



# Engagement Paper

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

**June 1 2017**

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## INTRODUCTION

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### 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](http://www.lands.gov.nt.ca) or email [LandActsReview@gov.nt.ca](mailto: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***

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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

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### 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.<sup>1</sup> 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

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<sup>1</sup> 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

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### 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.<sup>2</sup> 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.”<sup>3</sup> 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

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

<sup>3</sup> 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.”<sup>4</sup> 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.”<sup>5</sup> 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

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<sup>4</sup> See section 4 of the *Commissioner's Land Act*.

<sup>5</sup> See section 19(b) of the *Northwest Territories Lands Act*.

### 3. Land Tenure Instruments and Requirements

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#### 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.<sup>6</sup>

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.<sup>7</sup>

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.

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

<sup>7</sup> 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

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### 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.<sup>8</sup> 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*

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<sup>8</sup> 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*.<sup>9</sup> 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

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<sup>9</sup> 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.<sup>10</sup> 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

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<sup>10</sup> 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.<sup>11</sup>

### 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

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<sup>11</sup> 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.<sup>12</sup>

### 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

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<sup>12</sup> See section 15 of the *Northwest Territories Lands Act*.

## 5. Financial Assurances and Securities

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### 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.*

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

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

<sup>15</sup> 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

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### 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” authority<sup>16</sup> which may be inadequate for expanding and modernizing the Quarrying Regulations.

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

#### 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

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<sup>16</sup> See section 19 of the *Northwest Territories Lands Act*.

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

## 7. Enforcement, Offences and Punishments

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### 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.<sup>18</sup> 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*.<sup>19</sup>
  - 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.<sup>20</sup>
  - 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.<sup>21</sup> This authority does not exist in the *Commissioner's Land Act*.

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<sup>18</sup> See sections 29 to 32 of the *Northwest Territories Lands Act*.

<sup>19</sup> See section 17 of the *Northwest Territories Lands Act*.

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

<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

### 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

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<sup>22</sup> See section 5 of the *Commissioner's Land Act*.

<sup>23</sup> See section 16 of the *Northwest Territories Lands Act*.

## 8. Miscellaneous

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### 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*.<sup>24</sup> 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

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<sup>24</sup> 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.<sup>25</sup> 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

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<sup>25</sup> 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

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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

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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](http://www.lands.gov.nt.ca) for more information.