



18th Legislative Assembly of the Northwest Territories

Standing Committee on Economic Development and Environment

Report on the Review of
Bill 46: *Public Land Act*

Chair: Mr. Cory Vanthuyne

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SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Economic Development and Environment is pleased to provide its *Report on the Review of Bill 46: Public Land Act* and commends it to the House.

Cory Vanthuyne
Chair, Standing Committee on
Economic Development and Environment

**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

REPORT ON BILL 46: *PUBLIC LAND ACT*

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**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

REPORT ON THE REVIEW OF BILL 46: *PUBLIC LAND ACT*

INTRODUCTION

Bill 46: Public Land Act, sponsored by the Honourable Louis Sebert, Minister of Lands, was given second reading in the Legislative Assembly and referred to the Standing Committee on Economic Development and Environment for review on March 12, 2019. Committee is pleased to report on its review of *Bill 46: Public Land Act*.

Bill 46 repeals and replaces the *Commissioner's Land Act* and the *Northwest Territories Lands Act*, the latter of which was inherited by the Government of the Northwest Territories (GNWT) from the federal government in 2014, when responsibility for Crown lands and resources was devolved to the GNWT.

The *Public Land Act* applies to all land under the administration and control of the Commissioner of the Northwest Territories, including Crown lands formerly administered by the federal government. The Act includes responsibility for subsurface minerals and resources, and the associated regulations that came to the GNWT when the federal *Northwest Territories Lands Act*, was passed in the NWT Legislative Assembly as part of the devolution process.

As part of the GNWT's ongoing effort to update and renew the federal legislation inherited under the devolution initiative, it is anticipated that responsibility for the management and administration of mineral resources in the NWT will be governed by the *Mineral Resources Act* which has also been under consideration by this Standing Committee as Bill 34. Until that Act receives assent, and the appropriate provisions come into force, the provisions contained in the *Public Land Act*, and the existing regulations created under the *Northwest Territories Lands Act*, will govern mineral resources as a transitional arrangement. The provisions governing mineral resources will later be repealed from the *Public Land Act* to coincide with the coming-into-force of the appropriate provisions in Bill 34.

The *Public Land Act* provides general authorities for the administration of various interests in public land that was formerly known as Commissioner's land, and crown lands formerly administered by the federal government. The Act does not, however, apply to privately owned land or land under the, ownership, management or authority of any other government, including Indigenous governments. Among other things, the Act:

- Authorizes the Minister to sell or grant public land;
- Reserves from those grants minerals and interests in minerals, the bed of water bodies, the shoreline of any water body if the land is adjacent to water, and fishery rights and occupation related to fishing;
- Authorizes the Minister to issue dispositions of public land, such as leases, licences and quarry permits;
- Authorizes the Minister to require a security deposit as a condition of a lease, licence or other disposition and to develop regulations about which uses will require securities, the forms of security that are acceptable, and how they are calculated;
- Authorizes the Minister to reserve or withdraw public land and to designate land management zones;
- Provides for the lawful authority to use, possess or occupy public land and to set out in regulation the uses and activities that are allowed and are not allowed on public land without a disposition or authorization;
- Includes options to address unauthorized use and occupancy of public land;
- Enables the GNWT to monitor compliance, investigate potential offences, and enforce provisions of the Act and regulations; and
- Provides the authority for an administrative monetary penalty regime to discourage contraventions of the Act.

BACKGROUND

Bill 46: Public Land Act is one of 18 bills introduced by the Government of the Northwest Territories in 2019, of which 8¹ were slated to be reviewed by the Standing Committee on Economic Development and Environment. This has placed a tremendous strain on the limited resources of the Committee. It has

¹ *Bill 25 – An Act to Amend the Workers' Compensation Act; Bill 34 – Mineral Resources Act; Bill 36 – Petroleum Resources Act; Bill 37 – Oil and Gas Operations Act; Bill 38 – Protected Areas Act; Bill 39 – Environmental Rights Act; and Bill 44 – Forest Act.*

also placed on the Committee an obligation for extensive public consultation, within a limited time period, that has left Committee Members feeling challenged to give each bill the time and attention it deserves.

Given these circumstances, Committee asked that the GNWT consider withdrawing *Bill 44: Forest Act* and *Bill 46: Public Land Act* with the intention that they be reintroduced early in the 19th Legislative Assembly. Committee thanks the Government for its agreement to withdraw Bill 44. Unfortunately, Committee's request for the withdrawal of Bill 46 did not meet with similar favour.

THE PUBLIC REVIEW OF BILL 46

Given the need to proceed with the review of Bill 46, Committee determined to make best efforts to complete a thorough review. As always, Committee invited input from stakeholders across the Northwest Territories, including municipal and Indigenous governments, and a number of non-governmental organizations.

Committee traveled on Bill 46 from June 24 to 29, 2019, and held public hearings in Fort Smith, on the K'at'l'odeeche First Nation Reserve in Hay River, and in Fort Simpson, Fort Providence, Yellowknife and Inuvik.

Committee received a joint written submission from Alternatives North, Ecology North, the Canadian Arctic Resources Committee, the NWT Chapter of the Council of Canadians and the Canadian Parks and Wilderness Society. This submission is referred to in this report as the "joint NGO (non-governmental organizations)" submission. Committee also received written submissions from:

- Sahtu Secretariat Incorporated;
- Dehcho First Nations;
- Yellowknives Dene First Nation;
- Mackenzie Valley Land and Water Board;
- Information and Privacy Commissioner of the Northwest Territories;
- NWT Food Network;
- Town of Fort Smith;
- Town of Hay River;
- City of Yellowknife;
- NWT Association of Communities;
- Independent Environmental Monitoring Agency;

- Ducks Unlimited Canada; and
- Mr. N. Kabiri of Hay River.

The written submissions received by Committee are appended to this report. Committee wishes to thank everyone who participated in the review of this bill by providing a written submission or attending one of the Committee's public hearings.

PUBLIC INPUT AND COMMITTEE RECOMMENDATIONS

Committee noted a number of themes that emerged from the public submissions received on Bill 46. Each of these themes, identified below, guided Committee in its consideration of Bill 46 and shaped the nature of the amendments and recommendations proposed by Committee.

Preamble or Purpose Statement

When Committee first reviewed Bill 46, a preamble or purpose statement was notable by its absence. Members wondered why other devolution bills contained such a provision, which can help to guide the Minister and the courts in interpreting the purpose of the legislation, while the proposed *Public Land Act* did not. This absence was also noted in some of the public submissions Committee received:

- **Town of Fort Smith** – *“There appear to be several unresolved issues, as well as a lack of clarity regarding the intent and purpose of the Act and proposed changes...[S]ince the Act does not contain a defined purpose, the Government will still have considerable discretion regarding enforcement of the Act. This may perpetuate, amongst other issues, the challenges which municipalities face working under the current Acts.”*
- **Dehcho First Nations** – *“There is no preamble. Ideally a preamble would acknowledge that while this Act applies to public lands outside of the settlement areas, the government is committed to working in partnership with Indigenous Governments on land management, including planning and administration. Almost all other resource management bills, including the Mineral Resources Act and Protected Areas Act, have broad commitments and principles relating to the balancing of rights and interests and*

shared participation. Not so with the Public Lands Act. There should be a preamble committing to uphold legally binding agreements, including negotiated land use plans.”

In her comments to Committee, Grand Chief Gladys Norwegian elaborated that the Act “*does reflect non-treaty agreements, such as Deh Cho Land Use Plan.*” She further observed that “[n]othing in the bill recommends the polluter-pays principle.”

- **Joint NGOs** – “*Purpose statements are important guides to interpretation by the courts, and communicate the modes of conduct of governments and citizens. This Act will have more than one purpose, so it is important to describe the multiple purposes. The purpose can help bring concepts and principles from the Land Use Sustainability Framework into legislation. A purpose can also help guide future resource (granular, etc.) development. We recommend a purpose statement be added.*”
- **Sahtu Secretariat Incorporated** – “*A preamble for a statute serves an important purpose. While its provisions may not be legally-binding, a preamble often sets out the objectives and purposes of the statute. This would provide guidance and direction with respect to the interpretation of the statute, including any vague and ambiguous provisions.*”

Committee agreed that the Act would benefit from a preamble or purpose statement. However, parliamentary procedure constrained the ability of Committee to add a preamble. A preamble, which prefaces a bill, but does not form part of the statute itself, tends to be more aspirational in nature and can be used to set out the larger principles to which a statute aspires. Because Bill 46 did not contain a preamble when the principle of the bill was fixed at second reading, Committee was not at liberty to propose the inclusion of a preamble at the Committee stage. This left Committee with the option to propose a purpose statement, which tends to be more practical in its wording.

Committee used the wording provided by the joint NGOs as a starting point for developing a motion to amend the bill to include a purpose statement. Committee was advised by its Law Clerk that, as a rule of thumb for drafting, each provision in the purpose statement should be directly linked to an action or authority under the bill. This, for example, made it necessary to remove references such as the “sustainable and wise use of...waters” because, while the bill provides for setbacks from bodies of water, the administration of waters is governed under the *Waters Act*.

Rule 75(2) of the Rules of the Legislative Assembly require that all amendments made to a bill at the Committee stage must have the concurrence of the sponsor of the bill. Therefore, in considering possible wording for a purpose statement, Committee engaged in discussions with the Department of Lands, in order to propose an amendment that would be acceptable to the Minister of Lands. Committee thanks the Minister for making his staff available for productive discussions during the review of Bill 46 that enabled the Committee to make amendments to the bill.

In the clause-by-clause review of Bill 46, Committee noted a distinct perception on the part of the Department that its purpose is purely transactional in nature and that, in administering public lands, it primarily gives effect to decisions that are made through other forums, such as the land and water boards, or by other Departments, such as Municipal and Community Affairs. This self-perception may, in part, explain the absence of a purpose statement in the Act.

Committee strongly agrees with Dehcho First Nations that the Department of Land has a responsibility to respect existing rights and to balance competing interests in administering public land for the benefit of all residents of the Northwest Territories. Committee Members felt strongly that the purpose statement should include a provision noting that one purpose of the Act is “to realize economic, social and cultural benefits from the use of public land.” The Department was resistant to such wording, suggesting that this objective would be difficult to achieve on a disposition by disposition basis. Committee notes that this very wording is found in the *Department of Lands Establishment Policy 24.00*, which sets out principles to which the Minister must adhere when directing the Department to carry out its mandate. These principles are:

1. Land management decision making should recognize and respect Aboriginal and Treaty rights, as well as third party land interests and legal rights;
2. Decisions about public land should take into consideration ecological, social, cultural, recreational and economic values;
3. Decisions about land and resources within the NWT should be made in an effective and accountable manner and as close as practical to the people being served;
4. Traditional and scientific knowledge should be brought to bear in the effective and efficient management of land within the NWT;

5. Land use planning should be a shared responsibility across the NWT;
6. Land management decision-making processes should be clear, transparent, consistent and communicated; and
7. Natural resources should be managed and developed in a manner that meets the needs of the present without compromising the ability of future generations to meet their needs.

Committee believes that the principles articulated in the Department's establishment policy should be reflected in the legislation that it administers and that these principles, as worded, are generally consistent with the purpose statement the Committee wanted to see in the bill. Committee further believes that the failure to capture this wording in the bill represents a missed opportunity to more fully align the Department's mandate with its legislative framework.

Committee moved motion 12, proposing the inclusion of a purpose statement containing wording that was acceptable to both Committee Members and the Minister of Lands. Committee is pleased that Bill 46 amended to include a purpose statement, but feels it falls short of what stakeholders would have liked to see and what is captured in the Department's establishment policy.

More importantly, however, Committee is deeply concerned that the Department's perception of its mandate is not appropriately aligned with that mandate, as prescribed by the Premier in Executive Council. Committee notes that the Department has developed a *Land Use Sustainability Framework* which, according to Lands' website "*is a vision document that sets out the GNWT's thinking about land use in the Northwest Territories. It lays out where we want to go as we transition to our new role as a land owner and responsible land manager.*"

While Committee believes it is important to have a vision about where you want to go, it is equally as important to have a road map setting out how you are going to get there. In the absence of this, Committee feels strongly that it was premature for the Department to bring forward a *Public Lands Act* that does not fully reflect the Department's mandate or the principles set out in the *Land Use Sustainability Framework*. Accordingly, Committee makes the following recommendation:

Recommendation 1

The Standing Committee on Economic Development and Environment recommends that the Minister direct the Department of Lands to develop a *Land Use Sustainability Framework Implementation Plan* that more fully incorporates the principles guiding the Department's mandate, as set out in the *Department of Lands Establishment Policy*.

This plan should clearly identify actions, and associated time lines, required to implement the *Public Land Act*, including the need for further legislative change. It should also clearly and publicly articulate how the Department's guiding principles and those in the *Land Use Sustainability Framework* will inform land administration decisions.

The Standing Committee further recommends that this work be prioritized at the start of the 19th Legislative Assembly, such that it can guide the development of a process for engaging key stakeholders regarding the continued evolution of public land administration in the Northwest Territories.

Lack of Adequate Consultation

Committee is concerned about the perceived lack of adequate consultation on Bill 46, raised by stakeholders, including key stakeholders such as municipal governments and Indigenous governments and organizations.

- **Sahtu Secretariat Incorporated** – *“While the SSI supports the enactment of a single statute to administer all public lands in the NWT and the establishment of certain provisions on Bill 46, such as its enforcement, administrative monetary penalties and trespass provisions, the SSI has a number of deep concerns about Bill 46.”* These concerns, discussed at length in the SSI submission, include the fact that: they had no input into the decision to develop a new statute and no input into the legislative proposal; there was no working group used to develop bill 46; and that the bill focuses on the GNWT's issues.
- **NWTAC** – *“We would have hoped that...community interests would have been addressed in the Public Land Act but because of lack of consultation during the development, those interests are not addressed in the Act.” “Although reference was made to planning on engaging with community governments in the development of this Bill, the “What We Heard Document” states meetings only*

occurred with 1 community government. Nor was any attempt made to engage with the NWT Association of Communities. There is too much impact on Community Governments by this act for this lack of engagement.”

- **Town of Fort Smith** – *“Municipalities across the territory face similar and onerous concerns with regard to managing issues around Commissioner’s Land. Many of these issues and concerns could have been addressed through changes in the Act, had there been appropriate and meaningful engagement with communities in the initial drafting of this Act.”*
- **Dehcho First Nations** – *“Unlike the bills proposing the new Mineral Resources Act and the Protected Areas Act, Bill 46 has not provided opportunity for Indigenous Governments to reach consensus on the key provisions of the draft legislation through a technical working group before being introduced.”*

Committee believes that this was another opportunity, missed by the Department of Lands, to engage with key stakeholders. This would have allowed the Department of Lands to better understand expectations of stakeholders and accommodate their concerns with respect to the system of public land administration being established in the post-devolution Northwest Territories.

Aboriginal and Treaty Rights

Committee received a submission from the Yellowknives Dene First Nation. This letter was received after Committee had concluded its deliberations on the bill. Nonetheless, Committee wishes to acknowledge its receipt. The letter, which notes that the YKDFN is not a party to the devolution agreement, does not have a final settlement agreement to date, and did not cede title under Treaty 8, states the YKDFN’s position that that *“Canada has not given up, nor fulfilled its fiduciary duties regarding the “public lands” described in Bill 46 of the Act. These lands include our traditional territories which were not Canada’s to transfer, nor GNWT’s to take up. Accordingly, any grant or disposition within our territories under the proposed Act would be made without authority.”* The letter goes on to request changes to the Act, such as the requirement for Indigenous consent over dispositions in traditional territories, consistent with the YKDFN’s position.

While the Committee is respectful of and sympathetic to the YKDFN position, it notes that the requested amendments to the bill raise larger questions about the

GNWT's legitimacy as an administrator of the land than Committee can appropriately address within the context of its review.

The *Public Land Act* provides the authority the Minister of Lands requires to withdraw lands that may be subject to a future land, resources or self-government agreement. Once a settlement is reached, and such agreement will have paramountcy over the *Public Land Act*, regardless of whether this is expressly stated in the Act. However, as pointed out in the SSI submission, this fact alone does not absolve the GNWT of the obligation to acknowledge its legal obligations within its own legislation, in order to provide greater certainty.

- **Sahtu Secretariat Incorporated** – *“Since the GNWT has responsibility for the administration and control of public lands under the Devolution Agreement, it is our view that the GNWT would still be bound by these constitutional duties and obligations recognized in the Land Claim Agreement or the common law. However, it would be beneficial if Bill 46 incorporated those duties and obligations in order to provide clarity and certainty to land owners and users in the NWT.”*

Committee notes inconsistency in how the protections for Aboriginal and treaty rights are enshrined in the different devolution-related bills, which does not seem to be driven by the nature of the actual bills themselves.

The bills sponsored by the Minister of Environment and Natural Resources² each contain three provisions related to Aboriginal and treaty rights:

- The same provision as in clause 3 of Bill 46, noted above;
- A provision providing that actions authorized by the Act must be carried out in accordance with applicable land, resources and self-government agreements and the applicable role of any bodies established pursuant to those agreements; and
- A provision specifying that, in the event of conflict between a provision of the Act and a provision of a land, resources, and self-government agreement, the provision of the land, resources or self-government agreement prevails to the extent of the conflict.

² *Bill 38 – Protected Areas Act; Bill 39 – Environmental Rights Act; and Bill 44 – Forest Act.*

Committee can see no obvious reason why the GNWT would extend these protections for Aboriginal and treaty rights in some laws and not in others. Two of the three provisions are included in *Bill 38: Mineral Resources Act* and all three are absent from *Bill 36: An Act to Amend the Petroleum Resources Act* and *Bill 37: An Act to Amend the Oil and Gas Operations Act*. In the absence of any compelling reason why one or more of these provisions should be excluded from a bill, Committee is of the opinion all three should have been included in each of the devolution-related bills.

Committee notes the following input received on this matter:

- **Sahtu Secretariat Incorporated** – *“Bill 46 only sets out a non-derogation provision...In our view, it is not acceptable for Bill 46 to simply provide that it is subject to the Land Claim Agreement and, therefore, it does not need to integrate key objectives and provisions of the Land Claim Agreement. This approach misses an opportunity for this legislation to integrate the objectives and provisions of the Land Claim Agreements and other modern land claim agreements in the NWT. The integration of Aboriginal and treaty rights would have been consistent with the reconciliation of those rights within the Canadian Legal Framework. For instance, Bill 46 does not direct the GNWT to provide any notification to or undertake any consultations with the SSI and other Indigenous government and organizations about key land administration decisions, including decisions relating to withdrawal of public lands and requirements for sufficient security and use of security.”*
- **Dehcho First Nations** – *“s 3 provides a standard non-derogation clause, which stipulates that the Act must be interpreted in a manner consistent with Aboriginal and treaty rights under s 35. This does not provide adequate protection on its own. It merely affirms the constitutional obligation that the government must follow anyway. More explicit references are needed throughout the bill.*

Committee is disappointed that the GNWT did not make a better effort to ensure consistency both with respect to the inclusion of preambles in all devolution bills and the wording of provisions protecting Aboriginal and treaty rights, so that these important protections are expressly provided for in all of the devolution legislation. Accordingly, Committee makes the following recommendation:

Recommendation 2

The Standing Committee on Economic Development and Environment recommends that future amendments to the *Public Land Act* include more robust protections for Aboriginal and treaty rights, consistent with and improving upon those found in other devolution-related statutes.

Municipal Lands

By far, the vast majority of input received by the Standing Committee concerned the management and administration of public land within or adjacent to municipal boundaries. The input received from municipal representatives is organized by subject matter:

Transfer, ownership and control of public land within municipal boundaries

- **Town of Fort Smith** – *“The Territorial Government controlling the ability to lease or sell this property restricts the municipalities’ ability to regulate land use planning, management, and development, including that of the municipality. This carries several issues; improvements on Commissioners Land affect how taxes are collected and limit the municipalities’ ability to recover taxes, lack of lease-only policies being addressed in the Act which currently seem to be handled with an inconsistent approach.”*
- **NWTAC** – *“Community Governments in the NWT have expressed concern over the management and disposal of Territorial and Commissioner’s Land within their municipal boundaries. We hear constant concerns raised that community’s requests for land transfers are ignored and yet private sales seem to be occurring. Yet we are given to understand that first right of refusal is supposed to be provided to community governments within municipal boundaries. Communities need to have ownership and regulatory control of lands within their municipal boundaries. Community Governments cannot effectively take a comprehensive approach to land use planning, infrastructure, utilities and zoning without appropriate measures in place to protect the community’s interests.”*
- **Town of Hay River** – *“The existence of Commissioner’s Land within Municipalities is a contradiction to the Cities, Towns and Villages Act. The Act requires Municipalities to plan for land use within Municipal boundaries. If a more senior level of*

- government is controlling land interests within Municipal boundaries there is potential for diverging ideas for land use which places the Municipality in a vulnerable position for enforcing its Community Plan. Land governance would benefit from the transfer of all Commissioner's land within Municipal boundaries to the Municipality. In advocating this approach, we acknowledge that such transfer would need to recognize land claim processes (in a manner similar to the 2005 MOU) and not completely eliminate the role of the territorial government but would significantly improve the efficiency of land use planning and management within Municipal boundaries.”*
- **City of Yellowknife** – *“On March 27, 2019 the NWTAC reaffirmed Resolution RA-19-18-12 – Transfer of Lands to Community Governments to address concerns of municipalities regarding territorial land within municipal boundaries. A key point of interest for municipalities is the impact that Commissioner’s lands has on the ability of municipal governments to develop sustainable community plans.” The Act [Bill 46] does not address the transfer of public lands to municipal governments; an item of major importance to municipal governments for the purposes of community planning, certainty of growth and economic development.”*
 - **City of Yellowknife** – *“The GNWT does not transfer contiguous parcels of land to the City and instead takes an ad hoc approach, even in response to requests based on community planning and development needs. This approach does not lend to proper planning for linear infrastructure such as roads, utilities and other municipal services. The City requires certainty of land available for the purpose of proper phasing and establishing development costs.”*
 - **City of Yellowknife** – *“City Council recently established Goals and Objectives for 2019-2022 and specifically prioritized strategic land development and increased growth of development opportunities...It is difficult for the City to achieve these objectives without fee simple tenure to public lands within municipal boundaries. Under the current regime, the City must apply for public lands within the municipal boundary and is often not granted the lands as requested.” “The City of Yellowknife is home to close to half the population of the NWT, but...only has ownership of*

approximately 9% of the land within the municipal boundary: 1% of land within the municipal boundary is vacant and available for development.”

- **City of Yellowknife** – *“A related concern is the ability of municipal governments to collect property taxes on public lands that are leased. Municipal governments receive grants in lieu of property taxes for territorially owned lands. However, once public lands are leased, the lessee becomes responsible for payment of property taxes. If the lessee defaults on payment of property taxes, municipal governments have no ability to collect outstanding taxes, specifically, public lands cannot be sold at a tax auction.”*
- **City of Yellowknife** – *“It is the City’s submission that all vacant public lands within municipal boundaries which are not subject to a reservation or withdrawal pursuant to Sections 10-12 of the proposed Act (such as the Akaitcho Interim Withdrawal) should be transferred in fee simple to the municipal government to be administered and developed. At the very least, all public lands within the municipal boundary should be disposed of only by municipal governments and this should be regulated within the proposed Act [Bill 46]. Doing so will ensure comprehensive community plans are respected and adhered to, which cannot be guaranteed if other orders of government are directly disposing for purposes that they deem appropriate.”*
- **Grant Hood, Senior Administrative Officer, Inuvik** – *“Municipalities go through great lengths and expense to develop Community Plans under the Community Planning and Development Act and, as a result, should be able to administer all the lands within its boundaries...[T]he easiest way to correct these challenges would be to transfer all public lands within a municipal boundary to that Municipality and allow us to control and follow our Community Plans in a way that will allow for fiscal responsibility but also allow for the proper development of the Municipality.”*
- **Kirby Groote, Fort Simpson Chamber of Commerce** – *“Leased land in Fort Simpson is different than elsewhere in the NWT. Leased land is next to fee simple title on the island. It is a patchwork, like someone threw a dart. You can’t get mortgage on leased land. Property values are half of what they are on fee simple. There is no rhyme or reason. It stymies development. It is outside the land claim area. It is very important that we get to buy*

our property. We need it fixed here. We know government is aware of this problem. You've sold the land on Ingraham Trail. Why can't you sell to us?"

Extending municipal boundaries

- **Town of Fort Smith** – *"The process of extending municipal boundaries is unclear and inhibitory affecting the ability for communities to extend their municipal boundaries impeding growth, opportunities and future planning."*
- **NWTAC** – *"There is constant reference to 'lands within and around municipal boundaries' throughout the discussion documents yet no reference to municipal boundaries in the Act [Bill 46] or acknowledgement of the community governments' role."*
- **Town of Hay River** – *"Hay River advocates for a clear and defined approach to the extension of Municipal boundaries. A significant quantity of land is located outside of NWT Municipal boundaries. When Municipalities face growth scenarios, there should be clear guidelines and a defined process for them to engage in to seek additional lands outside of Municipal boundaries."*

Land Withdrawals

- **Winnie Cadieux, Mayor – Enterprise** – *"There should be a requirement in the Act [Bill 46] for consultation with communities on land withdrawals, particularly with respect to the potential impacts on municipal boundaries. When the GNWT comes into our community boundaries and wants to scoop up lands for their own uses, that is just not right. They are consulting with Aboriginal groups, they should be consulting with us"*
- **City of Yellowknife** – *"The City of Yellowknife respects the GNWT's longstanding Land Lease Only Policy which reaffirms that lands should not be disposed of 'by way of sale' while there are outstanding Indigenous rights agreements to be concluded so that these negotiations are not prejudiced. The City fully agrees with ensuring that interim land withdrawals are protected and upheld; however, retention by the GNWT of all other public lands does not enable coherent planning and community development, and in fact, will adversely impact this from occurring."*

Committee acknowledges the negative impact that the GNWT's land administration policies have on orderly municipal growth and development. It is unacceptably paternalistic that the territorial government doles out parcels of lands to municipalities on an ad hoc basis, and agreements on land transfers to municipalities take more than a decade to implement. Committee also acknowledges that Indigenous governments and organizations may have concerns about the use of public land by municipalities in areas where rights have not been negotiated and/or settled.

The GNWT must find a way to reconcile the need for municipal growth and the growing desire for municipal autonomy with the need to develop a public land administration system that appropriately respects Aboriginal and treaty rights.

In explaining the devolution process to the people of the Northwest Territories, Premier Bob McLeod frequently spoke of the need to "devolve then evolve." Committee is disappointed by how little evolution is evidenced by Bill 46. Committee believes the input received on this Bill clearly demonstrates where evolution is most needed, which is in the meaningful involvement of Indigenous governments and organizations in land administration decision-making, and in the transfer of municipal lands to community governments. Committee believes that these concerns are only going to grow with time and that resolving these concerns will take land administration legislation and practices in the direction they need to evolve in future.

Committee believes that it has limited ability to amend Bill 46 to adequately address the concerns it has heard, given the need for more extensive consultation. Therefore, it makes the following recommendation:

Recommendation 3

The Standing Committee on Economic Development and Environment recommends that the GNWT begin a phase 2 process of consultation on further amendments to the *Public Land Act*, to be completed during the 19th Legislative Assembly, that adequately address the concerns raised by municipalities and Indigenous governments and organizations (IGOs) in the review of Bill 46, and which find practical and meaningful ways, including co-management arrangements with IGOs, to integrate these key stakeholders into the public land administration decision-making process.

Committee developed and moved motions 14 and 6, in an effort to address some of the concerns raised by municipalities. Motion 14 adds a new subsection 12.1 to the Act, which requires the Minister to give notice to a municipal corporation of any of the following activities occurring within or adjacent to municipal boundaries: a grant or disposition under section 5; a disposition by way of lease or quarry permit under section 5 or 6; any withdrawal of public land under section 10, after the registration of the withdrawal; and any reservation of public land under section 11 or 12.

Committee encouraged the Minister to consider providing advance notice to municipalities regarding public land withdrawals that might have an impact on future community growth but, citing concerns about the confidentiality of land withdrawals, the Minister did not concur. For this reason, the motion was drafted to only require notice of withdrawals after the registration of the withdrawal.

Motion 6 provides the Minister with regulation-making authority respecting how notice will be provided to municipalities in accordance with the Act.

Minister Sebert concurred with both motions.

Public Notice and Public Reporting

In the name of transparency and public accountability, Committee also wanted to ensure that the public is kept adequately apprised of decisions made under the authority of the Public Land Act. Committee considered the development of a public registry under the Act, but did not have the time to conceptualize how this system would work in the context of the Land Titles Office, and the GNWT's Atlas computer system, both of which make public lands information available to the public. To address this, Committee moved Motion 13, 7 and 15, which implement a dual approach respect to public notice and public reporting.

Motion 13 requires the Minister to make information available on a publicly accessible website, related to: dispositions of public land under section 5; dispositions of mining rights under section 6; information in respect of the requirement to provide security, any reassessment of security, or any application of security under section 8; land withdrawals under section 10; and reservations of land under sections 11 or 12. This motion creates an exception for information relating to a grant or disposition that has been registered in accordance with the requirements of the *Land Titles Act*, since that information is already made

public, and motion 7 creates a similar exception that does not require the reporting of non-exclusive, temporary dispositions.

Motion 15 requires the Minister to table an annual report in the Legislative Assembly which provides public information related to key authorities under the Act, which are specified in detail in the motion (see appendix).

Security

Clause 8(1) of Bill 46 provides that the Minister may require security from an applicant for or holder of a disposition, or from a prospective assignee or transferee of a disposition, *“in a form and amount determined in accordance with the regulations.”* In light of the legacy of Giant Mine and the costs incurred by the GNWT for its reclamation (\$23 million pursuant to the 2005 Cooperation Agreement), Committee had concerns about the discretionary nature of the Minister’s authority to require security, and to determine the form and amount in accordance with the regulations. This concern was echoed by the joint NGOs who also called for mandatory security and who noted that *“[t]he posting of security can reduce the government’s and taxpayers’ liability for restoration of the land, since the holder of a disposition is responsible for the full cost of restoration.”* Both Committee and the joint NGOs noted that for proposed commercial or industrial uses, security is mandatory³ under the *Commissioner’s Land Act*, except in instances where the assessed value of the security is below \$1,000.

Committee moved three motions with respect to this section of the bill. Motion 1, to which the Minister concurred, inserted wording in subclause 8(1) requiring the Minister to ensure that any required security is *“sufficient to protect the public interest,”* thereby establishing a test in the legislation that the Minister must meet when determining security.

Motion 2 proposed to add a new subsection 8(1.1) to make security mandatory for commercial or industrial purposes, as it currently is under the *Commissioner’s Land Act*. The Minister declined to concur with this motion noting that, unlike mining legislation, the majority of dispositions provided for under the *Public Land Act* are small scale dispositions, such as leases for cabins or recreational uses, for which security is not usually necessary. The Minister expressed concern that mandatory security could have the impact of inhibiting economic development by

³ Subsection 3.1(1) and (3), *Commissioner’s Land Act*, R.S.N.W.T. 1988,c.C-11

dissuading potential applicants for dispositions. He indicated that the Department takes a risk-based approach for determining security which is assessed on a case-by-case basis, making discretionary security more appropriate under this Act. Committee notes that the Minister still retains discretion to set appropriate thresholds for land use activities that may require financial security. Given the Minister's decision not to accept Committee's motion, it is unclear how GNWT can meet its stated commitment to the polluter pays principle.

Subsection 8(5) of Bill 46 requires the holder of a disposition to restore the land *"to the satisfaction of the Minister"* upon termination of a disposition. The joint NGOs argued that this subsection needs more explicit language and that standards for the restoration, reclamation and remediation of public lands should at least be broadly stated in the legislation. *"We recommend that the Bill specify that the regulations include: That lands are to be restored to the equivalent ecological form and function the lands had prior to the disposition and the measurability of the sufficiency of reclamation, the application of scientific environmental standards, public notice regarding restoration requirements, and other such requirements for ecological and cultural restoration of the land."*

Committee discussed this proposal with the Department, and learned that the decision to exclude language from the Act specifying the standards for restoration was intentional. The Department noted that it may not be possible to restore public land to its original "equivalent ecological form and function" which requires the sufficiency of restoration to be determined on a case-by-case basis. Lands also noted that it does not employ scientists to determine scientific standards and that it frequently applies standards as determined by land and water boards. The Department did agree that some of these requirements could be addressed in the regulations. Hence, Committee moved motion 3, which proposed to amend subclause 8(5) to require that restoration occur "in accordance with the regulations" rather than "to the satisfaction of the Minister." The Minister concurred with this motion.

Finally, the Independent Environmental Monitoring Agency (IEMA) made a technically complex submission to the Committee on the subject of security which recommended:

- **IEMA** – *"The addition of a new clause to section 8 that would include authority enabling land-related securities to be held together with water-related securities by the Minister responsible for water in the same account. This addition would*

not alter the obligations or authorities of the Minister responsible for Lands and they currently relate to administering land-related security, but would increase the consistency, predictability and efficiency of how security is established, provided, held and utilized.”

Committee was not at liberty to Act on the IEMA recommendation, because it does not have the ability to make changes to the *Public Land Act*, administered by the Minister of Lands in a manner that would impact the authority of the Minister responsible for the *Waters Act* [ie. Minister of ENR (Environment and Natural Resources)]. Committee was prepared, however, to consider an amendment to the *Public Land Act* to allow the Minister of Lands to enter into an agreement with the Minister of ENR with respect to the shared management of land and water securities. Committee was advised, however, that this would not have the intended effect, because the authority of the Minister to manage securities has been delegated from the federal government, by way of a federal delegation instrument, in accordance with the *Mackenzie Valley Resource Management Act*. It would appear that federal intervention will be required to resolve the issue raised by the IEMA.

Investigations

Committee received a submission from the Information and Privacy Commissioner (IPC) of the Northwest Territories noting that the only clause in the bill with the potential to impact directly on the privacy of individuals is subclause 23(5) which provides that “[f]or the purposes of this section, an inspector shall not enter any place designed to be used and being used as a dwelling place except with the consent of the occupant or under the authority of a warrant...” The IPC noted that:

- **IPC** – “[T]his does not protect an individual whose ‘dwelling place’ was not designed as a dwelling place. It is very conceivable that an individual working on a remote work site on public lands might be both working and living in a space designed not as a dwelling, but for work purposes. Similarly, it is conceivable that the individual in such a case might be using a single computer for both personal and work purposes. In these cases, the individual’s personal belongings and files would be subject to all of the investigative processes described in 23(2)

and expose personal information to the inspector that is completely unrelated to the purposes of the Act.”

The IPC recommended that the words “designed to be used and” be removed from subclause 23(5) to prevent an inspector from conducting an inspection of a place being used as a dwelling place, even if it was not designed for that purpose. Committee agreed with this recommendation and moved motion 5 to amend the bill accordingly. The Minister concurred with this amendment.

Wetlands

Committee received input from Ducks Unlimited Canada (DUC), the joint NGOs and the Dehcho First Nations pointing out that wetlands are a critical component of the NWT ecosystem that does not appear to have been addressed in Bill 46. Submissions suggested that clauses 14 and 15 be amended to include references to wetlands and that Bill 46 include the definition of “wetlands” developed by the National Wetland Working Group in 1998.⁴

Clauses 14 and 15 are both contained in the section of the Act that deals with reservations from grants. The fact that water is not an object with fixed boundary, creates challenges in law with respect to defining its borders. Clause 14, which provides that the bed below the ordinary high water mark of a body of water is reserved to the Commissioner and not available for disposition, is not intended to protect the water, but rather to define the boundaries of the adjacent land. Clause 15 provides that a grant or disposition does not convey an exclusive right or privilege with respect to water crossing public land. This ensures that no disposition holder is authorized to damn, divert or monopolize water within, bordering or passing through the land. While these provisions reference water, they are not intended to protect water, but rather to assist in delineating parcels of public land.

In consultation with Committee’s Law Clerk, Committee determined that the *Public Land Act* is not the appropriate legislation under which to attempt to include protection of wetlands. Committee recognizes the importance of wetlands to the NWT ecosystem, and encourages those who are interested their protection to work with the Department of ENR to determine the appropriate legislation under which such protections could be put into effect.

⁴*“Wetland: land that is saturated with water long enough to promote wetland or aquatic processes as indicated by poorly drained soils, hydrophytic vegetation and various kinds of biological activity which are adapted to a wet environment.”*

Regulations

Committee strongly believes that municipalities and Indigenous governments and organizations and the general public must be engaged by Lands in a meaningful way in the drafting of future legislative amendments and in the development of the regulations flowing from the *Public Land Act*.

Committee also moved motion 16, which would have required the GNWT to publicize proposed regulations in the *Northwest Territories Gazette*. Committee realizes that this approach to consultation on proposed regulations is not ideal, but it would at least afford an opportunity for those who are interested to provide comment to the Minister before draft regulations are finalized.

Motion 16 was carried, but the Minister did not concur. Therefore, Bill 46 was not amended to include this requirement.

Consistent with recommendation 1, Committee, therefore, makes the following recommendation:

Recommendation 4

The Standing Committee on Economic Development and Environment recommends that the Department of Lands make a commitment to amend the regulations flowing from the *Public Land Act* in meaningful consultation with interested Indigenous governments and organizations and the general public, in accordance with a timeline set out in a *Land Use Sustainability Framework Implementation Plan*.

CLAUSE-BY-CLAUSE REVIEW OF THE BILL

The clause-by-clause review of Bill 46 was held on August 14, 2019. During the clause-by-clause review of Bill 46, Committee moved sixteen amending motions, of which the Minister concurred with 14. Four of these motions⁵ corrected drafting errors or improved the readability of the bill. Appendix 1 sets out the motions that Committee moved with respect to Bill 46.

⁵ Motions 4, 9, 10 and 11.

CONCLUSION

Committee thanks Minister Sebert for his concurrence with the majority of Committee's amending motions and thanks the Minister and his officials for their appearance before the Committee. Committee again thanks everyone involved in the review of Bill 46.

In closing, Committee wishes to reiterate its disappointment that the GNWT decided to move forward with Bill 46 against Committee's wishes. Committee believes that *Bill 46 – Public Land Act* is fundamentally flawed, and while the amendments made by Committee have served to improve the bill, they do not address the bill's fundamental failings. Committee will leave the last word on Bill 46 to the Dehcho First Nations,

- **Dehcho First Nations** – *“Bill 46 seeks to combine the Northwest Territories Lands Act and the Commissioner’s Land Act under one territorial land management regime. Unfortunately the Bill was not co-drafted with Indigenous Governments, and fails to bring forward provisions that support shared decision-making, joint management, or integrate negotiated land use planning regimes. In short, the Bill fails to protect Aboriginal and Treaty rights and does not respect the role of Indigenous Governments or land use planning boards. It fails to reflect the collaborative approach to land and resource management that the GNWT promised to deliver.”*

This concludes Committee's review.

APPENDIX A

AMENDING MOTIONS

APPENDIX B

SUBMISSIONS