KWANLIN DÜN FIRST NATION

MANAGING EXISTING OCCUPANTS AND HISTORICAL SUBMISSIONS FOR LAND POLICY

Legislative Authority: *Lands Act*
Policy Authority: OIC-2020-40 (September 24, 2020)
Administrative Authority: Heritage, Lands and Resources Department

DEFINITIONS:

Beneficiary means a beneficiary of Kwanlin Dün First Nation.

Citizen means a citizen of Kwanlin Dün First Nation.

Department means the Heritage, Lands and Resources department of Kwanlin Dün First Nation.

Existing Occupant means a Beneficiary or Citizen, including a combination of Immediate Family Members who are Beneficiaries or Citizens, who owns and lives in a residence located on settlement land or who owns and regularly uses a permanent or semi-permanent dwelling structure located on settlement land that is used in support of that person's pursuit of traditional activities. Such an occupancy may be referred to as an **Existing Occupancy**.

A **Family** is presumed to be all the Immediate Family Members of an individual, unless the Department is satisfied that the circumstances require otherwise.

An **Historical Submission** exists where there is sufficient proof that:

1. An individual or their Family has
    a. a land set aside, band council resolution, letter from Council or a document confirming an individual's or families' desire for a specific parcel of settlement land that is:
        i. dated prior to November 1, 2018, and filed with the Department; or
        ii. dated prior to April 1, 2005 regardless of whether it is filed with the Department; or
    b. an Existing Occupancy that commenced prior to April 1, 2005; and

2. Despite paragraph 1, no Historical Submission exists unless every individual involved in a claimed Historical Submission was a band member, citizen or beneficiary of Kwanlin Dün First Nation or its predecessor Band at the time the Historical Submission was submitted to Kwanlin Dün First Nation or at the time the Existing Occupancy commenced, and continued to be so affiliated through to the date on which a disposition of settlement land is requested pursuant to this policy.

Immediate Family Member has the meaning given to it by the *Lands Act*.

OBJECTIVE:

This policy provides holders of Historical Submissions an opportunity to obtain early dispositions of settlement land.

This policy strives to honour individuals, families, and community connections to parcels of settlement land. It outlines the process by which individuals and families can access lands they currently occupy; a new parcel that they wish to build on; or lands to pursue traditional activities.

Individuals will be able to receive a form of disposition for that land that they can use, pass onto family members and transfer to others.

Where an Existing Occupancy does not amount to an Historical Submission, this policy provides for how those Existing Occupants will be considered in the administration of this policy.

This policy also provides for the resolution of overlapping or multiple interests in the same parcel of settlement land and for the balancing of the Historical Submissions with the interests of the Kwanlin Dün First Nation.

APPLICATION OF POLICY:

This policy applies to:

- Historical Submissions; and
- Existing Occupants.

This policy does not apply to an individual who is:

- not a Beneficiary or Citizen; or
- occupying homes on settlement land that are owned by Kwanlin Dün First Nation.

BACKGROUND:

Many Beneficiaries and Citizens have selected or recorded their preference for a parcel of settlement land for residential and traditional activity. These selections date back to the earliest stages of land claim negotiations and have been called expressions of interests, land set aside, band council resolutions or site-specific selections. They have been documented in department files over many years. There may also be situations where Beneficiaries or Citizens may have a document confirming an individual's or families' interest in a specific parcel of settlement land, dated prior to April 2005, but not filed with the Department.

The recorded date on the Historical Submission is important. Historical Submissions recorded prior to April 1, 2005 were directly tied to land claim negotiations and are a priority to process. Those recorded after April 1, 2005 were not tied to the Final Agreement negotiations and are considered an interest in acquiring the parcel of land in the future.

The Department has over 350 Historical Submissions recorded. These submissions are mainly for residential or traditional use purposes.

PRINCIPLES:

The Department shall be responsible to implement this policy and will consider the following policy statements when processing Historical Submissions and related requests for dispositions of settlement land:

1. All requests for land submitted under this policy will be subject to the initiatives, needs, and interests of Kwanlin Dün First Nation.

2. In respect of any document submitted to the Department in connection with this policy, the Director of the Department is authorized to determine whether and how that document may be used in the administration of this policy and, without limiting that authority, the Director of the Department may reject any document that it is, in the Director's opinion, not sufficiently clear, complete, authenticated, vague, uncertain or otherwise unreliable for the purposes of this policy.

3. This policy will not dictate the development priorities of Kwanlin Dün First Nation or be permitted to compromise the development potential of a parcel of settlement land by a request for a parcel of land under this policy.

4. The department will use sound land planning principles and practices to protect the environment when reviewing any request to ensure the best use of settlement land and to protect the land, water, wildlife and the traditional interests of the Kwanlin Dün First Nation.

5. The department will seek creative solutions working with individuals to achieve outcomes that balance everyone's interests.

6. Beneficiaries and Citizens are entitled to benefit from this policy equally.

7. Historical Submissions will not be recognized by Kwanlin Dün First Nation except through this policy.

8. This policy is a time-limited policy. The policy will be formally brought to a close, once the Department is satisfied that potential interested parties have had a reasonable opportunity to participate in this program. At that time, the Department will no longer process any claim in respect of an Historical Submission.

9. As a condition of approval of a disposition of land under this policy, an individual will be required to provide Kwanlin Dün First Nation with a release of any claim to a right in respect of an Historical Submission that is not addressed through policy.

10. An individual may receive only one residential disposition and one traditional activities disposition through this policy.

11. The department may determine that it is in the best interests of the Kwanlin Dün First Nation for a Historical Submission to be moved to a different parcel of settlement land. There are situations where moving to another location may be beneficial to both the Kwanlin Dün First Nation or to the individual. These situations can include:
    a. a parcel of settlement land has multiple Historical Submissions that are either in direct conflict or will create crowding/lack of available space within that parcel;
    b. a planned development initiated to support multiple Historical Submissions does not receive the necessary approvals to proceed on that parcel;
    c. the parcel of settlement land requested is unsuitable for development; or
    d. the proposed disposition conflicts with planning/zoning or other interests of Kwanlin Dün

First Nation.

12. The Department may determine that a parcel of settlement land may only be available for disposition through an allocation, as defined by the *Lands Act*, in order to ensure that it remains held by a Citizen or Beneficiary. This determination will be based on planning/zoning and cultural or traditional interest considerations.

13. With regard to Existing Occupants, the policy will be administered so as to:

    a. honour, to the extent required by law, any authorization to occupy settlement land; and

    b. avoid issuing land under the policy that would displace Existing Occupants, unless doing so is reasonably required in order to give effect to the policy, in which case, an Existing Occupant may be required to vacate some or all of the land so occupied.

14. The Department will consider and give priority to requests for land submitted under this policy based on the factors and determinants outlined in the next section, entitled "Factors and Considerations".

FACTORS AND CONSIDERATIONS:

CHRONOLOGICAL ORDER	• Applications will be generally processed in the order of the date on which the Historical Submission was submitted or arose. • First priority will generally be given to those who made a Historical Submission submitted or arising prior to April 1, 2005. • Historical Submissions submitted or arising after April 1, 2005 will generally be processed once the first priority Historical Submissions have been addressed as a whole or within an area determined by the Department (such as in a planned development).
EXISTING OCCUPANTS	In determining whether the administration of this policy should affect an Existing Occupant, the Department will consider the details and history of that Existing Occupancy, including: • the payment of property taxes and utility charges; • whether the occupancy is related to residential or traditional activities; • whether the existing unauthorized occupancy would not be eligible for formal disposition in any event; • the date on which occupancy commenced and history of use; and • the type, date, and scale of any improvements to the occupied land. • The Department will not resolve building ownership disputes between individuals. Any person claiming an interest in the same building(s) must resolve the dispute prior to making an application for an interest.
USE	Applications will be accepted for both residential and traditional use activities.

SPECIAL CONSIDERATION	Under special circumstances, the Director may give consideration or prioritization to certain Historical Submissions (i.e., elders or those with urgent needs).

PROCESS:

Initial Preparation and Discussions:

Prior to making any decisions under this policy, the Department will complete the following actions:

- verify the information in its existing database;
- review the database (parcels and sites) in the context of land planning and zoning;
- confirm the status and location of existing residential buildings on settlement land with Community Services;
- determine the priority of site planning or planned development for parcels with multiple submissions at the outset; and
- identify first priority Historical Submissions that can likely be resolved as stand- alone dispositions.

Once these have been completed, the Department will contact Historical Submission holders to:

- determine whether there is a continued interest in the parcel;
- confirm their eligibility to acquire a disposition of settlement land;
- explain the procedural requirements; and
- discuss any cost and legal requirements associated with a land disposition.

Historical Submission holders will have the opportunity to withdraw their submission for land.

- A Historical Submission holder may designate an eligible Immediate Family Member:
- to replace them; or
- join them as a co-holder.

If a Historical Submission holder dies or is deceased, and there is insufficient evidence showing that the deceased identified an eligible recipient of that Historical Submission, an eligible Immediate Family Member who has written consent from each of the deceased's Immediate Family Members may request to replace the original holder.

Information in the Department's database will be updated to reflect confirmed eligibility of Beneficiaries and Citizens, and their continued desire to formalize a request for the land.

Categorizing Types of Existing Occupancy and Historical Submissions:

Historical Submissions will be classified into two basic categories:

- **Category 1 Simple:** a single or a small number (less than 5) Historical Submission(s); or
- **Category 2 Complex:** multiple Historical Submissions in one parcel of settlement land. These can be on parcels that are large and can accommodate multiple submissions or where the parcel is small and there are multiple submissions for the same parcel of land.

The Department will define the category of each submission based on the initial review and discussions. This will determine how the submission is processed and reviewed by the Department. At any time, the Department may recategorize Historical Submissions as discussions advance.

Procedures for Category 1 Simple:

Within this category, the Department will identify Historical Submissions where the holder:

- has applied for residential purposes; and
- owns and occupies their home or has the ability to build, own and maintain a home.

Once the list is complete, the Department will identify first priority Historical Submissions and work with those individuals to submit a formal application for a parcel of land. The Department will process applications based on priority to ensure the number of applications is manageable.

All applicants must complete the required application form as determined by the Department along with supporting documents.

The application must be submitted to the Department. The Department will check that the application has been completed and all required documents have been submitted, as well as confirm the applicant's eligibility.

The Department will work with applicants throughout the application process.

Once the Department receives an application, it will review the application and subject parcel of settlement land, which may include among other things:

- conducting a site inspection of the parcel identified in the application, including state and type of building on site, if any;
- delineating and flagging the parcel boundaries;
- reviewing land use planning and zoning, if applicable, to review conformity;
- confirming housing status with Community Services if there are buildings on site;
- contacting the City of Whitehorse or Yukon government regarding any other regulatory requirements that may impact the application review or outcome;
- determining whether an assessment under the *Yukon Environmental & Socio-economic Assessment Act* will be required; and
- soliciting community input on the application.

Based on the review, the Department may require that:

- a site plan is created that is designed to satisfy the requests in a single parcel;
- the application site location moves to a more suitable location if the site is determined to be unsuitable for development or conflicts with planning, zoning or other interests of KDFN; and
- family applications are submitted as a group or separately, depending on the needs of the individuals. Once the review is completed, the Director will approve, conditionally approve or deny an application. A conditional approval may require the parcel to change to a Category 2 Complex parcel, which will be developed as part of a planned development. If a parcel is changed to a Category 2 Complex parcel, the applicant will maintain priority in accordance with this policy.

The Department will provide written notice of the decision to the applicant. All applicants have the right to apply for a reconsideration of the decision, as provided for under the *Lands Act*. All decisions will be made available to the public on the Kwanlin Dün First Nation Department webpage.

The Department will establish a time limit for an applicant to decide whether to proceed or not with the lease or allocation. If the applicant is non-responsive or indicates that they do not wish to proceed, the application will be closed.

Procedures for Category 2 Complex:

The Department will consider developing planned lots for parcels of settlement land that have multiple Historical Submissions.

The Department will ensure sustainable land development and land use planning principles are incorporated into any potential development. Planning will consider:

- site suitability (topography, aspect, geo-technical considerations for building sites);
- access;
- services (water, sewer, utilities);
- development costs anticipated for Kwanlin Dün First Nation and any potential lease or allocation holder; and
- community needs and interests (greenbelts, community use parcels).

City of Whitehorse or Yukon government planning and zoning requirements that may apply on settlement lands will be considered and respected. The Department will be responsible for the necessary *Yukon Environmental & Socio-economic Assessment Act* assessment of the planned development along with any other regulatory permits or authorizations that may be required for the development prior to granting dispositions of land.

The department will solicit the required community input into any planned development.

If the development receives the necessary approvals to proceed, the Department will undertake the development. The Department may engage Chu Nikwaan Development Corporation to assist with planning and developing any multi-parcel development.

If a planned development does not receive approval to proceed, the Department will work with those individuals with an Historical Submission to identify another location to meet their needs.

Once the planned development is complete, the parcels are surveyed and access and servicing are constructed, the department will cost the lots in accordance with Departmental policies.

Historical Submission holders who have confirmed their interest in a parcel of settlement land will be provided an opportunity to apply for an available parcel in the planned development either through a direct offer or through a lottery process. In addition to the factors and considerations set out in this policy, when determining how to allocate parcels within a planned development, the Director may also consider the proximity of the land subject to an Historical Submission to the location of the planned development.

All individuals will be required to submit a land application for a lottery in accordance with the requirements determined by the Department.

Any remaining parcels may be made available to other Beneficiaries and Citizens or to the general public through a lottery process conducted by the Department.

Community Input:

During the application review or planned development processes, the Department will provide opportunities for community, public and other inputs and comments, as necessary, in order to identify, among other things:

- missing or historical information;
- potential conflicts or interests among individuals or governments; and
- wider community interest in the land.

The details of any application under Category 1 or planned lot under Category 2 will be posted on the Kwanlin Dün First Nation website and in the community for at least 30 calendar days. Information relating to the parcel, the proposed use, and the name of the applicant, if a single site, will be available to the community. The parcel itself will also be posted in a prominent location if people wish to view the site location.

A community meeting may be held to facilitate discussion on an application or planned development.