



MANITOBA OMBUDSMAN

Manitoba Ombudsman Ombudsman Act Investigation Report

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Mailing address: Manitoba Ombudsman
300 - 5 Donald Street
Winnipeg, MB R3L 2T4

Phone: 204-982-9130

Toll-free phone: 1-800-665-0531

Email: ombudsman@ombudsman.mb.ca

Website: www.ombudsman.mb.ca

Available in alternate formats upon request



MANITOBA OMBUDSMAN

REPORT UNDER THE OMBUDSMAN ACT

FILE # MO-04206

MUNICIPAL AND NORTHERN RELATIONS, NORTHERN AFFAIRS BRANCH – CONSTRUCTION OF SOLAR PANELS IN COTTAGE SUBDIVISION

THE COMPLAINT

We received a complaint that the Northern Affairs Branch of Manitoba Municipal and Northern Relations (formerly Indigenous Reconciliation and Northern Relations) acted unfairly when it withdrew approval granted to a cottage owner to construct solar panels and imposed an unreasonable timeline to relocate the panels. The complaint also included a concern that the Branch shared information about the complainant's interactions with the department in an unauthorized manner.

OUR INVESTIGATIVE PROCESS

Following efforts to resolve this complaint informally, we opened a formal investigation in July 2023. Our investigative process focused on whether the actions and decisions of the Northern Affairs Branch were consistent with applicable rules, and whether they were fair and reasonable.

Our investigation included a review of:

- Information and documentation provided by the complainant
- Information and documentation obtained from the Northern Affairs Branch, the Lands Branch of Natural Resources and Northern Development, and the Real Estate Services Branch of the department of Government Services and Consumer Protection

- The Planning Act, The Municipal Act, The Northern Affairs Act, The Provincial Parks Act and relevant regulations under each statute
- Northern Affairs Branch cottage lot policy
- Manitoba Cottagers Handbook for Manitoba Provincial Parks and Manitoba Parks Development Application Guide

We obtained relevant information through documentary evidence and interviews.

BACKGROUND

The Northern Affairs Branch administers municipal programs and services in 48 designated communities/settlements and cottage areas in Manitoba's unorganized territories under authority of The Northern Affairs Act. Unorganized territories are outside provincial parks and include communities, settlements, and cottage areas that are not governed by local elected bodies. In these communities, the province is the municipal authority.

In August 2022, the Northern Affairs Branch approved a cottage owner's request to install solar panels on public land adjacent to the owner's cottage lot. The owner's cottage is in a remote area not connected to the provincial power grid. Then, in December 2022, the cottage owner received a letter from the Branch indicating the approval was granted in error and the panels had to be relocated and land returned to its original state by the end of May 2023. The letter stated that privately owned property is not permitted to be constructed or installed within any public road owned by the Government of Manitoba.

The cottage owner's journey to seek approval to construct solar panels on public land adjacent to his cottage lot started more than one year before the Northern Affairs Branch issued, then withdrew, approval. His efforts to seek approval led him through several parallel programs under the jurisdiction of multiple provincial departments.

First, he spoke to a staff at the Office of the Fire Commissioner (now Inspection and Technical Services Branch) who suggested he contact the Lands Branch to inquire about the permitting process under the Crown Lands Act. The Lands Branch provided him an application to apply for a general permit under the Crown Lands Act. The permit application was processed by the Real Estate Services Branch and eventually denied because the land adjacent to the cottage owner's lot was determined to be public land under the municipal authority of the Northern Affairs Branch. This led him to the Northern Affairs Branch, which granted, and subsequently withdrew, approval for the construction.

ANALYSIS & FINDINGS

ISSUE #1: Installation of Solar Panels

To grasp the Branch's decisions to approve installation of the solar panels, then withdraw approval, we set out to understand the rules that apply to the decision. The Branch was upfront with us confirming they did not have a comprehensive policy to guide land use planning and development decisions in unorganized territories, including in cottage lot subdivisions in which they were the municipal authority.

The Branch pointed us to its brief, one-page cottage lot policy that is used to inform decisions about cottage lots under their jurisdiction, and to provide direction to cottage and recreational homeowners for the development of cottages, recreational homes and related structures in subdivisions within the jurisdiction of *The Northern Affairs Act*. The policy in its entirety is in Appendix A.

Cottage Lot Policy

This policy stated in part that:

1. no buildings are allowed on public reserve land, and
2. the department will follow conditions for development as outlined in the Parks Activities Regulation of The Provincial Parks Act.

These two parts of the cottage lot policy were relevant to our analysis because, taken together, they create an inconsistent and unclear decision-making framework.

The Branch's policy says no buildings are allowed on public reserve land, but it does not define public reserve. The Planning Act does however set out uses for **public reserves**. It says that public reserve land may be used only for a public park, a public recreation area, a natural area, a planted buffer strip separating incompatible land uses, or public works.

However, in its letter rescinding approval, the department states the land in question is a road allowance. This public road was reflected in the Plan of Subdivision. There are other provisions in The Planning Act that apply to **public roads**. This implies a difference between public reserves and public roads. The Branch's cottage lot policy that prohibits buildings on public reserve land would therefore not apply to this particular decision and circumstance.

Park Activities Regulation

Next, we examined the Park Activities Regulation (the regulation) which, according to the Branch's cottage lot policy, the department is required to follow in making development

decisions. The regulation applies to land contained within a provincial park, including private land. It also sets out a permitting application process for persons seeking to develop (construct, erect, install or modify) a building, structure, or work that is not located on a lot, but is in close proximity to a lot. The Cottagers Handbook for Manitoba Provincial Parks also describes this process.

The Regulation is specific to development in provincial parks and does not extend to cottage or land development outside of provincial parks. There is no other policy nor permit process that applies to development on cottage lots outside of provincial parks within the municipal authority of the department.

To be clear, the cottage subdivisions subject to the Northern Affairs Branch's municipal authority, and the location of the cottage lot in this case are not in provincial parks. The staff applied the general process as outlined in the Parks Activities regulation to make the development decision in this case.

The Original Approval and Its Withdrawal

The Branch lacks Branch-specific policies to guide development decisions in cottage subdivisions not located in provincial parks. It also affords staff a high degree of independence to make day-to-day decisions.

We heard this cottage subdivision is remote, is not connected to the provincial power grid, and as many as seven other nearby cottage owners had also erected solar panels on land adjacent to their cottage lot and had done so without approval from the Branch. Branch staff also described that their presence on the ground in cottage subdivisions is limited because staff are assigned to large regional areas.

Considering the multitude of laws, regulations, policies, and other factors that may influence and inform decision making, we find it was reasonable for Branch staff to initially decide the solar panels could be erected on land adjacent to the cottage lot, particularly because the Park Activities Regulation has a process for cottagers to apply to develop on land adjacent to their cottage lot. Staff exercise discretion, make choices, and use their professional judgment and expertise to decide on a range of municipal matters. In our view, staff did so in good faith and in a complex operating environment.

We also saw evidence that the department's decision to withdraw approval stemmed from a complaint made by another cottage owner in the area. The department initiated a review and determined the solar panels had been constructed on land designated as a public road, and that this was not permissible. The department found the original approval was granted in error

and in December 2022 notified the cottage owner and instructed him to relocate the solar panels by end of May 2023.

We asked the Branch how the compliance date was determined, and heard the main consideration was the ground would be thawed by the end of May and the cottage subdivision accessible by road. However, we heard from the complainant that relocating the solar panels would require hiring a company with construction equipment to remove and re-pour cement pads and clear large trees from his lot to make room for the panels.

We found the Branch failed to notify the cottage owner that the approval granted was under review and did not discuss with the cottage owner the feasibility of the deadline before it issued a compliance date. As such, we find the department did not uphold administrative fairness standards when it reviewed its decision and withdrew its approval previously granted to the cottage owner.

However, we do acknowledge that the after our office became involved and the complainant obtained legal counsel, the department reconsidered, suspended the compliance date, and worked with the complainant to establish a reasonable timeframe that considered the specific circumstances.

ISSUE #2: Department's complaint handling process

The complaint to our office also raised concern that the Branch shared information about the complainant's interactions with the Branch in an unauthorized manner. We heard the other cottage owner who complained to the Branch about the location of the solar panels had knowledge of the status of his dealings with the department, and in some cases was privy to information before he himself was, which he viewed as highly inappropriate. Our investigation into this issue considered the department's handling of the complaint from the other cottage owner and whether administrative fairness standards were upheld.

Our review found that when the other cottage owner complained to the department about the location of the cottage owner's solar panels, the Branch requested the name and contact information of the cottage owner subject of the complaint. In our view, it is reasonable for the department, in their role as municipal authority, to request details from a person lodging a complaint, such as who and what the complaint is about. If the department had no internal database or other way to access cottage owners' contact information, it is reasonable they would ask the person who lodged the complaint. However, the complainant who contacted our office told us he was not aware his name and contact information had been collected in response to a complaint made about him. In the future, as a best practice and to support an administratively fair complaints review process, the department should consider notifying

people when their personal information has been collected to enable follow up on a complaint, except in circumstances where this may be expected to cause harm.

Next, we considered the complainant's concern that the Branch disclosed personal information about his dealings with the Branch to the other cottage owner who complained about the location of his solar panels. When we first asked the department about this issue, the department's counsel told us the matter pertained to private property on public land, and therefore the complainant who contacted our office had no entitlement to privacy or confidentiality in his dealings with the department. However, the department is required to comply with the provisions of The Freedom of Information and Protection of Privacy Act in its handling of all personal information, including personal information that is publicly available or in which a person may not have a reasonable expectation of privacy. The Branch should not disclose personal information except for a purpose authorized under FIPPA. In this case, it would be fair and reasonable for the Branch to provide some level of accountability to the other cottage owner about the department's actions and timeframes for addressing the concerns raised. However, the Branch would still be required to ensure that the personal information disclosed was the minimum amount necessary to accomplish the purpose.

Our review of relevant records revealed that, in responding to the complaint from the other cottage owner, the Branch's legal counsel did provide information to the other cottage owner's legal counsel about the approval made in error, the withdrawal of the approval, and the timeline provided to remove and relocate the panels. Once the initial timeline passed without the panels being removed, the other cottage owner's counsel sent a follow up letter to the department's legal counsel making inquiries and pressing the department to act.

We acknowledge the Branch has a duty to respond to complaints it receives, and that certain information is necessary to provide a fair complaint review process and service to the person who complained to the department. However, in our view, the nature of the information and the absence of communication to the department's complainant when decisions were changed, risked creating or exacerbating problems between neighbours and making an already difficult situation worse. By not advising their complainant that the timeline to comply had changed, the department created the perception that the compliance requirement was not being taken seriously.

In our view, it would have been more appropriate and fair to all parties involved for the department to advise their complainant (the other cottage owner) that the complaint was received, reviewed, and that a decision was made to require the panels to be relocated in a reasonable timeframe agreed upon between the department and the owner of the solar panels. The department should have also advised their complainant that the timeline for compliance had changed and explained the reason for the decision.

CONCLUSIONS AND RECOMMENDATIONS

Our investigation has found the Northern Affairs Branch did not have adequate policies in place to guide development decisions in cottage subdivisions under its municipal authority. The Cottage Lot Policy required staff to interpret and apply a patchwork of policies and rules using their best professional judgement. The Branch's initial handling of the matter once it decided an error had been made was unfair. The affected cottage owner was not given advance notice that the approval granted to him was being reviewed, and he was not given a meaningful opportunity for input into the compliance date imposed upon him.

In this case, the complainant made good faith efforts over time to seek provincial approval to construct solar panels at his cottage which was not connected to the power grid. He went through a complicated and uncoordinated process involving various processes under multiple provincial departments. There was a lack of information to help this citizen understand the process that applied to his circumstances. This all creates a broader risk to the fair administration of programs and services in the form of inconsistent decision making and accessible and responsive services.

We also found the Branch collected the cottage owner's personal information to follow up on a complaint made from another cottage owner. We find it was reasonable to ask the person who made the complaint for the contact information, particularly if the Branch has no internal mechanism to access cottage owner contact information. However, the department should have told the cottage owner they collected his personal information from a third party to follow up on a complaint made.

We acknowledge the Branch had a duty to respond to the other cottage owner who complained about the location of the solar panels. However, in our view, only the minimum amount of information was required to confirm the complaint was being reviewed and followed up on. The department could have notified the complainant about the outcome of their review with less specific information about when the panels were to be relocated and advised their complainant that a decision was made to adjust the compliance timeframe, with reasons.

The lack of policy to guide the development decision in question had significant effects on the complainant and may have similar effects on other cottage owners under the municipal jurisdiction of the Northern Affairs Branch. The Branch told us the department is actively working to modernize the administration of cottage lots under its municipal jurisdiction through its "Cottage Administration Modernization Project".

Prior to our investigation, the Branch was already working to develop this modernized administration framework to apply to cottages outside of municipalities and provincial parks. It

is a government directive led by Municipal and Northern Relations that will address, in part, inconsistent service delivery and lack of a compliance mechanism in northern Manitoba. This is a positive step that will provide cottage owners and Branch staff a clearer understanding of what is expected of them.

The branch, with the involvement of Crown Counsel, acknowledged to our complainant that an adverse financial impact was incurred as a result of its error in issuing the approval permit. The branch took steps to remedy the negative financial impact and reimbursed costs associated with removal and relocation of the solar panels, and the legal fees incurred by the complainant at the outset of the process.

Through this investigation, we became aware that the Branch determined seven other nearby cottage owners also had solar panels constructed on the roadway, and that they must be removed and relocated to each respective cottage lot. We trust this report will be used to create a fair process for those affected persons.

Manitoba Ombudsman makes the following recommendations to the Northern Affairs Branch of Manitoba Municipal and Northern Relations to prevent a similar occurrence and to promote fair, objective, and transparent administration:

- **Recommendation 1.** The Northern Affairs Branch ensure the Cottage Administration Modernization Project provides clear policy direction, including the exercise of discretion, as well as clear instructions and processes for landowners to seek permitting approvals for development on land in close proximity to cottage lots, such as public reserve land and public roads.
- **Recommendation 2.** The Northern Affairs Branch should consider developing policy specific to the construction of solar panels for cottage areas within its jurisdiction.

DEPARTMENT RESPONSE TO REPORT

The department accepts the recommendations and is moving forward with an overall framework that will address these issues.

The Honourable Minister Ian Bushie provided the following response on June 18, 2024:

Thank you for your recent Manitoba Ombudsman Act Investigation Report (file # MO-02406) regarding actions and decisions by my department regarding the construction of solar panels in a Northern Affairs cottage subdivision. I appreciate the thoroughness of your report and recommendations to ensure fair and transparent administrative processes for cottage areas in the unorganized territory.

As noted in your report, my department is currently working to modernize the cottage area program, which includes a comprehensive legislative, regulatory and policy framework to support cottage administration within the unorganized territory of northern Manitoba. This necessary and long overdue administrative framework is designed to improve administrative gaps, strengthen service delivery and ensure program sustainability. These improvements will also necessarily address cottage lot development and zoning issues such as the installation of solar panels as well as other amenities and systems prevalent within cottage subdivisions. Staff from the Northern Affairs Branch are about to begin phase two of the modernization project this summer with an anticipated completion date in the 2025/26 fiscal year.

Thank you once again for your due diligence and recommendations from this review. As our journey through the cottage administration modernization project progresses, we appreciate these opportunities to reflect, learn and improve our processes for the betterment of the cottagers we serve.

This report concludes our review of this matter.

Manitoba Ombudsman

Appendix A – Cottage Lot Policy

Development of Cottage Lots and Recreational Homes	Policy	L7
	Effective Date	April 2002
	Revision Date	October 2023
	Page Number	1 of 1

What is the policy?

Department policy provides direction to cottage and recreational home owners for the development of cottages, recreational homes and related structures in subdivisions and within the jurisdiction of The Northern Affairs Act.

This policy applies to each community unless a development plan and zoning bylaw or planning scheme is adapted to the community. When the cottage subdivisions are located outside a community boundary, the department will follow the procedures set out in this policy and the conditions for development as outlined in the Parks Activities Regulation 141/96 and Cottagers Handbook for Manitoba Provincial Parks.

Cottages, other recreational homes or other structures for seasonal and/or recreational use, will not be permitted in subdivisions designed for residential purposes, except where the community has recommended and the department has approved a variance. No clearing or construction is to take place until a work permit is obtained from Manitoba Economic Development, Investment, Trade and Natural Resources (EDITNR). Conditions of work permits must be met.

Building plans must be submitted to Inspection and Technical Services of the department to obtain a building permit.

On lakeshore lots where conditions are suitable, an application for a site permit for additional buildings, such as a boat house or roofed boat slip or docks, must be submitted to EDITNR. The application for site permit and design must be approved by EDITNR. An annual permit is required and an annual rental fee is charged for the building on Crown reserve.

Public reserve is not part of the cottage lot, therefore no buildings are allowed on public reserve land.

All wastewater disposal systems must be approved by the appropriate environment officer of Manitoba Environment and Climate Change from the same region the home is located in.

Community responsibilities

- In consultation with the department, the community should recommend building permits within the community boundary, before submitting them to the department for approval.