

# Land and Water Boards of the Mackenzie Valley



## Reasons for Decision

### Interpretation of Subsection 26(6) of the Mackenzie Valley Land Use Regulations

#### 1.0 Introduction

On April 7, 2021, the Mackenzie Valley Land and Water Board (MVLWB/the Board) met and considered whether the Board may extend the term of a land use permit (permit) multiple times under subsection 26(6) of the Mackenzie Valley Land Use Regulations (MVLUR).<sup>1</sup> These Reasons for Decision set out the Board's decision on this matter.

#### 2.0 Background

The MVLUR are promulgated under the *Mackenzie Valley Resource Management Act* (MVRMA),<sup>2</sup> and apply to all uses of land in the Mackenzie Valley.<sup>3</sup> Subsection 26(5) of the MVLUR provides that, subject to subsection (6), the term of a permit cannot exceed five years and the term must be based on the estimated dates of land use commencement and completion as set out in the permit application.

Subsection 26(6) provides that, prior to the expiration of a permit, a permittee can submit a written request to the Board for an extension of the term of the permit, and "the Board may extend the term of the permit for an additional period not exceeding two years."

Subsection 26(6) does not explicitly state how many times the term of a permit may be extended by two years, and there is no case law interpreting section 26.

The Land and Water Boards' (LWBs) interpretation for over 20 years has been that the term of a permit can only be extended one time. That is, that the total term possible for a permit is seven years, i.e., a maximum five-year initial term plus a possible extension not to exceed two years.<sup>4</sup>

<sup>1</sup> See [Mackenzie Valley Land Use Regulations, SOR/98-429](#).

<sup>2</sup> See [Mackenzie Valley Resource Management Act, S.C. 1998, c. 25](#).

<sup>3</sup> See subsection 2(1) of the [Mackenzie Valley Land Use Regulations, SOR/98-429](#).

<sup>4</sup> See [Letter from LWBs to Chamber of Mines, dated August 27, 2020](#).

## 2.1 Chamber of Mines' Request

On July 14, 2020, the MVLWB received a letter from the NWT and Nunavut Chamber of Mines recommending, among other items, that the Boards “apply a two-year extension to licenses and permits issued to exploration mining companies. There would be no change to any conditions within the licenses and permits, just an extension of the expiry date by two years.” This would allow mining companies to plan for future work “without the need to worry about filing applications for a renewed license”, in recognition of the impact of COVID-19 on the companies. The Chamber of Mines indicated that “there is an allowance under the regulations for a two-year extension to land use permits”.<sup>5</sup>

On August 10, 2020, the LWBs responded to the Chamber of Mines' request indicating that pursuant to subsection 26(6), “LWBs cannot extend permits on their own initiative and cannot grant a two-year extension more than once without amendments to the legislation. If a permittee has already received a two-year extension, the legislation requires them to submit a new land use permit application to renew their permit.”<sup>6</sup>

On August 24, 2020, the Chamber of Mines responded to the LWBs' letter stating that:

The letter suggests that the current legislation does not allow a land use permit to be extended more than once for a two-year period. We agree that may be true of the *Northwest Territories Land Use Regulations* and the federal *Territorial Land Use Regulations*, which both expressly state that a permit can only be extended once. However, the *Mackenzie Valley Land Use Regulations* (MVLUR) contain no such restriction, and accordingly, the MVLUR allow the Board to extend land use permits more than once.<sup>7</sup>

On August 27, 2020, the LWBs suggested that the Chamber of Mines seek guidance from Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) on the proper interpretation of subsection 26(6), since the MVLUR are federal regulations.<sup>8</sup>

## 2.2 CIRNAC's Interpretation of Subsection 26(6)

On September 2, 2020, the Chamber of Mines wrote to CIRNAC seeking guidance on the interpretation of subsection 26(6). The Chamber of Mines noted that the MVLUR:

is silent on how many times a permit may be extended. This is in contrast to the *Territorial Land Use Regulations* under the *Territorial Lands Act*, which expressly state at s. 31(6) that a permit may be extended only once. The logical conclusion is that had the federal drafters intended to limit the amount of times a permit may be extended under the MVLUR they would have said so, but they did not so intend.<sup>9</sup>

CIRNAC responded as follows:

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<sup>5</sup> See [Letter from Chamber of Mines to MVLWB, WLWB and GNWT, dated July 14, 2020](#).

<sup>6</sup> See [Letter from LWBs to Chamber of Mines, dated August 10, 2020](#).

<sup>7</sup> See [Letter from Chamber of Mines to LWBs, dated August 24, 2020](#).

<sup>8</sup> See [Letter from LWBs to Chamber of Mines, dated August 27, 2020](#).

<sup>9</sup> See [Letter from Chamber of Mines to CIRNAC, dated September 2, 2020](#).

... it is our view that there is nothing in the ordinary meaning of the words of subsection (6) that would lead one to definitively concluded that the intent as expressed in the regulations was to limit the number of extensions to be granted to one single extension. If the intent was to limit the term of a permit, such intention would have been expressed clearly and directly, as has been done in other statutes such as the *Territorial Land Use Regulations*. As such, we believe it would be reasonable to the LWBs to conclude that the Boards could consider multiple term extension requests from permit holders.<sup>10</sup>

In a follow up email dated October 6, 2020, CIRNAC emphasized that its analysis of subsection 26(6) “focused on the ordinary meaning of the words”. CIRNAC also noted that extensions of permits would not be automatic, rather, CIRNAC assumed that upon receipt of a request for a permit extension, the LWBs could “run their process to gather evidence and consult with rights holders prior to making determinations on a case by case basis”.<sup>11</sup>

### **2.3 Comments Received by the Board about Subsection 26(6)**

In November 2020, the MVLWB invited recommendations on whether repeated two-year extensions are possible under subsection 26(6). The Board received recommendations from Acho Dene Koe First Nation (ADKFN), NorZinc Ltd., DeBeers Canada Inc., Fortune Minerals Limited, GNWT Lands, the NWT & Nunavut Chamber of Mines, and the Tłı̨ch̨ Government.<sup>12</sup>

The Chamber of Mines reiterated its earlier position on the interpretation of subsection 26(6). NorZinc Ltd., DeBeers Canada Inc., and Fortune Minerals Limited, agreed with the Chamber of Mines’ position but did not offer any further supporting legal analysis.

GNWT commented that the interpretation of subsection 26(6) is unclear.<sup>13</sup>

ADKFN and the Tłı̨ch̨ Government did not support an interpretation of subsection 26(6) that would allow for multiple permit extensions.

ADKFN indicated concern that if multiple extensions are permitted, project oversight, evaluation and consultation will be circumvented. According to ADKFN, “permit holders may preferentially choose to extend permits rather than proceed through a full renewal process, thereby reducing and/or delaying regulatory oversight of activities and the ability of rights holders to participate in the process.”<sup>14</sup>

The Tłı̨ch̨ Government’s position is that it is not the intent of the MVLUR to “set up a land use permitting system based on open ended authorizations that can be renewed indefinitely”.<sup>15</sup> Allowing multiple permit

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<sup>10</sup> See [Letter from CIRNAC \(ADM, Northern Affairs Organization\) to Chamber of Mines and LWBs \(undated\)](#).

<sup>11</sup> See [Email from Mark Hopkins \(CIRNAC\) to Shelagh Montgomery \(MVLWB\) et al., dated October 6, 2020](#).

<sup>12</sup> See attached Review summary and attachments.

<sup>13</sup> See attached Letter from GNWT Lands (Director, Securities and Project Assessment) to MVLWB, dated January 18, 2021.

<sup>14</sup> See attached Review summary and attachments.

<sup>15</sup> See attached Letter from Tłı̨ch̨ Government to MVLWB, dated January 18, 2021.

extensions would “introduce unintended risks, including process uncertainty for applicants, confusion for reviewers, administrative burden for everyone, and more potential for concern and delay during permitting... Due to the uncertain and unpredictable length of permits, multiple extensions would lead to more potential for concern and subsequent delay during permitting and during each extension process.” Furthermore, “duration of impacts is an important consideration in preliminary screening. This cannot be adequately considered if the duration of the project is unknown or open-ended and will only be decided in the future on a two-year-by-two-year basis.” Additionally, multiple extensions would require engagement and participation on permits every two years, which is an “administrative burden and an inefficient use of limited capacity.”

### **3.0 Analysis and Decision**

This decision turns on the statutory interpretation of subsection 26(6) of the MVLUR. In *Rizzo v Rizzo Shoes Ltd.*, the Supreme Court explained the modern approach to statutory interpretation, which states that a provision of a statute must be read in its entire context, in its grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.<sup>16</sup>

In *North American Tungsten Corp. v Mackenzie Valley Land and Water Board*, the Northwest Territories Court of Appeal explained that the modern approach requires consideration of context. Specifically, the modern approach:

Is often described as a purposive and contextual approach to statutory interpretation. The purposive dimension of this interpretive exercise requires courts to assess legislation in light of its purpose with due regard to the legislative scheme of which it forms a part. This contextual dimension requires that the words chosen be interpreted in the entire context in which they have been used.<sup>17</sup>

The Supreme Court recently highlighted the importance of the modern principle to administrative decision-making in *Canada (Minister of Citizenship and Immigration) v Vavilov*.<sup>18</sup> The Supreme Court explained that:

Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker... The administrative decision maker’s task is to interpret the contested provision in a manner consistent with the text, context, and purpose, applying its particular insight into the statutory scheme at issue... The decision maker’s responsibility is to discern meaning and legislative intent...<sup>19</sup>

Notably, the Chamber of Mines’ interpretation of subsection 26(6) of the MVLUR primarily considers the grammatical and ordinary sense of the provision. CIRNAC acknowledged that CIRNAC’s interpretation of

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<sup>16</sup> Re Rizzo and Rizzo Shoes Ltd., [1998] 1 SCR 27 at 41.

<sup>17</sup> North American Tungsten Corp v Mackenzie Valley Land and Water Board, 2003 NWTCA 5 at para 22.

<sup>18</sup> 2019 SCC 65 [Vavilov].

<sup>19</sup> Vavilov at para 118-121.

subsection 26(6) focuses only on the “ordinary meaning of the words”. This limited approach to statutory interpretation is not in line with the modern principle of statutory interpretation set out in *Rizzo v Rizzo Shoes Ltd*.

Consistent with *North American Tungsten Corp.*, and the Board’s obligations under *Vavilov*, the Board’s interpretation of subsection 26(6) of the MVLUR must consider the provision in its entire context, including in the context of the land use permitting regulatory scheme set out by MVRMA and MVLUR and that scheme’s purpose, and the intention of Parliament.

### **3.1 Grammatical and Ordinary Sense**

The Chamber of Mines’ stance is that the “only correct legal interpretation” of subsection 26(6) is that subsection 26(6) allows multiple permit extensions.<sup>20</sup> However, on a plain reading alone, one could argue that subsection 26(6) only permits a single two-year extension.

Subsection 26(6) provides that, prior to the expiration of a permit, “the Board may extend the term of the permit for an additional period not exceeding two years (emphasis added).” Subsection 26(6) references a single extension period that does not exceed two years. Had Parliament intended to allow multiple permit extensions, it could have explicitly stated, for example, that “the Board may extend the term of the permit for additional periods, each of which shall not exceed two years”.

The Supreme Court explained in *Canada Trustco Mortgage Co v R* that, “when the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role.”<sup>21</sup>

That there are two reasonable plain readings of subsection 26(6) means that the provision is ambiguous. This ambiguity can only be resolved by reading the provision in its statutory context, with regard to the purpose and history of the legislation.

### **3.2 Multiple Extensions Leading to an Indefinite Permit Term are Inconsistent with the MVLUR and Land Use Permitting Process**

In the Board’s view, the MVLUR, when read as a whole in accordance with the modern principle, support the interpretation that multiple permit extensions are not permitted.

Section 19 of the MVLUR sets out the process for applying for a permit, and subsection 19(2) provides that an application for a permit must include the information set out in Schedule 2. Schedule 2 lists the information applicants are required to submit in support of an application for a permit. Item 15 of Schedule 2 notes that applicants must submit the start date and completion date of the permit period, and specifically states “period of permit (up to five years, with maximum of two years of extension).”

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<sup>20</sup> See attached Letter from Chamber of Mines to MVLWB dated January 5, 2021.

<sup>21</sup> 2005 SCC 54 at para 10 – Canada Trustco.

Schedule 2 states that a permit term may only be extended for a maximum two years and does not contemplate multiple extensions. Schedule 2 is consistent with subsection 26(5) of the MVLUR, which provides that, subject to subsection (6), the term of a permit must be based on the estimated dates of land use commencement and completion as set out in the permit application.

When an applicant applies for a permit, the applicant is required to estimate the length of land use and the permit application is reviewed with the proposed length of land use in mind. Allowing an indefinite number of permit extensions has the potential to significantly lengthen the overall permit term and the duration of the land use, beyond the term contemplated in the permit application.

Neither the MVRMA nor the MVLUR prescribes the Boards' process for reviewing a permit extension request. However, pursuant to sections 65, 102, and 106 of the MVRMA, the MVLWB has published a *Guide to the Land Use Permitting Process*.<sup>22</sup>

Both applications for permit extensions and renewals must be for continuations of previously permitted activities that have not been modified. Under the *Guide to the Land Use Permitting Process*, the Board's process for reviewing an extension request is quite similar to the Board's process for reviewing a permit renewal request. However, there are three main differences:

- In considering an extension request, the Board has no ability to modify permit conditions, the Board may only make minor administrative updates to the permit (e.g., update a phone number or contact person). In contrast, in considering a renewal request, the Board may update the permit conditions and revisit the security amount held under the permit. The Board has more flexibility to adjust and “refresh” the permit to address a longer duration of land use under the renewal process than under the extension process.
- The Board's process for reviewing both renewal and extension applications includes public review. However, the engagement timelines on an extension request are typically shorter than on a renewal request, depending on the history of the file and the nature of the land use.
- The Board's process provides for more engagement opportunities on a permit renewal application than on an extension request. The MVLWB's *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits (Engagement Guidelines)* recommends that applicants provide written notification of a request to extend a permit to affected parties. By contrast, the *Engagement Guidelines* recommend that on a renewal application, the applicant (i) provide written notification to affected parties, and (ii) where the project is of large scale, utilizes new technologies, or is in an area of significant interest to an affected party, that the applicant engage in face-to-face meetings with the affected party and hold community public meetings.<sup>23</sup>

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<sup>22</sup> See [Land and Water Boards of the Mackenzie Valley Guide to the Land Use Permitting Process](#), dated September 16, 2020.

<sup>23</sup> See [Land and Water Boards of the Mackenzie Valley Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#), dated June 5, 2018; pg. 19.



Interpreting subsection 26(6) to allow multiple permit extensions would enable proponents to potentially circumvent the more rigorous renewal process. As noted by the ADKFN and the Tłı̨chǫ Government, allowing for multiple permit extensions could result in less regulatory oversight and engagement.

The purpose of the MVRMA is to provide a coordinated system of land and water management in the Mackenzie Valley, and the LWBs were created to enable residents of the Mackenzie Valley to participate in resource management.<sup>24</sup> In the Board's view, interpreting subsection 26(6) in a manner that results in less regulatory oversight and engagement is contrary to the purpose of the MVRMA and the land use regulatory regime.

### **3.3 Multiple Extensions are Inconsistent with Similar Legislation and Parliament's Intention**

Regulations similar to the MVLUR that apply to land uses outside of the Mackenzie Valley provide for two-year permit extensions, but explicitly state that the permit's duration may only be extended one time.

Subsection 30(5) of the Northwest Territories Land Use Regulations<sup>25</sup> provides that outside of the Mackenzie Valley, "on receipt of a written request from a permittee to extend the duration of a permit, the engineer may grant the extension...for a period not exceeding two years, as is necessary to enable the permittee to complete the land use operation authorized by the permit." Subsection 30(6) explicitly provides that a permit's duration may be extended under subsection (5) only once.

Subsections 31(5) and (6) of the Territorial Land Use Regulations,<sup>26</sup> which apply to permits for areas under the control, management, and administration of the Federal Government in NWT and Nunavut, include identical language.

Statutes that are in *pari materia*, i.e., that relate to the same person or thing or to the same class of persons or things, "are to be taken together as forming one system and as interpreting and enforcing each other."<sup>27</sup> The MVLUR are in *pari materia* with the Northwest Territories Land Use Regulations and Territorial Land Use Regulations, and should be interpreted to be consistent with them.

The Chamber of Mines argues that the fact that subsection 26(6) of the MVLUR does not specifically state that a permit duration may only be extended one time, in contrast to the Northwest Territories Land Use Regulations and Territorial Land Use Regulations, is evidence that Parliament intended to allow for multiple permit extensions in the Mackenzie Valley (and not outside of the Mackenzie Valley). The Board disagrees. There is no evidence that Canada or the legislature intended a different permitting process (permit terms) to apply in the Mackenzie Valley than that which applied historically throughout the NWT and that which continues to apply outside of the Mackenzie Valley and in Nunavut.

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<sup>24</sup> See Preamble and section 9.1 of the [Mackenzie Valley Resource Management Act, S.C. 1998, c. 25](#).

<sup>25</sup> See [Northwest Territories Land Use Regulations, R-012-2014](#).

<sup>26</sup> See [Territorial Land Use Regulations, C.R.C., c. 1524](#).

<sup>27</sup> In re Capital Grocers Limited and Registrar of Land Titles, [1953] 1 DLR 318 at para 12-14.

Indeed, as pointed out by the Board in its correspondence with CIRNAC, when the Federal Government amended the Territorial Land Use Regulations in 2016, one of the government's objectives was to make the Territorial Land Use Regulations more consistent with the MVLUR. In its Regulatory Impact Analysis Statement for the amendments, the Federal Government explicitly addressed land use permit terms and extensions.

The objectives of the proposed amendments are to reduce the administrative burden for companies and regulators by increasing the length of a land use permit from two years to a maximum of five years and increasing the length of the permit extension from one year to a maximum of two years, to ensure that adequate time is provided for consultation on Class B applications, to allow for new technologies (i.e. GPS coordinates) to be used in the final reporting and to modernize the language used in the provisions of the *Territorial Land Use Regulations*.

The proposed amendments will help bring the *Territorial Land Use Regulations* more in step with the *Mackenzie Valley Land Use Regulations*, which will bring more consistency to the regulatory regime that is currently being used in the North. For example, if a land use permit that crosses two different jurisdictions is required, the length of both permits can be coordinated to be the same length of time, thereby avoiding any administrative delays that would slow down the activity...

Changing the length of the permit term from two years to a maximum of five years and the length of the permit extension from one year to a maximum of two years gives companies greater flexibility to plan their activities. The proposed changes will also relieve some of the administrative burden on companies and the Crown from having to reapply for a permit after three years.

Although it is expected that the length of time to apply for a permit or renewal will not change, the longer term will result in fewer renewals (emphasis added).<sup>28</sup>

The Regulatory Impact Analysis Statement demonstrates Parliament's intention that the permitting processes, term of permits, and timing for permit expiry and renewal, be consistent across the MVLUR and Territorial Land Use Regulations. Interpreting subsection 26(6) of the MVLUR to allow for multiple permit extensions, which are not permitted under the Territorial Land Use Regulations, is inconsistent with this intention.

As set out above, pursuant to *Vavilov*, the Board's responsibility in interpreting subsection 26(6) is to "discern meaning and legislative intent," while "applying its particular insight into the statutory scheme."<sup>29</sup> In light of the Regulatory Impact Analysis Statement, the history and the related nature of these regulations, and absent a clear intention to the contrary, the Board must conclude that Canada

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<sup>28</sup> See Regulatory Impact Analysis Statement for Regulations Amending the Territorial Land Use Regulations, dated May 24, 2014, retrieved from: <http://www.gazette.gc.ca/rp-pr/p1/2014/2014-05-24/html/reg1-eng.html>.

<sup>29</sup> *Vavilov* at para 118-121.



intended the MVLUR and the Territorial Land Use Regulations and that the Legislature intended the Northwest Territories Land Use Regulations to each only allow for a single permit extension.

This is consistent with the LWBs' longstanding (over 20 year) interpretation that the term of a permit can only be extended one time.<sup>30</sup> *Vavilov* provides that an administrative decision-maker may only reasonably depart from a longstanding practice if the departure is justified.<sup>31</sup> In light of the considerations set out above, it is the Board's view that there is no justification to depart from the Board's longstanding interpretation of subsection 26(6) of the MVLUR.

#### 4.0 Conclusion

For the reasons set out above, considering the purpose of the MVLUR permitting regime, and in light of the Federal Government's intention to ensure consistency between the MVLUR and the Territorial Land Use Regulations, the MVLWB has determined that subsection 26(6) of the MVLUR only allows the Board to extend the term of a permit by two years **one time** (i.e., that the MVLUR do not allow multiple permit extensions).

SIGNATURE



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Mavis Cli-Michaud, Chair

April 22, 2021

\_\_\_\_\_  
Date

<sup>30</sup> See [Letter from LWBs to Chamber of Mines, dated August 27, 2020](#).

<sup>31</sup> *Vavilov* at para 131.

## Review Summary and Attachments

### Inviting Recommendations on the Interpretation of subsection 26(2) of the MVLUR

Reviewer	Comment	Recommendation
Acho Dene Koe First Nation	<p>“On July 14, 2020, the MVLWB received a letter from the NWT &amp; Nunavut Chamber of Mines (the Chamber), requesting a blanket two-year extension on an applicable water licenses and land use permits, typically valid for multiple consecutive years. Furthermore, the chamber requests that a two-year extension be placed on 2020 reporting requirements for exploration mining companies. The Chamber cites delays in activities in 2020 because of COVID-19, as the impetus behind these requests. Ambiguity exists in the wording of Subsection 26(6), as it allows for an initial term of a permit or license, followed by a two-year extension at the board’s discretion. However, unlike other comparable regulations which govern environmental permitting and licensing, Subsection 26(6), does not specifically state a maximum duration of the total permit or license tenure. ADKFN is sympathetic to the delays and extraordinary circumstances caused by COVID-19 and recognizes the economic importance of the mining sector to Nunavut and the Northwest Territories. However, ADKFN does not support an interpretation of Subsection 26(6) which allows for a blanket extension of water license or land use tenure for any organization in our traditional territory. The evaluation and consultation opportunity incorporated in the existing permitting process is of utmost importance to maintaining the integrity and oversight of permit activities, as well as essential to fulfilling the Crown’s duty to consult and accommodate Indigenous Rights holders under Section 35 of the Canadian Constitution. ADKFN is concerned that by creating a mechanism, which allows for extension of permits and licenses beyond their initial term plus a one-time two-</p>	<p>“ADKFN recommends that moving forward, Subsection 26(6) continue to limit the tenure of water license and land use permits to a maximum of their initial term plus a one-time two-year extension. The COVID-19 pandemic, while having significant impacts on economies, industry, and communities, is temporary and is not expected to extend beyond two years and should not be used as a basis for a reduction in appropriate regulatory oversight of mining. ADKFN also recommends that the Guide to Land Use Permitting Process be amended to provide clarity on this issue.”</p>

	year extension, a precedent may be set in which permit holders may preferentially choose to extend permits rather than proceed through a full renewal process, thereby reducing and/or delaying regulatory oversight of activities and ability of rights holders to participate in the process.”	
NorZinc	“Letter from Norzinc.”	
De Beers Canada	“Please see attached letter.”	“De Beers agrees with CIRNAC’s interpretation on Subsection 26(6) that the MVLUR allows the LWBs to approve multiple LUP extensions. The LWBs have the authority to approve the extension request based on the evidence that is presented.”
		“The criteria what are used for the LWBs’ considerations should be consistent between the first and any subsequent extension requests. The supporting evidence that is required for a permit extension request is well established under Section 6.2 of the recently released Guide to the Land Use Permitting Process (the “Guide”, LWB 2020), the same requirements should be used for the subsequent extension requests.”
		“Regardless of being the first or the subsequent extensions, in the Extension Request, the permittee should always confirm if there are changes to the scope or lifespan of the project/operation, or if there are proposed changes to the permit conditions: • If changes other than the permit term are required, a Permit Amendment Process may be triggered. During the Permit Amendment Process, additional permitting support documents including the updated management plans and security estimate, as specified under Section

		<p>6.1 of the Guide, should be submitted for approval. However, • If the permittee confirms no changes to the project or the permit conditions, no other additional support documents should be required. Only the supporting documents listed under Section 6.2 of the Guide should be required. In another words, requirements in the Permit Amendment process should not be imposed in a Permit Extension process regardless of the number of times an extension request has been made.”</p>
		<p>“De Beers recommends the LWBs setting a limit not based on the number of extensions, but instead, based on the specific projects/operations, as the follows: • For relatively larger projects/operations, where Water Licences are also required: Since the term of the Water Licence cannot be extended, i.e. can only be renewed, the LWB may limit the final LUP extension timeline to the same expiry date of the Water Licence. Since there are always overlapping conditions between the Water Licence and Land Use Permit, the Water Licence and Land Use Permit should be renewed at the same time. • For smaller projects and operations, where Water Licences are not required: The final extent of the LUP term extension should be based on the life span of the project under its approved scope, i.e. without a Permit Amendment.”</p>
Fortune Minerals Limited	<p>“Fortune Minerals Limited (Fortune) has reviewed the information provided on the interpretation of subsection 26(6) of the MVLWB and the comments submitted to date. We support the the COM position that multiple</p>	<p>“Fortune Minerals Limited recommends that the board allow for multiple extensions to existing Land Use Permits and that each</p>

	<p>extensions should be allowed for Land Use Permits holders and would suggest that we simply use the existing LUP extension process for any extensions beyond the existing 1 time two year limit. Fortune's NICO project has been in care and maintenance for a number of years and until financing is secured to develop the project, the project site will remain in its existing state. The possibility of multiple extensions of our existing LUP would be the most efficient means of dealing with the LUP for this site."</p>	<p>extension be requested separately using the existing process."</p>
GNWT - Lands	"Please see the attached letter for GNWT comments."	"Please see the attached letter."
Gwich'in Renewable Resources Board	"Thank you for giving the GRRB the opportunity to provide feedback on the interpretation of subsection 26(6) of the MVLUR. Our staff have reviewed it and feel that determining how to interpret regulations falls outside of the GRRB's mandate, so we have no comment at this time."	"We have no recommendations at this time."
NWT & Nunavut Chamber of Mines	"Chamber of Mines comment on multiple permit extensions."	
Tłı̨chǫ Government	"Please see the attached letter."	"Please see the attached letter."



January 5, 2021

Ms. Angela Plautz  
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P.O. Box 2130  
Yellowknife, NT X1A 2P6  
By email to: [aplautz@mvlwb.com](mailto:aplautz@mvlwb.com)

Dear Ms. Plautz,

The Chamber of Mines (“**Chamber**”) is pleased to comment on the MVLWB’s November 24, 2020 review item, “[Inviting Recommendations on the Interpretation of subsection 26\(6\) of the MVLUR](#)”. The Chamber will reference the [correspondence that forms the record](#) on this issue throughout this comment.

The Chamber’s response to the Board’s two questions is as follows:

1. The only correct legal interpretation to the question of whether repeated two year extensions to a land use permit are possible under the MVLUR is the one the Chamber provided in its September 2 correspondence to the Board, and as affirmed by CIRNAC correspondence on September 18 and October 6.
2. Since section 26(6) of the MVLUR does not draw a distinction between first and subsequent permit renewals, the evidence the Boards use to consider multiple extension requests should be the same evidence the Boards use to consider a first extension request. Section 26(6) of the MVLUR does not draw a distinction in the “test” for the Boards to consider on first and subsequent renewals, and any interpretation that would make a second renewal request more onerous than a first renewal would be unreasonable.

The Chamber would also like to comment on the Board’s process in this review, and to provide clarity for all reviewers, for the record, of how we got here.

First, the Chamber’s request for the Board to consider this issue did not arise in a vacuum. It arose in the context of one of the Chamber’s members applying for a second permit extension. That member had obtained support letters for the second extension from two municipalities and three Indigenous groups, together representing the majority of Mackenzie Valley residents. It was those support letters and the frankly straightforward legal interpretation that urged the Chamber to act on this issue. The Chamber *never* attempted to avoid consultation with Indigenous groups or stakeholders, and any suggestion to the contrary ignores the facts.

Second, to the extent that CIRNAC has attracted criticism for “telling the Boards what to do”, it is entirely misplaced. Let us be clear: the Chamber only requested CIRNAC’s interpretation



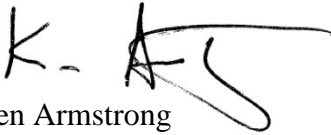
*because the Boards asked the Chamber to do so* (see the second last paragraph of the Boards' August 27, 2020 letter). The Chamber fully understands that the Boards are independent federal agencies, and as such the Chamber would never expect CIRNAC to "direct" the Boards on what to do. That is entirely consistent with the Chamber's position from the outset, that the decision whether to grant a permit extension is a matter of Board discretion, which must be exercised correctly and reasonably.

In closing, the Chamber urges the Boards to consider that this issue affects not only the mining industry but also other land use permit holders such as Indigenous and public governments, municipalities, construction, energy, tourism, and other land users. In fact, currently, only a minority of land use permits are issued to the mineral industry.

We look forward to the Boards' clear and positive response to this issue. Strong regulatory leadership will benefit all residents of the NWT and contribute to strengthening our regulatory system to attract prosperity for all our people at this critical juncture in this time of extreme global uncertainty.

Yours truly,

**NWT & NUNAVUT CHAMBER OF MINES**



Ken Armstrong  
President

c.c.: Shelagh Montgomery, Executive Director, Mackenzie Valley Land & Water Board  
Ryan Fequet, Executive Director, Wek'èezhìi Land and Water Board  
Serge Beaudoin, Assistant Deputy Minister, CIRNAC, Northern Affairs  
Mark Hopkins, Director General, CIRNAC – Natural Resources & Environment  
Rebecca Chouinard, Senior Advisor, CIRNAC Resource Policy & Programs Directorate  
Lisa Dyer, Director General, CanNor – Northern Projects Management Office  
Ms. Pamela Strand, Deputy Minister, GNWT – Industry, Tourism & Investment  
Menzie McEachern, Acting Deputy Minister, GNWT – ITI  
Erin Kelly, Deputy Minister, GNWT – Environment & Natural Resources  
John Macdonald, Assistant Deputy Minister, GNWT – Environment & Climate Change  
Rick Walbourne, A/Manager Water Regulatory, GNWT – ENR

# DE BEERS GROUP

January 13, 2020

Angela Plautz  
Senior Regulatory Policy Advisor  
Mackenzie Valley Land and Water Board  
P.O. Box 2130  
Yellowknife, NT X1A 2P6

Via Email: [aplautz@mvlwb.com](mailto:aplautz@mvlwb.com)

## Re: De Beers' Recommendations regarding Interpretation of Subsection 26(6) of the MVLUR

Dear Ms. Plautz:

De Beers Canada Inc. (De Beers) operates the Gahcho Kué Mine, the Snap Lake Mine and conducts exploration activities within the Northwest Territories. As required by the *Mackenzie Valley Land Use Regulations (MVLUR)*, De Beers has obtained Land Use Permits (LUPs) through the Land and Water Boards of the Mackenzie Valley (LWBs). We thank the LWBs for the opportunity to provide recommendations regarding the interpretation of Subsection 26(6) of the *MVLUR*, as the decision will directly impact De Beers' ability to obtain future extensions of existing LUPs and to maintain continued operations at the aforementioned sites.

### Background

Subsection 26(6) of the MVLUR reads:

*On receipt of a written request from a permittee, prior to the expiration of the permit, for an extension of the term of the permit, the Board may extend the term of the permit for an additional period not exceeding two years, subject to any conditions referred to in subsection (1).*

This subsection does not specify the number of LUP extensions that the LWBs may approve. However, in the past, the LWBs have interpreted that the MVLUR only allows for one extension of the LUP term. Since "there had been no questions raised about the LWBs' interpretation of ss. 26(6) over the last 20 years", permittees were required to apply for renewed LUPs after the first permit extension, even if there is no change to the permit scope or condition.

In the letter on July 14, 2020 and subsequent correspondences, the NWT & Nunavut Chamber of Mines (the "Chamber") requested the LWBs consider revising the interpretation of Subsection 26(6) to allow for multiple permit extension requests.

In the response on August 27, 2020, the LWBs acknowledged that "we do admit these other authorities are explicit about the total length of a permit term while the MVLUR are not". In addition, the LWBs indicated it is beneficial to seek guidance from the Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) on the interpretation, since the MVLUR is a federal regulation. The LWBs also suggested that the Chamber reach out to the CIRNAC separately for clarification.

#### De Beers Canada inc.

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# DE BEERS GROUP

The CIRNAC has since provided clarifications to both the Chamber and the LWBs on September 18 and October 6, 2020. The CIRNAC's interpretation of Subsection 26(6) are:

- “It would be reasonable for the land and water boards to conclude that the boards could consider multiple term extension requests from permit holders”, i.e. the Board may approve “multiple extensions beyond a total of two years”; and
- The extensions should not be automatic, instead “the board would run their process to gather evidence and consult with rights holders prior to making determinations on a case-by-case basis”.

On November 24, 2020, the LWBs posted the following two questions on the online review system:

- “The proper interpretation of subsection 26(6) in relation to the question of whether only one or repeated two year extensions to a land use permit are possible under the MVLUR?”
- “If the answer to question 1 is that multiple extensions are possible, what additional evidence (e.g., confirmation that no changes are proposed for the project and that existing security requirements and permit conditions are sufficient to mitigate potential environmental impacts) and/or criteria (e.g., a possible limitation on the number of extensions that can be granted) could the Boards use to consider multiple extension requests?”

## De Beers' Recommendation

### Regarding LWBs' first question:

- De Beers agrees with CIRNAC's interpretation on Subsection 26(6) that the MVLUR allows the LWBs to approve multiple LUP extensions. The LWBs have the authority to approve the extension request based on the evidence that is presented.
- The criteria what are used for the LWBs' considerations should be consistent between the first and any subsequent extension requests. The supporting evidence that is required for a permit extension request is well established under Section 6.2 of the recently released *Guide to the Land Use Permitting Process* (the “Guide”, LWB 2020), the same requirements should be used for the subsequent extension requests.

### Regarding LWBs' second question:

It appears the second question mixed requirements in two distinctive permitting processes between the *Permit Amendment* and the *Permit Extension*.

Regardless of being the first or the subsequent extensions, in the Extension Request, the permittee should always confirm if there are changes to the scope or lifespan of the project/operation, or if there are proposed changes to the permit conditions:

- If changes other than the permit term are required, a Permit Amendment Process may be triggered. During the Permit Amendment Process, additional permitting support documents including the updated management plans and security estimate, as specified under Section 6.1 of the Guide, should be submitted for approval. However,

## DE BEERS GROUP

- If the permittee confirms no changes to the project or the permit conditions, no other additional support documents should be required. Only the supporting documents listed under Section 6.2 of the Guide should be required. In another words, requirements in the Permit Amendment process should not be imposed in a Permit Extension process regardless of the number of times an extension request has been made.

### Regarding the question on “limitation on the number of extensions”

De Beers recommends the LWBs setting a limit not based on the number of extensions, but instead, based on the specific projects/operations, as the follows:

- For relatively larger projects/operations, where Water Licences are also required:

Since the term of the Water Licence cannot be extended, i.e. can only be renewed, the LWB may limit the final LUP extension timeline to the same expiry date of the Water Licence. Since there are always overlapping conditions between the Water Licence and Land Use Permit, the Water Licence and Land Use Permit should be renewed at the same time.

- For smaller projects and operations, where Water Licences are not required:

The final extent of the LUP term extension should be based on the life span of the project under its approved scope, i.e. without a Permit Amendment.

### **Conclusion**

De Beers' above recommendations also make practical sense. As an example, De Beers is currently going through a permit amendment process for Gahcho Kue Mine's LUP, as the scope of that permit has changed. The LUP is expected to be approved in Q1 of 2021. However, since the term of the LUP is due to expire in August 2021, under the previous LWBs interpretation of Subsection 26(6), De Beers has to start a Permit Renewal process, as soon as the same permit is amended. This will add unnecessary administrative burden to De Beers, MVLWB staff, and reviewers. In comparison, under De Beers' recommended approach, the Gahcho Kue LUP can be extended for two extra years at the same time as the permit is re-issued following amendment without an extensive regulatory process. The 2-year extensions will then continue until the Water Licence is due for a renewal in September 2028. At that time, both the Water Licence and Land Use Permit will be renewed in the same regulatory process.

De Beers appreciates the LWBs' re-consideration of their interpretation of Subsection 26(6) of the MVLUR. De Beers trusts the recommendations that have been put forth will streamline the current regulatory process and reduce unnecessary burdens to the permit holders and the reviewers.

Sincerely,

*Sarah McLean*

Sarah McLean  
Manager, Environment and Permitting  
De Beers Canada



JAN 18 2021

BY ONLINE REVIEW SYSTEM

Ms. Angela Plautz  
Senior Regulatory Policy Advisor  
Mackenzie Valley Land and Water Board  
7<sup>th</sup> Floor YK Centre Mall  
4922 – 48th Street  
PO BOX 2130  
YELLOWKNIFE NT X1A 2P6

Dear Ms. Plautz:

**The Territorial government's position and recommendations on the interpretation of subsection 26(6) of the Mackenzie Valley Land Use Regulations**

On behalf of the Government of the Northwest Territories (GNWT), I provide herein our position and recommendations for the Mackenzie Valley Land and Water Board (MVLWB) to consider regarding the proper interpretation of subsection 26(6) of the Mackenzie Valley Land Use Regulations (MVLUR).

**GNWT Response to MVLWB's first question (*What is the proper interpretation of s.26(6)?*)**

The GNWT's position to the MVLWB's first question is that the interpretation of subsection 26(6) of the MVLUR is entirely a question of law and that the interpretation is unclear.

**GNWT Response to MVLWB's second question (*What additional evidence and/or criteria should be considered?*)**

As the land manager for most public lands in the NWT, the GNWT recommends that the following factors be considered in developing any guidance and processes around multiple extensions:

.../2

- There is a need for land use permit terms and conditions to be reviewed at appropriate intervals to ensure the conditions reflect the appropriate standards of the day and adequately accommodate potential impacts to asserted or established Aboriginal and/or treaty rights.
- The public should retain the ability to comment at regular intervals on permit terms and conditions.
- Regular opportunities to review the security required under a permit are necessary to ensure projects are adequately secured. Reduced opportunities could increase potential public liability for a project.
- Any approach should consider the rationale for second and subsequent extension requests. For example, a short extension past the 7-year mark to allow for completion of a permitted land use may be considered differently than multiple extensions to allow for continuation of a long-term land use.
- Any approach should provide predictability and clarity for permittees and reviewers.

If the MVLWB decides that requested additional extensions (beyond the current 7 years) are allowed for under the MVLUR, the GNWT would like to express the following point for consideration:

- If, after appropriate initial review of the extension request, the applicable Land and Water Board determines that there is no change in the scope of the permitted activities, the Board should consider the request regardless of degree of completion of the project. As noted above, the Board should consider the rationale for the request when making its decision.



Should the MVLWB develop guidance and/or processes around multiple extensions in the future, the GNWT will participate, as appropriate. If the MVLWB has any questions or concerns or requires additional information, please contact Ms. Katie Rozestraten, Project Assessment Analyst, at [Katie\\_Rozestraten@gov.nt.ca](mailto:Katie_Rozestraten@gov.nt.ca) or (867) 767-9180 ext. 24022, or me at [Lorraine\\_Seale@gov.nt.ca](mailto:Lorraine_Seale@gov.nt.ca) or (867) 767-9180 ext. 24020.

Sincerely,

A handwritten signature in cursive script, appearing to read "L Seale".

Lorraine Seale  
Director  
Securities and Project Assessment  
Lands



January 18, 2021

Ms. Angela Plautz  
Senior Regulatory Policy Advisor  
Mackenzie Valley Land & Water Board  
P.O. Box 2130  
Yellowknife, NT X1A 2P6

By email to: [aplautz@mvlwb.com](mailto:aplautz@mvlwb.com)

Dear Ms. Plautz:

**Re: NorZinc's Recommendation regarding Interpretation of Subsection 26(6) of the MVLUR and Comments on Subsection 26(5) regarding LUP term**

NorZinc Ltd, through its wholly-owned subsidiary Canadian Zinc Corporation, (collectively “**NorZinc**”), holds a 100% interest in the Prairie Creek Project, also known as the Prairie Creek Mine, located in traditional Dene territory in the south west Northwest Territories.

NorZinc has obtained multiple Land Use Permits (“**LUPs**”) and Water Licenses (“**WLS**”) through the Mackenzie Valley Land and Water Board (“**MVLWB**”) process over many years. The original mine that is now referred to as the Prairie Creek Mine, was built in the early 1980s as the Cadillac Silver Mine and acquired by NorZinc in the early 1990s. The initial permits for exploration were issued in 1995 and Operating LUPs and WLS were issued in 2013.

We have not commented on any differences in regulatory approach between the Land and Water Boards of the Mackenzie Valley as we have only had exposure to the MVLWB.

**Potential Repeated Two-Year Extensions to LUPs**

NorZinc wholeheartedly supports the view of the NWT & Nunavut Chamber of Mines (“**the Chamber**”) that the correct legal interpretation to the question of whether repeated two-year extensions to an LUP are possible under the Mackenzie Valley Land Use Regulations (“**MVLURs**”) is the one the Chamber provided in its September 2 correspondence to the Board, and as affirmed by CIRNAC correspondence on September 18 and October 6.

In addition, the criteria used for consideration of an extension should only logically be the same criteria used in all extension requests. As stated by others, the supporting evidence that is required for a permit extension request is well established, and confirmed by Section 6.2 of the recently released Guide to the Land Use Permitting Process (LWB 2020). The requirements should be equally applicable to all extension requests, including the first extension and subsequent extensions. Sections 26(5) and 26(6) of the MVLUR do not seem in their wording to draw any distinction between the first and subsequent permit periods.

**Inconsistency between LUPs and WLS – A Meaningful Long-Term Solution**

The current NWT Waters Act (“**NWTWA**”) provides for WLS to have a potential term of up to 25 years (Section 26(2)) but LUPs under the MVLUR can only have an initial term of up to 5 years (MVLUR Section 26(5) with requirements for 2-year extensions (as discussed above). Historically, only one 2-year extension has been given to LUPs - essentially creating a maximum 7-year LUP term.

The suggestion/interpretation outlined by CIRNAC and supported by the Chamber and others, will provide for repeated 2-year extensions to initial 5 year LUPs. However, while this would be an improvement, it would remain illogical and wholly inadequate for companies that are developing actual mines for Operation i.e. those obtaining Operating permits to develop an operating mine. **Operating LUPs should have the same term as WLs i.e. up to 25 years.**

### **WLs and LUPs for Mine Development and Operation**

The rules and laws that govern the permitting of an operating mine require a fully detailed development plan, operating plan and closure plan. These 'plans' in the case of the Prairie Creek Mine cover a period of at least 18 years, before closure. It seems wholly inconsistent that the WL term can extend to 25 years but the related LUP would require multiple renewals.

The financing of mining projects by all but the largest companies usually include **bank Project Financing** based on a Feasibility Study – in fact the Canadian National Instrument 43-101 (incorporating by reference CIM Definition Standards) defines a Feasibility Study with reference to finance such that “*The results of the study may reasonably serve as the basis for a final decision by a proponent or financial institution to proceed with, or finance, the development of the project*”. External international and domestic debt and equity investors expect, as a condition to financing, that a mine has all the necessary permits to operate for the life of the mine as outlined in the Feasibility Study. We believe that with the short 5-year LUP the NWT is currently an exception to this general practice.

### **An Example of the Illogic of the Current Regime**

A direct example of the illogic with the limited LUP term would be the 2013 Operating permits granted for the Prairie Creek Mine. As mentioned, the original mine (now referred to as the Prairie Creek Mine), was built in the early 1980s as the Cadillac Silver Mine and acquired by NorZinc in the early 1990s. The initial permits for exploration for the substantial zinc-lead-silver resource that contains the silver were issued in 1995.

Following some very successful exploration, the mine was redesigned (largely on the same footprint as the original mine), as a zinc-lead-silver mine and Operating LUPs and WLs were issued in 2013 after applications in 2008. The Operating LUPs were given a term of 5 years and the WLs 7 years, and with one extension in 2018 to the LUP both Operating permits expired in 2020 and had to be renewed, despite the fact that the Operating Permits were never used. This process of renewal would be unnecessary had the original LUPs and WLs been issued for the construction and operating period (of over 16 years) presented in 2008. It should be noted that the NWT WL issued in November 2019 for the All Season Road access (previously winter road access) to the Prairie Creek Mine was issued for 20 years to Nov 2039.

### **Recommendation to Align Terms of LUPs to WLs for Developing Mines (Operating Permits)**

NorZinc thus recommends that consideration be given to taking the modified interpretation of MVLUR 26(6) a giant step forward with regards to the granting of LUPs for developing mines and that the LUP term (MVLUR 26(5)) be aligned with that of the WLs, namely up to 25 years. The term of the LUP should be sufficient to provide enough time for development, operations and commencement of closure, and providing a cushion for potential delays or extensions of timelines. The focus should be on the 25 year timeframe for long lived mines such as Prairie Creek.

In summary, the reasoning for LUPs for developing mines to be for a maximum of 25 years is:

1. LUPs for the development of operating mines, by their nature need to cover the proposed life of mine that was subject to an EA process. NWT WLs can be issued for up to 25 years.
2. No logical reason appears to explain why the terms for LUPs are shorter than those for WLs.
3. To make the NWT competitive with other jurisdictions around the world that usually provide life-of-mine permits.
4. To assist bank project financing for smaller mining companies developing mining projects in the NWT that do not have the same financing support as the largest mining companies.

Yours Truly

NORZINC LTD

*Don MacDonald*

Don MacDonald  
President & CEO

cc Shelagh Montgomery, Executive Director, Mackenzie Valley Land & Water Board  
Serge Beaudoin, Assistant Deputy Minister, CIRNAC, Northern Affairs  
Mark Hopkins, Director General, CIRNAC – Natural Resources & Environment  
Rick Walbourne, A/Manager Water Regulatory, GNWT – ENR  
Ms. Pamela Strand, Deputy Minister, GNWT – Industry, Tourism & Investment  
Menzie McEachern, Acting Deputy Minister, GNWT – ITI



## Tłıchǫ Government

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January 18, 2021

Ms. Angela Plautz  
Senior Regulatory Policy Advisor  
Mackenzie Valley Land and Water Board  
(sent through the Online Review System)

### **RE: The issue of whether the Boards should entertain multiple land use permit extensions**

Dear Ms. Plautz:

We thank the Boards for providing this opportunity to comment on the issue of land use permit extensions. This is the first time we have been asked to participate in a discussion about this issue. We learned about this issue only after Crown-Indigenous Relations and Northern Affairs Canada (Canada) had provided a response to a letter from the Chamber of Mines. We have now come to understand the origin of this issue and the various pieces of correspondence between the Boards, the Chamber of Mines, and Canada in relation to it.

The Mackenzie Valley Resource Management Act (MVRMA) is treaty legislation, Canada is not the sole 'owner' of it. The legislation implements the modern treaties and was co-developed by the treaty partners. Regulations under it should be approached with the same level of respect and collaboration. Accordingly, we have urged Canada not to, in future, unilaterally provide interpretations of MVRMA regulatory issues without first engaging with the treaty partners with whom the legislation was co-developed.

### **The issue of whether the Boards should entertain multiple land use permit extensions**

#### **Our "interpretation"**

We do not believe it is the intent of the Mackenzie Valley Land Use Regulations, flowing from the MVRMA and the modern treaties, to set up a land use permitting system based on open-ended authorizations that can be renewed indefinitely.

#### **Deference to the Boards**

The co-management Boards are independent tribunals that originate from the modern land claims and self-government agreements.

It is up to the Boards to decide how to run their processes in a manner that is fair and consistent with the modern treaties, and applicable legislation and regulations.

**Our view: The existing process works well and everyone knows what to expect**

The existing process has been consistent for 20 years. The first serious questions about multiple extensions arose during the unique and extreme circumstances of a global pandemic.

Outside of an extreme situation such as the current pandemic and NWT Border/travel restrictions, we do not believe it is appropriate or beneficial to allow multiple extensions to land use permits.

In our view, the Boards should continue to use the process they have been following for 20 years. The existing process works well and everyone – from applicants to reviewers – knows what to expect.

Entertaining multiple extensions would bring little to no benefit and would introduce all sorts of unintended risks, including process uncertainty for applicants, confusion for reviewers, administrative burden for everyone, and more potential for concern and delay during permitting.

**Multiple extensions would result in more potential for concern and delay**

Land use permit extensions should be a regulatory non-event. Our understanding is that extensions are automatically granted with minimal process, as long as the permittee is in good standing and the project is unchanged. Allowing multiple extensions would generate much more interest and turn extensions into more important regulatory events.

Due to the uncertain and unpredictable length of permits, multiple extensions would lead to more potential for concern and subsequent delay during permitting and during each extension processes. For land use permit applications, everything from engagement requirements to information needs is set up based on the seven-year maximum length of a permit and the reliable review process after that time (for ongoing projects).

Duration of impacts is an important consideration in preliminary screening. This cannot be adequately considered if the duration of the project is unknown or open-ended, and will only be decided in the future on a two-year by two-year year basis. There can be a significant difference between impacts on cultural practices, wildlife, or water that lasts five years vs. eight or ten.

A thorough review of each permit extension could address these questions, but then why bother with an extension rather than a new permit?



### **Multiple extensions would cause confusion and capacity burden for reviewers**

Reviewers are familiar and comfortable with the existing process. Multiple extensions would create uncertainty:

- Which process is being followed?
- What exactly is under review?
- What is the scope that reviewers should be considering?
- How much do we need to speculate about the future of the project?
- How much engagement and consultation is necessary at each stage?

Multiple extensions would also require Indigenous Governments and Organizations to respond to engagement requests and participate in Board reviews every two years, rather than every 5+2 years. This would be an administrative burden and an inefficient use of limited capacity.

### **Multiple extensions would bring process uncertainty for applicants**

Process certainty is very important part for an effective regulatory regime (although process certainty does not always mean certainty about the outcome).

Entertaining multiple extensions would result in uncertainty about which process will be followed/required. For example, a permittee may prepare to apply for ‘just’ another extension, and then could be surprised by a lengthier and more intensive process – if a new preliminary screening, changes to permit conditions, or more information is needed.

### **Little to no benefit**

Multiple extensions would mean more rigorous extension processes – likely a similar process to what is required for a new permit or amendment. This would eliminate the benefit to industry and other permit holders.

We do not want the administrative burden of carrying out a land use permit review process every two years. At the same time, due to all the risks outlined above, we cannot accept a streamlined or non-consultative review for extending permits multiple times.

### **The COVID-19 Pandemic**

We recognize the impact the pandemic is having on everyone – including Tłıchq communities, Tłıchq companies, Tłıchq government, industry etc. – and we have supported pandemic-related adjustments to some regulatory timelines. But we expect those adjustments will only last as long as the pandemic.

## Looking forward

The option to consider longer terms, based on the evidence available to the Board, is useful for water licences. In the future, a mechanism for considering land use permit terms that match water licence terms may be worth exploring for long-term projects such as some mines.

However, multiple extensions two years at a time is very different from a thoroughly considered and transparent process to set the term of a water licence when the licence application is first reviewed and issued. Setting the term of a water licence for a new mine is a predictable process: there is normally the benefit of a thorough environmental impact assessment with predictions and mitigations for the whole life of the project; everyone knows what the proposed term is; and everyone can fairly discuss and present evidence about why the licence should or should not be granted for a certain amount of time.

## Conclusion

We recommend that the Board continue its existing practice of considering only one possible land use permit extension.

We are always interested in understanding the views of other parties and we thank everyone who has shared their views on this issue.

We again thank the Boards for the opportunity to comment on this issue. If more discussion is needed, we are always open to exchanging ideas and views with other parties – formally and informally – in support of an effective and efficient regulatory system that fulfills the intent of the Tłı̨chq Agreement.

In Tłı̨chq Unity,



for:

Tammy Steinwand-Deschambeault, Director  
 Department of Culture, Language & Lands Protection  
 Tłı̨chq Government