

What We Heard

Proposed zoning for the Shallow Bay / Mản Tl'át area

September 2022

Shallow Bay Zoning Committee

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*“They [Ta’an people] relied
on Shallow Bay quite a bit.
It identifies us as a people”
—Ta’an citizen*



Executive Summary

This report summarizes what the Shallow Bay Zoning Committee heard during engagement between December 2020 and May 2021 in response to the Proposed Zoning for the Shallow Bay / M̄an Tl'at Area. This What We Heard report includes a brief background about the proposed zoning, a description of the methods used to solicit feedback and analyze results, and the key themes. The following themes were identified in response to the proposed zoning for the Shallow Bay / M̄an Tl'at area.

Theme 1: Connection to the area

1. Shallow Bay residents have a deep connection to the area and want to preserve the integrity of the rural community and the lifestyle it affords.
2. Ta'an Kwäch'än Council has a unique connection to the area that includes historical and present-day interests.

Theme 2: Protection of the area

1. There is consensus that protection of ecological values is essential but little consensus on how it should be balanced with human needs or how decisions should be made.
2. There is consensus that density control should be a priority for environmental protection of the area. There is a lack of consensus on how best to achieve this and a lack of clarity on what the density threshold is or should be.
3. It is unclear how environmental protection decisions were made by the committee, what evidence was used, why the measures are necessary and how they will mitigate potential impacts.

Theme 3: Process and consultation

1. Participants do not feel consultation has been sufficient and express concern about a lack of transparency in the process.
2. There is concern that the interests of all user groups, citizens, and residents have not been adequately heard and considered in the draft zoning and that certain interests are being favoured and others targeted.

Theme 4: Land use

1. There is significant concern that current land use not been adequately considered and will conflict with proposed uses, impacting the future of the area and the lives of residents.
2. There is a lack of clarity about how the proposed zones will be implemented and how this will affect individual properties, Settlement Land and continued use of the area.

Theme 5: Dispossession of land and rights

1. There is concern that the proposed zoning and the process has not adequately considered existing or historic land titles and rights.
2. There is a lack of clarity about how land dispossession will be mitigated or managed.

Introduction

Located in the heart of Ta'an Kwäch'än Council Traditional Territory, Shallow Bay / MÀN TL'ÀT has been and remains important for Ta'an Kwäch'än Citizens. The area is also in the Traditional Territory of Kwanlin Dün First Nation. Ta'an Kwäch'än Council Citizens have historically used and occupied the Shallow Bay area and continue to live, hunt, fish and gather in the area for subsistence purposes. This is the cultural and geographical centre of their Traditional Territory, a significant wetland, and an important area for birds, fish and wildlife. Past land-use decisions and changes have had major impacts on the Ta'an Citizens and their way of life.

Shallow Bay / MÀN TL'ÀT is part of the Whitehorse Periphery Development Area with a six-hectare minimum parcel size for rural residential properties. The *Whitehorse Periphery Development Area Regulation* was developed as an interim measure for development controls with the expectation that areas in the periphery would eventually be developed under the guidance of land use plans. Shallow Bay / MÀN TL'ÀT is one of the few areas that has yet to have a local area plan. The proposed zoning changes on private and public land are adjacent to Ta'an Kwäch'än Council Settlement Land parcels and traditional areas used by the First Nation community. There is also a consultation obligation that exists under the Compatible Land Use (Section 25) of the Ta'an Kwäch'än Council Self-Government Agreement.

Between 2015 and 2017, Shallow Bay residents expressed to the Government of Yukon an interest in lowering the minimum lot size for rural residential properties and requested that zoning changes reflect the unique social, cultural and ecological values of the Shallow Bay / MÀN TL'ÀT area.

The Shallow Bay Zoning Committee was appointed by the Government of Yukon and Ta'an Kwäch'än Council to develop a draft zoning regulation that could be reviewed and considered. The committee started working on new development area (zoning) regulations for the Shallow Bay / MÀN TL'ÀT area in June 2018. The committee reviewed input collected from previous surveys, information gathered from Ta'an Kwäch'än Citizens, current and past land uses, existing research, and expert opinion. They used technical, local and traditional knowledge, and community values to develop draft zoning for the Shallow Bay area. The proposed zoning was finalized and made public in the What We Heard: Proposed Zoning for the Shallow Bay / MÀN TL'ÀT Area, December 2020. The report summarizes input that has been received about the proposed zoning.

The Government of Yukon and Ta'an Kwäch'än Council are collaborating to determine how to proceed with land planning and zoning in the Shallow Bay area after the 2021 summer floods. They have paused the zoning process until the Government of Yukon works towards completing detailed flood risk mapping for 14 communities, including Lake Laberge and Shallow Bay, by 2023.

To learn more about the basics of a zoning regulation, find related documents, public meeting and committee meeting notes and a copy of the What We Heard: Proposed Zoning for the Shallow Bay / MÀN TL'ÀT area, visit [MÀN TL'ÀT \(Shallow Bay\) area development regulations \(Yukon.ca\)](#).

Màn Tl'at is the traditional Southern Tutchone name for what is now called Shallow Bay.



Engagement activities and feedback

The Proposed Zoning for the Shallow Bay / MÀN TL'ÀT Area Report was released by the Shallow Bay Zoning Committee in December 2020 and marked the beginning of the comment and engagement period. The deadline for comments and feedback on the proposed zoning was February 28, 2021. This deadline was later extended to May 31, 2021. The committee held a virtual public meeting on January 21, 2021, and a virtual meeting with Ta'an Citizens on January 27, 2021. Answers to questions from these meetings were posted online. After the January 21 meeting, surveys about the proposed zoning were sent to residents and Ta'an Citizens.

The following responses were received and are summarized in this report:

1. 28 surveys
2. 21 written responses
3. Three letters from stakeholder organizations:
 - a. Dog Powered Sport Association of Yukon
 - b. Yukon Dog Musers Association
 - c. Yukon Agricultural Association
4. Internal Ta'an Citizen consultation transcripts and notes from August 4, 2021 meeting (only shared with researcher)
5. Internal Ta'an Citizen report from 2020 (only shared with researcher)
6. Kwanlin Dün First Nation and Ta'an Kwächän Council letters addressed to the committee

Analysis methods and report format

Written responses, letters, meeting notes and surveys received between December 2020 and August, 2021 were all reviewed and analysed using thematic analysis. Thematic analysis is a useful method when there are many different opinions, or a large variation in responses, because it crosscuts specific issues looking for underlying commonalities or themes.

To conduct the thematic analysis, survey responses and written submissions were compiled and entered in NVivo software to organize and analyze the data. After an initial review, responses were coded or labeled based on what was being said. These codes were reviewed, grouped into similar topics and then described. These descriptions, or sub-themes, were reviewed again looking for similarities and patterns so they could be grouped into key themes, or overarching concepts or topics.

The main body of the What We Heard report outlines the five key themes that were found across all responses regardless of the respondent, question or format of the feedback.



What we heard

Key themes

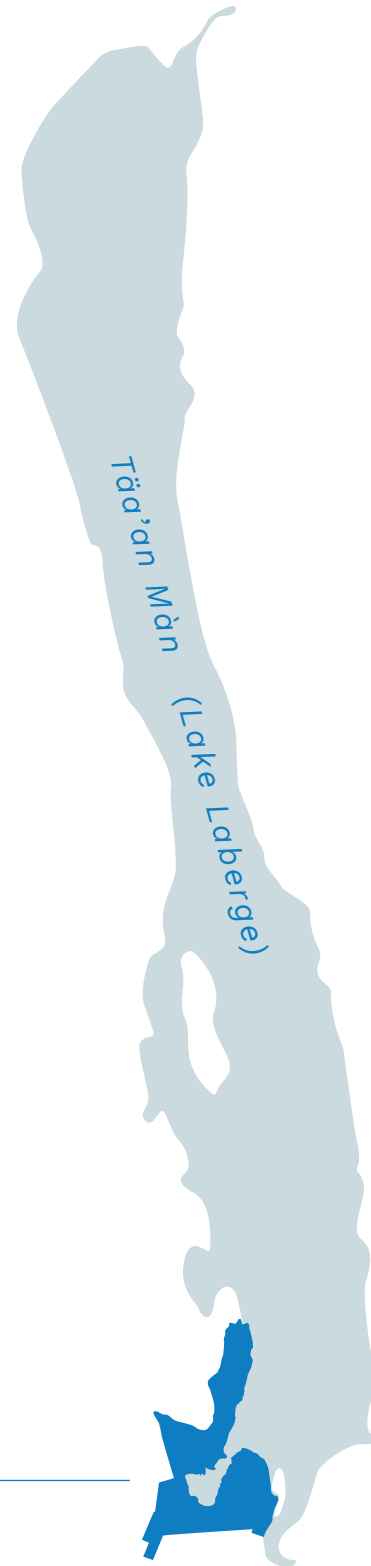
The following key themes or topics were identified.

1. Connection to the area
2. Protection of the area
3. Process and consultation
4. Land uses
5. Land dispossession and rights

The following discussion includes the sub-themes that make up each key theme. Sub-themes are bolded and explained, and summaries of the comments we heard in each theme are provided. The following themes are not meant to be detailed or specific to each issue raised. They are meant to show common threads throughout the responses.

The proposed development area

Màn Tl'at is the traditional Southern Tutchone name for what is now called Shallow Bay. Taa'an Màn refers to Lake Laberge, and Mbay Ätür Chü is the name for Horse Creek.



Theme 1: Connection to the area

Shallow Bay residents have a deep connection to the area and want to preserve the integrity of the rural community and the lifestyle it affords. Regardless of the issue, topic or concern, participants express gratitude and appreciation for the area and the rural lifestyle. Shallow Bay is described as a dynamic environment to live in where people feel connected to the natural world, connected to their community, and responsible to both.

This area means...heritage...culture...language...Elders...our people, our spirit houses, our burial grounds, our hunting areas, our spawning areas – that’s what that area means to us. We’ve had it for time in memorial. [G]rowing up...we went to Shallow Bay...they had fish camps all around that area. That’s where we learned our language. That’s where we learned our culture. That’s where we learned our way.

Ta’an Kwäch’än Council has a unique connection to the area that includes historical and present-day interests. Män Tl’ät is part of Ta’an Kwäch’än Council cultural and heritage identity and represents homelands, harvesting grounds, traditional knowledge, and heritage values.

The following summarizes what we heard.

- The Shallow Bay / Män Tl’ät area allows people to pursue a rural and/or traditional lifestyle.
- A rural and/or traditional lifestyle allows for self-sufficiency, an opportunity to build, connect with and maintain community, and an opportunity to connect with the environment.
- The community does not want to see the Shallow Bay / Män Tl’ät area become a municipal subdivision.
- The community relies on the land and water of Shallow Bay / Män Tl’ät and feel responsible for its stewardship.
- For many participants, the connection to Shallow Bay / Män Tl’ät extends back generations.
- The community is deeply connected and committed to the area and its future.
- Many participants are concerned about the conflict the proposed zoning process has created between neighbours.

Note: The term “community” refers to both residents and Ta’an Citizens.

People knew that if the winter was hard, or you didn't get much food on the land, that you come to the bay and get all the food you need to survive. And they would share. As a thank you for their survival.

We think it's important that we maintain and keep our historical connections to our ancestors and lands that they walked on.

This is not an example of a committee working to preserve the integrity of a community, and the lifestyle of the people that have lived in this area for decades.

Theme 2: Protection of the area

There are several ecological values that participants link to their enjoyment, lifestyle, livelihood, and culture in Shallow Bay / Màn Tl'at, including important habitats for wildlife, migratory birds, and fish, sensitive wetlands, and water quality. The proposed zoning for the Shallow Bay / Màn Tl'at area includes various land use and density control measures intended to protect these values. While participants agree on the importance of these values, and the need to protect them, there is little consensus on how protection should be balanced or achieved. While density control is often noted as the most effective measure to ensure these values are protected, it is unclear what the density threshold is and how this has been accounted for in proposed zoning. Finally, participants would like to better understand how the proposed environmental measures have been decided and what evidence was used to support these decisions.

If this [r]iparian zone is adopted it will set a precedent that will be harmful to all property owners who live close to the water. This situation evolved from bad planning and lack of rural land availability and is no fault of the current land owners.

The sprawl is from Marsh Lake to Lake Laberge. The importance of having a wildlife corridor somewhere between the two lakes is imperative for species movement from one wilderness area to the other.

There is consensus that protection of ecological values is essential but little consensus on how it should be balanced with human needs or how decisions should be made.

The following summarizes what we heard.

- Healthy ecological values are considered necessary for continued human use.
- Some participants feel ecological values should outweigh economic values.
- Some participants feel existing infrastructure and land uses should be considered equally with ecological values.
- Some participants feel environmental protection has been achieved through existing legislation and community stewardship.
- Some participants feel the environment has degraded beyond acceptable limits.

[W]e're worried about the natural environmental impact on the wildlife, water and fish. The impact of traffic, septic tanks, public access and of course climate change. We think it's important that we maintain and keep our historical connections to our ancestors and lands that they walked on. And right now it's peaceful and quiet, don't know what it's going to be like later. I personally don't mind the fields being used for livestock and feed or food sustainability, I think that's a terrific idea. Right now it's zoned agricultural and in terms of changing the zoning I could live with the present zoning, but we are worried about the bird habitat. This is a major migratory route for birds.

The importance of this area to be maintained as wilderness cannot be overstated.

I am concerned about the large increase in density in the area. It would impact what I love most of the area – the forest and wildlife. I like looking out my window and seeing trees. But to do that I need my home.



There is consensus that density control should be a priority for environmental protection of the area, however, there is a lack of consensus on how best to achieve this and a lack of clarity on what the density threshold is or should be.

The following summarizes what we heard.

- Density control is considered one of the most effective environmental protection measures.
- There is general consensus that lot size and subdivision potential are important factors in density control.
- There is a lack of consensus on what combination or level of density control will be effective and fair to all.
- It is unclear if current density and density thresholds have been determined and if so, what issues were considered.

The single largest threat I think to the bay is increased population density which would arise from allowing subdivision of large parcels into much smaller portions adjacent to the bay.

It is unclear to participants how environmental protection decisions were made, what evidence was used, why the measures are necessary and how they will mitigate potential impacts.

- Some participants would like environmental decisions to be based on known risk (evidence-based approach).
- Some participants would like environmental decisions to assume risk in the absence of evidence (precautionary approach).
- Most participants would like to understand the evidence used to support the proposed environmental measures.
- There is concern that environmental protection decisions have been made without:
 - » guidance of a land-use plan;
 - » territorial wetlands policy;
 - » Government of Yukon Agriculture Policy, 2020;
 - » baseline data of local ecological values;
 - » scientific, traditional and local knowledge;
 - » adequate assessment of potential impacts;
 - » adequate assessment of current impacts; or
 - » consideration of climate change.
- It is unclear how the proposed environmental protection measures will:
 - » mitigate current and future impact;
 - » enhance ecological values;
 - » articulate to territorial and federal environmental legislation;
 - » be applied to public and Settlement Land;
 - » be implemented;
 - » minimize off-site impacts; and
 - » protect water quality.

Was there any work done on the septic capacity the Shallow Bay area to help with the subdivision conversation? This is actually very important to us because of the potential for groundwater contamination.

Going ahead I would like to see more responsible planning, and good in-depth studies to try and make responsible decisions.

Theme 3: Process and consultation

A considerable number of participants expressed concern about the amount of consultation that has taken place, how or if previous consultations have been considered, and the overall transparency of the process. In general, participants feel ill-informed about the decision-making process and do not feel proposed zoning adequately or equally addresses all land-user, property-owner or Citizen concerns. There are still several questions and concerns and a lack of understanding about the decision-making process – how it was informed and what was considered.

We respectfully request the Committee reconsider these matters and better consider our position as fee simple owners, as was done in the original planning process, and as suggested in the original planning questionnaire from 2015.

Participants do not feel consultation has been sufficient and express concern about a lack of transparency in the process.

The following summarizes what we heard.

- Many participants feel the public planning documents did not provide adequate context or detail on the process or decisions.
- It is unclear to participants why zoning changes are needed.
- It is unclear to participants why zoning for Mán Tl'át / Shallow Bay differs from other existing local or regional plans.
- It is unclear to participants how proposed zoning considered land claims.
- There is concern that procedural fairness has not been followed.
- There is concern with the lack of transparency in committee selection, representation, and powers.
- It is unclear to participants what input was used to inform decisions.
- It is unclear to participants why certain interest groups have not been included in the process.
- It is unclear to participants how requests from previous consultations have been considered in decisions.
- Many participants feel the guiding principles have not been adhered to.

Many participants feel the interests of all user groups, citizens, and/or residents have not been adequately heard and considered in the draft zoning and that certain interests are being favoured and others are targeted.

The following summarizes what we heard.

- There is concern that those who followed previous zoning, setbacks and buffers will be penalized for conforming.
- Certain users and interest groups feel targeted and/or not adequately consulted including:
 - » Property owners with water frontage
 - » Horse owners
 - » Dog mushers and dog kennels
 - » Agricultural community
 - » Properties currently zoned agricultural
 - » Off-road vehicle users
 - » Traditional land users and Ta'an citizens
- Many participants do not feel they have had enough input or control in the process.
- Several participants do not feel their concerns have been addressed.

There are numerous other issues of concern to area residents, many of which were raised in the January public meeting, and which we do not see addressed in the questionnaire. We urge the Yukon government to fully inform area residents of the implications of this planning process, and urge the adoption of the principles from the 2015-2018 planning process, which was more open and inclusive of area resident's concerns.

We write to express our very significant concern with the actions of the Committee with respect to the proposed Shallow Bay Zoning Plan (the "Plan"), both as to its apparent direction, and its lack of respect for our position, and those of many area residents. Consultation means taking the interests of affected parties into account.

Theme 4: Land use

Land-use changes and restrictions in the proposed zoning was a significant topic in the feedback received and, as such, issues of land use permeate all the key themes. Two land-use themes that are not covered or incorporated in other themes include concerns and questions about how current and future land uses were considered and will impact the future and concerns and questions about how proposed land use changes will be implemented.

[Traditional use] would include, hunting grounds, berry picking, taking your children or your grandchildren out and teaching them how to fish, teaching them how to hunt, enjoying your time on the land, picking medicines, having celebrations, all seasonal uses that Citizens have practiced in the past and will continue to in the future.

There is significant concern that current land use not been adequately considered and will conflict with proposed uses, impacting the future of the area and the lives of participants.

The way participants have come to know, live or invest in the area and the values and characteristics of the area they consider important may differ, but all express concerns that the proposed zoning will impact the land uses they value and their future.

The following summarizes what we heard.

- It is unclear how current land uses have been assessed and if they have been considered in proposed zoning uses.
- Many participants feel the proposed land uses restrict current use and threaten future plans (that is, subdividing, land sharing with family, home businesses or rental income, farming pursuits, continued traditional use).
- Many participants express a desire to maintain existing zoning and associated land uses.
- There is concern that the proposed land uses do not align with to other local area plans.
- There are concerns that proposed zoning will impede access to lands and water.
- There is concern that land uses associated with a rural lifestyle have not been adequately considered and will be significantly impacted.
- There is concern that traditional land use has not been adequately considered and will be significantly impacted.
- There is concern that agricultural use has not been adequately considered and will be significantly impacted.

As presented the proposed zoning is reducing the range of permitted land uses compared to the existing regulations.



In the booklet it states in the Guiding Principles that “Zoning should generally promote a broader range of permitted land uses” and that “Zoning should reflect current land use.” I agree with those statements, but the proposed Shallow Bay zoning does the complete opposite of what the booklet states.

I worry about the impact of the proposed zoning in relation to agriculture and rural residential in relation to Ta’an Citizens preservation and access to their Traditional Territory for hunting, fishing, ceremony and land-based practices.

I don’t have concerns with the zones, but do have concerns with the proposed constraints in the zones.

[H]arvesting and berry picking...it’s not even noted as a key issue in this.

There is a lack of clarity about how the proposed zones will be implemented and how this will affect individual properties, Settlement Land, and continued use of the area.

The following summarizes what we heard.

- There is concern and confusion about what land uses are allowed or restricted in each zone in the proposed zoning.
- It is unclear what aspects of titled land and existing infrastructure will be considered non-compliant once implemented.
- There are several questions and concerns about how zones will be managed and enforced.
- It is unclear to participants what, if anything, would be grandfathered into proposed zoning.
- There is concern that land use compatibility between private and Settlement Lands has not been adequately addressed.
- There is confusion about what land-use compatibility is and a lack of knowledge about how land-use compatibility is involved in the Final Agreement.

Because the land use of adjacent Settlement Lands has not been identified, this [land compatibility] is difficult to have as an overriding principle.

We have concerns about how the zones are proposed to be regulated, not about the boundary of the zones.

Theme 5: Dispossession of land and rights

A recurring sentiment expressed by participants is the belief that proposed zoning demonstrates a lack of respect for existing land rights. There is significant concern that proposed changes will result in land dispossession, impacting both fee simple and First Nation land rights.

There is concern that the proposed zoning and the process has not adequately considered existing or historic land titles and/or rights.

Our priority is to support the Ta'an Kwach'an in their vision for the neighbourhood, and we recognize their view of fairness. We acknowledge that they have been displaced from their Traditional Territory here. We support the need for a Land Use Plan for the area before making significant changes to the area zoning, and the need to protect MÀN Tl'àt and Mbay Atur Chu. We share a preference for quiet, rural living.

I think the single largest issue facing F.N. and Y.T.G. Governments is a distinct lack of historically accurate knowledge about the actual content of the Yukon Land Claims, and in fact that there was very clear enabling legislation. People think they know what things say, and then inadvertently perpetuate errors as time passes.

The following summarizes what we heard.

- Many participants feel the proposed zoning will result in land dispossession and an infringement on their rights.
- Many landowners feel the proposed zoning threatens current and future investments.
- Some participants are concerned about the amount of differential dispossession the proposed changes pose (that is, water or wetland frontage, agricultural and farming zones) while some feel this is necessary or unavoidable.
- There is a lack of clarity about how fee simple land ownership rights intersect with First Nation land rights and title.
- Several Ta'an Citizens feel the planning process has not respected or adequately communicated First Nation land rights in the area.
 - » There is concern that land claim rights are not well understood by the public and have not been clarified throughout the process.
 - » There is concern that land claim rights have not been upheld, for example, land use plan, compatible land use.
- Several participants do not feel the process or the proposed changes acknowledge or attempt to reconcile historical land dispossession.
 - » Many feel the transfer of agricultural leases has led to land dispossession and is an unresolved issue.
 - » There is a desire for more educational material on land claims and history of land dispossession.
 - » There is a desire for the two governments to work together and to work with other residents and neighbours.

I believe that there should be land-use planning for the area in alignment with the First Nation Final Agreement, and the interests of the Ta'an Citizens should take precedence over other land use considerations.

[We're] curious as to the justification of creating these mini land-use plans, Takhini and then Shallow Bay and then we're going to be stuck in the future as a community with having consultation on a land-use plan that's going to have to conform to regulations that YG has already imposed under a land-use plan.

Respect for native values and historical use of area are more important to [names removed] than individual land owner rights.

There is a lack of clarity about how land dispossession will be mitigated or managed.

The following summarizes what we heard.

- It is unclear if or how compensation will be provided for loss of lands or infrastructure.
- It is unclear if or how individual properties will be assessed for losses.
- It is unclear what existing infrastructure or land uses would be grandfathered into new zones.
- There is significant concern with the lack of legal certainty the proposed zoning poses.

There was nothing in the Draft Planning Document nor the survey now before us to make aware to property owners how their land will be affected, nor any discussion on compensation if such a planned expropriation proceeds.

[We] just want to know that [we're] not hearing that one of the suggestions is that we buy back land that was not even purchased to begin with.

If we could not butt heads and try to know our neighbours and work together on issues like this and not [fight].



**Shallow Bay Zoning
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