

## PROPOSED CONSTITUTIONAL AMENDMENTS

### **Elections Committee**

**May 21, 2009**

During the course of our discussions with citizens of the First Nation of the Nacho Nyak Dun (the “NND”) in relation to the development of the proposed election law, a number of concerns were raised to us with respect to provisions of the newly amended constitution. To that end, we developed proposed amendments to the NND constitution to address those concerns and held community meetings in Mayo on May 19, 2009, and Whitehorse in May 20, 2009, to review those proposed amendments. We also met with the Elders Council to discuss specifically the issues related to the term and selection of the Elders Councillor. Based on those discussions, we set out below a number of proposed amendments for the review and consideration of the Assembly.

Please note that the NND constitution stipulates that any proposed amendment to the NND constitution must be approved by the Annual Meeting of the Assembly. It must be provided in writing to the Council and also included in written notices of the Annual Meeting of the Assembly where they will be considered, at least 30 days prior to the Annual Meeting.

- (a) **Elder Councillor.** Members of the Elders Council have advised that the four-year term of office of the Elder Councillor is too long and demanding. They stated a preference that the Elder Councillor be appointed by the Elders Council for a term of one year. This would require an amendment to sections 7.3.2 to provide that the Elders Council appoints the Elder Councillor for a one-year term in accordance with its written rules.

7.3 Each member of the Council shall be:

7.3.1 a Nacho Nyak Dun citizen; and

7.3.2 elected to a four-year term by a majority vote of Nacho Nyak Dun citizens in accordance with Nacho Nyak Dun Laws, other than the Elder Councillor who shall be appointed by the Elders Council for a term of one year in accordance with its written rules.

- (b) **Youth Councillor.** There are concerns about the requirement that the Youth Councillor be no older than 26 years of age. Some see this requirement as too narrow. It has been proposed that section 7.4 of the NND constitution be amended to provide that the Youth Councillor must be no older than 26 years of age on the date of the election.

To that end, it is recommended that section 7.4 be amended as follows.

7.4 The Youth Councillor shall be no older than twenty-six years of age on the date of the election or by-election.

- (c) **Transitional provision.** Section 2.1(2) of the proposed election law provides that general elections for the office of Chief, Deputy-Chief, Councillors, Elders Councillor and Youth Councillor will be held every four years on a specific date or a date specified by the Council. At present, the terms of the members of the Council are not synchronized and end at various dates and years.

Therefore, it is necessary for the terms of office of the members of the Council to be coordinated in order to have general elections. It is recommended that the NND constitution be amended to provide for the following transitional provision.

- 7.10 Notwithstanding section 7.3.2 of this Constitution, the term of office of each member of the Council shall end in 2011 and a general election shall be held on a date specified by the Council, for the office of the Chief, Deputy Chief, Councillor, Elder Councillor and Youth Councillor in accordance with this Constitution and Nacho Nyak Dun Laws.

Please note that this proposed amendment does not have to necessarily end the terms of each member of the Council in 2011. It could end the terms in 2009, 2010, 2011 or 2012 and hold a general election.

Over the next several years, the terms end at various times and, as a result, several elections will have to be held. In particular, an election is required this autumn for the Deputy Chief and an election will have to be held for the Youth Councillor in 2010. In addition, elections will have to be in held in 2011 for several Councillors and other Councillors and Chief in 2012. Therefore, the sooner that a general election is held, the fewer elections will have to be held by the NND. The cost of an election is substantial.

Please note that this proposed section may require a minor amendment if the Assembly approves an amendment providing that the Elders Council has the authority to appoint the Elder Councillor as discussed above in section (a).

- (d) **Amendments to Part I.** The NND constitution requires that any amendment to Part I or VI of the NND constitution, requires passage at two consecutive Annual Meetings of the Assembly.

At the 2008 Annual Meeting of the Assembly, the following amendments were approved to sections 3.7 and 4.1. Section 3.7 and 4.1 are set out in Part I of the NND constitution. Therefore, these amendments will have to be approved again at the 2009 Annual Meeting in order to take legal effect. The proposed amendments to sections 3.7 and 4.1 and explanatory notes are set out below.

- 3.7 All Nacho Nyak Dun citizens shall be entitled to equal rights, freedoms, benefits and programs provided by the First Nation of Nacho Nyak Dun subject only to reasonable limits prescribed by laws or policies of the First Nation of Nacho Nyak Dun.

Some NND citizens asserted that the NND constitution should speak to equality and respect to all NND citizens, including status and non-status members. Others asserted that NND citizens who live outside of the NND traditional territory or out of the Yukon are treated unfairly in a discriminatory manner in relation to the delivery of certain NND programs.

While section 3.4.1 of the NND constitution directs the Governing Bodies to exercise their respective powers and authorities in a “fair, non-discriminatory and non-abusive manner”, we recommend the above amendment.

- ~~4.1 An amendment to First Nation of Nacho Nyak Dun Settlement Agreements must be approved by both the Council and the Assembly.~~

We recommend the deletion of section 4.4 since it is redundant and unnecessary in light of the provisions of the NND Final and Self-Government Agreements. Each of the NND Final and Self-Government Agreements set out a provision for amendment: see section 2.3.5 of the NND Final Agreement and section 6 of the NND Self-Government Agreement.