7: Substantive and Governance Challenges and Opportunities from Semi-Structured Interviews with Key Stakeholders	113
Table 8: Overview of Differences Between PWPC and Yukon Government Plans for the Peel Watershed.....	119
Table 9: Summary of Evaluation of Peel Watershed Plans	120

List of Boxes

Box 1: Gibson (2005) Generic Criteria for Sustainability Assessment.....	21
Box 2: Noble and Udofia (2015) six calls for EA reform	39
Box 3: Gibson (2017) Steps for Criteria Specification	54

List of Acronyms

EA - Environmental Assessment

FPIC - Free, Prior and Informed Consent

IBA - Impact and Benefit Agreement

PWPC - Peel Watershed Planning Commission

PWPC Plan - Final Recommended Plan of the Peel Watershed Planning Commission

RLUP - Regional Land Use Planning

SCC - Supreme Court of Canada

TK - Traditional Knowledge

UFA - Yukon Umbrella Final Agreement

UNDRIP - United Nations Declaration on the Rights of Indigenous Peoples

YESAA - Yukon Environment and Socio-Economic Assessment Act

YLUPC - Yukon Land Use Planning Council

Chapter 1: Introduction

We get our berries for winter, we catch our fish in the summertime and dry it. It's our history, our history is there. We survived from the land, that's our home. That's where we belong. We have to protect our water because it keeps us alive. We have to look after the animals.

– Participant 11

Well, we know that the Regional Land Use Planning process hasn't been satisfactory for the by virtue of the court case.

-Participant 3

On December 1st, 2017 the Supreme Court of Canada (SCC) released a unanimous decision in the case of *The First Nations of Nacho Nyak Dun et al. v. Government of Yukon* (2017 SCC 58). The SCC upheld the ruling of the lower courts quashing the Yukon's approval of their regional land use plan for the Peel Watershed but returned all parties to the approval stage in the planning process. The case addressed the issue of decision-making under Chapter 11 of the Yukon Umbrella Final Agreement (UFA) regarding Regional Land Use Planning (RLUP). Conflict over the RLUP process for the Peel Watershed began in 2011 when the Peel Watershed Planning Commission (PWPC) released their Final Recommended Plan (PWPC plan) to the four affected First Nations and the Yukon Government for approval. The First Nations of Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitch'in and the Gwich'in Tribal Council all hold settlement land parcels in the Peel Watershed as this region makes up some of their traditional territory.

The PWPC plan called for 80% of the Peel watershed lands to be designated for protection (55% permanent protection and 25% interim protection) and 20% open to industrial development, which would be subject to the *Yukon Environment and Socio-economic Assessment Act* (YESAA). The PWPC plan was adopted by the affected First Nations for settlement land but soon after, the previous Yukon Government led by the Yukon Party announced its intention to modify the plan under section 11.3.2 of the UFA (Staples et al., 2013). In January 2014, the Yukon Government approved a RLUP for the Peel Watershed applying to non-settlement land. This plan called for 29% protection and 71% open to industrial development (*First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC).

This case is significant for many reasons. First, it embodies the tensions and challenges associated with RLUP in the Yukon to date (Staples et al., 2013). Second, it builds on the existing cases of Indigenous peoples taking direct action in various forms, including litigation, protests and blockades in resource development processes in Canada (O'Faircheallaigh and Corbett, 2005; McCreary and

Milligan, 2014; Atlin and Gibson, 2017). Third, this case has implications for resource development in other regions of Canada covered by modern treaties or land claim agreements (Olynyk, Bergner, Kruger, 2017). Fourth, the Peel Watershed, as a region containing no permanent human settlements or other human development activities, represents one of the last remaining wilderness watersheds in North America (*First Nations of Nacho Nyak Dun v. Yukon*, 2017 SCC 58). Sustainable development in the region is a potentially “wicked problem” (Rittel and Weber, 1973) as it is subject to conflicts over trade-offs and classic sustainability concerns such as ‘conservation versus development’ or ‘homelands versus frontier’ (Berger, 1977; Berke and Conroy, 2007). Resource development opportunities in the region include non-renewable resource extraction (mining, oil and gas exploration, and associated infrastructure developments such as roads and pipelines) as well as tourism and outfitting operations. Non-renewable resource development is typified by landscape changes, as well as linked social and cultural impacts that would primarily impact First Nations communities (Angell and Parkings, 2011).

In this thesis, I specify and apply the eight generic sustainability assessment criteria developed by Gibson et al. (2005) to better understand the challenges and opportunities associated with RLUP processes in the Yukon. Gibson et al.’s (2005) eight generic criteria are broad and imprecise (yet interconnected and mutually reinforcing) and require specification to case and context. For the purposes of this thesis, specification of the criteria was first undertaken through a literature review focusing on the broad substantive and governance challenges and opportunities to effective engagement with sustainability and Indigenous interests in northern Canadian resource development. Challenges and opportunities for attention from the literature review were applied to Gibson et al. (2005) criteria to develop an initial framework. The initial framework was then additionally specified from the challenges and opportunities for attention from the case study context and over 30 semi-structured interviews with key stakeholders involved in the planning process for the Peel Watershed. This framework was then applied to evaluate whether the PWPC plan and the Yukon Government plan for the Peel Watershed effectively met regional sustainability and Indigenous interests.

1.1 Problem Context

Canada along with countries such as Australia, New Zealand and the United States are “settler-states” or “post-settler states”, meaning they were formed through colonial processes of “discovery, acquisition, subjugation of Indigenous inhabitants, and ultimately, claims of state sovereignty” (Hibbard, Lane and Rasmussen, 2008, 137). These countries have achieved statehood through systemic

dispossession and subjugation of Indigenous populations, primarily through the physical removal of Indigenous peoples by means of relocation, formal and/or informal policies of extermination, as well as programs of social and political assimilation (RCAP, 1996; Hibbard et al., 2008). In Canada, the history of Indigenous marginalization due to colonial policies and practices spans approximately 400 years and is still largely felt across the country. Many ongoing policies and practices perpetuate colonial attitudes and racism, including resource exploitation of Indigenous lands through resource development (for example, from non-renewable resource development projects), intergenerational trauma from residential schools (Simpson, 2004; Truth and Reconciliation Commission, 2015), imposition of modern forms of governance structures (McCarthy et al., 2012) and the lasting impacts of the Indian Act (Alfred, 2009).

Indigenous peoples in Canada have fought against these policies, forcefully articulating their interests as well as worldviews and fighting for the sustainability of their rights, self-determination and self-governance at both the national and international level (Hibbard et al., 2008; Corntassel and Bryce, 2012; Wright and White, 2012). In recent years, opportunities for Indigenous participation in decision and policy making have emerged due to the recognition of Aboriginal and treaty rights under Section 35 of the *Constitution Act, 1982*, numerous SCC decisions¹, internationally under the United Nations Declaration on the Rights of Indigenous Peoples and federal government commitments to reconciliation (Blackburn, 2007; Ugarte, 2014; INAC, 2017).

Many of the foundational SCC cases relate to consultation and accommodation matters central to resource development and associated governance processes such as Environmental Assessments (EAs) or RLUP (Natcher, Hickey, Nelson and Davis, 2009; Sanderson, Bergner and Jones, 2012; McIvor, 2018). Additionally, the SCC has established, especially in *Haida* (2004), that the Crown is bound constitutionally by the ‘duty to consult and accommodate’, flowing from the broader principle of the honour of the Crown (Slattery, 2005).

Scholars, practitioners and Indigenous peoples have frequently recognized that many resource development policies and programs are incompatible or inappropriate avenues for articulating Indigenous worldviews, interests and knowledge (Baker and McLelland, 2003; Ellis, 2005; Blackburn, 2007; O’Fairchellaigh, 2007; Lane and Williams, 2008). They further recognize both procedural and

¹ See *R v. Sparrow* 1990 SCR 1075; *Delgamuukw v. British Columbia* 1997 3 SCR 1010; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 3 SCR 511; *Taku River Tlingit Nation v. British Columbia (Project Assessment Director)*, 2004; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005; *Rio Tinto Alcan v. Carrier Sekani Tribal Council*, 2010; *Beckman v. Little Salmon/Carmacks First Nation*, 2010; *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44.

substantive elements of resource development processes lack the ability to include, or respond to, Indigenous interests effectively (Baker, McLelland, 2003; O’Fairchellaigh, 2007; Jojola, 2008; Booth and Muir, 2011; Walker, Jojola and Natcher, 2013; Udofia, Noble and Poelzer, 2017).

In Canada, resource developments and planning initiatives have historically been, and continue to be, at the front line in conflicts between governments and Indigenous peoples (Howitt, 2002; McCreary and Milligan, 2014). Indigenous peoples are increasingly partnering with environmental movements (Nadasdy, 2005), planners (Walker, Jojola and Natcher, 2013) and scholars (Tipa and Nelson, 2008; McCarthy et al., 2012) to work towards policies that recognize their interests and sovereignty, while building sustainable economic opportunities and well-being for their communities (Hibbard et al., 2008; Walker, Jojola and Natcher, 2013). Indigenous struggles for control, management and planning of lands and resources as well as the design and implementation of policies are increasingly recognized in scholarship and practice (Hibbard et al., 2008; Tipa and Nelson, 2008; Walker, Jojola and Natcher, 2013; Ugarte, 2014; Maclean, Robinson and Natcher, 2015; Udofia, Noble and Poelzer, 2017). However, this recognition raises many questions regarding the challenges and opportunities to the effective engagement with Indigenous interests in existing resource development processes.

In response, this thesis examines the case of the Peel Watershed planning process to evaluate whether sustainability and Indigenous interests were effectively met in the regional plans developed by the PWPC and the Yukon Government. The Peel case represents likely best practice for effective inclusion of sustainability and Indigenous interests, as the land use planning process flows from a comprehensive land claim agreement with First Nations and requires contributions to sustainable development (Francis and Hamm, 2011). However, tensions between the independent planning authority and territorial government during the planning and approval process for the Peel Watershed resulted in a case decided by the SCC (Staples et al., 2013; Locke and Heuer, 2015; Atlin and Gibson, 2017). The Peel Watershed offers an interesting case study for determining how future RLUP processes in the Yukon can effectively engage with sustainability and Indigenous interests as it is only the second region in the territory having undergone a planning process under Chapter 11 and was subject to the tensions and conflicts associated with regional planning in the Yukon. For this and other reasons, it is a good case for determining lessons to be applied to future and possibly more complex planning initiatives in the Yukon established under comprehensive land claim agreements.

1.2 Objectives and Research Questions

The research is guided by four research questions:

1. What are the challenges and opportunities for effective² engagement with sustainability and Indigenous interests in resource development processes (notably northern Canadian RLUP and EA processes)?
2. How do stakeholders involved in the Peel process perceive³:
 - a. the challenges and opportunities of RLUP for sustainability interests, including the ability of RLUP to guide subsequent project level assessments effectively;
 - b. the challenges and opportunities for effective engagement with Yukon First Nations interests in the RLUP process;
 - c. lessons from the Peel planning process to be applied to future RLUP initiatives in the Yukon under Chapter 11 of the UFA.
3. Did the outcome of the RLUP process pursued by the PWPC and Yukon Government effectively meet regional sustainability and First Nations interests?
4. What are the challenges and opportunities for effective engagement with sustainability and First Nations interests in regional planning in the Yukon?

The objectives of this research are fivefold:

1. Develop an initial analytical framework responding to the challenges and opportunities for effective engagement with sustainability and Indigenous interests in resource development processes, notably northern RLUP and EA (Chapter 2).
2. Determine how stakeholders involved in the Peel process perceive engagement with sustainability and Yukon First Nations interests in the RLUP process for the Peel Watershed (Chapter 5).
3. Identify perceived lessons from the Peel process for future RLUP initiatives in the Yukon (Chapters 5-7).
4. Further specify the initial framework for application to RLUP in the Yukon including challenges and opportunities for attention from the case study context and stakeholder perceptions of the process (Chapters 5 and 6)
5. Develop recommendations for policy and decision-makers for effective engagement with sustainability and Yukon First Nations interests in future RLUP processes (Chapter 7).

1.3 Key Definitions

This thesis applies specific terminology with associated meanings. The purpose of this section is to ensure these terms are clarified and defined appropriately.

² Effectiveness is defined according to the EA literature, as “how well something works or whether it works as intended and meets the purposes for which it is designed” (Sadler, 1996, 37).

³ Perceptions include “the way an individual observes, understands, interprets, and evaluates a referent object, action, experience, individual, policy or outcome” (Bennett, 2016, 71).

1.3.1. Sustainable Development and Sustainability

The term ‘sustainable development’ gained prominence following its use in the 1987 Brundtland Commission report, titled *Our Common Future* (WCED, 1987). In it, the Commission defined sustainable development most briefly as that which “meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987, 27). The concept was novel in its recognition of the relationships between and among environmental, social and economic issues and thus advocated keeping within environmental limits while improving wellbeing for all, including future generations (Gibson, 2017). Sustainable development has been criticized for being vague; there is no agreement on what it entails and as a result, it is difficult to apply (Gibson, 2017). Further, many actors conceptualize the term differently and therefore apply it irregularly across disciplines and contexts (Gibson, 2006; Suopajarvi et al., 2015). Sustainability has become the more widely accepted term, although many of the same criticisms apply.

Recently, issues such as global climate change, rapidly declining fish stocks, biodiversity loss, changes to land and water use, as well as growing economic inequities have increasingly been recognized as linked complex, environmental, social and economic challenges (Rockström et al., 2009; IPCC, 2014; Gibson, 2017). Scholars and practitioners are increasingly working within social-ecological systems in order to address the complexities and feedbacks between and among resource systems, resource units, users and governance systems (Folke et al., 2002; Ostrom, 2009). Sustainability approaches need to be holistic in order to address the interdependencies of factors and the wickedness of the associated challenges (Rittel and Weber, 1973). Gibson et al., (2005) synthesized from the sustainability literature eight broad generic criteria for sustainability-based decision making in order to provide an overarching framework to be considered when addressing sustainability problems.⁴

1.3.2. Indigenous Interests

For the purposes of this thesis, ‘Indigenous interests’ or ‘First Nations interests’ will be applied to refer to the combined package of rights, worldviews (including Traditional Knowledge) and often invisible interests (Turner et al., 2008) which characterize Indigenous understandings and thus influence their effective inclusion and participation in resource development processes. It is important to recognize that many Indigenous scholars, including Cornthassel and Bryce (2012), note that “rights are state

⁴ Presented in Chapter 2 of this thesis.

constructions that do not necessarily reflect inherent indigenous responsibilities to their homelands” (152).

It is not my goal to define what constitutes ‘Indigenous interests’ as this would be inappropriate given my own conditioning and privileges as a non-Indigenous person as well as the limitations of this research. As a result, I will rely on the diverse perspectives presented by Indigenous peoples themselves, without trying to impose a synthesis. Additionally, it is important to note that Indigenous cultures are diverse and varied. However, they are connected through their shared experiences of marginality and exclusion at the hands of colonial policies (Nadasdy, 2005; Hillbard, 2008; Cornthassel and Bryce, 2012).

Indigenous interests and worldviews vary across geographies, communities and families. According to Jojola (2008), a worldview is “rooted in distinct community traditions that have evolved over a successive history of shared experiences” (42). Commonalities exist across worldviews and interests of Indigenous peoples. These include cultural, spiritual, economic and social ties and kinship relationships to their lands, territories, environment, and resources developed since time immemorial (Little Bear, 2000; Whitt et al., 2001; Hibbard et al., 2008; Kimmerer, 2013; Matunga, 2013). Indigenous peoples have always been managers, planners and stewards of their homelands (Anderson, Dana and Dana, 2006; Jojola, 2008; Booth and Muir, 2011; Matunga, 2013; Walker, Jojola and Natcher, 2013). Community connections to land embody relations with ancestors (Matunga, 2013) and are central to identity and sovereignty (Hibbard et al., 2008).

An additional guiding principle across Indigenous governance and resource development literature is the seven generations model (Jojola, 2008, 2013). This model is articulated by Jojola (2013) as “knowledge of the past informing the present and, together, building a vision towards the future” (457) or an understanding that present day decisions are made in a way that is “mindful of the past, cognizant of the present and suitable for the future” (Jojola, 2008, 43). This model is inherently sensitive to sustainability concerns given its intergenerational emphasis and its grounding in Indigenous worldviews that reflect direct ties to land and community (Jojola, 2013).

1.3.3. Traditional Knowledge (TK)

For the purposes of this thesis, the term ‘Traditional Knowledge’ (TK) will be used, in keeping with the United Nations Declaration on the Rights of Indigenous Peoples. An associated term, Traditional Ecological Knowledge has been criticized as it is perceived to refer only to ecological knowledge, whereas TK refers to a “cumulative body of knowledge, practice and belief, evolving by adaptive

processes and handed down through generations by cultural transmission, about the relationships of living being (including humans) with one another and with their environments” (Berkes, 1999, 8). The attributes of TK are “cumulative from long-term intergenerational interaction), dynamic (informed by a customary lifestyle but not unchanging), providing a historic understanding of change, local, holistic (viewing all elements as interconnected), embedded (in a unique matrix of local, cultural, historical and traditional elements), moral and spiritual” (Menzies and Butler, 2003; Tipa and Nelson, 2008, 316).

Indigenous worldviews, interests and relationships to homelands are guided by TK. Stewardship principles guide and inform relationships with homelands and TK informs the appropriate use of animals, plants and resources (Berkes, 1999; Doyle-Bedwell and Cohen, 2001; Jojola, 2008). Western scholars and practitioners are progressively recognizing the need to go beyond simply the inclusion of TK towards effective and appropriate engagement with Indigenous peoples and interests, including their political, social and economic struggles in the face of ongoing colonialism (Armitage, 2005; Nadasdy, 2005; Hibbard et al., 2008; Walker, Jojola and Natcher, 2013; Walsh, Dobson and Douglas, 2013; Udofia, Noble and Poelzer, 2016).

1.3.4. Resource Development

For the purposes of this thesis, resource development is defined as both renewable and non-renewable resource extraction. Focus is placed on non-renewable resource extraction activities including mining, oil and gas exploration and associated infrastructure developments such as roads or pipelines given the potential impacts of such activities in the Peel Watershed. Non-renewable resource development is typified by ecological impacts (including landscape change, impacts to wildlife corridors, creation of novel ecosystems) as well as social and cultural effects (for example, short term work opportunities, influx of transient southern workers) (Angell and Parkings, 2011).

Resource development processes typically apply a “command and control” (Holling and Meffe, 1996, 329) paradigm, dominated by forces of top-down environmental decision-making and management (Howitt, 2002; Bavington, 2011). Resource development approaches are an important subset of the sustainability problem (Lockwood et al., 2010). Management of the environment and natural resources fits into the Western paradigm premised on short term benefits, notions of private property and dominant notions of public welfare (Jojola, 2008), in direct contrast with Indigenous worldviews of belonging to, and being stewards of their homelands since time immemorial (Menzies and Butler, 2006; Jojola, 2008; Tipa and Nelson, 2008; Booth and Muir, 2011; McCarthy et al., 2012).

Recent approaches to resource development recognize the limitations of this paradigm, including contributing to the current global environmental crisis (Holling and Meffe, 1996; Howitt, 2002; Armitage, 2005; Gibson et al., 2005). Thus, bottom-up or power sharing approaches to resource development are increasingly implemented to balance the “exploitation and conservation of valued ecosystem components” (Armitage, 2005) and are at times offered as a “transformative tool” for overcoming social-ecological challenges (Howitt, 2002; Lane and Hibbard, 2005). For example, co-management with Indigenous peoples has been offered as one such tool in northern Canada (Castro and Nielsen, 2001; Kemp, Parto and Gibson, 2005; Armitage, 2005; King, 2010).

In Canada, environmental laws, policies, regulations and anticipatory planning processes are a complex patchwork for resource development, management and decision-making, first set out under sections 91 and 92 of the *British North America Act, 1867*. Acting within the limited environmental legislative authorities granted under these sections, provincial, territorial and federal governments have developed anticipatory and preventative approaches to resource development, management and decision-making (Muldoon, Lucas, Gibson, Pickfield, Williams, 2015). Among these approaches are project level EA requirements and planning and management regimes including RLUP (Gibson, 2002; Muldoon et al., 2015). These approaches recognize the value of public participation and thus include requirements for public notification, timely and convenient access to information, opportunities for effective involvement and the ability to enforce environmental laws should governments fail to act (Jones, Rigg and Lee, 2010; Muldoon et al., 2015). Additionally, the combination of SCC decisions, the United Nations Declaration on the Rights of Indigenous Peoples, comprehensive land claim agreements and policy commitments to reconciliation has further expanded these processes to include – and pay at least some special attention to – constitutionally recognized Aboriginal rights (O’Fairchellaigh, 2007; Hibbard et al., 2008; Atlin and Gibson, 2017).

1.3.5. Environmental Assessment (EA)

EAs are defined as the “process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken or commitments made” (IAIA and IEA, 1999). The EA landscape in Canada is made up of a varied patchwork of policies at the federal, territorial and provincial level. Federal EA is legislated through the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). However, new federal legislation was introduced in the House of Commons in February 2018 (Bill C-69). This Bill proposed

to extend the scope of assessments to cover the full suite of sustainability considerations and create the Impact Assessment Agency of Canada to carry out federal evaluations of projects (Tasker, 2018).

Bill C-69 is the Trudeau government's direct response to the demonstrated limitations of the 2012 iteration of federal environmental assessment legislation, *CEAA 2012*, which came into force July 6, 2012. *CEAA 2012* included significant changes to the EA landscape in Canada, for example narrowing the categories of projects requiring a federal assessment as well as limiting the scope of environmental impacts to be assessed towards those under federal jurisdiction (Gibson, 2012). Doelle (2012) referred to *CEAA 2012* as a "major step backward" (17) for EA in Canada. He thus outlined various improvements to be made to the EA process, including "early triggering, more effective public engagement, broader focus on sustainability, and the incorporation of strategic and regional EAs into the legal framework" (16). These calls for improvement have since been developed in the context of literature on next generation environmental assessment (Gibson, Doelle and Sinclair, 2015).

Calls for next generation environmental assessment include paying attention to a project's contributions (or lack thereof) to sustainability and ensuring effective tiering between project assessments and strategic levels (Gibson, et al., 2015; Olagunju and Gunn, 2016). Benefits to tiering include "addressing big issues and opportunities, broad alternatives and cumulative effects that cannot be covered as effectively and efficiency at the project level" (Gibson et al., 2015, 9). In various jurisdictions in Canada, opportunities for tiering already exist between strategic level urban and regional land use planning and forest management planning and project level environmental assessments (Gibson et al., 2015). For example, in the Yukon, development assessments under Chapter 12 of the UFA are required to conform with existing RLUPs established under Chapter 11. Unfortunately, in regions where such policies exist, strategic policies and programs often do not adequately link to project level assessments (McDonald and Brown, 1995; Jones et al., 2005; Olagunju and Gunn, 2016).

1.3.6. Regional Land Use Planning (RLUP)

Regional land use planning (RLUP) is defined by Kennett (2010) as:

"An exercise of social choice that requires us to define a common vision, assume responsibility for our actions, take account of alternative values and interests, think about the long term, and make explicit choices now that will have important implications for our future and for the lives of future generations" (40).

RLUP is further defined as a process of developing a regional, sub-regional or district land use policy, including spatial plans, designed to provide strategic guidance for development activities within defined boundaries, as well as a method touted to achieve sustainability and to reduce and mediate land use conflicts (Jones et al., 2010). Technical definitions frame the process as one that ensures “consistency and continuity in the framing and execution of policy with respect to the use and development of land” in order to ensure that the various interests at stake are appropriately considered when decisions are made and the development and use of the land is in the ‘public interest’ (Jones et al., 2010, 4).

These initiatives are particularly difficult given they are structured to approach land and resource management holistically, transcending existing resource development policies, rooted in “individual and organizational behaviour in the structure of decision-making,” which are typically focused on individual resources such as mining, oil and gas, commercial timber, water, fisheries, etc. (Kennett, 2010, 41). Further, RLUP aims to cut “against the narrow mandates and organizational ‘silos’ that often characterize institutions of government, particularly in the areas of environment” and resource development (Kennett, 2010, 40). Planning is thus both a tool for “negotiation, decision making, collaboration, coordination and empowerment” (Mannell, Palermo, Smith, 2013, 115) as well as a process. It is also increasingly characterized as a transformative tool (Lane and Hibbard, 2005; Mannell et al., 2013).

Indigenous planning is a paradigm increasingly finding its way into planning literature and practice (Jojola, 2008; Booth and Muir, 2011; Walker, Jojola and Natcher, 2013). This “theory of action” includes re-examining “contemporary planning practice through long-term learning, the empowerment of community voices, and the advocacy of [Indigenous] culture and tradition” (Jojola, 2008, 42). Indigenous planning is a process, outcome, tradition and methodology (Matunga, 2013). Given the relationships of Indigenous peoples with their traditional territories, Indigenous planning calls for case and context specific initiatives (Jones et al., 2010; Matunga, 2013; Hausam, 2013). Further, it represents a renewal of Indigenous community-building and planning, which has always been practiced by Indigenous peoples (Matunga, 2013). However, many Indigenous planning processes and systems are confined within “larger frameworks and are mediated by specific legal and government realities” such as the economic and governance regimes of post-settler states (Ugarte, 2014, 411). Scholarship in this field is primarily the result of research in Canada, the United States, Australia and New Zealand (see, for example Walker, Jojola and Natcher, 2013) given the experiences of Indigenous peoples in such post-settler states (Hibbard et al., 2008).

1.4. Research Design

Conducting this research, aiming to respond to the research questions and meet the research objectives required a number of qualitative research methods be applied. Five major qualitative methods and applications were used: I) a literature review of the challenges and opportunities to effective engagement with sustainability and Indigenous interests in northern resource development; II) development of a sustainability-based initial framework specified from challenges and opportunities for attention from the literature review; III) single case study of the Peel Watershed land use planning process, including a historical account of the planning process established under Chapter 11 of the UFA, the SCC's decision in *First Nation of Nacho Nyak Dun v. Yukon* (2017 SCC 58) as well as 34 semi-structured key stakeholder interviews resulting in additional challenges and opportunities for attention; IV) additional specification of the initial sustainability-based framework from the challenges and opportunities established from the case study and; V) application of the final framework for evaluation of the effectiveness of the PWPC plan and the Yukon Government plan for the Peel Watershed for meeting regional sustainability and Indigenous interests. A detailed review of the methods applied for the purposes of this study is offered in Chapter 3.

1.4.1. Sustainability Assessment Specification

Gibson et al.'s (2005) generic sustainability assessment criteria require specification to case and context given their broad and imprecise nature. Gibson (2017) lays out 14 steps for criteria specification, starting with identifying the key case and context considerations (e.g. conditions, concerns, aspirations) to be "recognized (e.g. as values to be protected, or desirable opportunities to be sought, or risks and adverse effects to be avoided) and ensuring that the resulting criteria cover both of these considerations and all the general requirements for progress towards sustainability" (Gibson, 2017, 6). Additional details on the methodology for sustainability assessment specification are provided in Chapter 3 of this thesis.

For the purposes of this thesis, the Gibson et al., (2005) criteria set was initially specified in light of challenges and opportunities for attention identified in the literature review (Chapter 2). This initial framework was then additionally specified from the case study context of the Peel Watershed planning process (Chapter 4) and results from 34 semi-structured interviews with key stakeholders (Chapter 5). The final framework was then applied to evaluate whether the PWPC plan along with the Yukon Government plan for the Peel Watershed effectively met regional sustainability and First Nations interests. Evaluation was also undertaken to determine lessons from the Peel Watershed

planning process to inform ongoing planning for the Peel Watershed along with future planning initiatives in the territory (Chapter 7).

1.4.2. Selection of Peel Watershed as Case Study

The single case study approach is ideal when the researcher aims to understand the potentially conflicting opinions or perspectives on the same situation through the comparison of different social groups (Baxter and Jack, 2008). The Peel Watershed case was chosen for the purposes of this thesis as it represents likely best practice in a Canadian jurisdiction as the planning work is recent, well documented and flows from land claims agreements, but where participants with contrasting perspectives were involved and those perspectives resulted in conflict, including a case eventually decided by the SCC in December 2017 (*First Nation of Nacho Nyak Dun et al. v. Yukon*, 2017 SCC 58).

Two competing visions for the Yukon have clearly emerged and underlie many of the ‘conservation versus development’ tensions in the territory. The first vision is based on increased resource development, in turn ensuring diversification of the Yukon’s economy away from its present reliance on federal government transfers and largely public-sector employment opportunities. The second places more value on the Yukon’s natural environment, embracing protection of internationally significant wilderness regions as well as the stewardship interests of Yukon First Nations (Halliday, 2014). The Peel Watershed case represents a particularly useful case as the planning and approval process for the plan was subject to conflicts between the planning authority and the territorial government (Staples et al., 2013; Locke and Heuer, 2015; Atlin and Gibson, 2017). The Peel case is also especially attractive because the conflict between the initial process and the Yukon government’s own separate process reveals the challenges involved (Staples et al., 2013). Given the tensions in the territory and their relationship to this case, many issues were clearly revealed and important lessons can be drawn from this case to guide ongoing planning for the Peel Watershed as well future RLUP processes in the Yukon or other similar jurisdictions.

1.4.3. Role of the Researcher

As both a non-Indigenous and southern researcher (someone not having been raised in one of Canada’s territories or northern regions of the country), I wish to acknowledge and shed light on my position of privilege in the undertaking of this thesis. I am aware that my past experiences and values may influence the outcomes of my research. This concern is widely recognized amongst researchers conducting

subjective analysis (Finlay, 2002). For this reason, this personal reflection has been included within this thesis to recognize how my experiences and values as an outsider have come to shape my research design. In particular, I recognize that working with Indigenous peoples “requires some unpacking of assumptions about what we are trying to achieve and the methods we employ” (Porter, 2007, 105). I wish to also acknowledge that as a product of settler-colonialism and post-settler Canada, my understandings and values have shaped the way I understand and process the teachings I have received (Porter, 2007). Further, I recognize that I will never fully comprehend the lived experiences of Indigenous peoples. As a result, I wish to approach this discussion with humility and respect for what I do not know and may never fully understand (Porter, 2007).

I have spent the majority of my life living on the traditional territories of the Algonquin peoples in the city now known as Ottawa, Ontario, Canada. My European ancestry has granted me privileges, such as the ability to pursue my studies at a post-secondary level. As a southerner I never really thought about the Canadian north until the topic of this masters’ thesis research was proposed. Throughout my post-secondary studies and the preparation of this thesis, I have been tasked with unpacking my many privileges and how I came to know about Canada’s colonial history, its relationships with its Indigenous peoples and our conceptualizations of the Canadian north. Moving forward, I will continue to reflect upon this and work toward building systems which empower Indigenous voices and to work towards reconciliation, decolonization and Indigenous sovereignty.

1.4.4. Limitations

There are limitations to this study that must be acknowledged. This project is not meant to be an exhaustive review of effective engagement with sustainability and Indigenous interests in resource development processes. It is also not meant to be an exhaustive review of the planning process for the Peel Watershed, given the length and complexities of the process itself. The timeline of this project, as a Masters’ thesis, restricts the scope and depth of this research.

Ethical considerations of research with Indigenous peoples in Canada need to be carefully addressed, as research with Indigenous peoples may be difficult as “scepticism and resentment of academic researchers exist in many Indigenous communities” due to a history of scientists collecting data (often without consent) and leaving, failing to report research findings back to the communities (Castleden and Garvin, 2008, 1393). Community-based participatory research applying decolonizing research methodologies offer an alternative as they actively engage community members in the research

process from development in order to simultaneously increase the likelihood of successful research and satisfied communities (Allen et al., 2011; Castleden and Garvin, 2008; Smith, 2012).

Unfortunately, these methodologies were not fully applied for this thesis due to personal financial and time constraints. However, it was my aim to apply best practices for conducting research with Indigenous communities (Steinhauer, 2002; Porter, 2007; Tsey et al., 2007; Castleden and Garvin, 2008). Prior to conducting interviews, a research ethics application was submitted and approved by the University of Waterloo's Office for Research Ethics. An application for a Yukon *Scientists and Explorers Act Permit* was also completed and received from the Yukon Department of Tourism and Culture prior to beginning interviews in the Yukon. Prior to submitting an application for the permit, I contacted the affected Peel First Nations via telephone to inquire about their research agreements or research ethics processes. I submitted a research agreement application to the First Nation of Nacho Nyak Dun, a research protocol with Trondëk Hwëch'in and a research agreement with Vuntut Gwitch'in First Nation. Additionally, an executive summary of this research covering the framework, findings and recommendations was developed and returned to participants ([included in Appendix A](#)).

Finally, my own experiences and conditioning as a non-Indigenous southern researcher may inevitably limit my interpretations of the findings of this study, as my own perceptions and understandings of Indigenous and northern issues continues to develop.

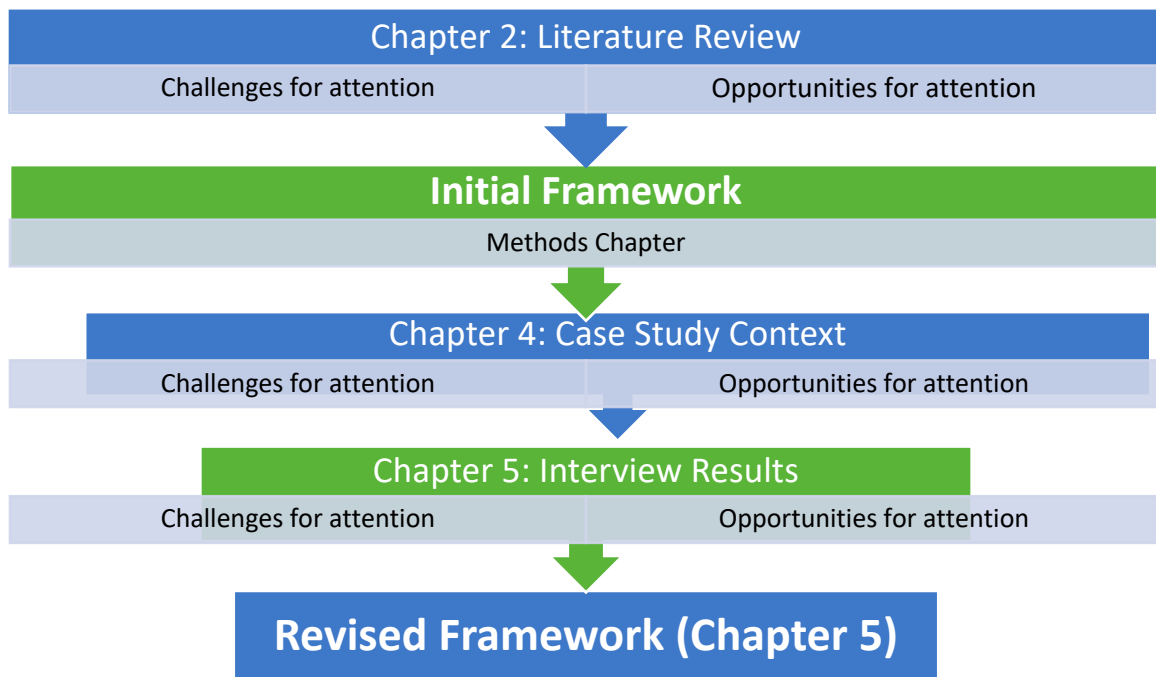
1.5. Thesis Structure

This thesis aims to develop an analytical framework, building upon the broad, generic sustainability assessment criteria developed by Gibson et al. (2005) for application to the case study of the Peel Watershed planning process. In order to do so, layers of context and specificity are added in each chapter, resulting in the final version of the framework, which was applied to evaluate the PWPC and the Yukon Government plans for the Peel Watershed in Chapter 6.

In this introductory chapter, I introduced the problem context, the case study, research objectives and questions, key definitions, research design and limitations of this research. Chapter 2 reviews the literature on the challenges and opportunities for sustainability and Indigenous interests in northern resource development, including the eight broad generic sustainability assessment criteria from Gibson et al. (2005). Chapter 2 culminates in an initially specified framework developed through the combination of Gibson's criteria and challenges and opportunities for attention from the literature review.

Chapter 3 reviews the research design and methodology applied for the purposes of this thesis. Chapter 4 provides an overview of RLUP for the Peel Watershed and concludes with a set of case specific challenges and opportunities for attention. Chapter 5 outlines the findings from semi-structured interviews conducted with key stakeholders involved in planning and assessment in the Yukon. Chapter 5 concludes with a presentation of the final framework, which is a result of the initial framework (presented in Chapter 2) along with the case specific criteria presented in Chapters 4 and 5. Figure 1 (below) illustrates the development of the analytical framework throughout Chapters 2 through 5. In Chapter 6, this framework is tested against the PWPC and the Yukon Government’s plans for the Peel Watershed to determine whether sustainability and Yukon First Nations interests were effectively met. Finally, Chapter 7 concludes this thesis by providing an overview of my findings, their implications, recommendations and directions for future research.

Figure 1: Framework Development Outline



Chapter 2: Sustainability and Indigenous Interests in Northern Resource Development

In this chapter, I review the literature central to the concepts associated with the research questions and objectives. Sources used to inform this review include peer-reviewed academic journal articles, scholarly books, academic theses as well as legislation, policy and media coverage. Where possible, emphasis was placed on consulting sources informed by community-based research methodologies or originating from Indigenous authors due to the limitations of this thesis, including decolonizing methodologies not being applied.

This chapter begins by reviewing sustainability concepts, including broad substantive and governance issues associated with resource development (section 2.1). Progress towards sustainability is complex and interconnected and thus requires specification to case and context (Kemp, Parto and Gibson, 2005; Gibson et al., 2005, Gibson, 2017). As a result, the sections that follow narrow the range of issues to address the challenges and opportunities to effective engagement with Indigenous interests (section 2.2) in northern Canadian resource development (section 2.3). In Canada, resource development planning and assessment have been, and continue to be, at the front line of tensions and conflicts among governments, Indigenous peoples, project proponents and other interests (Howitt, 2001; McCreary and Milligan, 2014; Atlin and Gibson, 2017).

The three areas of literature under review often overlap due to the complexities associated with resource development and decision-making. The academic literature addressing the research questions and outcomes is extensive. In order to set bounds on this chapter, Figure 2 acts as a conceptual framework.

Figure 2: Conceptual Framework

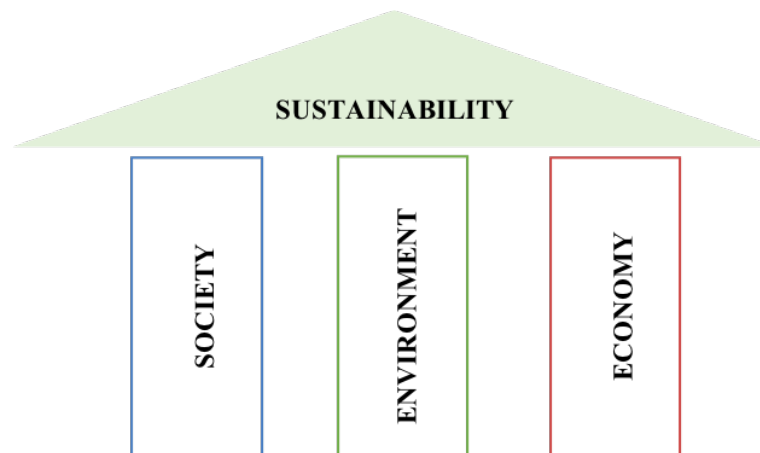


The purpose of this literature review is to provide the basis for developing a set of initial challenges and opportunities to inform criteria and framework development. These challenges and opportunities will be applied to specify the eight broad, generic sustainability assessment criteria developed by Gibson et al. (2005) for application to the case study of the Peel Watershed planning process. Gibson et al.'s (2005) sustainability assessment criteria along with the challenges and opportunities for attention from this literature review form the basis of the initial analytical framework. This framework will be further specified through a discussion of the case study context and thematic results of 34 semi-structured interviews with key stakeholders in the Peel planning process.

2.1 Sustainability in Resource Development

Sustainable development is a normative concept, often represented through the three pillars approach (Gibson et al., 2005; see Figure 3).

Figure 3: Three pillars approach to sustainability



The concept of sustainable development has been criticized for being vague; there is no agreement on what it entails and as a result, it is difficult to apply (Gibson, 2017). Many actors conceptualize the term differently and apply it irregularly across disciplines and contexts (Gibson, 2006; Suopajärvi et al., 2015). Sustainability has become the more widely accepted term, although many of the same criticisms apply.

Issues such as global climate change, rapidly declining fish stocks, biodiversity loss, changes to land and water use, as well as growing economic inequities have increasingly been recognized as linked complex environmental, social and economic challenges (Rockström et al., 2009; IPCC, 2014; Gibson, 2017). In response, holistic sustainability approaches have emerged to recognize that current trends are approaching the limits and thresholds of socio-ecological systems, along with the “wickedness” of sustainability issues (Rittel and Weber, 1973; Rockström et al., 2009; Ostrom, 2009). A social-ecological systems approach recognizes the complexities and feedbacks between resource systems, resource units, users and governance systems (Ostrom, 2009). Growing recognition of humanity’s influence on Earth’s natural systems led Crutzen (2002) to coin the term ‘Anthropocene’ to encapsulate a new geological era dominated by human activities and sustainability challenges (Crutzen, 2002; Preiser, 2017). Addressing sustainability issues in the Anthropocene requires a new approach to sustainability, one that recognizes the nested nature, complexities and feedbacks of the three pillars approach. As such, different illustrations have emerged, including the ‘doughnut’ model (Raworth, 2012) or the nested approach – see Figure 4 below (Constanza and Patten, 1995). Additionally, progress towards sustainability is a dynamic aspirational objective, rather than an end point (Gibson, 2017).

Figure 4: Nested model of sustainability

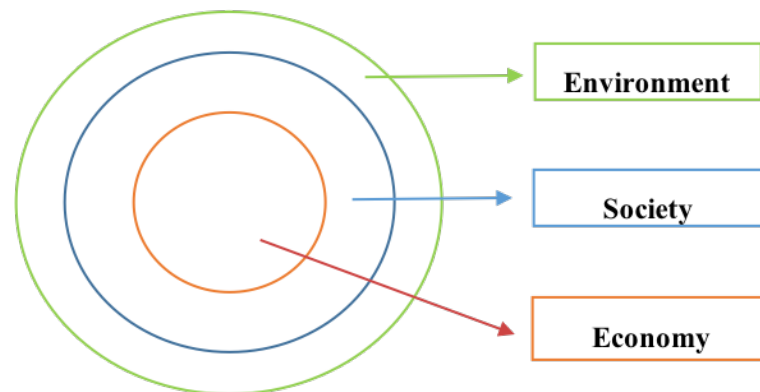


Figure 4 illustrates the need for societies and their associated economies to exist within planetary boundaries (Rockström et al., 2009; Broman and Robèrt, 2015). Progress towards sustainability requires steps to build the “resilience of desirable systems and facilitate positive transitions or transformations of problematic systems” for example, economies or societies operating outside planetary boundaries (Gibson, 2017, 9). Governance for sustainability has historically focused on the environmental and economic components of the concept while often dismissing the holistic nature of progress for sustainability (Suopajärvi et al., 2015; Gibson, 2017). Gibson’s (2005) eight broad generic criteria for sustainability-based decision-making provide an overarching framework to be considered when addressing sustainability problems. These criteria will be applied, specified and simplified according to challenges and opportunities and subsequently applied to the case study of the Peel Watershed later on in this thesis.

Box 1: Gibson (2005) Generic Criteria for Sustainability Assessment

1. **Socio-ecological system integrity:** Build human-ecological relations to establish and maintain the long-term integrity of socio-biophysical systems and protect the irreplaceable life support functions upon which humans as well as ecological well-being depends.
2. **Livelihood sufficiency and opportunity:** Ensure that everyone and every community has enough for a decent life and that everyone has opportunities to seek improvements in ways that do not compromise future generations' ability for sufficiency and opportunity.
3. **Intragenerational equity:** Ensure that sufficiency and effective choices for all are pursued in ways that reduce dangerous gaps in sufficiency and opportunity (and health, security, social recognition, political influence, etc.) between the rich and the poor.
4. **Intergenerational equity:** Favour present options and actions that are most likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably.
5. **Resource maintenance and efficiency:** Provide a larger base for ensuring sustainable livelihoods for all while reducing threats to the long-term integrity of socio-ecological systems by reducing extractive damage, avoiding waste and cutting overall material and energy use per unit of benefit.
6. **Socio-ecological civility and democratic governance:** Build the capacity, motivation and habitual inclination of individuals, communities and other collective decision-making bodies to apply sustainability requirements through more open and better-informed deliberations, greater attention to fostering reciprocal awareness and collective responsibility, and more integrated use of administrative, market, customary and personal decision-making practices.
7. **Precaution and adaptation:** Respect uncertainty, avoid even poorly understood risks of serious or irreversible damage to the foundations of sustainability, plan to learn, design for surprise, and manage for adaptation.
8. **Immediate and long-term integration:** Apply all principles of sustainability at once, seeking mutually supportive benefits and multiple gains.

-from Gibson et al., 2005, p. 235-236

The Gibson et al. (2005) criteria contribute three novel concepts to sustainability decision-making. First, the criteria are “centered on the requirements for progress towards sustainability and avoid any attempt to define sustainability” (Gibson, 2017, 12). Attempts to define sustainability often fail in categorizing sustainability as an “end point” rather than an “amorphous and ever-changing target” (12). Second, this set of criteria “dispels the conventional notion that sustainability can be built on social, economic and ecological pillars. None of the eight criteria fits in only one of those categories” (12). This set of criteria focuses on progress for sustainability and thus “these requirements necessarily

respect the interactive nature of sustainability problems and pathways for change” (Gibson, 2006; Gibson, 2017, 12). Finally, this set of criteria focuses on “seeking multiple, mutually reinforcing, fairly distributed and lasting benefits” (12). The three pillars approach unwillingly presented sustainability as a “field of tension among competing social, economic and ecological objectives” (12). Therefore, Gibson’s criteria are “individually and collectively interdependent and mutually supporting areas of improvement to be pursued together” (12). In summary, the above eight generic criteria represent a holistic framework for addressing the complexities and feedbacks associated with sustainability. However, effective sustainability applications need to be specified for case and context.

Much attention has been given to the role of environmental assessments, law and planning in promoting sustainability (Pezzoli, 1997). Resource development processes in Canada include attention to sustainable development or sustainability, for example, the recently proposed federal Impact Assessment Act, included in Bill C-69 (likely to receive Royal Assent in mid-2019) includes many provisions for sustainability, including in the preamble, which states: “whereas the government of Canada is committed to fostering *sustainability*” and includes the purpose of the Act as “to foster *sustainability*” (6.1.a) (emphasis added). Sustainable development is also a primary objective of the regional planning Chapter under the UFA – “to ensure that social, cultural, economic and environmental policies are applied to the management, protection and the use of land, water and resources in an integrated and coordinated manner so as to ensure *Sustainable Development*” (11.1.1.6) (emphasis added).

In practice, EAs ability to contribute to sustainability has been weak (Gibson et al., 2005). Gibson et al. note, “while the potential fit between EA and the pursuit of sustainability is good, few existing assessment processes manage to serve environmental objectives as well as they should” (xi). Additionally, EA’s have poorly served socio-ecological and other broad sustainability objectives. EA’s main weakness is its focus on project-by-project assessment, which fails to consider broader implications central to sustainability, such as cumulative impacts (Duinker and Greig, 2006; Kirchoff et al. 2011). Planning processes developed to anticipate and mitigate serious adverse cumulative effects and determine areas of ecological and sacred significance for protection as well as spatial considerations of development, do not often address the pace and scale of development, alternatives for development trajectories and contributions to sustainability (Atlin and Gibson, 2017). While planning is a potential tool for addressing the shortcomings of EA, effective tiering of these processes is lacking (McCarthy et al., 2012). Both EA and planning have also been widely criticized for failing to address the interests of Indigenous communities. These criticisms are discussed in section 2.2. of this chapter (Turner et al.,

2008; Whitelaw et al., 2009; Booth and Skelton, 2011; Booth and Muir, 2011; Sandlos and Keeling, 2016).

2.1.1. Sustainability and Non-Renewable Resource Development

Non-renewable resource development raises many substantial sustainability concerns at ecological, social, cultural and economic levels (MMSD, 1999; Suopajärvi et al., 2015; Sandlos and Keeling, 2016; Ali et al., 2017; Atlin and Gibson, 2017). Gibson et al. (2005) note “non-renewable resource extraction projects are generally poor candidates as contributors to sustainability” (2). Extraction is characterized by the depletion of a non-renewable resource (such as mining, oil and gas, etc.), limited project lifespans, negative ecological and socio-economic legacies, vulnerability to premature close or insolvency due to price fluctuations in global markets and adverse cultural effects in Indigenous communities (Baker and McLelland, 2003; Atlin and Gibson, 2017). These legacy effects often dominate the public conversation in regard to non-renewable resource developments, such as mining (Atlin and Gibson, 2017). In Canada, natural resources account for 17% of the national GDP (Natural Resources Canada, 2016). Addressing sustainability may thus be seen as a challenge to the status quo of present economic activities.

Non-renewable resource extraction often raises environmental justice concerns. These are primarily associated with the cumulative effects of development activities, the cyclical nature of resource extraction, legacy effects and a history of sudden closure and abandonment, or examples of large-scale disasters, leaving behind environmental problems and distrust between communities and proponents (Ali, 2014; Sandlos and Keeling, 2016). Cumulative effects are defined by Franks, Brereton and Moran (2010) as:

“The successive, incremental and combined impacts of one, or more, activities on society, the economy and the environment. Cumulative impacts result from the aggregation and interaction of impacts on a receptor and may be the product of past, present and future activities” (300).

Atlin and Gibson (2017) specify that cumulative effects can be both “positive and adverse, with the positive effects including opportunities and the adverse ones including risks” (38). Effective consideration of cumulative effects requires attention to the interactions among the effects of multiple undertaking and stressors from the past, present and reasonably foreseeable future (Atlin and Gibson, 2017).

Cumulative Effects Assessment is a requirement of most Canadian EA regimes but has faced criticism due to poor implementation as well as the view that it has become a “glorified checklist”

(Atlin and Gibson, 2017). It is limited by the individual proponent-based nature of EAs (Whitelaw et al., 2009) and by project-by-project application that facilitates cumulative effects as ‘death by a thousand cuts’ – as McIvor (2018) articulates, “no one decision fatal by itself, but the cumulative effects devastating nonetheless” (35). For this reason, regional processes with influence over individual assessments of projects are “important venues for sustainability-based deliberations”, not only to address the full range of effects but also to emphasize “attention to lasting results” (Atlin and Gibson, 2017, 38).

Mineral deposits are irregularly distributed and place specific. Thus, the mining industry “argues vigorously that keeping as much land as possible available for prospecting is essential to the industry’s long-term economic potential” (Kennett, 2010, 43). Development of mines must be evaluated against other regional land uses such as biodiversity protection, conservation, agriculture and urbanization etc. (Ali, 2017). Practices to implement the latest technologies to reduce negative impacts of mining and mineral treatment require proactive and effective stakeholder engagement as well as better coordination between proponents, local communities and governments (Ali, 2017). However, raw mineral materials are required to meet infrastructure and technology requirements of global environmental and sustainability initiatives such as the Paris Climate Change Agreement and the United Nations Sustainable Development Goals (Ali et al., 2017).

Northern Canadian resource development may have additional ecological implications given the slow recovery rates of high-latitude ecosystems as well as lasting impacts of the activities themselves, including polluting wastes (tailings and wastewaters), radiological and chemical contaminants and associated air pollution, fuel spills and community wastes (Sandlos and Keeling, 2016). Additionally, northern resource development is likely to be located in remote regions, which may require additional infrastructure such as roads or electricity supply. These can be further complicated by extreme environmental conditions, a limited labour supply, and high costs of development and operations (Haley et al., 2011).

The 2014 Mount Polley Mine tailings pond breach in British Columbia was the second largest mine waste spill on record (Byrne et al., 2018). It highlighted the increasing global environmental risk associated with such projects and demonstrated the need for application of the precautionary principle at the highest-level during project evaluation, development, follow-up and monitoring. It is important to note that the environmental risks associated with these activities are not uniform, as the severity depends on factors such as transportation routes, development type, or in the case of mines, ore body characteristics (Gibson and Klink, 2005).

Scholarship on the cultural and social sustainability implications of non-renewable resource extraction has concluded that these activities are characterized by high wages, cyclical employment (two weeks on, two weeks off), high mobility, risk of injury and exposure, as well as gendered effects (Gibson and Klink, 2005). While these activities produce socio-economic benefits, historically these have not been distributed to local communities (Kennett, 2010; Angell and Perkins, 2011; Haley et al., 2011; Suopajarvi et al., 2015). Local communities, often comprised of Indigenous peoples, disproportionately experience negative impacts of resource development. Health impacts include radiation exposure (Ali, 2014), high risk behaviours (such as alcoholism, drug use and prostitution), changes to traditional diets and food sources, family strains due to the nature of the employment, and cultural implications (Gibson and Klink, 2005; Atlin and Gibson, 2017). For Indigenous communities, resource development projects have been linked to cultural discontinuity and oppression, associated with high rates of depression, alcoholism, suicide and violence, with youth being the most at risk (Angell and Perkins, 2011).

Resource development planning and assessment have traditionally failed to adequately consider social and cultural sustainability. In their analysis of Northern European and Russian mining cases, Suopajarvi et al. (2015) point to the need to consider the comprehensive needs of local people while stressing the importance of a temporal perspective, both past and future. Multi-stakeholder decision-making, adaptive co-management, advisory round tables and other planning and assessment mechanisms may allow for better integration of social sustainability concerns into non-renewable project development (Kemp, Parto and Gibson, 2005; Armitage, 2005; King, 2010). Additionally, attention to and engagement with, the cultural, spiritual and political dimensions of TK may ensure effective consideration of these sustainability dimensions into planning and assessment processes occurring on Indigenous homelands (Sandlos and Keeling, 2016).

Economic sustainability challenges of resource development include the ‘boom and bust’ cycle of non-renewable resource development and associated uncertainties. For example, project approval delays for copper mine development have resulted in an average lead-time between discovery and development of 13 to 23 years (Ali et al., 2017). Commodity price fluctuations, driven by markets, are not always aligned with societal needs and constraints, and in many cases “commodity pricing signals run contrary to ecological goals” (Ali et al., 2017, 371). Resource development often does not benefit local communities as “labor and technical expertise is often hired from outside the region, royalties may go to a central government, and supply purchases may benefit businesses based far outside the local region” (Haley et al., 2011, 57).

Impact and Benefit Agreements (IBAs) along with resource revenue sharing agreements are supraregulatory agreements between proponents and local communities, which may ensure more fairly distributed benefits to local communities (Cameron and Levitan, 2014; Papillon and Rodon, 2016). The uncertainty of resource development activities is a concern in regions where an informal or traditional economy – comprised of activities such as subsistence hunting, herding, fishing and gathering – is a “critical cultural component and essential to the quality of life of local inhabitants” (Angell and Perkins, 2011; Haley et al., 2011, 38). Angell and Perkins (2011) conclude that the literature on resource development suggests that the overall impact of such activities depends on the social, cultural, economic and political state of the local community, including historic impacts and current aspirations.

Several major sustainability-based assessment initiatives have been developed in response to concerns associated with non-renewable resource development. For example, in 1999 the global mining industry’s Mining and Minerals and Sustainable Development initiative commissioned a report titled *Seven Questions to Sustainability: How to Assess the Contribution of Mining and Mineral Activities*, in response to an increasing disconnect between their practices and the values of society. It resulted in the design of a framework comprised of seven components and associated indicators, to “guide the assessment of whether or not a project or operation’s net contribution to sustainability is positive over the long term” (MMSD, 1999, 1). This framework was meant as the starting point in the decision-making process, rather than the decision-process itself. Sustainability-based initiatives are inherently collaborative, which raises many challenges including “overcoming divergent goals, establishing trust, goodwill and mutual respect, addressing the tendency for incremental change due to the need for compromise, ensuring legitimacy and building the required capacity” (Whitelaw et al., 2009, 804). Examples of the Voisey’s Bay and Mackenzie Valley cases represent different applications of sustainability-based assessment to non-renewable resource development projects, with varying degrees of success.

The Voisey’s Bay mine-mill environmental assessment was a “landmark in Canadian and global assessment practice because it introduced ‘contribution to sustainability’ as the basic test of acceptability” (Gibson et al., 2005, 5). The Panel Review concluded by approving the project with recommendations to address sustainability trade-offs, through extension of the project’s lifespan so as to ensure lasting benefits (Gibson et al., 2005). Voisey’s Bay is a rare case of a sustainability-based assessment being applied to a non-renewable resource development project with recommendations implemented following final decision-making.

The 2004 to 2009 Joint Review Panel for the Mackenzie Valley Pipeline project in the Northwest Territories included a sustainability-based assessment approach, including attention to the use and respect of TK and recognition of land claim agreements and treaties (Gibson, 2011; Gibson, 2017). The Panel applied a sustainability-based framework in order to guide the assessment, including comparisons of alternatives, recommendations and overall conclusions (Gibson, 2017). The Panel determined that with the inclusion and effective application of its 176 mutually supporting recommendations, the project would have only modestly positive sustainability effects. In the end, the decision-making process rested with the governments who accepted the ‘overall intent’ of the Panel report but rejected almost all of their recommendations (Gibson, 2017). Gibson (2017) points to recognition of Aboriginal rights as a key reason for the Panel’s reliance on a sustainability-based assessment process. Carly A. Dokis (2015) added that the sustainability-based Mackenzie Valley Pipeline review highlighted that questions of resource development go beyond sustainability for the local Indigenous community, the Sahtu Dene, in that they are “moral in nature and are founded on conceptions of respect, integrity and what it means to be human” (172). Essentially, in her critique of the Panel’s review, she concludes that the process pursued by the Panel maintained a “dominant paradigm of knowledge” (90) rather than effectively addressing Sahtu Dene worldviews and interests.

Scholarship recognizing the challenges and opportunities to Indigenous engagement in resource development processes is extensive and spans the fields of anthropology, sociology, Indigenous planning, natural resource management, environmental assessment and sustainability, among others. Section 2.2. provides an overview of the literature on effective engagement with Indigenous interests in resource development. The purpose of the section is to further refine Gibson et al.’s (2005) sustainability assessment criteria for application to the case study of RLUP for the Peel Watershed. In the Yukon, comprehensive land claims agreements and the devolution of federal management responsibilities to territorial and First Nations governments have given rise to new land and resource development processes, including RLUP and EA (Francis and Hamm, 2011). These are discussed in greater detail in section 2.3 of this Chapter.

2.2 Indigenous Interests and Resource Development

Scholarship on the challenges and opportunities facing Indigenous peoples participating in resource development processes (notably RLUP and EA) has focused on substantive and governance elements to effective engagement. It is well established in these bodies of literature that project-level EAs are ill-equipped to address cumulative effects (Tollefson and Wipond, 1998; Gunn, Russell and Greig, 2014),

conservation (Stevens, 1997; Menzies, 2006), broader alternatives and overall sustainability considerations central to Indigenous interests (Atlin and Gibson, 2017; McIvor, 2018). Regional land use plans, if designed and authorized to guide project planning and assessment, are a more promising tool for addressing these interests, but how well they can serve both sustainability and Indigenous interests is not yet suitably demonstrated.

Substantive challenges are primarily the result of colonial histories of marginalization, resulting in altered relationships to homelands and cultural foundations (Hibbard et al., 2008). Governance challenges are characterized by procedural issues such as “language and cultural barriers, geographic isolation, a lack of resources, consultation fatigue, cynicism about whether consultative efforts are genuine and a lack of familiarity with mainstream planning and decision-making processes” (Lane, 2006, 368). Compounding these challenges are the social pressures facing Indigenous communities, including housing shortages, health concerns, poverty and unemployment (Mannell, Palermo and Smith, 2013). Within Indigenous communities, leaders and administrators are often tasked with multiple responsibilities, have access to few resources and “frequently exist in a crisis-driven and reactive mode” (Mannell et al., 2013, 115).

Resource development may compound the above challenges. Turner et al. (2008) discuss how resource development often results in significant but invisible losses to Indigenous peoples. They identify eight types of individual losses, which cumulatively contribute to an overall decline in individual and community resilience. These losses are cultural/lifestyle losses, loss of identity, health losses, loss of self-determination and influence, emotional and psychological losses, loss of order in the world, knowledge losses and indirect economic losses and opportunities. Booth and Muir (2011) build upon these eight categories with the addition of the loss of spirituality.

Recognizing how resource development compounds these invisible losses, many scholars are supporting calls for effective engagement with Indigenous interests, worldviews and participation of Indigenous peoples in environmental planning and decision-making (O’Faircheallaigh, 2007; Hibbard et al., 2008; Booth and Muir, 2011; Bartlett, Marshall and Marshall, 2012; Hardess and Fortier, 2013; Walker, Jojola and Natcher, 2013; Porter et al., 2017). While the inclusion of TK has been mandated in Canadian resource development processes, both bottom-up and top-down strategies for its effective inclusion are limited. Inclusion of TK as an additional form of data limits its application and is far from incorporating due attention to Indigenous worldviews and interests. Thus, the inclusion of TK in resource development faces significant challenges, categorized by Menzies (2006) as either technical

(obstacles to integration) or epistemological (ways of knowing) (Menzies, 2006). Ellis (2004) further articulates these limiting factors as,

“Communication barriers, arising from the different languages and styles of expression used by traditional knowledge holders; conceptual barriers, stemming from the organizations difficulties in comprehending the values, practices and context underlying traditional knowledge; and political barriers, resulting from an unwillingness to acknowledge traditional knowledges that may conflict with the agendas of government or industry” (66).

Integration of TK is problematic as it has too often meant that TK is taken out of context and culture and applied in western resource development paradigms (Simpson, 2004). Increasingly, the Indigenous preference is to establish TK and conventional western science as equivalent but different – to be considered simultaneously but separately. This approach has often been referred to as “two eyed seeing”, a process for weaving together Indigenous and western knowledge (Bartlett, Marshall and Marshall, 2012).

Nadasdy (1999, 2005a and 2005b, 2006) discusses the problematic integration of TK into co-management processes. He argues that scholars’ focus on technical or methodological challenges ignore the power relations of knowledge integration (2006). Further, he claims that the compartmentalization of Indigenous worldviews “according to external criteria of relevance, seriously distort them in the process” (Nadasdy, 2005b, 15). TK is only seen as an additional source of data to be incorporated into environmental management by scientists and resource managers, thus limiting its application. Finally, he argues that the integration of TK into resource development processes would “actually serve to concentrate power in administrative centers, rather than aboriginal communities” (Nadasdy, 1999, 15). Both the inclusion of TK, Indigenous ways of knowing and capacity are well-documented challenges to engagement with Indigenous interests in resource development processes (Nadasdy, 1999; Usher, 2000; Ellis, 2004; Lane, 2006; Menzies, 2006; McCarthy et al., 2012).

Recognition of Aboriginal rights and title in domestic and international policy and practice, SCC decisions, co-management processes and IBAs offer opportunities to include Indigenous worldviews and interests more appropriately into resource development processes (Booth and Skelton, 2011; Bartlett, Marshall and Marshall, 2012). Additionally, sovereignty and decision-making authority (Wilkins, 2003; Ellis, 2005), capacity building to address procedural challenges (O’Faircheallaigh, 2007; McCarthy et al., 2012) and calls for regional and strategic tools (Udofia, Noble and Poelzer, 2016; Atlin and Gibson, 2017) also represent opportunities for better Indigenous engagement in resource development.

Upon election, Prime Minister Justin Trudeau's Liberal government expressed a desire to build a nation-to-nation relationship with Indigenous peoples, including strengthening their involvement in environmental decision-making (Udofia, 2016). The government also committed to implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2015 (Boutilier, 2017). Bill C-262, a private members Bill, passed the final stage in the House of Commons on May 30, 2018 (Gilmore, 2018). C-262 requires the Government of Canada to take all measures necessary to ensure that the laws of Canada are in harmony with UNDRIP. UNDRIP contains the standard of "Free, Prior and Informed Consent" (FPIC), which has been controversial in Canada. Many believe elements of the declaration, notably FPIC, to be incompatible with Canada's legal, political, and constitutional architecture (Coates and Flavel, 2016). Indigenous peoples in Canada are increasingly relying on the language of FPIC, UNDRIP and the federal government's commitment to implementation in order to gain greater control over activities on homelands (Papillon and Rodon, 2016).

Co-management processes show "substantial promise as a way of dealing with natural resource-based conflicts" given their ability to "foster a sense of community empowerment as local stakeholders participate meaningfully in decision making and benefit sharing" (Castro and Nielsen, 2001, 230). However, critiques of co-management with Indigenous peoples report that such processes often fail to include equal power sharing arrangements or initiatives for Indigenous self-determination (Castro and Nielsen, 2001; Nadasdy, 2005; Craig, 2002). Clark and Strack (2017) view these critiques as threats to the principles of co-management as they deny the agency of Indigenous peoples "who achieved their land claims and the hard, ongoing efforts" of Indigenous and non-Indigenous peoples to "simply make co-management work because they believe in it" (73).

IBAs between industry and Indigenous communities include employment commitments or revenue sharing in exchange for cooperation and support for a project. They are often private or confidential (Cameron and Levitan, 2014; Papillon and Rodon, 2016; Udofia, Noble and Poezler, 2016). While IBAs may represent a negotiated form of consent for a project, they can also contribute to narrowing that consent to trade-offs over economic considerations, as decided through elite negotiations with very little input from the community (Papillon and Rodon, 2016). However, Cameron and Levitan (2014) argue that IBAs represent mechanisms for self-determination as they enable Indigenous jurisdiction over "what was always their responsibility" (45).

IBAs may also alleviate procedural barriers to engagement with Indigenous interests in resource development. They establish opportunities for earlier engagement in project planning and development and thus may result in greater opportunity to influence the management of activities on

Indigenous homelands (Galbraith et al., 2007; Whitelaw et al., 2009). In an analysis of IBAs in Australia between Aboriginal peoples and developers of mining projects, O’Faircheallaigh and Corbett (2005) conclude that negotiated agreements have the potential to enhance Aboriginal participation. However, they found that in practice, IBAs reduce opportunities for Aboriginal participation in environmental management given the “weak position” of many Indigenous communities compared with the resource development industry (O’Faircheallaigh and Corbett, 2005, 629).

Indigenous sovereignty and self-determination are increasingly recognized in policy and practice, including the SCC’s 2014 *Tsilhqot’in* First Nation decision. However, Crown recognition of Indigenous sovereignty remains limited. Recognition of Indigenous sovereignty would require Canada to “go further and redefine its relationship with aboriginal people by recognizing that aboriginal nations were sovereigns who held exclusive title to their lands before settlers arrived” (Youngblood Henderson, 2002; Blackburn, 2007, 631; Alfred, 2009). Similarly, McCreary and Milligan (2014), in their analysis of Carrier Sekani experiences with the Enbridge Northern Gateway project argue that the dominant interpretation of Crown sovereignty is “based on the suspension of Indigenous jurisdictional claims” which “serves as the only basis for recognition of Aboriginality” (120). Indigenous articulation of sovereignty and self-determination are often perceived as a threat to the “territorial integrity of the countries in which they reside, and thus, a threat to state sovereignty” (Corntassel and Bryce, 2009, 155).

As demonstrated above, substantive and governance challenges, as well as opportunities for effective engagement with Indigenous interests in resource development are well documented. Significant challenges include the ongoing and lasting impacts of colonialism, procedural challenges such as language and cultural barriers, capacity issues for Indigenous communities and appropriate inclusion of TK. While opportunities exist, including increasing recognition of Indigenous self-determination and sovereignty, these are also limited by questions of power, authority and settler-state sovereignty. It may be possible to design resource development processes to serve as appropriate tools for addressing some of the above but these processes too are faced with their own specific challenges and opportunities.

2.2.1. Indigenous Interests in Regional Land Use Planning (RLUP)

RLUP faces specific substantive and governance challenges for effective engagement with Indigenous interests. Planning has historically played a role as a colonial tool for the marginalization of Indigenous communities and its support for European developmentalism has helped to maintain inequitable power

relations (Lane, 2006; Porter, 2006; Hibbard et al., 2008; Matunga, 2013). The inclusion of Indigenous peoples as stakeholders in planning perpetuates inequities as it fails to recognize planning as a practice conducted by Indigenous peoples since time immemorial (Booth and Muir, 2011; Hardess and Fortier, 2013; Matunga, 2013).

However, more recent planning initiatives offer an alternative model of Indigenous engagement, occurring earlier in the process when “alternative options for development are still viable and broader policy issues open for debate” (Udofia et al., 2016, 43). Land use planning is a more flexible tool compared to EA as EA follows a predetermined route, whereas planning is best developed through the inclusion of multiple perspectives and can therefore be more adaptable (Hodge and Robinson, 2001; Lein, 2003, Lane et al., 2006). This may lead to more effective attention to Indigenous concerns at the regional scale and more effective Indigenous engagement and consultation at the project level (Noble et al., 2012). RLUP is a “very pertinent lens through which to address state responses to Indigenous claims” due to its fundamental concern for “organization and management of lands and resources, the importance of place, and support for democracy” (Hibbard et al., 2008, 138). Planning’s broader scale offers opportunities for Indigenous peoples to assert rights and raise interests and concerns early in the decision-making process (Porter, 2004, 2006; Hardess and Fortier, 2013).

Critical perspectives of RLUP for effective engagement with Indigenous interests note that planning remains the domain of “the state and the state-based planner” (Porter, 2006, 391). Porter (2006) thus calls for a re-examination of planning techniques and an acknowledgement of planning’s “complicity in colonial dominion over space” along with rendering these processes “visible to planners” (394) so as to allow opportunities for transformation towards equitable planning for Indigenous peoples. Planners are in a unique position to address Indigenous interests, given planning’s interdisciplinary nature, its focus on long-term strategic initiatives such as land use and conservation, determination of pace and scale of development and threshold determination to address cumulative effects concerns (Pezzoli, 1997; Hibbard et al., 2008; Jojola, 2013; Porter, 2006; Galbraith, 2014; Noble and Udofia, 2015).

Indigenous planning is a subset of planning scholarship, which refers to practices of planning work with/by/for Indigenous communities (Jojola, 2008), Indigenous approaches to stewardship, law and governance (Turner and Berkes, 2006), an empirical research focus on events and processes resulting from Indigenous engagement with state planning (Hibbard et al., 2008), or a critical engagement with planning thought and practice especially in response to its complicity in the history of colonialism that persists to this day (Porter, 2010; Galbraith, 2014). Work in this field rests on

recognition that “while planning spaces operate in ways that tend to be colonial, certain conditions and mechanisms are available in these systems that can be used to open up (perceived) opportunities to change development outcomes while also changing the way this system implements reconciliation” (Galbraith, 2014, 454).

Planning is an inherently political process. On the one hand, it is an appropriate tool to address Indigenous interests as it offers opportunities for affected communities to participate in strategic decision-making about land use, conservation and the pace and scale of development (Booth and Skelton, 2011; Noble and Udofia, 2015). Culturally appropriate or community-based planning initiatives offer socio-economic development opportunities for Indigenous communities. On the other hand, many of these approaches fail to appropriately consider the capacity strains facing such communities (Hibbard and Adkins, 2013). Lane and Corbett (2005) conclude that even the agendas of community-based initiatives or bottom-up planning approaches continue to reflect “the cultural priorities of non-Indigenous peoples” (153). They also conclude that “epistemic barriers” exist to accommodating Indigenous interests (153).

Nadasdy (2003a) in writing about Canadian comprehensive land claims and self-government agreements argues that the concept of Aboriginal title is based on the European concept of property. He argues it is “incompatible with many Canadian peoples’ views about proper human-animal/land relations” (247). Planning processes flowing from comprehensive land claim agreements, such as those in northern Canada, are thus premised on property rights and may have altered Indigenous relationships with land and animals. Although they were entered into as a way to protect Indigenous ways of life from “Euro-Canadian encroachment” (258), they have obscured “the fact that there are other ways to conceive of the relationships between humans and land/animals” (258). Consequently, they ensure that “property remains a hegemonic discourse in the arena of aboriginal-state relations” (258). The European concept of private property and land ownership is a problematic concept for engagement with Indigenous worldviews and interests in planning.

Even planning’s inconsistent but frequent focus on conservation, the preservation of wilderness or creation of protected areas has been acknowledged by many scholars and Indigenous peoples as inconsistent with Indigenous worldviews of homelands (Cronon, 1996; Nadasdy, 1999; Watson, Alessa and Glaspell, 2003; Hibbard et al., 2008; King, 2010; Jago, 2017). The wilderness conservation movement began during the late nineteenth century and influenced the preservation of nature through national park programs across North America (Cronon, 1996; Jago, 2017). Johnson and Murton (2007) note that the north American national park movement frequently meant “locating and containing a

Native presence at specific sites, detaching them from the landscape which was then encountered and described as devoid of human occupation” (123). Cronon (1996) addresses the irony of these actions, noting “the removal of Indians to create an “uninhabited wilderness” – uninhabited as never before in the human history of the place – reminds us just how invented, just how constructed, the American wilderness really is” (16). Robert Jago (2017) notes that these actions continue to this day, citing the example of the Government of British Columbia establishing the Surrey Bend Regional Park within the territories of the Katzie and Kwantlen , land that is on the negotiation table as part of the Katzie treaty process. However, some authors argue co-management of protected areas between Indigenous communities and governments is emerging as a tool for conservation while continuing Indigenous use. It also functions as a tool for communities to establish sovereignty over territory and natural resources (Stevens, 1997; King, 2010).

Planning initiatives premised on socio-economic development may be at odds with Indigenous worldviews. Hibbard and Adkins (2013) argue that neo-classical views of economic development are “fundamentally at cross-purposes with Indigenous cultures” (96). Thus, culturally appropriate development is needed to strengthen Indigenous capacity and cultures, including recognizing colonial boundary making and Indigenous sovereignty. Colonial boundary making refers to “spatial or geographical, political/administrative, and even cognitive boundaries (the boundaries of identification that separates ‘us’ from ‘them’)” (Cornell, 2013, 35). Colonialism disrupted Indigenous governance structures and imposed policy and administrative boundaries such as political borders, citizenship, geographic boundaries of reserve space or title and international boundaries that “sometimes divide Indigenous nations” (49). These boundaries represent challenges to engagement with Indigenous interests in planning processes given their conflicts with Indigenous relationships to homelands as well as their role in “expropriating Indigenous lands and organizing the management of Indigenous peoples” (Cornell, 2013, 39). Indigenous communities have started to organize across these boundaries, “enacting their own conceptions of self-determination and self-governance” (Cornell, 2013, 41). For example, the Gwich’in peoples of Alaska, the Northwest Territories and the Yukon have mobilized campaigns and initiatives since the late 1980’s to protect the migratory Porcupine Caribou herd from oil and gas exploration and drilling in what is now the Arctic National Wildlife Refuge (Berger, Kennett and King, 2010; Cornell, 2013). These initiatives for organization, practical manifestation and “boundary challenges” provide examples of “transformative planning” (Cornell, 2013, 53). Specifically, Cornell (2013) remarks that these are examples of Indigenous Nations that “are building new organizational foundations for action” (53).

Sovereignty is key to Indigenous development as it “gives the community control over the administrative structures that design and implement the processes through which development goals are conceptualized and over the policy-making apparatus that puts them into effect” (Hibbard and Adkins, 2013, 101). Including self-determination and sovereignty within planning requires shifting the mindset of non-Indigenous consultants and planners (Hardess and Fortier, 2013). Plans are only effective if they are appropriately implemented. Mannell et al., (2013) note that the “most common complaint about planning is that strategies often end up on shelves, collecting dust and have no real impact on community” (138). It is fundamental to a plan’s success that it be implemented in order to make the desired future (as determined by the community) a reality. Additionally, it is impossible to predict and evaluate all potential scenarios given the complexities of the factors and their interactions, thus plans must include monitoring, review and adaptation phases (Lane and McDonald, 2005).

Hibbard et al. (2008) address the mounting recognition of the rights of Indigenous peoples, including growing land bases and application of Indigenous planning paradigms, although these are “threatened by rapid development, pollution and loss of resources” (142) given current unsustainable socio-ecological practices. Many of the conflicts over development activities and cumulative effects concerns between Indigenous peoples and the state are playing out in the domain of project level EAs (McCreary and Milligan, 2014). Olangunju and Gunn (2016), in a literature review centring on the relationship between planning and assessment, note that the “debate regarding the exact nature of the relationship [...] has been extensive in both planning and policy literature” (69). However, the underdeveloped link between planning and assessment remains a structural weakness of both processes (McDonald and Brown, 1995; Kennett, 1999; Duinker and Greig, 2006; Whitelaw et al., 2009; Gunn, Russell and Greig, 2014; Atlin and Gibson, 2017; McIvor, 2018). Limited (to no) development and implementation of RLUP in Canadian jurisdictions further limits the possibilities for broader discussion of Indigenous interests (Whitelaw et al., 2009).

Planning’s strategic focus offers opportunities for addressing cumulative effects concerns (Harriman and Noble, 2008; Atlin and Gibson, 2017). It can be applied to “identify limits, set priorities and make trade-offs” (Kennett, 2010, 46). Without planning, decisions made on a project-by-project basis tend to “focus on objectives and standard-setting for specific activities or sections, rather than on achieving cumulative outcomes” (Kennett, 2010, 46).

Canadian Indigenous communities are expressing their dissatisfaction with a lack of effective consideration of cumulative effects in resource development in the courts. For example, the Blueberry River First Nation filed a suit with the British Columbia Supreme Court in 2015, asserting that the

effects of incremental provincial approvals of industrial developments (including forestry, mining, hydroelectricity, and oil and gas) within their traditional territory has interfered with their constitutional rights to hunt, fish and trap (*Blueberry River First Nations v. British Columbia*. 2015 BCSC 1302; Atlin and Gibson, 2017; McIvor, 2018). Blueberry River was seeking an injunction to prevent British Columbia from selling 15 timber licences according to forestry plans approved in 2010 and 2011. In the end, their application was dismissed because the court was unable to establish “the balance of convenience” despite acknowledging that there was potential for irreparable harm from not granting the injunction (*Blueberry River First Nations v. British Columbia*. 2015 BCSC 1302; Atlin and Gibson, 2017; McIvor, 2018).

A similar case involving the Beaver Lake Cree Nation of Alberta has experienced considerable setbacks due to the financial implications of legal challenges (Bell, 2018). Beaver Lake launched a constitutional challenge in 2008 alleging an infringement of their treaty rights to hunt, trap, fish and gather due to the cumulative impacts of oil and gas development in their territories (Bell, 2018). McIvor (2018) maintains that by refusing to “seriously consider cumulative effects as part of the duty to consult and by limiting consultation to discrete decision without acknowledging overall project impacts, governments across the country are sanctioning the piecemeal infringement and extinguishment of Indigenous peoples’ constitutional rights” (117). Indigenous communities are therefore requesting the establishment of RLUP processes to address cumulative impacts of projects on their lands. In *Yellowknives Dene First Nation v. Canada* (2015), the Dene Nation expressed strong concerns and frustrations about gaps in responsibilities for who should monitor, mitigate and manage cumulative effects of projects (Gunn, Russell and Greig, 2014; Sandlos and Keeling, 2016). Other regions of concern for significant cumulative impacts on Indigenous peoples include the Ring of Fire region in northern Ontario given the likelihood of future mineral development in the region (Whitelaw et al., 2009; Atlin and Gibson, 2017).

RLUP faces significant substantive and governance challenges for effective engagement with Indigenous interests. These include its history of application in a colonial toolkit, its reliance on European development ideology including concepts such as property rights, protected areas and boundaries which may not align with Indigenous worldviews, as well as a lack of consideration of Indigenous sovereignty and self-determination. Then again, RLUP also offers at least potential opportunities for addressing Indigenous interests. Emerging planning paradigms discussed in the Indigenous planning literature present opportunities to engage appropriately across boundaries to address cumulative effects concerns, rights and title, self-determination, sovereignty, conservation and

sustainable socio-economic development. Planning can be especially effective if implemented explicitly to influence resource development processes, such as project level EAs. The following section outlines the substantive and governance challenges and opportunities to effective engagement with Indigenous interests in EA.

2.2.2. Indigenous Interests in Environmental Assessment (EA)

It is well established that project-level EAs are ill-equipped to address major cumulative effects (Tollefson and Wipond, 1998; Gunn, Russell and Greig, 2014), conservation needs (Stevens, 1997; Menzies, 2006), broad alternatives and overall sustainability considerations central to Indigenous interests (Atlin and Gibson, 2017; McIvor, 2018). Scholarship on the inadequacy of EA for addressing Indigenous interests in Canada is large with many case studies to support this view (see, for example, O’Faircheallaigh, 2007; Whitelaw et al., 2009; Booth and Skelton, 2011; McCearry and Milligan, 2014; Dokis, 2015). Authors have described current EA processes as inappropriate for Indigenous interests for substantive and governance reasons (O’Faircheallaigh, 2007; Lane, 2008; Booth and Skelton, 2011). Substantially, authors have described EA’s role to predict, evaluate and mitigate the ecological impacts of projects as essentially a *fait accompli* – meaning that Indigenous participation in the process is unlikely to affect the final decision in regard to whether or not the project goes forward (McDonald and Brown, 1995; Booth and Skelton, 2011; Papillon and Rodon, 2016). Recent scholarship on effective Indigenous engagement in EA has also pointed to restrictive scoping, streamlining of assessments and the limited consideration of project alternatives under recent iterations of EA legislation as significant challenges (Doelle, 2012; Gibson, 2012; Whitelaw et al., 2012; Kirchhoff, Gardner, Tsuji, 2013). Consideration of ‘alternatives to’ in project options and design may serve Indigenous interests, although attention to broad alternatives was severely limited under CEAA 2012 (Gibson, 2012).

Project-level EAs have been the primary stage for the integration of the duty to consult and accommodate under Section 35 but have traditionally served Indigenous interests poorly (Wismer, 1996; O’Faircheallaigh, 2007; Booth and Skelton, 2011; Craik, 2016; McIgor, 2018). Galbraith (2014) argues that the integration of the duty to consult into EA is “subject to considerable criticism” since it is seriously constrained by the assessment process, which relies on scientific methods of prediction and mitigation of impacts on “cultural rights” (469). As a result, it fails to address issues of Aboriginal title, sovereignty and self-determination, relationships to homelands and reconciliation central to Indigenous interests.

The 1974-1977 Berger Inquiry has long represented the high-water mark for Indigenous engagement in EA practices. Justice Thomas Berger, in his role evaluating the environmental, social and economic impacts of the proposed Mackenzie Valley pipeline project engaged 35 northern communities (Udofia et al., 2016). He concluded that the project would “pose a significant threat to Aboriginal ways of life” and thus recommended a moratorium on pipeline development until such a time that land claims had been settled (Berger, 1977; Udofia et al., 2016). The Inquiry has been heralded not only for its conclusions but also for the process by which they were reached. The Inquiry heard testimony from over 1000 residents to “hear their concerns, in their own language and own communities” (Udofia et al., 2016, 165).

Authors have commented on the importance of engaging and consulting with Indigenous communities early on in the planning of development projects (Hibbard et al., 2008; Booth and Skelton, 2011). Early consultation and engagement with Indigenous communities allows for better designed processes and Indigenous engagement (Baker and McLelland, 2003; O’Faircheallaigh, 2007; Hibbard et al., 2008) and may address issues such as project design, alternatives, enhanced mitigation options, project legitimacy and community empowerment (Meschytybe et al., 2005; O’Faircheallaigh, 2006; Fidler, 2010; Prno and Slocombe, 2012; Noble and Udofia, 2015; Craik, 2016; McIgor, 2018). Effective participation of Indigenous peoples’ in EA is “unlikely to threaten the efficiency of environmental assessment”, yet “poor engagement or lack of engagement will invariably cause delays and add costs to projects” (Noble and Udofia, 2015, 3).

Noble and Udofia (2015) set out a list of six proposed reforms to the current Canadian EA system for Aboriginal engagement (Box 2). The third and fourth call for reforms responds to the challenge of late engagement with Indigenous communities. The *Impact Assessment Act* in Bill C-69, the most recent iteration of federal environmental assessment legislation, promises to address this call for reform as it includes a 180-day planning stage of early consultations, including with Indigenous communities. This stage begins when an initial project description is submitted by the proponent. The Impact Assessment Agency is then required to consult with Indigenous groups that may be affected by the project, although the Bill (at the time of writing) does not explain the way in which these consultations will be carried out, the role of the project proponent or how the feedback received will be incorporated into the later stages of the assessment (Gilbride, Bundock and Roskey, 2018).

Box 2: Noble and Udofia (2015) six calls for EA reform

1. Investments in training programs to support Aboriginal education in EA processes
2. Enhanced financial capacity for engagement in EA activities pre- and post-project development
3. Legislative reform to promote early, front-end engagement
4. Government, not industry, the first boots on the ground
5. Disclose impacts and impact management strategies in agreements negotiated in advance of the EA process
6. Off-ramping strategic issues to regional and strategic environmental assessment

Industry, government and Indigenous communities are starting to implement strategies to address the challenges of Indigenous engagement in EA. Many of these strategies were inspired by the Berger Inquiry (Udofia et al., 2016). Other strategies include project proponents developing IBAs with Indigenous communities to build capacity and benefits from the project (Papillon and Rodon, 2016). Governments are also establishing mechanisms for Indigenous communities to benefit from resource development. For example, the Nisga'a Nation recently signed an agreement with the government of British Columbia that ensures the First Nation receives a share of the mineral tax revenue collected from the Brucejack Gold Mine (Ruiz Leotaud, 2018). Indigenous communities themselves are also developing EA regimes in order to conduct assessments of projects, such as those flowing from land claims agreements in northern Canada (Noble, 2010).

The incorporation of TK or Indigenous ways of knowing is another substantive challenge for Indigenous interests in EA, including Indigenous ecological stewardship practices not being well understood by government and thus poorly recognized in EA (Atlin and Gibson, 2017). Many of these processes have been the stage for conflicts between economy versus environment or development versus conservation values, with Indigenous communities taking direct action in various forms, including litigation, protests and blockades (O'Faircheallaigh and Corbett, 2005; Kennett, 2010; McCreary and Milligan, 2014; Atlin and Gibson, 2017). Litigation clarifying the duty to consult has primarily been the responsibility of . McIvor (2018) notes,

“First Nations have been forced to expend their energy and limited resources on litigation to defend their Aboriginal title, rights and treaty rights. In court they are opposed by governments and companies with comparatively unlimited resources derived in large part from exploiting Indigenous lands” (McIvor, 2018, 80).

Thus, these cases often further constrain capacity and leave negative legacies in the relationships between Indigenous groups, governments and proponents of resource development projects.

Follow up and monitoring is an additional challenge to effective engagement with Indigenous interests in EA processes (Howitt, 2001; Kapoor, 2001; Lane and Corbett, 2005; Mulrennan and Scott, 2005; Nadasdy, 2003; O’Fairchellaigh, 2007). Engagement with Indigenous worldviews, interests, participation and knowledge can improve monitoring by making it locally relevant and context specific (McKay and Johnson, 2017). Inclusion of TK in non-renewable resource reclamation and remediation is “often caught between complex technical discourses meant to address engineered solutions to environmental legacies” and often fails to include socio-economic injustices central to Indigenous interests (Sandlos and Keeling, 2016, 285). However, Indigenous communities are increasingly involved in follow up and monitoring initiatives such as community-based environmental monitoring, with indicators and metrics increasingly community based and culturally appropriate (O’Faircheallaigh, 2007; Angell and Perkins, 2011; McKay and Johnson, 2017).

Procedurally, the challenges of Indigenous engagement in EA are widely documented (O’Faircheallaigh, 2009; Booth and Skelton, 2011; Udofia, Noble, Poelzer, 2016). Udofia et al., (2016) summarize these as limited financial resources available to support Indigenous participation; late timing of participation in project development (Booth and Skelton, 2011); participation fatigue in intense resource development regions (Noble et al., 2012); and limited influence over project outcomes (Booth and Skelton, 2011). Others have added language barriers, complex technological terminology associated with the project, public review periods that are inappropriate to cultural timeframes and to Indigenous deliberative governance traditions, narrow project scoping and the integration of TK as further challenges to engagement with Indigenous interests in EAs (Mulvihill and Baker, 2001; Paci et al., 2002; Baker and McLelland, 2003, O’Faircheallaigh, 2007, 2009; Whitelaw et al., 2009). Natcher (2001) points to the reliance on traditional land use studies, a tool for mapping Indigenous values on landscapes, as an increasingly applied tool for meeting contractual obligations of consultation in EA. He calls this tool into question on the “basis of methodological limitations and cultural representation” including study development (often funded by industry and conducted by outside researchers) as well as control over access, use and application of knowledge (Natcher, 2001, 113). Procedural elements are closely linked to the substantial and governance elements challenging effective engagement with Indigenous interests in EA.

In summary, the substantive and governance challenges for effective engagement with Indigenous interests in EA are well documented. Given the above, many scholars, practitioners, and Indigenous peoples are working to establish innovative approaches to transform EAs to be more appropriate for Indigenous peoples (Howitt, 2001; Lane and Hibbard, 2005; Hibbard et al., 2008;

Cornell, 2013; Mannell et al., 2013). New land and resource development processes established under comprehensive land claim agreements with Indigenous peoples in northern Canada represent innovative tools for engagement with Indigenous interests, although they are not without challenges (Francis and Hamm, 2011). In the Yukon, RLUP and EA processes established under Chapters 11 and 12 of the UFA require collaboration and engagement with participating . A review of the literature on northern Canadian resource development processes, with a focus on the Yukon, is presented in the next section of this Chapter.

2.3. Northern Canadian Resource Development

Resource development in northern Canada requires careful attention to both sustainability and Indigenous interests. No historic treaties between colonial powers and Indigenous communities were ever signed in the Yukon, Northwest Territories or Nunavut. Public, scientific and industry interest in the north has increased in recent years due to impacts of climate change, infrastructure development, new governance structures, substantial conservation interest, and the availability of untapped natural resources such as diamonds, gold, base metals and silver, tungsten, uranium, rare earth elements, iron ore, zinc, copper and oil and gas (King, 2010; Canadian Northern Economic Development Agency, 2016). As of December 2013, over 30 major resource development projects were entering or moving through the EA and permitting processes across the three territories, representing an estimated capital investment of \$25 billion (CNEDA, 2016). Competing interests are playing out in the context of RLUP in northern Canada, with Kennett noting “nowhere else in Canada is there a greater range of economic, social, environmental and cultural interests at play in land use planning” (41). For the purposes of this thesis, I focus on resource development processes in the Yukon.

Resource development processes in the territories have flowed from comprehensive land claim agreements with Indigenous peoples (Fenge and Rees, 1987; Coates, 1992; Notzke, 1994, Berger, 2010). The SCC’s decision in *Calder* (1973) was the first to recognize Aboriginal title as existing within Canadian law, which led to Canada’s adoption in 1973 of a policy to settle comprehensive land claim agreements (Berger, 2010). These have since been established with some Indigenous peoples in British Columbia, Quebec, Newfoundland and Labrador, the Northwest Territories, Nunavut, and the Yukon. The Yukon underwent the devolution of federal management responsibilities to territorial and governments in 2003, which gave rise to unique RLUP and EA processes established under the UFA (Francis and Hamm, 2011; Alcantara, Cameron and Kennedy, 2012).

First Nations in the Yukon encompass all the Aboriginal people of the territory; there are no formal groups seeking recognition as Métis or Inuit (Dacks, 2004). As of the 2016 census, the population of the Yukon numbered 35,874 of whom 8,195 identified themselves as Aboriginal persons (Canada, Statistics Canada, 2016). Occupation of the land base now known as the Yukon has occurred since at least 10,000 BC and possibly earlier (Coates and Morrison, 1988). However, there is little recorded information about those that occupied the land before contact with Europeans. It is clear from archeological studies and TK that these people lived off the land, travelling seasonally (Koh, 2001). More is known about post-contact history, marked by several distinct periods of resource extraction, including the fur trade, whaling in the far north, the Klondike gold rush and development of the Alaska Highway during World War II (Koh, 2001; Halliday, 2014).

These periods of resource extraction primarily benefitted newcomers to the territory, while First Nations peoples were subjected to colonial policies of forced removal from lands, placement onto reserves and residential schooling (Gray, 2010). Angell and Perkins (2011) classify this period as the community impacts phase (1970s to mid-1990s), characterized by “a cultural politics of assimilation, a sociology of disturbance and an anthropology of acculturation” (75). In 1973, Chief Elijah Smith along with the Yukon Native Brotherhood presented the document *Together Today for Our Children Tomorrow* to then Prime Minister Pierre Elliott Trudeau in Ottawa (Coates and Powell, 1989). In it, they laid out the conditions of Yukon First Nations peoples, claimed Aboriginal rights existed and had never been extinguished in the Yukon and finally, that the government of Canada had a long-standing obligation to negotiate a treaty with the Aboriginal peoples of the Yukon (Council of Yukon First Nations, 2016). The presentation of *Together Today for Our Children Tomorrow* in Ottawa was a significant moment for Indigenous peoples in Canada as it was the first time that a document of the kind had been prepared and presented by peoples of “Native ancestry” to political figures (Council of Yukon First Nations, 2016).

The Yukon Umbrella Final Agreement (UFA) is a framework document for individual constitutionally recognized comprehensive land claim agreements between First Nations, the Yukon and Canada. It was signed in 1993 following 20 years of negotiations. It is a lengthy document establishing ownership over land, clarifying roles and responsibilities of various parties in managing the territory and setting out access to non-settlement or Crown lands, fish and wildlife harvesting, heritage resources, financial compensation and participation in the management of public resources (Alcantara et al., 2012). These resource management structures are integrated into existing systems of governance, while also formalizing new concepts of partnership between the Yukon and First Nations

(Koh, 2001). For example, Renewable Resource Councils established under the UFA are local co-management bodies for the management of renewable resources, such as fish, water, wildlife, habitat and forestry matters within traditional territories (King, 2010; Yukon Fish and Wildlife Management Board, 2017).

Land claim agreements include provisions for ownership of surface and sub-surface rights to areas within the land claims settlement area (known as settlement land parcels). Settlement land parcels for Yukon First Nations were established over 41, 595 square kilometres, nearly 9% of the Yukon's total land base (Duerden, 1996; Natcher and Davis, 2007). First Nations control if and how development can proceed on these parcels, although that control may be subject to "justified Crown infringement" (Berger, 2010; Northern Development Ministers Forum, 2013). Eleven of the 14 First Nations in the Yukon have signed, ratified and are in various stages of implementing their land claim agreements. Along with a comprehensive land claim, each First Nation also signs a separate self-governing agreement. While land claim agreements enjoy constitutional recognition under S. 35, provisions relating to self-government explicitly do not enjoy this constitutional entrenchment (Dacks, 2004). Angell and Perkins (2011) classify the mid 1990s to the present in the Yukon as the phase of community continuity in resource development, characterized by "political empowerment, participatory social impact assessment, and the influence of cultural ecology" (75).

Perspectives on comprehensive land claims policies vary with some scholars and Indigenous communities arguing they can be the first phase in decolonialization (Saku, 2002; Berger, 2010) while others are more critical (Alfred, 2009; Horne, 2010; King, 2010; Nadasdy, 2012; Samson, 2016). Favourable perspectives on land claim agreements argue that they represent new forms of governance, recognizing Indigenous sovereignty, as they allow for the control over the use of lands and resources. Land claim agreements also ensure greater clarity about land ownership and use, resource protection, economic development as well as protection of land and water (Berger, 2010).

Critical perspectives view land claims as tools of dispossession for the termination of collective rights in order to enable resource development on traditional homelands (Blackburn, 2005; Diabo, 2013; Samson, 2016). Samson (2016) argues that the methods by which agreements are achieved result in unjust and inequitable agreements. These include the social and political requirements of land claim negotiation, such as the need for Indigenous communities to establish structured governments recognized by Canada as well as the need to hire outside lawyers and consultants during negotiation and implementation. He argues that land claims are tools for the depletion of Aboriginal rights as they result in agreements that are inconsistent with Indigenous governance processes and relationships to

homelands, for example the establishment of colonial borders and boundaries. Finally, he notes that in land claims negotiations, “prior Indigenous occupation is therefore simply to be ‘reconciled’ [with Crown sovereignty] not treated as sovereignty itself” (Samson, 2016, 96). Finally, effective Indigenous sovereignty is limited by reliance on federal government funding transfers.

The comprehensive land claim agreements in the Yukon set out a unique set of circumstances, which may allow for broader consideration of First Nations interests in resource development processes. These may contrast with regions of Canada not subject to such governance and land management mechanisms (Duerden et al., 1996; Berger, 2010). Key provisions of the UFA for resource development include Chapters 11 and 12 for regional land use planning and development assessment. Regional planning under Chapter 11 supports the transition from Crown control of lands to collaborative Regional Planning Commissions or Boards. Plans must incorporate traditional knowledge and experience and promote sustainable development, as defined under Chapter 1 of the UFA (Francis and Hamm, 2011). Chapter 11 sets out provisions for land use planning for eight distinct planning regions within the territory (See Figure 5, Chapter 4). To date, only the North Yukon regional plan has been completed and approved and is under implementation (Staples et al., 2013). Plan development and implementation was stalled due to tensions and process concerns raised during planning for the Peel Watershed and associated legal challenges (Staples et al., 2013). These are discussed in greater detail in Chapter 4.

Chapter 12 of the UFA sets out provisions for development assessment as well as a relationship between Chapters 11 and 12, requiring conformity checks between regional land use plans and project applications (section 12.17.1). In order for tiering between RLUP and EA to be effective, it must be law-based and have public credibility (produced in a properly open, comprehensive, participative and accountable process, and regularly reviewed to keep up to date) (Atlin and Gibson, 2017).

EA in the Yukon is conducted under the *Yukon Environment and Socio-economic Assessment Act* (YESAA). In regions subject to RLUPs, proponents would have greater certainty as to whether a proposed undertaking would be accepted, based on whether or not its effects and their associated potential for contributions to regional cumulative effects would comply with the requirements and expectations of the regional plan (Kennett, 2010; Atlin and Gibson, 2017). Regional plans focusing on long-term desirable and sustainable futures as well as Indigenous interests may ensure better designed resource development projects. Calls for effective and efficient planning to guide individual project planning and assessment is a recurring theme in the north (Kennett, 2010).

In developing provisions for resource management under the UFA, the Yukon adopted a language of sovereignty, which may be “viewed as the legacy of colonial rule, of federal efforts to incorporate Yukon First Nation peoples more firmly into the Canadian state” (Nadasdy, 2012, 506). However, the UFA is also a product of resistance to colonialism, a result of “years of struggle and compromise” (Nadasdy, 2012, 506). Nadasdy’s (2012) overall argument is that land claims have substantially altered Yukon First Nations relationships to one another, moving from relationships of “kinship, reciprocity, and co-residence” to “territorialized conflict” (523). His analysis has implications for regions subject to overlapping claim areas between Yukon First Nations as territorial ownership is key to the certainty of RLUP and EA processes (Nadasdy, 2003; King, 2010). Duerden’s (1996) evaluation of Yukon First Nations participation in RLUP processes concluded that “conventional planning is a cultural artefact that is unable to accommodate First Nation perspectives adequately” (122). Participation of First Nations in planning processes was limited by the structures and practices of planning.

In 2010, as part of the CIBC scholar in residence lecture, Thomas R. Berger, Steven A. Kennett and Hayden King argued contrasting perspectives on planning in northern Canada. Justice Thomas Berger (of the Berger inquiry) presented an overview of the RLUP process for northern Canada, flowing from SCC decisions, policy initiatives and comprehensive land claims, and argued in favour of northern RLUP processes established under comprehensive land claims. In summary, Berger argued these processes establish a “new relationship between Canada and its Aboriginal peoples” (Berger, 2010, 27).

Kennett argued that northern planning is both an opportunity and an imperative. He commented that it offers openings to “seize new opportunities, minimize adverse effects, ensure orderly development, and identify and protect the values that are important to Northerners and other Canadians” (39). He then offers recommendations for improving northern planning. These follow three broad principles – to “begin with the end in mind, think outside the conservation-versus-development box- and demonstrate long-term commitment to lead and support planning” (53)⁵.

⁵ Kennett’s (2010) list of recommendations for improving Northern RLUP:

1. Begin with the end in mind: clarify expectations at the front end establishing clear terms of reference;
2. Clarify expectations for first generation plans: address pressing issues while ensuring plans remain adaptable and flexible;
3. Getting to yes: provide policy direction and political context: make difficult choices at the outset and offer innovative solutions to problems;
4. Thinking outside the conservation-versus-development box: Interests are more nuanced, improve the regulatory system to prevent such conflicts;
5. Expand the toolkit: apply management triggers and intensity limits rather than traditional zoning practices;

Hayden King (2010) offered a more critical analysis of engagement with Indigenous interests in northern RLUP processes, commenting, “Indigenous notions of governance and relationships with the land are considered, but ultimately ignored and excused, while traditional Southern solutions and discourses are uncritically adopted” (King, 2010, 79). RLUP processes premised on institutional and cultural assumptions fail to effectively consider Indigenous interests and worldviews. These assumptions affect process design, structure and implementation regimes. Additionally, the surrender of Aboriginal title in comprehensive land claim agreements, for a say in how land is managed is a “sacrifice for Indigenous people – even more so when the nature and structure” of these processes is examined (83). King calls for critical Indigenous reflection on how RLUP processes are designed and implemented in order to correct institutional power imbalances, recognize Indigenous worldviews and interests, relationships to land, sovereignty and governance. His recommendations are for governments to divest power, for Indigenous peoples to increase their literacy in bureaucratic discourse and to develop “earnest appreciation of different philosophical and technical knowledge” (105). While they approach this issue from different perspectives, Berger, Kennett and King agree that the north is likely to change in the coming decades, that it has gained importance in the Canadian socio-cultural, economic and political landscape and that RLUP processes offer opportunities to address these shifting interests (Voyer, 2010).

A lack of established and implemented RLUPs in the Yukon has meant that most resource development assessments are conducted on a project-by-project basis under YESAA without strategic guidance. Northern EA processes established under comprehensive land claim agreements face many of the same challenges as other EA regimes, in addition to the criticisms lobbed by King (2010) and others – concerns regarding cultural compatibility, resource accessibility, point of involvement and process clarity (Dokis, 2015). Indigenous communities in the north may be additionally cautious of non-renewable resource development due to ecological and social histories of long-term legacies as well as northern ecologies being subject to higher potential for significant adverse environmental impacts (Kennett, 2010; Sandlos and Keeling, 2016; Atlin and Gibson, 2017). However, communities may also see the benefits of development, including new revenue opportunities for First Nations communities (Dacks, 2004; Kennett, 2010; Halliday, 2014). These may increase as confidence in EA regimes increase. If proposals are to receive more positive attention in northern Canada, effective

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6. Create a sustainability fund to better align interests and incentives: allocate non-renewable resource revenue to a sustainability trust fund to stabilize and support northern economies in the long-term; and
 7. Get the right people on the bus: membership and participation are critical as is ensuring stable funding sources.

attention to conservation, protection of ecological and cultural values, cumulative effects, meaningful consultation, fair distribution of benefits, improved remediation practices and contributions to sustainability would be required (Kennett, 2010; Sandlos and Keeling, 2016; Atlin and Gibson, 2017).

2.4. Chapter Summary and Challenges and Opportunities for Attention

The purpose of this chapter was to review the literature central to the research questions and objectives in order to develop a set of challenges and opportunities for attention in specifying the eight broad, generic sustainability assessment criteria developed by Gibson et al. (2005). Both substantial and governance challenges and opportunities emerged from this review regarding sustainability and Indigenous interests in northern Canadian resource development processes. These are summarized in the table below.

Table 1: Substantive and Governance Challenges and Opportunities for Sustainability and Indigenous Interests in Northern Resource Development

	Substantive	Governance
Sustainability in Resource Development	<ul style="list-style-type: none"> ➤ Socio-ecological systems bounded within ecological limits ➤ Non-renewable resource development associated with ecological, social, cultural and economic legacy effects ➤ Cumulative effects concerns ➤ Opportunities for viable future livelihoods 	<ul style="list-style-type: none"> ➤ Collaborative decision-making processes ➤ Application of the precautionary principle ➤ Contributions to sustainability included in RLUP/EA ➤ Effective implementation/tiering of RLUPs to guide/influence EA
Indigenous Interests in Resource Development	<ul style="list-style-type: none"> ➤ Altered relationships to homelands due to colonialism (invisible losses); preservation of cultural identity and values ➤ Epistemological and technical challenges to the inclusion of TK ➤ Political/power dimensions of decision-making ➤ Recognition of Indigenous sovereignty and self-determination (UNDRIP, SCC decisions, co-management, IBAs) 	<ul style="list-style-type: none"> ➤ Procedural challenges: language/cultural barriers; geographic isolation; lack of resources; consultation fatigue; capacity strains ➤ Legal principles: Duty to Consult; honour of the Crown ➤ Early planning and engagement ➤ Worldview inconsistencies: borders/boundaries; conservation; development ➤ Flexibility and adaptability ➤ Cumulative effects concerns
Northern Resource Development	<ul style="list-style-type: none"> ➤ Slow ecological recovery rates at higher latitudes; monitoring and remediation ➤ Resource accessibility (remote regions) 	<ul style="list-style-type: none"> ➤ Decision-making under provisions of comprehensive land claim agreements (meaningful consultation and engagement in decision-making)

<ul style="list-style-type: none"> ➤ Attention to conservation values (conservation v. development) 	<ul style="list-style-type: none"> ➤ Effective tiering between planning and project assessment – cumulative effects concerns ➤ Protection of ecological and cultural values ➤ Fair distribution of benefits
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In keeping with the holistic requirements of progress towards sustainability, the initial framework (below) is based on a core set of generic sustainability assessment criteria, which are then specified to address the challenges and opportunities identified in this literature review. Keeping with Gibson et al.’s (2005) criteria, the components of this framework are overlapping and mutually supporting. Attention must also be placed on the interacting effects between categories and criteria (Gibson, 2011). Following Gibson’s (2017) steps for criteria specification, criteria were simplified and translated into a manageable set of categories (See [Appendix B](#) for simplification methodology). Gibson (2017) states,

“The most appropriate categories for the specified criteria may often be a combination of generic criteria categories with names adjusted to local understandings and big issue areas specific to the case, with the whole package designed to be comprehensible as well as comprehensive. The final set of categories may be the product of several iterations and re-organizations as the key considerations are clarified and various framings of the generic and local considerations are tested” (14).

The framework is in scope and purpose sustainability-based and thus inherently oriented towards the future. The criteria are meant to be applied to current or future resource development processes to determine challenges, opportunities and areas for improvement for northern sustainability and Indigenous interests.

The initial framework below will be further specified to the case study of the Peel Watershed planning process from challenges and opportunities for attention emerging in Chapter 4. Additional specification will be undertaken following presentation of findings from interviews with key stakeholders in the planning process in Chapter 5. The additionally specified framework is presented in the conclusion to Chapter 5.

2.5. Initial Framework

<p>1. Socio-ecological system integrity</p> <ul style="list-style-type: none">➤ Maintaining ecosystem services and respecting ecological limits (including water quality and quantity, species diversity)➤ Ensuring attention to northern Canadian ecologies and rapidly changing conditions (for example: from the impacts of climate change)➤ Applying contribution to sustainability tests to any resource development projects➤ Applying the highest degree of the precautionary principle for any non-renewable resource developments, including ensuring adequate attention to monitoring and follow-up➤ Ensuring attention to and effective assessment of the cumulative effects of any resource developments, regional plans to be appropriately applied to guide project-level developments and set allowable thresholds for development
<p>2. Livelihood sufficiency and opportunity</p> <ul style="list-style-type: none">➤ Ensuring continued livelihood sufficiency of resource users, including protection of traditional economy values and building opportunities for resource revenue sharing and economic diversification.➤ Developing opportunities for future livelihoods including traditional economy and avoidance of boom/bust effects associated with non-renewable resource development
<p>3. Equity</p> <ul style="list-style-type: none">➤ Increasing attention to intragenerational equity including Indigenous interests, building capacity and sustainable economic opportunities➤ Ensuring planning focuses attention on intergenerational equity including the rights of future generation to the sustainable use of renewable and non-renewable resources (with attention to seven generations model)➤ Attaining and distributing lasting and equitable social and economic benefits
<p>4. Socio-economic civility and democratic governance</p> <ul style="list-style-type: none">➤ Encouraging and supporting application of Indigenous sovereignty, authority and decision-making, including applying the honour of the Crown and reconciliation as guiding frameworks➤ Enhancing public engagement and collaborative decision-making, maintaining transparency and openness throughout resource development processes➤ Enhancing capacity for meaningful stakeholder and Indigenous participation/engagement
<p>5. Respect for and inclusion of Indigenous Worldviews</p> <ul style="list-style-type: none">➤ Preserving the cultural identity and values of Indigenous peoples within a changing northern society➤ Enabling Indigenous people to be equal and full participants in the development of the economy and society➤ Enhancing appropriate and meaningful engagement with TK and ways of knowing (applying best practices, innovative approaches such as two-eyed seeing approach)
<p>6. Precaution, adaptation and integration</p> <ul style="list-style-type: none">➤ Avoiding trade-offs between long-term needs and short-term gains➤ Building understanding of rapidly changing ecological/political/economic northern contexts➤ Promoting effective implementation between planning and assessment (including monitoring, evaluation, remediation and follow-up)➤ Promoting plan flexibility and adaptability to changing circumstances➤ Seeking mutually reinforcing benefits between planning, projects and actions

The next chapter reviews the research design and case study methodology applied for the purposes of this thesis. Chapter 4 outlines the historic context of RLUP in the Yukon, the planning process for the Peel Watershed and its associated litigation. It concludes with a discussion of the implications of the SCC's decision in *First Nation of Nacho Nyak Dun et al. v. Yukon* (2017 SCC 58) as well as additional substantive and governance challenges and opportunities for attention emerging from the case study context.

Chapter 3: Research Design and Case Study Methodology

A qualitative research methodology was applied for the purposes of this thesis. In the previous Chapter, a literature review was conducted examining the challenges and opportunities of effective engagement with sustainability and Indigenous interests in northern resource development. An initial sustainability-based analytical framework was presented in the conclusion to the previous chapter. This chapter presents the research design and case study methods applied to meet the associated research objectives and questions.

3.1 Research Methods

Conducting this research responding to the research questions and meeting the research objectives required a number of qualitative research methods be applied. The five most important qualitative methods and applications were as follows: I) a literature review of the challenges and opportunities to effective engagement with sustainability and Indigenous interests in northern resource development (Chapter 2); II) development of a sustainability-based initial analytical framework based on a core set of generic sustainability assessment criteria, which are specified to address the challenges and opportunities identified in the literature review (Chapter 2); III) single case study of the Peel Watershed land use planning process, including a historical account of the planning process established under Chapter 11 of the UFA, the SCC's decision in *First Nation of Nacho Nyak Dun v. Yukon* (2017 SCC 58) as well as 34 semi-structured key informant interviews resulting in additional challenges and opportunities for attention and; IV) additional specification of the initial sustainability-based framework to address the more particular challenges and opportunities established from the case study and; V) application of the final framework for evaluation of the effectiveness of the PWPC plan and the Yukon Government plan for the Peel Watershed for meeting regional sustainability and Indigenous interests. The table below summarizes each of my research objectives, the associated research question(s), the relevant method used to respond to the research question(s) and the relevant thesis chapter(s).

Table 2: Overview of Research Design

Research Question(s)	Objective	Methods	Thesis section
<p>1. What are the challenges and opportunities to effective engagement with sustainability and Indigenous interests in resource development processes (notably northern Canadian RLUP and EA processes)?</p>	<p>Develop an initial analytical framework responding to the challenges and opportunities for effective engagement with sustainability and Indigenous interests in resource development processes, notably northern RLUP and EA processes.</p>	<p>Literature review and initial sustainability assessment specification</p>	<p>Chapter 2</p>
<p>2. How do stakeholders involved in the Peel planning process perceive:</p> <p>a. the challenges and opportunities of RLUP for sustainability interests, including the ability of RLUP to guide subsequent project level assessment effectively;</p> <p>b. the challenges and opportunities for effective engagement with Yukon First Nations interests in the RLUP process;</p> <p>c. lessons from the Peel planning process to be applied to future RLUP initiatives in the Yukon under Chapter 11 of the UFA?</p>	<p>Determine how stakeholders involved in the Peel process perceive engagement with sustainability and Yukon First Nations interests in the RLUP process for the Peel Watershed;</p> <p>Identify perceived lessons from the Peel process for future RLUP initiatives in the Yukon;</p> <p>Further specify the initial framework for application to RLUP in the Yukon including challenges and opportunities for attention from the case study context and stakeholder perceptions of the process</p>	<p>Semi-structured key informant interviews</p>	<p>Chapter 5</p>
<p>Did the outcome of the RLUP process pursued by the PWPC and the Yukon Government effectively meet regional</p>		<p>Application of additionally specified framework to evaluate PWPC plan and Yukon Government plan</p>	<p>Chapter 6</p>

sustainability and First Nations interests?		
What are the challenges and opportunities to effective engagement with sustainability and First Nations interests in regional planning in the Yukon?	Develop recommendations for policy and decision-makers for effective engagement with sustainability and Yukon First Nations interests within future RLUP processes	Chapter 7

3.2 Sustainability Assessment Specification

This thesis builds an analytical framework for the evaluation of two competing RLUPs for the Peel Watershed. Layers of context and specification were added in each chapter, beginning with an initial specification of Gibson et al. (2005) broad, generic sustainability-assessment criteria from challenges and opportunities for attention from the literature review (Chapter 2). Additional specification is presented in the following chapters, resulting in a final framework for application offered in the conclusion to Chapter 5. Insights into sustainability indicate that “long-term gains depend on intricate combinations of social, economic and ecological factors that intertwine in different ways depending on local and regional conditions” (Gibson et al., 2005, ix). As a result, Gibson et al.’s (2005) criteria are interconnected and mutually reinforcing, providing a method for “moving away from the understanding of sustainability as a system of three pillars – the economic, social and environmental – towards a more comprehensive and complex decision-making framework” (119). The eight generic criteria for progress towards sustainability are:

1. Socio-ecological system integrity
2. Livelihood sufficiency and opportunity
3. Intragenerational equity
4. Intergenerational equity
5. Resource maintenance and efficiency
6. Socio-ecological civility and democratic governance
7. Precaution and adaptation
8. Immediate and long-term integration

Specification of the generic criteria is necessary for application to case and context given their broad and imprecise nature. As a result, Gibson (2017) lays out 14 steps for criteria specification, depicted in Box 3.

Box 3: Gibson (2017) Steps for Criteria Specification

1. Take initial information about the purpose and alternatives for the potential undertaking in question
2. Identify the key case/context considerations (issues, aspirations, vulnerabilities, etc.)
3. Ensure considerations cover all the generic sustainability assessment criteria
4. Organize the considerations in a manageable number of understanding categories (with associated questions and indicators) that ensure attention to often neglected matters and recognize interactive effects, to form a criteria framework to guide all key judgements, including those about effects, comparison of options, all recommendations including enhancements and mitigation
5. Review and reconsider the purposes and alternatives
6. Adjust the criteria framework as new understandings, considerations and priorities emerge through the process
7. Develop initial specification of trade-off rules
8. Apply criteria in critical review of revised purpose definition and comparative evaluation of alternatives
9. Identify mitigation needs and enhancement openings
10. Identify trade-offs, and seek avoidance/mitigation
11. Select preferred alternative
12. Determine conditions of approval, rules for implementation
13. Monitor, review and adjust implementation in light of the criteria, conditions of approval and actual effects
14. Continue sustainability-based evaluations and response until the undertaking disappears in the mists of time

The first step of criteria specification starts with identifying the key case and context considerations (e.g. conditions, concerns and aspirations) to be “recognized (e.g. as values to be protected, or desirable opportunities to be sought, or risks and adverse effects to be avoided) and ensuring that the resulting criteria cover both of these considerations and all the general requirements for progress towards sustainability” (Gibson, 2017, 6).

Following an explorative and iterative approach, the analytical framework developed throughout this thesis was specified in steps, beginning with understanding the broad contextual issues as described in the literature and the case study context. The second step was to build additional understanding of the issues with the planning process for the Peel Watershed through interviews with key stakeholders. In this way, the sustainability criteria were specified for the studied region.

Sustainability assessment specification requires criteria to be “comprehensible and practically useful” (Gibson, 2017, 6) which at times requires simplification (through grouping into categories) and elaboration (either through questions to be addressed or indicators). An iterative process with multiple steps needs to be applied in order to specify the generic criteria for case and context applications. The concluding tables of substantive and governance challenges and opportunities for attention in chapters

2, 4 and 5 were considered to develop the final framework which was then applied to evaluate both the PWPC plan and the Yukon Government plan for the Peel Watershed in Chapter 6. Criteria simplification methodology is offered in [Appendix B](#).

3.3 Case Study Selection

This research is motivated by evident needs to address current conflicts and tensions between Canada, Indigenous peoples and environmental interests over resource development in Canada (including cases such as the Northern Gateway, Energy East and Trans Mountain pipeline projects, Pacific Northwest Natural Gas Export Terminal, and Faro Mine in the Yukon). These tensions arise from wilderness areas being taken away for development purposes, potential adverse impacts of development activities on Indigenous worldviews and interests, as well as broader sustainability concerns such as climate change, biodiversity loss or cumulative effects (Baker and McLelland, 2003; Gibson, 2017; Atlin and Gibson, 2017). Project-level EAs are often the stage for these conflicts as they have historically served Indigenous interests poorly at both the substantive and procedural levels. RLUP offers many opportunities for addressing broader issues central to Indigenous and sustainability interests but how well it can serve these interests is not yet clearly demonstrated.

Lessons from RLUP processes in northern Canada offer interesting insights into the challenges of these processes for effective inclusion of sustainability and Indigenous interests, as RLUP and EA processes are mandated under comprehensive land claim agreements with Yukon First Nations. RLUP is a priority for the Yukon as it is undergoing significant social, economic, political and ecological change (Francis and Hamm, 2011). In the Yukon, RLUP under Chapter 11 offer “opportunities for Planning Commissions with equal participation from government, First Nations and communities to prepare land use plans” (Francis and Hamm, 2011, 18). The plans must (as core principles) include TK and experience, be built through consensus and promote sustainable development (Francis and Hamm, 2011).

This thesis adopts a single case study approach focusing on the Peel Watershed RLUP process in the Yukon. This case has been selected as the planning work is recent, well-documented and is mandated by First Nations comprehensive land claims agreements. The Peel Watershed represents an interesting case because participants with contrasting perspectives and values were involved in the planning process and those processes resulted in conflicts and tensions, culminating in a case decided by the SCC in December 2017 (Staples et al., 2013; Locke and Heuer, 2015; Atlin and Gibson, 2017; *First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 58). The conflicts between the initial

planning process pursued by the PWPC and Yukon Government's subsequent modifications of the PWPC plan reveals the challenges involved in the RLUP process under Chapter 11 (Staples et al., 2013). This case has garnered controversy as "individuals, groups, organizations and both Yukon and First Nations governments have expressed different, often conflicting viewpoints on what the plan should look like" (Staples et al., 2013, 144). Given that the Peel was only the second planning region to undergo regional planning under Chapter 11, it offers opportunities to retroactively consider lessons from the process to be applied to future planning initiatives for the Peel Watershed along with future planning processes in the territory. Additionally, the Peel Watershed represents one of the last remaining wilderness watersheds in North America as it contains no permanent human settlements or other human development activities (*First Nations of Nacho Nyak Dun v. Yukon*, 2017 SCC 58).

The single case study approach is a common method to adopt when undertaking qualitative research (Patton, 2015). This method is appropriate when the researcher wants to explore a phenomenon or describe a unique situation in situ (Baxter and Jack, 2008). It is a relatively flexible approach as it allows the researcher to work towards the development of theory, while remaining focused on a unique situation.

Case studies are ideal when the researcher aims to understand the potentially conflicting opinions and perspectives on the same situation through the comparison of different social groups (Baxter and Jack, 2008). Both Baxter and Jack (2008) and Flyvberg (2006) discuss how the case study approach allows for contextual conditions of a scenario to be emphasized within the research by adopting a more narrative approach to illuminate the case study. Flyvberg (2006) argues that social science research can benefit from an increase in individual case study research in order to understand complex social phenomena and situations, and this approach may be more generalizable than first imagined. Patton (1988) notes that case study research is "particularly useful where one needs to understand some particular problem or situation in great depth... a great deal can be learned about how to improve a program by studying dropouts, failures or successes" (19).

The case study in this thesis is conducted adopting a purely qualitative approach through a reliance on documents from the planning process, literature on territorial planning and 34 semi-structured interviews with key participants involved in planning for the Peel Watershed. These methods were used to document the emergence of patterns in relation to the challenges and opportunities to effective engagement with sustainability and Indigenous interests in the planning process for the Peel Watershed. Findings from interviews with participants are reviewed in Chapter 5.

3.4 Semi-Structured Interviews

Qualitative interviews allow researchers to speak with people who have experiences related to their research questions to find out about the way they interpret events, experiences and relationships or the way they think and feel (Fylan, 2005). Interviews offer insight into how behaviours, systems and relationships change or are maintained and may also provide additional insights into how organizations function.

Semi-structured interviews are “conversations in which you know what you want to find out about – and so have a set of questions to ask and a good idea of what topics will be covered – but the conversation is free to vary and is likely to change substantially between participants” (Fylan, 2005, 65). Semi-structured interviews use a predetermined list of questions yet allow for flexibility in that modifications to the order of questions can be made based on what the researcher deems most appropriate, question wording can be changed and explanations given, inappropriate questions for a particular participant may be omitted or additional questions or prompts included (Fylan, 2005). This flexibility makes semi-structured techniques well suited for answering ‘why’ questions. It is particularly useful for exploring views and opinions regarding complex and sometimes sensitive issues (Barriball and While, 1994; van Teijlingen, 2014).

For the purposes of this thesis, semi-structured interviews were conducted face-to-face with participants. A few interviews were conducted over the phone if the timing or location of participants would not allow for a face to face interview. A total of 34 interviews with key stakeholders involved in the Peel Watershed planning process were conducted. These interviews helped develop an understanding of the challenges and opportunities to effective engagement with sustainability and Yukon First Nations interests in the Peel Watershed planning process as well as lessons from the process to be applied to future planning initiatives established under Chapter 11. Although a literature review and document review were also undertaken for the purposes of this thesis, such methods fail to incorporate the perceptions of individuals directly impacted by, and involved in, these processes. The inclusion of key stakeholder interviews conducted in the Yukon added depth and context when seeking to answer the research questions. These interviews also helped to develop case and context specific criteria to further specify the initial framework established in Chapter 2.

3.4.1. Sampling and Recruitment

The sampling approach applied for this study was a mix of purposive sampling and snowball sampling. I first applied a purposive sampling approach in order to directly recruit participants based on their

knowledge of, or involvement with, the Peel Watershed RLUP process. Purposive sampling is useful in recruiting participants based on specific characteristics such as being closely involved with, or tied to, the research topic (Bradshaw and Stratford, 2008).

Participants for this study were identified prior to my May 2017 arrival in the Yukon through a screening of key documentary evidence from the Peel Watershed planning process, other publicly accessible documents, such as court documents, as well as conversations held ahead of time during the Peel Watershed court hearing at the SCC in Ottawa in March 2017. Documents contained information on the groups and individuals directly involved in the proceedings of the RLUP process and associated litigation. Subsequent conversations ahead of time with representatives of First Nations during research ethics approvals processes were also conducted in order to determine participants for the study.

After compiling a list of potential participants, phone conversations with representatives of the affected Peel First Nations were held to ensure willingness to participate in the research project and to follow appropriate protocols for conducting research with their communities, including completing research agreements and submitting an application for a *Yukon Scientists and Explorers Act* permit. Following contact and approval from First Nations, I proceeded to contact other key individuals via their publicly available professional e-mail accounts. An initial contact email was sent to determine interest in participating in the study. Key individuals included government representatives (at the federal, territorial and First Nation level), First Nation community members, industry representatives and environmental non-government organization representatives with knowledge of, or involvement with, the Peel Watershed RLUP process.

In order to identify additional participants, a snowball sampling method was applied. Snowball sampling is a recruitment technique for gathering research participants through the identification of an initial subject who then provides the names of other key informants (Lewis-Beck, Bryman and Liao, 2004). During interview wrap-up, I would informally inquire with the participant if they had suggestions for additional participants. Participants were at times asked to forward an email on my behalf or to send an email introducing me to the participant determined through snowball sampling. Additional participants names were often recurrent given the size of the community. Suggested names were cross-referenced according to documents from the Peel process. Once this step had taken place, an initial contact email was sent to determine interest in participation in the study. If email was not the preferable option for contact, a telephone call using a verbal script was used to recruit participants. By the end of my time in the Yukon, snowball sampling started to yield recurring names of perspective participants. As a result, I stopped recruiting additional participants.

To gain multiple perspectives on the Peel Watershed planning process, I sought to interview participants who would serve to illustrate the often-conflicting perspectives and opinions on the case. Recruitment continued until the point of data saturation, meaning that no new findings or themes emerged from consecutive interviews (Francis et al., 2010). In total, I conducted 34 interviews with key participants involved in the Peel Watershed planning process. Participants were all over 18 years of age and included both women and men.

Table 3: Distribution of Participants by Sector

	Environmental Organization	First Nation	Government	Yukon Planning/Assessment
Participants	8	13	6	14
Total: 41				

Due to the size of the community (Statistics Canada 2016 census data indicates a population in the Yukon of 35, 874) and length of the Peel planning process (over 10 years), some participants in this research project participated in the RLUP process for the Peel in various roles and were involved with multiple organizations and sectors. As such, some participants were included in the above table as representatives of multiple sectors, which is why the total number of participants in the table above is larger than 34 (total number of interviews conducted). Participants were considered to be representatives of First Nations if they were employed by the First Nation government, they did not need to be members of the First Nation themselves.

3.4.2. Sample Representativeness

Face to face interviews were carried out over six weeks between May and June 2017 in Whitehorse, Dawson, Mayo and Old Crow, Yukon. The majority of interviews took place in Whitehorse (17 in Whitehorse, 1 interview in Mayo, 6 interviews in Dawson, 4 in Old Crow and 6 over the telephone). As Whitehorse is the capital of the territory, it is home to three-quarters of the territory’s population (Statistics Canada, 2016) and is where the headquarters of the federal, territorial and non-governmental environmental organizations are located. As a result, conducting the majority of my fieldwork in Whitehorse proved to be appropriate as most participants lived and worked in the area. Short trips were taken to Mayo, Dawson and Old Crow in order to conduct interviews with key Yukon First Nation stakeholders.

It was my goal in conducting this research to report on a broad range of perspectives, as the perspectives of those who agree to participate in a research project are those who are ultimately represented, thus excluding the voices of those who do not (or cannot) participate (Diefenback, 2009).

Unfortunately, I was unable to recruit some key stakeholders due to inability to contact them or unwillingness or inability to participate. For example, the perspectives of stakeholders from industry (mining, outfitting, tourism) are not represented in this research project. The short length of time spent in the Yukon (six weeks) may have contributed to participant availability although this was addressed by conducting some telephone interviews upon my return from the Yukon (Creswell, 2009). Finally, the time between the end of the PWPC planning process (2011) and the date of interviews (2017) may have affected the availability of participants. However, a document review from the Peel process was also undertaken in order to shed light on some of the perspectives that were not represented through interviews.

3.4.3. Ethics Review

Ethical considerations for the conduct of research with Indigenous peoples need to be carefully addressed, especially in light of the history of poorly conducted research with Indigenous communities (Castleden and Garvin, 2008, 1393). Community-based participatory research applying decolonizing methodologies offers an alternative that actively engages community members in the research process from development in order to simultaneously increase the likelihood of successful research and satisfied communities (Allen et al., 2011; Castleden and Garvin, 2008; Smith, 2012). These methodologies were not fully applied for this thesis due to personal financial and time constraints. As a result, particular care was applied in ensuring appropriate ethical requirements were met. Prior to conducting interviews, a research ethics application was submitted to and approved by the University of Waterloo's Office for Research Ethics. The application included a review of recruitment, informed consent and an interview protocol to follow. It also addressed issues of participant risk, anonymity and confidentiality. Ethics clearance from the University of Waterloo was received in May 2017 (ORE #22149).

An application for a Yukon *Scientists and Explorers Act Permit* was also completed and submitted in April 2017 to the Yukon Department of Tourism and Culture prior to beginning interviews in the Yukon. This permit is required to conduct research anywhere in the Yukon. Prior to the submission of an application for the permit, I contacted the affected Yukon-based Peel First Nations (Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitch'in First Nation) via telephone to inquire about their research agreements or research ethics processes. I submitted a research agreement application to

the First Nation of Nacho Nyak Dun, a research protocol with Tr'ondëk Hwëch'in and a research agreement with Vuntut Gwitch'in First Nation. Throughout my time in the Yukon, I ensured I was acting appropriately both ethically and culturally by maintaining openness with participants, for example by sharing my interview protocol with participants if they wished to see it ahead of the scheduled interview time or by holding interviews in a mutually agreed-upon location.

3.4.4. Interview Procedure

Interviews added insights into the effectiveness of the RLUP process for the Peel Watershed for effective engagement with sustainability and Indigenous interests as well as lessons from the Peel to be applied to future RLUP processes under Chapter 11 of the UFA. Interviews were conducted with a wide variety of participants as many different organizations, governments and people with different viewpoints participated in the Peel Watershed RLUP process.

Interviews were conducted face to face in the Yukon over six weeks, from May to June 2017. Interviews were conducted at mutually agreed upon locations such as participants' offices, homes and local coffee shops in Whitehorse, Dawson, Mayo and Old Crow, Yukon. Six interviews were also conducted over the phone as the timing or location of the participant would not allow for a face to face interview. Interviews varied in length between 30 and 90 minutes. Four interviews were conducted with two participants simultaneously as they were representatives of the same organization or government department.

With the permission of participants, a voice recording device was used so that I could focus on the interview itself. Written consent for audio-recording was granted for 31 interviews. When permission for audio-recording was not granted, hand-written notes were taken and typed as soon as possible following the interview. One participant granted verbal consent, which was received after the participant had been read the Research Ethics Information Letter and Consent Form during the call. The participant was asked to answer 'yes' or 'no' to the statements on the consent form. During and after all interviews, observational notes were taken.

An interview protocol was used to ensure consistency of questions across participants. The format of the interviews was first to ask participants general questions about their participation in the Peel Watershed planning process, followed by questions about RLUP in the Yukon, challenges and opportunities for sustainability and First Nations interests in the process, including lessons from the Peel case for future planning initiatives. Concluding questions were used as a debriefing tool and to recruit additional participants through snowball sampling. The general interview guide is included in

[Appendix C](#). The interview guide acted as a general guiding tool for structuring interviews, however questions were often dropped or added depending on participants' experiences with the Peel process, their expertise, or in response to natural conversation throughout the interview process. This is common practice in semi-structured interviews (Fylan, 2005).

3.5. Data Analysis

The following sections describe how I analyzed interview data and applied it for the purposes of specifying the eight-generic sustainability-assessment criteria developed by Gibson et al. (2005). Analysis was conducted upon return from the Yukon, between October 2017 and February 2018.

3.5.1. Transcription and Coding

Upon completion of the fieldwork, each audio file was stored as an MP3 file on my personal computer. I undertook the process of transcribing the interviews verbatim, after all the interviews were completed. Transcription was done in full to reduce selection bias and to enhance familiarization with the data (Rowley, 2012). For interviews that were not audio recorded, typed notes were used rather than full transcripts for subsequent analysis.

Once the transcription process was complete, I began the analysis of interview data through open coding in order to identify common threads running through participant responses (Gläser and Laudel, 2013). My coding process was inductive and iterative. I first read over the entire interview transcript in order to elevate familiarity and to immerse myself with the data, recording preliminary ideas of the important themes and concepts as they emerged (Burnard, 1991; Gläser and Laudel, 2013). I then conducted an open coding stage, where I generated categories freely throughout the interview transcript (Burnard, 1991; Gläser and Laudel, 2013).

Subsequently, I conducted an additional round of coding, comparing participants' responses across questions, in order to determine recurring ideas or themes across participants' responses (Gläser and Laudel, 2013). These were recorded in coding tables, inspired by the tables used by Silverman and Patterson (2015). These tables also recorded any quotes that were particularly relevant or descriptive of the theme (Table 4). Themes developed at this stage were focused codes, meaning open codes were combined under broader categories.

Data were coded manually rather than relying on costly coding software, such as NVivo. This coding process was undertaken in order to search for patterns in the data and to organize data to reduce quantity (Cope, 2008; Gläser and Laudel, 2013). Qualitative research often results in large quantities

of relatively unorganized information; coding assists the researcher in determining what data will be useful and how to present it in the most effective way (Cope, 2008).

Once focused codes were developed, these were grouped according to challenges and opportunities across three focus areas, aligning with the second and fourth research objectives, as well as emerging themes from the literature review. Focus areas follow the conceptual framework as described in Chapter 2 - sustainability in resource development, Indigenous interests in resource development and northern resource development. Interview results are presented in Chapter 5.

Table 4: Template of Table Used to Code Data (Based on Silverman and Patterson, 2015)

Q9: In your experience, how have Yukon First Nations interests been considered in the development of land use plans?			
Participant	Open Codes	Interview Quote	Focused Code

The purpose of this coding process was not to quantify participants’ responses (for example, by determining the percentage of participants whose response aligned with a particular code) but rather to capture the narrative of stakeholders’ perceptions of the opportunities and challenges to effective engagement with sustainability and First Nations interests in the RLUP process for the Peel Watershed.

3.5.2. Plan Evaluation

Following the specification and development of the analytical framework in Chapters 2, 4 and 5 – the framework was applied to evaluate the effectiveness of both the PWPC plan and the Yukon Government plan for meeting sustainability and First Nations interests. Effectiveness was determined on a simple scale of *unmet*, *partially met* or *fully met* criteria. No quantitative indicators were applied to assess the plans because such approaches are often problematic in sustainability assessment as well as engagement with TK (Berkes and Berkes, 2008; Gibson, 2017). The aim of the framework application was to identify and illustrate the challenges and opportunities for attention in the RLUP process for the Peel Watershed as well as any future planning initiatives established under Chapter 11 of the UFA.

In the context of this research, criteria were deemed to be unmet if participants identified the actions, projects or guidance in the plans as representing challenges to meeting sustainability and First Nations interests or when no actions, projects or guidance was included in the plans to address the criteria in question. Criteria were deemed to be partially met if the plans included some actions, project or guidance for the criteria but where some limitations to meeting the criteria clearly existed or were

discussed by participants. Finally, criteria were deemed to be fully met if participants identified the actions, projects or guidance in the plans as opportunities to meet sustainability and First Nations interests or when actions, projects and guidance in the plans specifically addressed a criterion. Plan evaluation was conducted applying an evaluation matrix ([Appendix D](#)).

3.6. Limitations

There are limitations to this study that must be acknowledged. As discussed in Chapter 1, this thesis is not meant to be an exhaustive review of effective engagement with sustainability and Indigenous interests in resource development processes as that would go beyond the scope of a Masters' thesis project. It is also not meant to be an exhaustive review of the planning process for the Peel Watershed, given the duration and complexities of the process itself. The timeline of this project, as a Masters' thesis, restricts the scope and depth of this research. For example, decolonizing methodologies were unable to be fully applied given these limitations (Smith, 2012).

Complexities associated with this topic act as a limitation. This research draws from many related fields, including sustainability and Indigenous governance scholarship, Environmental Assessment, conservation, planning and Indigenous planning, to name a few. The purpose of this research is to yield a rich narrative, which is why semi-structured interviews were chosen for the purposes of this thesis. However, these are limited by the voices missing from the interviews, such as those from industry perspectives. While insights from this thesis may be applicable to other similar cases (Flyvberg, 2006; Yin, 2003), they are context and case dependent. Finally, my own experiences and conditioning as a non-Indigenous southern Canadian researcher may inevitably limit my interpretations of the findings of this study, which is why a personal reflection was included in Chapter 1.

3.7. Chapter Summary

In this chapter, I reviewed the research design and methodological approach applied for the purposes of this thesis. This qualitative research project applied a number of research methods to address the research questions and meet the research objectives. As noted above, the qualitative methods and applications included I) a literature review of the challenges and opportunities to effective engagement with sustainability and Indigenous interests in northern resource development; II) development of a sustainability-based initial framework specified from challenges and opportunities for attention from the literature review; III) single case study of the Peel Watershed land use planning process, including a historical account of the planning process established under Chapter 11 of the UFA, the SCC's

decision in *First Nation of Nacho Nyak Dun v. Yukon* (2017 SCC 58) as well as 34 semi-structured key informant interviews resulting in additional challenges and opportunities for attention; IV) additional specification of the initial sustainability-based framework from the challenges and opportunities established from the case study and; V) application of the final framework for evaluation of the effectiveness of the PWPC plan and the Yukon Government plan for the Peel Watershed for meeting regional sustainability and Indigenous interests.

Chapter 4 reviews the case study context, including a review of the associated litigation and the implications of the SCC's ruling in *First Nation of Nacho Nyak Dun v. Yukon* (2017 SCC 58). Chapter 5 presents the findings from the interviews with participants including challenges and opportunities for attention and concludes with the presentation of a revised analytical framework. Chapter 6 revisits the final framework, which is then applied to evaluate the PWPC plan and Yukon Government plan to determine whether sustainability and Yukon First Nations interests were effectively met. Finally, Chapter 7 concludes this thesis by providing an overview of my findings, their implications, recommendations and directions for future research.

Chapter 4: Regional Land Use Planning for the Peel Watershed

Chapter 11 of the UFA sets out the collaborative RLUP process involving Canada, Yukon and signatory First Nations (Axmann and Bildfell, 2018). It describes the organizational structure for RLUP, identifying the parties, stating the core principles that govern the process, including provisions for plan approval and implementation (Leach, 2011). The three Yukon First Nations who have not become signatories to land claims agreements do not yet have a formal collaborative process in place for land use planning in their traditional territories.

Planning under Chapter 11 is undertaken by temporary Regional Land Use Planning Commissions, which are non-government advisory bodies mandated with the responsibility of developing regional land use plans (Staples et al., 2013). They make recommendations to the Government of Canada, the Yukon Government and affected First Nation(s) as the three parties to the UFA (Council of Yukon First Nations, 2016). Commission members are nominated either by the federal government (in consultation with the Yukon Government) or by the First Nation(s) in whose traditional territory the planning region is located. A Commission usually consists of six members (appointed by the Minister of Indigenous and Northern Affairs), comprising one third nominated each by territorial or federal governments, First Nation(s) or by either or both governments and First Nation(s), depending on the demographics between First Nation(s) and non-First Nations residents in the planning region (Robins, 2007). The Commission's funding is distributed by the Yukon Government but provided by the federal government. Each Commission is required to prepare an annual budget subject to review and approval by these governments (Robins, 2007).

These independent Commissions are supported by the Yukon Land Use Planning Council (YLUPC) a "peak body coordinating community-based regional land use planning processes in the territory" (Robins, 2007, 46). The mission statement of the YLUPC is to:

"Advocate land use planning as a comprehensive means of addressing cultural, social, economic and environmental sustainability. The YLUPC promotes an open, fair and public process carried out by all Yukoners, as set out in the Yukon First Nation Final Agreements" (YLUPC, n.d.).

Eight planning regions have been roughly delineated under the UFA: North Yukon, Peel Watershed, Dawson, Northern Tutchone, Dakh Ka (includes Teslin), Whitehorse, Kluane and Kaska (see Map, Figure 5) although these are still subject to negotiation. Planning regions are based, where practicable, on the traditional territories of First Nations or groups of First Nations (Robins, 2007).

Chapter 11 leaves many “important issues unresolved” (Kennett, 2010, 53). While it specifies a number of provisions that the process should include, it does little to define exactly what is required. Leach (2011) emphasizes, “consequently, provisions dealing with public participation, timelines, linkages to other planning processes, plan substance, monitoring, and plan review are left for interpretation by the Commissions, the Parties and the YLUPC” (17). Within Chapter 11, section 11.6.0 lays out the approval process for land use plans (*Umbrella Final Agreement*, 1993).

Twenty-five years following the signing of the UFA, “land use planning is still in its early stages of development with territorial and First Nations governments learning about the process as it is carried out” (Staples, et al., 2013, 144). In this chapter, I first briefly discuss the history of RLUP processes both prior to and following the UFA, including planning for North Yukon (the only successfully approved plan in the Yukon to date), Dawson region and the Peel Watershed. I then review the litigation for the Peel Watershed and the implications of this case for resource development in regions subject to First Nations land claims or modern treaty agreements.

Figure 5: Yukon Planning Regions



Yukon Land Use Planning Council, n.d.

4.1 History of Regional Planning in the Yukon under Chapter 11

In the wake of the *Calder* decision and the Mackenzie Valley Pipeline Inquiry, the Government of Canada's Department of Indian Affairs and Northern Development began developing northern land use planning processes for the Yukon and Northwest Territories (Berger, 2010; Pike, 2014). These processes were undertaken prior to the 1982 *Constitution Act*, the *Sparrow* decision and the signing of the UFA in 1993. The Yukon Land Use Planning Agreement ('the Agreement') was the first formal process for integrated regional land use planning in the Yukon. The Agreement led to three unsuccessful regional planning attempts for the Greater Kluane Region and one unsuccessful attempt for the North Yukon region (Leach, 2011). These plans were never formally adopted for a variety of reasons, including impeding land claims negotiations, the suggestion that the process lacked a clear decision-making model and a lack of consensus on the plans (Pike, 2014). However, these initiatives did lead to information gathering in the planning regions.

The Agreement was replaced in 1993 by Chapter 11 of the UFA under which two failed regional planning attempts have occurred – the Vuntut Planning Commission for the North Yukon and the Teslin Planning Commission for a portion of the Dahk Ka region. In both cases, the planning Commissions were disbanded and not reinstated (Leach, 2011).

While there have been numerous attempts at RLUP in the Yukon, unfortunately there is an "overwhelming lack of successfully completed, approved and implemented land use plans" in the territory (Leach, 2011, 10). The only completed and approved plan to date is the plan for the North Yukon region, discussed in greater detail in section 4.1.1.

4.1.1. North Yukon

The North Yukon planning region makes up a significant portion of the traditional territory of the Vuntut Gwitch'in First Nation and encompasses 55,548 square kilometres (or 12% of Yukon). This region is within Beringia, meaning it escaped ice sheets during the last Ice Age. During that time, it was a refuge for plants, animals and some of the first peoples in North America (North Yukon Planning Commission, 2009). There is one permanent community in the region, Old Crow. The only major all-season road in the region is the Dempster Highway (North Yukon Planning Commission, 2009). The region includes "large intact ecosystems, healthy wildlife populations, internationally recognized wetlands, a wealth of natural resources, and archeological and paleontological resources of global significance" (North Yukon Planning Commission, 2009, 1-1). Resource development interest and

activity is increasing in the region in the oil and gas and mining sectors, particularly in the Eagle Plains region (North Yukon Planning Commission, 2009).

As previously noted, various attempts at land use planning had been established in the region and failed. These attempts included one under the Yukon Land Use Planning Agreement of 1987 and another led by the Vuntut Planning Commission following the signing of the UFA in 1993. In 2003, the North Yukon Planning Commission was established to attempt, for a third time, to produce a land use plan for the region. This Planning Commission has since advanced the furthest along in the process since the signing of the UFA and is the first planning body in Yukon to produce a RLUP approved by all affected parties (Leach, 2011).

The responsible bodies for the North Yukon Land Use Plan were the two parties to the plan, the Yukon and Vuntut Gwitch'in, the YLUPC and the North Yukon Land Use Planning Commission. The Commission was responsible for developing the plan for Yukon and Vuntut Gwitch'in approval and YLUPC played a supporting role for the Commission and parties (Leach, 2011). The parties provided input into the process through two sub-committees: The Senior Liaison Committee for political direction and the Technical Working Group for technical support (Leach, 2011).

The Commission submitted a recommended plan to the parties in March 2008. This plan was reviewed by the parties and their comments gave rise to a Final Recommended Plan in January 2009. In June 2009, the plan made Yukon land use planning history when it was approved by both parties.

The North Yukon planning region is characterized by seven primary areas of concern or valued components: 1) oil and gas exploration and development in Eagle Plains, 2) land management and the Porcupine Caribou Herd, 3) future development impacts on water, 4) wetlands and riparian habitat, 5) opportunities to access land and resources, 6) transportation, and 7) climate change (North Yukon Planning Commission, 2009). Underlying these areas of concern were requirements to consider the cumulative impacts of activities on the landscape (North Yukon Planning Commission, 2009). The regional land use plan for the North Yukon is now under implementation.

Leach (2011) identified various procedural challenges of the North Yukon planning process, including missed deadlines, conflicts over deliverables and expectations, and misunderstandings. The land use planning process for the region took longer and spent more money than participants originally intended. However, Leach determined that this process was able to overcome the challenges because of a “committed group of people from government, the council and the commission, combined with a significant effort to build strong team skills, which allowed all individuals to stay focused on the end-goals” (2011, 63). She determined that this attempt was also successful because the “parties strongly

supported the process from senior levels and were able to work through common issues through an in-place intergovernmental accord” (63).

A controversial resource development project has been proposed in the North Yukon planning region, the Northern Cross oil-and-gas exploration project near Eagle Plains (Yukon Land Use Planning Council, 2014). The project has gone through the development assessment process under YESAA with a conformity check pursued by the Yukon Land Use Planning Council. In February 2017, YESAB determined the project required a higher level of assessment due to a lack of information on the project’s impacts to the Porcupine caribou herd (Garrison, 2017). The proponent applied for a judicial review of YESAB’s decision in March 2017 to push it to a higher level of assessment. The application for judicial review was rejected by the Federal Court of Canada (Garrison, 2017). Additionally, Northern Cross is involved in a lawsuit against the Yukon Government due to an April 2015 decision to close the territory to shale oil and gas development.

While the North Yukon process was underway, regional planning processes for the Peel Watershed and the Dawson region were also being pursued. The planning process for the Dawson region is discussed in the following section of this chapter. The Dawson plan was put on hold once legal proceedings began for the Peel Watershed, which arose between the First Nations of Nacho Nyak Dun, Trondek Hwech’in, the Canadian Parks and Wilderness Society and Yukon Conservation Society (Plaintiffs) and the Yukon Government (Defendants) in 2014.

4.1.2. Dawson Region

The Dawson planning region covers approximately 46,000 square kilometres in northwest Yukon. This represents around 10% of the total land mass of the territory. The planning region excludes land within the municipal boundaries of the City of Dawson, land that is already managed under a Local Area Plan, and existing protected areas (such as Tombstone Territorial Park) (Dawson Regional Planning Commission, 2013).

A regional land use planning process for the Dawson region was established in August 2011 under Chapter 11 of the UFA. Regional Planning Commissions are composed of up to six Yukon community members, based on nominations from the Parties. During the previously established planning process, the Parties in the planning region were Yukon Government, Tröndek Hwëch’in First Nation and Vuntut Gwitch’in First Nation. The First Nation of Nacho Nyak Dun was an observer to the process as per their overlap agreement with Tröndek Hwëch’in (Dawson Regional Planning Commission, 2013). The Dawson planning process is set to restart in October of 2018, and parties

announced they were seeking nominations for Commission members in July 2018 (Joannou, July 17, 2018). Vuntut Gwitch'in First Nation will no longer have representatives on the 2018 Dawson Planning Commission because a dispute over overlapping portions of their traditional territories was settled with Tröndek Hwëch'in in 2018 (Hong, May 23, 2018).

The Commission released an Issues and Interests report following consultation with affected Parties in December 2011, summarizing stakeholder input. The primary areas of stakeholder concern for the region were 1) management of cumulative effects, 2) promotion of economic diversity, 3) maintenance of ecological integrity, and 4) access as an opportunity for realizing economic potential and as a threat to sensitive areas and vulnerable wildlife populations (Dawson Regional Planning Commission, 2011). The Commission outlined four themes that would need to be addressed in the Dawson plan in their 2013 Resource Assessment Report. These were:

1. Mineral exploration and mining:

The Dawson region was the historic site of the Klondike gold rush of the 1890s (Gray, 2010) and continues to experience significant mineral exploration and mining activities. The Resource Assessment Report (2013) added “recent discoveries in the region will lead to further exploration and possible mine development. The land use plan will need to address the cumulative effects of mineral exploration, mine development and access issues” (1-4). Figure 6 below demonstrates the impacts to the landscape caused by historic and continuous mining activities in the region.

Figure 6: Historic placer mining activity in the Dawson City region (Google maps 2018)



2. Conservation of Fish and Wildlife Habitat:

The Commission’s goal was to establish a plan with a sustainable vision for the foreseeable future. This included the maintenance of healthy ecosystems, thus the land use plan must provide the “framework for identification and designation for protection of areas of high ecological significance and sensitivity” (Resource Assessment Report, 2013, 1-4).

3. Defining a “workable balance” for sustainable development:

The third theme for the plan required balancing economic development with environmental protection, which may “provide greater equity in social outcomes by sustaining traditional subsistence activity” (Resource Assessment Report, 2013, 1-4). The goal of the land use plan was to establish a framework for “evaluating the ‘workable balance’ of alternative approaches to achieving the desired future state” (Resource Assessment Report, 2013, 1-4).

4. Land use conflicts within the Yukon River Corridor

The Yukon River corridor is a key artery for the region and the Yukon. The river has multiple uses with a wide range of user groups and is a very important foundation for the subsistence rights of Tröndek Hwëch’in First Nation. The overlapping and potentially conflicting interests in the river corridor will be one of the more important issues to be addressed by the new land use planning Commission in 2018.

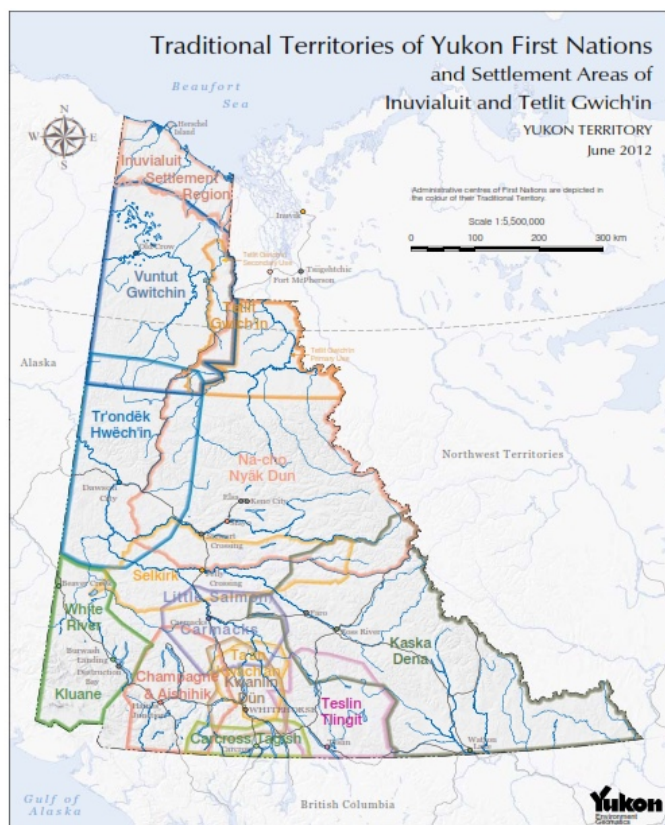
RLUP for the Dawson region was suspended as of December 1st, 2014 due to litigation surrounding the Peel Watershed planning process. The suspension of the planning process for the Dawson region was mutually agreed upon by the three parties to the planning process. After the SCC released its decision on the Peel Watershed case on December 1st, 2017, the new Yukon Government and Tr'ondëk Hwëch'in First Nation announced that they were seeking new Commission members in July 2018. The planning process is expected to restart with a new Commission in the October of 2018 (Joannou, 2018b).

4.1.3. Peel Watershed

The Peel Watershed region encompasses approximately 68,000 square kilometres (equivalent to roughly 14% of Yukon) in the northeast region of the territory. The region is unique in that it contains no permanent human settlements or other current development activities (Peel Watershed Planning Commission, 2010). The majority of the land is Crown owned or non-settlement land (97.3%) while the remaining portion (2.7%) is settlement land divided between four First Nations. The First Nations of Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitch'in as well as the Tetlit Gwitch'in, represented by the Gwich'in Tribal Council (of the Northwest Territories), have traditional territory as well as settlement land parcels in the region.

The Peel is one of the largest remaining intact wilderness watersheds in North America (First Nation of Nacho Nyak Dun v. Yukon, 2017 SCC 58). The landscape ranges from “mountains, deep canyons, plateaus, wetlands and rolling hills laced with rivers” (CPAWS Yukon, n.d.) to low, flat taiga forests. The region is “characterized by its rich water resources and abundant and diverse fish, wildlife, and plant populations” (First Nation of Nacho Nyak Dun v. Yukon, 2017 SCC 58 para. 12). This vast wilderness supports the activities of the affected First Nations. The map below (Figure 7) depicts the traditional territories of Yukon First Nations and Settlement Areas of Inuvialuit and Tetlit Gwich'in.

Figure 7: Traditional Territories of Yukon First Nations



Regional planning for the Peel Watershed began formally under the Peel Watershed Planning Commission (PWPC) in 2004. A previous initiative centred on the Peel River Watershed Advisory Committee was established in 1996 but stalled (Grzybowski, 2014). A planning initiative was also undertaken during the regional planning process by the Canadian Parks and Wilderness Society Yukon chapter in 2006, titled “Conservation Plan for the Peel Watershed” (Yukon Land Use Planning Council, January 2017). Table 5 below provides a chronological account of the Peel Watershed Planning Commission’s activities during planning for the Peel Watershed as well as the associated litigation (source: Grzybowski, 2014, 16-18 and *First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC at para. 35-110).

Table 5: Chronology of Regional Planning for the Peel Watershed

Date	Planning Process Event	Description
2002-2005	General Terms of Reference prepared	General terms of reference for the Commission jointly prepared by the Parties.

March 19, 2004	General Terms of Reference finalized	Terms of reference developed through a process of consultation and consensus reached between the Parties.
October 2004- March 2005	Commission Appointment and Start Up	Commission appointed in 2004, received two-day training and orientation in November from the YLUPC. In March 2005, Commission developed its statement of intent for the planning process, policies and procedures and precise terms of reference, which provided a work-plan and specified a timeline for the completion of major planning products.
Fall 2005	Statement of Intent Released	Commission issued its Statement of Intent, which was accepted by the Parties without reservation.
May- November 2005	Preparation of Interests and Issues report	Commission held public consultation sessions in various communities for the purposes of gathering interests and issues related to RLUP in the planning region. Over 30 formal presentations and numerous comments were made to the Commission during these sessions from various interest group representatives including mineral exploration and development; oil and gas exploration and development; fish, wildlife and habitat; water; culture and heritage; tourism and outfitting and transportation.
January 2006	Issues and Interests Report published	Commission released Issues and Interests report highlighting various land use interests within the planning region.
May 23, 2006	Yukon Government responded to Issues and Interests Report	In the comments provided, then Deputy Minister of Energy, Mines and Resources largely concurred with the “overall direction of the planning process” but noted its expectation for a “highly balanced plan that deals with the diversity of needs and issues in the region”. The Deputy Minister confirmed the Government of Yukon’s support for sustainable development as the cornerstone of the regional planning model. In their view, the model included the identification of areas suitable for resource development with required access corridor and management direction. He also specifically stated: “From our perspective it is inappropriate for the Commission to single out or favour one value or economic sector over another” (para. 45).
May 2005- September 2008	Information Gathering	Throughout a large part of the planning process, Commission members learned and gathered information about the planning region with the help of scientists, resource specialists, elders, land users, and others who knew the planning area well. These people described the Peel Watershed’s ecosystem processes, vegetation, animals, and fish; its landforms and waterways; its minerals and oil and gas; its historical and current human uses; and its heritage resources. Commission members also learned about the current and potential future land use conflicts and the potential limits or sensitivities of the land.

September 2008	Resource Assessment Report	Resource Assessment report represented a major product of the planning process. The intent of the Resource Assessment Report was to provide a description of the natural, human and economic resources in the Peel Watershed as well as historical, current and potential future land uses and land use patterns in the region. The Resource Assessment Report was based on the Commission's current state of knowledge, both scientific and traditional.
September 2008	Conservation Priorities Assessment	The purpose of the Conservation Priorities Assessment report was to integrate scientific, local and traditional information to identify high priority conservation areas in the planning region. It was developed through work with scientists and community experts to gather, map and interpret information in order to assess ecosystem representation, areas where people harvest wildlife and plants, species distributions and habitats, and special feature distributions.
November 2008-February 2009	Scenarios Development	Commission examined various management scenarios for land uses within the planning region, each with different levels of development and conservation. After consultations with the public, stakeholders, and the Parties on the various scenarios, the Commission developed the Draft Land Use Plan.
April 2009	Draft Land Use Plan	Following publication of the Draft Plan, Commission held additional consultations by travelling to communities near the planning region and holding meetings and workshops with the Parties and the public, and by gathering feedback through online surveys and written submissions.
December 2009	Recommended Plan	Consultations from the Draft Plan shaped the next version of the plan - The Recommended Land Use Plan.
January 25, 2010	Joint Letter of Understanding	After receiving the Recommended Plan in December 2009, the Parties signed a "Joint Letter of Understanding on Peel Watershed Regional Land Use Planning Process". The Letter contains a number of objectives and principles, including: I) A joint commitment to establish a coordinated process for responding to the Recommended Plan; II) Acknowledgment of the parties' Consultation obligations and an agreement to conduct joint community Consultations; III) Agreement to endeavour to achieve consensus on a coordinated response to the Recommended Plan, and to be guided by the objectives of the Final Agreements in crafting their response.
February 18, 2011	Joint response of all the Parties to the Recommended Plan	Joint response of all the Parties, including then Yukon Government led by the Yukon Party to the Recommended Plan is contained in a letter dated February 18, 2011 and authored by the Chair of the Senior Liaison Committee. The letter stated that the views were held in common and intended to provide

		guidance to the Commission as it considered input from the parties in developing the Final Recommended Plan.
February 18, 2011	Joint First Nations response	Joint First Nations response encouraged 100% protection of the region, with the exception of the Dempster Highway corridor.
February 21, 2011	Letter from Minister of Energy, Mines and Resources (EMR)	<p>Patrick Rouble, Minister of Energy, Mines and Resources wrote a four-page response on behalf of the Yukon Government proposing modifications to the Recommended Plan, which he grouped into themes and summarized as follows:</p> <ol style="list-style-type: none"> 1. Re-examine conservation values, non-consumptive resource use and resource development to achieve a more balanced plan 2. Develop options for access that reflect the varying conservation, tourism and resource values throughout the region 3. Simplify the proposed land management regime by re-evaluating the number of zones, consolidating some of the land management units and removing the need for future additional sub-regional planning exercises 4. Revise the plan to reflect that the Parties are responsible for implementing the plan on their land and will determine the need for plan review and amendment 5. Generally, develop a clear, high level and streamlined document that focuses on providing long term guidance for land and resource management <p>Minister Rouble attached a 16-page “Detailed Yukon Government Response to the Recommended Peel Watershed Plan”.</p>
January 20, 2011	Second Joint Letter of Understanding	In anticipation of the Yukon Government Consultation as laid out in s.11.6.3.2 with affected Yukon First Nations and any affected Yukon community before approving, rejecting or modifying the Final Recommended Plan as it pertains to non-settlement land, a second Joint Letter of Understanding was entered into prior to the release of the Final Recommended Plan.
July 2011	Final Recommended Plan	Commission considered feedback on the Recommended Land Use Plan provided by the Parties and many other groups, in the development of the Final Recommended Land Use Plan. The Final Recommended Land Use Plan was submitted to the Parties who have the option to accept, reject or modify the plan under section 11.6.3.2.
October 11, 2011	Territorial Election	The election results did not change the overall leadership of the Yukon Government (remained Yukon Party) but resulted in changes to the relevant ministries.
December 2, 2011	Letter from new Minister of EMR	In a letter, Brad Cathers, the new Minister of Energy, Mines and Resources reconfirmed the Yukon Government’s “commitment to working with the parties to develop a shared position on the plan and a final plan that all Parties can support and approve”.

February 14, 2012	Minister Cathers meeting with First Nations leadership and news release from Yukon Government	Minister Cathers met with the three First Nations Chiefs and the Gwich'in Tribal Council President to discuss the Yukon Government's response to the Final Recommended Plan. The same day, the Yukon Government issued a News Release outlining eight core principles to guide modifications and completion of the Peel Watershed Regional Land Use Plan.
February 17, 2012	Letter from First Nations	Chief Taylor, Chief Mervyn, Chief Kassi and President Nerysoo responded by a letter indicating their shared view that the Yukon Government had overstepped in its response to the Final Recommended Plan. The leaders set out their view, for the first time, that the ability of the Yukon Government to modify the Final Recommended Plan was limited to the proposed modifications submitted earlier in the process and considered by the Commission.
March 20, 2012	Response to letter from First Nations	Minister Cathers (Energy, Mines and Resources) and Minister Dixon (Environment) responded to the letter and stated that the Yukon Government's view was that it had followed the planning process and had worked in good faith to keep First Nations informed about its expectations. They also wrote that "as early as 2006, in response to the Issues and Interests Report prepared by the Commission, we indicated that our expectation was for a highly balanced plan that deals with the diversity of needs and issues in the region".
September 14, 2012	Government of Yukon provided its "update" to Senior Liaison Committee	The Yukon Government provided its Peel Watershed Regional Land Use Plan "update" to the Senior Liaison Committee, which included new planning concepts that introduced a different vision for the planning region.
October 2012	Objection from First Nations governments	First Nations wrote Ministers Cathers and Dixon objecting to the introduction of a new land use designation system and concepts as, in their view, it amounted to a "rejection of the constitutionally protected land use planning process" provided for in the Final Agreements.
October 2012-February 2013	Public Consultation by Yukon Government	Consultation pursued by Yukon Government supported by a 15-minute DVD, a 12-page "we want to hear from you" document and a 12-page media package.
November 30, 2012	First Nations request feedback by Yukon Government	Three Yukon Chiefs and the Gwich'in Tribal Council President wrote Ministers Cathers and Dixon requesting the feedback received by the Yukon Government in its Peel Watershed Regional Land Use Plan Consultations. This request was repeated on March 6 and March 27, 2013.
April 5, 2013	Response from Premier Pasloski	Letter noted that the community and public Consultations concluded on February 25, 2013, and comments received along with a summary document were available on the Peel Consultation website. The Premier reiterated the Yukon Government's position that its ability to approve, reject or modify the Recommended Plan was unfettered and indicated

		that “Yukon Government is not prepared to accept, without change, that part of the final recommended plan that applied to Non-Settlement Land”.
April 2013	What We Heard Report	A 27-page report prepared by Yukon Department of Energy Mines and Resources and J.P. Flament Consulting Services (2013) entitled “Peel Watershed Regional Land Use Plan Public Consultation 2012-2013 What We Heard Report” summarized what was heard with the following headings: Perspective 1: The Peel Watershed is an irreplaceable global asset Perspective 2: The Final Peel Recommended Plan (FRP) is fair and balanced Perspective 3: The Yukon government is not following the rules Perspective 4: The Yukon government must balance development with protection
October 2013	Letter from the Yukon Government to affected First Nations	The Yukon Government wrote to the three affected First Nations and the Gwich’in Tribal Council to provide a summary of the Consultations to date from July 2011, proposed Plan modifications and a timeframe for conclusions of the Consultations on the final recommended Peel Watershed Regional Land Use Plan. This letter included further modifications to the proposed land use designation system.
October 21, 2013	Letter from affected First Nations to Yukon Government	In a letter, the three affected First Nations and the Gwich’in Tribal Council again wrote Ministers Kent (Energy, Mines and Resources) and Dixon (Environment) voicing their objections to the planning process and stating that the proposals “amount to a new Plan and, as such, violate the terms of [the] constitutionally-protected Final Agreements”.
January 2014	Approval	The Yukon Government informed the three affected First Nations and the Gwich’in Tribal Council that the government had decided to approve the Government’s own regional land use plan applying to Non-Settlement Land in the Peel Watershed planning region.
May 2014	Legal action started between First Nations and ENGOs against Government of Yukon	The Plaintiffs, the First Nation of Nacho Nyak Dun, Tr’ondëk Hwëch’in, Yukon Chapter-Canadian Parks and Wilderness Society, Yukon Conservation Society, Gill Cracknell and Karen Baltgailis brought legal action against the Yukon Government. The Plaintiffs were seeking a declaration from the Yukon Supreme Court that Yukon Government had not acted in accordance with s.11.6.3.2 of the Final Agreements. The Plaintiffs sought an order that the Government approved Peel Watershed Regional Land Use Plan, dated January 2014, be quashed, as well as an order requiring the Yukon Government to re-conduct the s.11.6.3.2 Consultation with constraints on its ability to modify the Final Recommended Plan.
December 2014	Decision of Yukon Supreme Court	Action heard in July 2014 - decision released by Justice R.S. Veale on December 2 nd , 2014. Court granted the remedies

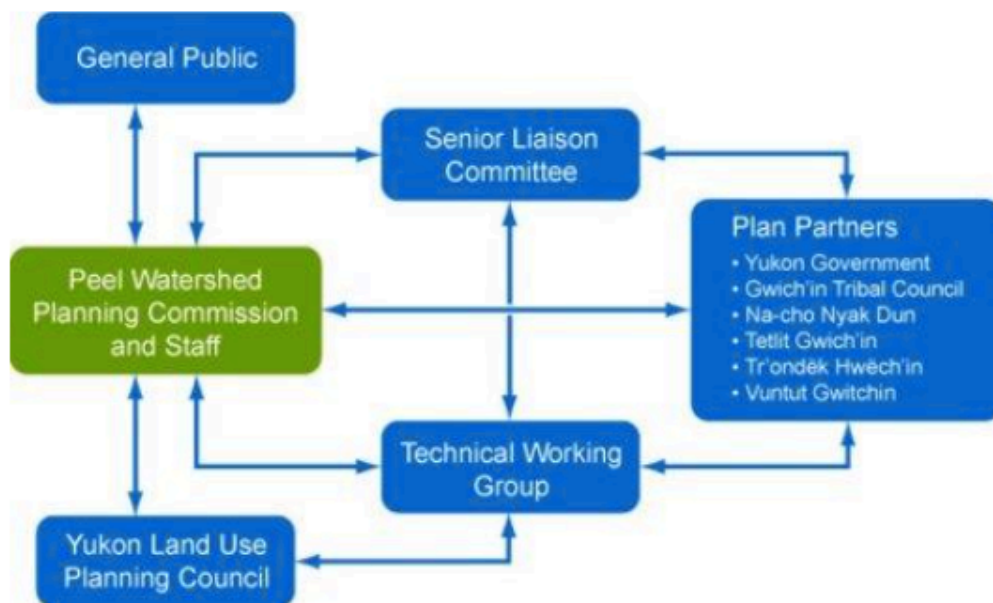
		sought by the Plaintiffs and quashed final consultation and Government approved plan of January 2014. Ruled that modifications under s.11.6.3.2 can only be those which are detailed and previously submitted in writing to the Planning Commission. The Court sent the process back to the final consultation stage, under s.11.6.3.2.
November 2015	Yukon Court of Appeal judgment	The Yukon Government appealed Justice Veale’s judgement to the Yukon Court of Appeal. The appeal was heard in August 2015. The Court of Appeal released its judgment on November 4, 2015. The Court upheld the decision of the lower court that the Yukon failed to honour its treaty obligations. However, it varied the remedy of the lower court and sent the process back to an earlier stage in the process, the 11.6.2 stage. It also added that Yukon was free to reject the Final Recommended Plan.
December 2017	Decision of the Supreme Court of Canada (SCC)	Case heard by the SCC on March 22 nd , 2017. Unanimous decision released December 1 st , 2017. SCC ruled the appeal should be allowed in part. It upheld the ruling of the lower courts quashing Yukon’s approval of its plan but returned all parties to the 11.6.3.2 stage in the process. The implications of this ruling are discussed in section 4.4 in this Chapter.
January 2018	First Nations and Yukon Government create committee responsible for final round of consultations	First Nations and the newly elected Yukon Government expressed full support for the PWPC’s Final Recommended Plan and created a committee responsible for a final round of consultations. The process is estimated to take one year and begin in the October of 2018 (Joannou, January 31, 2018).

Regional planning for the Peel Watershed, as set out under Chapter 11 and conducted by the PWPC, concluded according to s.11.6.0 in January 2014 with the former Yukon Party Government approval of its Regional Land Use Plan for the Peel Watershed. The planning process itself has yet to conclude (at the time of writing) as no plan has been officially accepted and implemented following the SCC’s ruling in December 2017. However, in January 2018, the affected First Nations and the newly elected Liberal Yukon Government expressed full support for the PWPC plan and created a committee responsible for a final round of consultations, anticipated to last one year and begin in October of 2018 (Joannou, 2018). At the outset, it was envisioned that the planning process conducted by the Commission would take three years and cost \$1 million. In the end, the PWPC’s planning process took twice as long and went over budget, costing an estimated \$1.6 million (Pope, 2012).

The PWPC was composed of six public members nominated by the Yukon Government and the affected First Nations (Grzybowski, 2014). The planning process occurred between 2004 and 2011. The PWPC was responsible for developing a Final Recommended Plan for the region. This process was supported by the YLUPC through administrative assistance (Robbins, 2007).

During the seven years of planning, PWPC members, chairs and staff changed numerous times (Grzybowski, 2014). Similar to the North Yukon planning process, the parties to the Peel plan provided input into the process through two sub-committees: The Senior Liaison Committee for political direction and the Technical Working Group for technical support (Peel Watershed Planning Commission, 2010) (see Figure 8 below). Plan partners included the three affected Yukon First Nations as well as the Tetlit Gwich'in First Nation and the Gwich'in Tribal Council in the Northwest Territories.

Figure 8: Organization of Peel Watershed Planning Commission



Peel Watershed Planning Commission, 2011

The PWPC's mandate, as set out in their March 2004 General Terms of Reference, were to “develop and recommend a regional land use plan in a manner consistent with Settlement Agreements” (PWPC, 2004, 4). The PWPC was to “work towards the development of a plan for Settlement Land, Non-Settlement Land and Tetlit Gwich'in Yukon land that is consistent with and achieves the objectives of Chapter 11 of Yukon First Nation Final Agreements” (PWPC, 2004, 4). The early stage planning consultations by the Committee raised eight broad planning issues of both short and long-term importance that were reflected in the Statement of Intent. These were 1) maintain wilderness, 2) ecosystem integrity (wildlife focus), 3) aquatic integrity, 4) transportation, 5) mining exploration and

development, 6) oil and gas exploration and development, 7) traditional pursuits, and 8) climate change (Peel Watershed Planning Commission, 2011). These issues were integrated and addressed throughout the planning process.

The Peel region is significant for Yukon First Nations peoples, who have traditionally harvested, trapped, fished and managed the region since time immemorial. For these people, the region has had “physical, intrinsic, and spiritual value for thousands of years”. As a result, “their cultures and traditional economies depend on the area’s healthy environment” (Peepre, 2007; PWPC, 2011). Presently, 2.7% of the region is made up of settlement land parcels and citizens of these four First Nations also have various hunting, trapping, fishing and management rights within the Peel Watershed (Staples et al., 2013). First Nations citizens participated throughout the planning process, both in official capacities as members of the PWPC, the Technical Working Group or the Senior Liaison Committee and also by attending community consultation sessions and sharing their knowledge, values and interests throughout (PWPC, 2011).

In addition to interests in the Peel region, land uses include commercial and private canoeing excursions, commercial hunting outfits, mineral, oil and gas exploration, recreational snowmobiling and hiking and travel along the Dempster highway (Grzybowski, 2014). In 2010, the Yukon Government imposed a one-year moratorium on staking in the Watershed while it reviewed the Recommended Plan. The moratorium prevented any new subsurface mineral staking and rights to oil, gas and coal (CBC News, February 5, 2010). The moratorium has since been extended (Whitehorse Star, December 17, 2015).

Staples et al. (2013) note that the planning process for the Peel Watershed was subject to significant tensions and conflicts throughout. The PWPC was tasked with managing these viewpoints and creating a plan that would be accepted and implemented by all parties (Grzybowski, 2014). This task was extremely challenging, given the “varying social, cultural, economic and ecological values of the Peel region, the weight that these are given by various participants, and expectations about the land use planning process itself” (Staples et al., 2013, 44).

Tensions came to a head in February 2011 when the previous Yukon Party Government proposed five modifications to the PWPC’s Recommended Plan. Of these five recommendations, three were technical and two were substantial. The Yukon requested more “balance” in the Plan and additional options for “access”. It also indicated a general preference for more industrial development in the Watershed without specifically indicating how and where that development should take place (Staples, 2013; Gerberding, 2016). The First Nations were frustrated by these suggestions as they felt

these preferences had not been adequately expressed earlier in the planning process. First Nations made a clear recommendation at this stage for 100% protection of the Watershed.

In July 2011, after consideration of the above recommendations, the PWPC presented its Final Recommended Plan to the Parties, which called for 80% designation for protection (55% permanent protection and 25% interim protection) and 20% opening to industrial development. The PWPC's mandate ended with the presentation of the Final Recommended plan to the Parties in accordance with the process as laid out under Chapter 11 (Staples et al., 2013). The Final Recommended Plan was adopted by the four First Nations for settlement land parcels, but in February 2011, the previous Yukon Party Government announced eight new 'principles to guide completion of the Plan' (*First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC). The Yukon Government announced its intentions to modify the Final Recommended Plan through new concepts and proposed new land designations in 2012 (Staples et al., 2013). These principles, concepts and land designations were new notions, which had not been introduced during the seven years of planning under the PWPC (Gerberding, 2016).

Throughout 2013, the Yukon Government led open house style consultations with communities, the general public and First Nations on the Final Recommended Plan and its proposed land designations. In April 2013, Yukon released a 27-page report entitled "*Peel Watershed Regional Land Use Plan Public Consultation 2012-2013 What We Heard Report*" summarizing the perspectives heard during the Yukon Government led consultations (Staples et al., 2013). In January 2014, the Yukon Government approved a regional land use plan for the Peel Watershed applying on Non-Settlement Land. This plan called for 71% opening to industrial development and 29% protection (*First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC).

A review of the planning process conducted by Grzybowski (2014) outlined the challenges and opportunities of the Peel process and included recommendations for addressing procedural challenges. Grzybowski's review found that there was much room for improvement on such things as the general terms of reference, training and orientation for Commission members and others involved, information gathering and incorporation of First Nations knowledge and worldviews into the process and participation of the public in the Commission's decision-making. Finally, participants in Grzybowski's (2014) study were concerned that the Peel process had "left the Parties, stakeholders and the public disillusioned with the planning process and anticipate that no one will readily initiate another planning process until outstanding issues are resolved and ground rules are determined and established for future

planning processes” (5). From this review, Gryzbowski (2014) made nine recommendations addressing the above issues ([Appendix E](#)).

4.2 Litigation for the Peel Watershed

Following the Yukon Government’s modification of the Commission’s Final Recommended Land Use Plan, the First Nations of Nacho Nyak Dun, Tröndek Hwëch’in, the Canadian Parks and Wilderness Society and the Yukon Conservation Society (Plaintiffs) commenced an action against the Yukon Government (Defendant). The Gwitch’in Tribal Council supported the three Yukon First Nations as an intervener in the case (*The First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC 69). The Appellants were seeking a declaration that the former Yukon Government’s approved Land Use Plan for the Peel Watershed be quashed and that the final consultation with affected communities and between the parties be re-conducted with specific court direction limiting the plan modifications available to the Yukon Government (*The First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC 69, para.114). The First Nations presented three primary concerns against the Yukon Government:

1. The Yukon Government failed to act in conformity with the Land Use Plan approval process set out in Chapter 11 of the UFA;
2. The Yukon Government did not have the authority to introduce a new plan after the planning process had been essentially completed;
3. The Yukon Government was then limited to the modifications it proposed to the Recommended Plan.

The Yukon Government submitted to the Court that a “plain reading of s. 11.6.3.2. permits the Government to retain its decision-making over its Non-Settlement Land and empowers it to make the final decision with respect to what regional Land Use Plan applies to Non-Settlement Land” (para. 115). Essentially, the Yukon Government was arguing that it had the authority to reject the Final Recommended Plan for Non-Settlement Land or, in the alternative, the Peel Watershed Land Use Plan approved by the Government was a logical extension of the modifications it proposed in the Recommended Plan. The action was heard before Justice R.S. Veale in the Yukon Supreme Court in July 2014. The Plaintiffs were represented by Thomas R. Berger, of the 1970s Berger Inquiry.

Justice Veale released his judgement on December 2, 2014. In it, the Court ruled that the Yukon Government failed to act in conformity with the land use planning approval process under s. 11.6.3.2 of the UFA. Justice Veale also ruled that the actions of the Yukon Government did not enhance the goal of reconciliation and interpreted s. 11.6.3.2 in a manner “not consistent with the honour and

integrity of the Crown” (para.182). The Court quashed the final consultation and the government approved plan of January 2014 (para. 222-2(a)). It also held that the Yukon Government cannot reject the Final Recommended Plan and that the government can only modify the Final Recommended Plan in a manner that is consistent with the modifications it proposed in writing to the earlier Recommended Plan, which do not include modifications related to access and balance or the quantum of land to be protected. The Court held that the government’s proposed modifications on access and balance did not qualify as proposed modifications because they were too vague to enable the Peel Watershed Planning Commission to respond to them (*The First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC 69). Finally, the Court added that the only acceptable modifications under s. 11.6.3.2 were those regarding simplifying the land management regime, making parties responsible for implementing the Plan and generally developing a clear streamlined document that focused on long term guidance for land and resource management. In summary, modifications to the Final Recommended Plan under s.11.6.3.2 can only be those which are detailed and previously submitted in writing to the Planning Commission.

The Yukon Government appealed Justice Veale’s judgement to the Yukon Court of Appeal. The appeal was heard in August 2015. Vuntut Gwitch’in First Nation was not a party to the original action but was added as a respondent in the appeal (*The First Nation of Nacho Nyak Dun v. Yukon*, 2015, YKCA 18, para 83). The Court of Appeal released its judgment on November 4, 2015. The judgement upheld the decision of the lower court that the Yukon Government failed to “honour the letter and spirit of its treaty obligations” (*The First Nation of Nacho Nyak Dun v. Yukon*, 2015, YKCA 18, para.3).

However, the Court of Appeal varied the remedy imposed by the lower court. Rather than sending the process back to the stage of final consultation (11.6.3.2), the Court of Appeal sent the process back to an earlier stage, or to the “point at which the failure began”, the 11.6.2 stage (*The First Nation of Nacho Nyak Dun v. Yukon*, 2015, YKCA 18, para 3). This stage of the process is where the Parties are required to provide a written response to the Commission’s initial Recommended Plan. The Court of Appeal also added that at the final point in the process, the Yukon Government is free to reject the Final Recommended Plan, no matter what the process had been leading up to the final recommendation. The Court noted:

In my view, there is nothing in the UFA and the Final Agreements constraining the right of Yukon (or the First Nations under their mirroring provisions) to reject the Commission’s final recommendations. The right is necessary since the Commission in its reconsideration under

s.11.6.3.1 might put forward a final recommendation which on the whole is objectionable to Yukon. This may arise because of new changes to the plan which Yukon had not previously considered. Such a right is also consistent with the notion that the entire planning process begins, as earlier discussed, with the voluntary agreement of the parties. Neither party is entitled to a regional land use plan as of right (para. 159).

The Court of Appeal discussed modern treaties and land claims within the context of reconciliation, noting that the UFA and Final Agreements “embody a plan for achieving reconciliation” (para. 175). In summary, the Court of Appeal ruled that the modifications proposed by the Yukon Government were an invalid exercise of the Yukon Government’s power and as such, returned the planning process back to s. 11.6.2 so as to “allow Yukon to articulate its priorities in a valid manner” (178).

The First Nations of Nacho Nyak Dun, Vuntut Gwitch’in, Tröndek Hwëch’in, The Canadian Parks and Wilderness Society Yukon Chapter and the Yukon Conservation Society applied for a leave to appeal the decision of the Yukon Court of Appeal to the SCC in December 2016. In June 2016, the SCC ruled it would hear the appeal brought forward by the First Nations and environmental organizations. The case was heard in front of the SCC in Ottawa on March 22nd, 2017. A unanimous decision, written by Justice Karakatsanis, was released December 1st, 2017. The SCC ruled the appeal should be allowed in part. The trial judge’s order quashing the Yukon Government’s approval of its plan was upheld but all parties were returned to the s.11.6.3.2 stage of the planning process, where Yukon can approve, reject or modify the Final Recommended Plan as it applies to Non-Settlement Land after consultation with the specified Parties. In the ruling, the Court commented on relevant matters beyond the scope of the conflict in the Peel case. The ruling addressed broad issues regarding the role of the courts in the implementation and interpretation of land claim agreements and issues of First Nations sovereignty. Specific to the Yukon, the courts also commented on the definition of modifications under Chapter 11 of the UFA, Consultation with First Nations under the UFA and the Yukon Government’s participation in the RLUP process. The next section of this Chapter will briefly discuss the implications of the SCC’s ruling on the above issues.

4.3 Implications of The First Nations of Nacho Nyak Dun et al. v. Yukon

The SCC’s ruling on the Peel Watershed land use planning case is a landmark ruling for the interpretation of the UFA as well as all other modern treaties or land claims in Canada (Olynyk, Bergner, Kruger, 2017). The SCC’s ruling clarified the role of the Yukon Government for decision-making under s.11.6.3.2 as well as the meaning of modification under the same section of the final

agreements. The decision acts as a reminder to governments, and by extension resource developers relying on authorizations given by governments, that “treaty rights contained in modern land claim agreements are to be given large and liberal interpretation consistent with the objectives of the treaty and in a manner that upholds the honour of the Crown (Olynyk, Bergner, Kruger, 2017, 2). Future regional planning initiatives in the Yukon will benefit from this clarification and thus ideally avoid the tensions and conflicts that arose during planning for the Peel Watershed. In the ensuing paragraphs, I briefly discuss the implications of the SCC’s ruling in the case of *First Nation of Nacho Nyak Dun et al., v. Government of Yukon* (2017 SCC 58). This discussion is meant to be high level as the decision has many layers and complexities and raises important issues for future consideration and legal discussion.

The SCC first commented on the general role of the Courts in cases dealing with the implementation of land claims agreements or modern treaties. The ruling presented the Peel case as essentially a judicial review of Yukon’s decision to approve its land use plan for the region. Terry, Fortier and Kennedy (2017), note that in so finding, the SCC explained that “the appropriate judicial role [in this context] is informed by the fact that this dispute arises in the context of the implementation of modern treaties” (3). These treaties, the SCC explained, “are intended to renew the relationship between Indigenous peoples and the Crown to one of equal partnership”. Therefore, “[i]n resolving disputes that arise under modern treaties, courts should generally leave space for the parties to govern together and work out their differences. Indeed, reconciliation often demands judicial forbearance” (3). As such, the Peel case clarified the role of the court in their interpretation of modern treaties or land claims.

As a second general comment, the court then discussed the interpretation of modern treaties or land claim agreements, noting,

“Compared to their historic counterparts, modern treaties are detailed documents and deference to their text is warranted. Paying close attention to the terms of a modern treaty means interpreting the provision at issue in light of the treaty text *as a whole* and the treaty’s objectives. While courts must show deference to the terms of a modern treaty, this is always subject to such constitutional limitations as the honour of the Crown” (para. 36-37).

These findings align with those of Justice Binnie in *Beckman v. Little Salmon/Carmacks* (2010 SCC 53), which was the first case heard before the SCC to address land claim agreements in the context of the Crown’s duty to consult Aboriginal peoples. The case also dealt with the interpretation of the UFA. Justice Binnie found that modern treaties are to be interpreted “generously” and within the context of the written terms of the treaty text.

Further, modern treaties must be interpreted beyond simply “everyday contracts” and require careful consideration of whether the honour of the Crown is engaged (Adkins and Isaac, 2010). The SCC noted in the Peel decision that the UFA is a “model for reconciliation” as it “establishes institutions for self-government and the management of lands and resources”. The agreements under the UFA are intended to “foster a positive and mutually respectful long-term relationship between the signatories. In this way, the Final Agreements address past grievances, and yet are oriented towards the future” (para. 10). Thus, in accordance with the decision in *Little Salmon/Carmacks* (2010 SCC 53), a modern treaty cannot be interpreted in an “ungenerous manner as if it were an everyday commercial contract” but rather interpreted using reconciliation and the honour of the Crown as guiding frameworks. Olynyk, Bergner and Kruger (2017) indicate that the Court has clarified that “conclusion of treaties is only one step in the process of reconciliation, which continues into the treaty implementation phase” (4).

Third, the SCC commented on the definition and application of ‘modifications’ under s.11.6.3.2 of the UFA. This discussion got to the heart of the matter before the courts regarding the Peel planning process as the Yukon government chose to “modify” the PWPC plan of 80% of lands protected and 20% open to industrial development to one of 71% open to industrial development and 29% protected. The SCC’s ruling clarified the meaning of modification under s.11.6.3.2 by indicating “the term conveys that a modification is a limited exercise, which involved changing something without altering its fundamental nature” (para. 39). As such, Yukon may make “modifications that respond to changing circumstances, such as those that may arise from the second consultation and changes made by the Commission in its reconsideration of the plan”. Additionally, Yukon “can only depart from positions it has taken in the past in good faith and in accordance with the honour of the Crown” (para. 52). Axmann and Bildfell (2018) note, the SCC did “not grant Yukon a right to modify the plan so significantly as to effectively reject it” (3).

The SCC agreed with the lower courts that Yukon’s authority to “modify” a Final Recommended Plan is limited by the language of s.11.6.3.2 with its “requirement of Consultation, as robustly defined, and by the objectives and scheme of the land use planning process, including the central role of the Commission and the rights of First Nations to meaningfully participate in the process”. Thus, the SCC viewed Chapter 11 as a “collaborative process for developing a land use plan” and as such, “unconstrained authority to modify the Final Recommended Plan would render this process meaningless, as Yukon would have free rein to rewrite the plan at the end”. Finally, Justice Karatsanis concluded that interpretation of s.11.6.3.2 in the broader context of Chapter 11 demonstrates that Yukon “cannot exercise its modification power to effectively create a new plan that is untethered from the one

developed by the Commission, on which affected parties had been consulted” (para. 48). Thus, the SCC ‘quashed’ the modifications made by the Yukon and clarified that the modifications to the PWPC plan were not in accordance with the spirit and intent of the agreements, constitutional principles such as the honour of the Crown and the definition of “modify” as clarified by the court.

The Court offered only limited discussion of the duty to consult and accommodate as established in *Haida Nation v. British Columbia (Minister of Forests)* (2004 SCC 73) but did indicate that “Consultation is a key component of the approval process. Consultations between parties and affected community members on the Commission’s Recommended and Final Recommended Plans foster meaningful dialogue” (para. 45). Key to this clarification is the emphasis on “meaningful dialogue” as the affected First Nations felt that the open-house style consultations pursued by the Yukon Government were inappropriate forms of consultation on modifications as significant as those proposed to the PWPC plan (Gerberding, 2016).

A central issue of the Peel conflict was First Nations participation in the management of public lands and resources. Upon the signing of their land claims agreements, First Nations with traditional territories in the Peel Watershed ceded 97.3% of their claims to the region in exchange for provisions of the UFA, such as Chapter 11, which afforded them an equal seat at the decision-making table for RLUP across settlement and non-settlement land (or Crown land). The First Nations argued that decisions that affect their way of life, including the management and planning of Crown land, must be made in a collaborative manner that respects the provisions and intent of the agreements.

The Court considered this issue and clarified the role of First Nations in RLUP processes. In considering the issue of cooperative management and thus the degree of participation given to First Nations under Chapter 11, Justice Karatsanis wrote:

“In the Final Agreements, most traditional territory was designated as non-settlement land. In exchange for comparatively smaller settlement areas, the First Nations acquired important rights in both settlement and non-settlement lands, particularly in their traditional territories. [...] In short, it is a clear objective of Chapter 11 to ensure First Nations meaningfully participate in land use management in their traditional territories. As well, the Chapter 11 process is designed to foster a *positive, mutually respectful, and long-term relationship* between the parties to the Final Agreements” (emphasis added) (para. 47).

The SCC decision included quotes from Barry Stuart, the Chief Land Claims Negotiator for the Yukon Territorial Government, to support the view held by First Nations in the Yukon that it was more important for them to “meaningfully participate in land use management in all their traditional territory

than to acquire vast tracts of their traditional territory as settlement lands” during negotiation of the agreements. These quotes go on to explain that it “became abundantly clear that [the First Nations] interests in resources were best served by creatively exploring opinions for *shared responsibility* in the management of water, wildlife, forestry, land and culture” (emphasis added) (para.47).

This SCC finding aligns with the views held by Justice Veale, who quoted Professor Peter Hogg in his decision in saying that land claims agreements:

“Constitute sophisticated codes with respect to such matters as development, land use planning, water management, fish and wildlife harvesting, forestry and mining. These codes assure a continuing role for the Aboriginal people in the management of the resources of the entire region covered by the agreement, not just their own settlement land” (2007, 28-35).

The clarification provided by the SCC goes to the heart of the interpretation of modern land claim agreements in the Yukon as agreements for collaborative management of all lands in the territory, including Crown (or non-settlement) lands. Thus, the final agreements describe and direct Yukon to meaningfully engage with First Nations in decision-making on both settlement and non-settlement land, including acting in accordance with the principles of reconciliation and the honour of the Crown as guiding frameworks.

Finally, the SCC’s decision addressed the issue of Yukon’s participation during the Peel Watershed planning process as pursued by the PWPC. The court found that Yukon must “bear the consequences of its failure to diligently advance its interests and exercise its right to propose access and development modification to the Recommended Plan” (para. 61). As such, the SCC found with the trial judge that “it would be inappropriate to give the Government the chance to now put its January 2014 plan to the Commission” (para. 219 in *The First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC 69). The SCC agreed that the appropriate remedy was to quash Yukon’s approval of its plan, thereby returning the parties to the 11.6.3.2 stage of the RLUP approval process.

The SCC chose not to address the issue of Yukon’s authority to reject the Final Recommended Plan, after it consults with affected First Nations. The First Nations argued that if Yukon is allowed to reject a plan that was developed collaboratively over many years, it will render the RLUP process set out under Chapter 11 meaningless and would reduce the public’s willingness to participate in future RLUP initiatives (Gerberding, 2016). The SCC did not address this issue as it was “unnecessary to resolve this appeal” (para. 61). At this time, the issue of Yukon’s ability to reject a land use plan established under Chapter 11 has yet to be explicitly clarified.

In summary, the decision of the Supreme Court of Canada in the case of *The First Nation of Nacho Nyak Dun et al., v. Government of Yukon* (2017 SCC 58) is a landmark decision for the interpretation of the UFA as well as all other modern treaties or land claim agreements in Canada. In the decision, the Supreme Court clarified many key issues, including:

- The role of the Courts in implementing land claims or modern treaties;
- The interpretation of land claims or modern treaties;
- The meaning of “modify” under s.11.6.3.2;
- The Crown’s duty to consult Aboriginal peoples;
- Yukon First Nation participation in the management of public lands and resources; and
- Yukon’s participation under Chapter 11 of the UFA.

However, the court did not clarify whether Yukon had the ability to reject a land use plan established under the terms of Chapter 11. The issue of rejection will require future consideration and legal analysis. Clarifications provided by the Court will inform future planning initiatives in the Yukon and will guide these processes so as to avoid the tensions and conflicts that arose during land use planning for the Peel Watershed. It will also have implications for resource development in other regions of Canada covered by modern treaties or land claim agreements (Olynyk et al., 2017).

4.4. Chapter Summary and Challenges and Opportunities for Attention

In this chapter, I provided an overview of regional planning in the Yukon, regional planning for the Peel Watershed, the associated litigation and implications of the SCC’s decision in *The First Nation of Nacho Nyak Dun et al., v. Government of Yukon* (2017 SCC 58). The purpose of this chapter was to provide the necessary context for the discussion, in the next chapter, of stakeholders’ perceptions of the challenges and opportunities for effective engagement with sustainability and Yukon First Nations interests during the RLUP process for the Peel Watershed.

The context from this chapter also contributes to specifying the initial framework developed in Chapter 2 and applied in Chapter 6 to evaluate the two competing plans for the Peel Watershed. Emerging from the case context are challenges and opportunities for attention. These are presented in Table 6.

Table 6: Emerging Case Study Challenges and Opportunities for Attention

	Substantive	Governance
RLUP for the Peel Watershed	<ul style="list-style-type: none"> ➤ Land claim agreements and resource development processes to be interpreted applying reconciliation and the honour of the Crown as guiding frameworks ➤ Chapter 11 and other decision-making on non-settlement/Crown land are collaborative processes requiring meaningful First Nations engagement 	<ul style="list-style-type: none"> ➤ RLUP experience in the Yukon is mixed – competing interests/values within planning regions ➤ RLUP process for the Peel Watershed broke down due to the Yukon Government’s lack of participation in good faith ➤ Modifications under Chapter 11 must be conducted in accordance with previously included comments, honour of the Crown and reconciliation

Chapter 5 presents the thematic findings of 34 semi-structured interviews conducted with key stakeholders involved in planning for the Peel Watershed, conducted between May and June 2017. Chapter 5 concludes with challenges and opportunities for attention to further specify the initial framework offered in Chapter 2 as well as a final specified framework.

Chapter 5: Key Stakeholder Perceptions of Sustainability and First Nations Interests in Regional Land Use Planning for the Peel Watershed, Yukon

In this chapter, I present participants' perceptions of the challenges and opportunities for effective engagement with sustainability and Yukon First Nations interests in RLUP as well as the perceived lessons from the Peel Watershed RLUP process for application to future planning initiatives under Chapter 11 of the UFA. This chapter seeks to answer my second research question and associated objective:

2. How do stakeholders involved in the Peel process perceive⁶:
- a. the challenges and opportunities of RLUP for sustainability interests, including the ability of RLUP to guide subsequent project level assessments effectively⁷;
 - b. the challenges and opportunities for the effective engagement with Yukon First Nations interests in the RLUP process;
 - c. lessons from the Peel process to be applied to future RLUP initiatives in the Yukon under Chapter 11 of the UFA.
- Research objective:
2. Determine how stakeholders involved in the Peel process perceive engagement with sustainability and Yukon First Nations interests in the RLUP process for the Peel Watershed.

This chapter presents the emerging themes from 34 semi-structured interviews conducted with key stakeholders involved in planning for the Peel Watershed. Findings are subject to the limitations of this research, discussed in Chapters 1 and 3, notably that decolonizing methodologies, such as community-based participatory research methods, were not applied for the purposes of this masters' thesis.

Findings are organized according to the three research questions (above) regarding participants' perceptions. I first discuss participants' perceptions of sustainability in Yukon RLUP broadly, including the perceived role of RLUP in guiding future project planning and assessment. I then review participants' perceptions on how to achieve effective engagement with Yukon First Nations interests in RLUP processes, before concluding with a discussion of perceived substantive and governance lessons from the Peel process to be applied to future RLUP initiatives in the Yukon under Chapter 11.

⁶ Perceptions include "the way an individual observes, understands, interprets, and evaluates a referent object, action, experience, individual, policy or outcome" (Bennett, 2016, 71).

⁷ Effectiveness is defined according to the EA literature, as "how well something works or whether it works as intended and meets the purposes for which it is designed" (Sadler, 1996, 37).

This chapter concludes with challenges and opportunities for attention to further specify the framework offered in Chapter 2. A revised analytical framework is presented in the conclusion to this chapter.

5.1 Perceptions of Sustainability Interests in Regional Land Use Planning

RLUP in the Yukon is conducted under Chapter 11 of the UFA. Chapter 11's objectives include:

“To ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development” (Section 11.1.1.6).

Sustainable Development is defined under Chapter 1 of the UFA as:

“Beneficial socio-economic change that does not undermine the ecological and social systems upon which communities and societies are dependent” (UFA, Chapter 1).

Participants were asked broad questions on effective engagement with sustainability interests in RLUP processes in the Yukon. As a result, many participants drew on their experiences with the RLUP processes underway or completed in the Yukon, namely the North Yukon, Peel Watershed and Dawson planning regions. Although some participants described the RLUP process for the territory as “a failure” and “inconsistent”, others expressed that it was “really valuable” and a “good process”. Overall, participants expressed that the RLUP process for the territory had been inconsistent due to conflicting visions for the territory playing out during planning processes.

Two competing visions for the territory have clearly emerged and underlie many of the “conservation versus development” tensions in the Yukon. The first vision is based on increased resource development, in turn ensuring diversification of the Yukon's economy away from its present reliance on federal government transfers and largely public-sector employment opportunities. The other places more value on the Yukon's natural environment, embracing protection of internationally significant wilderness regions as well as the stewardship interests of Yukon First Nations, including their continued ability to practice land-based pursuits such as hunting, fishing and gathering (Halliday, 2014). Conflicts during the approval process for the Peel Watershed planning process point to broader issues of power and authority between the Yukon Government, First Nations and Regional Planning Commissions.

Tensions associated with the two competing visions for the territory became increasingly apparent during planning for the Peel Watershed. Participant 31 remarked, “it was no longer about the plan, it was a broader [political] issue” and Participant 10 commented, “the Peel was a slap in the face of the dominant mentality that the best use of land in the Yukon is extractive”. Many participants

remarked that RLUP processes are bound to become more and more complex and tension fuelled as they progress towards increasingly developed regions, such as the Whitehorse planning region. For example, Participant 6 stated:

“That’s why we have done the north-south thing because as you go south, you’re dealing with more disturbance, more stakeholders, more communities, more roads... It’s going to get harder and harder and harder in terms of how those plans actually have to come together”.

Participants also commented on the fact that the only land use plan that had been completed to date was for the North Yukon region. North Yukon was largely perceived as having clearly defined Valued Ecosystem Components (VECs) including management of the Porcupine Caribou Herd and the cumulative effects of oil and gas exploration and development in the Eagle Plains region. As a result, it was “relatively easy to develop a RLUP for the region since there were relatively few competing interests that had to be reconciled” (Participant 14).

Although the majority of participants felt the various RLUP processes had been inconsistent to date due to these conflicts and tensions, they also felt that RLUP was the only governance tool available to address sustainability interests such as conservation, cumulative effects and First Nations relationships to homelands, and to provide strategic guidance for project level assessments. Participant 9 commented “I think there’s a better chance of that [sustainability] happening with regional plans than without”. RLUP’s broader scale was discussed as a benefit for addressing sustainability challenges, in contrast to project level development assessment processes. Participant 34 noted,

“I don’t see any other way in terms of sustainability at that scale and RLUP’s are the best way to try to moderate the intensity of a given activity in an area. I think it’s more effective than to do it on a case by case basis, even a case by case basis through YESAA alone I don’t think would be as effective because you’re looking at it [development] on a larger scale and considering broader aspects and considerations that go into it beyond immediate impact on the median footprint.”

While RLUP’s potential to address sustainability was acknowledged due to its broader scale, five participants commented on the vagueness of the concept of sustainability as a challenge to its inclusion as a primary objective of Regional Planning Commissions. This critique highlights the underlying tensions, discussed above, as different stakeholders with competing visions and values for the territory conceptualize sustainability differently. Participants commented on the concept’s application differing across stakeholders, with Participant 10 commenting,

“That said, there’s a lot of danger... sustainability is becoming a meaningless buzzword and sustainable development is tricky because it means so many different things in different places. If you spoke to a conservationist, a solar installer and a placer miner... everybody would have different definitions of what sustainability looks like to them”.

Participant 18 commented,

“I have a hard time with the term “sustainable development”. It is one of those terms that is used by different people to mean different things. Even if you use the Brundtland Commission definition of it, you can interpret it in different ways”.

Collaborative decision-making under independent Regional Planning Commissions may be hindered by different stakeholders using the same terms or concepts but meaning very different things. Such issues may result in conflicts or tensions if Commission trade-offs do not reflect the values of participating stakeholders in the process. For example, participants said that subtle differences between Indigenous and non-Indigenous worldviews can mean that “we can be saying the same thing but mean different things” and as a result “that’s where it really gets lost in translation” (Participant 30). During the Peel planning process, tensions came to a head when the Yukon Party Government’s vision for the Peel region was not reflected in the PWPC plan, which led them to modify the PWPC plan and develop their own plan to be applied to non-settlement land.

5.1.1. Planning for Sustainability

Participants perceived the RLUP process as advancing opportunities to address sustainable development, including determining trade-offs between often conflicting ecological, economic, social and democratic interests. Participant 19 commented, “planning, if done right, shows where you are going to be making these trade-offs”. Many of the trade-offs in RLUP are between the Yukon Government and seeking new revenues from resource development, while maintaining and protecting unique wilderness values, avoiding habitat loss and disruption to local species. Participants indicated in their answers to multiple questions, that planning for sustainability was constrained by procedural and substantive challenges such as value-based conflicts over acceptable trade-offs and best use of land. This theme clearly emerged as central from interviews with participants. For example, during the PWPC planning process, First Nations jointly expressed a desire to see the Peel Watershed 100% protected, while it was perceived by participants that the Yukon Government wanted a “resource plan where they could have industries throughout the landscape and then mitigate against other values” (Participant 21).

Over half of participants commented on the opportunities of RLUP for addressing sustainability interests, such as determining VECs, establishing baseline data for a region and establishing protected areas or conservation opportunities. Determination of pace and scale of development as well as development thresholds was also perceived as an opportunity of the RLUP process. Planning was perceived as a tool to develop economic opportunities in a region, including traditional economy values, wilderness and recreation opportunities. For example, the Youth of the Peel program was originally a program developed by CPAWS Yukon during the Protect the Peel campaign. The program bought youth from Yukon First Nations on canoe trips into the Peel Watershed to learn about tourism opportunities and to connect with the land (BCIC, 2018). The program is now run by First Nation youth and has completed two additional canoe trips into the region (Participant 30). An additional opportunity of the planning process was its role as a collaborative, public and democratic forum. Participant 6 remarked,

“It’s [RLUP] an opportunity – for mining interests to have their voices heard, for the conservation interests to have their voices heard, it’s an opportunity for the Yukon public and the public at large to have their voices heard – it’s a good process”.

However, a clearly emerging theme across all questions asked was that these opportunities were hindered by existing interests and value-based conflicts over the best use of land, which became increasingly apparent during planning for the Peel Watershed. Participants expressed concerns over sustainable development in the absence of land use planning, as strategic guidance would not be provided for project level assessments of non-renewable resource development or planning processes for other values, such as forest management plans or wildlife management plans. For example, Participant 22 expressed the following view,

“Even with the dissatisfaction of the Peel process, there’s talk of needing a plan. Without one, we have little control over what happens out there given our present mining laws”.

These concerns were heavily felt in the Dawson planning region, which is the historic site of the Klondike Gold Rush and remains an important mining region to this day. The Indian River Watershed was discussed by participants as an area of concern in this planning region since mining activity has been occurring on a project by project basis. The watershed is part of Trondëk Hwëch’in traditional territory and an important moose habitat.

A majority of participants said that the plan approval process for the Peel Watershed pointed to underlying tensions and values that posed significant challenges to effective consideration and

engagement with sustainability interests. The approval process is central to the conflict associated with the case study of the Peel Watershed. As a result, it is discussed in greater detail later on in this chapter.

5.1.2. Planning and Mining

For more than a century, the money economy of the Yukon has been primarily non-renewable resource based, with mining continuing to play a significant role following the 1898 Klondike Gold Rush. Participants indicated that this reliance on non-renewable resource development was a challenge to the effective consideration of sustainability interests in the RLUP process. For example, Participant 15 commented, “you’re talking about activities that are inherently unsustainable, you can’t sustainably develop a non-renewable resource”. Mining exploration and staking activities have occurred in the Peel Watershed as it is rich in coal, iron, copper, gold and uranium potential. However, the Peel region is not currently home to any mines (PWPC, 2011). Mining continues to be an important economic sector in the Yukon. Mining’s history in the territory is characterized by several abandoned mines requiring reclamation, including the Faro mine which is considered to be one of the world’s largest mining environmental disasters (Halliday, 2014).

The Yukon is home to free-entry staking laws, meaning a prospector is able to “stake” or claim almost any piece of public land if he or she believes it to have mineral potential and then mine it, although developments are subject to regulatory processes (Halliday, 2014). Given the general lack of predictability of mineral resources, industry prefers to limit protected areas to maintain availability of land for development (Kennett, 2010). Over half of participants expressed that this free-entry staking system was a challenge to the RLUP process. Participant 10 stated, “currently, we have more complexity in the world than the gold rush era mentality and those laws are still in place today”. Open staking was indicated by participants as a challenge for the RLUP process, both in needing to address existing mineral claims in regions during RLUP processes as well as the inability to “stake” land for other interests. For example, Participant 17 said “It [open staking] pretends that mining is what the Yukon is only meant for. I can’t go out and stake an agricultural or timber harvesting claim”. One participant said that the model for protected areas was at odds with resource development and thus may require innovation in order to develop compromises and manage for trade-offs between competing visions for the territory.

5.1.3. Relationship Between Planning and Assessment

The relationship between Chapters 11 and 12 is set out under the UFA in section 12.17.1, requiring conformity checks between approved RLUPs and development applications. An overwhelming majority of participants expressed that established RLUPs would provide “guidance” and “certainty” to development applications both prior to their application and during the assessment process. A lack of established land use plans was offered as an explanation for conflicts playing out at the level of EAs. For example, Participant 6 discussed RLUPs as offering strategic guidance to project applications,

“It [RLUP] does guide the process [development assessment] once the land use plan is in place, it then provides a lot of guidance for EA. The biggest issue is that EAs are happening without the RLUP process having been completed. RLUP will provide guidance on a more basic level where those EA processes can and should happen.”

Certainty over allowable areas for development was perceived as an opportunity for proponents seeking resource development in the territory. Participant 9 commented,

“When a project comes in, a proponent wouldn’t try and build a project in an area that doesn’t have the compatible land use. I think right off the bat that will shape where proponents are looking to do business”.

Drawing on their experiences with the North Yukon plan, some participants added that the implementation of conformity checks was a challenge to the relationship between Chapter 11 and 12. Section 12.17.1 lays out the responsibility for conformity checks on the Regional Land Use Planning Commission for the planning region. Both the North Yukon and Peel Watershed Regional Planning Commissions were disbanded following submission of the Final Recommended Plan to the Parties for approval. As a result, North Yukon conformity checks have become the responsibility of the YLUPC. However, under s.11.4.5.10 of the UFA, Regional Planning Commissions “may monitor the implementation of the approved regional land use plan, in order to monitor compliance with the plan and to assess the need for amendment of the plan”. Thus, it is unclear whether the YLUPC having responsibility over plan implementation, including monitoring, compliance and conformity checks is in accordance with the provisions as set out under Chapters 11 and 12.

5.2 Perceptions of Yukon First Nations Interests in Regional Land Use Planning

Chapter 11’s objectives include to “recognize and promote the cultural values of Yukon Indian People” (11.1.1.3) to “utilize the knowledge and experience of Yukon Indian People in order to achieve effective

land use planning” (11.1.1.4) and “to recognize Yukon responsibilities pursuant to Settlement Agreements for the use and management of Settlement Land” (11.1.1.5).

Chapter 11 is a “critical pillar” of the UFA as it is “part of the regime whereby Yukon First Nations people and governments are provided input into decisions regarding the way public resources in the Yukon are managed” (Participant 14). Further, Yukon First Nations use the land extensively “with an economy and culture intractably dependent on the maintenance of environmental quality”. As a result, they have a “vested interest in the outcome of any planning process” (Duerden, 1996, 109). Given the key role of Chapter 11 within land claim agreements, conflicts over the Peel planning process point to broader themes of First Nations sovereignty, self-determination and decision-making authority as well as procedural requirements for more effective cross-cultural engagement and consultation during planning processes.

5.2.1. “The Agreements need to be interpreted as the floor and not the ceiling”: Sovereignty, Self-Determination and Co-Management in the Yukon

Conflicts and tensions associated with the approval process for the Peel Watershed plan under s.11.6.3.2 raised issues regarding interpretation of the UFA and associated comprehensive land claim agreements. Given the constitutional protection afforded to land claim agreements, the Crown has a duty to interpret these agreements applying the honour of the Crown and reconciliation as guiding frameworks (*First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 58). Additionally, the UFA has a “spirit and intent” meaning “it was negotiated by First Nations to breathe and provide a management framework that reflects cultural values and practices” (Clark and Strack, 2017, 72).

Essentially, the approval process pursued by the Yukon Party Government for the Peel Watershed plan demonstrated its narrow interpretation of its responsibilities to Yukon First Nations land claim agreements. The previous Yukon Government interpreted section 11.6.3.2 to mean they had the ability to ‘modify’ the PWPC plan for application to Crown land (non-settlement land) under their jurisdiction, representing 97.3% of the region. In their view, First Nations could implement the PWPC plan on their 2.7% settlement land parcels. Participant 32 stated,

“Our view [Yukon Government] was that 97% of the land is Crown land, the Yukon [Government] is responsible. There was only a small percentage that was settlement land. At the end of the day, the Yukon can accept, reject or modify the recommendations coming out of the Commission.”

Such an interpretation of the UFA fails to consider its “spirit and intent” as well as First Nations authority and sovereignty, as First Nations agreed to cede Aboriginal rights and title, including surface and subsurface rights within their traditional territories with the understanding that “their region would be planned in partnership” (Clark and Strack, 2017, 72). Participant 15 summarized this issue, stating:

“It’s this concept they [Yukon Government] have of Crown land, so can do whatever they want.

In reality, that Crown land they thought they could do whatever they wanted with has conditions as it was unceded territory, 97% of it. The First Nations gave up ownership of it in return for the authority to make decisions on it *with* Yukon Government” (emphasis added).

Conflict over the interpretation of the agreement boils down to First Nations and the Yukon Government differing over the “spirit and intent” of the agreements. First Nations argued they ceded Aboriginal title in exchange for co-management authority. Chapters 11 and 12 are key chapters of the agreement for co-management of lands and resource development decisions. Co-management is defined as “local to regional-scale institutional arrangements that are intended to share some measure of control and authority for decisions about specific resources (commonly wildlife, fisheries, lands, protected areas and water) between governments and resource users” (Clark and Strack, 2017, 71). Participant 21 clearly articulated this perspective, saying:

“I view and lots of First Nations view these chapters as two key chapters because what the First Nations gave up, if you look earlier in the agreement, is they ceded Aboriginal title to everything but settlement land and the only way they did that was because the agreements said that these two chapters were to be independent of government, that the First Nations were to be at the table, otherwise there is no way that you would have gotten the agreement”.

Interpretation of the agreement to include co-management provisions under Chapters 11 and 12 was generally opposed by the previous Yukon Government. Participant 23 described their experience meeting with the previous Yukon Party Government during the Peel conflict and using the term co-management. In response, Participant 23 recalls the previous Yukon Government representative responding by saying “that is not a word used in the Yukon, we don’t think that way”.

Applying the guiding frameworks of the honour of the Crown, participation in good faith and reconciliation, interpretation of the agreements needs to be broad. In other words, viewing the agreements as the “floor and not the ceiling” (Participant 4). Participant 10 encapsulated a broader interpretation, stating:

“In order to make the future better than the past, we need to respect the agreements that have been made. We need to proceed with them in a way that honours the spirit of reconciliation rather than using the letter of the agreements to further rob people of their agency and land”. The SCC supported this interpretation of the agreements, viewing it as “a model for reconciliation” intended to “address past grievances” yet “oriented towards the future” (*First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 58 para. 56). Land claim agreements need to be perceived as the beginning of an ongoing relationship rather than a divorce (Participant 10). Yukon sovereignty, decision-making and co-management authority is central to such a relationship.

5.2.2. Implications of Mining on First Nations’ Interests

Interests of self-governing Yukon First Nations communities include creating employment opportunities for their citizens and business opportunities for their development corporations, while maintaining the ability of their citizens to continue land-based practices (Halliday, 2014). First Nations governments receive a share of the Yukon’s resource revenues and may receive additional benefits from individual negotiations with project proponents, for example, through IBAs. However, Yukon First Nations communities are aware of the risks associated with resource development, including environmental and social impacts that characterize non-renewable resource development such as cumulative impacts of multiple projects within their traditional territories and associated cascading impacts to fish and wildlife. As a result, Yukon First Nations communities may be in favour of “one mine at a time over 10-20 years each rather than 5 over the next 20 years” (Participant 24). First Nations may also point to environmental disasters such as the Faro Mine and the recent Mount Polley tailings dam spill as reasons to require a high level of application of the precautionary principle, monitoring and follow-up. For example, Participant 30 concluded, “We [First Nations] are not against development; we are for responsible development”.

Concerns over mining activities reported by First Nation participants include a lack of application of reclamation practices, sudden closure and abandonment, cumulative impacts, social or cultural effects and an inherent incompatibility between free staking policies and First Nations rights contained under comprehensive land claim agreements. First Nations participants mentioned experiences with sudden non-renewable resource development closure and abandonment. For example, participant 12 commented “often, we are in a situation like Faro where a company ends up going bankrupt and none of it is reclaimed”. As a result, a high level of application of the precautionary principle in assessment, follow-up and monitoring practices were encouraged to ensure sustainable

development and the protection of First Nations interests. Free entry staking policies were identified as a barrier to the protection of First Nations interests and as fundamentally incompatible with provisions of land claim agreements.

As discussed in Chapter 2, non-renewable resource development is characterized by high wages, cyclical employment, high mobility, risk of injury and exposure and gendered effects (Gibson and Klink, 2005). For Indigenous communities, development has also been associated with cultural discontinuity and oppression, linked with depression, alcoholism, suicide and violence, with youth being the highest at risk. Participant 15 characterized the social implications of resource development in First Nation traditional territory as “traumatic”, saying:

“I don’t think people realize how traumatic these projects are to communities. You look at some of these really big, hard rock type projects and they are in the consultation phase for years. It’s all speculative and most of them never go ahead and our communities are left in a continual state of upset: is the project going to happen or is it not going to happen? Are there going to be jobs or aren’t there going to be jobs? If there really are going to be jobs, are any of us going to get them? What is going to happen to my kids when my husband goes to work for two weeks at a time and has a huge amount of money to blow?”

Uncertainties and anxieties associated with resource development were thus articulated as an additional outcome of project development and consultation.

Additionally, communities needing to constantly “fight for and communicate the value of maintaining, not just an intact piece of land, but also the value of not having your culture further eroded every time” (Participant 15) was identified as a further contribution to community anxieties and trauma. Extensive consultation requirements of project development were articulated as further sources of cultural impacts of mining development. Participant 15 added,

“We have our Elders here who are supposed to be out with their grandkids, spending time with them, teaching them whatever they feel. You know what our Elders do? They go to meetings almost every night”.

The transmission of cultural practices and TK is thus being eroded due to resource development and associated consultation processes. Participants expressed a need for the procedural elements of resource development processes to include cross-cultural communication and engagement in order to effectively engage with First Nations communities, worldviews and interests.

5.2.3. Cross-Cultural Communication and Engagement

Epistemological and technical challenges to effective engagement with TK during consultation on resource development projects emerged as a key finding of the literature review offered in Chapter 2. Gryzbowski's (2014) review of the planning process for the Peel Watershed found challenges (along with facilitating factors) for integrating knowledge into the RLUP process. Gryzbowski (2014) offered recommendations to address these challenges, including modifying traditional knowledge gathering workshops, connecting with traditional knowledge and completing information sharing agreements between First Nations and Regional Planning Commissions (see [Appendix E](#)). My findings complement Gryzbowski's (2014), with participants highlighting the timing of engagement with First Nations communities, consideration of TK and capacity concerns as procedural challenges to First Nations engagement during RLUP processes.

Five participants commented on the timing of engagement as key to effective consideration of First Nations interests in the RLUP process. While both the importance of engaging during planning processes and formal First Nations roles are established under land claim agreements in the Yukon, various procedural elements may hinder effective engagement with these interests during RLUP processes. Duerden (1996) addressed such procedural elements, stating, "while the intent may not be malicious, poor internal communication, funding problems and cultural barriers can all be identified as contributing to a failure of Native participation, even when the opportunity clearly exists" (121). Although an overwhelming majority of participants found the process pursued by the PWPC to be sensitive and appropriate for addressing both sustainability and First Nations interests, Participants indicated earlier engagement would be an appropriate tool for Parties to articulate their positions at the beginning of the process, to establish a core guiding principle and vision, to build cross-cultural communication, and to better engage with TK.

Establishing formal guidance documents, early in the process, on community consultation, (such as consultation protocols) was offered as a potential solution. Applying Arnstein's (1969) "ladder of consultation", early engagement could help a community establish a clear vision for their participation and inclusion in the planning process, both meeting and going beyond the requirements of Chapter 11. Describing the challenges of current consultation initiatives in resource development processes generally, Participant 13 said,

"Often the government would say that they consulted us when really they sent a letter. For us, that wasn't really consultation... there's definitely different views on what consultation is and should be and that's evolving".

Establishing consultation protocols early in the process would allow First Nations and Commissions to determine the information they would need to provide, a process to standardize the information being provided to Commissions, the format for consultations and how information would be included and reflected in the RLUP.

Early engagement was offered as a recommendation to determine “where people are coming from and [...] reaching a common understanding about language [and] values so that we are all talking about the same things” (Participant 20). Early engagement was perceived as a tool for ensuring Commissions understood First Nations’ worldviews and engaged effectively with TK. During the planning process conducted by the PWPC, First Nations were asked to rank the importance of certain landscape values over others. Participant 15 highlighted the challenges of this ranking system from a First Nation worldview, stating “how can you rate the importance of one thing over another when every single thing depends on the other to exist?” Ranking certain values over others represented a culturally inappropriate way of discussing the region. Six participants drew attention to this example as a challenge to First Nations engagement in the process.

First Nations’ worldviews contrast with Western-European ideologies about the use of land, including perceptions around protected areas, wildlife and management. Participant 3 highlighted these differences, stating:

“The culture is different, the general philosophy of the use of the land, the sanctity of life, sustainable development, all of those are different... I’m not saying they are not complimentary but they are certainly different”.

For example, participants commented on the Commission’s focus on protected areas as being different from First Nations’ worldviews. Participant 17 added:

“The whole protection thing... land use was always about use. It may not have been to the same intensity, but it was about an interaction on the land. It wasn’t about locking it away”.

Participants also commented on comfort with uncertainty and long-term visions, contrasting with RLUP’s goals of providing certainty for resource development.

Scholars have pointed to regional planning’s application as a tool in the colonial toolkit to explain its continued reliance on incompatible cultural methodologies, such as value ranking and bureaucratic management of lands and resources (Duerden, 1996; Lane, 2006; Porter, 2006; Hibbard et al., 2008; Cornell, 2013; Matunga, 2013). Participants pointed to the division of land into land management units under the PWPC as another example of culturally inappropriate planning practices.

Participant 30 highlighted the differences between planning's approach to lands and resources and First Nations understandings, stating:

“I was recently expressing some general frustrations over how sterile the quantification of lands and animals are and how it's detrimental to our system because we never followed lines on a map, we followed animals or river and water systems. These more local stimuluses or areas that forced us to travel the land or use the land the ways that we did. To pop a bunch of squares on a map completely draws a line between families, between traditional areas, which are really huge because land masses that our grandparents grew up on, of course they fell in love with. There's more of an intimate dimension to our relationships with the land and then to turn around and look at a land use planning process as a process that does not have the ability to conceptualize that kind of aspect”.

Culturally appropriate consultation methodologies, recognizing the capacity strains on First Nations, were also raised as an additional area for improvement. participants raised capacity concerns in relation to effective engagement in planning processes, with Participant 12 indicating “a lot of the time, just because of the basic capacity issues that we face, we are more reacting rather than participating in a meaningful way”. Different First Nations representatives indicated varying capacity levels, especially in the context of availability of information. For example, Vuntut Gwitch'in First Nation has digitized a significant portion of their oral history records, making it somewhat easier for them to participate and contribute information to Regional Planning Commissions. On the other hand, the First Nation of Nacho Nyak Dun indicated that they were working to digitize their paper records and that it was “a strain on their capacity” (Participant 12).

Consultation processes were limited by community attendance and participation in the processes. Communities want to feel as though they are contributing to the process and that their information and values will be reflected in the plans produced by the Commissions. Participant 15 stated:

“It is hard to keep people engaged when they feel hopeless and helpless, when they are not heard. For so many people, it's [RLUP and EA] so far removed from their daily reality, they don't see any benefit from it”.

Engagement with community members must be culturally appropriate and align with traditional laws and social practices. For example, not all knowledge holders will feel comfortable stepping forward in an open house or town hall style-meeting, which may lead to Regional Planning Commissions missing out on valuable knowledge.

Although the Tetlit Gwich'in Council in the Northwest Territories was involved in the Peel planning process as a result of the Yukon Transboundary Agreement within the Gwich'in Comprehensive Land Claim Agreement, participants commented on their limited role in the planning process as a challenge to the inclusion of First Nations interests. The Tetlit Gwich'in Council has the largest share of settlement land parcels in the Peel Watershed region (2.32%) but were not officially represented in the makeup of the PWPC. However, they were represented on the Senior Liaison Committee and the Technical Working Group. Participant 19 pointed to the role of colonial borders and boundaries as a hindering factor to the Tetlit Gwich'in Council's involvement in planning for the Peel:

“You had a case where a territorial boundary reduced the natural influence that the Tetlit Gwich'in may have had if they were a Yukon First Nation. They would have been able to play a larger and more appropriate role than they were able to in this process. If the philosophy is that the First Nations who have traditionally occupied land now have a really large say, they should have had the biggest say but because they were in another jurisdiction, their say was reduced [...] It's a somewhat historical wrong. A legacy of the dividing of the country into provinces and territories and splitting the traditional territories [of Indigenous peoples].”

If RLUP processes are to be sensitive to First Nations interests, these need to be wary of colonially established borders and boundaries, which are inherently at odds with structures of Indigenous governance (Cornell, 2013). Finally, effective engagement with First Nations interests requires building understanding of the planning process and its requirements. This must be established early on in the process to avoid confusion, determine appropriate consultation methodologies and communicate effectively across cultures and worldviews.

5.3 Lessons from the Peel Watershed Planning Process

During a January 2018 meeting between Chiefs of the affected Peel First Nations and Yukon's Liberal Premier Sandy Silver, the Premier announced:

“We are now finally going in the right direction for the future of the Peel Watershed. We look forward to working together with First Nations, affected communities, stakeholders and Yukoners in a respectful and transparent way to arrive at a plan for the Peel Watershed that we can all embrace. This process is an important part of rebuilding respectful government to government relationships” (Water Canada, February 2018)

The affected Peel First Nations and the Yukon Government have all endorsed the PWPC plan and have committed to a final year of consultations to propose small modifications prior to plan approval (Joannou, 2018b). Section 5.3 presents participants' perceived lessons from the Peel planning process to be applied to future planning initiatives for the Peel Watershed along with future RLUP initiatives in the Yukon under Chapter 11.

Participants overwhelmingly agreed that the process conducted by the PWPC was appropriate. However, procedural areas for improvement emerged, including clarification of the role of Regional Planning Commissions, early engagement and transparent planning process participation in good faith, and the need for appropriate timelines and budgets to conduct comprehensive planning. They pointed to the need for a territorial protected areas or conservation strategy to address tensions between conservation and development values. Participants also discussed the conflicts associated with plan approval for the Peel Watershed. Suggestions to improve the plan approval process to avoid the conflicts in the Peel from arising during future planning initiatives centre on interpreting Chapter 11 according to the "spirit and intent" of the agreement along with maintaining transparency of all stakeholders throughout the planning process.

5.3.1. Peel Watershed Planning Commission Process was Appropriate

An overwhelming majority of participants felt the RLUP process as conducted by the PWPC was appropriate and yielded a plan that was an adequate compromise between First Nations, the Yukon Government and the interests of other stakeholders. Participant 12 commented,

"I think they [PWPC] listened to the community and not only our community, but everybody that participated in the negotiations, to get to that Final Recommended Plan".

When asked about the PWPC's attention to First Nations interests, nearly 70% of participants said that the Commission was sensitive to First Nations interests in the region. Participant 17 commented,

"I think the Commission was very sensitive to First Nations concerns. It had engagement with the First Nations in a way that government does not. I think in that respect they were able to gather and put together ideas and information from the First Nation perspective that was commendable in a lot of ways".

The majority of participants felt that the process pursued by the PWPC followed the one established under Chapter 11. Participant 18 added,

"The process was, as appears to be written in the final agreements, driven by the PWPC. There were extensive and genuine consultations with all of the communities and the users and/or

stakeholders in the Peel Watershed. Thoughtful recommendations were produced at the end that were accepted by most of the governments involved.”

Although First Nations expressed a desire for 100% protection of the Peel Watershed following the Commission’s release of the Recommended Plan in February 2011, they were willing to compromise for 80% protection, as was established in the Final Recommended Plan. Participant 14 commented,

“I think that strategically and politically, the First Nations decided that the best way to protect the Peel was to support the Commission’s final recommendation so they did and they made that public. They accepted the recommendation.”

First Nations support of the PWPC plan is demonstrated by their choice to address the issue of the plan’s modification through the courts. While it was widely held by participants that the process as pursued by the PWPC was appropriate, procedural areas for improvement were highlighted during interviews.

5.3.2. Procedural Areas for Improvement

Participants highlighted various procedural areas for improvement but recurring themes included early engagement, more appropriate planning timelines and budgets, clarification of the role of Regional Planning Commissions and transparent planning process participation in good faith to avoid the conflicts and tensions associated with the Peel Watershed planning process. As discussed above, early engagement was perceived as a tool for Parties to articulate their positions early on in the process, to establish a core guiding principle and vision, to build cross-cultural communication and for the Regional Planning Commission’s to better engage with TK, for example in establishing guidelines for how and when TK would be collected and included in the planning process.

Overwhelmingly, consultation pursued by the PWPC was perceived as appropriate. Participant 18 commented on the timing of consultations, in that best practices and understandings of effective consultation with Indigenous peoples have improved since consultations were originally conducted by the PWPC in the mid to late 2000s.

“I think that as time goes by, we gain a deeper understanding of what meaningful community consultation means. The last time the PWPC had public consultations was five years ago. We have learnt a bit since then. I hope we could do even better. For the time, they were very good”.

Participants addressed the need to apply best practices for consultation with First Nations communities during early engagement. Participants expressed dissatisfaction and frustration with the application of open house style consultation processes by the Yukon Party Government as they did not allow space

for discussion or clarification. This type of consultation was pursued by the previous Yukon Government following its modifications of the PWPC plan. Eleven participants expressed that this type of consultation was inappropriate. Participant 14 remarked,

“When you consult, you should properly be presenting views. It’s not just a blind fishing expedition. You should be consulting on something that has some substance. The substance was not there.”

Yukon Government officials, on the other hand, reported, “we had quite an in-depth consultation process, one of the longest and most detailed one I would think actually” (participant 8). As mentioned, eleven participants viewed the open house style engagement at that stage in the planning process to be a format that failed to establish public credibility. Public credibility is established through open, comprehensive, participative, accountable or transparent consultation processes (Atlin and Gibson, 2017).

Participants expressed concerns over the length of the planning process and associated funding requirements. For example, Participant 1 commented, “It took a lot of time... seven years and a lot of money. I shudder to think how much they spent”. While it was acknowledged that RLUP processes require extensive baseline data collection, participants felt that the PWPC spent too much time in the data collection stage. Participant 7 added,

“The Peel process is a classic example, you look at the documentation and the resource analysis that went into that process and its massive amounts of money. Obviously that stands you in good stead for things afterwards [such as EA] and could be considered useful spending but I honestly don’t think the territory has the kinds of resources that would support RLUP in the future.”

However, First Nation representatives added that they required more culturally appropriate timelines as they were working with capacity restraints. Participant 12 commented “when we are reacting, we are on very short timelines so it doesn’t allow us time to assess those things necessarily in the ways that we should”. Timeline and budget considerations should be established early in the process so as to ensure adequate baseline data collection and culturally appropriate timelines.

The role of Regional Planning Commissions was seen as a procedural challenge, given their independence during the process but ultimate decision-making authority resting with the Parties. Many participants felt that the Commission’s role and relationship to the Parties required clarification in order to avoid the conflicts associated with planning for the Peel Watershed. In its ruling, the SCC clarified whether the Parties have the ability to modify Final Recommended Plans, stating that modification

under s.11.6.3.2 would have to be detailed and in a manner that is consistent with the modifications proposed in writing earlier in the planning process.

The central theme that emerged in regard to lessons learned from the Peel process to be applied to future RLUP processes in the Yukon was the need for all Parties to maintain transparency and openness throughout the planning process. Many participants felt that the previous Yukon Government did not “put its cards on the table” (Participant 20) during the planning process for the Peel Watershed. Participants also felt that Yukon Government’s decision to modify the PWPC plan was a clear example of the previous Yukon Government not following the rules as established under the UFA. Participant 14 remarked,

“Transparency and openness is certainly a lesson. You have to play by the rules, you have to respect the process and you’ve got to be open to let people know what you’re thinking”.

Participants added that the open house style consultations were another example of the previous Yukon Government’s lack of transparency during planning for the Peel Watershed.

Finally, participants added that a Yukon-wide conservation or protected areas strategy would help to alleviate some of the tensions and conflicts between two competing visions for the territory. Such a strategy would provide guidance to Regional Planning Commissions, project proponents and associated EAs. Given the current lack of a conservation strategy for the territory, the planning process was perceived to be the only opportunity for the determination of new protected areas, further fuelling the tensions between competing visions of the territory. Planning’s iterative nature was indicated as a challenge for protected areas, with Participant 24 commenting,

“I’m not convinced that RLUP processes on a region by region basis are the best way to deal with that [conflicts between mining and conservation] because they are iterative, it’s [conflict] going to return time and time again and the same problems are going to emerge. Potentially a better solution would be to have a Yukon-wide Protected Area Strategy that got that interest dealt with upfront and would end up expediting many of the subsequent RLUP processes.”

To summarize, participants emphasized many procedural areas for improvement, including the need for early engagement, more appropriate planning timelines and associated budgets, clarification of the role of Regional Planning Commissions, transparent planning process participation in good faith to avoid the conflicts and tensions associated with the Peel process and finally, a territorial protected areas or conservation strategy to guide RLUP processes.

5.3.3. Conflict in the Peel

As previously discussed in Chapter 4 and the sections above, conflict in the Peel was primarily perceived by interview participants to be the result of conflicting interpretations of the UFA as well as the Yukon Government's lack of transparency and openness during planning for the Peel Watershed. These conflicts were further exacerbated by the underlying tensions in the Yukon between two competing visions for the territory.

First Nations interpreted the "spirit and intent" of the UFA as co-management because they ceded Aboriginal right and title in exchange for key provisions for land and resource management, including those contained under Chapters 11 and 12. Participant 6 commented "they [First Nations] were supposed to have a say in the management of these lands. Not 100% say but to be actively and meaningfully involved". In contrast, the previous Yukon Government interpreted the agreements as providing the Yukon Government with final decision-making authority over Crown lands. Participant 8 remarked,

"In my opinion, if you read through every chapter of the UFA there is a very common decision-making process that all parties would very carefully together work as hard as they can to reach a consensus on whatever it is they are talking about but at the end of the day, a decision has to be made and the government has the final say for its jurisdiction. First Nations have final say on settlement land and the Yukon Government has final say on non-settlement land."

The SCC's ruling clarified the Yukon Government's decision-making authority, viewing Chapter 11 as a "collaborative process for developing a land use plan." As such, "unconstrained authority to modify the Final Recommended Plan would render this process meaningless, as Yukon would have free rein to rewrite the plan at the end" (*First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 58 para. 48). The SCC clarified that modifications to the Final Recommended Plan must be in accordance with the spirit and intent of the agreements, constitutional principles such as the honour of the Crown and the definition of "modify" as clarified by the court in its ruling. Participant 28 summarized their perceived largest lesson from the Peel Watershed conflicts and tensions as:

"They [Yukon Government] have to be fair to First Nation people because of our land claim agreements. I bet you that's the biggest lesson."

A lack of transparency and openness throughout the planning process was perceived to be another contributing factor for conflict during the Peel Watershed planning process. Almost all participants felt that the planning process would be improved by ensuring all parties participated in good faith. Early engagement was perceived by most participants as a tool to develop "rules of

engagement” and to “manage expectations of the process” (Participant 31). Participants also pointed to early engagement following best practices for consultation as a tool to ensure planning processes developed community buy-in. As a result, plans would be more likely to be fully implemented and provide effective guidance to project-level assessments of non-renewable resource development.

5.4. Chapter Summary and Challenges and Opportunities for Attention

The purpose of this chapter was to present emerging themes from 34 semi-structured interviews conducted with key stakeholders involved in planning for the Peel Watershed. Findings address participants’ perceptions of the challenges and opportunities to effective engagement with sustainability and Yukon First Nations interests in RLUP as well as the perceived lessons from the Peel Watershed planning process for application to future planning initiatives under Chapter 11 of the UFA. Both substantive and governance challenges and opportunities emerged as findings from the interviews conducted. These are summarized in the table, below.

Table 7: Substantive and Governance Challenges and Opportunities from Semi-Structured Interviews with Key Stakeholders

	Substantive	Governance
Sustainability Interests	<ul style="list-style-type: none"> ➤ Conflict between development and conservation values ➤ Open staking as hindrance to maintenance of wilderness, ecosystem services and First Nations relationships to homelands 	<ul style="list-style-type: none"> ➤ Determining VECs, establishing baseline data for a region ➤ Managing pace and scale of development ➤ Economic opportunities ➤ Establishing protected areas/conservation opportunities ➤ Democratic/public engagement forum ➤ Better implementation of conformity checks between RLUPs and EAs
First Nation Interests	<ul style="list-style-type: none"> ➤ Interpretation of UFA: co-management ➤ Guiding frameworks: honour of the Crown, reconciliation, participation in good faith 	<ul style="list-style-type: none"> ➤ Concerns over open staking and associated socio-ecological and cultural impacts of resource development including community uncertainty/trauma ➤ Need for early engagement ➤ Cross-cultural communication
Peel Watershed	<ul style="list-style-type: none"> ➤ PWPC process appropriate (followed process established under Chapter 11 and sensitive to First Nations interests) 	<ul style="list-style-type: none"> ➤ Early engagement ➤ Best practices for consultation ➤ Timelines and budgets ➤ Clarify the role of the Regional Planning Commission

➤ Transparent and open participation in good faith throughout the planning process	➤ Need for territorial protected area strategy
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5.5. Revised Framework

The initial framework developed in Chapter 2 was established with attention to a core set of generic sustainability assessment criteria, which were then specified to address the challenges and opportunities identified in the literature review on sustainability, Indigenous interests and northern resource development.

Below, the framework from Chapter 2 is additionally specified with attention to the challenges and opportunities for attention presented in the conclusion to Chapter 4 as well as those presented in Table 7, above. Passages of text in italics are the result of additional specification of the initial framework presented in Chapter 2 from case and interview material. The components of the framework from Chapter 2 and the specified framework below are overlapping and mutually supporting, in keeping with the holistic requirements of progress towards sustainability (Gibson, 2017). Applying the framework requires attention to overlap and interacting effects between categories and criteria.

1. Socio-Ecological System Integrity

- Maintaining ecosystem services and respecting ecological limits (including water quality and quantity, species diversity, *special attention to and management of Valued Ecosystem Components*).
- Ensuring attention to northern Canadian ecologies and rapidly changing conditions (for example: from the impacts of climate change).
- *Avoiding trade-offs between wilderness values/conservation and non-renewable resource development through mitigation and determination of allowable pace and scale of development activities.*
- Applying contribution to sustainability tests to any resource development projects.
- Applying the highest degree of the precautionary principle for any non-renewable resource developments, including ensuring adequate attention to monitoring and follow-up.
- Ensuring attention to and effective assessment of the cumulative effects of any resource developments, regional plans to be appropriately applied to guide project-level developments and set allowable thresholds for development.

2. Livelihood sufficiency and opportunity

- Ensuring continued livelihood sufficiency of resource users, including protection of traditional economy values and building opportunities for resource revenue sharing and economic diversification.
- Developing opportunities for future livelihoods including traditional economy and avoidance of boom/bust effects associated with non-renewable resource development
- *Developing opportunities for employment opportunities which ensure lasting livelihoods (for example: Youth of the Peel initiative)*

3. Equity

- Increasing attention to intragenerational equity including Indigenous interests, building capacity and sustainable economic opportunities.
- Ensuring planning focuses on intergenerational equity including the rights of future generations to the sustainable use of renewable and non-renewable resources (with attention to the seven generations model)
- Attaining and distributing lasting and equitable social and economic benefits
- *Protecting regions of cultural and spiritual importance for future generations*

4. Socio-economic civility and democratic governance

- Encouraging and supporting application of Indigenous sovereignty, authority and decision-making, including applying *best practices for consultation*, the honour of the Crown and reconciliation as guiding frameworks.
- *Ensuring respect for the “spirit and intent” of land claim agreements applying a broad interpretation including participation in good faith.*
- Enhancing public engagement and collaborative decision-making, maintaining transparency and openness throughout resource development processes.
- Enhancing capacity for meaningful stakeholder and Indigenous participation/engagement
- *Ensuring Regional Planning Commissions are sensitive to community input and follow the planning process established under land claim agreements.*
- *Developing understanding of the role of Regional Planning Commissions and the Yukon Land Use Planning Council.*
- *Developing appropriate planning timelines and budgets so as to ensure appropriate and conducive cross-cultural engagement.*

5. Respect for and inclusion of Indigenous Worldviews

- Preserving the cultural identity and values of Indigenous peoples within a changing northern society
- Enabling Indigenous people to be equal and full participants in the development of the economy and society
- Enhancing appropriate and meaningful engagement with TK and ways of knowing (applying best practices, innovative approaches such as two-eyed seeing approach, *cross-cultural communication and early engagement*).
- *Ensuring territorial policies and practices align with provisions of comprehensive land claim agreements (for example: open staking and associated historic mining legislation currently not in accordance with provisions and interpretation of Yukon First Nation land claim agreements).*
- *Avoiding cultural and socio-ecological impacts of resource development including attention to community uncertainty and trauma.*

6. Precaution, adaptation and integration

- Avoiding trade-offs between long-term needs and short-term gains
 - Building understanding of rapidly changing ecological/political/economic northern contexts
 - Promoting effective implementation between planning and assessment (including monitoring, evaluation, remediation and follow-up)
 - Promoting plan flexibility and adaptability to changing circumstances
 - Seeking mutually reinforcing benefits between planning, projects and actions
 - *Ensuring development assessment proposals are in conformity with established Regional Land Use Plans*
-

In the next chapter, I apply the above framework to analyze the PWPC plan as well as the Yukon Government's plan for the Peel Watershed to determine the effectiveness of the plans for meeting regional sustainability and First Nations interests. A discussion of the strengths and weaknesses of the above framework for the evaluation of the planning process is also undertaken. In the final chapter, I review my findings, their implications, recommendations and directions for future research.

Chapter 6: Evaluation of Regional Land Use Plans for the Peel Watershed

In the previous chapter, I presented key stakeholder perceptions of the challenges and opportunities for effective engagement with sustainability and Yukon First Nations interests in RLUP as well as perceived lessons from the Peel Watershed planning process for application to future RLUP initiatives under Chapter 11 of the UFA. These were then translated into challenges and opportunities for attention to further specify the initial framework developed in Chapter 2, meeting my fourth research objective.

4. Further specify the initial framework for application to RLUP in the Yukon including challenges and opportunities for attention from the case study context and stakeholder perceptions of RLUP for the Peel Watershed.

In this chapter, the final analytical framework is applied to evaluate both the PWPC's Final Recommended Plan (PWPC plan) and the Yukon Government plan for the Peel Watershed to determine the challenges and opportunities of both plans for effective engagement with sustainability and First Nations interests. Applying the framework in this way to both plans allowed me to determine the challenges and opportunities of the plans for meeting sustainability and First Nations interests, corresponding with research objective 4. This chapter concludes with a discussion of the strengths and limitations of the analytical framework developed throughout this thesis.

6.1 Revised Framework

The revised analytical framework offered in the conclusion to Chapter 5 was built through attention to case and context specified criteria that incorporated broad generic sustainability requirements (as established by Gibson et al. 2005) and responded to a set of challenges and opportunities developed through a literature review, case context and interviews with key stakeholders involved in RLUP for the Peel Watershed. These were simplified and translated into a set of manageable categories, according to the criteria specification methodology developed by Gibson (2017). Applying the framework to the case study was for the purposes of gaining insights into the challenges and opportunities of the two competing plans for the Peel Watershed for effective engagement with sustainability and First Nations interests. It was also to identify areas for improvement and recommendations for policy and decision-makers in the Yukon to be applied to future planning for the Peel Watershed, along with future RLUP

initiatives under Chapter 11 of the UFA. Recommendations and associated areas of improvement are discussed in the final chapter of this thesis.

The analytical framework offered in Chapter 5 was translated into a matrix for evaluation of both the PWPC plan and the Yukon Government plan for the Peel Watershed. The matrix for evaluation is included in [Appendix D](#). The plans were evaluated to determine their potential effectiveness in meeting regional sustainability and First Nations interests. Effectiveness was determined on a simple scale of *unmet*, *partially met* or *fully met* for each of the criteria.

Criteria were deemed to be *unmet* if participants identified the actions, projects or guidance in the plans as representing challenges to meeting sustainability and First Nations interests or when no actions, projects or guidance were included in the plans to address the criteria in question. Criteria were deemed to be *partially met* if the plans included some actions, projects or guidance for the criteria but where some limitations to meeting criteria clearly existed or were discussed by participants. Finally, criteria were deemed to be *fully met* if participants identified the actions, projects or guidance in the plans as opportunities to meet sustainability and First Nations interests or when actions, projects and guidance in the plans specifically and clearly addressed a criterion.

6.2 Plan Evaluation

Regional land use planning for the Peel Watershed has shed light on conflicts and tensions between two competing visions for the Yukon. These two visions came to a head when the Yukon Party Government proposed modifications to the PWPC plan, from the proposed 80% of lands designated for protection and 20% open to industrial development to 29% protection and 71% open to industrial development (*First Nation of Nacho Nyak Dun v. Yukon (Government of)*, 2014, YKSC). Litigation brought forward by the affected Peel First Nations and environmental organizations seeking to quash the Yukon Government plan resulted in a ruling by the SCC in December 2017. The SCC ruled in favour of the First Nations and environmental organizations. In the time since the Court's ruling, the new Liberal Yukon Government and affected First Nations have expressed full support for the PWPC plan and have established a committee responsible for a final year-long round of consultations on the plan to begin in the October of 2018 (Joannou, 2018b).

Table 8 presents a summary of the differences between the PWPC plan and the Yukon Government plan for the Peel Watershed (table prepared by the Yukon Conservation Society, 2013).

Table 8: Overview of Differences Between PWPC and Yukon Government Plans for the Peel Watershed

PWPC plan	Yukon Government Plan
<p>55% Special Management Area: permanent protection from mining and oil and gas exploration and development. Existing mining claims continue but without surface access to them.</p>	<p>29% Protected Area: No new mineral staking or oil and gas exploration. Existing mining claims continue and “temporary” surface access to them is allowed for advanced exploration and mine development. All of the “Protected Areas” have mining claims in them except Landscape Management Units 11 and 12, the Blackstone and Hart Major River Corridors, and parts of the Peel main stem and Snake River Wild River Parks. The amount of more “Protected Areas” where roads and mines could not occur adds up to approximately 14% of the Peel region.</p>
<p>25% Wilderness Area: Interim protection from mining and oil and gas exploration and development – to be reviewed at the next Plan review in approximately 10 years. Existing mining claims continue to exist but no surface access to them is allowed.</p>	<p>44% Restricted Use Wilderness Areas (RUWA): New claim staking, roads and mines allowed within a .2% surface disturbance limit. No oil and gas development allowed at this time.</p>
<p>20% Integrated Management Area: Roads and industry are allowed.</p>	<p>27% Integrated Management Areas: Roads and industry allowed.</p>
<p>80% of Peel region protected from roads and industry.</p>	<p>Approximately 14% of the Peel region protected from roads and industry.</p>
<p>New mineral staking allowed in 20% of Peel region.</p>	<p>New mineral staking allowed in 71% of Peel region.</p>
<p>Oil and gas development allowed in Integrated Management Areas: 20% of Peel region.</p>	<p>Oil and gas development allowed in Integrated Management Areas: 27% of Peel region.</p>
<p>Uranium exploration and development: Not allowed anywhere in the Peel until the Yukon Government develops policies and guidelines for uranium exploration and mining.</p>	<p>Although oil and gas development not allowed in RUWA’s at this time, the plan allows for this to change in the future.</p> <p>No specific mention of uranium exploration and development, so they are allowed in Integrated Management Areas and RUWA’s.</p>

Air access in Special Management Areas and Wilderness Areas: **no new air strips**.

In Protected Areas: **New air strips allowed for “reasonable access”** to mine existing claims.

Dempster Highway subregional plan is required.

Dempster Highway subregional plan is required.
















Wind River Trail no longer recorded as an existing route under the Yukon Highways Act. Wind River Trail cannot be developed into a winter or all-season road because it is in a Special Management Area.

Wind River Trail no longer recorded as an existing route under the Yukon Highways Act. It could be developed into a winter or all-season road since it is in a RUWA. Approval after an EA would be required to develop it into a road.

Yukon Conservation Society, 2013

The plan evaluation matrix applied to evaluate the PWPC and Yukon Government plans for the Peel Watershed is presented in [Appendix D](#). A summary of the plan evaluation is presented in Table 9. The challenges and opportunities of the plans for meeting criteria representing sustainability and First Nations interests, as discussed in the next sections, were determined during evaluation of the plans. The discussion is organized according to challenges and opportunities to correspond with the earlier literature review discussion along with responding to research objective 4.

Table 9: Summary of Evaluation of Peel Watershed Plans

Evaluation according to <i>unmet</i>  <i>partially met</i>  or <i>fully met</i> 		
CATEGORIES	PWPC Plan	Yukon Government Plan
1. Socio-ecological system integrity		
2. Livelihood sufficiency and opportunity		
3. Equity		
4. Socio-economic civility and democratic governance		
5. Respect for and inclusion of Indigenous worldviews		
6. Precaution, adaptation and integration		

6.3 Challenges

Sections 6.3.1 to 6.3.6 briefly discuss the challenges of the PWPC and Yukon Government plans for meeting the criteria as established in the analytical framework.

6.3.1. Socio-ecological system integrity

The PWPC Plan fully met all six of the criteria under the category of socio-ecological system integrity due to the plan's focus on sustainable development, wilderness protection, limiting access and cumulative effects monitoring. The plan protected 80% of the region from non-renewable resource development while ensuring that any future developments would be conducted applying the highest degree of precaution through mitigation, reclamation and limited permanent access and transportation, thus ensuring the socio-ecological integrity of the region.

In contrast, the Yukon Government's plan for the Peel Watershed only fully met one criterion while it partially met five of six of the criteria under this category. The Yukon Government plan opened much more of the region to non-renewable resource development (71% compared to 20%) as well as made broader allowances for access. Many participants said that the Yukon Government wanted a resource plan and did not want to see areas with restricted resource development activities. Given the nature of non-renewable resource development and its potential impacts on First Nations culture and interests as well as sensitive northern ecologies, development of this sort does not advance or ensure socio-ecological system integrity. Although any developments in the Peel Watershed would be subject to EA requirements under YESAA, the Yukon Government plan for the Peel Watershed prioritized resource development over the protection of wilderness values and conservation.

6.3.2. Livelihood sufficiency and opportunity

The PWPC plan for the Peel Watershed fully met three of three criteria under the category of livelihood sufficiency and opportunity while the Yukon Government plan for the Peel Watershed partially met three out of three criteria. The Yukon Government plan failed to fully meet the criteria under this category as the plan offered broader allowances for resource development, thus prioritizing livelihoods resulting from such developments. These are characterized by high wages, cyclical employment (two weeks on, two weeks off), high mobility, risk of injury and exposure as well as gendered effects (Gibson and Klink, 2005). While these activities contribute to livelihood sufficiency and opportunity through socio-economic benefits during the life of the extractive operations, they are inherently short-term livelihoods and are vulnerable to premature closure or insolvency due to price fluctuations in global

markets (Baker and McLelland, 2003; Atlin and Gibson, 2017). Extractive projects may result in negative legacy effects, further eroding the potential for sustainable livelihoods (Atlin and Gibson, 2017). However, the economic opportunities of extractive projects may contribute to the development of sustainable economic opportunities, for example through contributions to a sustainability legacy fund. Resource development in the Peel Watershed would occur in remote regions, requiring significant infrastructure development (e.g., roads). Non-renewable resource development may negatively affect socio-ecological system integrity, thus impacting traditional economy values, which are dependent on healthy ecosystems and are inherently lasting in nature. Interactions between the criteria for socio-ecological system integrity and livelihood sufficiency and opportunity must be given significant attention, especially in the context of maintaining traditional economic livelihoods for the First Nations with traditional territory in the Peel Watershed.

6.3.3. Equity

The PWPC plan fully met three criteria and did not meet one criterion under the equity category. The Yukon Government plan for the region did not meet one criterion and partially met the three remaining criteria under this category.

Both plans did not meet equity criterion 3 – the attainment and distribution of lasting and equitable social and economic benefits. Both plans lack guidance on the distribution of benefits from future resource development in the region. However, this type of guidance may go beyond the scope and authority of RLUP processes established under Chapter 11. Guidance on the distribution of lasting and equitable benefits may be the purview of the development assessment process established under Chapter 12 as well as supraregulatory mechanisms such as IBAs with affected First Nations. However, addressing benefit distribution in such ways does not ensure consistent and efficient direction during project-by-project assessments, adequate attention to cumulative equity effects or establish consistent methods to address such cumulative effects.

The Yukon Government Plan for the Peel Watershed only partially met three of the four equity criteria because its broader allowances for non-renewable resource development prioritized short-term gains over long-term sustainable development activities. Resource development may have adverse intragenerational equity effects given the implications of living by a mine or oil and gas development (such as health and environmental justice concerns) along with adverse intergenerational equity effects due to contamination, rapidly changing conditions due to climate change, and sudden environmental risk or disaster becoming the burden of future generations (Suopajarvi et al., 2016).

6.3.4. Socio-economic civility and democratic governance

The planning process by which the PWPC plan was developed fully met four socio-ecological civility and democratic governance criteria, partially met two and left one criterion unmet. The process pursued by the PWPC did not meet the criterion relating to timelines and budgets as participants overwhelmingly felt that the planning process pursued by the PWPC took too long and went significantly over budget. As the plan developed by the Yukon Government was developed from the baseline data collected by the PWPC, it also did not meet the criterion on planning timelines and budgets.

All seven criteria under the category of socio-economic civility and democratic governance were unmet by the process pursued by the Yukon Government to arrive at its plan. The Yukon Government's significant modifications of the PWPC plan were ruled by the Yukon Supreme Court not to be in conformity with the land use planning approval process under s.11.6.3.2 of the UFA. This decision was upheld by the SCC in December 2017.

The open house style consultations pursued by the Yukon Government following its modifications of the PWPC plan were reported by participants to be unsatisfactory and frustrating. Participants felt that open house style consultations were another example of a lack of transparency on behalf of the previous Yukon Party Government during planning for the Peel Watershed. Modifications to the PWPC plan by the Yukon Government were ruled by the courts not to be in accordance with the "spirit and intent" of the final agreements, constitutional principles such as the honour of the Crown and the definition of "modify" as clarified by the SCC. As a result, the Yukon Government plan was quashed (*First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 58).

6.3.5. Respect for and inclusion of Indigenous worldviews

The PWPC plan fully met three criteria and partially met two criteria under this category. It did not fully meet criterion 3 – enhancing appropriate and meaningful engagement with TK and ways of knowing – because the PWPC asked First Nation participants to rank areas of significance during the Issues and Interests stage of the planning process. This type of request was deemed to be inappropriate by many First Nations participants interviewed as it fails to recognize the holistic nature of TK and associated Indigenous worldviews. This critique of the PWPC was also included in Gryzbowski's (2014) review of the planning process for the Peel Watershed (see [Appendix D](#)). The PWPC plan only partially met criterion 4 – ensuring territorial policies and practices align with provisions of comprehensive land claim agreements – because it did not make recommendations to alter open staking

policies and practices in the Peel Watershed. However, the plan did limit access and allowed non-renewable resource development in a few defined areas.

In contrast, the Yukon Government Plan did not fully meet any of the criteria under this category. The Yukon Government's decision to significantly modify the plan created by the PWPC in the final hour of the planning process demonstrated a narrow interpretation of its responsibilities under First Nation comprehensive land claim agreements. The Yukon Government's interpretation of the agreements failed to consider its "spirit and intent" as well as First Nations authority, sovereignty and co-management responsibilities. The plan prioritized resource development by allowing mineral exploration and development in 71% of the region although affected First Nations clearly expressed that they wanted to see the region 100% protected.

6.3.6. Precaution, adaptation and integration

The PWPC plan fully met three criteria, partially met two criteria and did not meet one criterion under this category. For this reason, it was determined that the PWPC plan partially met the criteria within this category. The PWPC plan did not meet all the criteria under this category because the plan failed to establish specific indicators for all sustainable development themes, participants expressed concerns over responsibilities for plan implementation and the plan contained limited guidance for future resource development other than limiting access and regions open to development.

The Yukon Government plan for the Peel Watershed partially met five criteria and did not meet one criterion under this category. The plan's significant opening to development prioritizes short term gains from non-renewable resource development revenues over long-term needs, such as the maintenance of healthy ecosystems and associated traditional economic and livelihood practices.

While the PWPC plan applied adaptive management principles and included three methods for plan review, the Yukon Government plan only established one method for plan review, which was to be conducted by an internal Implementation Committee in consultation with affected First Nations. Category six is key for recognizing the interactions and relationships between criteria and categories. Monitoring, plan flexibility and implementation are necessary requirements of effective engagement with sustainability and Indigenous interests.

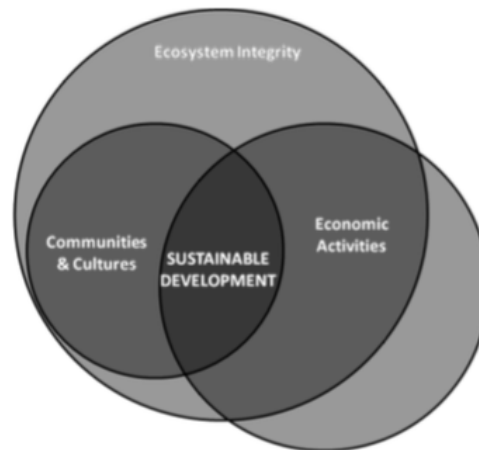
6.4. Opportunities

Sections 6.4.1 to 6.4.6 briefly discuss the opportunities offered by the PWPC and Yukon Government plans for meeting the criteria as established in the analytical framework.

6.4.1. Socio-ecological system integrity

The PWPC plan for the Peel Watershed met six of six criteria under this category. The core principle of the PWPC plan was sustainable development and the PWPC applied a nested approach to sustainability. This approach recognized that “society exists within the environment and is limited by its capacity. Some economic activities fall outside the overlapping circles of environment and society because they are not sustainable,” such as non-renewable resource development (1-7). The PWPC’s nested understanding of sustainable development is represented in Figure 9.

Figure 9: Sustainable Development as represented by the PWPC



Peel Watershed Planning Commission, 2011

The PWPC plan aims to ensure socio-ecological system integrity through recognition that ecological integrity is the baseline for any future socio-ecological activities, including lasting livelihoods, equity, First Nations interests and applying a precautionary approach within rapidly changing northern ecologies. The PWPC plan also fully met all the criteria for socio-ecological system integrity because it valued maintaining the wilderness character of the region, including by limiting linear features such as roads, which have potential implications for VECs such as caribou, which are an important source of traditional foods for First Nations in the region. The Peel remains one of the last intact wilderness

watersheds in North America. For this reason, protection of its wilderness character is both territorially and globally significant. The Yukon Government plan for the Peel Watershed partially met five of the criteria under this category as its broader allowances for non-renewable resource development may have led to resource development outside ecological limits.

6.4.2. Livelihood sufficiency and opportunity

The PWPC plan fully met three of the three criteria under the category of livelihood sufficiency and opportunity because it emphasized the maintenance of lasting livelihoods such as First Nations traditional economic activities, big game outfitting and tourism. Such activities are challenging to quantify economically and as a result are often not prioritized during planning exercises (Hibbard and Adkins, 2013). However, the PWPC recognized the long-term livelihood benefits of maintaining the region's wilderness character, including opportunities from the region's cultural and ecological value, such as First Nations opportunities for wilderness guiding and tourism. Interview participants indicated that the affected First Nations valued maintaining lasting livelihoods in the Peel Watershed as they are experiencing significant resource exploration and development in other regions within their traditional territories, such as in the Dawson and Northern Tutchone planning regions and the Eagle Plains region in North Yukon.

The Yukon Government plan for the Peel Watershed emphasized maintaining land available for non-renewable resource development, therefore prioritizing the Canadian and Yukon status quo of resource development as a primary economic activity. While non-renewable resource development offers socio-economic benefits, these are inherently unsustainable given the projects' limited lifespans as well as associated risks of adverse ecological and social legacy effects.

6.4.3. Equity

Three of the four equity criteria were met by the PWPC plan. The Yukon Government plan for the region partially met three criteria and one criterion was unmet under this category. As discussed, the PWPC plan emphasized the maintenance of the region's wilderness value and respected First Nations interests in the region. Regions of significant cultural and spiritual importance were granted the highest level of protection under the PWPC plan. Equity considerations for First Nations participants include stewardship responsibilities to lands and resources as well as past and future generations. For example, in a community vision statement from the Peel Watershed gathering held on February 18, 2007, the affected First Nations wrote that they wanted to see protection of the Watershed so that,

“The future generations can walk where their ancestors have walked and live as they have lived; the youth can learn who they are from the land; we can make a living from the Watershed. When we work for this future vision, we walk in the footsteps of our ancestors and our Elders before us”.

While both plans include guidance to maintain VECs for future generations, the PWPC plan provides interim protection to 25% of the region. This interim protection empowers future generations to make decisions about the best use of land in the context of rapidly changing northern realities, for example due to climate change. The Yukon Government plan for the watershed did not include interim measures for protection.

6.4.4. Socio-economic civility and democratic governance

The planning process pursued by the PWPC advanced socio-economic civility and democratic governance as it was conducted according to the planning process established under Chapter 11, the “spirit and intent” of the UFA and applied the honour of the Crown and reconciliation as guiding frameworks. The planning process pursued by the PWPC interpreted Chapter 11 as a framework for co-management and cooperation between First Nations and the Yukon Government. While some areas for improvement were identified during evaluation of the plan, the overall outcome of the evaluation of the PWPC plan was that it fully met the criteria under this category. Specifically, the planning process pursued by the PWPC was transparent and valued First Nations sovereignty, authority and decision-making.

For example, the PWPC’s initial Draft Plan was a compromise between development and conservation interests. During consultations, the Draft Plan was criticized by all stakeholders to the planning process. As a result, the PWPC responded and recommended a “cautious, conservative approach”, which included interim protection for some regions in the watershed. This demonstrates the PWPC’s willingness to build compromises and respond to input from stakeholders.

The process pursued by the PWPC was upheld through litigation on planning for the Peel Watershed. The SCC ruled that First Nations have a right to “meaningful participation in the process” (*First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 58 para. 48). In contrast, the process pursued by the Yukon Government to arrive at its plan for the region was ruled by the SCC not to have been conducted in accordance with the “spirit and intent” of the final agreements, the honour of the Crown or applying reconciliation as a guiding framework. As a result, the plan was quashed by the court.

6.4.5. Respect for and inclusion of Indigenous worldviews

The affected Peel First Nations expressed that they wanted to see the watershed 100% protected following the release of the PWPC's Draft Plan. However, First Nations were willing to compromise. They chose to support and implement the PWPC's Final Recommended Plan calling for 80% protection of the watershed and 20% opening to industrial development on settlement land parcels. Regions of cultural and spiritual significance were granted a high level of protection under the PWPC plan. Additionally, the PWPC plan followed the process as established under Chapter 11 of the UFA, which requires the full and equal participation of First Nations in decisions about the future of their traditional territories. The PWPC's respect for and inclusion of First Nations' worldviews interacts and feeds into all of the categories and criteria included in the framework, given the planning process flows from comprehensive land claim agreements. First Nations support of the PWPC plan is exemplified by First Nations seeking a legal remedy to support the plan as well as the SCC's subsequent "quashing" of the Yukon Government plan.

6.4.6. Precaution, adaptation and integration

Three of six criteria under this category were fully met by the PWPC plan. The PWPC plan offers opportunities for meeting the criteria under this category given its emphasis on protecting and managing valuable features for future generations, including interim protection for 25% of the watershed. The PWPC plan offers three methods for altering the plan and applies an adaptive management approach for plan variance, amendment and review. The PWPC plan also includes significant calls for research in the watershed, building understanding of ecological conditions in rapidly changing environments. In contrast, the Yukon Government plan did not provide interim protection and only offered one method for plan review to be conducted by an Internal Committee in consultation with affected First Nations. As a result, the Yukon Government plan partially met five criteria and did not meet one criterion under this category.

6.5. Strengths and Limitations of the Framework

Application of the final framework to the PWPC plan revealed that 3 (10%) out of the 31 criteria were *unmet*, 6 (19%) were *partially met* and 22 (71%) were *fully met*. In contrast, 13 (42%) criteria of the 31 were *unmet* by the Yukon Government plan, 17 (55%) were *partially met* and 1 (3%) was *fully met*. These results are not surprising, given the SCC's December 2017 ruling "quashing" the Yukon Government plan for the Peel Watershed, as the modifications proposed by the Yukon Government

were not in accordance with the “spirit and intent” of the agreements, constitutional principles such as the honour of the Crown as well as the definition of “modify” as clarified by the court. The Yukon Government’s emphasis on maintaining regions open for non-renewable resource development resulted in all of the initial socio-ecological system integrity criteria being unmet, as these activities are associated with ecological, social and economic impacts. Socio-ecological system integrity interacts with all of the other criteria included in the framework.

Applying a sustainability-based and case specified analytical framework for the purposes of evaluating the effectiveness of the PWPC and Yukon Government plans for the Peel Watershed had both strengths and limitations. Development of criteria was an iterative process, and the initial framework depicted in Chapter 2 is in scope and scale sustainability-based but is specified to address broad challenges and opportunities for effective engagement with sustainability and Indigenous interests in northern resource development. That framework offers an interesting starting point for adjustments for application to case and context evaluations of resource developments in other northern contexts.

Nevertheless, the initial framework required additional specification for application to the case study of the Peel Watershed RLUP process. Specification to the case was developed through attention to challenges and opportunities from the case study context and key stakeholder interviews. While this framework is more specified to the case study, it is subject to significant limitations as it was not developed applying decolonizing methodologies. As a result, it may not be entirely representative of sustainability and First Nations interests in the region. Additional First Nations community input would have been beneficial under these circumstances in order to validate the categories and criteria depicted in the framework. Furthermore, framework development was limited as no interviews were conducted with stakeholders representing industry perspectives in the Peel Watershed, such as mining, oil and gas and tourism or guiding operators due to time constraints and the unwillingness of representatives of these interests to be interviewed. Any future application of this framework to the case study of the Peel Watershed should address these limitations. Any applications of this framework to other cases would require attention to the specific challenges and opportunities of the cases in question.

This research project applies a single case study approach of the Peel Watershed RLUP process. While a single case study approach is appropriate when the researcher wants to explore a phenomenon or describe a unique situation in situ, this approach raises generalizability limitations (Baxter and Jack, 2008). As a result, my research findings are limited to the geographic and temporal scales of the case study. Although my research findings may provide useful insights into other cases, these may be limited

to other cases of RLUP in the Yukon under Chapter 11 or other RLUP processes established under comprehensive land claim agreements.

Finally, application of a matrix for evaluation raises scope and scale limitations given the holistic nature of both sustainability and Indigenous interests and worldviews (Berkes and Berkes, 2008; Gibson, 2017). Progress towards sustainability, Indigenous sovereignty and reconciliation are interconnected and complex. As a result, these categories and criteria are not a roadmap for effective engagement with sustainability and Indigenous interests but merely an initial set of criteria for attention. The overlaps and interconnections between categories and criteria require additional attention. Future application of the framework may require thinking through innovative approaches to evaluation, potentially drawing from literature on complex systems or cumulative effects assessment.

6.6. Chapter Summary

In this chapter, I applied the final analytical framework to both the PWPC plan and the Yukon Government plan for the Peel Watershed to determine the challenges and opportunities of the plans for effective engagement with sustainability and First Nations interests. Applying the framework in this way to both plans allowed me to determine areas for improvement and recommendations for decision-makers to improve future planning for the Peel Watershed as well as any other future RLUP initiatives under Chapter 11 of the UFA. These recommendations are presented in the next chapter of this thesis. In this chapter, I also discussed the strengths and limitations of the application of the analytical framework developed for the purposes of this thesis.

Findings indicate that the PWPC's focus on conservation, limiting resource development and ensuring socio-ecological system integrity in the watershed offered cascading opportunities to meet subsequent criteria, including those established under the categories of livelihood sufficiency and opportunity, equity, and attention to, and inclusion of Indigenous worldviews. Additionally, the plan was developed following the process established under Chapter 11 of the UFA as well as paying attention to guiding principles such as the honour of the Crown, reconciliation and the spirit and intent of the agreements, thus meeting criteria for socio-economic civility and democratic governance.

In contrast, the Yukon Government's plan was determined by the courts to not have followed the process established under Chapter 11. It emphasized maintaining land available for non-renewable resource development, which may lead to developments outside sustainable levels, the degradation of socio-ecological system integrity and linked traditional economic pursuits. Chapter 7 reviews the findings of this thesis, their implications and associated recommendations.

Chapter 7: Conclusion

This chapter concludes this thesis by summarizing the research findings, their implications and identifying recommendations and directions for future research. Results of the evaluation of the PWPC plan and the Yukon Government plan for the Peel Watershed discussed in the previous chapter were translated into practical recommendations for policy and decision-makers. Doing so met my fifth and final research objective:

5. Develop recommendations for policy and decision-makers for the effective inclusion of sustainability and Yukon First Nations interests within future Regional Land Use Planning processes under Chapter 11 of the Umbrella Final Agreement.

7.1. Thesis Conclusions

In this thesis, I developed and applied an analytical framework to determine the effectiveness of both the PWPC plan and Yukon Government plan for the Peel Watershed to meet sustainability and First Nations interests. The analytical framework was developed using case and context specified criteria that also incorporated broad generic sustainability requirements (as established by Gibson et al. 2005), and responded to an initial set of challenges and opportunities from a literature review of sustainability and Indigenous interests in northern resource development, regional challenges and opportunities for attention from the case context as well as insights from 34 semi-structured interviews with key stakeholders involved in RLUP for the Peel Watershed.

The initial framework offered in Chapter 2 was established through attention to Gibson et al.'s (2005) generic set of sustainability-assessment criteria along with substantive and governance challenges and opportunities for effective engagement with sustainability and Indigenous interests in northern resource development processes, as established through a literature review. The initial framework included six categories and associated criteria. Under the first category, socio-ecological system integrity, it was established that effective resource development must include maintenance of ecosystem services and respect for ecological limits, paying attention to cumulative effects, monitoring, follow-up and effective tiering between strategic initiatives and project-level assessments. The second and third categories, livelihood sufficiency and opportunity and equity considerations, require development of economic opportunities, while ensuring lasting livelihoods and supporting cultural

values and practices of Indigenous peoples. The fourth category, socio-economic civility and democratic governance under comprehensive land claim agreements requires respect for Indigenous sovereignty, authority and decision-making while also enhancing capacity for meaningful stakeholder and Indigenous participation. Governance processes are to be transparent, collaborative and conducted applying the honour of the Crown and reconciliation as guiding frameworks. Criteria under the fifth category, respect for and attention to Indigenous worldviews, ensure attention to the preservation of the cultural identity of Indigenous peoples and the enhancement of meaningful engagement with TK and Indigenous ways of knowing. Finally, attention must be paid to interactions among and across criteria areas, applying precaution and adaptation to rapidly changing northern ecological, political and economic contexts.

Criteria were further refined according to substantive and governance challenges and opportunities for attention from the case study context and insights from 34 semi-structured interviews with key stakeholders from the RLUP process for the Peel Watershed. A review of the history of RLUP in the Yukon indicated a mixed experience with planning, culminating in conflict over the approval process for the PWPC plan and a case ultimately decided by the SCC in December 2017.

The Peel case embodies the tensions in the Yukon between competing visions for the territory. The first calls for increased resource development, ensuring the diversification of Yukon's economy away from its present reliance on federal government transfers and largely public-sector employment opportunities. The second places more value on Yukon's natural environment, embracing protection of internationally significant wilderness regions as well as the stewardship interest of Yukon First Nations, recognizing that all of these serve as a strategy to maintain resources and culture for long term wellbeing benefits (Halliday, 2014). Results from key stakeholder interviews validated these tensions while pointing to broader issues of power, authority and interpretation of the final agreements between the Yukon Government and Yukon First Nations. The previous Yukon Party Government's decision to substantially modify the PWPC plan went against the "spirit and intent" of the UFA and the RLUP process established under Chapter 11. These modifications point to the Yukon Government applying a narrow interpretation of its responsibilities towards Yukon First Nations under comprehensive land claim agreements.

Interview participants indicated that the RLUP process pursued by the PWPC effectively engaged with sustainability and Indigenous interests. However, procedural areas for improvement emerged as themes from the interviews. These included the need for reconsideration of Yukon's existing open staking policies and regulations, early consultation and engagement applying cross-cultural

communication methodologies, more appropriate planning timelines and budgets, clarification of the role of Regional Planning Commissions, transparent participation in good faith to avoid the conflicts and tensions associated with the Peel process and finally, establishment of a territorial protected area or conservation strategy to guide future RLUP processes.

The challenges and opportunities for attention from the literature review, case study context and semi-structured interviews were translated into a final case-specified analytical framework which was then applied to evaluate both the PWPC and Yukon Government plans for the Peel Watershed. Evaluation of the PWPC plan determined that 22 of 31 (77%) of criteria within the framework were fully met. In comparison, evaluation of the Yukon Government plan for the Peel Watershed determined that 1 of 31 (3%) of criteria within the framework were fully met. These results are not surprising, given the SCC's decision supporting the lower court's ruling to "quash" the Yukon Government plan for the Peel Watershed and to return all parties to a final consultation stage on the PWPC plan prior its' to implementation. The Yukon Government plan emphasized the availability of regions for non-renewable resource development. As a result, it met none of the initial socio-ecological system criteria. Such activities are associated with adverse ecological, social and economic impacts. Criteria under the umbrella of socio-ecological system integrity have far-reaching interactions with all other categories and criteria included in the framework. The PWPC plan recognized this, stating: "if we fail to sustain the ecosystem, we have no basis for a sustainable society, nor for a sustainable economy" (PWPC, 2011, viii). While these may seem like obvious conclusions, such a recognition moves away from present path dependencies and the status quo of many non-renewable resource development activities that leave negative legacies within Indigenous homelands.

7.2. Implications

The next sections draw conclusions about the theoretical and practical implications of this research. Practical implications include implications for resource development processes - paying attention to both sustainability and Indigenous interests. Practical implications also include areas for improvement and recommendations for the Peel Watershed planning process along with future RLUP initiatives established under Chapter 11 of the UFA.

7.2.1. Theoretical Implications

This research responds to calls in scholarship and practice to address the limitations of Canadian resource development processes for both sustainability and Indigenous interests. Addressing both

sustainability and Indigenous interests holistically offers a novel approach to evaluating existing resource development processes, including RLUP and EA processes. It also contributes a detailed qualitative case study of northern Canadian RLUP for its ability to influence project-level EA processes, including results from over 30 interviews with key stakeholders.

The framework developed throughout this research is specified to case and context considerations of a RLUP process established under comprehensive land claim agreements in northern Canada. While this framework responds to the specific sustainability and First Nations interest challenges and opportunities of RLUP for the Peel Watershed, it is most likely generalizable to other resource development processes. The criteria put forward in the framework are necessarily tentative and would merit additional consultation, debate, verification and innovation. The framework would also benefit from application to other resource development processes established under comprehensive land claim agreements, both within and outside of Yukon, for additional insights and refinement. However, application of this framework to different case studies would require thorough case exploration and incorporation of resulting criteria (Gibson, 2017).

Finally, the case study of the RLUP process for the Peel Watershed and subsequent evaluation of the regional plans for the watershed represent a substantive contribution on their own. This case study has shed light on issues associated with co-management of lands and resources in the Yukon established under constitutionally-protected comprehensive land claim agreements. The SCC's decision in *First Nation of Nacho Nyak Dun et al. v. Yukon* (2017 SCC 58) emphasized the importance of the honour of the Crown and reconciliation as guiding frameworks in the interpretation and implementation of such agreements with signatory First Nations. Finally, the role of strategic initiatives (such as RLUP) was emphasized through this case study for addressing broader interests, including cumulative effects and Indigenous interests in rapidly changing northern contexts.

As will be discussed in the next section of this chapter, application of the framework to the case study facilitated the identification of several practical policy implications and recommendations for the Yukon as well as future RLUP initiatives established under Chapter 11.

7.2.2. Implications for Policy

The case study of the RLUP process for the Peel Watershed, including a review of the history of RLUP in the Yukon, litigation for the Peel Watershed and insights from interviews with key stakeholders involved in RLUP for the Peel Watershed revealed four key implications for policy in the territory. The first is that conflicts associated with RLUP for the Peel Watershed point to larger tensions between

competing visions for the territory. These are representative of the classic sustainability conflicts over conservation versus development. They require effective engagement with and trade-offs between stakeholders and their interests or developing alternative approaches in order to eliminate negative legacies of non-renewable resource development including initiatives such as revenue sharing, the establishment of legacy funds, remediation, extending project lifespans and applying latest technologies to maintain ecosystem services within planning regions. While such practices may not eliminate trade-offs, they may identify improvement options. The maintenance of ecological systems is significant given the potential cascading and interactive effects these may have on livelihoods, equity and Indigenous interest considerations.

The second implication for policy relates to the role of strategic planning in offering guidance to project-level assessments. Interview participants largely indicated that concerns over adverse cumulative effects in particular regions, for example the Dawson and Northern Tutchone planning regions, are significant given the high levels of interest in mining exploration and development occurring in the absence of established RLUP processes. Such concerns will continue to be brought forward during consultations on project-level assessments, even though the weaknesses of these processes for addressing broader considerations are well established. Strategic initiatives, such as RLUP, offer tools to bridge towards more sustainable initiatives including lasting livelihoods. RLUP could also move beyond traditional approaches to emphasize lasting benefits of non-renewable resource development, including bridging opportunities for more sustainable livelihoods and practices.

The third implication for policy has to do with the interpretation of Chapters 11 and 12 of the UFA. These chapters were emphasized by both the SCC and interview participants as key chapters in Yukon First Nations ceding Aboriginal rights and title under comprehensive land claim agreements. The SCC's decision acts as a reminder to governments, and by extension resource developers relying on authorizations by governments, that "treaty rights contained in modern land claim agreements are to be given large and liberal interpretation consistent with the objectives of the treaty and in a manner that upholds the honour of the Crown" (Olynyk, Bergner, Kruger, 2017, 2). Liberal interpretation includes fostering a "positive and mutually respectful long-term relationship between the signatories" (*First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 58), including attention to the "spirit and intent" of the agreements. First Nations in the Yukon interpret the "spirit and intent" of the agreements to contain co-management authority under Chapters 11 and 12 (Clark and Strack, 2017).

Finally, both the SCC ruling and interview participants indicated that consultation requirements must include "meaningful dialogue" (*First Nation of Nacho Nyak Dun et al. v. Yukon* 2017 SCC 48 at

para. 45). In essence, this points to the inadequacy of the open house style consultations pursued by the Yukon Government following their proposed modifications to the PWPC plan. Meaningful dialogue also relates to the above interpretation of the “spirit and intent” of the agreements as collaborative management tools for the entire territory, including both settlement and non-settlement lands.

7.2.2.1. Recommendations

The following recommendations are proposed to address the above policy implications:

1. Canada, Yukon and First Nations should develop and implement, in partnership, a territorial conservation or protected areas strategy.
2. Staking moratoria should be established as soon as possible for regions of high ecological, cultural or spiritual value until such a time as RLUP has been completed.
3. Canada, Yukon and signatory First Nations should find opportunities for meaningful dialogue on the interpretation of Chapters 11 and 12 of the UFA, emphasizing the “spirit and intent” of the agreements and building opportunities for effective co-management of territorial lands and resources (ex: initiatives such as the YESAA Forum).
4. Yukon and First Nations should develop consultation protocols for meaningful engagement applying best practices for consultation with First Nations peoples.

7.2.3. Implications and Areas for Improvement of RLUP in the Yukon under Chapter 11

Key stakeholder interviews revealed potential areas for improvement in the RLUP process for the Peel Watershed, which were applied to inform the development of the final framework offered in Chapter 5. Evaluation of the PWPC plan and the Yukon Government plan for the Peel Watershed according to criteria from the final analytical framework revealed potential procedural areas for improvement for both future planning initiatives for the Peel Watershed along with any future planning initiatives established under Chapter 11 of the UFA. Given the SCC’s decision upholding the ruling of the lower courts quashing the Yukon Government plan for the Peel Watershed, the following discussion focuses on areas for improvement of the PWPC plan and future planning initiatives established under Chapter 11.

Evaluation of the PWPC plan for the purposes of this thesis revealed areas of possible improvement for the plan to engage more effectively with sustainability and First Nations interests. The new Yukon Government and affected Peel First Nations announced in January 2018 that they would begin a year-long consultation process on the PWPC plan, beginning in the October 2018 (Joannou, 2018b). Therefore, areas of improvement and associated recommendations (below) may result in practical applications. These procedural areas for improvement may also offer insights for planning

regions subject to similar interests and conflicts, such as the Dawson and Northern Tutchone planning regions.

Three criteria within the final framework were unmet by the PWPC plan. Two of these related to the distribution of lasting and mutually reinforcing benefits from resource development projects. The third addressed the PWPC's long timeline and budget (over 7 years and \$1.6 million spent). Lasting benefits may not be the responsibility of Regional Planning Commissions, as a result, this criterion may need to be met through other means – during development assessment, through supraregulatory agreements such as IBAs between project proponents and First Nations, through territorial initiatives such as revenue sharing and the establishment of legacy funds or technical approaches such as remediation, extension of project lifespans and application of the latest technologies for resource development projects. Timelines and budgets for the Peel process cannot be improved retroactively. However, recommendation 1 (below) addresses baseline data collection and the standardization of information ahead of the start of future planning processes. These were identified by several participants as promising tools for improving the timeline of future RLUP processes.

A total of six criteria were partially met by the PWPC plan. Two of these were under the heading of socio-ecological civility and democratic governance and relate to building understanding and capacity for participation in RLUP processes. Recommendation 1 (below) also seeks to address the issue of building capacity for more effective participation of First Nations and building understanding of the role of Planning Commissions and the YLUPC.

Two criteria under the heading of respect for and inclusion of Indigenous worldviews were only partially met due to the PWPC asking First Nations to rank areas of significance in the planning region, along with existing open staking policies in the Yukon. Recommendation 2 addresses the issue of the PWPC's request to rank areas of significance as it is assumed that additional training for key stakeholders in RLUP on First Nations worldviews and interests ahead of the planning process will help to ensure that planning initiatives apply best practices and ensure that planning remains culturally appropriate. Recommendation 3 addresses the need for amendments to open staking policies and regulations to ensure that governance processes in the territory are in accordance with constitutionally protected provisions of comprehensive land claim agreements.

Finally, two criteria were only partially met under the heading of precaution, adaptation and integration given the PWPC's lack of indicators for all sustainable development themes, along with concerns over plan implementation and responsibility for conformity checks. Recommendation 4 addresses the need for the development of indicators for all sustainable development themes under the

PWPC plan to ensure effective monitoring, follow up and evaluation. Conformity checks remain a challenge that should be discussed during the next round of consultations on the PWPC plan and any future planning initiatives under Chapter 11.

The implications discussed in this section are largely procedural but have significant implications for substantive improvements in meeting regional sustainability and Indigenous interests. These areas of improvement and associated recommendations may be applied to the upcoming consultation on the PWPC plan or to any future planning initiatives under Chapter 11 as regional land use plans have yet to be developed for six planning regions in the Yukon.

7.2.3.1. Recommendations

The following recommendations are offered to address the above implications and areas for improvement for RLUP for the Peel Watershed along with future RLUP processes in the Yukon established under Chapter 11 of the UFA:

1. Early engagement should occur between YLUPC and affected First Nations in the planning region to determine consultation protocols, build understanding of the RLUP process, the role of Regional Planning Commissions and establish procedures for baseline data collection and standardization.
2. Training should be provided to Regional Planning Commissions, YLUPC staff, the Senior Liaison Committee and the Technical Working Group on First Nations interests, worldviews, history and governance processes as well as meaningful and effective engagement or best practices for consultation.
3. In the spirit of reconciliation, the honour of the Crown and the spirit and intent of the Umbrella Final Agreement, Canada and Yukon should amend historic mining legislation such as the *Placer Mining Act* to correspond with the requirements of First Nations comprehensive land claim agreements.
4. Indicators should be developed for all sustainable development themes under the Final Recommended Plan to ensure plan implementation and assist with plan monitoring and evaluation.

7.3. Directions for Future Research

The criteria included within the analytical framework established in this thesis illustrate the complexities associated with RLUP for the Peel Watershed. The criteria put forward in the framework are necessarily tentative and would merit additional consultation, debate, verification and innovation. They would also benefit from additional testing and application to different resource development processes established under comprehensive land claim agreements, both within and outside of Yukon.

Sustainability assessment mechanisms are not static and “may be the product of several iterations and re-organizations as the key considerations are clarified and various framings of the generic and local considerations are tested” (Gibson, 2017, 14). As both the RLUP process for the Peel Watershed and RLUP established under Chapter 11 continue, additional opportunities for specification

of the criteria included in this framework may merit attention. For example, other Yukon planning regions face contextual realities different from those of the Peel Watershed (e.g., communities within the planning region, established linear features such as all-season roads or past and current resource development activities). Criteria specification must reflect such contextual realities. Attention to the role of established RLUPs to guide project level assessments may also merit attention in order to determine whether such processes result in projects with greater contributions to sustainability and First Nations support.

Literature recognizing the challenges and opportunities for effective Indigenous engagement in established resource development processes is extensive. Evaluation of Indigenous engagement in resource development processes established under comprehensive land claim agreements may merit attention given the nature of these processes as recently established tools that were jointly negotiated between Indigenous and non-Indigenous actors. Further, most northern Canadian comprehensive land claim agreements include processes for RLUP and subsequent EAs of projects. Additional research into the relationships between RLUP processes and EAs established under comprehensive land claim agreements may shed light on how well these processes can serve both sustainability and Indigenous interests.

Application of this analytical framework to similar case studies would need to be specified to particular contexts. However, any future research building upon the work conducted for the purposes of this thesis should aim to respond to the limitations of this thesis, notably in applying best practices for community-based participatory research with northern Indigenous peoples, applying decolonizing methodologies (Allen et al., 2011; Castleden and Garvin, 2008; Smith, 2012). Research should be driven by communities participating in the research and should respond to the areas of inquiry as determined in partnership between researchers and the community.

7.4. Final Concluding Remarks

We are at a critical junction in Canadian efforts to build pathways towards sustainability. Pathways must recognize the importance of the relationships between Indigenous and non-Indigenous peoples based in reconciliation, respect for Indigenous sovereignty and good faith participation in resource development processes. While the Peel Watershed case represented an initial conflict, in essence, it is a good news story. The PWPC plan recognizes the inherent values of wilderness conservation and First Nations stewardship responsibilities to homelands. At the time of writing, the PWPC's plan for the Peel Watershed is set to be fully implemented.

Lessons from this case can be applied to future RLUP processes established under comprehensive land claim agreements not only in the Yukon but also across other Canadian jurisdictions. The SCC's landmark decision in *First Nation of Nacho Nyak Dun et al. v. Yukon* (2017 SCC 58) emphasized the importance of interpreting land claim agreements in good faith, applying the honour of the Crown and reconciliation as guiding frameworks. This case will have far reaching implications for the interpretation of comprehensive land claims and associated resource development processes in Canada.

Across the country, recognition of the need for broader instruments, such as RLUP, to guide regional land use and project level assessments is widespread. Legislative changes are being proposed not only to recognize Indigenous interests and worldviews but also to add a "contribution to sustainability" test to future resource development projects. Early consultation and relationship building with Indigenous peoples is slowly becoming the norm for project proponents seeking resource development on Indigenous traditional territories. On top of that, Indigenous peoples themselves are developing opportunities and capacity for planning, assessment and renewable and non-renewable resource development on their homelands.

However, it is not all good news. Indigenous peoples continue to face significant challenges in establishing their authority, sovereignty and rights under both s. 35 and UNDRIP. Conflicts over resource development remain highly present in news cycles and the lives of Indigenous peoples. It is my hope that as we work in partnership, we start to see less conflict over resource development as well as more good news stories of people winning their fights for the protection of Indigenous rights and healthy ecosystems.

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Appendix A: Executive Summary

Introduction

On December 1st, 2017 the Supreme Court of Canada (SCC) released a unanimous decision in the case of *The First Nations of Nacho Nyak Dun et al. v. Government of Yukon* (2017 SCC 58). The case addressed the issue of decision-making under Chapter 11 of the Yukon Umbrella Final Agreement (UFA) regarding Regional Land Use Planning (RLUP). Conflict over the RLUP process for the Peel Watershed began in 2011 when the Peel Watershed Planning Commission (PWPC) released their Final Recommended Plan (PWPC plan) to the four affected First Nations and Yukon Government for approval. The PWPC plan called for 80% designation for protection (55% permanent protection and 25% interim protection) and 20% opening to industrial development. Soon after, the Yukon Government announced its intention to modify the plan under section 11.3.2. of the UFA (Staples et al., 2013). In January 2014, the Yukon Government approved a RLUP for the Peel Watershed applying to non-settlement land. This plan called for 29% protection and 71% opening to industrial development. Conflict over the Peel RLUP process points to broader tensions in the territory between ‘conservation and development’ interests.

My thesis examined a case study of the Peel Watershed planning process to evaluate whether sustainability and Indigenous interests were effectively met in the regional plans developed by the PWPC and the Yukon Government. This executive summary of my thesis provides a brief overview of the research conducted.

The land use planning process in the Yukon flows from comprehensive land claim agreements with First Nations and requires contributions to sustainable development. Given the Peel Watershed is only the second region in the territory having undergone a RLUP process under Chapter 11, it is an interesting case study for determining how future RLUP processes can effectively engage with sustainability and Indigenous interests. The thesis research was guided by four research questions:

1. What are the challenges and opportunities to effective⁸ engagement with sustainability and Indigenous interests in resource development processes (notably northern Canadian RLUP and EA processes)?
2. How do stakeholders involved in the Peel process perceive⁹:
 - a. the challenges and opportunities of RLUP for sustainability interests, including the ability of RLUP to guide subsequent project level assessments effectively;
 - b. the challenges and opportunities for effective engagement with Yukon First Nation interests in the RLUP process;
 - c. lessons from the Peel planning process to be applied to future RLUP initiatives in the Yukon under Chapter 11 of the UFA.
3. Did the outcome of the RLUP process pursued by the PWPC and Yukon Government effectively meet regional sustainability and First Nations interests?
4. What are the challenges and opportunities to effective engagement with sustainability and First Nations interests in regional planning in the Yukon?

⁸ Effectiveness is defined according to the EA literature, as “how well something works or whether it works as intended and meets the purposes for which it is designed” (Sadler, 1996, 37).

⁹ Perceptions include “the way an individual observes, understands, interprets, and evaluates a referent object, action, experience, individual, policy or outcome” (Bennett, 2016, 71).

The objectives of the research were fivefold:

6. Develop an initial analytical framework responding to the challenges and opportunities for effective engagement with sustainability and Indigenous interests in resource development processes, notably northern RLUP and EA.
7. Determine how stakeholders involved in the Peel process perceive engagement with sustainability and Yukon First Nations interests in the RLUP process for the Peel Watershed.
8. Identify perceived lessons from the Peel process for future RLUP initiatives in the Yukon.
9. Further specify the initial framework for application to RLUP in the Yukon including challenges and opportunities for attention from the case study context and stakeholder perceptions of the process.
10. Develop recommendations for policy and decision-makers for effective engagement with sustainability and Yukon First Nations interests in future RLUP processes.

Background

Scholars, practitioners and Indigenous peoples have frequently recognized that many resource development policies and programs are incompatible or inappropriate avenues for articulating Indigenous worldviews, interests and knowledge. They further recognize both procedural and substantive elements of resource development processes lack the ability to include, or respond to, sustainability and Indigenous interests effectively. Resource development processes include project-level Environmental Assessment (EA) requirements and planning and management regimes, including RLUP. The term Indigenous interests is applied in the thesis to refer to the combined package of rights, worldviews (including Traditional Knowledge) and often invisible interests which characterize Indigenous understandings and thus influence their effective inclusion and participation in resource development processes. For the purpose of the thesis, sustainability is defined applying Gibson et al.'s (2005) eight broad criteria for sustainability-based decision making, depicted below.

Gibson et al. (2005) Generic Criteria for Sustainability Assessment

- | |
|--|
| <ol style="list-style-type: none">1. Socio-ecological system integrity2. Livelihood sufficiency and opportunity3. Intragenerational equity4. Intergenerational equity5. Resource maintenance and efficiency6. Socio-ecological civility and democratic governance7. Precaution and adaptation8. Immediate and long-term integration |
|--|

Much attention has been given to the role of environmental assessments, law and planning in promoting sustainability. Resource development processes in Canada include attention to sustainability but in practice, EAs ability to contribute to sustainability has been weak. EA's main weakness is its focus on project-by-project assessment, which fails to consider broader issues central to sustainability, such as cumulative impacts or impacts on the interests of Indigenous peoples.

Tiering between EA and strategic initiatives such as RLUP offers opportunities to address broader considerations central to Indigenous and sustainability interests. In the Yukon, development assessments under the UFA's Chapter 12 are required to conform with existing RLUPs established under Chapter 11. Unfortunately, in regions where such policies exist, strategic policies and programs often do not adequately link to project level assessments. RLUP processes in the Yukon have been subject to conflicts and tensions between two competing visions for the territory. The first vision is based on increased resource development, in turn ensuring diversification of Yukon's economy away

from its present reliance on federal government transfers and largely public sector employment opportunities. The second places more value on Yukon's natural environment, embracing protection of internationally significant wilderness regions as well as the stewardship interests of Yukon First Nations.

Given the tensions in the territory and their relationship to the case study, many issues were clearly revealed and important lessons can be drawn to guide ongoing planning for the Peel Watershed as well as future RLUP processes in the Yukon or other similar jurisdictions.

Literature review

A literature review was conducted to identify the challenges and opportunities to effective engagement with sustainability and First Nations interests in northern resource development processes. The sources of information used to inform this literature review include peer-reviewed academic journal articles, scholarly books, academic theses as well as legislation, policy and media coverage. The purpose of the literature review was to provide the basis for developing a set of initial challenges and opportunities to inform criteria and framework development. The challenges and opportunities were then applied to specify the eight broad, generic sustainability assessment criteria developed by Gibson et al. (2005) for application to the case study of the Peel Watershed planning process.

The initial framework resulting from the literature review included six categories and associated criteria. Under the first category, socio-ecological system integrity, it was established that effective resource development must include maintenance of ecosystem services and respect for ecological limits, paying attention to cumulative effects, monitoring, follow-up and effective tiering between strategic initiatives and project-level assessments. The second and third categories, livelihood sufficiency and opportunity and equity considerations, require development of economic opportunities, while ensuring lasting livelihoods and supporting the cultural values and practices of Indigenous peoples. The fourth category, socio-economic civility and democratic governance under comprehensive land claim agreements requires respect for Indigenous sovereignty, authority and decision-making while also enhancing capacity for meaningful stakeholder and Indigenous participation. Governance processes are to be transparent, collaborative and conducted applying the honour of the Crown and reconciliation as guiding frameworks. Criteria under the fifth category, respect for and attention to Indigenous worldviews, ensure attention to the preservation of the cultural identity of Indigenous peoples and the enhancement of meaningful engagement with TK and Indigenous ways of knowing. Finally, attention must be paid to interactions across criteria, applying precaution and adaptation to rapidly changing northern ecological, political and economic contexts.

Methodology

Conducting the research for this thesis, aiming to respond to the research questions and meet the research objectives required a number of qualitative research methods be applied. These qualitative methods included: I) a literature review of the challenges and opportunities to effective engagement with sustainability and Indigenous interests in northern resource development; II) development of a sustainability-based initial framework specified from the challenges and opportunities for attention from the literature review; III) single case study of the Peel Watershed land use planning process, including a historical account of the planning process established under Chapter 11 of the UFA, the SCC's decision in *First Nation of Nacho Nyak Dun et al. v. Yukon* (2017 SCC 58) as well as 34 semi-structured interviews resulting in additional challenges and opportunities for attention; IV) additional specification of the initial sustainability-based framework from the challenges and opportunities established from the case study and; V) application of the final framework for evaluation of the effectiveness of the PWPC plan and the Yukon Government plan for the Peel Watershed for meeting

regional sustainability and Indigenous interests. These methods follow those established by Gibson (2017) for sustainability-assessment specification.

Interviews were conducted in the Yukon between May and June 2017 with key stakeholders involved in planning for the Peel Watershed. Interviews were analyzed applying an inductive and iterative open coding process to determine recurring ideas or themes across participants responses. Interview results aided in capturing the narrative of stakeholder perceptions of the opportunities and challenges to effective engagement with sustainability and First Nations interests in the RLUP process for the Peel Watershed. Interview results along with the case study context were applied to specify the initial framework.

Case Study Findings and Revised Framework

A review of the history of RLUP in the Yukon indicated a mixed experience with planning, culminating in conflict over the approval process for the PWPC plan and a case ultimately decided by the SCC in December 2017. The Peel case embodies the tensions between two competing visions for the territory. Results from key stakeholder interviews validated these tensions while pointing to broader issues of power, authority and interpretation of the final agreements between the Yukon Government and Yukon First Nations. The Yukon Government's decision to substantially modify the PWPC plan went against the "spirit and intent" of the UFA and the RLUP process established under Chapter 11. These modifications point to the Yukon Government applying a narrow interpretation of its responsibilities towards Yukon First Nations under comprehensive land claim agreements.

Interview participants indicated that the RLUP process pursued by the PWPC effectively engaged with sustainability and Indigenous interests. However, procedural areas for improvement emerged as themes from the interviews. These included the need for reconsideration of Yukon's existing open staking policies and regulations, early consultation and engagement applying cross-cultural communication methodologies, more appropriate planning timelines and budgets, clarification of the role of Regional Planning Commissions, transparent participation in good faith to avoid the conflicts and tensions associated with the Peel process and finally, establishment of a territorial protected area or conservation strategy to guide future RLUP processes. The challenges and opportunities for attention from the literature review, case study context and semi-structured interviews were translated into a final case-specified analytical framework (see below) which was then applied to evaluate both the PWPC and Yukon Government plans for the Peel Watershed.

I) Socio-Ecological System Integrity

- Maintaining ecosystem services and respecting ecological limits (including water quality and quantity, species diversity, special attention to and management of Valued Ecosystem Components).
 - Attention to northern Canadian ecologies and rapidly changing conditions (for example: from the impacts of climate change).
 - Avoidance of trade-offs between wilderness values/conservation and non-renewable resource development through mitigation and determination of allowable pace and scale of development activities.
 - Applying contribution to sustainability tests to any resource development projects.
 - Applying the highest degree of the precautionary principle for any non-renewable resource developments, including ensuring adequate attention to monitoring and follow-up.
 - Attention to and effective assessment of the cumulative effects of any resource developments, regional plans to be appropriately applied to guide project-level developments and set allowable thresholds for development.
-

II) Livelihood sufficiency and opportunity

- Ensuring continued livelihood sufficiency of resource users, including protection of traditional economy values and building opportunities for resource revenue sharing and economic diversification.
- Develop opportunities for future livelihoods including traditional economy and avoidance of boom/bust effects associated with non-renewable resource development
- Develop opportunities for employment opportunities which ensure lasting livelihoods (for example: Youth of the Peel initiative)

III) Equity

- Increased attention to intragenerational equity including Indigenous interests, building capacity and sustainable economic opportunities.
- Ensuring planning focuses on intergenerational equity including the rights of future generations to the sustainable use of renewable and non-renewable resources (with attention to the seven generations model)
- The attainment and distribution of lasting and equitable social and economic benefits
- Protection of regions of cultural and spiritual importance for future generations

IV) Socio-economic civility and democratic governance

- Encouraging and supporting application of Indigenous sovereignty, authority and decision-making, including applying best practices for consultation, the honour of the Crown and reconciliation as guiding frameworks.
- Ensuring respect for the “spirit and intent” of land claim agreements applying a broad interpretation including participation in good faith.
- Enhancing public engagement and collaborative decision-making, maintaining transparency and openness throughout resource development processes.
- Enhancing capacity for meaningful stakeholder and Indigenous participation/engagement
- Ensuring Regional Planning Commissions are sensitive to community input and follow the planning process established under land claim agreements.
- Develop understanding of the role of Regional Planning Commissions and the Yukon Land Use Planning Council.
- Develop appropriate planning timelines and budgets so as to ensure appropriate and conducive cross-cultural engagement.

V) Respect for and inclusion of Indigenous Worldviews

- Preserving the cultural identity and values of Indigenous peoples within a changing northern society
- Enabling Indigenous people to be equal and full participants in the development of the economy and society
- Enhancing appropriate and meaningful engagement with TK and ways of knowing (applying best practices, innovative approaches such as two-eyed seeing approach, cross-cultural communication and early engagement).
- Ensuring territorial policies and practices align with provisions of comprehensive land claim agreements (for example: open staking and associated historic mining legislation currently not in accordance with provisions and interpretation of Yukon First Nation land claim agreements).
- Avoiding cultural and socio-ecological impacts of resource development including attention to community uncertainty and trauma.

VI) Precaution, adaptation and integration
















- Avoiding trade-offs between long-term needs and short-term gains
 - Building understanding of rapidly changing ecological/political/economic northern contexts
 - Promoting effective implementation between planning and assessment (including monitoring, evaluation, remediation and follow-up)
 - Promoting plan flexibility and adaptability to changing circumstances
 - Seeking mutually reinforcing benefits between planning, projects and actions
 - Ensuring development assessment proposals are in conformity with established Regional Land Use Plans
-

Plan Evaluation

Applying the above framework to the competing plans for the Peel Watershed aided in gaining insights into the challenges and opportunities of the plans for effective engagement with sustainability and First Nations interests. It also allowed identification of areas for improvement and recommendations. The plans were evaluated to determine their effectiveness in meeting regional sustainability and First Nations interests. Effectiveness was determined on a simple scale of *unmet*, *partially met* or *fully met* to each of the criteria.

Criteria were deemed to be *unmet* if participants identified the actions, projects or guidance in the plans as representing challenges to meeting sustainability and First Nations interests or when no actions, projects or guidance were included in the plans to address the criteria in question. Criteria were deemed to be *partially met* if the plans included some actions, projects or guidance for the criteria but where some limitations to meeting criteria clearly existed or were discussed by participants. Finally, criteria were deemed to be *fully met* if participants identified the actions, projects or guidance in the plans as opportunities to meet sustainability and First Nations interests or when actions, projects and guidance in the plans specifically and clearly addressed a criterion.

Summary of Evaluation of Peel Watershed Plans

Evaluation according to <i>unmet</i>  <i>partially met</i>  or <i>fully met</i> 		
CATEGORIES	PWPC Plan	Yukon Government Plan
8. Socio-ecological system integrity		
9. Livelihood sufficiency and opportunity		
10. Equity		
11. Socio-economic civility and democratic governance		
12. Respect for and inclusion of Indigenous worldviews		
13. Precaution, adaptation and integration		

Evaluation of the PWPC plan determined that 22 of 31 (77%) of criteria within the framework were *fully met*. In comparison, evaluation of the Yukon Government plan for the Peel Watershed determined that 1 of 31 (3%) of criteria within the framework were *fully met*.

These results are not surprising, given the SCC’s decision supporting the lower court’s ruling to “quash” the Yukon Government plan for the Peel Watershed and to return all parties to a final consultation stage on the PWPC plan prior to implementation. The evaluation of the plans yielded theoretical and practical implications. Practical implications include implications for resource development processes as well as areas for improvement and associated recommendations for the Peel Watershed planning process along with future RLUP initiatives established under Chapter 11 of the UFA. Implications include:

- **Conflict in the Peel:** The Peel Watershed RLUP process embodies tensions between two competing visions for the territory. They require effective engagement with and trade-offs between stakeholders and their interests, or developing alternative approaches in order to eliminate negative legacies of non-renewable resource development including initiatives such as revenue sharing, the

establishment of legacy funds, remediation, extending project lifespans and applying latest technologies to maintain ecosystem services within planning regions.

- **The role of strategic planning in offering guidance to project-level assessments:** Findings indicate that fully implemented land use plans in the Yukon will provide guidance to project-level assessments, including addressing cumulative effect concerns. In the absence of strategic planning initiatives, resource development in the Yukon will continue to occur on a project by project basis.
- **Interpretation of Chapters 11 and 12:** These chapters are key chapters for Yukon First Nations ceding Aboriginal rights and title under comprehensive land claim agreements. Agreements must be interpreted liberally, including attention the “spirit and intent” of the agreements and applying the honour of the Crown and reconciliation as guiding frameworks.
- **Consultation as meaningful dialogue:** Open house style consultations pursued by the Yukon Government following their proposed modifications to the PWPC plan were inappropriate and failed to interpret Chapters 11 and 12 liberally, including collaborative management between the Yukon Government and First Nations.
- **Distribution of lasting and mutually reinforcing benefits:** The PWPC plan failed to address the distribution of lasting and mutually reinforcing benefits from resource development in the region. Lasting benefits may not be the responsibility of Regional Planning Commissions. As a result, this criterion may need to be met through other means - during development assessment, through supraregulatory agreements such as IBAs between project proponents and First Nations, through territorial initiatives such as revenue sharing and the establishment of legacy funds or technical approaches such as remediation, extension of project lifespans and application of the latest technologies for resource development projects.
- **Building capacity and understanding:** Need to build capacity and understanding for participation in RLUP processes, including First Nation capacity for participation and understanding of the role of Regional Planning Commissions.
- **Applying best practices for First Nations engagement:** Addressing the issue of ranking areas of significance as an inappropriate method for First Nations participation in the process.
- **Open staking policies:** Open staking policies established as a challenge given their incompatibility with constitutionally protected provisions of comprehensive land claim agreements.
- **Effective monitoring, follow up and evaluation:** PWPC plan lacks indicators for all sustainable development themes. Concerns over plan implementation and conformity checks. Conformity checks remain a challenge that should be discussed during the next round of consultations on the PWPC plan and any future planning initiatives under Chapter 11.

Recommendations

Recommendations are offered to address policy and practical implications, discussed above.

1. Canada, Yukon and First Nations should develop and implement, in partnership, a territorial conservation or protected areas strategy.
2. Staking moratoria should be established as soon as possible for regions of high ecological, cultural or spiritual value until such a time as RLUP has been completed.
3. Canada, Yukon and signatory First Nations should find opportunities for meaningful dialogue on the interpretation of Chapters 11 and 12 of the UFA, emphasizing the “spirit and intent” of the agreements and building opportunities for effective co-management of territorial lands and resources.
4. Yukon and First Nations should develop consultation protocols for meaningful engagement applying best practices for consultation with First Nations peoples.

5. Early engagement should occur between YLUPC and affected First Nations in the planning region to determine consultation protocols, build understanding of the RLUP process, the role of Regional Planning Commissions and establish procedures for baseline data collection and standardization.
6. Training should be provided to Regional Planning Commissions, YLUPC staff, the Senior Liaison Committee and the Technical Working Group on First Nations interests, worldviews, history and governance processes as well as meaningful and effective engagement or best practices for consultation.
7. In the spirit of reconciliation, the honour of the Crown and the spirit and intent of the Umbrella Final Agreement, Canada and Yukon should amend historic mining legislation such as the *Placer Mining Act* to correspond with the requirements of First Nations comprehensive land claim agreements.
8. Indicators should be developed for all sustainable development themes under the PWPC's Final Recommended Plan to ensure plan implementation and assist with monitoring and evaluation.

Conclusion

The thesis established an analytical framework which was applied to determine the effectiveness of both the PWPC plan and Yukon Government plan for the Peel Watershed for meeting sustainability and First Nations interests. It was developed through case and context criteria, incorporating broad sustainability requirements (as established by Gibson et al. 2005), responded to an initial set of challenges and opportunities from a literature review, regional challenges and opportunities for attention from the case context and insights from 34 semi-structured interviews with key stakeholders involved in RLUP for the Peel Watershed.

Opportunities for future research include application of the framework to other cases, although would require specification to particular cases and contexts. Application of the lessons and recommendations developed throughout this research would ensure more effective engagement with sustainability and First Nations interests in RLUP processes in the Yukon.

Appendix B: Criteria Simplification Methodology

The initial framework developed in Chapter 2 was built through attention to Gibson et al.'s (2005) broad sustainability assessment criteria along with challenges and opportunities for attention from the literature review. Development of the framework was conducted according to Gibson's (2017) criteria specification methodology, including simplification and translation into a manageable set of categories. This Appendix details the simplification methodology applied to arrive at the final framework.

Challenges and Opportunities for Attention	
Associated Gibson Criteria	
Sustainability in Resource Development	
Socio-ecological systems bounded within ecological limits	Socio-ecological system integrity (1)
Non-renewable resource development associated with ecological, social, cultural and economic legacy effects	Socio-ecological system integrity (1)
Cumulative effects concerns	Socio-ecological system integrity (1)
Opportunities for viable future livelihoods	Intragenerational equity (3) Intergenerational equity (4)
Collaborative decision-making processes	Socio-ecological civility and democratic governance (6)
Application of the precautionary principle	Precaution and adaptation
Contributions to sustainability included in RLUP/EA	Socio-ecological system integrity (1)
Effective implementation/tiering of RLUPs to guide/influence EA	Socio-ecological civility and democratic governance (6)
Indigenous Interests in Resource Development	
Altered relationships to homelands due to colonialism (invisible losses); preservation of cultural identity and values	Livelihood sufficiency and opportunity (2)
Epistemological and technical challenges to the inclusion of TK	<i>Respect for and inclusion of Indigenous worldviews (+)</i>
Political/power dimensions of decision-making	Socio-ecological civility and democratic decision making (6)
Recognition of Indigenous sovereignty and self-determination (UNDRIP, SCC decisions, co-management, IBAs)	<i>Respect for and inclusion of Indigenous worldviews (+)</i>
Procedural challenges: language/cultural barriers; geographic isolation; lack of resources; consultation fatigue...; capacity strains	<i>Respect for and inclusion of Indigenous worldviews (+)</i>
Legal principles: Duty to Consult; honour of the Crown	<i>Respect for and inclusion of Indigenous worldviews (+)</i>
Early planning and engagement	Socio-ecological civility and democratic governance (6)
Worldview inconsistencies: borders/boundaries; conservation; development	<i>Respect for and inclusion of Indigenous worldviews (+)</i>

Flexibility and adaptability	Precaution and adaptation (7)
Cumulative effects concerns	Socio-ecological system integrity (1)
Northern Resource Development	
Slow recovery rates at higher latitudes; monitoring and remediation	Socio-ecological system integrity (1)
Resource accessibility (remote regions)	Resource maintenance and efficiency (5)
Attention to conservation values (conservation v. development)	Socio-ecological system integrity (1)
Decision-making under provisions of comprehensive land claim agreements (meaningful consultation and engagement in decision-making)	Socio-ecological civility and democratic governance (6)
Effective tiering between Chapter 11 and 12 – cumulative effects concerns	Immediate and long-term integration (8)
Protection of ecological and cultural values	Socio-ecological system integrity (1)
Fair distribution of benefits	Intragenerational equity (3) Intergenerational equity (4)

Although all eight of Gibson et al.'s (2005) categories are represented above, some were simplified through combining multiple categories into one. The final framework includes the following categories:

Category	Justification
1. Socio-ecological civility and democratic governance	Significant representation under the categorization above.
2. Livelihood sufficiency and opportunity	Although not significantly represented under the categorization above, such considerations are central to sustainability and Indigenous interests in northern resource development.
3. Equity	This category was developed through combining Gibson et al. (2005) categories of intra- and inter-generational equity under the single heading of equity.
4. Socio-economic civility and democratic governance	Significant representation under the categorization above.
5. Respect for and inclusion of Indigenous worldviews	This category was added as none of Gibson's et al. (2005) categories responded adequately to the challenges and opportunities associated with Indigenous interests in resource development, as determined during the literature review.
6. Precaution, adaptation and integration	This category was arrived upon by combining Gibson et al. (2005) categories of Precaution and adaptation with Immediate and long-term integration.

Appendix C: Interview Guide

I. GENERAL QUESTIONS

1. Can you tell me about your (or the organization you work for) (are a member of) role in the Peel Watershed land use planning process?
 - a. Can you tell me more about your or your organizations' views on the Peel land use planning process generally?

II. REGIONAL PLANNING PROCESSES

1. How do you perceive the land use planning process in the Yukon to date?
2. In your opinion, what role does regional planning play in areas that already have existing land uses, such as pre-existing mining claims?
3. In what way do you think land use planning in the Yukon will guide or influence environmental assessments of future projects?
 - a. Do you think land use planning is a potential tool for ensuring sustainable development or sustainability outcomes of projects in the Yukon?

III. BARRIERS




1. What are your thoughts (or those of the organization you represent) on the original Peel Watershed Planning Commission's Final Recommended Plan (submitted to the Yukon Government in 2011)?
2. How do you feel about the Community engagement processes as pursued by the Commission during the Peel land use planning process?
3. In your experience, how have Yukon First Nations interests been considered in the development of the land use plan?
4. The Peel Land Use planning process has raised many tensions and questions around land use planning in Yukon, as mandated under Chapter 11 of the Yukon Umbrella Final Agreement. In your opinion, what lessons can be learned from this case for application to future land use planning initiatives in Yukon?







IV. CONCLUSION









1. Do you have anything you would like to add before we conclude this interview?
2. Can you suggest any other participants whom you believe would be a valuable addition to this research project?









Thank you. I would like to re-emphasize that everything you have shared today will remain confidential and your name will not be used in any publications or presentations. If you have any questions or concerns regarding today's interview please do not hesitate to contact me, my supervisor, Environment and Resource Studies at the University of Waterloo, or the University of Waterloo Research Ethics Office.











Appendix D: Plan Evaluation Matrix









Evaluation of the Regional Land Use Plans for the Peel Watershed for meeting Peel specified criteria on sustainability and First Nations interests. Evaluation according to unmet  partially met  or fully met 







Criteria of Sustainability and Yukon interests for RLUP for the Peel Watershed	PWPC Plan	Yukon Government Plan	Comments
1. Socio-ecological system integrity			
1. Maintaining ecosystem services and respecting ecological limits (including water quality and quantity, species diversity, special attention to and management of VECs)			<p>Both plans include the following goals:</p> <ol style="list-style-type: none"> 1. Maintain the wilderness character of much of the planning region. 2. Maintain ecological integrity by ensuring terrestrial and aquatic habitats remain in a suitable condition to sustain healthy native wildlife and fish populations and communities within their natural ranges. 3. Maintain the quantity, quality and rate and flow of water within its natural range. <p>The PWPC protected 80% of the region (55% permanent protection; 25% interim protection). A central issue of the planning process was ecosystem integrity, including attention to different species and their tolerance for disturbance.</p>
2. Attention to northern Canadian ecologies and rapidly changing conditions (for example: impacts of climate change)			PWPC and Yukon Government plans recognized the uncertainties of climate change for land and resource management as well as water quality and quantity. Region likely to warm at two to three times the global average.
3. Avoidance of trade-offs between wilderness values/conservation and non-renewable resource development through mitigation and determination of allowable pace and scale of development activities			<p>Both plans included the following fourth environment goal:</p> <ol style="list-style-type: none"> 4. Ensure that any lands disturbed by human activities are reclaimed or restored in their natural habitat. <p>A significant planning issue was attention to mineral exploration and development, including the cumulative effects of such developments. PWPC responded by protecting 80% of the Watershed while Yukon Government's response was to protect 29% of the region. Mineral exploration and development are possible in the remaining 71% of Crown land. Holders of subsurface rights will be allowed reasonable access to assess and develop their claims or permit areas (3-5).</p>









4.	Applying contribution to sustainability tests to any resource development projects			<p>Sustainable development (as defined in the UFA) as a key guiding principle of the plan. PWPC went beyond definition of sustainability as balance of economy, environment and society towards an understanding that “if we fail to sustain the ecosystem, we have no basis for a sustainable society, nor a sustainable economy” (viii). Applying nested perspective of sustainability rather than vision of “balance” thus recognizing ecological limits of both society and economy.</p> <p>Yukon Government plan includes limited discussion of Sustainable Development. However, it remains a key component of the Terms of Reference included in the plan.</p>
5.	Applying the highest degree of the precautionary principle for any non-renewable resource developments, including ensuring adequate attention to monitoring and follow-up			<p>The PWPC plan limits road development and specifies that “all new roads are to be temporary” (vii). Additionally, the PWPC recognized three types of environmental activities, including “that which is not sustainable, but which ecosystems can tolerate or recover from. Some kinds of mining and oil and gas development are examples of this. Best management practices and effective restoration make this possible in some, but not all areas” (ix). PWPC Plan calls for application of best management practices and strategies.</p> <p>Yukon Government plan allows access roads in 71% of the Watershed. Integrated Land Management Areas (27% of the Watershed) do not prevent all season road access.</p>
6.	Attention to and effective assessment of the cumulative effects of any resource developments, regional plans to be appropriately applied to guide project-level developments and set allowable thresholds for development			<p>PWPC Plan “allows limited, but flexible, development in other areas, with a focus on managing cumulative effects and restoring lands to previous conditions”. This includes limiting road access, given the potential cumulative effects of road development (such as aggregate (gravel) use). Additionally, plan includes indicators for cumulative effects (3-8).</p> <p>Yukon Government plan allows for road development in 71% of the Watershed. Cumulative effects indicators and monitoring are included in the plan.</p>
Summary: Socio-ecological system integrity				<p>PWPC Plan: 6/6 criteria fully met</p> <p>Yukon Government Plan: 5/6 criteria partially met; 1 criteria fully met</p>











2. Livelihood sufficiency and opportunity				
1.	Ensuring continued livelihood sufficiency of resource users, including protection of traditional economy values and building opportunities for resource revenue sharing and economic diversification			<p>PWPC/Yukon Government goal 6 was to: Facilitate economic opportunities and activities that result in benefits to surrounding communities, affected First Nations, and Yukon as a whole, and contribute to achieving the goals established by this Plan. Protection of wilderness to ensure continued traditional economic pursuits including renewable resource use, big game outfitting and tourism opportunities associated with the maintenance of wilderness values in the region.</p> <p>Significant opening to development may affect traditional economy values such as hunting and trapping. Non-renewable resource development may have unexpected effects on species of importance for First Nations practices.</p>
2.	Develop opportunities for future livelihoods including traditional economy and avoidance of boom/bust effects associated with non-renewable resource development			<p>PWPC plan includes attention to both renewable and non-renewable resource use such as subsistence harvesting, trapping, big game outfitting, tourism, forest resources (although negligible in the Peel region) and oil and gas, mining and aggregate. An appropriate balance between the economic activities was sought by the Commission while maintaining the wilderness value of the region.</p> <p>The Yukon Government prioritized non-renewable resource development by allowing mineral exploration and development in 71% of the territory and oil and gas opportunities within 27% of the region.</p>
3.	Develop opportunities for employment which ensure lasting livelihoods			<p>PWPC plan ensures maintenance of wilderness values thus ensuring protection of renewable resource use. Non-renewable resource development subject to high remediation requirements (for example: no permanent roads to be developed in the Watershed).</p> <p>71% of the region remains open to mineral development which are characterized by boom/bust cycles.</p>
Summary: Livelihood sufficiency and opportunity				<p>PWPC Plan: 3/3 criteria fully met</p> <p>Yukon Government Plan: 3/3 criteria partially met</p>









3. Equity				
1.	Increased attention to intragenerational equity including Indigenous interests, building capacity and sustainable economic opportunities			<p>PWPC plan recognized and protected economic and ecological interests of First Nation peoples, including protection of renewable resource use (subsistence harvesting, trapping, etc.), water quality and quantity and other VECs such as the Porcupine Caribou Herd. The Plan's goal 5 is to "recognize, conserve, and promote the heritage and cultural resources and values, and traditional land use practices, of affected First Nations and the Yukon" (4-12).</p> <p>Yukon Government Plan recognized the rights of First Nations peoples as protected under the UFA however allowed larger regions to be opened up to development, which may negatively affect First Nations interests in the Watershed.</p>
2.	Ensuring planning focuses on intergenerational equity including the rights of future generations to the sustainable use of renewable and non-renewable resources (with attention to the seven generations model)			<p>The PWPC plan states as one of its aims to "provide land use options for future generations through interim protection of other lands" (1-3). The plan's focus on sustainable development includes attention to the future, such as through goal 8 – Maintain future land use options by adopting a cautious but flexible approach to land and resource decision-making (4-16).</p> <p>While the Yukon Government's plan maintains the same principle as above, more land in the Watershed is available to resource development than protected.</p>
3.	The attainment and distribution of lasting and equitable social and economic benefits			PWPC and Yukon Government plans lack guidance on distribution of benefits from development in the region.
4.	Protection of regions of cultural and spiritual importance for future generations			<p>Regions deemed of high spiritual and cultural importance protected at the highest level (Special Management Area) under PWPC plan.</p> <p>Some protection of regions of cultural and spiritual importance however First Nations wanted to see the region 100% protected and the Yukon Government plan only fully protects 29% of the region from mineral development.</p>
Summary: Equity				<p>PWPC Plan: 3 criteria fully met; 1 criteria unmet</p> <p>Yukon Government Plan: 3 criteria partially met; 1 criteria unmet</p>

4. Socio-economic civility and democratic governance				
1.	Encouraging and supporting application of Indigenous sovereignty, authority and decision-making, including applying best practise for consultation, the Honour of the Crown and reconciliation as guiding frameworks.			<p>PWPC conducted extensive consultation with First Nations with traditional territory in the Peel Watershed and followed the process as proposed under Chapter 11. First Nations wanted to see the region 100% protected but were comfortable with the Commission’s decision to protect 80% of the region and have any developments in the remaining 20% subject to development assessment requirements under chapter 12 along with mitigation and cumulative effects indicators developed by the PWPC.</p> <p>Yukon Government conducted Open House style consultations on a plan which included new land designations. Many participants commented that this was not in accordance with the planning process as laid out under Chapter 11. The SCC ruled against the modifications proposed by Yukon Government.</p>
2.	Ensuring respect for the “spirit and intent” of land claim agreements applying a broad interpretation including participation in good faith			<p>PWPC aimed to develop a plan that met the agreed upon General Terms of Reference while recognizing that “no plan will please all people because not all resource conflicts can be solved to everyone’s satisfaction” (viii). However, Participants indicated that the consultation and plan development process pursued by the PWPC was done in good faith.</p> <p>Yukon Government plan was meant to be implemented only onto Crown/non-settlement land. This was perceived as an infringement of the “spirit and intent” of the UFA as the First Nations had agreed to cede Aboriginal rights and title in exchange for cooperative management responsibilities as established in Chapter 11.</p>
3.	Enhancing public engagement and collaborative decision-making, maintaining transparency and openness throughout resource development processes			<p>All stages of the planning process conducted by the PWPC included public consultation processes, applying best practices for consultation as established at the time. Materials were made publicly available for comment.</p> <p>Yukon Government did not participate transparently during consultations as pursued by the PWPC. The majority of participants felt that they played their cards close rather than participating openly in the process.</p>
4.	Enhancing capacity for meaningful stakeholder and Indigenous participation/engagement			<p>A few participants raised concerns regarding the PWPC’s requests for information resulting in information not being standardized across Parties thus limiting its application (also included in Gryzbowski’s</p>

				<p>recommendations). Gryzbowski’s review included calls to modify the incorporation of First Nations knowledge (see Appendix D).</p> <p>Yukon Government plan imposed for Crown/non-settlement land without building capacity for meaningful stakeholder and Indigenous participation/engagement</p>
5.	Regional Planning Commissions sensitive to community input and follow the planning process established under land claim agreements			<p>Example: First Nations and Yukon Government were unhappy with the Draft Recommended Plan. As a result, PWPC responded to comments provided and made changes as appropriate to arrive at Recommended Plan (December 2009).</p> <p>Yukon Government plan developed internally by the Yukon Government. SCC ruled that the process pursued by Yukon Government did not follow the process established under Chapter 11.</p>
6.	Develop understanding of the role of Regional Planning Commissions and the Yukon Land Use Planning Council			<p>Some participants expressed a need to clarify the role of the YLUPC as a supporting body for the Parties and the Regional Planning Commissions. Gryzbowski’s recommendations also included clarifying the role of the YLUPC.</p> <p>Yukon Government plan was not developed by Regional Planning Commission. YLUPC wrote letter to Minister Cathers detailing their concerns with the planning process pursued by the Yukon Government.</p>
7.	Develop appropriate planning timelines and budgets so as to ensure appropriate and conducive cross-cultural engagement			<p>Many participants expressed that the planning process for the Peel Watershed spent too much time in baseline data collection and the 7-year timeframe was too long for a planning process. They also expressed concerns that the PWPC went over budget, thus limiting the availability of funding for future planning regions.</p> <p>While the planning process conducted by Yukon Government to arrive at the Yukon Government plan was shorter, the baseline data used in the plan was collected by the PWPC.</p>
Summary: Socio-economic civility and democratic governance				<p>PWPC Plan: 4 criteria fully met; 2 criteria partially met; 1 criteria unmet</p> <p>Yukon Government Plan: 7 criteria unmet</p>

5. Respect for and inclusion of Indigenous worldviews				
1.	Preserving the cultural identity and values of Indigenous peoples within a changing northern society			Regions of cultural and spiritual importance granted the highest level of protection under the PWPC plan. First Nations willing to accept 80% designation for protection although originally wanted to see the region 100% protected. Yukon Government's plan opening to development prioritized resource development which may negatively affect the cultural identity and values of First Nations with traditional territory in the region.
2.	Enabling Indigenous people to be equal and full participants in the development of the economy and society			PWPC plan and planning process was appropriate as it followed the process as established under Chapter 11 and was sensitive to First Nations interests including sovereignty and self-determination. Yukon Government plan and process for achieving it did not follow process as established under Chapter 11 and did not apply "spirit and intent" of the UFA.
3.	Enhancing appropriate and meaningful engagement with TK and ways of knowing (applying best practices, innovative approaches such as the two-eyed seeing approach, cross-cultural communication and early engagement)			Participants commented on the inappropriate request to determine areas of significance according to a ranking system during the Issues and Interests stage of planning by the PWPC. Gryzbowski's recommendations included modifying the incorporation of First Nations knowledge and additional training for Planning Commissions and YLUPC members on First Nations' worldviews (see Appendix D). Yukon Government pursued Open House style consultations which are not best practice for engaging with Indigenous interests.
4.	Ensuring territorial policies and practices align with provisions of comprehensive land claim agreements (for example: open staking and associated historic mining legislation currently not in accordance with provisions and interpretation of Yukon First Nation land claim agreements)			This issue was addressed during planning for the Peel Watershed through a staking moratorium established in 2010. However, the region was staked prior to the establishment of a moratorium. Participants raised concerns about sustainable development in Yukon given open staking practices and policies. FRP calls for Conservation Areas to be withdrawn from new oil and gas permits and leases and mineral claims. Yukon Government plan allows access and resource development in 71% of the Peel Watershed. Plan implementation calls for amendments to the <i>Quartz</i>

				<i>Mining Act</i> and <i>Placer Mining Act</i> to establish special operating conditions in RUWA and PA regions.
5.	Avoiding cultural and socio-ecological impacts of resource development including attention to community uncertainty and trauma			Oil and gas exploration and development potential in regions with significant cultural value for First Nations and some “First Nations and Yukoners believe the economic gains from oil and gas exploration and development would be negated by the environmental and social impact” (1-5). As a result, resource development limited to regions with lower ecological and heritage/cultural values. Yukon Government plan allows access and resource development in 71% of the Peel Watershed.
Summary: Respect for and inclusion of Indigenous worldviews				PWPC Plan: 3 criteria fully met; 2 criteria partially met Yukon Government Plan: 4 criteria unmet; 1 criteria partially met
6. Precaution, adaptation and integration				
1.	Avoiding trade-offs between long-term needs and short-term gains			PWPC attention to sustainable development included maintain the wilderness character of the region, limiting access and ensuring effective restoration from anthropogenic disturbances. 71% opening to development in the Yukon Government plan prioritizes non-renewable resource development over conservation and traditional economy values.
2.	Building understanding of rapidly changing ecological/political/economic northern contexts			PWPC Plan includes calls for research into regions with limited baseline data and suggestions for consideration in future Plan Reviews (6-6). Calls for research in Yukon Government plan primarily focused on collecting additional baseline data as well as economic considerations.
3.	Promoting effective implementation between planning and assessment (including monitoring, evaluation, remediation and follow-up of resource development)			PWPC Plan and Yukon Government Plan apply a results-based management framework which focuses on monitoring. However, not all sustainable development themes include associated indicators. Indicators have only been determined for cumulative effects concerns. Participants raised concerns about plan implementation and responsibility for consistency checks between the Plan and development assessment proposals.

4.	Promoting plan flexibility and adaptability to changing circumstances			<p>Both the PWPC and Yukon Government Plans are “designed to be flexible, and is intended to be a living document” (6-4). The PWPC Plan includes a process for reviewing the plan that supports adaptive management principles. Three ways are described for making changes to the plan: plan variance, amendment and review.</p> <p>Yukon Government Plan only establishes a plan review stage to be conducted by the Implementation Committee.</p>
5.	Seeking mutually reinforcing benefits between planning, projects and actions			<p>Although the PWPC plan calls for sustainable development, no guidance is provided to future developments in the region other than limiting potential ecological impacts and includes limited provisions for access to the region. For example, the Plan does not identify detailed management strategies for economic goals. This criteria may require additional revision as development assessments are proposed in the region.</p> <p>Yukon Government provides some management direction within special management considerations including provisions for access and remediation requirements.</p>
6.	Ensuring development assessment proposals are in conformity with established regional land use plans			<p>PWPC established responsibilities for conformity checks to be conducted by the YLUPC secretariat. Participants expressed concerns with this responsibility lying with the YLUPC rather than the Commissions maintaining these responsibilities during plan implementation.</p> <p>Implementation to be the responsibility of Implementation Committee established by Yukon Government. Conformity checks to remain the responsibility of YLUPC.</p>
Summary: Precaution, adaptation and integration				<p>PWPC Plan: 3 criteria fully met; 2 criteria partially met; 1 criteria unmet</p> <p>Yukon Government Plan: 5 criteria partially met; 1 criteria unmet</p>

NET RESULTS	PWPC Plan	Yukon Government Plan
1. Socio-ecological system integrity	●	●
2. Livelihood sufficiency and opportunity	●	●
3. Equity	●	●
4. Socio-economic civility and democratic governance	●	●
5. Respect for and inclusion of Indigenous worldviews	●	●
6. Precaution, adaptation and integration	●	●

Appendix E: Gryzbowski (2014) Recommendations

Recommendation 1: Modify the General Terms of Reference

The Parties could jointly develop and agree to a general terms of reference that:

- Defines the roles and responsibilities of the Commission, the Council the Parties, subcommittees (such as the Technical Working Group and the Senior Liaison Committee), the stakeholders and the public throughout the planning process.
- Stipulates ground rules for the planning process such as an agreed upon description of the issues that will be negotiated, how major decisions will be made, how and when the Parties and stakeholders will be involved, timelines for the planning process and how information will be gathered, portrayed and shared.
- Determines the necessary information needed by the Parties and the Commission for the planning process.
- Determines the communication networks and how various agencies are going to respond and provide feedback to the Commission and the expectations of coordination and communication amongst the Parties, the Technical Working Group and Senior Liaison Committee during key stages of the planning process.
- Allows adequate time for the Parties to negotiate and set their objectives for the planning process, clarify expectations and to define policy priorities for the planning region.
- Determines the scope of what the planning process can address, to ensure that the Commission stays within their mandate.
- Includes provisions and strategies for the resolution of disagreements between the Parties throughout the planning process and strategies for building consensus amongst the Parties by utilizing appropriate consensus building approaches, such as principled negotiation.
- Determines if resources (funding, training or additional time) need to be provided for certain Parties or stakeholders to participate in the planning process.
- Outlines the amount of resources the Parties will commit to the planning process and implementation of the final land use plan.
- Determines a Commission appointment process that anticipates Commission member and staff vacancies, ensures that potential members have the necessary skills to participate in the planning process and that the Commissions are gender balanced.
- Is flexible enough to allow for adaptation and creativity in problem solving by the Commission and the Parties, through crafting a general terms of reference that is not overly prescriptive.
- The Commission and the Parties agree to the provisions of the general terms of reference through signing the document.

Recommendation 2: Create additional training and orientation opportunities

Additional training and orientation opportunities were cited as ways to improve the planning process including:

- Providing training and orientation opportunities yearly to the Commission, Parties, stakeholders and the public throughout the planning process. These training opportunities could provide exercises to give participants an opportunity to familiarize themselves with regional land use planning tasks, for example, writing a precise terms of reference, developing an issues and interests statement and providing feedback on Scenarios and plan iterations.
- The Council developing training modules covering key stages of the planning process and the associated responsibilities of the participants that can be easily distributed to the Parties, stakeholders and the public. Modules could include roles and responsibilities of the Technical Working Group and the Senior Liaison Committee, background information on the Umbrella Final Agreement and Chapter 11 and descriptions of the various documents the Commission will produce such as the Resource Assessment report the, Scenarios and a description of how plan Implementation works.

- Providing principled negotiation training opportunities to all Commission members and staff, the Technical Working Group and the Senior Liaison Committee members.
- Interview participants listed the following training and orientation topics and opportunities to be available for the Parties and the Commission:
 - Opportunity to learn from participants who were involved in previous regional planning processes in the Yukon.
 - Detailed descriptions of the major steps of the planning process.
 - Associated legislation such as Chapter 11 and provisions of the Umbrella Final Agreement.
 - Facilitation, public consultation and mediation training.
 - Cultural competency training.
 - Project and financial management.
 - Training on the roles and responsibilities of the Council, Parties, stakeholders and the public.

Recommendation 3: Planning Commission develop a work plan

- Commission could develop a work plan with the following considerations:
- The Council could assist the Commission write this document, applying lessons learned from previous planning processes that utilize up to date planning methods and strategies.
 - The Council and the Commission could discuss what stage of the planning process to write this work plan, the Commission could write it after the Issues and Interests report.
 - Includes a detailed timeline and budget as well as strategies for dealing with missing deadlines and exceeding the allotted budget. These strategies could include the Commission meeting with the Council to determine where the planning process is faltering and rectifying the situation through utilizing available resources from the Council and by altering and/or re-coordinating the planning approach.
 - Determines a process for deciding who is going to act as chair and how decisions will be made in the absence of quorum. The Commission could defer deciding who is going to act as chair for six to eight months.
 - Describes the Commission's intended methodologies for information gathering, plan development, consultations, resolving competing interests amongst the Parties or stakeholders and how decisions will be made.
 - Identifies training and orientation needs that will be needed by the Commission throughout the planning process.
 - Assesses the possibilities of Commission members and staff spending time in the planning region.
 - Includes a communication strategy that:
 - Attempts to hear from everyone with a stake in the planning region, including a national perspective.
 - Determines strategies to ensure that the Parties, the stakeholders and the public's interests are captured and adequately reflected in planning documents. The Commission could accomplish this by circulating draft planning documents such as the Issues and Interests report for comment by the Parties before releasing the final document.
 - Strategically plans how information will be gathered, detailing which government departments, stakeholders and communities the Commission will collect information from.
 - Assesses possibilities of hosting workshops, consultations and information sessions in the communities.
 - Provides enough opportunity and time for seasonal industries to participate.
 - Appoints a Commission member to act as media spokesperson.

- Flexible enough to account for unexpected events such as a death in a community or other events that require rescheduling.
- The Commission's work plan could be formally reviewed and considered by the Parties and the Council to ensure that they are aware of the Commission's strategies and to ensure that the Parties' expectations for the planning process aligns with the Commission's.

Recommendation 4: Governments proactive throughout the planning process

- Government(s) could work towards being more active in the planning process through:
- Demonstrating preparedness and willingness to support the major stages of the planning process. This could be accomplished through signing a letter of understanding amongst the participating governments at the outset of each stage of the planning process, outlining how the governments will work together and with the Commission to accomplish the necessary tasks.
 - Providing interest statements during the information gathering stage to the Commission that specifically outline what their interests in the planning region are.
 - Assisting the Commission with writing the Resource Assessment and Conservation Priorities Assessment reports.
 - Providing policy direction for the planning process that could include: Commission's role during the recommended plan consultations, protected area strategy for the Yukon Territory, a working definition of wilderness and if mineral staking bans will be enacted during the planning processes.
 - Ratifying all major decisions reached by the Commission, such as the content of the Resource Assessment report and the content of the Draft plan. If governments are not willing to ratify Commission products then they could provide a detailed explanation on the issues that they have with the planning product.
 - Governments encouraging the participation of all stakeholders and dissuading behavior that undermines the planning process.

Recommendation 5: Modify information gathering workshops, consultations and public events

- The information gathering workshops, consultations and public events could be improved through:
- The Commission beginning the information gathering stage with a community and stakeholder tour to inform them of the information gathering process and to highlight the information that the Commission needs for the planning process.
 - The Commission beginning these events with a presentation describing the purpose of the event and explaining how the Commission is seeking input.
 - Keeping presentations by the Commission and the planners simple by explaining technical terms and complicated concepts in an easily understandable format.
 - Through utilizing many mediums for community members to participate and engage with such as pictures, maps, PowerPoint presentations and the opportunity for community members to give oral presentations
 - Providing adequate time for participants to get acquainted with the material and creating opportunities for quieter members or people who may be against the majority to voice their opinion without the fear of being alienated. The Commission could accomplish this through scheduling one on one discussion time before or after public events.
 - Promoting the building of intellectual capital amongst participants through providing additional opportunities for the Parties and stakeholders to come together to discuss the necessary information needed for the planning process and to develop a mutual understanding of each other's interests.
 - The Commission could provide summary documents to participants that describe the major planning products to date such as the Issues and Interests report, Resource Assessment report and the Conservation Priorities Assessment report.

- Highlighting areas of the planning region where there is likely to be conflict and areas where conflict is less prevalent, through overlaying the Resource Assessment and Conservation Priorities Assessment maps and other maps portraying stakeholder interests in the planning region.
- Highlighting if the potential conflicts are going to be current or in the future. The Commission could use the who, what, where, when model that was used in the Gwich'in settlement area planning process.
- Having a system in place for organizing the feedback from consultation and public events such as a centrally managed spreadsheet.
- Using a facilitator to promote dialogue, substantive feedback on Commission products and principled negotiation amongst participants. Furthermore, a facilitator could assist keeping the discussions positive and could help manage these events.

Recommendation 6: Modify incorporating First Nations knowledge

- Incorporating knowledge and worldviews into the planning process could be improved by:
- The Commission meeting with First Nations government departments at the start of the information gathering stage to discuss a standardized approach for collecting and presenting information to the Commission. If a standardized approach is not possible, then the Commission and the First Nations government(s) could attempt to determine a workable alternative before beginning the information gathering process.
 - Providing cultural competency training to the Commission as well as the Parties discussing how the Commission is going to work with First Nations knowledge, confidentiality agreements and culturally appropriate methods for gathering First Nations knowledge.
 - Commission hosting traditional knowledge gathering workshops within the planning region or in an outdoor location.
 - Utilizing facilitators and a senior planner who are aware of culturally appropriate means of dispute resolution, planning methods and techniques.

Recommendation 7: Modify plan development stage

- The plan development stage could be improved through:
- During the scenarios stage, the Commission could present between three and five options to give the Parties, stakeholders and the public an opportunity to select from a range of Scenarios.
 - The Commission forecasting the Scenarios and other land use plan iterations at public events to give people an understanding of how the various land use decisions will play out over time.
 - The Commission and the Parties could develop objective criteria to assess iterations of the plan during the plan development stages.
 - The Commission providing a clear and easily understood methodology report to the Parties, stakeholders and the public outlining how the Scenarios, Draft plan, Recommended plan and the Final Recommended plan were developed.
 - The Commission working with the Council to determine the best method for representing the landscape management units during plan development.
 - The Commission making presentations on iterations of the plan to the Parties, stakeholders and the public so these groups understand and are aware of the direction the Commission is heading in and can raise any questions or concerns they have about the content of the plan. If there are concerns the Commission and the Parties could work towards addressing these issues before moving ahead with the planning process.
 - Providing more opportunities for face to face meetings between the Parties and the stakeholders to discuss issues and negotiate mutually acceptable agreements while utilizing a facilitator and principled negotiation. Other avenues could include: the creation of an intergovernmental discussion forum where issues can be negotiated, convening a stakeholder table as illustrated in Appendix 8 or taking issues to an impartial party who can help resolve the dispute.

Recommendation 8: Include a comprehensive implementation section

The implementation component of the planning process could be improved by:

- Including an implementation section in the planning documents during the plan development stage that provides a detailed description of the roles and responsibilities of the Council and the Parties during plan implementation.
- Establishing a monitoring process that includes procedures for mitigating implementation failures.
- Establishes when the plan will be reviewed and how plan amendments will be made.
- Including those involved in developing the land use plan in the plan implementation stages.

Recommendation 9: Council champion the process

The Council could work to improve the planning process through:

- Negotiating and defining the working relationship between the Commission and the Council to determine how the Council can best support the Commission and the planning process. This agreement could define who the senior planner is answering to, how human resource decisions are made and how these groups will communicate, interact and work together throughout the planning process to ensure that the Council can support the planning process without interfering with the Commission's mandate. This agreement could be captured through signing a memorandum of understanding between the Commission and the Council during the Commission start up stage.
- Priming the Parties and the stakeholders for key stages of the planning process by hosting workshops and meeting with the Parties in advance of the Commission to explain the upcoming stage of the planning process and the types of information, feedback and involvement that will be required.
- Checking in with the Parties in person or by telephone after each major stage of the planning process to ensure that expectations are being met and any outstanding issues are addressed.
- Anticipating conflicts amongst the Parties or stakeholders and utilizing appropriate means to address the issues such as mediating the dispute or hiring a facilitator.
- Making Council staff available to assist the Commission during heavy workload times, assistance could include, editing documents, assisting with presentations and providing feedback on Commission products.
- Ensuring that the Commission and the Parties are sticking to the general terms of reference and are participating in good faith, through writing letters and communicating frequently with these agencies. The Council could host meetings with the Commission and or the Parties yearly showing these agencies where they are at in relation to the general terms of reference.
- Reviewing past land use planning processes in the Yukon to determine areas that need improvement and by updating the current land use planning process by applying findings from these initiatives. The Council could organize opportunities for the Parties, stakeholders and the public to be involved in updating the land use planning process through hosting workshops dedicated to this topic.
- Promoting relationships, between Council board and the Commission members and staff through providing additional opportunities to meet informally.
- Promoting the generation of new relationships and social capital amongst participants through organizing more opportunities for face to face interactions amongst the Parties, stakeholders and the public.