



Engagement Summary Report: “What We Heard”

*Review of the Northwest Territories
Lands Act and Commissioner’s Land Act*

October 17th, 2017

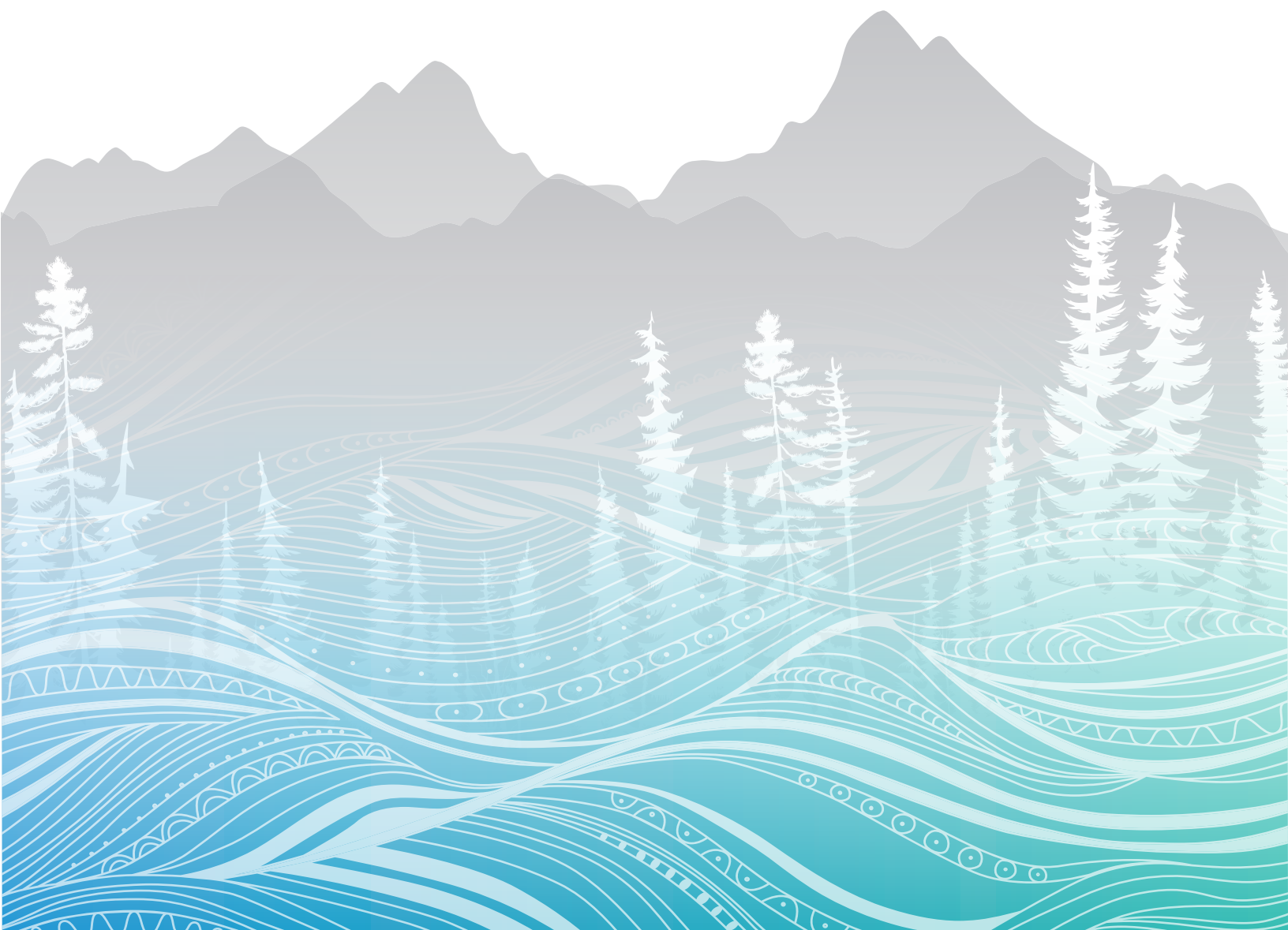


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Executive Summary

The Department of Lands (Department) reviewed the *Northwest Territories Lands Act* (NWTLA) and the *Commissioner's Land Act* (CLA) to identify potential legislative amendments that will improve the overall effectiveness of public land administration in the Northwest Territories. The Government of the Northwest Territories is looking to harmonize these two Acts as much as possible in the near term to improve the way we manage and administer public lands. This current legislative initiative is part of a broader strategy to develop a modern and comprehensive legislative framework for land and natural resource management in the Northwest Territories.

Over the summer of 2017, the Department sought feedback on issues and proposed legislative amendments outlined in a discussion paper titled "*Engagement Paper: A Review of the Commissioner's Land Act and the Northwest Territories Lands Act*" (the Engagement Paper), as well as any other issues organizations and individuals wished to identify with the two land Acts.

Considering the technical and administrative nature of the legislative review, participation in the engagement process was good. The Department received substantial input through open houses, meetings with Indigenous governments and organizations and other interested parties, online submissions and correspondence. Although the turnout for public meetings was modest, the attendees were committed to learning about the lands legislation and openly shared their wealth of experience and ideas. Many of the attendees in meetings were in leadership roles at the local or territorial level. Overall, participants indicated support for the initiative to review and improve the two land Acts. Although there are questions about the rationale for keeping two acts, the feedback generally validated the issues and supported, with some caveats, the recommended actions set out in the Engagement Paper.

This report provides an overview of the engagement tools and activities used, and summarizes the feedback the Department received during the engagement period. The Engagement Paper and other resources can be found in the Appendices. The feedback presented in this report represents only one of several sources of information that will be considered in drafting a legislative proposal.



Sommaire

Le ministère de l'Administration des terres a examiné la *Loi sur les terres des Territoires du Nord-Ouest* et la *Loi sur les terres domaniales* pour déterminer de futures modifications législatives qui amélioreront l'efficacité globale de l'administration des terres publiques aux Territoires du Nord-Ouest.

Le gouvernement des Territoires du Nord-Ouest (GTNO) souhaite harmoniser ces deux lois autant que possible dans un avenir proche, afin d'améliorer les pratiques d'administration des terres publiques. Ce projet législatif fait partie d'une entreprise ambitieuse d'adoption d'un cadre législatif moderne et complet pour l'administration des terres publiques aux Territoires du Nord-Ouest.

Au cours de l'été 2017, le Ministère a invité le public à formuler des rétroactions relativement à certaines questions et propositions de modifications législatives présentées dans un document de discussion sur l'examen de la *Loi sur les terres des Territoires du Nord-Ouest* et de la *Loi sur les terres domaniales* (ci-après nommé document de discussion). Les répondants, institutionnels ou personnels, étaient également invités à soulever toute autre question en lien avec les deux lois sur les terres.

Étant donné la nature technique et administrative de l'examen législatif, la participation au processus s'est révélée encourageante. Le Ministère a enregistré une participation soutenue par l'intermédiaire d'événements portes ouvertes, de réunions avec les organismes gouvernementaux autochtones et d'autres intervenants, ainsi que des mémoires et de la correspondance présentés en ligne. Même si peu de Tenois ont participé, ceux qui l'ont fait avaient à cœur d'en apprendre davantage au sujet des lois régissant les terres, et ont parlé ouvertement de leur vaste expérience et de leurs idées. D'ailleurs, plusieurs participants aux réunions occupent un rôle de leadership au niveau municipal ou territorial. En général, les participants appuyaient l'initiative de révision et d'amélioration des deux lois sur les terres. Bien que l'idée de conserver les deux lois ait été remise en question, les commentaires ont, en général, validé les questions soulevées et ont appuyé, accompagnés de certaines mises en garde, les mesures recommandées dans le document de discussion.

Le présent rapport fournit un résumé des activités et outils de consultation utilisés, et résume les commentaires reçus par le Ministère au cours de la consultation. Le document de discussion et d'autres ressources sont joints en annexe. Les commentaires reproduits dans le présent rapport ne constituent qu'une seule des sources d'information examinées pour la rédaction d'une proposition législative au Conseil exécutif.

1. Introduction

The Department of Lands' (Department) mandate is to manage, administer, and plan for the sustainable use of public land in the Northwest Territories in a fair and transparent manner that reflects the interests of the people of the Northwest Territories. The Department is committed to ensuring that land administration is clear, effective, and efficient.

The Department reviewed the *Northwest Territories Lands Act* (NWTLA) and the *Commissioner's Land Act* (CLA) to identify potential legislative amendments that will improve the overall effectiveness of public land administration in the Northwest Territories. The Government of the Northwest Territories (GNWT) is looking to harmonize these two Acts as much as possible in the near term to improve the way we manage and administer public lands. This legislative initiative is part of a broader strategy to develop a modern and comprehensive legislative framework for land and natural resource management in the Northwest Territories.

In June 2017, the Department released a discussion paper titled "*Engagement Paper: A Review of the Commissioner's Land Act and the Northwest Territories Lands Act*" (the Engagement Paper – attached as Appendix "A"). The Engagement Paper identified issues with the NWTLA and CLA and proposed recommended actions to address these issues.

Over the summer of 2017, the Department sought feedback on the issues and proposed legislative amendments outlined in the Engagement Paper as well as any other issues organizations and individuals wished to identify with the two land Acts.

This report summarizes the feedback the Department received from Indigenous governments and organizations (IGOs), stakeholders, and the public on potential changes to the NWTLA and CLA. The Department obtained this input through public open houses, one-on-one meetings, and online and written submissions.

2. Engagement Process

2.1 Engagement Objectives

The objectives of the engagement process were to:

- Enhance long term relationships with GNWT’s partners in public land administration
- Provide clarity for land users and the public about post devolution lands legislation
- Obtain information for decision makers about technical and operational issues and possible changes to the NWTLA and CLA
- Engage on proposed amendments to identify the best approach in advance of developing a formal legislative proposal.

2.2 Engagement Tools

The Engagement Paper was the primary tool used to facilitate discussion around potential administrative and technical changes to the NWTLA and CLA. The Engagement Paper was made available on the Department’s website, where the public could also provide online comments and submissions. The Engagement Paper was also distributed to IGOs, community governments, federal government departments, non-governmental organizations and others with interests in the Northwest Territories’ public land administration regime. Copies of the Engagement Paper were available in public and other meetings.

The information in the Engagement Paper was supplemented with a Frequently Asked Questions (FAQs) document (attached as Appendix “B”). The FAQs were also made available on the Department’s website.

In order to facilitate information dissemination and feedback all of the supporting materials were organized along the same themes as the Engagement Paper.

2.3 Engagement Activities

The Department actively sought input from IGOs, community governments, non-governmental organizations and the public through open houses in regional centres, one-on-one meetings with interested groups and online feedback gathered through the Department’s website. The Department also met with the Intergovernmental Council on Land and Resources Secretariat (IGCS) to discuss the Engagement Paper and next steps in the legislative process.

The Department engaged with IGOs early in the process to gather input and concerns. Formal Aboriginal consultation will take place at a later date when preparing draft amendments to the Acts.

PUBLIC OPEN HOUSES

Between July 20 and August 4, 2017, the Department held open house-style engagement sessions to provide an informal setting to present the contents of the Engagement Paper and to obtain input on the review of the two land Acts. The open houses were advertised on our website, in local media and through community posters.

Departmental representatives attended the public meetings including Legislative Advisors and regional Superintendents and employees, as well as a contracted expert in northern land management.

In the public meetings the Departmental representatives used a presentation summarizing the Engagement Paper to give an overview of the initiative, issues that have been identified to date, and recommended actions (presentation slides are attached in Appendix “C”). Each presentation was followed by a question and answer period. Subsequently, the open house format provided the opportunity for one-on-one interaction between attendees and GNWT representatives.

The locations, dates and number of attendees in the public meetings are provided on the following page.

Table 1: Public Engagement Sessions 2017

Location	Date	Venue	Attendance
Yellowknife	July 20	Tree of Peace	12
Norman Wells	July 25	Royal Canadian Legion	2
Inuvik	July 27	Midnight Sun Complex	2
Hay River	July 31	Ptarmigan Inn	12
Fort Smith	August 1	Roaring Rapids Hall- Fort Smith Métis Local	6
Fort Simpson	August 3	Fort Simpson Recreation Centre	1

ONLINE AND OTHER WRITTEN SUBMISSIONS

The Department received the following input:

- four online submissions from individuals
- two online submissions from organizations
- nine emails or letters from interested parties including federal government departments, land and water boards, and non-governmental organizations with interests the environment and resource development
- five submissions from IGOs
- several phone calls in which representatives of IGOs and non-governmental organizations, as well as individuals asked questions and provided comments.

MEETINGS

The Department's representatives met face-to-face or by teleconference with the IGCS, four IGOs, one community government, and two non-governmental organizations to discuss the review of the NWTLA and CLA.

3. Summary of What We Heard

This section summarizes the comments and recommendations received from the above-mentioned sources. General comments on the initiative are summarized first, followed by the feedback received on the topics set out in the Engagement Paper. These issues and recommended actions are included at the beginning of each section for ease of reference.

Please note that the comments summarized below are not detailed or verbatim from particular individuals or organizations. This report is intended to provide a summary of “what we heard” about operational and technical issues and possible changes to the NWTLA and CLA. Comments deemed outside the scope of this initiative are not included in this report.

Written submissions and notes from meetings have been stored in the Department’s files for reference in the preparation of the Legislative Proposal. They will also be available to supplement future engagement on regulations and policy.

General comments

The Department received the following general comments about the initiative; these are not specific to any particular issue or recommended change in the NWTLA or CLA.

- General support for improving and harmonizing the NWTLA and CLA to create more clarity, consistency and certainty for all public land users throughout the Northwest Territories. Although there was general support for modernizing the two land Acts following devolution, numerous contributors wondered about the rationale for keeping two land Acts rather than combining them into one comprehensive piece of legislation.
- Support for amending legislation to address issues relating to lands within and around municipal boundaries and, different processes and requirements on Territorial and Commissioner’s Land.
- The focus should be on making the legislation streamlined, easier to understand and administer, and less complicated.
- Lands administration should encourage use of land and resources for gardens, sawmills, fishing and other activities that would help people.
- Changes to the legislation should ensure Aboriginal rights are respected and protected.
- Questions and comments about how current and future self-government agreements could affect the administration of public lands within communities.
- The GNWT’s approach should consider the potential capacity challenges IGOs may face in responding to numerous ongoing GNWT and federal legislative initiatives.
- Concerns about overlapping regimes and requirements causing delays in obtaining permits for development projects, particularly where projects straddle the boundaries of Territorial and Commissioner’s Land.
- Legislative changes should address land issues relating to resource development as well as community land issues.
- Subsequent development and amendments to regulations, policies and protocols could set out limits and best management practices on the authority to dispose of land and the management of granular resources.
- General concerns about the lack of availability of lease related information, including leaseholder names, location and terms of leases, as well as inspection reports.
- Support for prioritizing commitment to openness and transparency in land administration, consistent with the GNWT’s Open Government Policy.
- Suggestion that lease applications should also be available for public review.
- GNWT is asking IGOs for information on traditional use cabins but does not release information about recreational and other land leases.

3.1 Application of the two land Acts

3.1.1 ROADS, STREETS, LANES AND TRAILS ON PUBLIC LANDS

Issue

The CLA applies to all roads, streets, lanes and trails on public lands, including those within Territorial Lands. The NWTLA does not apply to roads, streets, lanes and trails on public lands. The result is a patchwork of Territorial and Commissioner's Land, which present challenges for land administration.

Recommended Action

Propose that all roads, streets, lanes and trails within Territorial Lands are managed under the NWTLA while all roads, streets, lanes and trails within Commissioner's Land continue to be managed under the CLA.

Comments

- Support for the proposed action of putting roads and trails within otherwise Territorial Lands under the NWTLA.
- The two lands systems have created hurdles for land use projects that straddle Territorial and Commissioner's Land.
- Comments suggest clarifying the authorities to manage and regulate roads that are not designated highways managed by the Department of Infrastructure; particularly relating to "resource roads" or roads on public land that are required to access resource development projects.

Outcome

- The feedback indicates no change is necessary to this issue or recommended action.
- The Department should, however, consider reviewing the overlapping authorities in the two land Acts, and other acts, such as the *Area Development Act* and the *Public Highways Act* to address roads related issues.

3.1.2 BEDS OF BODIES OF WATER

Issue

The NWTLA applies to most beds of bodies of water, including those located within blocks of Commissioner's Land. The result is a patchwork of Territorial and Commissioner's Land, which presents challenges for land administration.

Recommended Action

Propose that all beds of bodies of water within Commissioner's Land are managed under the CLA, while beds of bodies of water within Territorial Lands continue to be managed under the NWTLA.

Comments

- Support for the proposed action to manage the beds of bodies of water within blocks of Commissioner's Land under the CLA; this would consolidate public lands within a community under a single land system.
- Concerns that administering beds of bodies of water within communities as Commissioner's Land under the CLA would weaken the protection of these beds of water bodies or the adjacent waterfront reserve land. However, no concern if the same rules apply under the CLA as the NWTLA.
- The proposal to place bed of bodies of water within communities under the CLA regime must continue to respect Aboriginal rights.
- Transferring beds of bodies of water to the Commissioner's Land system might help facilitate land administration agreements between community governments and IGOs [in the Inuvik area].
- Concerns about whether or how the proposed action may impact the jurisdiction of the land and water boards under the *Mackenzie Valley Resource Management Act*.
- Comment that beds and bodies of water could be defined inclusive of wetlands.

Outcome

- The feedback indicates no change is necessary to the issue or recommended action.
- Note that the provisions in the NWTLA that apply to beds of bodies of water, such as the "100 foot reserve," apply equally to Commissioner's Land.
- The recommended action would not change or impact the role of the land and water boards as the application of the land use permit system in the Mackenzie Valley is related to the municipal boundary and not whether the lands are under the NWTLA or CLA.

3.2 Authority to Transfer and Reserve Land for Government Use

3.2.1 CONSOLIDATE LAND UNDER A SINGLE ADMINISTRATION SYSTEM

Issue

The NWTLA and CLA provide the authority to transfer land or a category of land between the two regimes. However, there are limits to the authority to transfer where “existing interests” may be affected.

Recommended Action

Clarify that where land is transferred from one regime to the other:

- *existing interests continue unaffected*
- *there is sufficient authority to administer existing interests set out in land tenure instruments under the “new” regime.*

Comments

- The ability to consolidate lands using the existing authority for transferring administration from one system to the other could address issues that arise from having two different regimes.
- Concern about duplication and delay in getting permits and approvals, particularly where a project straddles the boundaries of Territorial and Commissioner’s Land; the transfer authority may be useful in addressing issues that arise from having two land administration systems for surface land use.

Outcome

- While GNWT legal and policy analysis indicates that the current wording in the CLA and NWTLA adequately protects existing interests and provides sufficient authority to administer existing interests under the “new” regime, the wording in the two Acts could be revised and modernized to improve the clarity of the provisions.
- It is also proposed that the administrative process of transferring land between regimes be clarified and streamlined to reduce administrative burdens.

3.2.2 RESERVE LAND FOR GOVERNMENT USE

Issue

The provisions in the NWTLA and CLA differ relating to authorities to set apart and appropriate or reserve land for public purposes. Further, the NWTLA and CLA set out different procedures and approvals required for various government uses of land.

Recommended Actions

- ***Propose to harmonize authorities in the two acts to set apart and reserve land for government and public purposes***
- ***Clarify that Territorial and Commissioner's Land may be made available for GNWT and other government's internal use for the purposes of program and service delivery.***

Comments

- Support for clarification of these provisions as there is very little understanding of what an administrative reserve is and when it may be used.
- Support for greater communication and public consultation around the government using and reserving public lands, particularly where public access to land may be affected.
- There is need to streamline the process for establishing GNWT reserves on Territorial Lands.

Outcome

- The feedback indicates no change is necessary to the issue or recommended action. Policy development may be required to support the recommended legislative changes and to clarify requirements and procedures for public consultation.

3.3 Land Tenure Instruments and Requirements

3.3.1 TYPES OF LAND TENURE INSTRUMENTS

Issue

NWTLA and CLA provide inconsistent authorities for issuing land tenure instruments. Further, there is no explicit authority in the NWTLA and CLA to issue different land tenure instruments for temporary, long-term, exclusive, and non-exclusive uses and occupancy of public lands (for example, licences, permits, authorizations, or notations).

Recommended Action

Clarify the authorities to issue different types of land tenure instruments for a range of land uses and occupancy (including non-exclusive or exclusive use, and temporary or long-term occupancy) under the NWTLA and CLA.

Comments

- Support for the proposal to clarify and enhance the authorities to issue land tenure instruments for non-exclusive land uses.
- Proposed action could be helpful as sometimes a permission to occupy land is necessary pending the issuance of leases or transfer of title.
- Any changes to land tenure instruments and requirements should respect Aboriginal rights.
- There is a significant regulatory gap with respect to roads that are not designated highways regulated or maintained under the Department of Infrastructure's legislation.
- Interest in addressing long standing concerns about road and access management.
- The two land Acts should address the need to control access where use may result in adverse environmental impacts.

Outcome

- The feedback indicates general support for the proposal to clarify the authorities to issue different types of land tenure instruments for a range of land uses and occupancy.
- The Department should, however, consider reviewing the overlapping authorities in the two land Acts, and other acts, such as the Area Development Act and the Public Highways Act to address roads related issues.

3.3.2 CLARIFY WHEN A LAND TENURE INSTRUMENT IS REQUIRED

Issue

The NWTLA and CLA each contain provisions for addressing unauthorized use, possession or occupancy of public lands. However, neither the NWTLA nor the CLA explicitly indicates when a land tenure instrument or authorization is required for land use or occupancy. This creates uncertainty in administration where a person has other permission, such as a land use permit or other authorization under other legislation (such as the federal Mackenzie Valley Resource Management Act), to undertake an activity.

Recommended Action

Clarify the types of land occupancy or uses that require a land lease or other land tenure instrument.

Comments

- Support to clarify when a land tenure instrument is required as it relates to permissions or authorizations under the *Mackenzie Valley Resource Management Act*.
- Permanent and long-term uses of land should require tenure. Other tenure options should be available for short-term uses of land.
- Consider that the *Northwest Territories Land Use Regulations* contain provisions for temporary and non-exclusive land use, however these regulations only apply in the Inuvialuit Settlement Region.
- The *Oil and Gas Operations Act* allows activities authorized under that legislation to be carried out without a surface land lease.

Outcome

- The feedback and further internal analysis indicates this issue might be addressed, in part, by clarifying the authority to issue different types of land tenure instruments.
- Any amendments will ensure consistency between the two land Acts and, will require collaboration with other GNWT Departments and should align with other legislation such as the *Oil and Gas Operations Act* and the *Mackenzie Valley Resource Management Act*.

3.4 Limits to Authority to Dispose of Land

3.4.1 MINISTER CANNOT AUTHORIZE THE SALE OF MORE THAN 160 ACRES OF TERRITORIAL LANDS

Issue

NWTLA limits the Minister's authority for sale of large parcels of Territorial Lands without approval of the Executive Council. The CLA does not contain the same limit.

Recommended Action

Propose adding the limitation in the Northwest Territories Lands Act to the Commissioner's Land Act to the amount of Commissioner's Land the Minister may sell to no more than 160 acres without the approval of the Executive Council.

Comments

- Concern that the proposal to add the limitation in the NWTLA to the CLA could affect the disposition of land to the local governments and land corporations.
- Questions about how the amount of land (160 acres/65 ha) that the Minister may sell without approval of the Executive Council was determined and if this limitation is necessary in either of the NWTLA or CLA.
- If consistency is the goal, then why not lift the restriction in the NWTLA to accord with the CLA?
- Suggestion that policies and protocols could set out limits and best management practices.

Outcome

- The feedback indicates that there is concern about adding the limitation to the CLA and that the limitation and amount in the NWTLA might not reflect current land administration issues in the Northwest Territories.
- The recommended action has been changed to remove this provision from the NWTLA and instead add the authority in the NWTLA and CLA to set reasonable limits on the Minister's authority to sell or lease public lands through regulations or policy.

3.4.2 MINISTER CANNOT AUTHORIZE LEASE FOR MORE THAN 640 ACRES OF TERRITORIAL LANDS

Issue

The NWTLA sets out a statutory limitation on the Minister’s authority to authorize a lease for more than 640 acres of Territorial Lands without approval of the Executive Council. Where a leaseholder requires additional land for a new or existing project, there are administrative costs and procedures involved which can unnecessarily delay resource development projects. The limitation is a historic measure and redundant today given the procedural checks and balances on ministerial powers. There are no such limitations in the CLA.

Recommended Action

Propose to allow the Minister to authorize the lease of over 640 acres of Territorial Lands, consistent with the authority to lease Commissioner’s Land.

Comments

- There were no comments received on the recommended action to remove this limitation from the NWTLA.

Outcome

- The recommended action has been changed to remove this provision from the NWTLA and instead add the authority in the NWTLA and CLA to set reasonable limits on the Minister’s authority to sell or lease public lands through regulations or policy.

3.4.3 MINISTER CANNOT AUTHORIZE A LEASE FOR MORE THAN 6,400 ACRES OF TERRITORIAL LANDS THAT ARE HAY LANDS OR THAT ARE SUITABLE FOR THE PURPOSES OF MUSKRAT FARMING OR GRAZING

Issue

The NWTLA limits the Minister's authority to authorize the leasing of more than 6,400 acres of land suitable for grazing or muskrat farming. The provision is historic and no longer relevant. There is no such provision in the CLA.

Recommended Action

Propose that the Minister's ability to authorize the lease of Territorial Lands is not limited by the land's use as hay land or its suitability for muskrat farming or grazing, consistent with the authority to lease Commissioner's Land.

Comments

- Although there were questions about the origin of this provision, the Department did not receive any comments on the proposal to remove it from the NWTLA.

Outcome

- The recommended action has been changed to remove this provision from the NWTLA and instead add the authority in the NWTLA and CLA to set reasonable limits on the Minister's authority to sell or lease public lands through regulations or policy.

3.4.4 PROHIBITION ON SALE OF LANDS SUITABLE FOR MUSKRAT FARMING

Issue

The NWTLA prohibits the sale of lands suitable for muskrat farming. This is a historic provision and is no longer relevant. There is no such provision in the CLA.

Recommended Action

Propose that the ability to sell Territorial Lands is not limited by its suitability for muskrat farming.

Comments

- The Department did not receive any comments on the proposal to remove this provision from the NWTLA.

Outcome

- The recommended action has been changed to remove this provision from the NWTLA and instead add the authority in the NWTLA and CLA to set reasonable limits on the Minister's authority to sell or lease public lands through regulations or policy.

3.4.5 PROTECTION OF WORKS FOR THE MOVEMENT OF TIMBER

Issue

The NWTLA provides protection of rights associated with the movement of timber. This provision is historic and is no longer relevant. It unnecessarily encumbers land titles and leases. There is no such provision in the CLA.

Recommended Action

Propose removal of the statutory reservation with respect to rights associated with the movement of timber.

Comments

- Questions of clarification about the origin of this provision and possible effects of removing the protection of works for the movement of timber when granting land titles or leases.

Outcome

- The feedback indicates no change is necessary to the issue or recommended action.

3.5 Financial Assurances and Securities

3.5.1 INCONSISTENT SECURITIES PROVISIONS IN THE TWO LAND ACTS

Issue

The NWTLA and CLA contain different provisions relating to:

- *the authority to require security*
- *security and liability*
- *security exemptions*
- *security calculations*

The differences between the two acts create challenges for land administration and a lack of clarity for land users.

Recommended Actions

- *Propose that the NWTLA and CLA provide the authority to require securities in leases and land tenure instruments issued under it for various uses, not only commercial and industrial.*
- *Propose removal of section 3.1(2) of the CLA and advance policy work on securities to support a land administration approach that is based on similar criteria but has the flexibility needed to determine security requirements for different land uses. Propose development of calculation criteria in regulations and standardize the form of security accepted. Providing for discretion to adapt or waive security amounts might help to avoid security duplications between the NWTLA, CLA, and other legislation.*
- *Propose removal of the mandatory \$1000 threshold for exemptions and use regulations to set the amount below which security is not required, unless the Minister determines otherwise based specific circumstance of particular proposed uses.*
- *Propose that the NWTLA include a provision to indicate that the posting of security does not affect the liability of a lessee for costs incurred by the GNWT in excess of the amount of the posted security for restoration of the land and other activities.*

3.5.1 INCONSISTENT SECURITIES PROVISIONS IN THE TWO LAND ACTS (CONTINUED)

Comments

- Security requirements should be informed by the need to support economic development, as well as the need to protect the public from liabilities.
- Support for security requirements should be based on the “polluter pays principle”.
- Security related provisions in the legislation should be consistent and compatible with regard to the types of land use and risks.
- Support for the recommended action to provide more flexibility in the CLA security requirements including Ministerial discretion for determining security requirements.
- Concern that the mandatory security requirements in the CLA are barriers to starting a business on leased Commissioner’s Land. In many communities the only option is to lease Commissioner’s Land because there is no option to purchase or own land. If it were possible to own land, security would not be required.
- Security can raise capital resources for the life of a commercial or industrial facility.
- Environmental risks associated with land developments within communities could be lower than in remote areas because environmental inspection and controls are easier to implement.
- Both Acts should contain consistent financial security, closure planning and remediation provisions for commercial and industrial land uses.
- Should ensure there is alignment between security requirements in different regimes that apply across the Northwest Territories.

Outcome

- The feedback indicates significant public interest in ensuring that the two acts provide the statutory authority for minimizing financial risk for Northwest Territories residents and at the same time do not create barriers to economic development that requires the use of Territorial or Commissioner’s Land.
- The recommended actions will be refined in the next stages of the legislative development process to ensure coordination with other legislative initiatives to develop a comprehensive securities regime.

3.6 Granular Resources

3.6.1 AUTHORITY FOR THE MANAGEMENT OF GRANULAR RESOURCES

Issue

The NWTLA does not provide specific enabling authority for regulations respecting the establishment, operation and restoration of a quarry, including the collection of fees, royalties and other charges. The authority exists in the CLA.

Recommended Action

Propose that the NWTLA include enabling authorities to create regulations respecting the management of granular resources including conservation and removal of granular materials from Territorial Lands and collection of fees, royalties and other charges.

Comments

- Support for the proposal to enhance the authorities for the management of granular resources and quarrying in the NWTLA.
- Consider adding regulation-making or other authorities that would recognize and give greater weight to existing departmental guidelines such as the *Northern Land Use Guidelines – Pits and Quarries*.
- Subsequent to the legislative changes, regulations, policies and protocols could set out limits and best management practices for the management of granular resources.
- There does not appear to be any effective planning in place for sand and gravel. Pits are developed ad-hoc, resulting in landscape fragmentation and inefficient use of the resources.
- There should be government inspections on removal of gravel.
- Application fees should apply to all quarrying activities.

Outcome

- The feedback indicates no change is necessary to the issue or recommended action, however, the Department will review related regulations and policies and endeavour to address other concerns identified.

3.7 Enforcement, Offences and Punishments

3.7.1 AUTHORITIES RELATING TO ENFORCEMENT, OFFENCES AND PUNISHMENTS

Issue

There are numerous differences between the NWTLA and CLA relating to enforcement, offences and punishments. The differences create challenges and inconsistencies for administration and enforcement. Operational issues are specifically related to:

- *appointment and powers of enforcement officers*
- *punishments for trespass offences*
- *administrative monetary penalties.*

Recommended Action

Propose that the enforcement, offences and punishments provisions from the NWTLA be included in the CLA, including those relating to:

- *appointment and powers of enforcement officers*
- *maximum punishments for trespass offences*
- *authority for administrative monetary penalties.*

Comments

- There should be more enforcement of trespass laws. Everyone should be required to have a land lease for cabins, with appropriate exceptions for Indigenous peoples and traditional land uses.
- Enforcement actions should be done in a transparent manner so that people can see what is being done when trespass situations are reported.
- The legislation should allow the Department to deal with or remove structures and buildings that have been abandoned on public land by squatters and others. This was identified to be a problem particularly in the Yellowknife area. The legislation should provide the authority to require people to clean up structures and personal things left on public lands and the authority for the GNWT to remove such abandoned things.
- Potential problems and hardship with enhanced legislation related to enforcement and penalties, the legislation should set out fines that are appropriate and proportional given the circumstances.
- Interest in how the penalties and fines mirrored from the federal *Territorial Lands Act* in the NWTLA were determined by the federal government before devolution.

Outcome

- The feedback indicates a high level of interest in enforcement issues, particularly as they relate to trespassing.
- No change is necessary to the recommended action, however the Department will review regulations and policies to support changes to the Acts.

3.7.2 DELEGATION AND ENFORCEMENT ACTIONS

Issue

The NWTLA and CLA require different procedures to initiate enforcement actions for the unauthorized use of public lands. Determining if there is believed to be trespass may be better delegated to an enforcement officer than performed by the Minister.

Recommended Action

Propose to clarify the Minister's authority to delegate enforcement decision-making with respect to unauthorized occupancy of public land.

Comments

- Support for the proposal to amend the NWTLA to allow delegation of the Minister's authority related trespass enforcement.
- Support for stronger enforcement of trespass laws and requirements for leases.

Outcome

- The feedback indicates no change is necessary to the issue or recommended action.

3.8 Miscellaneous

3.8.1 TERMINOLOGY AND PROCESSES FOR DELEGATING DECISION-MAKING

Issue

The NWTLA and CLA contain different provisions and terminology relating to the:

- *authority of the Commissioner*
- *delegation of decision-making authorities*

Persons authorized to make similar types of decisions are inconsistent between and within the two acts. The different processes and delegations for decision-making can result in inefficient administration and inconsistent decision-making.

Recommended Action

Propose modernization and harmonization of authorities and delegations of authority in the NWTLA and CLA to ensure decisions are being made at appropriate levels.

Comments

- Land administration should be efficient and consistent.

Outcome

- The feedback indicates no change is necessary to the issue or recommended action.

3.8.2 RESIDENTIAL TENANCIES ACT

Issue

The CLA states that the Residential Tenancies Act does not apply in respect of Commissioner's Land held under a lease issued under the CLA. There is no such residential tenancies provision in the NWTLA. As such, the Residential Tenancies Act could be applied to leases issued under the NWTLA by the GNWT.

Recommended Action

Propose that the Residential Tenancies Act not apply to a lease on Territorial Lands issued under the NWTLA.

Comments

- No comments were received on this issue.

Outcome

- No change is necessary to the issue or recommended action.

3.8.3 LIMITATION OF OCCUPIERS' LIABILITY

Issue

The CLA provides that the Commissioner is not liable as an occupier of Commissioner's Land for damages, including damages for injury or death, arising from any activity that occurs on undeveloped Commissioner's Land. There is not a limitation of liability provision in the NWTLA.

Recommended Action

Propose that the limit of liability for damages arising from any activity that occurs on undeveloped Territorial Lands be included in the NWTLA.

Comments

- No comments were received on this issue.

Outcome

- No change is necessary to the issue or recommended action.

3.8.4 UNITS OF MEASUREMENT

Issue

The NWTLA uses the imperial system whereas the CLA uses the metric system. The differences between the NWTLA and CLA create issues and inconsistencies for land administration.

Recommended Action

Propose modernization of the NWTLA by changing imperial units to the equivalent metric units.

Comments

- No comments were received on this issue.

Outcome

- No change is necessary to the issue or recommended action.

3.9 Other Issues

The Engagement Paper identified four other potential issues and invited comments on these:

The four issues are:

- the possibility of defining of “land” in the two acts
- the difference between the use of “land” and “lands” in the two acts
- the distinction between quarrying, and mining and mine safety
- the authority to grant certain specified parties an exemption from paying quarry royalties.

There were no specific comments or concerns identified with the “other” four potential issues identified in the Engagement Paper.

4. Conclusion

Overall, public engagement indicated support for the initiative to review and improve the two land Acts. Although there are questions about the rationale for keeping two acts, the feedback generally validated the issues and supported, with some caveats, the recommended actions set out in the Engagement Paper.

Considering the technical and administrative nature of the legislative review, overall participation in the engagement process was good. The Department received substantial input through open houses, meetings with IGOs and other interested parties, online submissions and correspondence. Although the turnout for the public meeting was modest, the attendees were committed to learning about the lands legislation and openly shared their wealth of experience and ideas. Many of the attendees in meetings were in leadership roles at the local or territorial level.

All of the input received was considered by the Department in preparing a Legislative Proposal to amend the two Acts to help shape a made-in-the-North approach to managing land in the Northwest Territories. This “What We Heard” summary report will be posted to the Department’s website and sent out to those organizations that participated in the engagement.



Appendix A

Engagement Paper





Engagement Paper

A Review of the Commissioner's Land Act and the Northwest Territories Lands Act

June 1 2017

INTRODUCTION

Land is Life

Land is fundamental to all aspects of life in the Northwest Territories (NWT). The Department of Lands' (Department) mandate is to manage, administer, and plan for the sustainable use of public land in the NWT in a fair and transparent manner that reflects the interests of the people of the NWT. The Department operates with the central belief that land management and administration is a core public good and critical asset. The Department is committed to ensuring that land administration is clear, effective, and efficient.

Depending on how land is used in the NWT, leases or other land tenure instruments are often required. The [Northwest Territories Lands Act](#) and the [Commissioner's Land Act](#) are administered by the Department, and provide the Government of the Northwest Territories (GNWT) with similar authorities to issue and administer leases and other land tenure instruments for the use and occupancy of public land.

The Department has reviewed the *Northwest Territories Lands Act* and the *Commissioner's Land Act* to identify potential legislative amendments that will improve the overall effectiveness of land administration in the NWT. This document identifies issues and proposes recommended actions to address these issues. The document is intended to facilitate discussion for future action.

How is Land Administered in the NWT?

Land administration regimes throughout the world have a number of common features. They are generally comprised of processes and systems to manage land and information about land. These include:

- systems and processes for recording and registering interests in land
- defining and regulating land use
- issuing and transferring interests in land

In April 2014, the responsibility for managing and administering most public land in the NWT devolved from the federal government to the GNWT. Prior to devolution, the GNWT managed Commissioner's Land under the *Commissioner's Land Act* and the federal government managed Territorial Lands under the federal *Territorial Lands Act*. Through devolution, the GNWT acquired authority over the administration and control of Territorial Lands. To ensure a smooth transition, the GNWT mirrored the federal *Territorial Lands Act* and now manages Territorial Lands under the *Northwest Territories Lands Act*. This includes all lands formerly managed by the federal government, both surface and subsurface, with the exception of certain lands retained by the federal government, primarily contaminated waste sites or sites set aside for conservation purposes.

Currently, the GNWT administers and manages land primarily through the *Northwest Territories Lands Act*, the *Commissioner's Land Act*, the *Area Development Act* and associated regulations.

The *Commissioner's Land Act* was originally based on the federal *Territorial Lands Act*, which dates back to the 1950s. Over the years, the *Commissioner's Land Act* evolved to enable the GNWT to respond to the NWT's needs, primarily in the areas of communities and recreational land use. The *Commissioner's Land Act* governs the disposition of surface rights and land use within and around most communities, as well as the land used for public airports and highways.

The *Northwest Territories Lands Act* evolved to respond to different needs, primarily for land uses related to larger scale commercial activities and natural resource development. The *Northwest Territories Lands Act* primarily governs the disposition of surface rights outside communities, as well as dispositions of subsurface rights throughout the NWT including subsurface rights that are underlying Commissioner's Land.

The Department is also responsible for the [Area Development Act](#), which provides the legislative authority to designate and regulate specific areas for development. This legislation is not the focus of this initiative.

Since these legislative frameworks for land administration developed independently over decades to address distinct geographical areas and types of land use, they are quite different today. The differences between the *Northwest Territories Lands Act* and *Commissioner's Land Act* can present challenges for land management and administration in the NWT. With both the *Northwest Territories Lands Act* and *Commissioner's Land Act* now under a single government, the GNWT has the opportunity to improve how the two lands acts work together.

What is being Proposed?

The GNWT is proposing amendments to both the *Northwest Territories Lands Act* and *Commissioner's Land Act* to improve land administration in the NWT. In some cases, where there is a direct link, this may also result in changes to regulations, policies, guidelines, and procedures.

This legislative initiative is limited in scope and intended to address current operational needs and issues that can be resolved in the short-term. Each recommended action outlined in this document aims to achieve one or more of the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act* (where appropriate)
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- improve clarity relating to legislative authority
- modernize legislation by removing or updating out-dated provisions or terminology
- minimize operational challenges in land administration
- ensure legislation reflects current risks, practices and standards
- provide clarity and transparency to land users

This document summarizes each proposed legislative amendment by identifying the issue relating to provisions of the *Northwest Territories Lands Act* and/or *Commissioner's Land Act*, as well as providing background information, recommended action(s), and rationale for recommendation(s).

The Department is interested in engaging on all of the proposed amendments to identify the best approach in advance of developing a formal legislative proposal.

Why Amend the Legislation Now?

A Mandate commitment of the 18th Legislative Assembly states, “in order to advance the territorial vision of land and resource management in accordance with the Land Use and Sustainability Framework, we will evolve our legislative, regulatory and policy systems by developing and proposing amendments to the *Commissioner's Land Act* and the *Northwest Territories Lands Act*”. This initiative marks another step in advancing the GNWT’s post-devolution vision for an integrated land and resource management regime that is designed by Northerners, for Northerners. Addressing administrative and technical issues in legislation now will help to improve land administration practices in the short-term. Meanwhile, broader discussions that include further policy and legislative analysis about the future of a more integrated and modern land management regime for the NWT can continue.

The GNWT expects that proposed amendments to the *Northwest Territories Lands Act* and *Commissioner's Land Act*, along with related changes to land administration tools such as regulations, policies, guidelines and procedures, will support land administration by:

- providing adequate authority at appropriate levels to deal with essential components of land administration
- providing flexibility to create and implement regulations and policies to support legislation
- aligning the *Northwest Territories Lands Act* and *Commissioner's Land Act* where appropriate to enable consistent administration and application

How does this relate to other Land Management Initiatives?

Land management is an integrated process that involves many parties – from the lessees to stakeholders to government bodies. Most activities require land in some capacity. As a result, the Department is engaged in many initiatives that support the effective management and sustainability of land internally and through other organizations.

Proposing administrative and technical amendments to the *Northwest Territories Lands Act* and *Commissioner's Land Act* is an independent legislative initiative. However, it relates to other ongoing GNWT initiatives. For example, all discussions are guided by the GNWT's vision and guiding principles for land use and management as set out in the [Land Use and Sustainability Framework](#).

The Department also recently released the [Recreational Leasing Management Framework](#), which guides how the GNWT manages recreational use of land. The recommended actions in this document consider recreational uses and support related implementation activities.

The Department is also modernizing the [Land Pricing Policy](#) and will be introducing new Ministerial Policies to supplement our implementation of the updated Policy.

Similarly, the recommended actions support other GNWT departments' initiatives, such as the implementation of the [Northwest Territories Agriculture Strategy](#), and the development of a new *Mineral Resources Act*. The Department will continue to work with other GNWT departments to ensure the coordination of GNWT legislative initiatives currently underway.

As this initiative moves forward, it is anticipated that legislative changes will roll out over time. This may occur in parallel with other initiatives relating to land management in the NWT. Some of the recommended actions will take longer to fully implement than others depending on the scope of activity involved.

How Can I Participate?

The GNWT is committed to collaborating with partners to make decisions in a transparent and open manner. The Department will be engaging the public on this initiative during summer 2017. Engagement activities include:

- presentations or meetings upon request with Aboriginal governments and organizations and other key stakeholder groups
- public feedback through online surveys

The Department looks forward to collaborating with Aboriginal governments and organizations, other partners and stakeholders and the public on this initiative to determine the best approach to improve land management in the NWT. Information gathered through the various public engagement activities will contribute to the Department's understanding of potential implications of these proposed legislative amendments. All comments will be considered as the Department drafts a formal legislative proposal in fall 2017.

Please visit www.lands.gov.nt.ca or email LandActsReview@gov.nt.ca to provide input and obtain information on engagement opportunities.

PROPOSED AMENDMENTS TO THE NORTHWEST TERRITORIES LANDS ACT AND COMMISSIONER'S LAND ACT

This Engagement Paper identifies issues and recommends potential actions to evolve the land management regime. The proposed recommendations set out in this document are not absolute; rather they are intended to facilitate discussion. The Engagement Paper is organized into the following sections:

Section 1: Application of the Two Lands Acts

- Section 1 discusses differences between the categories of land to which each of the two acts applies and presents options for increasing clarity for land users and land administration.

Section 2: Authority to Transfer and Reserve Land for Government Use

- Section 2 discusses differences between the two acts and authorities to consolidate land under one of the two regimes. Section 2 also discusses the authorities to set apart and reserve land for public and GNWT use.

Section 3: Land Tenure Instruments and Requirements

- Section 3 discusses the authorities set out in the two acts to issue various land tenure instruments relating to different types of land use and occupancy.

Section 4: Limits to Authority to Dispose of Land

- Section 4 discusses options to modernize out-dated provisions in the two acts which limit authorities to sell or lease public land.

Section 5: Financial Assurances and Securities

- Section 5 discusses inconsistencies between the two acts relating to financial assurances and securities required for land tenure instruments and presents options to increase clarity for land users and land administration.

Section 6: Granular Resources

- Section 6 discusses provisions in the two acts relating to authorities to manage quarrying and granular resources activities.

Section 7: Enforcement, Offences and Punishments

- Section 7 discusses and presents options to address differences between the two acts relating to enforcing legislation, as well as offences and punishments for violations of the acts.

Section 8: Miscellaneous

- Section 8 discusses issues with various provisions of the two acts and presents options for harmonization, modernization and/or clarification.

1. Application of the Two Lands Acts

1.1 Roads, streets, lanes and trails on public lands

Issue

The [Commissioner's Land Act](#) applies to all roads, streets, lanes and trails on public lands, including those within Territorial Lands. The [Northwest Territories Lands Act](#) does not apply to roads, streets, lanes and trails on public lands. The result is a patchwork of Territorial and Commissioner's Lands, which present challenges for land administration.

Background

Prior to devolution, the GNWT had administration and control over roads, streets, lanes and trails on public land. With devolution, the *Commissioner's Land Act* continues to apply to all roads, streets, lanes and trails on public lands including those within Territorial Lands.¹ Further, many roads, streets, lanes and trails are not formally identified in land records, resulting in undefined boundaries between lands under the *Northwest Territories Lands Act* and *Commissioner's Land Act*.

Recommended Action

- *Propose that all roads, streets, lanes and trails within Territorial Lands are managed under the Northwest Territories Lands Act while all roads, streets, lanes and trails within Commissioner's Land continue to be managed under the Commissioner's Land Act.*

Rationale

The recommended action will help to achieve the following goals:

- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- minimize operational challenges in land administration

¹ See section 2(c) of the *Commissioner's Land Act*.

1.2 Beds of bodies of water

Issue

The *Northwest Territories Lands Act* applies to most beds of bodies of water. The result is a patchwork of Territorial Land and Commissioner's Land, which presents challenges for land administration.

Background

Prior to devolution, the federal government transferred blocks of land, in and around communities to the GNWT. The federal government reserved beds of bodies of water and rights to water; these were managed under the federal *Territorial Lands Act*. Since devolution, beds of bodies of water continue to be managed as Territorial Lands under the *Northwest Territories Lands Act*, including most beds of bodies of water located within Commissioner's Land.

Recommended Action

- *Propose that all beds of bodies of water within Commissioner's Land are managed under the Commissioner's Land Act, while beds of bodies of water within Territorial Lands continue to be managed under the Northwest Territories Lands Act.*

Rationale

The recommended action will help to reduce uncertainty about which act applies to beds of bodies of water in communities and support the efficiency of administration under the *Northwest Territories Lands Act* and *Commissioner's Land Act*.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of *Northwest Territories Lands Act* and *Commissioner's Land Act*
- minimize operational challenges in land administration

2. Authority to Transfer and Reserve Land for Government Use

2.1 Consolidate land under a single administration system

Issue

The *Northwest Territories Lands Act* and *Commissioner's Land Act* provide the authority to transfer land or a category of land between the two regimes.² However, there are limits to the authority to transfer where “existing interests” may be affected.

Background

Certain land administration issues arising from devolution may be addressed by using the transfer authorities to consolidate lands for similar use or within geographic areas under a single administration system. For example, most of the lands in and around communities are Commissioner's Land. However, there are some communities made up mostly of Territorial Lands that were not transferred to the GNWT before devolution. Similarly, some parcels of Territorial Lands exist within communities largely made up of Commissioner's Land. As a result there can be inconsistencies in land administration within community areas, for example different lease rents, as well as terms and conditions between leaseholders.

Although the *Northwest Territories Lands Act* and *Commissioner's Land Act* provide the authority to transfer land between regimes, the authority is limited. The *Northwest Territories Lands Act* and *Commissioner's Land Act* provide that an interest existing at the time of an order transferring land to the other system continues unaffected by the order and shall be respected and administered “as if the order had not been made.”³ In essence, where land is transferred between regimes, existing interests continue under the original land regime until they expire or are surrendered and replaced under the new lands systems.

Recommended Action

- *Clarify that where land is transferred from one regime to the other:*
 - *existing interests continue unaffected*
 - *there is sufficient authority to administer existing interests set out in land tenure instruments under the “new” regime*

Rationale

The recommended action will help to ensure that leaseholders maintain their rights and interests while providing consistency, clarity and transparency in land administration and decision-making.

The recommended action will help to achieve the following goals:

- improve clarity with respect to legislative authority
- minimize operational challenges in land administration
- provide clarity and transparency to land users

² See section 53 of the *Northwest Territories Lands Act* and section 2 of the *Commissioner's Land Act*.

³ See section 53(4) of the *Northwest Territories Lands Act* and section 2(4) of the *Commissioner's Land Act*. See also section 3.27 of the Devolution Agreement which provides that an “Existing Interest shall continue in full force and effect unless the holder of the Existing Interest and the GNWT agree that the Existing Interest be cancelled and replaced by a right or interest provided by the GNWT.”

2.2 Reserve land for government use

Issue

The provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act* differ relating to authorities to set apart and appropriate or reserve land for public purposes. Further, the *Northwest Territories Lands Act* and *Commissioner's Land Act* set out different procedures and approvals required for various government uses of land.

Background

The *Commissioner's Land Act* provides that the Commissioner may set apart and reserve land for “public and other purposes.”⁴ The *Northwest Territories Lands Act* provides that the Commissioner in Executive Council may set apart and appropriate Territorial Lands for sites of places of public worship, burial grounds, schools, market places, jails, court houses, town halls, public parks or gardens, hospitals, harbours, landings, bridge sites, airports, landing fields, railway stations, town-sites, historic sites or “for other public purposes.”⁵ The difference in language can present uncertainty about authorities to set apart and reserve land for government or public purposes.

Pursuant to the *Northwest Territories Lands Act*, even temporary uses of Territorial Lands by a department of the GNWT, for example a water stream gauge, require the approval of the Executive Council. The *Commissioner's Land Act* does not require approval of the Executive Council for GNWT use of land.

Recommended Action

- *Propose to harmonize authorities in the two acts to set apart and reserve land for government and public purposes.*
- *Clarify that Territorial and Commissioner's Land may be made available for GNWT and other government's internal use for the purposes of program and service delivery.*

Rationale

The recommended action will help to establish clear enabling authority and consistency for regulations and associated policy respecting land reserves on Commissioner's and Territorial Lands, and ensure that GNWT departments and other governments have timely access to public lands for programs and services. Internal policies may need to be developed to clarify administrative requirements and procedures.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- minimize operational challenges in land administration

⁴ See section 4 of the *Commissioner's Land Act*.

⁵ See section 19(b) of the *Northwest Territories Lands Act*.

3. Land Tenure Instruments and Requirements

3.1 Types of land tenure instruments

Issue

The *Northwest Territories Lands Act* and *Commissioner's Land Act* provide inconsistent authorities for issuing land tenure instruments. Further, there is no explicit authority in the *Northwest Territories Lands Act* and *Commissioner's Land Act* to issue different land tenure instruments for temporary, long-term, exclusive, and non-exclusive uses and occupancy of public lands (for example, licences, permits, authorizations, or notations).

Background

The *Northwest Territories Lands Act* provides the authority for the “sale, lease and licensing or other disposition” of Territorial Lands. The *Northwest Territories Lands Act* does not provide specific authority for other land tenure instruments giving non-exclusive permission to use public land for a specific purpose for a specified period of time.⁶

The *Commissioner's Land Act* provides the authority for the “sale, lease or other disposition” of Commissioner's Land. The *Commissioner's Land Act* does not provide explicit authority for issuing licences or other land tenure instruments giving non-exclusive permission to use public land for a specific purpose for a specified period of time.⁷

The legislation does not provide explicit authority, in particular relating to the regulation-making authority, for the issuance of a licence or other instrument where exclusive use and long-term possession (for example in the form of a lease) is not necessary.

Recommended Action

- Clarify the authorities to issue different types of land tenure instruments for a range of land uses and occupancy (including non-exclusive or exclusive use, and temporary or long-term occupancy) under the *Northwest Territories Lands Act* and the *Commissioner's Land Act*.

Rationale

The recommended action will support ongoing GNWT initiatives and discussions relating to the availability of tools for land administration and management. Eventually, the recommended action will provide clarity for different uses of land. Further analysis and public input will be required to determine the types of land tenure instruments best suited to the needs and interests of Northern residents. Further analysis is also required to determine the best terminology to be used in order to avoid confusion or complications with authorizations issued under other legislation, such as the *Waters Act*.

Alternatively, the Department could potentially develop policies to clarify the various types of land tenure instruments available under the *Northwest Territories Lands Act* and *Commissioner's Land Act*, rather than amending the legislation.

⁶ See sections 6 and 19(k) of the *Northwest Territories Lands Act*.

⁷ See sections 3(1) and 12(i) of the *Commissioner's Land Act*.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- improve clarity with respect to legislative authority

3.2 Clarify when a land tenure instrument is required

Issue

The *Northwest Territories Lands Act* and *Commissioner's Land Act* each contain provisions for addressing unauthorized use, possession or occupancy of public lands. However, neither the *Northwest Territories Lands Act* nor the *Commissioner's Land Act* explicitly indicates when a land tenure instrument or authorization is required for land use or occupancy. This creates uncertainty in administration where a person has other permission, such as a land use permit or other authorization under other legislation (such as the federal *Mackenzie Valley Resource Management Act*) to undertake an activity.

Background

The *Northwest Territories Lands Act* and *Commissioner's Land Act* generally do not set out when the use of land would require a land lease or other land tenure instrument. However, the Mining Regulations, under the *Northwest Territories Lands Act*, require that subsurface mineral rights be accompanied by surface rights (such as a land lease) before a mine can enter into production.

The *Northwest Territories Lands Act* and *Commissioner's Land Act* do not create linkages between other potential land uses that may require separate rights and interests. Establishing criteria will help clarify when obtaining a land lease or other land tenure instrument for all uses of land is necessary, for example for oil and gas activities, and tourism.

Recommended Actions

- *Clarify the types of land occupancy or uses that require a land lease or other land tenure instrument.*

Rationale

This will provide clarity to land users and the public about the differences between permissions and authorizations required for various types of land use and occupancy. It will also ensure there is authority to collect land rents and other revenue for occupancy. Policy work and regulatory amendments will be required to support this recommended action.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- provide clarity and transparency to land users
- minimize operational challenges in land administration

4. Limits to the Authority to Dispose of Land

4.1 Minister cannot authorize the sale of more than 160 acres of Territorial Lands

Issue

The [Northwest Territories Lands Act](#) limits the Minister's authority for sale of large parcels of Territorial Lands without approval of the Executive Council. The [Commissioner's Land Act](#) does not contain the same limit.

Background

The *Northwest Territories Lands Act* provides that not more than 160 acres of Territorial Lands may be sold to a person without the approval of the Commissioner in Executive Council.⁸ There is no such restriction of the Minister's authority to sell Commissioner's Land.

Recommended Action

- *Propose adding the limitation in the Northwest Territories Lands Act to the Commissioner's Land Act to the amount of Commissioner's Land the Minister may sell to no more than 160 acres without the approval of the Executive Council.*

Rationale

The recommended action sets a reasonable limit on the Minister's authority to sell Commissioner's Land.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*

⁸ See section 9 (1) of the *Northwest Territories Lands Act*.

4.2 Minister cannot authorize lease for more than 640 acres of Territorial Lands

Issue

The *Northwest Territories Lands Act* sets out a statutory limitation on the Minister's authority to authorize a lease for more than 640 acres of Territorial Lands without approval of the Executive Council. Where a leaseholder requires additional land for a new or existing project, there are administrative costs and procedures involved which can unnecessarily delay resource development projects. The limitation is a historic measure and redundant today given the procedural checks and balances on ministerial powers. There are no such limitations in the *Commissioner's Land Act*.

Background

The *Northwest Territories Lands Act* provides that except for grazing land the Minister may not lease more than 640 acres of Territorial Lands to a person without the approval of the Commissioner in Executive Council. This limitation is not in the *Commissioner's Land Act*.⁹ The 640-acre limit is a cumulative total for any person in any place the NWT. For example, once a company reaches the 640-acre limit, even if some or all of the lands are no longer leased, Executive Council approval is required each time additional land is leased.

Recommended Action

- *Propose to allow the Minister to authorize the lease of over 640 acres of Territorial Lands, consistent with the authority to lease Commissioner's Land.*

Rationale

The recommended action will eliminate the need to obtain approval from the Executive Council for applications for additional land under existing leases. This will support more efficient regulatory processes for larger projects by avoiding duplication in decision-making. If any limits on the Minister's authority were to be required in the future, they could be set out by the Executive Council in regulations.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- modernize legislation by removing or updating out-dated provisions or terminology
- minimize operational challenges in land administration

⁹ See section 9 (2) of the *Northwest Territories Lands Act*.

4.3 Minister cannot authorize lease for more than 6,400 acres of Territorial Lands that are hay lands or that are suitable for the purposes of muskrat farming or grazing

Issue

The *Northwest Territories Lands Act* limits the Minister's authority to authorize the leasing of more than 6,400 acres of land suitable for grazing or muskrat farming. The provision is historic and no longer relevant. There is no such provision in the *Commissioner's Land Act*.

Background

The *Northwest Territories Lands Act* provides that where Territorial Lands are hay lands or lands suitable for grazing or muskrat farming, not more than 6,400 acres may be leased by a person without the approval of the Commissioner in Executive Council.¹⁰ It is unlikely that the amount of land leased for muskrat farming or for grazing would ever exceed 6,400 acres.

Recommended Action

- *Propose that the Minister's ability to authorize the lease of Territorial Lands is not limited by the land's use as hay land or its suitability for muskrat farming or grazing, consistent with the authority to lease Commissioner's Land.*

Rationale

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- modernize legislation by removing or updating out-dated provisions or terminology

¹⁰ See section 9 (3) of the *Northwest Territories Lands Act*.

4.4 Prohibition on sale of lands suitable for muskrat farming

Issue

The *Northwest Territories Lands Act* prohibits the sale of lands suitable for muskrat farming. This is a historic provision and is no longer relevant. There is no such provision in the *Commissioner's Land Act*.

Background

The *Northwest Territories Lands Act* contains a provision that prohibits the sale of Territorial Lands suitable for muskrat farming.¹¹

Recommended Action

- *Propose that the ability to sell Territorial Lands is not limited by its suitability for muskrat farming.*

Rationale

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- modernize legislation by removing out-dated provisions or terminology

¹¹ See section 8 of the *Northwest Territories Lands Act*.

4.5 Protection of works for the movement of timber

Issue

The *Northwest Territories Lands Act* provides protection of rights associated with the movement of timber. This provision is historic and is no longer relevant. It unnecessarily encumbers land titles and leases. There is no such provision in the *Commissioner's Land Act*.

Background

The *Northwest Territories Lands Act* provides statutory protection in all Territorial Lands sales, leases or other dispositions of any rights and works (dams, piers, booms, portages, etc.) associated with the movement of timber.¹²

Recommended Action

- *Propose removal of the statutory reservation with respect to rights associated with the movement of timber.*

Rationale

The recommended action will create greater certainty for land titles and leases.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- modernize legislation by removing or updating out-dated provisions or terminology

¹² See section 15 of the *Northwest Territories Lands Act*.

5. Financial Assurances and Securities

5.1 Inconsistent securities provisions in the two lands acts

Issue

The [Northwest Territories Lands Act](#) and [Commissioner's Land Act](#) contain different provisions relating to:

- the authority to require security
- security and liability
- security exemptions
- security calculations

The differences between the two acts create challenges for land administration and a lack of clarity for land users.

Background

Security is an important tool for reducing GNWT exposure to financial risk associated with the use of public land and resources. The *Northwest Territories Lands Act* and *Commissioner's Land Act* should provide the ability to ensure that security may be required of a land user for different types of land tenure instruments and that security is adequate. The two acts contain several differences relating to security. These differences are summarized below.

- The *Northwest Territories Lands Act* does not provide explicit authority to require securities for leases or other land tenure instruments issued under it. The *Commissioner's Land Act* was amended in 2011 to add such authority and other provisions for the amount, form, and use of security but only for commercial and industrial leases.
- The *Commissioner's Land Act* sets out criteria to be used in calculating a security amount. The *Northwest Territories Lands Act* does not.¹³ The specific calculation criteria set out in the *Commissioner's Land Act* limits Executive Council and Ministerial decision-making authority.
- The *Commissioner's Land Act* requires security to be taken in every commercial or industrial land lease if the amount of security would exceed \$1000.¹⁴ The inclusion of the exemption amount of security in the *Commissioner's Land Act* does not allow flexibility for the Executive Council to determine an appropriate exemption amount of security. The *Northwest Territories Lands Act* does not contain such a provision.
- The *Commissioner's Land Act* includes a provision that the posting of security does not affect the liability of a lessee for damages in excess of the amount of the posted security required for restoration of the land.¹⁵ The *Northwest Territories Lands Act* does not contain such a provision.
- The *Commissioner's Land Act* and associated regulations prohibit the taking of cash for securities.

Recommended Actions

- *Propose that the Northwest Territories Lands Act and the Commissioner's Land Act provide the authority to require securities in leases and land tenure instruments issued under it for various uses, not only commercial and industrial.*

¹³ See section 3.1(2) of the *Commissioner's Land Act*.

¹⁴ See section 3.1(3) of the *Commissioner's Land Act*.

¹⁵ See section s. 3.1 (5) of the *Commissioner's Land Act*.

- *Propose removal of section 3.1(2) of the Commissioner's Land Act and advance policy work on securities to support a land administration approach that is based on similar criteria but has the flexibility needed to determine security requirements for different land uses. Propose development of calculation criteria in regulations and standardize the form of security accepted. Providing for discretion to adapt or waive security amounts might help to avoid security duplications between the Northwest Territories Lands Act, Commissioner's Land Act and other legislation.*
- *Propose removal of the mandatory \$1000 threshold for exemptions and use regulations to set the amount below which security is not required, unless the Minister determines otherwise based specific circumstance of particular proposed uses.*
- *Propose that the Northwest Territories Lands Act include a provision to indicate that the posting of security does not affect the liability of a lessee for costs incurred by the GNWT in excess of the amount of the posted security for restoration of the land and other activities.*

Rationale

Policy and guidelines related to securities are being developed by the Department and other GNWT departments. The recommended actions will support and enable the GNWT to manage securities consistently and effectively.

The recommended actions have the potential to reduce costs to the GNWT and proponents relating to security. Broad authorities will allow a full range of actions to guide the GNWT in implementing a modern approach to managing securities for land use activities.

The recommended actions will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- improve clarity relating to legislative authority
- provide clarity and transparency to land users
- ensure legislation reflects current risks, practices, and standards
- minimize operational challenges in land administration

6. Granular Resources

6.1 Authority for the management of granular resources

Issue

The [Northwest Territories Lands Act](#) does not provide specific enabling authority for regulations respecting the establishment, operation and restoration of a quarry, including the collection of fees, royalties and other charges. The authority exists in the [Commissioner's Land Act](#).

Background

Although the [Quarrying Regulations](#) are under the *Northwest Territories Lands Act*, the *Northwest Territories Lands Act* does not specifically provide specific authority for regulations respecting the management of granular resources on Territorial Lands. The Quarrying Regulations are made under a general “all purpose” authority¹⁶ which may be inadequate for expanding and modernizing the Quarrying Regulations.

The *Commissioner's Land Act* contains explicit regulation-making authority for quarrying.¹⁷

Recommended Action

- *Propose that the Northwest Territories Lands Act include enabling authorities to create regulations respecting the management of granular resources including conservation and removal of granular materials from Territorial Lands and collection of fees, royalties and other charges.*

Rationale

This will help to improve granular resource management in the NWT, reduce GNWT liability for pit reclamation, and establish clear authority for revenue collection.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- improve clarity with respect to legislative authority

¹⁶ See section 19 of the *Northwest Territories Lands Act*.

¹⁷ See section 12(c) of the *Commissioner's Land Act*.

7. Enforcement, Offences and Punishments

7.1 Authorities relating to enforcement, offences and punishments

Issue

There are numerous differences between the [Northwest Territories Lands Act](#) and [Commissioner's Land Act](#) relating to enforcement, offences and punishments. The differences create challenges and inconsistencies for administration and enforcement. Operational issues are specifically related to:

- appointment and powers of enforcement officers
- punishments for trespass offences
- administrative monetary penalties

Background

The differences between the *Northwest Territories Lands Act* and *Commissioner's Land Act* are summarized below:

- The *Northwest Territories Lands Act* provides enforcement officers with extensive and detailed powers, as well as limitations on those powers.¹⁸ The *Commissioner's Land Act* does not provide for the same authorities.
- The maximum punishments for the same trespass offences are different in the *Northwest Territories Lands Act* and *Commissioner's Land Act*.¹⁹
 - Pursuant to the *Northwest Territories Lands Act* and *Commissioner's Land Act*, it is an offence to remain on public lands after having been ordered to vacate it or after having been removed from it.²⁰
 - Pursuant to the *Commissioner's Land Act*, this offence is punishable on summary conviction. The *Commissioner's Land Act* does not set out a maximum punishment for this offence.
 - The *Northwest Territories Lands Act*, which mirrored the 2014 punishments updated in the federal *Territorial Lands Act*, sets out a punishment if found guilty of trespass for the first offence to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding six months, or to both; and for a second or subsequent offence, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.
- The *Northwest Territories Lands Act* provides enabling authority, as well as limitations, for regulations respecting administrative monetary penalties.²¹ This authority does not exist in the *Commissioner's Land Act*.

¹⁸ See sections 29 to 32 of the *Northwest Territories Lands Act*.

¹⁹ See section 17 of the *Northwest Territories Lands Act*.

²⁰ See section 17 of the *Northwest Territories Lands Act* and section 6 of the *Commissioner's Land Act*.

²¹ See sections 33 to 52 of the *Northwest Territories Lands Act*.

Recommended Action

- *Propose that the enforcement, offences and punishments provisions from the Northwest Territories Lands Act be included in the Commissioner's Land Act, including those relating to:*
 - *appointment and powers of enforcement officers*
 - *maximum punishments for trespass offences*
 - *authority for administrative monetary penalties*

Rationale

The recommended actions will support consistent, effective, and efficient enforcement for all public lands.

The recommended action to align enforcement, offences and punishment provisions will create consistency between the *Northwest Territories Lands Act* and *Commissioner's Land Act*, help to discourage unauthorized use of public land and support sustainable land management practices.

Administrative monetary penalties are being widely used across Canada to regulate certain activities and many partners have indicated support for developing an NWT scheme. The federal government is currently working on regulations under the federal *Territorial Lands Act*, which may provide a model for the NWT. GNWT regulations and supporting policies will need to be developed under the *Northwest Territories Lands Act* and *Commissioner's Land Act* before an administrative monetary penalties regime can be fully implemented.

Updating provisions relating to enforcement, offences and penalties requires further discussion to ensure alignment with compliance and enforcement initiatives across other GNWT legislation.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- minimize operational challenges in land administration

7.2 Delegation and enforcement actions

Issue

The *Northwest Territories Lands Act* and *Commissioner's Land Act* require different procedures to initiate enforcement actions for the unauthorized use of public lands. Determining if there is believed to be trespass may be better delegated to an enforcement officer than performed by the Minister.

Background

The *Commissioner's Land Act* provides for the Minister or his or her delegate to “form an opinion” that a person is wrongfully or without lawful authority using, possessing, or occupying Commissioner's Land.²²

The *Northwest Territories Lands Act* does not explicitly state that the Minister may delegate the task of forming an opinion that a person is unlawfully using, possessing, or occupying Territorial Lands.²³

Recommended Action

- *Propose to clarify the Minister's authority to delegate enforcement decision-making with respect to unauthorized occupancy of public land.*

Rationale

The recommended action will improve consistency between *Northwest Territories Lands Act* and *Commissioner's Land Act* and will provide authorities at appropriate levels. This will support timely initiation of enforcement for suspected new trespassing on Territorial Lands.

This recommendation will help ensure enforcement actions against unauthorized occupants can be consistently applied in accordance with GNWT policies and guidelines, and all enforcement actions are appropriate for the specific situation being investigated.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- ensure legislation reflects current risks, practices and standards
- minimize operational challenges in land administration

²² See section 5 of the *Commissioner's Land Act*.

²³ See section 16 of the *Northwest Territories Lands Act*.

8. Miscellaneous

8.1 Terminology and processes for delegating decision-making

Issue

The [Northwest Territories Lands Act](#) and [Commissioner's Land Act](#) contain different provisions and terminology relating to the:

- authority of the Commissioner
- delegation of decision-making authorities

Persons authorized to make similar types of decisions are inconsistent between and within the two acts. The different processes and delegations for decision-making can result in inefficient administration and inconsistent decision-making.

Background

The *Commissioner's Land Act* provides different authorities to the Commissioner in various provisions. Three separate authorities exist throughout the act: the "Commissioner", the "Commissioner in Executive Council" or the "Commissioner, on the recommendation of the Minister." The *Northwest Territories Lands Act* only refers to the "Commissioner in Executive Council."

The *Northwest Territories Lands Act* and *Commissioner's Land Act* also provide different authorities to delegate decision-making powers. The *Commissioner's Land Act* provides that certain persons may be designated decision-making authorities by: the Commissioner, the Commissioner in Executive Council, the Commissioner on the recommendation of the Minister, or the Deputy Minister. The *Northwest Territories Lands Act* allows the Minister to delegate his or her responsibilities and authorities. Associated regulations are also inconsistent.

Recommended Action

- *Propose modernization and harmonization of authorities and delegations of authority in the Northwest Territories Lands Act and Commissioner's Land Act to ensure decisions are being made at appropriate levels.*

Rationale

The recommended action will increase transparency and accountability in decision-making. It will also improve efficiency while ensuring that decisions are delegated to persons with appropriate levels of authority.

Regulations under the two acts will also require amendments.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- improve clarity with respect to legislative authority
- modernize legislation by removing out-dated provisions or terminology
- minimize operational challenges in land administration

8.2 Residential Tenancies Act

Issue

The *Commissioner's Land Act* states that the [Residential Tenancies Act](#) does not apply in respect of Commissioner's Land held under a lease issued under the *Commissioner's Land Act*.²⁴ There is no such residential tenancies provision in the *Northwest Territories Lands Act*. As such, the *Residential Tenancies Act* could be applied to leases issued under the *Northwest Territories Lands Act* by the GNWT.

Background

The *Residential Tenancies Act* sets out obligations and liabilities that characterize traditional landlord-tenant relationships. These are not always appropriate or applicable for land leases granted by the GNWT.

Recommended Action

- *Propose that the Residential Tenancies Act not apply to a lease on Territorial Lands issued under the Northwest Territories Lands Act.*

Rationale

This amendment will reduce GNWT potential liability and legal costs, and improve consistency between the *Northwest Territories Lands Act* and *Commissioner's Land Act*.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- minimize operational challenges in land administration

²⁴ See section 3 (1.2) of the *Commissioner's Land Act*.

8.3 Limitation of occupiers' liability

Issue

The *Commissioner's Land Act* provides that the Commissioner is not liable as an occupier of Commissioner's Land for damages, including damages for injury or death, arising from any activity that occurs on undeveloped Commissioner's Land.²⁵ There is not a limitation of liability provision in the *Northwest Territories Lands Act*.

Background

Occupiers' liability refers to the duties that occupiers owe to individuals who enter their premises. The gap in the *Northwest Territories Lands Act* potentially leaves the GNWT open to liability, where it would not be under the *Commissioner's Land Act*.

Recommended Action

- Propose that the limit of liability for damages arising from any activity that occurs on undeveloped Territorial Lands be included in the *Northwest Territories Lands Act*.

Rationale

The recommended action will improve consistency between the *Northwest Territories Lands Act* and *Commissioner's Land Act*, and reduce GNWT potential liability and legal costs.

This provision in both Acts can be repealed by way of a consequential amendment when the new GNWT "Occupier's Liability Act" comes into force. The Department is in the early stages of developing this legislation for the GNWT.

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- minimize operational challenges in land administration

²⁵ See section 6.1 (1) of the *Commissioner's Land Act*.

8.4 Units of measurement

Issue

The *Northwest Territories Lands Act* uses the imperial system whereas the *Commissioner's Land Act* uses the metric system. The differences between the *Northwest Territories Lands Act* and *Commissioner's Land Act* create issues and inconsistencies for land administration.

Background

The *Northwest Territories Lands Act* uses the imperial system, for example provisions relating to land parcel size or distances are in acres and feet. The *Commissioner's Land Act* uses the metric system, provisions relating to parcel size or distances are in hectares and metres. Canada officially uses the metric system and has since the 1970s. The use of the imperial system in the *Northwest Territories Lands Act* is out-dated and creates challenges in land administration.

Recommended Action

- *Propose modernization of the Northwest Territories Lands Act by changing imperial units to the equivalent metric units.*

Rationale

The recommended action will help to achieve the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- modernize legislation by removing out-dated provisions or terminology
- minimize operational challenges in land administration

OTHER ISSUES

Other issues requiring further discussion and analysis were identified through the review of the [Northwest Territories Lands Act](#) and [Commissioner's Land Act](#). Many of the issues addressed were raised internally, within the GNWT. Other issues include, but are not limited to:

- The term “land” is not consistently defined in the *Northwest Territories Lands Act* and *Commissioner's Land Act*. Defining land clearly in the two lands acts may address specific issues that arise for land administration.
- The *Northwest Territories Lands Act* refers to “lands” and the *Commissioner's Land Act* refers to “land”. Although this is a minor difference between the acts and regulations, it often adds confusion and results in errors when referencing legislation.
- The *Northwest Territories Lands Act* and *Commissioner's Land Act* do not adequately distinguish quarrying activities from mines. The legislation creates uncertainty as to whether the [Mine Health and Safety Act](#) applies to quarrying activities that are managed under the *Northwest Territories Lands Act* and *Commissioner's Land Act*.
- Pursuant to the *Commissioner's Land Act* and the [Quarrying Regulations](#) under the *Northwest Territories Lands Act*, certain persons or entities are not required to pay application fees and royalties for quarrying activities. It is possible that additional persons or entities not included in the acts and regulations should not be required to pay fees and royalties for certain activities.

The Department invites comments on the above-noted issues, as well as other administrative or technical issues not mentioned in this document relating to the *Northwest Territories Lands Act* and *Commissioner's Land Act*.

CONCLUSION

This legislative initiative is part of a broader strategy to develop a modern and comprehensive legislative framework for land management and administration in the NWT. The proposed amendments identified in this paper are intended to address existing land administration challenges in the short-term, while ensuring there is sufficient flexibility and authority as land administration evolves within the GNWT.

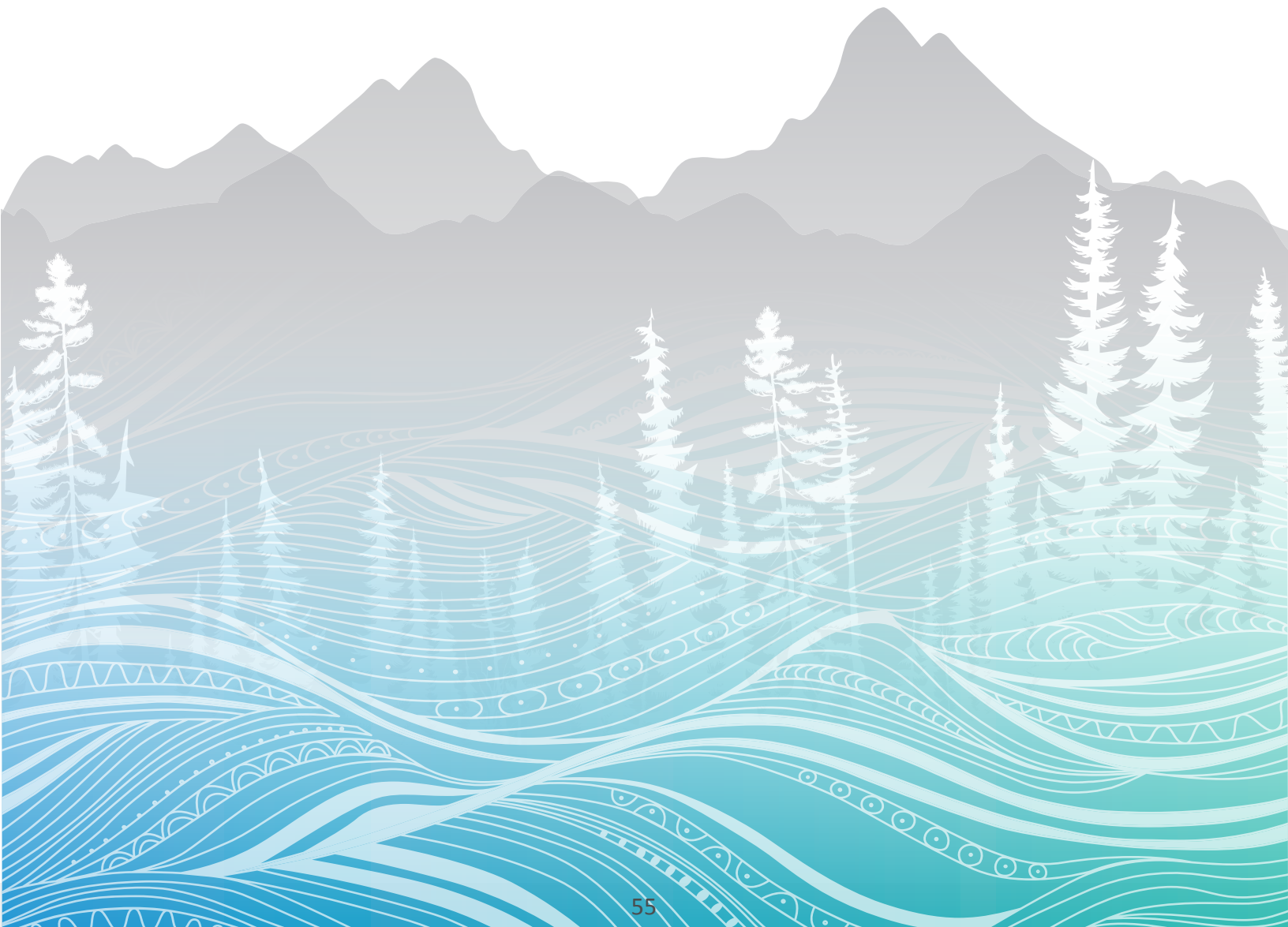
Next Steps

The issues and proposed amendments presented in this document have been identified by the Department are set out for discussion purposes. The Department intends to engage Aboriginal governments and organizations, stakeholders, and the public on the recommendations and provide opportunities for input during summer 2017. The Department will develop a formal legislative proposal in the fall of 2017.

Please visit www.lands.gov.nt.ca for more information.

Appendix B

Frequently Asked Questions (FAQs)



Frequently Asked Questions

A Review of the *Commissioner's Land Act* and *Northwest Territories Lands Act*

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Overview

- **Why are you doing a review of the Northwest Territories Lands Act and Commissioner's Land Act?**

The GNWT is reviewing both the *Northwest Territories Lands Act* and *Commissioner's Land Act* to propose amendments to improve land administration in the NWT. This legislative initiative is articulated in the *Engagement Paper: A Review of the Commissioner's Land Act and the Northwest Territories Lands Act*. The initiative is limited in scope and intended to address current operational needs and issues that can produce near-term improvements in land administration and client services.

- **What is the objective of this initiative?**

Each recommended action outlined in the engagement paper aims to achieve one or more of the following goals:

- align provisions in the *Northwest Territories Lands Act* and *Commissioner's Land Act* (where appropriate)
- enhance consistency in the application of the *Northwest Territories Lands Act* and *Commissioner's Land Act*
- improve clarity relating to legislative authority
- modernize legislation by removing or updating out-dated provisions or terminology
- minimize operational challenges in land administration
- ensure legislation reflects current risks, practices and standards
- provide clarity and transparency to land users

- **Why do we need to amend the Northwest Territories Lands Act and the Commissioner's Land Act?**

This initiative marks another step in advancing the GNWT's post-devolution vision for an integrated land and resource management regime that is designed by Northerners, for Northerners. Addressing administrative and technical issues in legislation now will help to improve land administration practices in the short-term.

Meanwhile, broader discussions that include further policy and legislative analysis about the future of a more integrated and modern land management regime for the NWT can continue.

- **What about regulations? Will they also be changed?**

Regulations rely on authorities found in acts. The amendments will ensure authorities are appropriate for supporting future changes to regulations, policies, guidelines, and procedures, as required, to further evolve the land administration system.

About the Northwest Territories Lands Act and the Commissioner's Land Act

- **What is the difference between the Northwest Territories Lands Act and the Commissioner's Land Act?**

The *Commissioner's Land Act* was originally based on the federal *Territorial Lands Act*, which dates back to the 1950s. Over the years, the *Commissioner's Land Act* evolved to enable the GNWT to respond to the NWT's needs, primarily in the areas of communities and recreational land use. The *Commissioner's Land Act* governs the disposition of surface rights and land use within and around most communities, as well as the land used for public airports and highways.

The *Northwest Territories Lands Act* though it includes recreational use as well, responded to different needs, primarily for land uses related to larger scale commercial activities and natural resource development. The *Northwest Territories Lands Act* governs the disposition of surface rights outside communities, as well as subsurface rights throughout the NWT including subsurface rights that are underlying Commissioner's Land.

- **Why do we have two lands acts – why can't we just have one?**

In April 2014, the responsibility for managing and administering most public land in the NWT devolved from the federal government to the GNWT. Prior to devolution, the GNWT managed Commissioner's Land under the *Commissioner's Land Act* and the federal government managed Territorial Lands under the federal *Territorial Lands Act*. Devolution gave the GNWT authority over the administration and control of Territorial Lands. To ensure a smooth transition, the GNWT mirrored the federal *Territorial Lands Act* and now manages them under the *Northwest Territories Lands Act*. This includes all lands formerly managed by the federal government, both surface and subsurface, with the exception of certain lands retained by the federal government, mostly contaminated waste sites or sites set aside for conservation purposes.

The GNWT continues to manage land through both the *Northwest Territories Lands Act* and the *Commissioner's Land Act*. The GNWT is looking to the best practices in the two acts to improve land administration under both pieces of legislation. In the longer term, the GNWT will review the two lands acts and other related legislation and explore options to improve and modernize land management.

I am a leaseholder...

- **How will changes in legislation affect me? Will the terms and conditions of my lease be affected?**

The proposed changes in the lands legislation would not affect the rights you have as the holder of a lease. Your rights are set out in the terms and conditions of the lease itself. Leases are contracts and can only be changed with the agreement of both the lessor and lessee.

- **I am a recreational land user; will I have to post security?**

The conditions of an existing lease could not be unilaterally changed to require security. Given the nature of recreational land use and associated risk for the GNWT, it is unlikely that security would be required under normal circumstances in a new recreational land lease.

- **What will happen if the land I lease is transferred to the other regime?**

The two lands acts currently provide authority for the transfer of land administration from one regime to the other, importantly, subject to the protection of any existing lease or other such interests. There is no proposal to remove the protection of existing leases. The rights you have through the lease would continue unaffected and the lease conditions cannot be changed without your agreement.

- **Will this legislative initiative make more land available to buy or lease for residential use, agriculture, and cottages?**

The Department of Lands is aware of the interest by some NWT residents in acquiring public land for various uses. Since devolution the GNWT has made significant strides to improve land management. The Land Use and Sustainability Framework (LUSF) set out the overall GNWT vision and goals for sustainable use of NWT public lands including making land available to meet the needs of NWT residents and businesses. This lands legislative project, along with other initiatives including the Recreational Leasing Management Framework (RLMF) and Agriculture Strategy support the LUSF.

I am a commercial/industrial leaseholder...

- **How will changes in legislation affect me? Will these amendments change security requirements?**

The proposed changes will not change your leasehold rights or conditions of your lease.

A lease is a contract that can only be changed with the agreement of the parties. Security is one of the areas where legislative changes are being proposed for commercial/industrial leases to make it more consistent and clear for both Territorial and Commissioner's Lands.

I would like to obtain land...

- **Will I be able to purchase land? If so, how much, where, and what conditions?**

This legislative initiative will not change the NWT Land Lease Only policy that is applicable in unsettled claim areas of the NWT.

Any changes to, or exemptions from, GNWT land policy regarding future land sales will be informed by various policy and program initiatives, including consultations.

Evaluating the opportunities and challenges associated with different land tenure options for cabins, including, but not limited to, fee simple title, may be examined in future. A goal of the legislative review is to ensure that both land acts provide adequate authority for various types of land tenure instruments.

The terms and conditions of a land sale, including costs are normally set out in an agreement for sale. The price of land is established according to regulations and policy.

- **How can I get a lease?**

Please contact either the Territorial or Commissioner's land administration office. Staff can advise you on what opportunities are available to lease public lands in, and around communities, and on rural lands. They can provide information of the application forms and processes. Much of this information is also available online through the Department of Lands website at www.lands.gov.nt.ca.

You may also wish to contact the Aboriginal, municipal or local government in the area you are interested acquiring land.

Public engagement

- **What kind of engagement are you doing?**

The Department looks forward to hearing from Aboriginal governments and organizations, other partners and stakeholders, and the public on this initiative to determine the best approach to improve land management in the NWT.

This engagement is currently underway until mid-August. Engagement activities include:

- Meetings, presentations and discussions with Aboriginal governments and organizations and other key stakeholder groups
- public feedback through online surveys, email and regular mail

- **How can I have my say?**

Please visit www.lands.gov.nt.ca or email LandActsReview@gov.nt.ca to provide input and obtain information on engagement opportunities. You can also respond in writing:

Department of Lands
Policy, Legislation and Communications
4923 - 52 Street
Box 1320
Yellowknife, NT X1A 2L9

We are accepting feedback until **August 15 2017**. Information gathered through the public engagement activities will contribute to the Department's understanding of potential implications of these proposed legislative amendments. All comments will be considered as the Department drafts a formal legislative proposal in Fall 2017.

- **Have Aboriginal governments participated?**

Aboriginal governments have been invited to provide comment and feedback on these proposed technical and administrative amendments.

More formal consultation will occur when the Department gets approval to begin the drafting of the legislative proposal

- **Why amend the Northwest Territories Lands Act and Commissioner's Land Act now?**

The GNWT is reviewing both the *Northwest Territories Lands Act and Commissioner's Land Act* to propose amendments to help improve land administration in the NWT. This legislative initiative is limited in scope and intended to address current operational needs and issues that can produce near-term improvements in land administration and client services. The proposed amendments will also support the recently released Recreational Leasing Management Framework (RLMF) and NWT Agriculture Strategy, which both note the importance of sound lands legislation, policy and administration and may be complementary to some of the legislative work being carried out by ITI.

Although the amendments are technical and administrative, taken together, and with corresponding changes to regulations and policies, we hope to:

- clarify and consolidate where each of the two land systems apply
- improve protection of land resources from unauthorized and inappropriate use
- clarify and enhance different ways for making land availability for various uses
- increase transparency and accountability in decision-making
- reduce GNWT potential legal liability and financial exposure
- clarify mechanisms for making land available for internal use by the GNWT and other governments
- improved clarity and security of land leases
- provide greater efficiency and consistency in the two land administrations

- **How will the public input be used to inform this initiative?**

The anticipated results of consultation and engagement on the proposed technical and administrative amendments to the *Northwest Territories Lands Act and Commissioner's Land Act* are to:

- provide clarity for land users and the public about existing (post devolution) GNWT land legislation and related regulations and policies
- obtain information for decision makers about possible changes to the land legislation and related regulations and policies

Other initiatives

- **How does this relate to other land management Initiatives?**

Land management is an integrated process that involves many parties – from the lessees to stakeholders to government bodies. Most activities require land in some capacity. As a result, the Department is engaged in many initiatives that support the effective management and sustainability of land internally and through other organizations.

For example, the proposed amendments to the acts will help address some of the concerns raised in the RLMF generally about types of land tenure available, consistency in lease conditions, unauthorized land occupancy and enforcement.

This work will also support other GNWT departments' initiatives, such as the implementation of the Northwest Territories Agriculture Strategy and the development of a new Mineral Resources Act. The Department will continue to work with other GNWT departments to ensure the coordination of GNWT legislative initiatives currently underway.

- **How does this relate to adjustments to lease rents and fee schedules?**

The proposed changes will help improve consistency across the GNWT's two land administration systems. The adjustments to lease rents and fee schedules, although also in an effort to achieve consistency between the two acts, are not directly connected. Work on these technical and administrative amendments, and work on other initiatives will continue as we evolve our land management system with a made-in-the-NWT approach.

- **When would these changes become effective?**

The proposed legislative changes would take effect when they receive final approval and are proclaimed into force. However, some changes to the legislation may not take effect until regulations are in place to implement them.

- **How did you identify the proposed amendments set out in the engagement paper?**

The Department did a side by side comparative review of the *Northwest Territories Lands Act and Commissioner's Land Act* to identify inconsistencies between the legislation. We also drew on additional information from What We Heard reports gathered during the extensive RLMF public engagement on recreational leasing. Finally, we relied on our operational experience of the past three years and considered issues brought forward by MLAs and Northerners that could be resolved through amendments of the nature we are proposing. Taken together we noted potential gaps, inconsistencies and duplication that, now or in the future, make land administration less effective and efficient for land users and the GNWT. This work is an important step toward establishing a solid legislative foundation to ensure we meet the needs and reflect the priorities of the Northwest Territories.

Appendix C Presentation





Review of the Commissioner's Land Act and the Northwest Territories Lands Act

Department of Lands

July, 2017

Government of
Northwest Territories

Introduction

- The GNWT is reviewing the *Northwest Territories Lands Act* (NWTLA) and the *Commissioner's Land Act* (CLA) to propose amendments to improve land administration in the NWT
- The initiative is limited in scope and intended to address current operational needs and issues that can produce near-term improvements in land administration and client services
- This legislative initiative is articulated in the [*Engagement Paper: A Review of the Commissioner's Land Act and the Northwest Territories Lands Act*](#)



Government of
Northwest Territories

Purpose

- The Department of Lands is engaging residents and land users on proposed land administration legislation to ensure decision-making processes are inclusive, participatory and transparent
- The purpose of this presentation is to:
 - provide the context and reason for the review of the *Commissioner's Land Act* and the *Northwest Territories Lands Act*
 - outline issues and potential technical and administrative amendments to the *Northwest Territories Lands Act* and the *Commissioner's Land Act*
 - facilitate discussion and input



Outline

1. Background and context
2. Overview of the Engagement Paper
3. Next steps and timeframe
4. Suggested discussion themes/questions



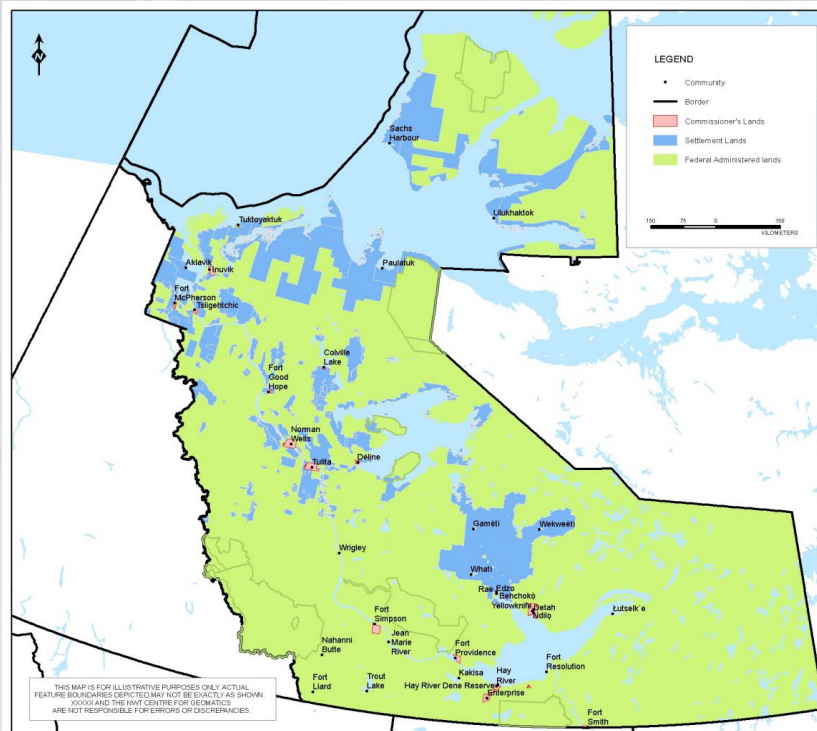
Improving Lands Legislation

- Advancing post-devolution vision for an integrated land and resource management regime
- Implementing the Land Use and Sustainability Framework
- Supporting related legislative and policy initiatives
- Cooperation and collaboration with partners in land management



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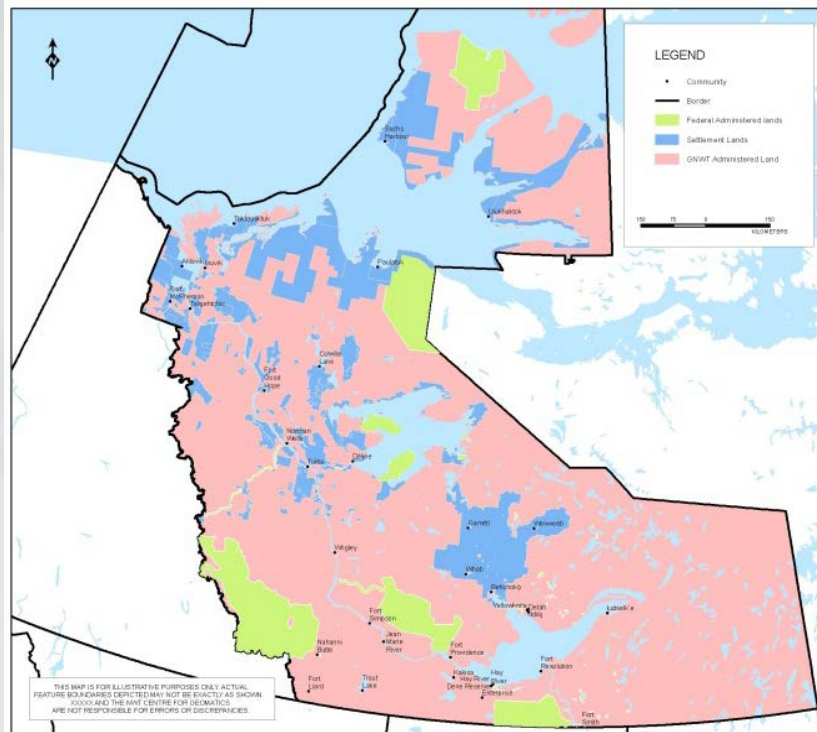


Pre-devolution jurisdictional landscape



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Post-devolution jurisdictional landscape



Evolution of Land Legislation in the NWT

Commissioner's Land Act

- Originally based on the federal *Territorial Lands Act* in the early 1970s
- Evolved to respond to human settlements – near and within communities
- Surface interests
- Quarry resource management

NWT Lands Act

- Mirrored from the federal *Territorial Lands Act* at Devolution
- Evolved to primarily respond to resource development – mostly outside of communities in rural areas
- Surface and subsurface interests
- Quarry resource management

- Legislative frameworks developed independently to address distinct geographical areas and types of land use.



Lands Administration Related Legislation

- *Area Development Act*
- *Waters Act*
- *Environmental Protection Act*
- *Land Titles Act*
- *Surface Rights Board Act*
- *Petroleum Resources Act*
- *Oil and Gas Operations Act*
- *Territorial Parks Act*
- *Forest Management Act*
- *Public Highways Act and Public Airports Act*
- Community Governance and Community Planning Legislation

Delegated powers under
the federal *Mackenzie
Valley Resource
Management Act*



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Other Land Administration Initiatives



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Issues and Proposed Changes

1. Application of the Two Lands Acts
2. Authority to Transfer and Reserve Land for Government Use
3. Land Tenure Instruments and Requirements
4. Limits to Authority to Dispose of Land
5. Financial Assurances and Securities
6. Granular Resources
7. Enforcement, Offences and Punishments
8. Miscellaneous



Goals and Recommended Actions

- Each recommended action in the Engagement Paper aims to achieve one or more of the following goals:
 - align provisions in the NWTLA and CLA (where appropriate)
 - consistency in the application of the NWTLA and CLA
 - provide clarity and transparency to land users
 - clarify legislative authority
 - modernize legislation by removing or updating out-dated provisions and terminology
 - ensure legislation reflects current risks, practices and standards



Application of the Two Lands Acts

ISSUE	RECOMMENDED ACTION	RATIONALE
The CLA applies to all roads, streets, lanes and trails on public lands including those within territorial lands resulting in a patchwork of Territorial and Commissioner's Lands	Propose that all roads, streets, lanes and trails within Territorial Lands are managed under the NWTLA	Creates certainty about which act applies to what lands and minimizes operational challenges in land administration
NWTLA applies to most beds of bodies of water located within Commissioner's Land resulting in a patchwork of Territorial and Commissioner's Lands	Propose that all beds of bodies of water within Commissioner's Land are managed under the CLA	Creates certainty about which act applies to what lands and minimizes operational challenges in land administration



Authority to Transfer and Reserve Land for Government Use

ISSUE	RECOMMENDED ACTION	RATIONALE
<p><u>Consolidate land under a single administration system</u></p> <p>The two Acts provide the authority to transfer land or a category of land between the two regimes. However, the limitations on such transfers with respect to "existing interests" are unclear</p>	Clarify that where land is transferred from one regime to the other existing interests continue unaffected and there is sufficient authority to administer existing interests set out in land tenure instruments under the "new" regime	Ensure that leaseholders maintain their rights and interests while providing consistency, clarity and transparency in land administration and decision-making



Authority to Transfer and Reserve Land for Government Use *continued*

ISSUE	RECOMMENDED ACTION	RATIONALE
<p><u>Reserve land for public and government use</u></p> <p>The provisions in the two Acts differ relating to authorities and procedures to set apart and appropriate or reserve land for public purposes</p>	<p>Harmonize authorities in the two acts to set apart and reserve land for public and government and purposes</p> <p>Clarify that Territorial and Commissioner's Land may be made available for GNWT and other government's internal use for the purposes of program and service delivery</p>	<p>Establish clear enabling authority and consistency for setting land aside for public purposes</p> <p>Ensure that GNWT departments and other governments have timely access to public lands for programs and services</p>



Land Tenure Instruments and Requirements

ISSUE	RECOMMENDED ACTION	RATIONALE
<p><u>Types of land tenure instruments</u></p> <p>The two Acts provide ambiguous and inconsistent authorities for issuing different land tenure instruments for temporary, long-term, exclusive, and non-exclusive uses and occupancy of public lands</p>	<p>Clarify the authorities to issue different types of land tenure instruments for a range of land uses and occupancy</p>	<p>Ensure clear statutory authority for issuing the most appropriate land tenure instrument with terms and conditions for various types of land use</p>
<p><u>Clarify when a land tenure instrument is required</u></p> <p>The Acts do not explicitly indicate when a land lease or other such instrument is required</p> <p>This creates uncertainty if a person has a land use permit or other permission to undertake an activity on public lands</p>	<p>Clarify the types of land occupancy or uses that require a land lease or other such land tenure instrument</p>	<p>Provide clarity to land users and the public about when a land lease or other such tenure instrument is required</p>



Limits to Authority to Dispose of Land

ISSUE	RECOMMENDED ACTION	RATIONALE
1. Minister cannot authorize the sale of more than 160 acres of Territorial Lands without approval of Executive Council. The CLA does not contain the same limit	Propose adding the limitation in the NWTLA to the CLA	Sets a reasonable limit on the Minister's authority to sell Commissioner's Land
2. Minister cannot lease more than 640 acres of Territorial Lands (cumulative life-time total) without approval of the Executive Council. Where a leaseholder requires additional land for a new or existing project, there are administrative costs and procedures involved which can unnecessarily delay resource development projects	Allow the Minister to authorize the lease of over 640 acres of Territorial Lands, consistent with the authority to lease Commissioner's Land	Support more efficient regulatory processes for large or multiple projects by the same company



Limits to Authority to Dispose of Land *continued*

ISSUE	RECOMMENDED ACTION	RATIONALE
3. Lease of more than 6,400 acres of Territorial Lands suitable for grazing or muskrat farming requires approval of Executive Council. This provision is historic and no longer relevant. There is no such provision in the CLA	Remove the historic limitation on leasing lands suitable for grazing or muskrat farming	Align provisions in the NWTLA and the CLA Modernize legislation by removing the out-dated provision
4. The NWTLA prohibits the sale of lands suitable for muskrat farming. There is no such provision in the CLA	Propose that the ability to sell Territorial Lands is not limited by its suitability for muskrat farming	This is a historic provision and is no longer relevant Align the CLA and the NWTLA



Limits to Authority to Dispose of Land *continued*

ISSUE	RECOMMENDED ACTION	RATIONALE
5. The NWTLA provides protection of rights associated with the movement of timber by water. This provision is historic and is no longer relevant. It unnecessarily encumbers land titles and leases. There is no such provision in the CLA	Removal of the statutory reservation with respect to rights associated with the movement of timber	The recommended action will create greater certainty for land titles and leases. Align provisions in the NWTLA and the CLA



Financial Assurances and Securities

ISSUE	RECOMMENDED ACTION	RATIONALE
<p>The Northwest Territories Lands Act and Commissioner's Land Act contain different provisions relating to:</p> <ul style="list-style-type: none"> the authority to require security security and liability security exemptions security calculations <p>Differences between the two acts create challenges for land administration and a lack of clarity for land users</p>	<p>Propose that the Commissioner's Land Act be amended to give authority to the Executive Council or Minister to:</p> <ol style="list-style-type: none"> require securities for various uses, not only commercial and industrial to determine security amounts, exemption levels and forms <p>Propose that the NWTLA be amended to</p> <ol style="list-style-type: none"> provide explicit authority to require security indicate that posting of security does not limit liability 	<p>Enables the GNWT to manage securities consistently and effectively</p> <p>Greater consistency in the NWTLA and the CLA</p> <p>Potential to reduce financial risk to taxpayers and costs for holders of land tenure</p>



Granular Resources

ISSUE	RECOMMENDED ACTION	RATIONALE
There is no specific authority in the NWTLA for regulations respecting the operation and restoration of a quarry	Propose that the NWTLA include enabling authorities to create regulations respecting the management of granular resources including conservation and removal of granular materials from Territorial Lands and collection of fees, royalties and other charges	<p>Clarity with respect to legislative authority</p> <p>Improve granular resource management in the NWT, reduce GNWT liability for pit reclamation, and establish clear authority for revenue collection</p> <p>Align provisions in the NWTLA and the CLA</p>



Enforcement, Offences and Punishments

ISSUE	RECOMMENDED ACTION	RATIONALE
Substantial differences in the two Acts with respect enforcement, offences and punishments. The differences create challenges and inconsistencies for administration and enforcement	Enforcement, offences and punishments provisions from the NWTLA be included in the CLA	<p>Support consistent, effective, and efficient enforcement</p> <p>Discourage unauthorized use of public land</p> <p>Enable regulations for Administrative Monetary Penalties</p>
The two Acts require different procedures to initiate enforcement actions for the unauthorized use of public lands	Clarify the Minister's authority to delegate enforcement decision-making with respect to unauthorized occupancy of Territorial Lands	<p>Provide authorities at appropriate levels</p> <p>Improve consistency between the NWTLA and the CLA</p>



Miscellaneous

ISSUE	RECOMMENDED ACTION	RATIONALE
The Acts contain different provisions and terminology relating to the authority of the Commissioner and delegation of decision-making authorities	Propose modernization and harmonization of authorities and delegations of authority in the two Act to ensure decisions are being made at appropriate levels	Increase transparency and accountability in decision-making Improve efficiency while ensuring that decisions are delegated to persons with appropriate levels of authority
Unlike the CLA, the NWTLA does not limit the application of the <i>Residential Tenancies Act</i>	Propose that the Residential Tenancies Act not apply to a lease on Territorial Lands issued under the NWTLA	Reduce GNWT potential liability and legal costs, and improve consistency between the two Acts



Miscellaneous *continued*

ISSUE	RECOMMENDED ACTION	RATIONALE
The CLA provides that the Commissioner is not liable as an occupier of Commissioner's Land for damages arising from any activity that occurs on undeveloped Commissioner's Land. There is no limitation of liability provision in the NWTLA	Propose that the limit of liability for damages arising from any activity that occurs on undeveloped Territorial Lands be included in the NWTLA	Improve consistency between the two Acts, and reduce GNWT potential liability and legal costs
The NWTLA uses the imperial system whereas the CLA uses the metric system	Modernization of the NWTLA by changing imperial units to the equivalent metric units	Modernize and align provisions in the two Acts



Next Steps and Tentative Timeframe

- June – August 2017: Stakeholder and public engagement including a summary report
- September – December 2017: Prepare a Legislative Proposal and other documentation
- January – December 2018: Draft and review legislation, and Aboriginal consultation
- January 2019: Submit proposed legislation (the Bill) to the Executive Council for tabling in the Legislative Assembly



For further information and feedback form please visit:

<http://www.lands.gov.nt.ca/en/have-your-say>

or email us at:

LandActsReview@gov.nt.ca



Engagement Summary Report: “What We Heard”

*Review of the Northwest Territories
Lands Act and Commissioner’s Land Act*

October 17th, 2017

