

The Development and Planning Act, 2015

Guiding Questions for Discussion

1. What is the *Land Development and Planning Act, 2015*?

The *Land Development and Planning Act, 2015* (the "Act") is legislation intended to work in conjunction with the *Land Interests Act, 2014* to assume authority for section 13.3.11 powers under the Self Government Agreement.

The law will serve three primary functions:

- (i) Establish the authority and process for CTFN to zone its Settlement Land (which will allow the government to restrict certain activities on specific parcels or regions of Settlement Land).
- (ii) Allow for the management, control and monitoring of development on Settlement Land. Individuals with a registered interest in a parcel of Settlement Land will be required to work with the CTFN Government to ensure their activities on the land are consistent with CTFN laws.
- (iii) Establish penalties and enforcement measures for activities which violate this Act. Specifically, there will be new penalties for individuals who build on or damage Settlement Land without permission.

2. What the *Land Development Act* is not.

The Act is not about the regulation of natural resource extraction (timber and minerals). Nor is the Act about heritage resources. Separate legislation will be developed for these matters when CTFN chooses. This piece of legislation is not intended to displace current laws relating to wildlife, fish or the environment though consideration of these matters will be important in determining whether to grant permits or not.

The law as it is proposed is not intended to be exhaustive or overly complex. As CTFN grows into exercising its land management jurisdiction, there will be a requirement for significant flexibility. Accordingly, the law is drafted to allow for broad regulatory powers; this will allow CTFN to tweak, change and add elements as necessary. The result will be a relatively short law which delegates a significant amount of the detail to the regulations.

Preamble

3. Do you want the Act to follow the format of the *Land Interests Act* or CTFN Book Laws?

At the June 24 and 25th Community Consultation on the *Land Interests Act*, some Citizens raised concern about the lack of traditional knowledge in that legislation. While the *Land Interests Act* in particular can be technical and not conducive to the CTFN approach to legislative drafting, there will be room in this legislation to incorporate traditional stories, our beliefs and virtues/values into the framework of the Act.

- (a) Does CTFN wish to have a comprehensive section at the beginning which outlines the traditional legal framework for land management and the virtues/values behind land use?
- (b) Does CTFN wish to infuse traditional knowledge throughout the Act? This may take the form of a preamble before each section which will provide interpretive guidance to people who may later need to address a matter under the Act.

Part One – Preliminary Matters

4. Definitions

The definitions are taken largely from the Final Agreement and Self-Government Agreement. Some definitions mirror legal terms from Yukon legislation. There is a possibility to define terms differently in order to recognize specific CTFN priorities in the Act.

Part Two – General Prohibitions

5. Does CTFN wish to incorporate regional land use plans and local area plans?

This legislation can referentially incorporate plans that are done either under Chapter 11 of the Final Agreement or Section 31 of the Self-Government Agreement. Section 31 plans in particular would benefit from being incorporated by the law since they may not be binding if the *Area Development Act* regulations are displaced.

6. A Decision Document through YESAB is required before any triggering development

Chapter 12.14.3.1 of the Final Agreement requires that the use and development of Settlement Land be in accordance with any conditions or terms of a Decision Document agreed to under the YESAB process. This will be an administrative cost to CTFN since many activities on Settlement Land currently go unregulated.

Part Three – Administration

7. What role do you want the Land Management Board to play?

In the *Land Interest Act*, the LMB plays an advisory role to the Executive Council who must ultimately decide whether or not to convey an interest in the land. However, the actions which happen under this Act will occur on land that has already been leased or is otherwise held by a third party. Arguably, this means the gravity of the decision may not be as high and therefore decision making power could rest with the LMB on the approval of permits.

8. Does CTFN wish to delegate enforcement and administrative authorities to YG officers?

Upon consideration of the resources required to implement the administrative and enforcement provisions this Act, it is open to CTFN to delegate this authority to other governments as a cost-saving measure, e.g. YG enforcement officers may be authorized to enforce the law (pursuant to section 12.2 of the Self-Government Agreement). The disadvantage of such an agreement is that CTFN will not have control over these employees beyond the administration of the law, and it is possible CTFN Citizens may not welcome outside officers enforcing their law. Please note that if CTFN decides to delegate a power to an outside body, an agreement must be negotiated with

the party of choice, which is beyond the scope of the present First Nation Market Housing Fund funding.

9. Public Hearings

CTFN to consider what types/class of decisions will trigger a public hearing. It is assumed that major projects such as zoning, land use plans or large scale developments will be subject to public notice and hearing provisions; however, it would not be cost or time effective to require public hearings for every application to construct a shed or move earth.

Part Four – Zoning

10. How should we approach the many plans in the Final and SG Agreement?

As mentioned above, there are several processes governed by the Final Agreement and the Self-Government Agreement that will affect zoning. If CTFN wishes to defer to collaborative plans (regional and local), then zoning should reflect this. There are several options laid out in this section depending on the level of deference chosen by CTFN.

11. Executive Council Re-zoning

The Territorial legislation allows for the Cabinet (Executive Council) to amend zoning plans by Order in Council. The CTFN legislation contemplates this power being held by the CTFN Executive Council. Is this the proper authority? Should it go to General Council?

12. Does CTFN want the power to remove undeveloped land from use/zoning?

CTFN may wish to remove land from the development process. This could be done by zoning the specific land as a park or another category of restricted use. There is a “withdraw from development” clause in the drafted version of the Act which would have the same effect as designating specific undeveloped Settlement Land as a park but it would be time limited and more flexible. This could be done if a particular parcel of Settlement Land was developing too rapidly or if the set zoning was having undesired effects on the environment, wildlife or other matter CTFN viewed as a priority. The clause is modeled on a section of the territorial *Parks and Land Certainty Act* which allows for the expansion of parks.

13. Does CTFN wish to include a provision which allows General Council to determine use on unzoned land?

. In the event that the First Nation does not complete a zoning regulation before the enactment of this Act, a clause could be included which allows the General Council to determine land use on a case by case basis. This power is included in the Act as a result of the community meetings in June 2015 when CTFN expressed the desire to allow for flexibility.

Part Five – Development Permits

14. How much of the Development Permit process does CTFN wish to put into the Act (as opposed to the Regulations)?

As drafted, the Act only regulates building on Settlement Land, and does not regulate wood cutting permits or the use of Settlement Land to set up a camp.

15. Permit Application timelines

What timeline should be in the Act to turn an application around from submission to decision? Some legislation includes hard timelines (around 45 days) while other development legislation leaves the timeline flexible with required notice/time estimates at each stage.

Part Six – Subdivision

16. What approach should CTFN take to subdivision requests?

Three scenarios are set out in the draft Act. The first is that no third party can subdivide CTFN Settlement Lands. This is probably the most advisable approach. Instead of an application to subdivide, a leaseholder could go through the *Land Interests Act* to have a separate interest recognized in the parcel. This approach would allow CTFN to retain maximum control over activities on Settlement Land and would be consistent with Yukon legislation which prohibits subdivision on leased land.

The second approach would be to regulate third party subdivision requests. The Tsawwassen First Nation has a model for this approach.

The final approach would be to outlined rule for CTFN to subdivide its own Settlement Land parcels. While it is possible to grant an interest on a portion of a Settlement Land block under the *Land Interests Act*, there is no distinct process guiding this decision.

Part Seven – Dispute Resolution

17. Should there be mandatory ADR?

Should the law first require alternative dispute resolution through community based mediators? JIBC trained mediators could be given a role in the resolution of disputes.

Part Seven – Trespass

18. How does CTFN want to enforce trespass on Settlement Land?

This law will also establish CTFN rules for trespassing on Settlement Land. How deferential does CTFN want to be in the enforcement of trespass violations? There will be administrative costs to receiving trespass complaints and issuing orders to vacate Settlement Land. What is the role that the Land Monitors play in investigating, charging and removing trespassers?