

LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
7TH COUNCIL, 44TH SESSION

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REPORT

Of the Subcommittee of the Committee of the Whole, of the
Council of the Northwest Territories on the Proposed

LAND USE REGULATIONS

I. Introduction

On the 9th of February, 1971, Mr. Alex Reeve, Mr. Bryan Trevor and Mr. Bill Armstrong, all three being officers from the Northern Economic Development Branch of the Department of Indian Affairs and Northern Development, appeared before the Council of the Northwest Territories in the Committee of the Whole to discuss with the Council of the Northwest Territories the matter of proposed federal Land Use Regulations. As a result of this discussion a Motion was passed by the Council of the Northwest Territories calling for the formation of a Subcommittee of three, with Mr. Searle as Chairman, and the other two members to be named by the Commissioner, to develop a position on the Land Use Regulations, and report back to the Committee of the Whole.

In carrying out its duties the Subcommittee was authorized to speak to whomever wished to make representations to the Subcommittee. As a result, the Subcommittee met with representatives of the Canadian Petroleum Association and the Northwest Territories Indian Brotherhood. In addition, submissions were received from the Northwest Territories Chamber of Mines and the Yellowknife Board of Trade, the Audubon Society, the National and Provincial Parks Association of Canada, Dr. A. R. Thompson, and the Canadian Wildlife Federation. All of these submissions have been examined, considered and weighed by the Committee

in coming to its conclusions.

On the matter of consultation by the Committee with other persons, bodies and groups interested in land use in the Northwest Territories, the Subcommittee regrets that the time available to it to consult and to report was limited to the period commencing the 9th of February and ending this date. The Subcommittee would have preferred to become a standing committee and carry on consultations after prorogation of this Session until the June Session. This would have enabled fuller consultation and as a result a more detailed and comprehensive report. Such, however, was impossible due to the time-table for implementation of the proposed regulations as communicated to us by the officials of the Department of Indian Affairs and Northern Development. These officials made it clear to the Subcommittee that the plan of the Department is to promulgate these regulations before June of 1971, hence any report by this Subcommittee to the June Session of the Council of the Northwest Territories would simply have been too late. As a result, the Subcommittee was compelled to do what it could within the eight days available to it.

II. (Preamble)

In considering the matter of protecting our northern environment the Subcommittee considers it essential that not only should there be protection to the land such as is afforded pursuant to the provisions of the proposed Land Use Regulations, but so too should there be protection of our northern waters, whether the water be fresh, brackish, or salt, whether the water be in rivers, lakes, swamps or along our coast lines.

Dealing specifically with land, however, we note that the proposed Regulations deal, not with the disposition of title to land, but rather with the way a proposed user may use the land. We also note with approval that section 3 of the

proposed regulations exempt from the application of said regulations anything done by a resident of the Yukon Territory or Northwest Territories in the course of hunting, fishing or trapping. Because of the above two points the Subcommittee, in consultation with the Northwest Territories Indian Brotherhood, formed the conclusion that the Northwest Territories Indian Brotherhood felt firstly that the people living off the land would not be effected and secondly that the proposed regulations do not effect any land claims which the Indian people may be asserting.

The Subcommittee wishes to recommend, in the strongest possible terms, that the principle behind the proposed Land Use Regulations be fully supported. This principle is that resource development in the Northwest Territories be permitted within well defined guidelines setting out how the land might be used, safe guarding against needless or irreparable damage to the land and the delicate ecological balance. Furthermore, it is clear to the Subcommittee that because of the extremely high rate of unemployment of our native people residing in the Northwest Territories that there must be development of our mineral resources for the benefit of our people. The Subcommittee stresses, however, that this development need not and should not be done at the expense of needless or irreparable damage to the land.

The Subcommittee further noted the concern of this and previous Councils of the Northwest Territories for protection of the environment and our northern wildlife. This concern

is evidenced by the present quota systems employed by our game branch as applied to the harvest of our wildlife on a sustained yield basis. It is further evidenced by and through the legislation which this Council has recently passed and which has been requested. In particular, we refer to the Pesticides Ordinance which was passed by the last Council, controlling the use of DDT. Just this Session the Council further requested the preparation of a Litter Ordinance to be presented to the June Session of the Territorial Council for enactment.

(Recommendations)

In light of the foregoing general principles and the submissions made to the Subcommittee, the Subcommittee recommends the following:

1. That the Minister consider including in the proposed Land Use Regulations a provision which would permit compensation to be paid to residents of the Northwest Territories engaged in hunting, fishing or trapping should the use of the land by land use operators adversely affect the traditional hunting, fishing or trapping area of an NWT resident. This could be done either through an arbitrator appointed to assess such damage and adjudicate on such claims, or through a Board, from funds on deposit with the Minister as a result of Section 24 of the Regulations.
2. In order not to discourage mining exploration, the Subcommittee recommends a redefinition, under Section 2 of the proposed Regulations, of "Land Use Operations" along the following lines. Respecting the use of explosives, we would recommend that the use of explosives should not fall within a land use operation, unless more than 50 pounds of explosives in any one day or 300 pounds of explosives within any 30 day period where used. Concerning the use of power

driven vehicles, the Subcommittee feels that a net weight of 2000 pounds is too low, but appreciate that this depends on the nature of the terrain. We recommend, however, that the use of a power driven vehicle should not be a land use operation unless the terrain is unfrozen and only then if the bearing capacity exceeds a prescribed number of pounds per square inch. Concerning the use of any stationery power driven machine for drilling, the Subcommittee further recommends that the type of diamond drilling done in the exploration stage of mining should not come within a land use operation. Concerning the establishment of any campsite, the Subcommittee recommends that such should not constitute a land use operation unless it is to be used for longer than 30 days by more than 15 men when the ground is not frozen.

3. Concerning the definition of "Territorial Lands" in section 2 of the proposed regulations, the Subcommittee recommends that this definition should be expanded to make it clear that excluded from the application of these regulations are lands already under surface lease.
4. Concerning the prohibition without the prior written authority of the engineer, to a land use operation being conducted north of the 65th parallel of north latitude between May 1 and October 31, as found in section 5(2)(b) of the proposed regulations, it is the feeling of the Subcommittee that this is a line which could be better defined by reference instead to that part of the Northwest Territories north of the transitional zone limited by the tree line and the line of discontinuous perma-frost, or the Arctic Coast for that area of continental N.W.T. which is part of the Precambrian Shield. This line could then be drawn on that basis on the zoning map. The Subcommittee further feels that the dates above referred to are too arbitrary and recommends instead that dates be set for each zone on the basis of when the land is not frozen.

5. Concerning section 5(2)(c) of the proposed regulations the Subcommittee recommends the addition of "historic sites" and "burial grounds" as subsection (iii).
6. Concerning section 5(2)(f) of the proposed regulations the Subcommittee recommends that the placement of a fuel or supply cache be merely above the normal high water mark, not 10 feet above or 300 feet from the shore as this is impractical.
7. Concerning the restoration of all excavations, pursuant to section 6 of the proposed regulations, the Subcommittee feels that it is not practical to expect trenching, done by prospectors in the initial exploration phase of mining, to be filled and restored except in certain special cases where the trenching is extensive or dangerous to other users of land. The Subcommittee recommends, therefore, that trenching as described above, be excluded from the operation of section 6.
8. Concerning section 12 of the proposed regulations, it is the definite feeling of the Subcommittee that the requirement to remove from Territorial Lands all buildings, machinery, equipment, materials and fuel is not to the advantage of the people of the Northwest Territories. Such buildings are often used by hunters and trappers as a means of protection from the elements and we consider it a very important safety role for other Arctic travellers. Cached equipment, materials and fuel often becomes of considerable importance to northern people while out on the land and to "bush pilots" in times of emergency. Therefore, the Subcommittee feels that land use operators should be permitted to establish a proper cache and providing such a cache is tidy, then machinery, equipment, materials and fuel drums, whether full or empty, should be

permitted to remain. The Committee, however, completely agrees with the requirement that the land use operations shall be kept clean and that the operator shall eliminate all garbage, waste, and debris, by removal, burning or burial, both while the land use operation is in process, and also on termination of the land use operation. This aspect should, of course, be strictly enforced.

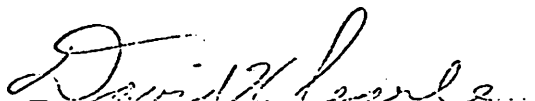
9. Concerning section 17(3) of the proposed Land Use Regulations, the Subcommittee feels that this subsection should be deleted because it virtually gives the engineer power to regulate as he sees fit using unfettered discretion.
10. Concerning section 19 of the proposed Land Use Regulations, the Subcommittee is concerned with foreseeable administrative delays involved in the processing of applications for the land use permit. With reference particularly to requests simply for extensions to existing land use operations already permitted, where speed in the processing of an application for extensions is required, surely 30 days is not required. The Subcommittee recommends that some flexibility be built into section 19 to permit extensions to the area of land in an already permitted land use operation, within a matter of days.
11. Concerning section 20, which deals with the terms and conditions of permits, the Subcommittee feels that subsection (k) of subsection (1) of section 20 should be deleted and so recommends because it appears to the Subcommittee that all of the matters conceivable are already covered previously in that section.
12. Concerning the fees to be paid, it is the recommendation of the Subcommittee that these be reconsidered as they will undoubtedly put a very heavy burden on persons engaged in prospecting and exploration.


13. Concerning section 23(4) of the proposed Land Use Regulations, the Subcommittee recommends that the words "in his opinion" be deleted.
14. Concerning the guaranteed deposits set out in section 24 of the proposed Land Use Regulations, the Subcommittee recommends that the guaranteed deposit be computed at the rate of "not in excess of" \$1000 per acre. Furthermore, in support of the foregoing suggestion the Committee firmly believes that unless this is done mining exploration will become virtually prohibitive and also the small oil and gas operators will be virtually excluded.
15. Concerning the powers of Inspectors as set out in section 28 in the proposed Land Use Regulations, the Subcommittee recommends firstly that the words "of the opinion" as they appear in subsection (1) of section 28 be deleted. Furthermore, the Subcommittee recommends that before an Inspector be permitted to order the operator to suspend the land use operation, a reasonable even though minimal period of time be given to correct the default before suspension of the operation is ordered. Only if the correction is not made within the time period stated, then should the Inspector be able to order the suspension of the operations. The Subcommittee further questions whether the power to order a shut down or suspension should reside in an Inspector and considers that only the engineer should have this power.
16. The Subcommittee, furthermore, is concerned about the qualifications of the proposed Engineer and Inspectors. In view of this, the Subcommittee recommends that the areas of wide discretion of the engineer and inspectors be reviewed with a view to modification of same; these

sections being section 17(3), section 20(k), section 23(4) and section 28(1), as hereinbefore stated.

Conclusions

Together with making the foregoing recommendations, which this Subcommittee makes to the Committee of the Whole of the Council of the Northwest Territories, with the recommendation that they be adopted by the Council of the Northwest Territories for transmission to the Honourable Jean Chretien, Minister of Indian Affairs and Northern Development, the Subcommittee would also comment that laterly there would appear to have been a breakdown in consultation between the Department and some of the proposed land use operators, particularly the N.W.T. Chamber of Mines and the Canadian Petroleum Association. It appears that these bodies were initially involved in some of the initial drafts but the latest draft of the Land Use Regulations tabled at this Session of the Territorial Council was never officially discussed with the N.W.T. Chamber of Mines until the evening of the 8th of February, and has not yet been officially discussed with the Canadian Petroleum Association.


David Searle, Chairman


Lyle Trimble, Member


W.W. Phipps, Member