

NUNAVUT PLANNING COMMISSION  
PUBLIC HEARING ON THE 2016 DRAFT NUNAVUT LAND USE PLAN

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Nunavut Impact Review Board

PRE-HEARING WRITTEN SUBMISSIONS

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Filed by:  
Nunavut Impact Review Board  
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Nunavut Impact Review Board  
Submission for the Public Hearing on the 2016 Draft Nunavut Land Use Plan

12/1/2017

## **1 Background and Objectives**

The Nunavut Impact Review Board (NIRB or Board) is established through Articles 10 and 12 of the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)*, and is further enacted through the *Nunavut Planning and Project Assessment Act (NuPPAA)*. The NIRB's mandate is to conduct impact assessment of proposed development projects, gauging and defining regional impacts, reviewing ecosystemic and socio-economic impact and determining whether or not projects should proceed and if so, under what terms and conditions. The NIRB also monitors the effects of approved projects and their compliance with predetermined terms and conditions. Through the integrated resource management regime established by the Nunavut Agreement, where the NPC deems a proposed project to be in conformity with approved land use plans for the area, the NIRB conducts a project-specific impact assessment prior to the project proponent being able to obtain the licences, permits and approvals required to proceed.

Nunavut's regulatory system requires integration between the NPC's land use planning and the NIRB's development impact assessment processes to operate fully as envisioned. Unfortunately, at present there are significant portions of the Nunavut Settlement Area not addressed by approved land use plans, and not subject to the NPC's conformity determination process as a result. For those areas which have approved land use plans in place, after more than 15 years since their approval the plans themselves have become dated, and the NIRB has encountered challenges with project-specific impact assessments where feedback from parties has called into question the acceptability of the project *type* and associated land use, something that land use plans are intended to address. As a result of these contentious issues being deferred to the impact assessment process, the NIRB has been providing notice to parties and the NPC where issues raised would more appropriately be addressed at a regional level through land use planning. The feedback provided in this submission is developed from the NIRB's experience in this regard specifically, with identified issues encountered through many project-specific impact assessments in areas with and without approved land use plans, as well as other items related more directly to the June 2016 draft of the Nunavut Land Use Plan.

The NIRB has participated in the NPC's development of the Nunavut Land Use Plan throughout each phase of the public process to date; providing staff level feedback on each draft, sharing logistical information on undertaking community meetings, and continuing to flag land use planning issues through individual board decisions. This submission is prepared on behalf of the NIRB to provide clarity on issues discussed through the NIRB's participation to date, and to identify issues with the 2016 DNLUP that remain outstanding and require addressing for the NPC's Final Hearing.

## **2 General Comments and Recommendations**

As an integral part of Nunavut's integrated regulatory process, the NIRB's impact assessment process may only commence following the successful conclusion of the NPC's land use planning conformity process. Where there are no approved land use plans in place, or where existing approved land use plans are in place but have become outdated, issues more appropriately addressed through regional land use planning

bypass the NPC and are left for the NIRB to address through project-specific impact assessment. This situation presents unique challenges and strains the capability of the development impact assessment process by requiring farther-reaching issues of land or resource use to be addressed on a project-by-project basis. Examples include development of uranium, nuclear power, transportation corridors, oil and gas development, development in caribou calving grounds, etc.; these broad issues deserve consideration through land use planning at a regional and/or territory-wide level as envisioned by the Nunavut Agreement.

The NIRB is supportive of the NPC's efforts to establish a Nunavut-wide land use plan and the Board appreciates the opportunity to participate in the process for its development and approval, not only to get a first version of any such plan in place, but also to further develop or revise such a plan following approval to ensure it remains current and effective. As the NIRB's mandate and jurisdiction is related to project-specific assessments and not developing broader development or conservation policies, the following observations and recommendations are offered to encourage land use planning which supports the subsequent impact assessment process and which provides clear direction on process, creating process certainty and clear expectations for all parties and the general public.

## **2.1 Overall structure and clarity of the DNLUP;**

The NIRB does not have any outstanding issues with the DNLUP structure and clarity in general, however a few items within the document such as definitions and overlapping land use designations are raised to direct the NPC to items that may be clarified for more effective implementation and screening referrals to the NIRB. Reference issue 3.1 - *definitions*, 3.13 – *editorial* updates, and 3.3 – *overlapping land use areas* below.

The Nunavut Land Use Plan should explicitly state expectations on its implementation in relation to regional land use plans previously in place; as currently written, the nature of this relationship is unclear in working with or superseding the previous plans. Where VECs or VSECs are managed significantly different in the NLUP from conservation methodologies contained within previous regional plans, justification should be provided for clarity on why these significant adjustments have been made, and provide the reader full understanding on the process leading to the current balanced conservation criteria. Reference issue 3.4 – *Polar Bear denning*, and 3.5 – *ice flow edges and restrictions*.

Finally, the NIRB believes it is important to recognize the significant time required to develop and approve land use plans for the Nunavut Settlement Area; it is the NIRB's view that caution should be exercised when deferring issues to be addressed by future versions of the NLUP, following approval. The NPC has frequently noted that, to date, the DNLUP has been developed over a period spanning more than 10 years; it is also unclear how much time may remain until a NLUP is approved and can begin to be implemented. Without further clarity regarding the process for revisiting the NLUP once approved, the approach to be taken and associated timetables, assumptions, etc. there should be limited confidence in a 5 year timeframe being feasible for updates to the NLUP. Nunavut's integrated regulatory system has been challenged by areas lacking land use plans and the absence of updates to the existing plans that are currently approved; this should provide motivation to the NPC and all parties to ensure consensus on the process for NLUP updates once approved.

## **2.2 Consistency with the applicable legal requirements and policy context;**

Conservation issues previously identified in the approved land use plans have been updated and, in some cases, changed to reflect the state of specific resources and surrounding regulatory requirements. In recognizing the updated policy, the NIRB has also noted where updated information would be prudent to

provide parties with clarity where management strategies have changed significantly between previously approved plans and the current 2016 DNLUP. Reference issue 3.4 – *Polar Bear denning*, 3.5 – *ice floe edges*, and 3.11 – *palaeontological resources* below.

### **2.3 Fit with the integrated regulatory system;**

Preliminary instruction on the Alternative Assessment Test noted in Section 5 of the DNLUP outlines responsibilities for multiple parties in determining the fit for possible development for linear structures in Nunavut. However additional clarity should be provided to ensure all parties are participating within their mandate in the development of a decision on appropriate alternatives.

The NIRB strongly urges the NPC to consider taking a more precautionary approach to the NLUP in instances where limited data may be available to provide the desired certainty for implementing land use planning restrictions. Many definitions are available for the precautionary principle and might be applied as deemed appropriate by the NPC; it is the NIRB's view that the NPC's mandate under the Nunavut Agreement requires the NPC to exercise its discretion in making land use planning decisions which protect and promote the existing and future well-being of Inuit, Nunavummiut and Nunavut communities even where data gaps are identified. Reference issue 3.2 – *data gaps* below.

### **2.4 Quality of the planning process;**

The NIRB has nothing further to note on this topic of discussion.

### **2.5 Incorporation of input from participants in the planning process;**

The NIRB has developed extensive experience working with transboundary groups through the impact assessment process. As a result of gaps in the DNLUP related to the co-management of Heritage Rivers and water sheds, a discussion has been presented on specific items that should be addressed in the 2016 version of the DNLUP specific to these areas. Reference 3.6 – *transboundary (Great Bear Lake)*, 3.7 – *heritage rivers*, and 3.12 – *incorporating community comments* below.

### **2.6 Overall balance among competing interests on important issues;**

The NIRB understands that many land uses may compete for resources, however for developments that may specifically limit the value or viability of other resources, positive conformity determinations should provide additional direction on operational restrictions or development limitations to ensure that the impact assessment is appropriately focused. Reference issue 3.7 – *Heritage Rivers*, 3.8 – *mineral potential*, 3.9 – *strategic environmental assessment*, and 3.11 – *palaeontological resources* below.

### **2.7 Governance and implementation;**

The NIRB and the NPC are both governed by the legislative requirements of the NuPPAA, which utilizes the terms 'manifestly insignificant' and 'significant modification' when describing general thresholds for what constitutes a 'project' requiring submission to the NPC. Development of guidance regarding how these terms will be applied by the NPC in its intake of project proposals will be important for providing much-needed clarity to proponents and responsible authorities moving forward. Given the importance of this issue to the daily administration of the NPC, the NIRB, responsible authorities and project proponents and, recognizing the need for continued discussion and required flexibility to address all possible project types, the NIRB believes that the desired guidance regarding the interpretation of these terms may best be housed outside of the NLUP. The clarity that parties seek on interpreting these terms could then be updated on a more timely basis if housed outside of the plan, but could be referenced as appropriate to the subject being discussed within the LUP. Therefore, the NIRB respectfully suggests that this guidance be

developed and implemented through policy and outside of the NPC's development of the Nunavut land use plan. Reference issue 3.1 – *definitions and Recommendation #1* below, and further reference *PHC discussion item 25*.

## **2.8 Other**

In the NIRB's submissions to the NPC regarding previous drafts of the Nunavut Land Use Plan, substantial explanation was provided regarding how the current lack of designation for important caribou habitats or clear and appropriate limitations on development for these areas have created serious challenges for the NIRB in making project-specific decisions. Within a number of its decisions (reference: NIRB Final Hearing Report 09MN003, 12MN036, in addition to numerous Screening Decision Reports) the NIRB has indicated to responsible authorities that the lack of clear information on caribou population health and absence of designated protection for important caribou habitats or accepted best-management practices for development occurring in or around those areas has limited the NIRB's ability to have confidence in impact predictions for caribou made through the environmental assessment process. This, in turn, has resulted in recommendations from the NIRB directed at regulators and land use planning. The NIRB continues to recommend the following:

*"Territorial and federal government agencies and regional Inuit associations should ensure that the protection of caribou and caribou habitat figure prominently into their contributions towards the Nunavut Planning Commission's development of a Nunavut-wide land use plan."* (Excerpt from the NIRB's screening decision report for 11EN046: Anconia's Victory Lake Area project)

It is the NIRB's strong wish that the NLUP will strike an appropriate balance between establishing measures for conservation designed to protect the health of caribou populations while promoting the continued development of natural resources for the benefit of Nunavut communities. While impact assessment is designed to address potential impacts on a project-specific basis, land use planning is intended to address broader issues of conservation and development for various project types on a regional scale; parties will not be well-served if a NLUP avoids addressing required protection for caribou habitat and any associated restrictions on development in favour of continued deference to project-specific impact assessments by the NIRB.

Regardless of what the NPC and interested parties determine is an appropriate balance of caribou conservation versus promotion of economic potential (whether seasonal restrictions, management of air and ground traffic through specific areas, or outright prohibition on development), the NIRB requests that a Nunavut wide land use plan provide clear guidance regarding measures for protection for caribou habitat and associated parameters for development of various project types in and around those areas. In their participation within the NPC's land use planning process, the NIRB encourages governments and responsible parties to clearly identify other legislative tools for caribou protection that may reside outside of the NLUP (e.g. DIAND Caribou Protection Measures) and any corresponding plans for using the same to address caribou protection more broadly.

## **3 Specific Comments and Recommendations**

Specific observations provided for consideration by the NPC, to its DNLUP Final Hearing as follows:



### 3.1 Definitions – Valued Ecosystem Component and Obnoxious Land Use

#### 3.1.1 Reference in DNLUP

DNLUP, Definitions: General, pages 8 to 12.

#### 3.1.2 Comment

The NIRB has developed a resource of definitions (NIRB Guide 2) based on industry standard and legal precedent, and would encourage continued use of the definitions to aid interpretation and application of term. Further, definitions should contain clear thresholds or criteria for consistency of implementation. Several definitions should be updated for consistency and detail, specifically:

- Definition of “obnoxious land use” should be defined with clear criteria.
- Definitions of Valued Ecosystem Component (VEC) and Valued Socio-Economic Component (VSEC) as written are too constricted (also noted in NPC’s errors and omissions document) referencing resources in relation to scientific purposes only; definitions should reflect community interests in the resource, and should be in line with other commonly used definitions.

#### 3.1.3 Recommendation(s)

**Recommendation #1:** Define criteria for “obnoxious land use” to establish guidance for interpretation or thresholds in identifying types of land uses that constitute obnoxious or offensive.

**Recommendation #2:** The NPC considers updating its definition of Valued Ecosystem Component to:

“Those aspects of the environment considered to be of vital importance to a particular region or community, including:

- a) Resources that are either legally, politically, publicly or professionally recognized as important, such as parks, land selections, and historical sites.
- b) Resources that have ecological importance.
- c) Resources that have social importance.”

**Recommendation #3:** The NPC considers updating its definition of Valued Socio-Economic Component to:

“Those aspects of the socio-economic environment considered to be of vital importance to a particular region or community, including components relating to the local economy, health, demographics, traditional way of life, cultural well-being, social life, archaeological resources, existing services and infrastructure, and community and local government organizations.”

#### 3.1.4 Rationale

Definitions provide assurances for the rest of the document. As currently written, some definitions lack detail and are inconsistent with others in common-usage, leading to reduced certainty for the reader and ambiguity for interpretation of the document, which could create unintended consequences. The NIRB believes it advisable to ensure the definitions used for the Land Use Plan are written clearly and maintain consistency with other existing definitions to the extent practicable and appropriate. The NIRB recommends that the definitions noted above be updated, specifically, that VEC/VSEC be updated for greater consistency and *obnoxious land use* be updated with additional detail and implementation criteria.

#### 3.1.5 Supporting Material

NPC PHC – Formulation of Issues (2).

## 3.2 Data Gaps

### 3.2.1 Reference in DNLUP

DNLUP Section 1.6, page 20; Section 6.8, page 53

### 3.2.2 Comment

Detail lacking on how future versions of the Nunavut Land Use Plan (NLUP) would be informed by or updated based on the results from research, as recommended in Section 6.8 of the DNLUP. It is unclear when the NPC expects to have specific data gaps addressed.

### 3.2.3 Recommendation(s)

**Recommendation #4:** A discussion should be included within the NLUP regarding how data gaps would be treated in future versions of the NLUP and whether the NLUP would be updated to reflect any new data or results from research as recommended in Section 6.8 of the DNLUP. Further, a discussion should be included on what specific plans and mechanisms the NPC has in place to obtain information to close the current data gaps noted in the 2016 DNLUP. These types of discussions could be included in the Options and Recommendations document to provide the reader with assurance on how data gaps would be treated.

### 3.2.4 Rationale

The DNLUP does not provide an indication of how identified data gaps would be addressed and/or treated within the NLUP. Further, the DNLUP does not provide a discussion on how additional/new information would be added or treated within future versions of the NLUP following approval. Section 1.6 of the DNLUP only notes that as new information is provided, the NLUP would be updated as required; from this it is unclear whether the NPC expects to be a passive player receiving information from specific parties or whether it anticipates actively directing parties to provide it with specific information. Clarification would be helpful regarding the anticipated role of the Nunavut General Monitoring Plan and associated research program in addressing these data gaps moving forward in accordance with section 12.7.6(c) of the Nunavut Agreement.

The 2016 DNLUP further indicates that the NLUP is a first generation plan and was written with anticipation that subsequent generations of the NLUP will have an expanded scope. However, as noted there is no indication within the 2016 DNLUP on how the NPC would incorporate updated data/data gaps as obtained from research results or how the data would be treated in future NLUPs.

In addition, Section 6.8 of the DNLUP provides recommendations for additional research and studies that should be completed and specifically what should be focused on to answer resource management questions. However, again, is it NPC's idea to use the results from these research studies to update future versions of the NLUP? If so, what is the anticipated process for doing so and the associated role of responsible parties?

### 3.3 Clarity Regarding Overlapping Designations and Approved shipping Projects Especially near Lancaster Sound

#### 3.3.1 Reference in DNLUP

DNLUP, Section 1.7.5.4, pages 22 to 23

Options and Recommendations Section 2.6.2, pages 47 to 48

#### 3.3.2 Comment

The 2016 DNLUP does not clearly describe the intended process for determining land use restrictions or making determinations in areas with overlapping designations or designations prohibiting previously approved activities. Designations and development restrictions on which a conformity determination is to be made should be explicitly noted in the determination itself to ensure that any subsequent impact assessment by the NIRB is conducted in respect of the applicable conservation requirements.

#### 3.3.3 Recommendation(s)

**Recommendation #5:** Provide direction for parties on how acceptable land uses are to be determined where overlapping designations occur, and specific considerations applicable to any conformity process for projects within these areas. A discussion within the Options and Recommendations document is recommended to assist parties in understanding implications for conformity determinations, and explicit limitations which can be further considered during any subsequent project-specific impact assessment.

**Recommendation #6:** Provide a discussion on how the designation assigned to the Lancaster Sound area would impact community resupply or currently approved shipping routes through the area. A discussion within the Options and Recommendations document is recommended to assist the reader in understanding the effects of this option, including implications for amendments to previously approved shipping routes through these areas.

#### 3.3.4 Rationale

It is noted that the DNLUP includes a discussion on overlapping designations as follows: *[a project] will be considered to conform as long as all aspects of the project conform to the requirements of both designations.... Proposals must conform to all Designations and meet the most stringent requirements of the overlapping designations.* It is not clear within the plan what the process would be for decision making in areas with overlapping designations. A description within the Options and Recommendations document would be useful to the reader to understand how overlapping designations would be treated. As an example, for Lancaster Sound, North Water (Pikialaorsuaq) Polynyas [Section 2.6.2 Polynyas (Map 63) – Options and Recommendations document], Option 2 was recommended; however the document notes *“Option 2 was chosen given the well-established and understood ecological importance of these polynyas. Note overlapping section on North Water (Pikialaorsuaq) Polynya (Sec. 2.1.3.29) and Lancaster Sound (Sec. 3.2)”*. It is not clear from the document how these overlapping designations would be considered in relation to existing requirements for community re-supply barge traffic, the previously approved open-water shipping activities related to operation of the Mary River Iron Ore Mine, or future considerations should amendments be sought for related activities/amendments.

#### 3.3.5 Supporting Material

NPC PHC – Formulation of Issues (9).

### **3.4 Polar Bear Denning**

#### **3.4.1 Reference in DNLUP**

DNLUP, Section 2.3, Page 28

Options and Recommendations, Section 2.3, Page 45 and associated Map 59

#### **3.4.2 Comment**

The DNLUP does not carry forward comments and concerns received related to Polar Bear denning areas.

#### **3.4.3 Recommendation(s)**

**Recommendation #7:** Concerns expressed by communities related to the designation and preservation of Polar Bear Denning areas should be defined within the Nunavut Land Use Plan as these types of concerns should be incorporated into consistently applied limits on land uses, rather than being left to rely on the NIRB's project-specific impact assessment process. Considering the ongoing regulatory discussion on balancing development with conservation efforts, denning areas should be defined clearly, any restrictions on development clearly outlined, and operational limitations clearly stated with positive conformity determinations to inform the subsequent NIRB impact assessment.

#### **3.4.4 Rationale**

The 2016 DNLUP notes that “despite the *Species At Risk Act* (SARA) listing, the information provided to the NPC on polar bear denning areas was not sufficiently precise to allow the NPC to recommend land use designations in specific locations”; therefore, “Option 4 [no restrictions with VECs identified] was chosen for these areas given the large geographic extent of polar bear denning areas and the thin and sporadic use of these areas.” The designation is provided based on technical difficulties with the data due to denning areas being a habitat of consistent use rather than establishment of permanent dens (shown in Map 59), and despite the SARA designation and concerns as noted in the Options and Recommendations document (community concern, World Wildlife Fund [WWF], NIRB etc.), no further limitations would be required by the NLUP. The Keewatin and North Baffin Regional Plans both currently “restrict development activities near polar bear denning sites” with maps delineating denning areas. Therefore the NPC should provide clarification on its rationale for discontinuing the seasonal restrictions established by the previous plans despite the current designation of polar bears on the SARA list and continuing community concerns for conservation; further, the NIRB recommends that the NPC consider working with wildlife authorities on addressing current limitations with interpreting data to allow for appropriate restrictions to be incorporated within the NLUP.

#### **3.4.5 Supporting Material**

NPC PHC – Formulation of Issues (12).

### **3.5 Ice Floe Edges and Restrictions from the Keewatin and North Baffin Land Use Plans**

#### **3.5.1 Reference in DNLUP**

DNLUP, Section 2.6.3, Page 29

DNLUP, Section 5.5.2, Page 46

Options and Recommendations, Section 2.6.3, Page 48

#### **3.5.2 Comment**

The DNLUP does not provide information on how the restrictions in the existing Keewatin and North Baffin Regional Land Use Plans have been translated into the DNLUP and why certain restricted activities within the existing plans were not incorporated within the DNLUP.

Further, premature break-up of fast ice and the floe edges could lead to possible changes in wildlife movements, which are essential to spring harvesting activities, however a non-restrictive option was given for ice floe edges within the DNLUP.

### 3.5.3 Recommendation(s)

**Recommendation #8:** Provide clarification regarding why any restricted activities in areas under the Keewatin and North Baffin Regional Land Use Plans would no longer be restricted under the NLUP and the reason for changing the specific restriction in question.

**Recommendation #9:** Ice floe edges are considered important to communities for spring harvesting activities and the NPC should consider revising the option for ice floe edges to be more restrictive to address the concerns raised by communities and interested groups.

### 3.5.4 Rationale

The DNLUP should provide clarification on whether restricted activities outlined in the Keewatin and North Baffin regional land use plans (KRLUP and NBRUP) related to preservation of the land fast ice zone would or would not be in effect in the NLUP, and justification for removing the restrictions as appropriate. As an example, the DNLUP indicates that floe edges are important geologically (page 48 of the Options and Recommendations) and *“that floe edges are used by polar bears and people for hunting, serve many ecological purposes, and are important to community life. Depending on the season, icebreaking can prevent the formation of floe edges by structurally damaging the ice pack, or can cause early break-up. The latter may create floating ice islands at unpredictable times, trapping hunters.”* (page 29 of the DNLUP). Further, the North Baffin Regional Land Use Plan includes an action that “ship traffic through and around the floe edges in April, May and June shall be minimized”. However, the DNLUP recommends Option 4, which includes *“Does not restrict Access”*. This option was chosen by NPC based on the fact that these biologically active areas have limited information available to formulate specific management options.

Further, the NIRB notes that communities, governments, and interest groups are concerned about potential effects on wildlife resulting from marine shipping especially due to premature break-up of fast ice and the floe edges with possible changes in wildlife movements. This in turn could affect spring harvesting activities, which are essential to communities throughout Nunavut. The DNLUP should include a discussion why a non-restrictive option was given for ice floe edges and ice breaking.

The NIRB strongly urges the NPC to consider taking a more precautionary approach to this, and other such issues where limited data may be available to provide the desired certainty for implementing land use planning restrictions. Many definitions are available for the precautionary principle and might be applied as deemed appropriate by the NPC; it is the NIRB’s view that the NPC’s mandate under the Nunavut Agreement requires the NPC to exercise its discretion in making land use planning decisions which protect and promote the existing and future well-being of Inuit, Nunavummiut and Nunavut communities even where data gaps are identified.

### 3.5.5 Supporting Material

North Baffin Regional Land Use Plan (Chapter 3, Page 45)  
NPC PHC – Formulation of Issues (12).

### 3.6 Transboundary (Great Bear Lake)

#### 3.6.1 Reference in DNLUP

DNLUP; Section 2.7; Page 30

Options and Recommendations Document; Section 2.8.1; Pages 48, 49

#### 3.6.2 Comment

The DNLUP does not appear to take into account the special management conformity requirements as set out within the 2013 approved Sahtu Land Use Plan. Further, information should be provided to readers on how the NLUP would treat transboundary projects.

#### 3.6.3 Recommendation(s)

**Recommendation #10:** The Option of *Does Not Restrict Access* given to the Great Bear Lake Watershed should be reconsidered as the Great Bear Lake Watershed has been identified as an important ecological and cultural area in the Sahtu region of the Northwest Territories.

**Recommendation #11:** The NPC should take into account the special management conformity requirements as outlined within the Sahtu Land Use Plan when considering a revised option for the Great Bear Lake Watershed.

**Recommendation #12:** The NLUP or the Options and Recommendations document should provide details on how transboundary projects would be treated and how the NLUP would be applied to transboundary projects.

#### 3.6.4 Rationale

The 2016 DNLUP (Section 2.7) notes the Great Bear Lake Watershed was identified as an important area with transboundary considerations because it is located between the Sahtu region of the Northwest Territories and the Nunavut Settlement Area (NSA). No option was assigned to the Watershed other than to note that a portion of the Great Bear Lake Watershed within the NSA is presented as an area of a Valued Ecosystemic Component (VEC). The NIRB notes that the Great Bear Lake Watershed has been identified as an important ecological and cultural area in the Sahtu region of the Northwest Territories (NWT) and options for its environmental protection should be considered or discussed within the NLUP. The option given to this watershed in the Options and Recommendations document is Option 4: does not restrict access.

The following statement within the Options and Recommendations document requires clarification: “a management plan which has no legal force has been developed to manage the area” (p.49). With the following reference of “[t]he approved Sahtu Land Use Plan includes provisions to manage the area”, it should be explicitly noted which management plan is being referred to in the first statement (The Great Bear Lake Watershed Management Plan or the Sahtu Land Use Plan). Considering the Sahtu Land Use Plan states “[t]he Plan provides legally binding direction to regulators, land owners and applicants through ‘Conformity Requirements,’ to be implemented in the process of authorizing land use activities and granting dispositions” (p. 26) may contradict content on enforceability expectations within each plan. Ensure content is consistent with outside Management Plans.

#### 3.6.5 Supporting Material

Sahtu Land Use Plan, August 2013

([https://sahtulanduseplan.org/sites/default/files/final\\_sahtu\\_land\\_use\\_plan\\_april\\_29\\_2013.pdf](https://sahtulanduseplan.org/sites/default/files/final_sahtu_land_use_plan_april_29_2013.pdf))

NPC PHC – Formulation of Issues (10).

### 3.7 Heritage Rivers

#### 3.7.1 Reference in DNLUP

DNLUP Section 3.5; Page 34

DNLUP Section 6.8.8, Page 54

Options and Recommendations; Section 3.5.3; Page 62

#### 3.7.2 Comment

Canadian Heritage Rivers, which have been nominated but have yet to be officially designated, are under consideration for this designation and associated legislative protection because they have identified been as having considerable cultural value. The Coppermine River has been nominated as a Canadian Heritage River, however no discussion is provided in the DNLUP on required management considerations for the area while it awaits completion of the designation process.

#### 3.7.3 Recommendation(s)

**Recommendation #13:** Chapter 3 should specify how nominated Heritage Rivers would be managed in the interim until they become fully designated, and consideration should be given to having the NLUP assign a complementary designation to that offered through the Canadian Heritage River designations (Section 3.5 of the DNLUP).

**Recommendation #14:** The NLUP include details regarding what specific transboundary considerations were undertaken regarding the Canadian Heritage River designations where they cross the border of Nunavut into neighbouring jurisdictions.

#### 3.7.4 Rationale

Section 3.5 of the NLUP, describing Heritage Rivers, does not include required management for 'Heritage Rivers Awaiting Designation (or nominated rivers)'; an example is the Coppermine River which has been nominated but is awaiting designation as a Heritage River. The Options and Recommendations document notes that the recommendation for the Coppermine River was an *Option 3: Does not restrict access; and Identified area not discussed in NLUP*, justifying that the option was chosen as the river has not been designated. To acknowledge the importance of a nominated river, the same consideration should be given under the NLUP to 'Heritage Rivers Awaiting Designation' as those officially deemed Heritage Rivers. Further, it is noted that the Coppermine River is treated the same as the other Heritage Rivers under Section 6.8.8 of the DNLUP when recommending additional research and studies for the Heritage Rivers.

#### 3.7.5 Supporting Material

Canadian Heritage River System (<http://chrs.ca/>).

### 3.8 Mineral Potential

#### 3.8.1 Reference in DNLUP

DNLUP, Section 5.2, Page 42

Options and Recommendations, Section 5.2, pages 75 to 76

#### 3.8.2 Comment

Clarification required for areas identified for mineral potential, with the reference of weighing tourism the potential of these areas.



### 3.8.3 Recommendation(s)

**Recommendation #15:** Provide clarification on the option or designation assigned to areas of known mineral potential and the consideration of proposals for tourism facilities or conservation in these areas.

### 3.8.4 Rationale

The designation: “Areas of known mineral potential are described in Schedule B. Proposals for tourism facilities or conservation **should be considered against** the economic development potential in these areas” indicates potential for impacts to several VECs which could conflict with tourism land uses. Conformity determinations made for projects proposed in areas under this designation may be associated with adverse impacts to one or more VECs; therefore if conformity determinations for these project proposals are to be referred to the NIRB, they should be accompanied by specific operational limitations to ensure that the impact assessment is appropriately focused.

## 3.9 Strategic Environmental Assessments

### 3.9.1 Reference in DNLUP

DNLUP, Section 5.2.1, Page 42

### 3.9.2 Comment

The recommendation within the DNLUP that government provide additional funding to the NPC and the NIRB to co-lead Strategic Environmental Assessments (SEA) in areas considered to have high mineral value may need to be reconsidered.

### 3.9.3 Recommendation(s)

**Recommendation #16:** The NLUP should allow for assignment of Strategic Environmental Assessments to the NPC and/or NIRB by federal/territorial government agencies and/or Designated Inuit Organizations as appropriate.

### 3.9.4 Rationale

The NIRB’s mandate, under the Nunavut Agreement and the NuPPAA, is to conduct impact assessments of proposed projects, with the definition of project and project proposal encompassing physical works subject to government approval. As strategic environmental assessments (SEAs) are focused on evaluating impacts of potential governmental and land administrative decisions, such as policy options, leading or co-leading SEAs is outside the NIRB’s primary functions and is considered to be an additional duty or function that may be assigned through section 12.2.4 of the Nunavut Agreement. The NIRB questions the ability of the NLUP to extend the NPC and NIRB’s mandated authorities to include self-initiating SEAs without such assessments being assigned by government or set out in legislation.

As Nunavut’s respective land use planning and impact assessment authorities, the NIRB supports the view that the NPC and the NIRB either jointly or individually may be best-poised to conduct SEAs for specific issues. To this end, the NIRB is presently in discussions with Indigenous and Northern Affairs Canada regarding the assignment of an SEA to the NIRB for oil and gas development in Baffin Bay and Davis Strait, pursuant to section 12.2.4 of the Nunavut Agreement. However, the limits to the NPC and NIRB’s mandated authorities should be recognized by the NLUP, with SEAs enabled through the appropriate provisions of the Nunavut Agreement. Further, recognizing that the NPC and the NIRB are independent agencies with differing bylaws, rules of procedure and common practices, jointly conducting SEAs may be problematic and require further consideration, with specific direction possibly provided by federal/territorial government agencies and/or Designated Inuit Organizations as may be appropriate.



### 3.10 Marine Areas

#### 3.10.1 Reference in DNLUP

DNLUP, Section 5.3, pages 42-43

DNLUP, Section 6.8, Page 53

DNLUP, Section 6.8.7, Page 54

Options and Recommendations, Section 5.3, Page 76

#### 3.10.2 Comment

The DNLUP does not appear to consider community concerns related to oil and gas development. The NIRB notes that the Government of Canada has also recently designated all of Arctic Canada as indefinitely off limits to future offshore oil and gas licensing, to be reviewed every 5 years through a climate and marine science-based life cycle assessment.<sup>1</sup>

#### 3.10.3 Recommendation(s)

**Recommendation #17:** Community concerns and the current Government of Canada position regarding oil and gas development should be considered and addressed within the Nunavut land use plan.

#### 3.10.4 Rationale

Within the 2016 DNLUP, the marine areas adjacent to Baffin Bay and Davis Strait near Qikiqtarjuaq, Clyde River, and Pond Inlet have a mixed-use designation, although areas have been assigned VECs. The NIRB recognizes that there is considerable community concern related to potential oil and gas development and marine seismic surveys in these areas, as well as overlap with existing commercial fisheries and Inuit harvesting in this area. While the DNLUP recommends additional research and studies related to oil and gas exploration and seismic surveying, the plan does not appear to directly address the community concerns associated with these types of development. The concerns were identified through the NPC and NIRB processes and incorporated into the Nunavut Marine Council's recommendation indicating that a strategic environmental assessment needs to take place in the Baffin Bay and Davis Strait Area prior to oil and gas development occurring. The Government of Canada has also recently designated all of Arctic Canada as indefinitely off limits to future offshore oil and gas licensing, which might enable the NPC to go further in developing complementary restrictions through the NLUP.

Further, as mentioned in the preceding section, the NIRB is presently in discussions with Indigenous and Northern Affairs Canada regarding the assignment of a Strategic Environmental Assessment to the NIRB for oil and gas development in Baffin Bay and Davis Strait, pursuant to section 12.2.4 of the Nunavut Agreement. It is anticipated that the results of this SEA could potentially be used to inform future versions of the NLUP, as well as the climate and marine science-based life cycle assessments contemplated by the Government of Canada (mentioned above).

### 3.11 Palaeontological Resources

#### 3.11.1 Reference in DNLUP

Schedule A map

#### 3.11.2 Comment

Palaeontological sites should be considered and included within the NLUP.

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<sup>1</sup> <http://pm.gc.ca/eng/news/2016/12/20/united-states-canada-joint-arctic-leaders-statement>

### 3.11.3 Recommendation(s)

**Recommendation #18:** The NLUP should include a section on Palaeontological Sites and a designation should be assigned based on comments and concerns that the NIRB and other organizations have received from parties on these important areas.

### 3.11.4 Rationale

It appears that palaeontological sites are not addressed through the 2016 DNLUP. There are two protected areas (key bird habitat sites) as well as the proposed Napurtulik Territorial Park on Ellesmere and Axel Heiberg Island, and while they appear to encompass parts of the fossil forest in this area it is unclear how much is included (especially as the exact area of fossils is protected in some cases), including the Geodetic Hills Fossil Forest on the east side of Axel Heiberg Island. It is noted that during the screening of NIRB File No. 09EN067, commenting parties raised extensive concerns regarding the potential for unacceptable adverse impacts to paleontological resources in the area. Parties noted the importance of the area where the project was being proposed nationally and internationally, the current lack of protection for the area, and the likelihood of irreparable and unacceptable impacts to paleontological resources occurring as a result of the proposed project.

### 3.11.5 Supporting Material

NIRB File No. 09EN067, available at [www.nirb.ca](http://www.nirb.ca).

## 3.12 Incorporation of Community Comments

### 3.12.1 Reference in DNLUP

Options and Recommendations, Section 2.7

### 3.12.2 Comment

The incorporation of feedback received from parties including communities is not clearly described within the DNLUP.

### 3.12.3 Recommendation(s)

**Recommendation #19:** Provide a description within the NLUP regarding how feedback received from parties including feedback from communities was considered and incorporated in the selection of Options for each area.

### 3.12.4 Rationale

It is noted that “Priorities and values of the residents” are often listed as ‘considered information’ within the plan. It is not clear within the DNLUP what specific priorities and values of residents were considered when completing the options and designations or who was consulted, leaving this to be inferred by the reader. As an example, it is not clear what the community feedback was that reflected the decision for Atlantic Cod Lakes and who was consulted on this topic (Section 2.7 of the Options and Recommendations document).

## 3.13 Editorial Updates

### 3.13.1 Reference in DNLUP

### 3.13.2 Comment

1. Multiple figures are presented with duplicate numbering in the DNLUP, for example, Figure 8: Community Areas of Interest (page 36) and Figure 8: Terrestrial Linear Infrastructure Corridor

Conformity Determination Process (page 45); recommend updating the numbering of figures for clarity.

2. Ensure all acronyms are spelled out when used the first time (e.g., MBS not listed in 2016 version).
3. To reduce any potential issues and ambiguity it is suggested that all items in the maps for the Options and Recommendations document be included in the legend.

### **3.13.3 Recommendation(s)**

**Recommendation #20:** Update the NLUP to include the suggested editorial edits.