

January 13, 2023

Honourable Shane Thompson, Minister of Environment and Natural Resources  
Honourable Caroline Wawzonek, Minister of Industry, Tourism and Investment  
Honourable Shane Thompson, Minister of Lands

**Re: Public Participation in Resource Management**

Dear Ministers

I have closely followed and participated in the review of resource management legislation and regulations in the 18<sup>th</sup> and 19<sup>th</sup> Assemblies and have been reflecting on my experiences to date. This letter is my attempt to provide some observations and recommendations on how public participation can and should be improved.

I commend the Government of the Northwest Territories (GNWT) for its progressive and innovative approach to the co-development of resource management legislation and regulations with Indigenous governments. This has culminated in the Legislative Development Protocol with the Intergovernmental Council. This is an accomplishment that we should all be proud of and a true expression of reconciliation and co-management that all NWT residents have come to expect. I support this co-development approach and want to make sure it has the time and resources necessary to do its work. From every report of recent activities, this process appears to be working well. There is still a need to provide more information to those Indigenous governments that are not part of this process.

I acknowledge that there have been some improvements since the 18<sup>th</sup> Assembly in terms of public engagement in post-devolution resource management legislation and regulations. For example, presentations have been made to some external organizations by departments and some of those have been held in public and recorded for later posting on social media. On the other hand, the extent of information being shared by departments and timelines for public engagement have varied substantially and shown little consistency.

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In particular, I am alarmed and dismayed that GNWT has failed to embrace and implement an approach to resource management that includes meaningful public participation in both the development of resource management legislation and regulations, and in modifying and establishing new processes for decision-making about resources. Public participation in these two significant aspects of resource management does not come at the expense of relationships with Indigenous government but rather should be seen as an essential complement to co-management. Public participation opportunities are what NWT residents have come to expect from responsible resource development and co-management itself.

It is not clear to me, whether GNWT continues to endorse and implement its [Open Government Policy](#) as signed by the Premier on January 8, 2018. I repeat the principles of that Policy here:

The Government of the Northwest Territories will adhere to the following principles when applying this Policy:

- 1) **Public services should be open by design, to build a government that becomes open by default.**
- 2) **Government data, information, and decision-making should be accessible in a way that is responsive to the needs and expectations of NWT residents.**
- 3) How open government is understood in the NWT should reflect territorial culture and priorities.
- 4) **Increased accountability and transparency should result from open government policy and practice.**
- 5) **Use of government data and information, along with public participation in decision making, should help identify opportunities to improve programs and services.**
- 6) **Access to government data, information and dialogue should be timely, simple, and available across multiple platforms.**
- 7) **Citizen participation into potential government decisions should be encouraged.**
- 8) Reasonable limits should be placed on information sharing to prevent the unauthorized collection, use, or disclosure of information.

[emphasis added]

I draw your attention to several of the principles of this policy as I am of the view that they have not been adequately considered or implemented in the recent development of resource management legislation and regulations. Furthermore, when public engagement finally does take place, a clear role for the public in resource decision-making is often not part of the amended or new legislation or regulations. I detail some of that experience and my observations below to demonstrate these points and inconsistencies between different departments.

In addition to the Open Government Policy, GNWT has an obligation under s. 72(1) of [Access to Information and Protection of Privacy Act](#). This reads as follows:

72. (1) The head of a public body shall
- (a) establish categories of records that are in the custody or under the control of the public body, and that do not contain personal information, to be made available to the

- public without a request for access under this Act; and
- (b) publish any categories of records established under paragraph (a).

I note that the [most recent report from the Standing Committee on Government Operations](#) on the report of the Information and Privacy Commissioner 2020-21, contained substantive discussion and a recommendation around proactive disclosure by GNWT. Public registries for resource management are precisely the kind of tool that accomplish proactive disclosure and facilitate public participation in decision-making. This is how the co-management bodies currently operate and the public has come to expect similar transparency from GNWT in its decision-making.

## **Experience and Observations with Departmental Processes**

### Industry, Tourism and Investment (ITI) and the Mineral Resources Act Regulations

ITI ran a public engagement program for the development of the [Mineral Resources Act](#) (MRA) that did not encourage written submissions. A number of the written submissions from Indigenous governments and non-governmental organizations raised the desire and need for involvement in the development of regulations and [Standing Committee](#) made the same recommendation.

ITI has not presented a full and public schedule or plan for development of the MRA regulations. Separate processes were established for royalties and other matters (including tenure, benefits and appeals). There is still no “What We Heard” report from the [royalties public engagement](#) even though it closed on July 29, 2022.

Meanwhile, ITI has had numerous (at least 25) detailed private meetings with the mining industry on a variety of subjects over the last year and a half to develop regulations for the MRA. There was also a [special targeted engagement](#) with the mining industry only (those holding prospecting licenses) that ran from August 16 to September 30, 2023 with surveys covering 21 topics. There were detailed surveys on these topics yet this was not open to the public and the information presented is no longer publicly available. No report on this engagement has ever been made available. It is not clear why this engagement was not open to the public as it may have presented a useful set of data where comparisons could have been drawn from those holding prospecting licenses and other stakeholders.

A discussion paper “[An Overview of Policy Intentions That Will Guide the Drafting of Regulations for the NWT Mineral Resources Act](#)” was released on December 13, 2022 dealing with tenure, benefits and appeals. The deadline for submissions on this paper has been extended a couple of times now to January 31, 2023 but included the holiday season.

There also is a separate and uncoordinated review of Socio-Economic Agreements taking place by ITI. A [summary report](#) and a full [260-page report](#) with a [492-page appendix](#) were released by ITI in December 2022 with no public notice, links to the broader MRA regulations public engagement (even though benefits is one of the topics covered in the Policy Intentions discussion paper) or an opportunity to submit comments. ITI held a Socio-Economic Forum in December 2022 that was attended by a few Indigenous governments and many mining industry representatives. The limited scope of participants happened despite my best efforts over two years to ensure a more inclusive approach to this event. I had suggested that a variety of stakeholders including mine training organizations (Aurora College and the Mine Training Society), women’s organizations, the NWT Association of Communities and non-

governmental organizations (NGOs) with a track record of constructive input on socio-economic matters, should all be included in this event. I had thought I had secured a clear commitment in the House and in Committee meetings for this approach but the Minister refused to invite these organizations. It does not appear that there will be any public engagement on this separate policy initiative.

### Environment and Natural Resources (ENR) and the Forest Act

There were a few general public presentations to interested stakeholders that were held as part of a general review of post-devolution resource management during the 18<sup>th</sup> Assembly. There was a limited public engagement that was undertaken on Bill 44, the proposed Forest Act, before it was withdrawn at the request of Indigenous governments, MLAs and NGOs.

The first indication of any public engagement during the 19<sup>th</sup> Assembly was the release of a discussion paper [Summary of Policy Intentions a New Forest Act for the NWT](#) on November 21, 2022 with a deadline of December 28, 2022. There has been no other public outreach that I am aware of for this new legislation.

Concerns raised during the 18<sup>th</sup> Assembly have not been addressed in the discussion paper and there were compressed timelines for public engagement over the holiday season. The discussion paper is totally silent on a public registry and there is no clear commitment to or details on public participation in forestry decision-making.

ENR has publicly stated that it was outsourcing public engagement to renewable resource boards and that there was no need for a public registry as it would be expensive to maintain and would duplicate information found elsewhere. Renewable Resource Boards are not the place where public input on forest management agreements, permitting and licencing will take place. There would be very limited, if any, overlap between public registries operated by the Land and Water Boards and a potential forest public registry. Land and Water Board registries would only capture information related to land use permits or water licences required for specific projects that exceed thresholds, and not forest inventories, management plans, monitoring results, forestry agreements, permits and licences. Needless to say, I am very disappointed with the responses from ENR to date.

### Lands and the Public Land Act Regulations

MLAs and the public were surprised with the introduction of Bill 46, the [Public Land Act](#) (PLA), in the 18<sup>th</sup> Assembly as the earlier public engagement held by the Department of Lands only dealt with minor modifications of the two separate GNWT and former-federal lands systems. There was no Indigenous government involvement and no other public engagement on the development of this legislation.

During the 19<sup>th</sup> Assembly, there was a [public engagement](#) by the Department of Lands that ran from December 10, 2020 to February 19, 2021. The Department sought feedback on issues with the current legislation, suggestions of what to consider in the new PLA regulations, and answers to specific questions regarding land pricing, tenure requirements, agriculture, quarry management and security requirements. Although a [“What We Heard”](#) report promised a second round of public engagement in “late 2021/early 2022” that never took place. Technical Advisory Panels on a number of topics were

also promised but not delivered. Names were solicited for these panels from NGOs but the panels were never established.

The Department appears to have placed a priority on the pursuit of surety bonds as a form of financial security over all other matters in terms of the development of PLA regulations. I participated in an interview with Ernst and Young, an accounting firm, regarding a study they are conducting where it seems certain that they will recommend the use of surety bonds as requested by the mining industry. I have heard nothing further from the Department and remain concerned about the opportunities and timelines for the development of regulations under the PLA.

## **Conclusions and Recommendations**

It is clear from the discussion above of my experience and observations that there is little consistency across departments around the current efforts to develop post-devolution resource management legislation and regulations. I recognize this is an evolving process but public participation appears to be consistently short-changed in terms of departmental capacity, timelines and processes. I offer the following recommendations to help improve and build on what is happening:

### 1. A Clear Statement on Public Participation in Resource Management

**That GNWT make a clear public statement on public participation in resource management, such as a Ministerial Statement by the Premier, that GNWT continues to endorse and implement its Open Government Policy in the development of post-devolution resource management legislation and regulations.** Such an expression will reconfirm that GNWT is committed to the principles of this policy and the concept of public participation in resource management decisions.

**There should also be a letter or directive issued to GNWT staff to remind them of the importance of the Open Government Policy in developing resource management legislation and regulations.** This communication should make it clear that GNWT has a responsibility and obligation to ensure meaningful public engagement and a public role in decision-making. GNWT is the advocate for public participation in resource management. Public participation is consistent with co-management, the expectations of the public and sound resource management.

### 2. GNWT Ensure Consistent and Meaningful Public Engagement in the Development of Resource Management Legislation and Regulations

- **early establishment of a representative public stakeholder advisory committee** during the development of new or amended resource management legislation and regulations, along with resources to support participation
- **early and consistent communications from the coordinating departments of policy options, policy intentions and a formal public engagement with a reasonable timeline** for submissions; **all submissions should be made public and with a written response** from the department, and clear **schedules with process milestones**
- public outreach by departments developing new or amended resource management legislation and regulations, such as **public meetings, webinars with presentations and opportunities for**

**questions and answers, websites or surveys that have detailed background information (i.e., jurisdictional scans, timely release of final reports from consultants, policy options papers and policy intentions papers) and reasonable timeframes for comments or submissions**

- **targeted engagement with some stakeholders is encouraged but the information shared with them must be made available to the public** to avoid the perception of apprehension of bias and to ensure transparency and accountability
- So-called “What We Heard” reports from formal public engagements vary greatly in their detail, organization and contents. **There should be greater consistency to “What We Heard” documents, through a communications directive and/or template.** There should be consistent presentation of the process used for public engagement, issue and concerns identified, responses, options considered and policy direction moving forward with rationale. Written submissions received should be listed and appended wherever possible

Following formal public engagement on new resource management regulations, there should be a clear process for the public review of regulations. Standing Committee will of course review new legislation or amendments. I also acknowledge that not all regulations may require a public review. However, where **significant policy issues are left to regulations, which is typical of most resource management legislation introduced by GNWT, there should be a greater effort at public review through posting of draft regulations on a GNWT website, posting of submissions received and responses to issues, concerns and recommendations.**

Standing Committees may also wish to **consider public hearings on significant regulations related to resource management to allow for a public forum for the exchange of ideas and constructive suggestions.**

### 3. GNWT Ensure Consistent and Meaningful Public Involvement in Resource Decision-Making as Set out in New or Amended Legislation and Regulations

- inclusion of a **clear commitment to public participation in resource management decisions in a set of principles in either a preamble or purpose section** of all new or amended resource management legislation and regulations
- **public participation provisions for agreements, plans, permitting or licensing as part of resource management decision-making**
- **public registries for proactive disclosure of notices, orders, policies, appointments, agreements, plans, licenses, permits, public reports, reviews and similar instruments and key decisions**

### 4. Secure the Resources Necessary for Full Implementation of Responsible Resource Management

GNWT secured significant new funding for the administration and management of resources as part of devolution. Specifically, one time start-up funding of \$26.5 million and a permanent annual increase of \$67.3 to GNWT’s Gross Expenditure Base, all for the new responsibilities assumed under devolution. I cannot locate any public record related to devolution of forest resources and fire management but it is

probably safe to assume that there were resources attached to this new management responsibility as well. With these additional resources, GNWT should be in a position to properly manage public resources, including public registries and public participation in decision-making. Additional resources may be required to operate administrative systems related to resource management on a cost-recovery basis, so fees and charges should be carefully considered, otherwise operational expenses serve as a public subsidy.

In those instances where departmental resources are insufficient for development of new or amended resource management legislation or regulations, departments need to willingly secure additional resources. I note that ITI has been very successful in securing additional staff for the development of the MRA regulations and at least \$3.5 million for the new Mineral Administration and Registry System (MAARS). As I understand it, MAARS will be the basis for a new public registry for mineral rights, notifications, public reporting and additional information.

**The new responsibilities and need for developing made-in-the-North resource legislation and regulations makes for a demanding time for law-makers, administrative staff and the public. This is a unique period where fundamental law is being adopted that lays the critical foundation for the future of the NWT. Recognizing this, departments need to consistently assess and respond to their capacity needs to develop new resource management laws and regulations. This now necessarily includes co-development with Indigenous governments through the Legislative Development Protocol and public engagement pursuant to the Open Government Policy. Additional resources for implementation must also be secured to ensure that new co-management approaches, access to information and public participation are all included. Where Departments need to secure additional resources, they must do so.**

Thank you for your attention to read and consider my concerns and constructive suggestions for solutions. I also welcome the opportunity to meet with you and your officials to explore these issues and find solutions. I will make this letter public and request a detailed written response to this letter which I will also make public.

Sincerely,

A handwritten signature in black ink that reads "Kevin O'Reilly". The signature is written in a cursive, flowing style.

Kevin O'Reilly  
MLA Frame Lake

cc. Honourable Caroline Cochrane, NWT Premier  
Jackie Jacobsen, Chair of Standing Committee on Economic Development and  
Environment