

NISICHAWAYASI ASKI PUMENIKWIN

(LAND CODE)

Background

In 1996 a number of First Nations entered into the Framework Agreement on First Nation Land Management (FNLML). The First Nation Land Management Act legislation was passed by Canada in 1999. Since then the Framework Agreement has been amended to allow many other First Nations including NCN participate in this new land management system that re-establishes First Nation control over the administration and management of our lands.

The Framework Agreement establishes certain provisions that must be addressed in each First Nation's land code. It also establishes the voting thresholds required for community approval to assume responsibility for the administration and management of First Nation lands.

As part of its due diligence, NCN retained an environmental consultant to identify issues that require resolution by Canada prior to the transfer of responsibility to NCN. A separate report on this is available for review by NCN Citizens. NCN has worked as part of the LABRC communities and has been assisted by its surveyor in reviewing the land description boundaries and related matters.

NCN and Canada will enter into an Agreement for the transfer of the administration and management if NCN Citizens approve the arrangements in a Ratification Vote to be held in the summer of 2017.

Disclaimer

This is a summary document only for ease of reference by NCN Citizens. For a fuller understanding reference should be had to the full text of all of related documents. Although all reasonable efforts have been made to accurately convey the information in this document, none of NCN, the Chief or any councillors, advisors or representatives of NCN make any representations concerning the accuracy or completeness of this document. It should also be

noted that this is a summary of the first circulation draft and the final draft may be revised based on community feedback and further review.

Overview of *Aski Pumenikewin*

PREAMBLE

The Preamble provides context based on our customary law principles – it says in part:

Our customary laws are based on *mamawi nisitawenachikewin* (mutual recognition), *mamawi kistithichikewi* (mutual respect), *mamawi wechihitowin* (sharing), and *mamawi tipethimisowin kanawapatamasowin* (mutual responsibility) with all relations in *tapwetamowinihk* (honesty, truth, trust and understanding) within *N'tuskenan*;

Whereas the *Nisichawayasi Nehethowuk* has had a profound relationship with *N'tuskenan* (our land) from *Kihche'Othasowewin Mechemahch'ohche* (since the beginning of time) as *Aski* (land) is recognized as a sacred gift from *Kehchi Manitou* (the Creator) to be used for the collective benefit of the *Nisichawayasi Nehethowuk*;

Whereas in accordance with our customary law, *Aski Kanache Pumenikewin*, we have a sacred duty to protect *N'tuskenan* (our land) and keep it safe for future generations;

Whereas the vision statement of the *Nisichawayasi Nehethowuk* is “to exercise sovereignty that sustains a prosperous socio-economic future for the *Aski Pumenikewin* (Land Code) is consistent with our traditional practices and our inherent right to govern ourselves

PART 1 – PRELIMINARY MATTERS

Definitions – specific terms used in *Aski Pumenikewin* (land code) are defined in Article 2.1. Such terms are capitalized throughout the document.

Paramountcy – rules to establish which laws prevail if there is a conflict between them (*Aski Pumenikewin* versus Land Laws, Resolutions or Administrative orders and NCN Laws versus laws of Canada or Manitoba). General rule is laws of Canada and Manitoba will apply unless

replaced by an NCN Law and *Aski Pumenikewin* will apply in the case of a conflict that arises in its implementation and administration (Article 2.2)

Interpretation Principles – customary laws principles based on teachings of our ancestors will be used in administering the code and *Nehethowewin* (our language) and English will be used equally to interpret or clarify the meaning of any provisions of *Aski Pumenikewin* (Articles 2.3 and 2.4)

Treaty and Aboriginal Rights – approving *Aski Pumenikewin* does not take away our treaty or aboriginal rights or other rights and freedoms including our sovereign right to govern ourselves (Article 2.5)

Fiduciary relationship with Crown - continues to exist (Article 2.6)

Additional definitions and principles – These are technical provisions explain how the number of days for various events are determined, regular NCN business hours and what happens if NCN's government office is closed when the time for doing something expires (Articles 2.7 to 2.11)

Authority to Govern – These provisions acknowledge that the authority comes from *Kihche'Manitou* through *Kehchi Othasowewin (the Great Law)* to NCN Citizens and from NCN Citizens to Chief and Council. In accordance with our culture, traditions, customs and laws we have the responsibility to care for *N'tuskenan* (our land) and the right to govern the land and use the resources that flow from the land. Developing and approving *Aski Pumenikewin* is an assertion of NCN's sovereign right and duty to protect *N'tuskenan* (Articles 3.1 to 3.3)

Purpose – is to establish the principles and administrative structures for the administration and management of NCN Lands and Resources (Article 4.1)

Description of Lands to be Managed – These articles briefly describe the existing reserve lands, confirm that the remaining compensation lands, TLE lands and any future lands NCN has designated as reserve lands will be administered under *Aski Pumenikewin* (Articles 5.1 to 5.5).

PART 2 – NCN LAWS

Land Management – involves developing laws and policies for the governance, protection, use, finance, administration, enforcement and resolution of disputes related to lands and Resources (Article 6.1)

Law Making Authority – confirms Chief and Council instead of Canada can enact laws in accordance with *Aski Pumenikewin* and eventually our own *Othasowewin* (Constitution) if it is approved (Article 6.2)

Law Making Procedures – Laws will be initiated by a Proposal from a member of Chief and Council, an NCN employee, the Lands Advisory Committee or at least 5% of NCN voters. The Proposal will then be considered by Council and a decision made about having a draft law prepared. Council will then consider the draft and when it is ready refer it to a General Assembly or hold workshops to obtain input from NCN Citizens about the draft law.

A report about the input obtained will be prepared and presented to Council who will review the draft law and decide whether to modify it or refer it to the Lands Advisory Committee or another group for further review. They will have 30 days to report back to Council so a decision can be made to accept or reject the law. (Articles 7.1 to 7.9) Laws can be amended (Article 7.13). NCN Laws can be enacted by Chief and Council immediately to protect public health or safety or to prevent criminal activity (Article 8.1)

Laws – once approved laws will come into effect within 30 days or an alternate approved date, the laws will be signed by Council and submitted to the First Nations Gazette and posted on the NCN website. (Articles 7.10 to 7.12)

PART 3 – COMMUNITY APPROVALS

Nuskomowin – This section outlines that Chief and Council need to obtain Community Input at a General Assembly for granting an interest in land to a commercial entity or person who is not NCN for a term of over 99 years; a Resource interest over 5 years, a mortgage over 25 years and any other matter where a Land Law requires Community Input with the exception of utility permits (Articles 9.1 and 9.2).

Votes and Quorums – Council will establish in advance of a vote the quorum for approval before the vote proceeds (Articles 9.3 and 9.11) and Council can decide it wants to hold a vote at a General Assembly or by Ratification Vote before making a decision (Article 9.5).

Ratification votes – a full ratification vote of all NCN Citizens 18 and over must be held to approve and expropriation law, voluntary exchange of lands or approve any other matter where a Land Law requires a ratification vote (Article 9.4). The NCN Electoral Officer will conduct the vote using the procedures in NCN’s Election Law and no federal verifier will be required (Articles 9.9 and 9.10) after *Aski Pumenikewin* is approved.

PART 4 – PROTECTION OF LAND AND COMMUNITY INTERESTS

Expropriation – these provisions allow for the expropriation of NCN Lands for community purposes such as a fire hall, water treatment plant or other type of public facility. Fair compensation would have to be paid. Land Laws would have to be established to do this. Disputes would be determined by the Lands Tribunal. (Articles 10.1 to 10.7)

Heritage Sites – no development shall be allowed on any site Chief and Council formally designates as a heritage site in accordance with our customary laws (Article 11.1)

Voluntary Land Exchanges – NCN can agree to exchange lands if it receives community approval. The lands must be equal or greater in area, comparable in value, Canada has confirmed the lands will be accepted as reserve lands and an agreement is entered into (Articles 12.1 to 12.8)

PART 5 – ACCOUNTABILITY

Financial Accountability – All Lands revenues and expenditures will be included in NCN’s annual budgeting and auditing processes and any requests during the year will go to NCN’s Treasury Board and Council for approval. The information will be included in NCN’s consolidated financial statements. (Articles 13.1 to 13.6)

Conflicts of Interest – the procedures for avoiding and dealing with conflicts of interest are set out and apply to members of Council, the Lands Advisory Committee, the Lands Tribunal and any NCN employee involving immediate family members which is defined (Articles 14.1 and 14.2).

PART 6 – LAND AND RESOURCES ADMINISTRATION

Delegation of Authority – NCN Citizens delegate authority to the Chief and Council they elect. Chief and Council can delegate certain authority over administrative matters to others in the case of lands, to an NCN employee, the Lands Advisory Committee or it can set up a Special Operating Agency but Chief and Council can not delegate law making authority or the fees, rent or royalties payable for the use of NCN Lands (Article 15.1)

Lands Advisory Committee – five NCN Citizens 18 and over shall be appointed to this Committee for 4 year terms although two of the initial appointees will be for terms of 2 years so that there is continuity on the Committee. The Committee will provide advice to Council about various land issues. (Articles 16.1 to 16.6)

Lands Advisory Committee Chair – Council will designate a person to be the chairperson to convene meetings, submit the Committee’s recommendations to Chief and Council, and perform other duties assigned by the Committee or Council (Articles 17.1 to 17.3)

Authority for Land Dispositions – Chief and Council or whoever they have delegated authority to in accordance with an NCN Law will be responsible for granting the interests in NCN Lands, with or without conditions by Land Resolution, Administrative Order or community approval as required in *Aski Pumenikewin* or a Land Law. Any decision that does not comply with these rules is not valid. (Articles 18.1 to 18.3)

Existing Interests – existing rights at the time *Aski Pumenikewin* comes into effect will be honoured but all future dispositions of interests in lands and resources will be dealt with using NCN Laws including *Aski Pumenikewin*.

Allotments to NCN Citizens – do not have to be approved at a General Assembly or by Ratification Vote but NCN Laws on Allotments and the rules if spousal relationships break down must be enacted within 12 months of *Aski Pumenikewin* being approved (Articles 18.5 and 18.6)

PART 7 – ADMINISTRATION OF INTERESTS IN LAND

Limits on Mortgages and Seizures – Certain provisions of the Indian Act that prevent the seizure of reserve lands will continue to apply. A leasehold interest in NCN Lands can be mortgaged or seized for the term of the Interest or Licence granted by Chief and Council (normally no more than 25 years unless community input is obtained to go beyond that period) (Articles 20.1 to 20.4). Certain rules must be followed before the leasehold interest can be seized. (Article 20.5)

NCN Right to Redeem – All mortgages must include a provision that NCN will have the right to redeem the mortgage that is in default before seizure in which case NCN will become the holder of the leasehold interest (Articles 20.6 and 20.7)

Residency and Access Rights – rules are established about who can live on NCN Lands and their right of access to the lands and the use of roads on NCN Lands as well as Chief and Council's ability to deny or restrict persons right to reside on or have access to NCN Lands to protect public health and safety or to prevent crime (Articles 21.1 to 21.4). Persons who violate these provisions will be guilty of an offence but civil remedies for trespass are preserved (Articles 21.5 and 21.6)

PART 8 – DISPUTE RESOLUTION

Lands Tribunal – Chief and Council will appoint persons for terms of 3 to 5 years to the lands tribunal to adjudicate disputes. NCN Laws will be enacted to establish the jurisdiction, powers and remedial authority of the Lands Tribunal. Each person must take an oath of office once appointed. Conflict of interest rules are set out as well as technical requirements related to completion of hearings. (Articles 22.1 to 22.8)

Annual Report – the Lands Tribunal will submit an annual report to Chief and Council for presentation at the next General Assembly (Article 22.9)

Chairperson – is the presiding officer of the Lands Tribunal (Article 22.10)

Panels – The Lands Tribunal can sit in panels established by the chairperson. Each panel would have either the chairperson or vice-chairperson and at least two other members of the tribunal. A panel has the same authority to make decisions as the full tribunal. (Articles 22.11 to 22.13)

Final decisions and judicial review – A decision of the Lands Tribunal is a final decision on the matter and may only be reviewed by a court if the Lands Tribunal fails to observe principles of natural justice, follow NCN customary laws, or acts beyond or refuses to exercise its jurisdiction. (Articles 22.14 and 22.20)

Procedures – the Lands Tribunal will determine its own practices and procedures but must give parties an opportunity to be heard, either orally or in writing. The tribunal may hold a hearing or part of a hearing in camera if certain financial or personal matters are involved. (Articles 22.15 and 22.16)

PART 9 – OTHER MATTERS

Indemnity – Persons carrying out their obligations in good faith will be indemnified if there are claims made against them as long as they have not acted fraudulently or negligently in the performance of their obligations (Article 23.1)

Insurance – Chief and Council may maintain insurance coverage for Council, its officers and employees in carrying their obligations under *Aski Pumenikewin* and any Land Laws (Article

23.2). The Lands Advisory Tribunal may make recommendations about insurance coverage to Chief and Council (Article 23.3).

Offences – the Criminal Code will apply to offences under *Aski Pumenikewin* and any Land Laws. Fines of up to \$5000 plus a prison sentence of up to six months can be imposed for violation of NCN Laws and if there are greater penalties under the Criminal Code or other laws those would apply. (Articles 24.1 and 24.2)

Enforcement – NCN may appoint justices of the peace or a *Nisichawayasi* court for the enforcement of *Aski Pumenikewin* or any Land Law. Until appointed the matters will be dealt with by the provincial court.

Effective Date – This *Aski Pumenikewin* and the Individual Agreement with Canada must be approved by Ratification Vote and certified by the verifier. It will then come into effect on a date fixed by Council Resolution that is no more than 90 days after the verifier certifies it (Articles 25.1 and 25.2).

Amendment or Repeal – Chief and Council are required to review *Aski Pumenikewin* from time to time and can make technical amendments that do not change its substance without having to obtain further Community Input (things like typos, grammatical errors, correcting cross-references) but all substantive changes or repeal require Community Input before Chief and Council make a decision. (Articles 26.1 and 26.2) Amendments will take effect on a date established by Council Resolution. (Articles 26.3)