



November 5, 2011

Ms. Cathy Towntongie
President
Nunavut Tunngavik Incorporated
P.O Box 638
Iqaluit, Nunavut, X0A 0H0

Delivered by Electronic Mail

Dear Ms. Towntongie

Thank you for your letter of October 25, 2011 regarding concerns with an October 12, 2011 letter the Commission provided to the Nunavut Impact Review Board (NIRB). In this letter you suggest that the Nunavut Planning Commission (the Commission) is bypassing the plan amendment process considered as part of the review of transportation corridors under the North Baffin Regional Land Use Plan (NBRLUP).

I can assure you that is not the case. The Commission and NIRB will determine whether the information requirements of the NBRLUP Appendices J and K are met and make the decision public as part of the Pre-hearing Conference Report. The final alignment of the bed of the railway must be approved before the Commission will be able to undertake the design of the transportation corridor. Once the information requirements are met and the final location of the railway bed is known the Commission will proceed with implementation of the plan amendment process established under the Nunavut Land Claims Agreement.

In your letter you state that the component of Term 3.5.12 which reads, *"NPC may request the ministers to amend the plan to include the new transportation corridor"* is a conformity requirement. The Commission disagrees. The Commission interprets the noted plan amendment provision under NBRLUP Term 3.5.12 to be an "action" and not a "conformity requirement."

The following is a list of criteria the Commission considers when interpreting the Terms of the NBRLUP. It is important to take into account that:

- the NBRLUP contains conformity requirements, actions and recommendations.
- "conformity requirements" do not prohibit transportation corridors, nor is there specific direction regarding the construction, operation or the location of land based transportation routes.

- “actions” set out in Term 3.5.11 of the NBRLUP include a joint public review:
 - the joint public review is to be undertaken by the NPC and NIRB or federal environmental assessment panel as determined under NLCA 12.4.7.
 - NLCA 11.5.11 states that a positive conformity determination, variance or ministerial exemption must be granted before a project may be sent to NIRB.
 - The Commission is of the view that it is impossible to proceed with a joint public review proposed under the NBRLUP Term 3.5.12 without a positive conformity determination.
- “actions” set out in Term 3.5.12 of the NBRLUP provide an option for the Commission to consider a plan amendment to *“include the new transportation corridor”*
 - an amendment to show the new transportation corridor means to add a map showing the final location of the corridor.
 - the NBRLUP requires alternative routes to be considered as part of the plan amendment request. The final location for the bed of the railway could be altered during the finalization of the NIRB Part 5 review. The final decision on the location of the railway is determined through the issuance of the NIRB Project Certificate. Once the Certificate is issued the Commission would be able to design the transportation corridor.
- The completion of the action component of Term 3.5.12 has no effect on the Commission’s positive conformity determination of April 30, 2008, the current NLCA Part 5 review, or the issuance of any permit, license or authorization.

When the above points are taken into account it is possible to see the logical flow and sequence of events set out in the NBRLUP.

- Term 3.5.11 establishes information requirements and a joint public review process.
- The joint public review is to be undertaken by the NPC and NIRB or federal environmental assessment panel which is determined in accordance with NLCA 12.4.7.
- The NLCA 12.4.7 decision to undertake a review of the project cannot occur without a positive conformity determination.
- Once a positive conformity is received regulators are able to implement their legislative responsibilities.
- Final decisions on the routing of the bed of the railway will be made as part of the NLCA NIRB Part 5 review.
- A transportation corridor cannot be designed until the final location of this railway bed is known.
- The Commission is unable to design a transportation corridor for this project until the final routing of the bed of the railway is approved.
- The Commission would then be in a position to recommend to the Ministers that the plan amendment be accepted, or rejected in whole or in part as per NLCA 11.6.3.

In summary the NBRLUP does not contemplate that a plan amendment be completed before the NLCA Part 5 project review is finalized or before any permits, licenses or authorizations can be issued.

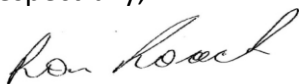
In my October 12 letter I indicated that the Commission “*will not be seeking an amendment to the NBRLUP.*” This statement needs to be taken in context with the requirements of Nunavut Land Claims Agreement, the NBRLUP and protocols already in place. Implementation of NLCA 11.6.3 requires that the Commission provide a recommendation to the Minister of Aboriginal Affairs and Northern Development Canada and the Minister of Environment, Government of Nunavut. The recommendation must advise the Ministers on whether the request for plan amendment should be accepted or rejected in whole or in part. Although premature, there are a number of technical and administrative reasons why the Commission believes the request for the plan amendment may be rejected. The recommendation of the Commission to accept, or reject the plan amendment proposal in whole or in part has no effect on the NIRB review or the issuance of permits licenses or authorizations.

Once the final decision is made on the location of the railway the Commission will provide its recommendation on the request for plan amendment to the Ministers for their consideration as outlined in NLCA 11.6.3. The decision whether the NBRLUP should be amended to show the location of the new transportation corridor located within the North Baffin planning region rests with government.

The Terms 3.5.11 and 3.5.12 contain “actions” which are considered separate from the conformity determination requirements. The project proposal conforms to the conformity requirements contained in the NBRLUP and the project is proceeding through the NLCA NIRB Part 5 review. The design of the transportation corridor for this project cannot be completed until the final location of the railway is determined. The final decision on the location of the railway bed will not be provided to the Commission until the Minister accepts the NIRB Final Hearing Report and the NIRB Project Certificate is issued. The action under Term 3.5.12 does not affect the Commissions conformity determination or the process currently being under taken by NIRB under NLCA NIRB Part 5 review. Nor, does it infringe on the ability of regulators or land managers to issue permits, licences or authorizations.

In closing, Commission staff are always available to support Nunavut Tunngavik Incorporated by providing information or clarification on the Terms of the NBRLUP. If we may be of any assistance please contact the Commission’s Executive Director, Sharon Ehloak.

Respectfully,

A handwritten signature in cursive script, appearing to read "Ron Roach".

Ron Roach
Chairperson

CC: Lucassie Arragutainaq, Chairperson, NIRB