

# FNLMRC

## Training, Mentorship and Professional Development

Land Use Planning 102:  
Ethics and Assistance

TMPD Course Workbook  
June 2019







## A Welcome Message

Welcome to the printed version of our online course focusing on Land Use Planning. This is the second of two courses on the subject, with more to come. The course is developed specifically to mirror the online version, for communities having limited internet access, or for learners who prefer print over screen.


The course is brief, introducing key terms and concepts related to the subject.

It also has “knowledge checks” so that you can check yourself along the way.

We hope that you will find it informative for your work.

In the meantime, should you require any assistance, please let us know.

*The Resource Centre’s “Training, Mentorship and Professional Development” team.*



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## Course Objectives

Upon completion of this course, you may be more familiar with:



**Land Use Planning ethics and fairness in the community.**



**Assessing at what point a Professional Planner is needed.**



**The Land Use Plan support that the Resource Centre offers to signatory communities.**



**Module 1:  
Ethics**



# What is Ethics?

“Ethics” are moral principals that guide behaviours and decisions. Ethical principles include: justice, fairness, being trustworthy, doing good to others, do no harm, honesty, integrity, law-abiding, accountability, transparency, and self-determination.

Ethics is concerned with:

1. How to live a good life
2. Our rights and responsibilities
3. The language of right and wrong
4. How do we make good decisions
5. What is in the best interest of our community?

## Ethics and the History of Planning

The Planning Profession has had a colonial history with Indignous Peoples. Colonial governments everywhere have historically planned for the elimination of the “Indian Problem”. We do not want to repeat the mistakes of the *Indian Act*. The *Indian Act* was about taking the voice of the people away, removing decision making processes, and “claiming” land.

The Framework Agreement is all about building transparency and accountability into land governance. Community engagement is therefore key!



I want to get rid of the Indian problem.  
[...] Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian Question and no Indian Department.

— Duncan Campbell Scott —

# Land and Indigenous Ethic

Land is the source of:

- Life
  - Collective Memory
  - Aboriginal Rights and Title
  - Self-governing Authority
- Language and culture are deeply connected to the land. Knowledge, Law and Ethics are also connected to the Land.

Our relationship with the Land and ensuring the health and well-being of future generations are the most important considerations in Land Use Planning.



What are your community's traditional ethical and moral principles?

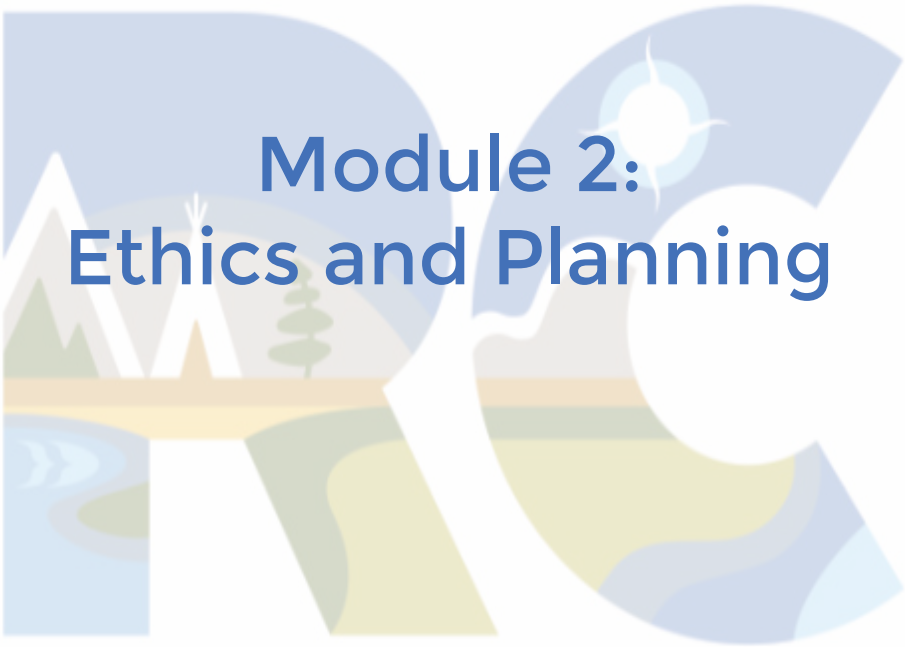
How do you choose to incorporate them into your Governance?

Examples:

- Treat all things with respect and honour
- Speak only the truth
- Sacred duty to protect the land
- Listen first, and then speak
- Remember the future generations
- Humanity plays a key role in maintaining natural processes

Some communities list their ethical principles in their Laws, on websites, print copies for every office, include them in oaths, HR policies, codes of conduct, etc.





# Module 2: Ethics and Planning



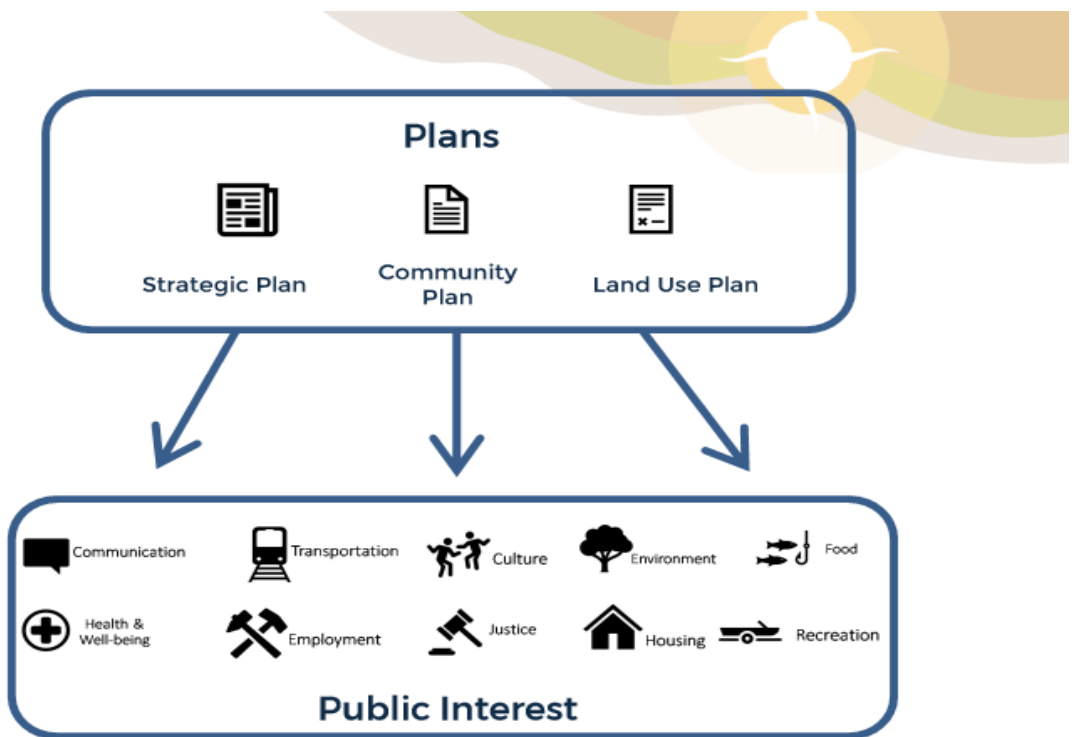
# Why Do Ethics Matter in Planning?

## Public Interest

Planning is done in the public interest:



Ethical planning means a deliberative and consistently held view of the policies and actions that best serve the entire community, by all parties. Every actor will claim to be acting in the public interest. Who's public? What interest?



When a First Nation adopts a plan, including a Land Use Plan, it is committing to the vision, goals, values and principles that were developed in the planning process and reflected in the planning document. Official endorsement from Chief & Council is a good way to enshrine and foster organizational, cross-departmental commitment.

# Why Do Ethics Matter in Planning?

## Fairness

Justice and fairness are critical components in the rule of Law. You can include the components in your Land Use Plan.

Example:

*“This Land Code shall be interpreted in a fair, large and liberal manner. A Sema:th Law regarding Allotments must include the basic principle of fairness to all Members when granting an Allotment.”*

*-Sema:th First Nation Land Code*

### Examples of Land Governance issues involving fairness:



Housing



How are homes & allotments made available to the membership?  
Do all parties go through the same development procedures? E.G. Leaseholder on CP-lands vs. community lands?



Allotments/CP's



Development Procedures



Being “Business Friendly”



What if Economic Development, Administration, or another department is proposing a project? What is the role of lands?

# Why Do Ethics Matter in Planning

## 1. Streamlined Operations

- Be very familiar with your processes
- Review your processes regularly
- Use outside contractors for technical aspects of review
- Prepare guides
- Understand your thresholds
- Hire competent staff
- For re-occurring or problematic issues, create simple worksheets that highlight what the issues are



## 2. Flexibility

- Use common sense
- Know when you can be flexible and not
- Track and address any problems, inconsistencies, gaps

## 3. Good Customer Service

- Be sincere
- Use language that shows you are on their team
- Utilize checklists, template
- De-personalize issues and make it clear you're still business friendly
- Know your roles & responsibilities
- Keep people up to date, as People get anxious. Email/ phone once a week, even if there isn't new information

## 4. Land Code Integration

- Everyone in the organization needs to understand the Land Code, the role of Lands Dept. and legal requirements
- Foster a shared understanding amongst staff - what is our work, and how do we do it with our customers?

# Why Do Ethics Matter in Planning?

The private sector, developers and consultants, have increasingly courted, conflicted and collaborated with planning departments facing shrinking budgets. As business interests engage and influence public agencies and planning strategy, the role of ethics is of increasing importance for the planning practitioner and Lands Governance Director's.

- \* Don't say: "We can't approve this application because you are missing these elements." Instead, say: "We can approve this as soon as these last three items come in."

**Roles and Responsibilities:** Who is the case manager, who is responsible for communicating with the proponent? Who is responsible for ensuring the project moves through the system? Be a problem solver, help people understand how they can comply with your Laws.

- \* Be explicit that you are business friendly but in the context of an expectation around ethical conduct amongst all developers, staff and leadership.



## Fairness: Common “Business Friendly” ethical pitfalls that a Lands Department may face

### Planner Shopping

Example: A proponent doesn't like what they hear from your Lands department so they go talk to the General Manager or Economic Development.

### Bait and Switch

Example: Design quality bait and switch. A developer wants to get a proposal approved, so they show you one thing to get approved. Once they go for their permits they back away from the design standards they've already agreed to, saying they're too expensive.

### Short-cut the public input

Example: Developers or leadership will challenge you; they may question you on really needing a public scoping meeting or ratification vote.

### Communication Shortfalls

Example: Private, unscheduled meetings, no minutes or records of decision. Decisions are not communicated in a timely manner.

### Personal Relationships with the person in authority

Example: Business person alleging close personal relationship with someone on Council.

### Gossip, bullying and harassment

This is never acceptable.

### Request to “Make an Exception”

This sets a precedent and has implications for other projects. Your Land Code requires you to treat everyone fairly.

### Requests to “Expedite the process”

Requests to “Expedite the process” – you have to be careful. Projects need a detailed review and you can miss something. Timelines are in place for a reason.

### Any request that puts the interests of a developer over the policies and interests of the community

Remember: Keeping in mind the public interest is so important in planning.

# The Public Interest: Examples Under the Land Code

## *Indian Act vs. Land Code*

The Land Code is a significant step forward for a community in terms of ethics in decision-making and upholding the public interest. Additional ethical gaps in the *Indian Act* (e.g. expropriation) are addressed in the Framework Agreement.

Powers of Council	
<u>Indian Act</u>	<u>Framework Agreement &amp; Land Code</u>
Imposed by Canada on communities with no consent or consultation	Negotiated on a G2G basis, developed and approved by community.
Only the Council may introduce land by-laws, with no requirement for membership input or consent.	Council is limited to the kinds of laws it can pass on it's own. Some laws (e.g. LUP, expropriation) may require ratification. There are due process requirements, members can propose new Laws.
Council may (with the approval of the Minister) negotiate leases up to 99 years	Council may only approve a lease in accordance with the rules of the Land Code, e.g. community ratification.
Council may use the land for development or other uses without the consent of the membership.	Council must draft a LUP that is typically voted on by communities. All uses of the land must comply with the LUP.
Council may grant land interests or uses to family members, themselves or friends.	Land Codes contain conflict-of-interest provisions to prevent this.
Council is accountable to the Department of Indian Affairs.	Council is accountable to the membership.
Membership cannot appeal a decision of Council.	Dispute resolution body is in place to handle appeals for decisions made by Council. Decisions can be overruled.

## How do we identify and uphold the public interest when planning?

- Be conscious of the rights of others
- Have special concern for the long-range consequences of present actions
- Pay special attention to the interrelatedness of the decisions
- Provide timely, adequate, clear and accurate information
- Give people the opportunity to have a meaningful impact on the development of plans. Include those who lack formal organization or influence
- Seek social justice by working to expand choice and opportunity for all persons. Promote integration of voices not typically heard in planning processes. Urge the alteration of policies, institutions, and decisions that oppose such needs
- Promote excellence of design and conserve and preserve the integrity and heritage of the natural and built environment
- Be consistent in your engagement and in the application of Laws and Plans. Make exceptions with careful deliberation

# Conflict of Interest

Paragraph 5.2(g) of the Framework Agreement (amendment #6) requires a First Nation to include conflict of interest rules for land management in the Land Code.

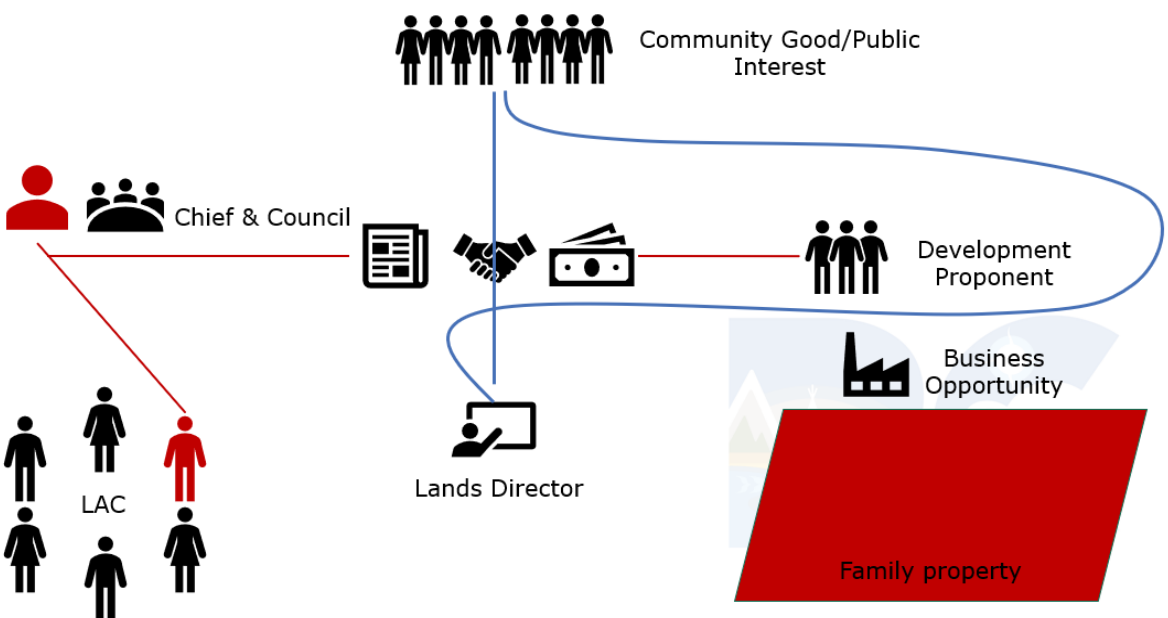
## What is a conflict of interest?

1. A situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.
2. A situation where a person, or an organization, is involved in multiple interests, and serving one interest could involve working against another.

Conflict of Interest is a common ethical dilemma faced in land governance. A conflict of interest can be real or perceived!

## Examples of Conflicts of Interest

A potential conflict of interest can occur when a person is in a position to derive personal benefit from actions or decisions made in their official capacity.





## Examples of Conflicts of Interest

A potential conflict of interest can occur when a person, or an organization is involved in multiple interests, and serving one interest could involve working against another.





## Strategies and tools to ensure Fairness and address / prevent Conflict-of-Interest (COI) in Land Use Planning



Standardized meeting processes



Persons with COI recuse themselves from any decision-making process that could affect their interest



Understand roles and responsibilities (how are your decisions made?)



Know and promote your Land Code



Human Resource policies (promote a safe and healthy work environment)



Dispute Resolution (utilize the Land Code and consult with Elders)

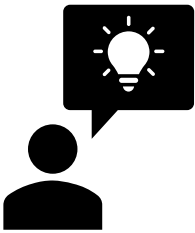


Seek out and engage affected parties (land holders and off-reserve members)

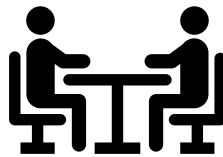
## Develop your own Code of Ethics

Identify and list the traditional Indigenous values of your organization and commit to adhering to them in all your work.

Develop key policies that deal with ethics:



As an individual



When working with clients (proponents, membership and contractors)



When working with decision-makers (Chief & Council, Lands Committee)

Examples:

**As an individual** - Don't accept illegal work. Don't discriminate. Don't accept a gift from someone in exchange for, or expectations for advantages.

**When working with clients** - Don't make private deals. Provide timely, clear and accurate information. Respond to phone calls & emails within 24 hours.

Share your Code of Ethics with all staff, administration, Chief & Council, and development proponents!

## Lands Governance means being a champion for ethical planning...

- Ethical dilemmas are common and an expected part of planning and governance.
- Ethical decision-making often involves weighing values against each other and choosing which values to elevate.
- Indigenous traditions and traditional values provide a solid foundation for ethics.
- The Lands Director and Lands Department, as the principal actors responsible for the fair implementation of laws, are important ethical champions for your organization.
- A good Professional Planner can help you prevent, identify and navigate ethical issues; care must be taken when choosing planner!

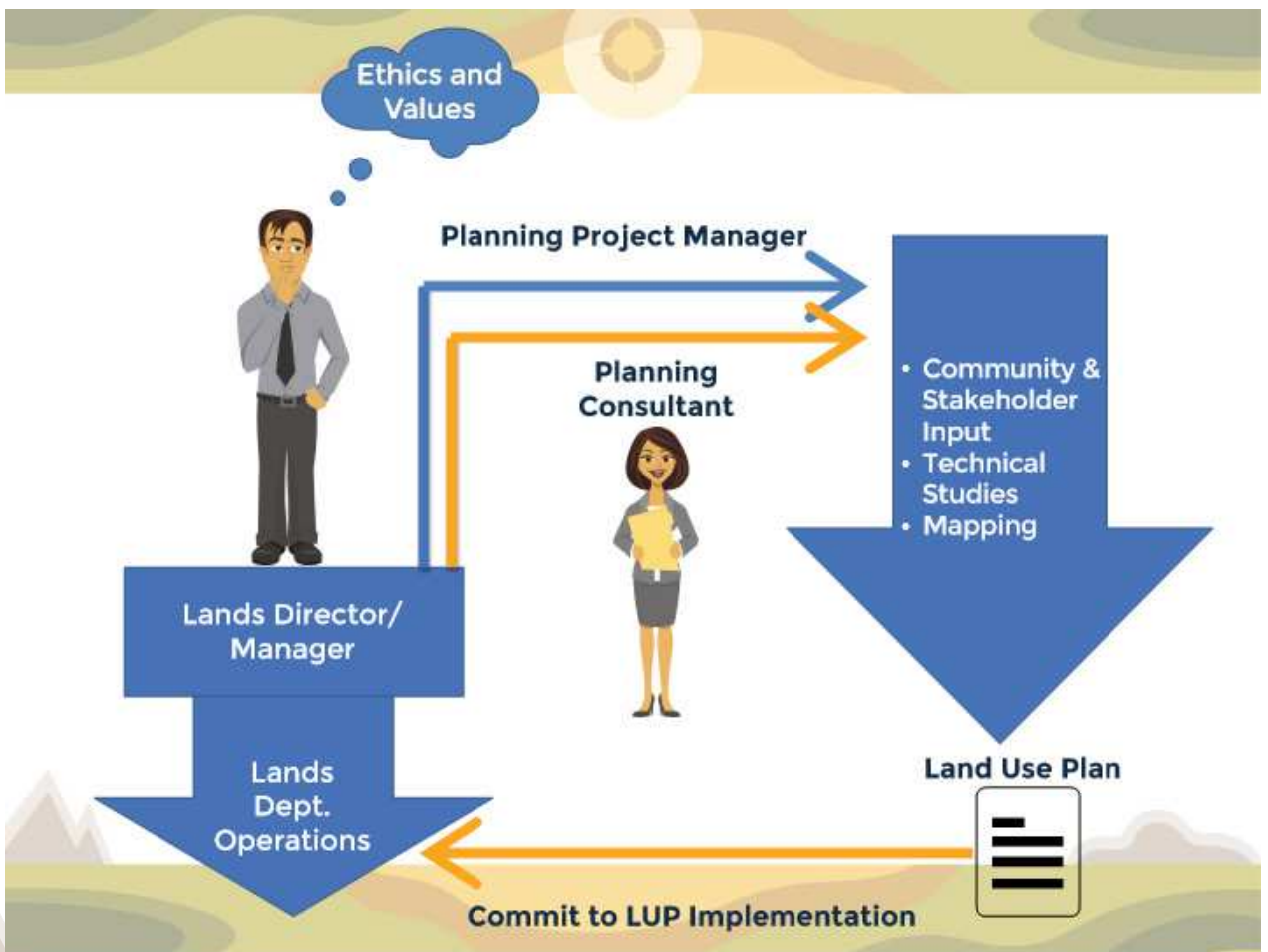


## Lands Governance means being a champion for ethical planning...

A Lands Governance Director / Lands Manager plays a key role in the planning process, usually as the project manager. A Lands Governance Director/ Lands Manager or the staff they hired / contracted out will be conducting community engagement, technical studies, mapping and drafting policies which will help produce your final Land Use Planning document. This will inform the day-to-day activities that the Lands Governance Director / Lands Manager is responsible for overseeing.

Every element of the work of a Lands Governance Director / Lands Manager requires an ethical lens, and this need is magnified when conducting a Land Use Plan.

Choosing a planning consultant is perhaps the most important aspect of applying ethical standards to your work in Lands Governance.



# Knowledge Check

Please answer the questions below.

1. Ethics is concerned with:

- a) Making the most money
- b) The best interest in the community
- c) Our rights and responsibilities
- d) Both B and C

2. The most important considerations in the LUP are ensuring the health and well-being of future generations and the land.

- a) True
- b) False

3. Not all plans (LUP, Strategic Plan, Community Plan) need to think about the public interest.

- a) True
- b) False

4. Why do we uphold public interest in planning? Choose all correct responses.

- a) provide accurate and timely information
- b) pay attention to interrelated of decisions
- c) make sure that everyone in the community follows the rules without questions
- d) to conserve and preserve the heritage integrity of the natural environment

5. A conflict of interest does NOT include a situation where a person will benefit from a decision made in their own official capacity.

- a) True
- b) False

6. Select all of the common “business friendly” pitfalls

- a) bait and switch
- b) request to “make an exception”
- c) providing ample time for communication
- d) short-cut the public interest
- e) being upfront and explaining a potential conflict of interest



# Module 3: Choosing a Planning Consultant

# What is a Professional Planner?

A planner is a professional (difference between a profession and a job) who adheres to a code of ethics to uphold the public interest. While everyone involved in a planning process plays a key role in defining, accessing, and interpreting what the public interest is, a planner is bound by a code of ethics. A Professional Planner belongs to a provincial or national planning institute, and is bound to an ethical code of conduct.



## CODE OF PROFESSIONAL CONDUCT:

- 14.3** The professional nature of their work requires the acceptance by members of principles of conduct in their relations with the public, fellow members of their profession, their employers or clients, their assistants, and students of the profession.
- 14.4** The Planner's Responsibility to the Public Interest: A member shall:
- 14.4.1** Practice in a manner that respects the diversity, needs, values and aspirations of the public and encourages discussion of these matters;
  - 14.4.2** Provide full, clear and accurate information on planning matters to decision-makers and members of the public, while recognizing the employer or client's right to confidentiality and the importance of timely reporting;
  - 14.4.3** Acknowledge the inter-related nature of planning decisions and the consequences for natural and human environments; and
  - 14.4.4** Provide opportunities for meaningful participation and education in the planning process to all interested parties.

A planner has specific ethical obligations:

- as an individual
- to the public interest
- to clients and employers





According to the Planning Institute of British Columbia (PBIC), in order to maintain membership as a Certified Professional Planner, a planner must:

- Be competent
- Have integrity and retain a sense of independence to exercise their professional judgement without bias
- Practice sustainable planning that considers the use of society's resources and the needs of future generations
- Value both the natural and human environments and understand their interrelationships
- Balance the needs of communities with the interests of individuals
- Foster meaningful public participation by all segments of society

## Example of a Certified Planner



**RPP: Registered Professional Planner**

**MCIP: Membership in the Canadian Institute of Planners**

**Look for these when hiring a planner!**

# Consultant Evaluation Matrix

You can use a consultant evaluation matrix as a guide for finding the right planner for you! See the example below:

## Consultant Evaluation Matrix example

*Identify what values matter to you when reviewing a proposal. Rank each value in order of its importance to you (e.g. if price is the biggest factor, rank that value as #1). Score each consultant's proposal against each value, and then multiply that score based on the importance of the value. Tally up the total.*

Compare the results with your gut feeling!

Value	Importance (1-5)	Consultant #1			Consultant #2			Consultant #3		
		Company name	Contact info	Score	Company name	Contact info	Score	Company name	Contact info	Score
Planning Certification & experience	1 (multiply by 5)		Contact info	3 (15)		Contact info	4 (20)		Contact info	5 (25)
Experience with Land Code Governance	2 (multiply by 4)			2 (8)			2 (8)			3 (12)
Reputation & reliability	3 (multiply by 3)			2 (6)			4 (12)			3 (9)
Price	4 (multiply by 2)			5 (10)			4 (8)			3 (6)
Proposal meeting RFP requirements	5 (multiply by 1)			2 (2)			3 (3)			5 (5)
<b>TOTAL SCORE</b>				<b>41</b>			<b>51</b>			<b>57</b>

# How can the RC assist you?

The Resource Centre (RC) can provide LUP support and advice at any stage in your planning process, including process design! Throughout the planning process, the RC also coaches and mentors Lands staff.

## Training, Mentorship and Professional Development (TMPD) Strategy

-  Workshops
-  Online Courses
-  Land Governance Manual
-  Knowledge Repository
-  Direct Community Support

### Direct Community Support:

Depending on the community, workshops are held in order to explain planning concepts and options to the community's lands staff. Sometimes this orientation extends to separate sessions with the community's LC, Chief and Council, or they can be done together.

### Strategic Advising to Chief and Council:

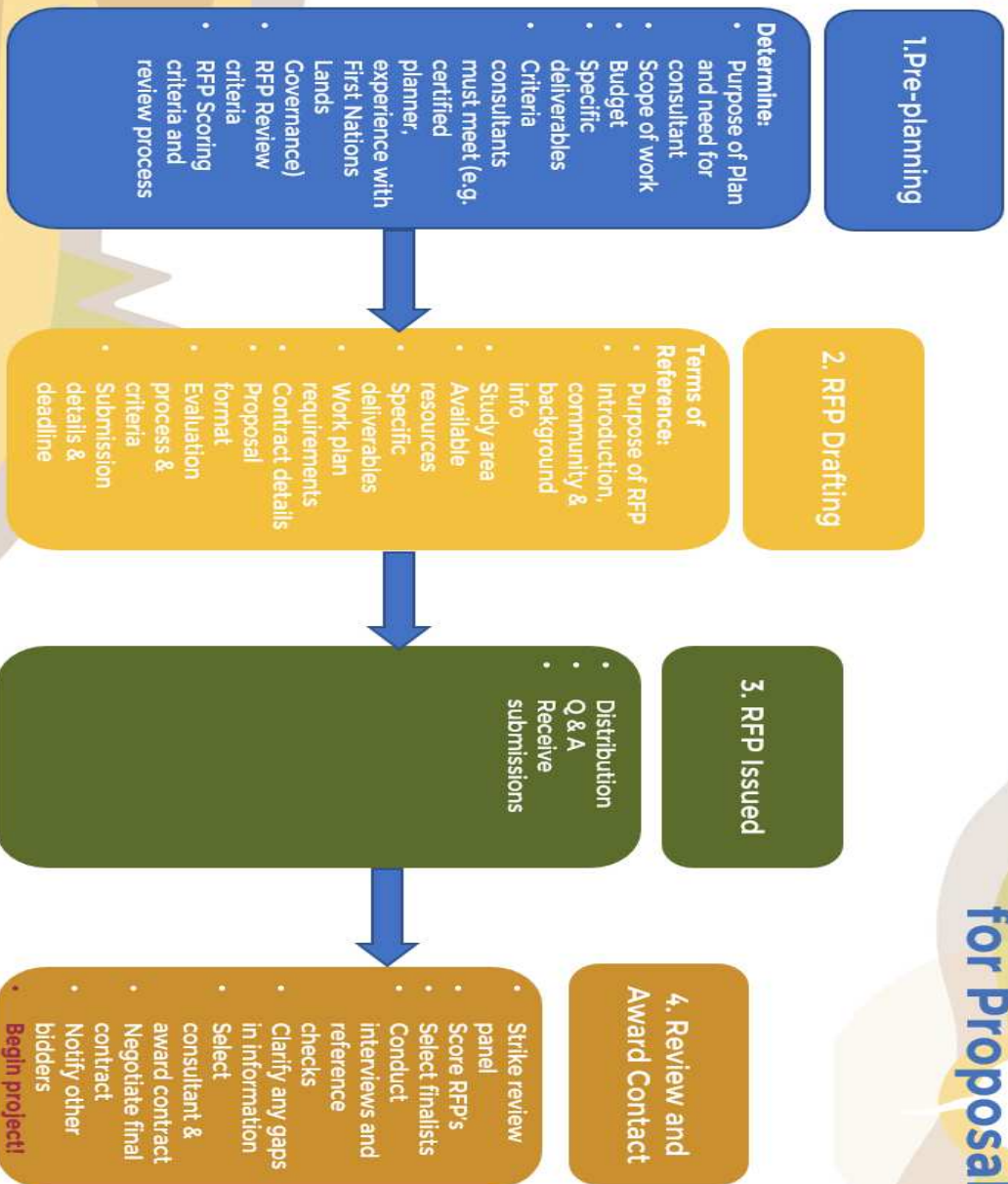
- Land Use Planning & Governance in the context of the Framework Agreement
- Developing, sequencing & integrating plans
- Ratification & Endorsement

Not all LUP's will look the same. Each community is different, with unique aspirations and circumstances. The RC will work with you to make sure your LUP meets your needs. We can meet with your staff, Council, Lands Committee, community meetings or individually with members or families!

# Issuing a Request for Proposals



## Issuing a Request for Proposals



## Ethical Scenarios

Consider these ethical scenarios. What would you do?

- 1 A proponent has an approved project but has taken issue with the environmental standards established under Land Code. The proponent has approached someone on Council whom they have a close personal relationship with and the Lands Department is now being pressured by this person and the proponent to lower the environmental standards.

What do you do?

- 2 Council and administration desire to move forward with a project that will bring jobs and revenue to the community (the project was a key part of the election campaign and the administration's goal). They want to move ahead with the project but do not want to go through community meetings and ratification vote, which is required by Land Code.

How do you respond?

- 3 A project has been proposed by another department (Economic Development or Housing). The project is rushed and they are proposing to cut corners, not meet codes, or the Lands Department established criteria on drainage, etc. But the Administration wants the Lands Department to partner with them to ensure you complete the work.

What do you do?



4

A proponent has an approved project and is seeking their permit from the Lands Department. However, even though their geotechnical report (required for the permit) requires them to pave the site, they're saying this will be too expensive and they just want to add gravel.

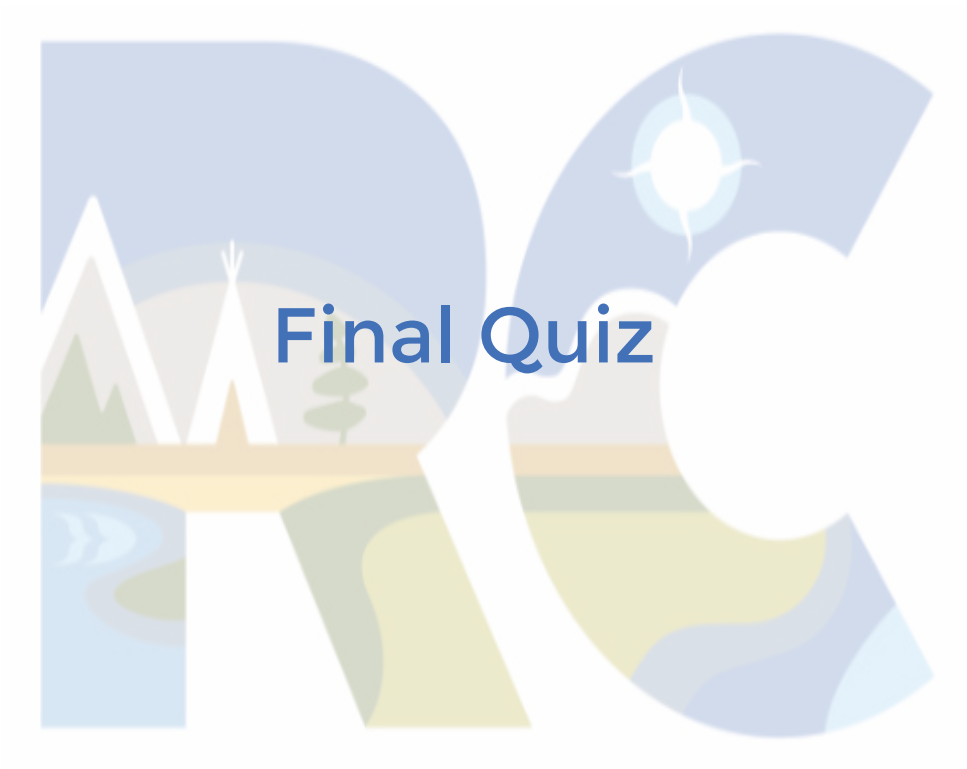
How do you respond?

5

A consultant has approached you with a funding opportunity. They tell you that they will apply for the grant on your behalf, and won't charge you unless you receive the grant and award them the work outlined in the funding proposal.

Do you accept?







Please answer the questions below.

1. A professional planner swears by a code of ethics to uphold the public interest.

- a) True
- b) False

2. What certifications should a professional planner have?

- a) OCT, RRP
- b) MP, RPP
- c) RPP, MCIP
- d) PhD

3. Ethics are a useful guide that can affect the way humans behave and make \_\_\_\_\_.

- a) Plans
- b) Money
- c) Decisions
- d) Strategies

4. It is ethical to short-cut the public interest if the outcome will be positive.

- a) True
- b) False





# Attachments



# Answer Key

## Knowledge Check

1. D
2. True
3. False
4. A,B and D
5. False
6. A,B and D

Score: /6



## Final Quiz:

1. True
2. C
3. C
4. False

Score: /4

**Final Quiz:** Check these answers against yours. If you find that you have received a score below 80%, maybe take some time to go through the material again. Or, you may contact us for further information.

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# Glossary of Terms and Acronyms

## Areas of Environmental Concern (AEC's)

Areas of Environmental Concern. AEC's refer to areas that could have contamination from a number of sources. Under the Framework Agreement, Canada is responsible for addressing any environmental issues that were present while Canada managed the reserve land. Once a FN is operational with a Land Code, they are responsible for managing the lands, but only as of the date they become operational under their Land Code. Canada is still liable for environmental issues prior to the Land Code. This is why mapping and identifying AEC's is so important.

## CCP

comprehensive community plan

## Code of Ethics

A document which outlines the values of an organization. Commit to adhering to them in all of your work.

## Common Land Use Categories

This refers to the human use of the land. This may include land for community, traditional, agricultural, commercial and residential purposes.

## Comprehensive Community Plan CCP

Comprehensive Community Plan Is a process that engages community members in planning and implementing the long-term vision for their community. It includes the development of objectives, goals and/or a plan of action to work towards fulfilling the vision.

## Conflict of Interest

A conflict of interest is a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity, or a situation where a person, or an organization, is involved in multiple interests, and serving one interest could involve working against another.

## Ethics

Ethics are moral principles that guide behaviours and decisions. Ethical principles include justice, fairness, being trustworthy, doing good to others, do no harm, honesty, integrity, law-abiding, accountability, transparency and self-determination.

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## Framework Agreement (FA)

The Framework Agreement is a government to government agreement signed in 1996. It gives First Nations the option of withdrawing their lands from the *Indian Act* in order to exercise control over their lands and resources.

## *Indian Act (IA)*

The *Indian Act* is a legislation enacted by the Federal Government. The current act has been in place since 1951.

## Lands Committee (LC)

Each Lands Committee will vary based on the structure outlined in the First Nations unique Land Code. Some comprise of youth, elder, members at large, and may include lands department and other administrative staff or consultants that support the implementation of the First Nation Land Code. Some of the duties can include providing advice to the Council and the Land Governance Director on matters respecting First Nation Lands; making recommendations to Council on policies, procedures and law development in respect to First Nation Lands; assist in the exchange of information between Members and Council regarding First Nation Land matters and other consultation and reporting under the First Nation Land Code.

## Lands Governance Director / Lands Manager

A Lands Governance Director / Lands Manager is the person employed or otherwise engaged by the First Nation to oversee the day to day operations of the Lands Department and the administration of the First Nation Land Code; and where applicable the signing of documents, including written instruments, as authorized by Council.

## Land Use

Land use refers to the particular purpose that the land serves.

## Land Use Planning (LUP)

Land use planning is the process of regulating the use of land in an effort to promote more desirable social and environmental outcomes, promoting the efficient use of resources, and fostering fair and transparent decision-making processes regarding the land and its uses.

## LC

Lands Committee

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## MCIP

Membership in the Canadian Institute of Planners

## Mapping

A graphic symbolic representation of significant features of the surface of Earth. Mapping can be both technical (GIS, Satellite) and non-technical.

## Planning

Planning is *turning knowledge into action*. We plan in order to provide a guide as to where we want to go in terms of land use and protecting land-based traditions. Planning is a process. The process to create a plan is as important as the plan itself.

## Public Interest

Public interest is the welfare or well-being of a society or general public.

## RPP

Registered Professional Planner





**FIRST NATIONS  
LAND MANAGEMENT  
RESOURCE CENTRE**

June, 2019