



August 27, 2010

Re: NIRB Comment Submission on the Working Draft NLUP and Draft NLUP Implementation Strategy

As an institution of public government created by the Nunavut Land Claims Agreement (NLCA), the Nunavut Impact Review Board (NIRB; the Board) is uniquely linked to the Nunavut Planning Commission (NPC; the Commission) and the Nunavut Water Board in the integrated regulatory system established by the NLCA. As such, the NIRB appreciates the opportunity to provide input into the Commission's development of a Nunavut Land Use Plan (NLUP), as this important document will have implications for our organization and the efficiencies of the current regulatory system. Given NIRB's mandate for development impact assessment, our focus will be restricted to offering advice as a partner with NPC in the integrated regulatory system established by the NLCA and further refined by the current draft of the Nunavut Planning and Project Assessment Act (NUPPA).

Overall, the Working Draft NLUP and Draft NLUP Implementation Strategy contain many features which could be useful for providing guidance and direction for resource use and development in the Nunavut Settlement Area. However, at the present time these draft documents are a very rudimentary form that provides very little tangible information with which to provide a thorough and comprehensive comment submission; the NIRB would be pleased to provide additional comments once these important documents are more fully developed. In the interim, the following comments have been compiled for the Commission's consideration during its continued development and revision of the NLUP and corresponding Implementation Strategy.

Section 1: Definitions

There are no definitions listed here for which to provide comments, yet there are several potentially ambiguous terms in the Implementation Strategy which might benefit from being articulated in this manner (e.g. "leave-no-trace activities", "restricted access" and "policy direction").

Section 2: NUPPA Process Maps

There are no process maps included in the current draft, which is understandable as the NUPPA itself is still in draft form and is therefore potentially subject to change. In the meantime it may be useful to present process maps based upon the NLCA only. The NIRB would be happy to assist the Commission in its efforts to create these process maps if this would be helpful.

Section 3: NLUP Procedures

The items listed in this section for which rules and procedures are to be developed are of specific interest to the NIRB, and are central to the provision of our comments on the NLUP as these procedures may implicate and/or involve the NIRB. We ask therefore, that these procedures be provided for comment once developed, especially as they relate to proposals located within municipalities, conformity determinations, minor variances, and cumulative effects referrals.

It does not appear that the NLUP and the Implementation Strategy address the potential of a Ministerial exemption of conformity (NLCA Section 11.5.11) for project proposals. The NIRB recommends that this section might benefit from a discussion of this possibility, especially in relation to minor variances (i.e. what would constitute a minor variance versus an exemption).

Section 4: Implementation of Terms

Without there being a corresponding explanation, the NIRB is unsure of the intent of this particular section and has assumed that once completed it might provide the reader with an understanding of whom is responsible for implementing the terms and conditions of a NLUP conformity determination.

With regards to the statement which reads “height restrictions near airstrips are implemented through land use permits issued by INAC or a Regional Inuit Association”, it is unclear whether the only terms currently prepared for the draft NLUP relate specifically to airstrips and minimum flight elevations. In the NIRB’s experience, in order to protect sensitive wildlife species from aircraft disturbances, flight restrictions are often applied through land use permits and licences issued by Indian and Northern Affairs Canada (crown land), Regional Inuit Associations (Inuit-owned lands) and the Government of Nunavut (Commissioner’s Lands). These restrictions are not necessarily limited to the area surrounding an airstrip as such, but rather might be applied to areas where such concerns for disturbance to sensitive wildlife exist.

Section 5: Application

The NIRB is extremely concerned with the statement that the NLUP will not apply within municipal boundaries of the Nunavut Settlement Area (NSA). The Board is aware of the inconsistencies in the current approach taken by NPC when determining conformity determinations for projects within municipal boundaries in the NSA. It is our understanding that the land use plans developed by NPC are to encompass planning regions of Nunavut as determined by the Commission, and these planning regions include municipalities to which regional land use plans also apply.

The NLCA contains provisions which indicate municipalities are responsible for developing municipal land use plans (NLCA Section 11.7.2) and should be included in NPC’s development of regional land use plans. Section 11.3.1 of the NLCA states that NPC’s land use plans shall take into account numerous factors, including “community infrastructural requirements,

including health, housing, education and other social services”. NPC and municipalities are further directed to ensure that regional and municipal plans are compatible (NLCA Section 11.7.4) and as currently proposed NUPPA further states that NPC cannot have overlapping regional land use plans. It is the NIRB’s firm contention that both the NLCA and NUPPA establish a system where activities proposed within municipalities which meet the definition of project proposal are meant to be subject to the requirement of conforming to land use plans developed by NPC. Further, where regional plans exist the NPC is to determine whether these proposals are exempt from the requirement for NIRB Screening (NLCA Schedule 12-1) or if exempt should be referred for screening where there is a concern for potential cumulative impacts (NLCA Section 12.3.3).

The NIRB requests clarification from NPC on the applicability of the current regional land use plans within municipalities as well as the proposed applicability of the NLUP within the municipalities of the Nunavut Settlement Area. The NIRB would also ask that NTI and Government provide their understanding of the requirements of the NLCA and NUPPA in this regard. If the NIRB is mistaken in its interpretation of these provisions of the NLCA and NUPPA, the Board respectfully requests clarification on the process for ensuring project proposals within municipal boundaries of the Nunavut Settlement Area are subject to development impact assessment by NIRB under the NLCA and NUPPA.

Section 6: Permitted Uses in all Zones

This section of the Implementation Strategy lists several “permitted uses in all zones” which would not require an application for conformity to the NLUP and would be further exempt from cumulative impact referrals and screening by the NIRB. The NIRB has serious concerns with this apparent effort to exclude certain types or classes of activities from the requirement for conforming to land use plans and being subject to impact assessment. The definition of project proposal is established by Article 1 of the NLCA, and is further refined in the current draft of NUPPA, while activities exempt from NIRB screening are listed in NLCA Schedule 12-1 and await further development as a schedule of NUPPA.

Although not defined in the current documentation provided by NPC, “leave no trace” activities presumably still might have the potential to have impacts to the environment; i.e., though a camp site might be removed without leaving a trace does not mean that while there it had no impact to the surrounding ecosystem. It is important to note that the NLCA and NUPPA grant only the NIRB the ability to enter into agreements to exempt categories of activities and projects from the requirement for screening, which is only done after appropriate public consultation and subject to approval by the appropriate Minister.

The cumulative impact assessment provisions of the NLCA (Section 12.3.3) create a vehicle to ensure activities that are typically benign in nature are subject to impact assessment when they have the potential to react with other projects in the same area and result in cumulative impacts. Although NPC has yet to develop and implement such a strategy as mandated by the NLCA, seeking to exempt certain classes of activities from the possibility of being subject to cumulative impacts assessment in the future is counter-intuitive and would defeat the insightful provisions of the NLCA and NUPPA. NIRB strongly recommends NPC reconsider its approach to permitted

uses in all zones for the NLUP, as it is the Board's belief that the current approach is beyond NPC's authority and would violate the provisions and spirit of the current legislation. Should there be a need to identify permitted uses in all zones in the NLUP, the NIRB would respectfully suggest that NPC simply state that it will automatically confirm such projects positively conform to the NLUP upon referral, and process the proposals accordingly, forwarding them for impact assessment where required.

Section 14.1 Special Management

This section contains one of the few explicit prohibitions of the NLUP, stating that "the development of oil and gas is prohibited within the identified study area for the Lancaster Sound National Marine Conservation Area". The use of the term "development" however is somewhat ambiguous and could benefit from a clear expression of the types of activities being prohibited. For example, is development limited to production or is it meant to include exploration as well? Does development include activities such as research using marine seismic surveys or initial exploration involving the installation of test wells?

The Keewatin Regional Land Use Plan makes mention of a moratorium on oil and gas exploration around Southampton Island, yet this does not appear to have been carried over into the NLUP. The NIRB requests clarification from NPC on this point if possible.

Section 14.2: Policy Direction

It is unclear what provision of the NLCA or NUPPA would give NPC the mandate to provide "policy direction" or the authority to direct NIRB or government regulators, though the Commission clearly has the mandate to provide recommendations to the NIRB and others pursuant to its conformity determinations. After careful review of available documents, the NIRB notes that the Commission's "Broad Planning Policies, Objectives and Goals - Rolling Draft Version 2 - June 14, 2010", specifically Goal 2 -Protecting and Sustaining the Environment, objective "B" (pg.8) states the following:

It is a policy of the NPC that land use planning where appropriate, should provide direction to the NIRB, government regulators and Inuit land managers to manage climate change issues, including Greenhouse gas emissions.

The NIRB is also aware of NPC's duty to cooperate with Government through Section 12.7.6 of the NLCA, to develop a general monitoring plan for directing and coordinating general monitoring and data collection, however the policy direction being offered in this section does not appear to be directly related to either climate change or the Nunavut General Monitoring Plan. As such, the current attempt at the provision of "policy direction" to NIRB will require further clarification.

Conclusions and Summary

The existence of an approved land use plan which covers the whole of the Nunavut Settlement Area would be a significant improvement to Nunavut's current regulatory regime, increasing certainty and consistency in the approval of project proposals. The Nunavut Land Use Plan could be used to address many issues of great significance to the protection of the environment and the promotion of well-being among residents and communities in the Nunavut Settlement Area. For example, providing guidance to resource users regarding the potential seasonal restrictions to certain land use activities in caribou calving grounds might be both useful and appropriate in the NLUP. However, as outlined above the NIRB has noted significant deficiencies and problematic areas within the current working draft documents supplied for review.

The NIRB has serious concerns regarding the Commission's intention to have the NLUP not apply to municipalities, and to further exempt classes of projects from the requirement to conform with the NLUP or be subject to potential cumulative impact referrals. The current NLUP does not contain any details regarding the procedures for conformity determinations, consideration of minor variances, and cumulative effects referrals, or the prioritization of the clean-up of waste sites in the Nunavut Settlement Area. It is also unclear whether the NLUP would replace the currently approved North Baffin Regional Land Use Plan and Keewatin Regional Land Use Plan, or whether these land use plans might become regional components of the NLUP upon approval. If the intention is that the approval of the NLUP will render the current regional plans obsolete, then the current disparity in detailed information and topics covered would be even more alarming.

The NIRB understands that the NLUP is still in the early stages of development and NPC staff will be revising the current draft before presenting it to the Commission members for approval as the Draft NLUP to be used for community consultation purposes. While acknowledging the aggressive timelines which the Commission is intending to adhere to as it targets submission of a NLUP to the Ministers for consideration in 2011, the NIRB hopes that there will be adequate opportunity provided for additional input as the NLUP progresses towards its final form.

Should there be any items in the NIRB's comment submission which require clarification or a more detailed discussion, please do not hesitate to contact either myself (1-867-983-4608; rbarry@nirb.ca) or Amanda Hanson, Technical Advisor, (1-867-983-4615; ahanson@nirb.ca) at your convenience.

Sincerely,



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