



WOLASTOQEY NATION IN NEW BRUNSWICK

Matawaskiye • Neqotkuk • Wotstak • Pilick • Sitansk • Welamukotuk

[DELIVERED VIA EMAIL]

Ref: WNNB [13-22]

May 2, 2022

Andrew Foster

Executive Director

Department of Aboriginal Affairs (DAA)

Chris Ward

Assistant Deputy Minister

Forestry Division

Re: Initial Comments on PNB's Proposed 2022 Forest Strategy

Mr. Foster, and Mr. Ward:

This is the initial response of our Communities to the March 23, 2022, letter (March 23 Letter) from Chris Ward about the proposed 2022 Forest Strategy. Your letter came after 2 years of silence on this topic:

- DNERD confirmed its plans to start consulting about a new Forest Strategy in late 2019.
- In February 2020, DNERD sought initial feedback from WNNB about the impacts of forestry on our rights to inform the document in February 2020. DNERD urged WNNB to respond promptly, which WNNB did, responding that same month.
- In March 2020, Shyla O'Donnell followed up with Chris Ward to learn what DNERD was doing with the Wolastoqey feedback, who explained that this work was on hold while PNB focussed on responding to the Covid pandemic.
- The March 23 Letter is PNB's first communication since March 2020 about a new Forest Strategy.

DNERD also stopped engaging on a closely related document, the Forest Management Agreement, well before the Covid pandemic started, in the Fall of 2019, despite repeated WNNB requests to continue that discussion in advance of PNB negotiating new FMAs.

These are our initial comments about the Proposed 2022 Forest Strategy. We will be working to develop feedback on the draft Forest Strategy and our recommendations for improving it over the coming weeks. We require the information requested below to inform our substantive comments.

1. Comments relating to PNB's Proposed Consultation Process

PNB must Consult with our Communities

The proposed consultation schedule on p. 6 of the March 23 Letter suggests that PNB is consulting with WNNB. While WNNB plays an important role in supporting Wolastoqey consultation about our Aboriginal title, our other Aboriginal rights, and our Treaty Rights (Section 35 Rights), the Crown's duty is to consult with our Communities. Wolastoqey Chiefs and Councils, not WNNB, are the Wolastoqey decision-makers. Our Communities, supported by WNNB, will work to develop collective Wolastoqey Nation views and recommendations, but each of our Communities may ultimately develop its own unique views and feedback.

PNB must Provide Reasonable Time for Consultation

PNB's draft schedule anticipates concluding consultations by the week of July 18. We are not confident that this timeline is achievable. Our Communities need adequate time to develop and provide substantive comments on the draft Forest Strategy. Specifically, we need time to complete the following tasks:

- Compare the Proposed Forest Strategy to 2014 Forest Strategy and to relevant feedback that WNNB, the RDCCs and our Forestry Directors have previously provided to DNERD regarding the Province's approach to forestry management. This task will be all the more time consuming given the hiatus in provincial engagement and the fact that our feedback is at least 2-3 years old.
- Receive feedback from our registered professional forester on the new Proposed Forest Strategy to help us assess its impacts on our Section 35 Rights and whether and how it improves on the 2014 Forest Strategy.
- Inform members about the proposed Forest Strategy and gather their feedback about how it stands to affect our Section 35 Rights
- Hold internal meetings to seek to develop unified Wolastoqey Nation views on the Proposed Forest Strategy and how to improve it
- Develop and seek to reach consensus amongst our Communities on written comments based on the outcome of the work described above

By law, the Crown must provide reasonable time for consultation and must consider the competing demands on our time for consultation matters and the heavy demands on our time that we and our staff face. Moreover, there is no statutory deadline for preparing a new Forest Strategy, and it was DNERD's decision to not engage with Wolastoqey representatives for over two years about the draft Forest Strategy.

For all these reasons, we require until June 20 to provide our substantive written feedback on the Proposed Forest Strategy, which will include relevant information, our concerns, and proposals for

improving the Strategy. This timeline assumes that the Crown responds in a timely way to our information requests (included below). Crown and Wolastoqey representatives will then need time to meet and discuss our information, our concerns, and our proposed improvements to the Strategy. This will likely require more than one meeting.

At this point, we are simply noting that we may need beyond the week of July 18 to complete meaningful consultation and request your confirmation that the Crown will stay flexible on this point, depending on how consultation unfolds. As always, WNNB and our Communities will work as fast as reasonably possible to develop our feedback and seek to reach internal agreement on shared comments, including delivering our feedback before June 20 if possible.

We require Capacity Funding for Consultation

PNB has not offered any capacity funding for this consultation process. We have costs associated with this consultation, such as the time of WNNB's registered professional forester, consultant Shyla O'Donnell (whose support we require given her years leading the Wolastoqey Nation's engagement on forestry), and legal counsel, as well as the costs for holding in-person leadership and community meetings.

The Province has not confirmed *any* capacity funding for any of our forestry-related work for this fiscal year. Furthermore, in previous years, PNB has prescribed how such funds must be spent. ***We would like to discuss with PNB, within 1 week, a flexible capacity funding budget for consultation on the Proposed Forest Strategy. Please contact Gillian Paul at WNNB to do so.***

PNB must be open to Revising its Assessment of Depth of Duty to Consult

PNB assesses the duty to consult on the Forest Strategy as "moderate" or "normal" (March 23 Letter, p. 6). We believe that the depth of the duty to consult is higher given our strength of rights claims and the severity of potential adverse effects of the Forest Strategy on our Section 35 Rights. Our substantive comments will explain why. ***Please confirm that PNB is open to reviewing and revising its assessment about the depth of consultation required based on forthcoming Wolastoqey information and concerns.***

2. Substantive Comments

PNB has not Considered Aboriginal Title Impacts

Aboriginal title includes the right to decide how to manage lands and the natural resources on those lands. The unilateral adoption and implementation by the Crown of a Forest Strategy to guide the management of title lands adversely affects and indeed, seriously infringes this core aspect of Aboriginal title. WNNB identified this impact for DNERD in February 2022; DNERD never responded to WNNB's submissions. The March 23 Letter (pp. 5-6) identifies PNB's views on potential adverse impacts from the Proposed Forest Strategy to our Section 35 rights, and it makes no reference to impacts on our Aboriginal title.

Meaningful consultation requires responsiveness and transparency. ***Therefore, please explain why you do not agree that the Proposed Forest Strategy adversely affects our Aboriginal title.*** We require this feedback to inform our detailed response.

The Forest Strategy Fails to Adequately Prioritize Section 35 Rights

Our Nation has repeatedly explained to DNERD that the Crown has a constitutional duty to manage forestry in a way that accommodates reasonably asserted Section 35 Rights and respects established Section 35 Rights. WNNB's *Proposed Modifications to the Forest Management Agreements* (January 17, 2019) noted the failure of the *Crown Lands and Forests Act* and the 2014 Forest Strategy to acknowledge this obligation. WNNB's first recommendation in that submission was:

- I. Expand the objectives of forestry management to include meaningful accommodation of reasonably asserted Section 35 Rights and the protection of established Section 35 Rights.

DNERD never provided feedback on WNNB's recommendation, but it is now apparent that the Proposed Forest Strategy does not include this new theme. The Crown continues to prioritize "Commitments to Society" in the Proposed Forest Strategy while failing to also prioritize its unique, constitutional obligations to Indigenous people. This omission is extremely disappointing. ***In order to further a transparent and responsive dialogue, please explain why PNB rejected our 2019 recommendation to establish a new forestry management theme centred on accommodating and protecting section 35 rights.*** We need to understand PNB's decision to inform our detailed response.

Mischaracterization of our 2019 Feedback on the Crown's Forestry Consultation Efforts

The Forest Strategy Memo (dated February 1, 2022 and shared with us along with the March 23 Letter) contains a section called "First Nation Engagement on Forestry". At page 17, it refers to our March 27, 2019 letter to Minister Holland and says: "WNNB acknowledged that the work plan discussions which had occurred had been productive."

This statement is inaccurate. First, the letter was from us, not WNNB. Second, we did not describe the discussions as productive. We simply said: "we appreciate your staff's open-minded and forthcoming approach to date". We then proceeded to identify the need for the Minister to provide his staff with mandates to make the discussion productive:

However, resolving our concerns will require your leadership and Cabinet mandates. We see the forestry file as a major opportunity for building a strong, respectful working relationship between the Wolastoqey Nation and the Province, one that is founded on recognition of and respect our Section 35 Rights, while also strengthening local economies and supporting long term forestry jobs for our members and other citizens of this Province.

What follows is a more detailed explanation of the impacts of forestry on our Section 35 Rights, the issues that we seek to resolve collaboratively with your Ministry, the nature of our discussions to date with your staff, and the mandates that we urge you to provide them to help make those discussions as productive as possible.

3. Information requests

We need some additional information to understand the Proposed Forest Strategy, assess the nature and severity of its potential impacts on our Section 35 Rights, as well as to understand where PNB is at on our previously shared concerns and proposals in relation to forestry management and that are missing from the Proposed Forest Strategy.

1. As requested above, please explain why PNB does not agree that the Forest Strategy adversely affects Wolastoqey Aboriginal title and why PNB has rejected our 2019 recommendation for a new forestry management theme centred on meeting the Crown's obligations to accommodate and protect section 35 rights.
2. Please provide us with the draft Forest Management Manual, which PNB's Forest Strategy Memo references at footnote 2. The Crown's consultation duty extends to this document and reviewing it will allow us to better understand the implications of the Proposed Forest Strategy.
3. Has PNB made any assessment of the strength of the Wolastoqey Aboriginal title claim for the portions of Wolastoqey Territory covered by the Forest Strategy? If not, please let us know. If you have, please share the information and non-legal advice that has informed PNB's understanding of our Aboriginal title claim (e.g. any reports by ethnographer, ethnohistorian, anthropologist).

Your responses will provide necessary transparency on relevant consultation issues that we have previously raised with PNB, which will in turn allow our Communities to advance the dialogue with PNB by providing responsive information, views and concerns. We look forward to hearing back from you on these issues in time for us to address them in our detailed feedback on the Proposed Forest Strategy.

4. Forest Management Agreements

The Forest Strategy informs another key forestry management tool, Forest Management Agreements with the licensees. DNERD stopped engaging with Wolastoqey representatives about FMAs in 2019, at which point it still had not provided much feedback on WNNB's recommendations for how to improve them. WNNB repeatedly communicated the concern that PNB might move forward on renewing FMAs without completing consultation with the Wolastoqey Nation on those important agreements or on a rushed timeline that would prevent our meaningful participation in their renewal to help ensure that they adequately account for, accommodate, and protect our Section 35 Rights. We now see at p. 11 of the Forest Strategy Memo that the Crown intends to renew FMAs this year. This is very concerning to us.

Please confirm

- whether PNB has begun negotiating new FMAs,
- which if any of our 2019 recommendations PNB intends to incorporate into the new FMAs,
- whether the Crown agrees it has a duty to consult about FMAs; and if so,
- whether and on what timeline you plan to consult with our Communities to inform the development of the new FMAs.

We look forward to your response on our consultation capacity funding request and our information requests. Please address your responses to all of us, our RDCCs, and Gillian Paul. Please also note that any long delays on these issues would make it impossible for us to meet our target date of June 20 for delivering substantive feedback.

Woliwon / Wəliwən,

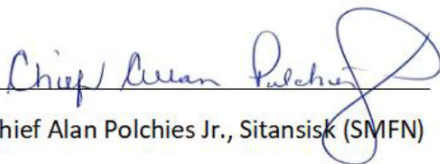
Wolastoqey Nation in New Brunswick Chiefs



Chief Ross Perley, Neqotkuk (TFN)



Chief Shelley Sabattis, Welamukotuk (OFN)



Chief Alan Polchies Jr., Sitansisk (SMFN)



Chief Gabriel Atwin, Pilick (KFN)



Chief Patricia Bernard, Matawaskiye (MMFN)



Chief Tim Paul, Wotstak (WFN)

cc: Gillian Paul, Interim Nihkanatpat (Executive Director), WNNB
Kelsey Wierdsma, Consultation Manager, WNNB
Shyla O'Donnell, Forestry Consultant
Russ Letica, RDCC, Matawaskiye (Madawaska Maliseet First Nation)
Jamie Gorman, RDCC, Neqotkuk (Tobique First Nation)
Mike Barlett, RDCC, Wotstak (Woodstock First Nation)
Richard Francis, RDCC, Pilick (Kingsclear First Nation)
Tim Plant, RDCC, Sitansisk (St. Mary's First Nation)
Fred Sabattis Jr, RDCC, Welamukotuk (Oromocto First Nation)