

## **Giant Mine Implementation Committee**

### **Meeting Minutes**

**June 19, 2015, 9 a.m. – 12 p.m.**

**Basement Boardroom, Scotia Building**

#### **Round table introductions**

##### **In attendance:**

Lisa Dyer, Director of Environment, Environment and Natural Resources (ENR)  
Erika Nyssonen, Environment Division, ENR  
Matt Seaboyer, Environment Division, ENR  
Bruce Hannah, Regional Science Coordinator, ENR  
Rohan Brown, Legal Counsel, Justice, Legal Division  
Letitia Pokiak, Environment Division, ENR  
Jeff Mackey, Governance Advisor, Aboriginal Affairs and Northern Development  
Canada (AANDC)  
Ken Landa, Legal Counsel, Justice  
Gordon Hamre, Alternatives North (AN)  
Kevin O'Reilly, AN  
Shin Shiga, North Slave Metis Alliance (NMSA)  
Kerry Penney, City of Yellowknife

Via teleconference:  
Johanne Black, Yellowknife Dene First Nation (YKDFN)  
Tom Nesbitt, Legal Counsel for AN and YKDFN  
Mark Palmer, AANDC

#### **INTRODUCTION TO SUPPORT FOR THE IMPLEMENTATION COMMITTEE AND OVERSIGHT BODY**

Bruce Hannah, support to the Implementation Committee/Oversight Body

Letitia Pokiak, Secretary to the Implementation Committee/Oversight Body

#### **DISCUSSION AND FINALIZATION OF BY-LAWS**

Last set of changes from YKDFN and AN.

Cleanup of by-laws will be in data entry, using the most recent draft.

Correcting the name in the Agreement, accepted by Ken and Rohan.

**Section 6 – Resignation.** Leave with Rohan and Ken, unless it is preferred to have it cross referenced. Need to err on the side of caution; cross reference makes it clear for everyone. Legal counsel suggested making section 6 as clear as it needs to be; there doesn't need to be a link between 6 and 7; leave section 7 as it is now, resignation is

more permanent. Suggested by AN to find a different word other than 'resignation'. Legal Counsel also suggested looking at alternative wording.

**Section 10 – First directors.** First directors actually incorporate the body, but they do not have to be the official appointed directors, only interim directors.

**Section 12 – Term.** Approved edition made by AN and YKDFN; "to appoint a new director within 90 days of its previous director's ceasing to be a director."

**Section 18 – Removal of Officers and Employees.** Suggested that wording needs to be clearer, about removing a person from an office; may or may not be an employee. Strike the addition of the 'employees'. 'Employees' struck.

**Section 20.c – Duties of the Chair.** Covers the situation where an Executive Director will be taking holidays. Members want to allow for the powers of office to be able to be passed to another director. In section 16.c, the concern is that this section may preclude the Executive Director from being delegated other Officer duties.

**Section 20.d – Duties of the Chair.** Removal of the bullet approved, as section 56 covers matters regarding conflicts of interest.

**Section 21 – Duties of the Vice Chair.** Suggested that there should be a mechanism where the Vice Chair can pick up duties temporarily, by board resolution. If chair is too incapacitated, Chair can request that the board pick up where left off, on request of the Chair, or designated by the board. Agreed by Legal Counsel.

**Section 48 – Execution of Contracts, etc.** Seeking clarification by AN, as there are two classes of documents; "requiring the signature of the Society" vs. "general".

Need more than 2 people to sign cheques, as it can be challenging to find parties for signing.

A line can be added for a second person to sign specific documents. Need at least two responsible officials, unless authorized by board resolution and the rest stay largely as it is. Agreed, as the board can decide how they want to approve, with a default starting point, unless authorized by resolution, including a dichotomy of options.

**Section 56 – Conflicts of Interest.** On moving the idea of conflict, put the onus on the board to resolve it, not an individual.

**Section 11 – Appointment of Directors.**

Legal Counsel: Primary concern is, the potential expectations, and about friction being created. Clear that the decision is with the member, not the board. Asking that the advice of the board be sought before making an appointment.

AN: Members should have an obligation to talk to the board before making a director appointment/replacement, so the board has the ability to express their views on areas of expertise that are desirable for its mandate. Suggest putting a time limit of about 15 days to provide advice on areas of expertise.

Members are under no obligation to follow the advice of the board; we want to hold people accountable for that. If AN has to replace a director, they are also held accountable. Putting a timeline will be helpful. There is some pressure from the board to respond in a timely fashion. Trying to find some middle ground, but make it a consultation, without the wording 'consultation'.

AANDC: Mentioned that CANADA will reach out to the board and say that appointment is being sought. An appointer can tell who they will appoint as director. Put a time limit on appointment. Presumably the board will not hold people accountable. Not comfortable to go with 'not accepting' the advice of the board.

ENR: If GNWT has to find a replacement within 90 days, the internal process with the government makes it difficult in the 90 day turn around, if GNWT doesn't know the process.

#### **Section 14 – Removal of Directors.**

Legal Counsel: In response to AN and YKDFN's editions and concerns, Legal Counsel pointed out that, cause is a very high legal hurdle. The members will find it difficult to dismiss a director based on poor performance. A person's appointment may become an entitlement. Real objective is stability. 2nd objective is the independence and impartiality. Currently, the only person who can remove board directors is the member. The remainder of the board is still there, the boards collective views don't change.

Would like to acknowledge a proposed solution came from YKDFN; proposing a warranty period of 2 years. During that period, can get a replacement if necessary. After a person's tenure, they can speak independently. Can also look at how long the period will be.

The board wants members to be impartial, independent, and knowing that they are independent. There is not a lot of incentive to removing someone. They are independent and impartial and will not be removed for conflict of views.

Removal for cause, creates incentive for shorter and shorter appointments, removing stability and security. By doing that, creating a financial risk/legal risk that doesn't work well. The capacity of the institution brings forward progressive discipline for approval of removal.

Need to keep thinking about allowing independence, cohesion and for the board to say that a member is not working out; the board is acting in good faith at all times. Remove someone at pleasure, as long others agree. The board is expecting to work independently; signal to all parties that there is an expectation of impartiality, competence, and members may remove at their pleasure, communicating that appointed members are expected to remove members at pleasure. Suggest putting 'expectation' language in roles.

Also would like to acknowledge that AANDC has provided an interesting alternative, with the removal of more than 1 member; is there a requirement for 3 or 4 other members to agree? In having someone removed at pleasure, will allow for special circumstance.

Terminated appointment, need to find a replacement within 90 days, which is not easy.

AN: The members have to have some assurance that they can say and do things as they see fit as a professional, coming into the Oversight Body.

Some ideas about setting some parameters around the term, giving free reign for a period of time. The board is in a delicate position if a member were to change. The board cannot defend itself in the media, it's not their job, they can't go political, and shouldn't have to.

If the member can terminate a director, it can create consequences of members ganging up / dividing and conquering. More worried for society members removing someone for illegitimate reasons. Importance of making good appointments. Members need to be careful who they appoint, with the Oversight Body in mind.

Gap between cause and pleasure; allow for shifting priorities, performance and if someone is dysfunctional, they can be removed.

CITY: It's not just about performance, members must also be cohesive. If a member is always causing disruption, that can be a cause for removal. With the city, they are there for the tenure.

AANDC: Do not like the idea of shorter terms. Precedence out there that an appointer can remove an appointee with agreement from the board. Want to take Legal Counsel's suggestion, and reword it. For the next meeting in May, it's in the Agreement, to discuss in future.

YKDFN: Something that we need to fight for the YKDFN. Add 'Special case removal and adding a time limit on that'.

ENR: Can also bring forward that you are thinking of removing someone, as well as appointing someone.

No concrete decisions from the discussion on section 14. However, YKDFN/AN legal counsel proposed some additional wording that may alleviate concerns around this issue. Rohan and Ken will collaborate to incorporate the suggested edits, and given a week for drafting, by 5 pm next Friday, June 26.

## **IMPLEMENTATION OF THE AGREEMENT**

### **Implementation committee membership**

Erika will be a GNWT rep. Between Erika and Lisa, there will be coverage from GNWT. Jeff will be the AANDC rep, along with Natalie. Membership will be the same from the CITY; Kerry and Dennis. Kevin, will be gone for 3 weeks in Aug, and Gordon is the other alternate for AN. Joanne will continue to be involved with implementation committee, taking some holidays in July.

### **Society Registration**

Targeting Oct 1 for the full operation of the body. 45 days to have the appointments and the Agreement to be operational. By-laws need to be finalized, appointments need to be in place before the elections.

Not going to be able to pay members until society is registered and financials are settled. Committee can create interim board next week, if by-laws are passed, allowing funding to be established by September in order for the Oversight Body to commence operations in October. The board itself has to agree to office space.

Parties are open to an interim board, with benchmark around end of Aug. Some activities should not be carried out by the interim board.

If folks make interim appointments, make that really clear in the appointment letters. that they are interim appointments only.

Folks that will sign on behalf of the organization need to be in a position in the next week or so, to sign the by-laws and represent their respective organizations. Interim directors can sign by-laws.

### **Discussion of appointments**

CITY: Has not found an appointment yet; no mention of who the potential appointee is currently. Suggested having office etc. in place or in the process in the meantime.

YKDFN: Not going to appoint anyone in the next two, or three weeks. Has someone potentially. Can discuss skill sets. Have a candidate that Todd Slack reached out to before he left; someone with water quality background.

ENR: No appointment in the next month or so. Have an idea of skill sets, and have approached someone, but have not received confirmation. Has worked previously at Giant Mine site. Hopefully can get someone in place by the end of July. Looking at a Northerner with knowledge and experience around Giant Mine. Received direction from cabinet that GNWT appointee needs to be a resident of NWT.

- Bruce mentioned that *Laura Johnson*, who lives in Ontario, has years' experience with Environment Canada in the field of water quality/former IEMA board member. *Duane Fleming* retired recently from GNWT Health and Social Services. McGill has also been doing work on arsenic research.

AN: Can appoint someone relatively quickly. Approached 3 people. 2 have indicated an interest. Asked to be kept confidential;

- *David Livingstone* served with AANDC for a number of years, worked in Ottawa for Environmental and Natural Resources. Is retired now, but does contract work.
- *Bill Slater* lives in WH, used to work with DIAND on water resources. Extensive experience with mine closures. Currently serves as an advisor to the Giant Mine working group, where he would not be able to be on once/if appointed. Others can pick up either of these individuals if necessary.
- Approached *Ian Gilchrist*. Served on the NWT and Mackenzie Valley Land and Water Boards, but he doesn't have enough time.
- Had a conversation with Dennis Kefalas; he was looking into someone with an engineering background. Not necessarily someone in YK, but has work experience that will be helpful.
- It would be helpful to have someone with human health background, geochemist, toxicity, arsenic; *Dr. John Kwong*, Cannel (research arm of NRCan). Has published research, done work on arsenic, getting close to retirement. Has done work on mine closure and wants to work with communities.
- Would like to have more discussion with the parties once names have been brought forward.

AANDC: Narrowed to 2 or 3 individuals. Canada is not in a position to commit yet.

- Former senior executive with the gov, experience in Science, longtime resident in YK. Direct experience with Giant Mine. Someone else similar to *Bill Slater*; closure of ponds in Nova Scotia. Similar skill sets with mine closure experience, and some experience with management of programs and research. Memorial University has also been doing work/research on Giant.

- Former government scientist, has PhD background in permafrost, remarkably good ability to explain science. Can appoint someone in the next couple of weeks.

NMSA: Have two shared candidates; public health expert. Can bring a couple names forward. Any suggestions, for someone throughout Canada? Concerned that committee has not covered enough expertise, as there may be a few areas not covered.

**Sale line to get potential directors interested:** 4 or 5 face to face meetings per year, office in YK, teleconference in between, need to read technical documents, participate in regulatory meetings, honoraria, some element of public service, and experience to add to the resume. Communicating to the public should be added to the importance.

**Wrapping things up:**

Oversight Body needs a physical address. Society will decide their own law firm.

Expenditures for August; Other than the incorporation application, setting up a bank account after registering the body. Suggested First Nations Bank downtown. Jeff has secured someone for funding, and can have funding flowing within 2 months. Takes 3 weeks to do paperwork on AANDC side. Cheques can be printed, depending on where the money is sourced.

**Next meeting** – Tuesday, July 7th in the afternoon at 1pm; by-laws, names, and signing of the registration.

Joanne: Sunday, starting at 1 pm, healing the land ceremony, at the Weledeh site across from the YK River. Lisa will distribute invite letter today. Celebrating the signing of the Environment Agreement, from 1pm to 2:30pm. Published in the newspapers; will have people speaking on it; AN, Mayor, Chief; AANDC and GNWT will be attending, and will also speak, followed by 'feeding the fire', and fish fry and bannock.

**Action item:** fill out form from Dept. of Justice and coordinate signing by members to register Society. GNWT will use VISA for payment of the application. GNWT will obtain the registration forms. Due next meeting.

**Action item:** Ken will write it up that the Society will decide their own law firm, and apply to the by-laws.

**Action item:** Jeff to draft up a letter for signing of interim body, and will have Rohan and Ken to have a look at. Need to be on letterhead and cc'd to other society members for contact information in the agreement. Send everybody the French copy of the Environmental Agreement.

**Meeting adjourned**

