



VALLAR PARTNERS

UNDRIP & LOCAL GOVERNMENTS

Developing the path forward

ABOUT VALLAR PARTNERS

Vallar Partners is a full-value strategic management firm focused on risk mitigation across the broad spectrum of corporate affairs.

Our team works with both the private and public sectors to develop comprehensive and customized plans that enable the successful delivery of projects.

We specialize in multi-pronged approaches that integrate relationship building alongside innovative solutions.



CURRENT LANDSCAPE



THE OVERVIEW

- UNDRIP legislation and the path toward reconciliation have left local governments in a precarious situation - they are not responsible for accommodation, yet municipal projects have impacts on Traditional Territories.
- The pressure to consult based on UNDRIP - likely requiring consultation in a more formal context on more types of projects
 - There are no guidelines for the delivery
- Indigenous communities are also increasingly exercising their rights and title within their Territories - this includes stewardship, environmental, and archaeological mandates, as well as "economic reconciliation."
- Many municipality staff do not have much experience, if any, directly engaging with the Nations.



WHAT IS BREWING ON THE HORIZON

The alignment of Laws (Section 3 of the Declaration Act) states:

“the Declaration on the Rights of Indigenous Peoples Act (Declaration Act) requires the Province of B.C., in consultation and co-operation with the Indigenous Peoples in B.C., to take all measures necessary to ensure the laws of B.C. are consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).”

...

Making B.C.’s laws consistent with the UN Declaration (1st Annual Report)

“There are currently dozens of projects underway to ensure provincial laws and policy are consistent with the UN Declaration. This past year, two significant pieces of legislation were passed by the Legislature and reflected consultation and co-operation efforts with Indigenous Peoples as described in the Interim Approach”

This means that changes to local government legislation are on the horizon.

Likely outcomes:

- New processes & requirements are imposed (Changes to Municipal Act)
- Arbitration

Or

- Proactive agreements and processes with local Indigenous communities



THE PROACTIVE ROUTE

Efforts on “making laws consistent with the UNDRIP Declaration” will need to address impacts posed by municipal services and infrastructure. We know this.

The Municipal Act is similar to the Mineral Tenure Act (MTA); however, with the MTA, some nations decided to take the matter to court before the province could sort out a path forward. The court ruling gives the matter 18 months to resolve Indigenous consultation.

So, it is possible that a local government/municipal project, whether it be signage in a sensitive area, a matter with a water main or the building of a firehall, can trigger a work stoppage that escalates to legal action due to the lack of process and protocol.

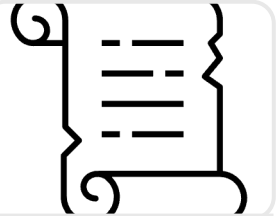
Establishing processes and protocols directly with the Nations is the best way to enable continuity and preparedness.



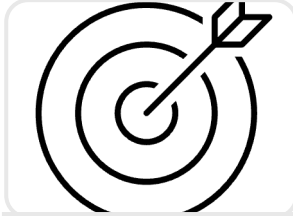
EXPECTATIONS &
ACHIEVABLE OUTCOMES



THE CHALLENGES



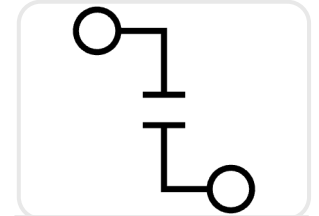
UNDRIP



Moving
Goalposts



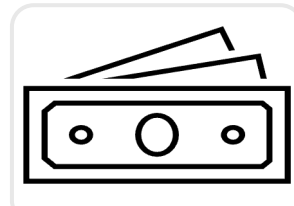
Political
instability and
Factionalism



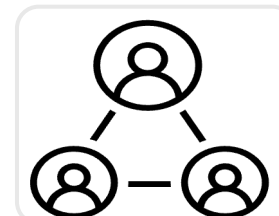
Atrophied
relationships



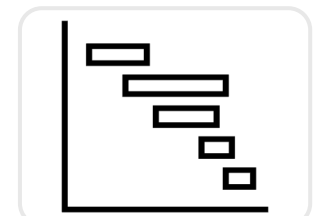
Managing
Expectations



Costs



Resource
Allocation



Reputation
Management



COMMITMENTS V. LIMITATIONS

- In general, local governments are supportive of reconciliation, but *clear and realistic objectives* need to be established by all parties
- Unlike a for-profit entity, municipalities exist to provide services and infrastructure funded through taxation.
- Fulsome processes for consultation on impacts cannot happen overnight; it takes time, and certain projects will not be able to wait.
- Nations also do not have enough resources to review everything that is sent their way
- Not all Nations that claim impacts may be consulted at the same level.



ENGAGEMENT OBJECTIVES

- Municipal Objectives(s):
 - Effective processes with Nations to get projects to completion on behalf of residents
 - Staff and contractors are clear on processes and commitments and are clear on their own roles in achieving objectives (clarity, accountability, alignment and coordination)
 - Open lines of communication to avoid unnecessary work stoppages and delays
 - Establishing trust – maintaining a strong relationship
 - Being proactive and developing engagement processes before one is imposed
- Nation Objective(s):
 - Ensure all levels of government reflect the obligations of FPIC (free, prior and informed consent)
 - Ensuring that impacts are properly assessed and mitigated/avoided
 - Ensuring nothing is missed when it comes to their archaeological, environmental, stewardship requirements
 - Economic reconciliation
 - Heritage and cultural consideration
- Things will move more easily if there is an agreement in place that outlines the responsibilities of **both** parties in the agreement with clear and consistent rationales

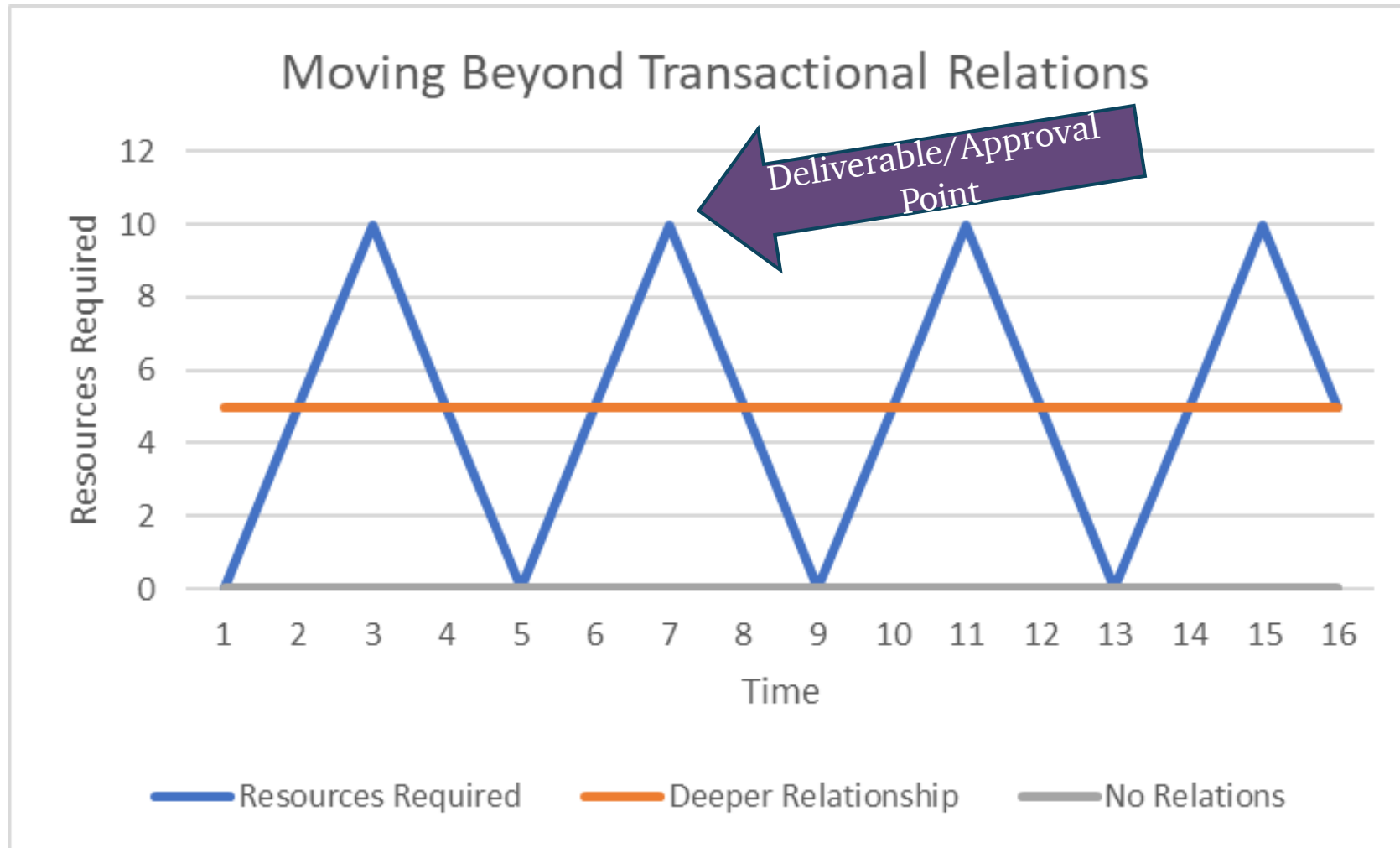


BUILDING THE RELATIONSHIPS

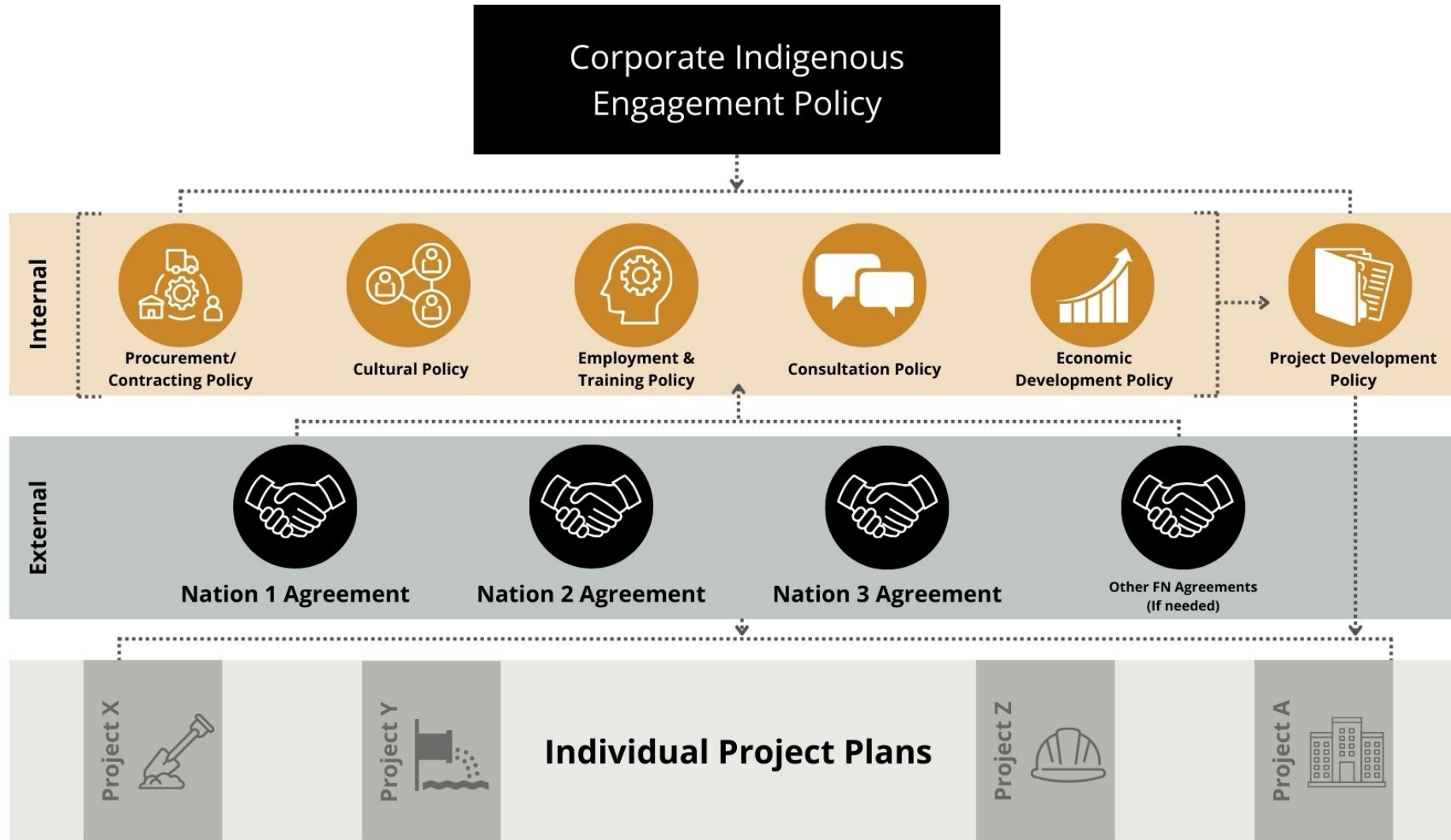
- Engagement should be genuine and balanced between transactional and performative
- Establishing trust with the Nation(s) is key - it is the cornerstone of effective processes
- An overarching agreement can help ensure interactions are not ad hoc and, instead, connected to overarching goals (encapsulated in a relationship agreement)
- At a high level, a relationship agreement enables:
 - Ongoing efforts towards identified objectives/deliverables
 - Effective policies are developed for benefits opportunities (tied into project delivery)
 - Nothing "being left on the table" - maximizing returns for all parties
 - Processes are clear and consistent to avoid preventable work stoppages



THE INTERNAL ENGAGEMENT POLICY



A POSSIBLE COMPREHENSIVE APPROACH



THE REFERRAL OFFICE



WHAT IS A REFERRAL OFFICE?

The Referral Office in Indigenous communities supports the Nation in compiling and assessing information relevant to rights and, title and other interests and keeps track of timelines and responses.

The objective of the municipal referral office (for Projects) is to manage the technical relationship (information sharing) with the impacted Nations to support the successful delivery of projects.

- Standardize a template for internal project assessment (triaging)
- Point of coordination for internal assessments (i.e. archaeology) and other requested plans (i.e. construction environmental management plans, etc.)
- Disseminate project information to Nations for review
- Centralize the database for all project-related information
 - Correspondences (internal and external)
 - Requests (from Nations and internal as part of triaging and document prep)
 - Responses (from project managers and engineers)
 - Timelines (generated by project scale and scope as well as developed joint processes)



WHAT TO AVOID

Setting up a referrals office for municipalities is not as straightforward as sending referrals for all ground disturbances to the Nations – this will not work. Nations do not want this and cannot handle the workload this way.

Free Prior and Informed Consent (FPIC)

Nations cannot reach consent if they are not informed, but being informed is not just to be inundated with data (while under-resourced)

Without clear and transparent engagement and information-sharing processes, referrals have burned through staff time and resources without yielding understanding or consent.

Consultation and the referral process are meant to understand impacts and determine how to address the matters at hand in a way that works for all parties.

- What is the project?
- Where is it located?
- What data is required to assess levels of impact and risk?
- What is the timeline?
- Why is it needed?



SCOPE & SCALE

- Both local governments/municipalities and Indigenous communities vary in size and resources. Some have established departments and in-house subject matter experts, while others are small and understaffed.
- Generally, Indigenous communities with a larger team can handle 300-400 referrals total per year at full capacity, while a larger municipality can have around 30,000 ground disturbances a year
 - why thresholds and criteria for review processes are needed

Urban municipalities:

- Have larger budgets and a lot more projects due to much larger populations
- Have enough projects to set up a full referral office with full-time staff & full-fledged negotiations on large relationship agreement

Rural local governments:

- Much smaller populations and fewer “ground disturbance” projects but will still be affected nonetheless
- Bi-lateral efforts with the Indigenous community are still the way forward
- Local governments can pool resources with the same Indigenous communities (e.g. hiring of archaeologist)
- Has a case to lobby for Provincial funding to meet the obligations of UNDRIP



GETTING STARTED

The first step would be to reach out to the Nation(s) whose territory is part of the municipal and local government boundaries.

The conversations can lead to a Memorandum of Understanding (or similar agreement) on how to proceed and the protocols to be implemented along with resources and capacity funding.

If commitments to reconciliation are to be realized it will take time and resources, but local government projects cannot come to a halt (they serve public need) - so a phased approach is needed

This can entail:

- An interim process for backlog projects
 - Identifying priorities and permit requirements
 - Multi-assessment Permits, where possible
 - Developing a process with key Nation(s) in a transition stage – Capacity funding
- Developing threshold criteria – this involves archaeological support
- Chance Find Management policy – also involves archaeological support



KEY MILESTONES – (Technical Referral)

- ✓ Memorandum of Understanding
 - Intent of parties to work together
- ✓ Capacity Agreement
 - Anticipated costs and resources of Nations to engage in process
 - Categories of work
- ✓ Thresholds
 - Acknowledgment of different levels of impacts and identifying resources needed for review
- ✓ Chance Find Management Policy



UNIFIED CORPORATE POLICY & AGREEMENTS

When the Internal Corporate Policy (based on slide 13) has been developed, and relationship agreements are completed, staff and contractors will need to be trained.

All staff should be aware of commitments and goals and what their specific responsibilities are.

These are some of the items that are likely in the rollout:

- Employment and Training
- Procurement
- Communications protocol
- Cultural /Heritage acknowledgment
- Community engagement & CSR
- City Data and GIS
- Permitting/Referral



QUESTIONS?

