

Government of Canada Priority Expectations for a First Generation Nunavut Land Use Plan

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1 Introduction and Overview

This document presents the Government of Canada's (GoC) priority procedural and substantive expectations for a first generation Nunavut Land Use Plan (NLUP). A second document with individual departments' and agencies' technical priorities and interests and additional data will follow shortly. These priority and substantive expectations represent the GoC's first step toward implementing the Independent Review Final Report¹. The report recommended a four step process as a path forward towards the development of a Nunavut Land Use Plan (NLUP). These steps can be summarized as follows:

Step 1: Engagement with other Institutions of Public Government

A facilitated dialogue involving the Nunavut Planning Commission (NPC), Nunavut Impact Review Board (NIRB), and Nunavut Water Board (NWB): 1) to assemble information from regulatory hearings and decisions on the concerns with land use issues that have been identified by the public and stakeholders; and 2) to more carefully consider how and to what extent a first generation Nunavut-wide plan could contribute to improved decision making within Nunavut's integrated regulatory system.

Step 2: Public² and Stakeholder Participation

The engagement of the public and all stakeholders in the development of the NLUP by providing opportunities for meaningful input on values, issues, priorities and objectives (and also the structure of the plan and use of designations/recommendations system). Step 2 also calls for: i) the establishment and operation of a public registry that organizes and consolidates the record of all previous public participation prior to the community tours; ii) explicit and transparent procedures for documenting feedback; iii) a comprehensive participation strategy; iv) supporting materials; v) a communications strategy and schedule; and vi) documentation of community feedback on the public registry.

Step 3: Structured Process for Clarifying Specific Expectations by the Parties

Re-engagement of the three approval bodies - the Government of Canada, Government of Nunavut (GN) and Nunavut Tunngavik Inc. (NTI)³ - and NPC

¹ *Independent Review Draft Nunavut Land Use Plan Final Report*. Dillon Consulting Limited. June 2012.

² The term "public" as used in this document applies to a wide range of audiences addressed in the NLCA, in particular Inuit, other residents of Nunavut communities, municipalities, government and other stakeholders.

³ NTI would become an approval body on the enactment and coming into effect of the proposed *Nunavut Planning and Project Assessment Act* (NUPPAA), which at the date of this writing is before the House of Commons in the *Northern Growth and Jobs Act*, Bill C-47

through a focused and well managed formal process of structured decision making aimed at clarifying specific substantive and procedural expectations for a first generation NLUP.

Step 4: Preparation of a Revised Draft Nunavut Land Use Plan

Preparation of a well-substantiated draft plan by NPC based on the input received in Steps 1 to 3.

As noted above, Step 3 of the four step process specifically calls for “*a re-engagement of the Parties through a focussed and well managed formal process of structured decision making aimed at clarifying specific substantive and procedural expectations for the first generation Nunavut-wide land use plan.*”⁴ To prepare for this re-engagement process, GoC departments and agencies with an interest in Nunavut land use planning collaborated on the development of this document.

Consistent with the Independent Review’s advice to take a pragmatic approach focussed on core priorities, the GoC departments set out to categorize their various substantive and procedural priorities and interests as follows:

Core Expectations for a First Generation DNLUP

The procedural and substantive priorities presented and discussed in this document are the GoC’s core expectations for the development of a first generation DNLUP. The GoC will bring these expectations forward for discussion during the re-engagement process envisioned in Step 3 of the Independent Review recommendations.

Department and Agency Technical Expectations

While the GoC has not prepared a formal review of the DNLUP released in September 2012, to respect the disengagement of government recommended by the Independent Review, some departments and agencies have identified areas for clarification, correction, accurate interpretation of this last version of the Draft Plan. These comments will be forwarded under separate cover.

There is a basic expectation that data and other information provided in the past or future by the various government departments and agencies and used to inform the draft Nunavut land use plan be interpreted and represented accurately.

Furthermore, it is expected that any new data provided by GoC departments in the future would be considered and similarly treated by the Nunavut Planning Commission. If the new data is not reflected in the next iteration of the draft plan, the GoC expectation would be that an explanation of how this information was considered and the decision making that led

⁴ Independent Review Draft Nunavut Land Use Plan, June 2012, p. 112

to its exclusion be provided in writing.

Finally, departments and agencies with any available new data will forward it to the Nunavut Planning Commission in parallel to the on-going community consultations (Step 2 of the Independent Review recommendations).

Longer Term Expectations

Other substantive expectations considered high priority by the GoC (e.g. the development of assessment tools and thresholds for managing cumulative effects, inclusion of the provisions of watershed management plans as they become available from the Nunavut Water Board, etc.) are expected to be addressed in subsequent iterations of the NLUP. The GoC recognizes that there are currently significant data gaps or lack of specific, fact-based management approaches for some of these priorities and has accepted to defer these types of expectations to future iterations of the plan.

Consistent with the NLCA, the GoC intends to continue to collaborate with NPC in the generation and interpretation of data and the development of management approaches in support of future iterations of the plan.

The table on the following page summarizes the GoC's priority procedural and substantive expectations for a *first generation* Nunavut Land Use Plan. Further details and supporting rationale are described in Section 2 of this document.

Government of Canada Priority Expectations for a First Generation Nunavut Land Use Plan

Legal Compliance

The planning process and resulting Draft Nunavut Land Use Plan (DNLUP) shall be compliant with the Nunavut Land Claims Agreement (NLCA) and the Nunavut Planning and Project Assessment Act (NUPPAA)⁵.

Policy Consistency

The DNLUP must be consistent with federal department and agency mandates, authorities, commitments and policies, including international conventions and agreements which Canada is a party to.

Planning Process Credibility

The development of the DNLUP must be supported by a meaningful, inclusive and transparent public and stakeholder consultation process.

A public registry that organizes and consolidates a complete record of evidence and public and stakeholder participation must be established and accessible throughout the planning process.

The DNLUP must be based on a transparent process for making decisions among competing land uses based on the consideration of both facts and values.

Clarity and Certainty

The DNLUP must be clear and understandable to users.

The DNLUP must provide improved certainty for users.

Implementation

The DNLUP must be practical and implementable.

Conformity requirements must be clear and objectively verifiable.

Regulatory Efficiency

The DNLUP should contribute positively to Nunavut's integrated regulatory system.

⁵ Bill C-47, the *Northern Jobs and Growth Act*, which would enact the *Nunavut Planning and Project Assessment Act* (NUPPAA) is before the House of Commons at the time of this writing. For ease of expression, this document refers to NUPPAA as if those legislative requirements were presently in force. It is important to note that bills can be amended during their consideration by the House of Commons and Senate, and have no force or effect until passed by both houses of Parliament, receive Royal Assent, and come into force.

2 Expectations Framework

The framework for describing the GoC's expectations is based on the six categories presented in the preceding table. The GoC's NLUP Working Group has developed these categories based on the recommendations of the Independent Review Final Report, previous submissions and correspondence to the NPC as well as other documents that were developed to support the review and approval of northern land use plans. In moving forward, a focus has been placed on the GoC's priorities and interests for a *first generation* land use plan.

2.1 Legal Compliance

GoC Expectation:

The planning process and resulting DNLUP shall be compliant with the NLCA and NUPPAA.

This overview expectation is of primary importance as it represents the foundational basis of land use planning in Nunavut.

2.2 Policy Consistency

GoC Expectation:

The DNLUP must be consistent with federal department and agency mandates, authorities, commitments and policies, including international conventions and agreements.

An approved Nunavut land use plan will become one of the authorities governing land use in the Nunavut Settlement Area (NSA). It is expected that in developing the DNLUP, the Nunavut Planning Commission would ensure that the plan is consistent with applicable federal legislation, departmental mandates, authorities and commitments. International conventions and agreements that Canada has entered into should also be considered.

One example demonstrating this is GoC's commitment to establish parks and marine conservations areas under the National Park Systems Plan and National Marine Conservation Areas Systems Plan in the NSA. The DNLUP is expected to take this into consideration when considering the designation of land for particular permitted and prohibited uses.

2.3 Planning Process Credibility

The Independent Review noted that a number of additional improvements to the procedural approach to plan development are essential to successfully developing a DNLUP that would be acceptable to the approval bodies.

For a first generation land use plan the GoC has focused its core process expectations on three key areas:

- Public registry
- Public participation
- Decision making

2.3.1 Public Registry

GoC Expectation: *A public registry that organizes and consolidates a complete record of public and stakeholder participation must be established and accessible.*

The need for a public registry or depository accessible to all has been documented in previous GoC submissions and correspondence. Having a complete and accessible public registry is the key to “informed” participation of the public, government, Inuit organizations and other stakeholders, as intended by the NLCA. Such a registry also ensures transparency in the planning and decision making processes. The Independent Review recommended ways to formalize and improve documentation and enhance standards for such a registry, including the adoption of a naming convention, dating documents, and organizing materials for easier access and more transparency.

2.3.2 Public Participation

GoC Expectation: *The development of the DNLUP must be supported by a meaningful, inclusive and transparent public engagement process.*

The NLCA provides explicit requirements for the participation of the Inuit, other residents, government, municipalities and other stakeholders throughout the development of a land use plan. It calls for a planning process that provides “...opportunity for the active and informed participation and support of Inuit and other residents affected by the land use plans”, “appropriate and realistic schedules” and “ready access to all relevant information” (NLCA 11.2.1). Furthermore, the planning process is expected to “solicit opinions from municipalities, residents and others” and,

“promote public awareness and discussion and conduct public hearings and debate throughout the planning process” (NLCA 11.4.4).

The GoC has addressed public participation in previous correspondence and submissions to the NPC. While NPC’s 2012 *Community Engagement Strategy* provides a welcome level of clarity, the transparency of the participation process is still a concern. Without a registry of information and feedback that has already been exchanged and that records the feedback from Inuit, other residents, municipalities, government and other stakeholders, public participation cannot be fully informed.

NPC’s intention to provide only simple summaries of the community consultations and not “details on how particular information is being used to inform the Draft Plan”⁶ until after the public hearing, does not meet the expectation for a meaningful, inclusive and transparent public and stakeholder engagement process. At the public hearing, the public and other stakeholders will be solicited to present “written and oral comments from appropriate federal territorial government agencies, DIOs, communities and the general public” (NLCA 11.5.3). Without a complete record of past public and stakeholder feedback, as well as an explanation of how this feedback has informed the plan, the requirements of the NLCA will not be met, i.e. informed participation throughout the planning process and ready access to all relevant material to prepare written and oral comments and debate.

It is a key expectation of the GoC that all feedback and submissions and how this evidence has been used to inform a revised Draft Plan be made available throughout the public and stakeholder engagement process and not just for the formal public hearing. As stated in NPC’s *Community Engagement Strategy* “It is important for communities to know how the information they provide is being used in the planning process”, yet the document also states that this information “will not be made available until after a public hearing”.⁷

2.3.3 Decision Making

GoC Expectation: ***The DNLUP must be based on a transparent process for making decisions among competing land uses based on the consideration of both facts and values.***

Planning decisions should be based on fact as well as the priorities, interests and values of the Inuit, other residents of the NSA, government (federal and territorial) as well as other stakeholders.

Land use decisions and the overall rationale used in the decision making process should be based on an objective and transparent process, utilizing modern methods

⁶ Nunavut Planning Commission’s *Community Engagement Strategy*, October 2012

⁷ Nunavut Planning Commission’s *Community Engagement Strategy*, 2012, pg.9

and tools to support decision-making. Decisions should be clearly documented and made available to the public and stakeholders to ensure their informed participation. This includes: i) how factual information, both scientific and traditional, was considered; ii) how evidence of the values of Inuit and other residents, stakeholders and governments were incorporated into the assessment of land use options; and iii) the various land use options considered.

In terms of gathering the necessary facts and information for land use planning, the GoC government acknowledges its own role and commits to the ongoing assembly and provision of information in a manner that best meets its intended end use in the land use decision-making process. The Nunavut General Monitoring Program (NGMP) is one way that this can be achieved, along with scientific research conducted by government and research institutions.

Certain GoC departments expect to identify additional priority areas, management approaches and/or suggest clarifications for consideration in developing a revised DNLUP.

2.4 Clarity, Completeness and Certainty

In order “to provide for the conservation, development and utilization of land”⁸, the DNLUP must be clear, precise and as complete as possible to provide certainty for users.

2.4.1 Clarity

GoC Expectation: ***The DNLUP must be clear and understandable to all users.***

The purpose, application and contents of the DNLUP should be clear to a wide audience, including community members, industrial stakeholders and government, among others. Every effort to minimize the risk of uncertainty or misinterpretation of the intended outcomes of the DNLUP should be made. For example, priority information such as areas with restricted uses should be easily and quickly identified by the reader.

Specific considerations include:

- The terminology used in the DNLUP must be clear, consistent and understandable to all;
- Information that is currently uncertain must be highlighted as such, e.g. any boundaries presented on DNLUP maps of proposed marine conservation areas, proposed national parks, areas of economic development potential, transportation corridors, etc.;

⁸ NLCA 11.2.1 (e)

- The potential for changes and refinements to the plan over time based on new information, changing environmental conditions and values must also be identified (see Section 2.4.2 below).

The GoC has several specific concerns regarding clarity in the current and previous draft plans, including:

- *Land Use Designations* – The GoC is concerned that the current land use designations may not be clear to all users. The use of more objective zoning terms would be helpful and would reduce the risk that the names of designations will lead to unfounded assumptions about the legal effect of the various zoning decisions.

Of equal concern is that the names of the land use designations do not always reflect the areas or issues within the designation. An example is the fact that DND/CF sites are currently included in *Building Healthier Communities* (BHC-10). DND/CF sites do not appear to meet the objectives for this land use designation as enumerated in the DNLUP.

The DNLUP should provide a clear explanation of all the designations, their purposes and intended outcomes. The Draft Plan should explain the differences between areas that appear to address similar values and permit or prohibit the same uses. An example is the Protecting and Sustaining the Environment (PSE) and Environmental Conservation Planning (ECP) designations. Both have the same permitted and prohibited uses and criteria for the consideration of plan amendments, both include bird habitats, etc.

- *Permitted and Prohibited Uses* – permitted and prohibited uses must be clearly defined. For example, the land use ‘tourism’ should be defined with respect to the permitted type, scale, seasonality or any other terms or conditions attached to the use. Without further clarification, tourism could be interpreted as allowing anything from small scale wildlife viewing lodges for dozens of guests to cruise ship terminals for many thousands of guests. Similarly, the permitted use “research” could be interpreted as including seismic research activity that might have a negative impact on an area being protected or conserved under the DNLUP.
- *Use of Recommendations* – The GoC is concerned that the use of recommendations across expansive areas in the current DNLUP, many of which overlap with other spatial land use designations in the plan, creates uncertainty that could potentially lead to land use conflicts. Furthermore, clear direction on how project proponents and implementing bodies are to take the

recommendations into consideration is lacking. Additional clarity as to the purpose and expected outcomes of the recommendations is required.

The DNLUP should make it clear that recommendations are not a conformity requirement under the NLCA or NUPPAA schemes. This will avoid the potential for readers to assume that the recommendations identified in the DNLUP and Schedule B could have an effect on whether a project proposal conforms or not.

While the Planning Commission may make recommendations when forwarding its determinations to government and regulatory bodies, these recommendations in themselves should not determine conformity of the proposed project or use.

2.4.2 Certainty

GoC Expectation: ***The DNLUP must achieve certainty for users.***

The GoC expects that the contents of the DNLUP contribute to certainty for land users and regulatory bodies. All the necessary information required by a project proponent to achieve conformity or an implementing body to respect its obligations under the plan must be included. The plan must provide certainty around the intended interpretation of permitted and prohibited uses, the criteria to be used when assessing cumulative impacts, further understanding on the intentions of recommendations and how the plan acknowledges existing rights and interests (NUPPAA, s.58)

2.5 Implementation

GoC Expectation: ***The DNLUP must be practical and implementable.***

The GoC has focused on procedural requirements for the following key implementation tools for the first generation NLUP:

- Conformity Determination
- Plan Amendment
- Plan Review

2.5.1 Conformity Determinations

GoC Expectation: ***Conformity determinations are expected to be based on objective and clear conformity requirements.***

In order for the conformity assessment process to be objective, it is imperative that a first generation NLUP clearly defines the applicable land use designations, accompanied by explicit definitions of permitted and prohibited uses, variances and any other terms and conditions to be used in assessing conformity of a proposed land use. Specific considerations with respect to conformity assessments must include:

- *Definition of a project* –the definition of what constitutes a “project” must be consistent with the NLCA and NUPPAA and used consistently in the DNLUP and the implementation of an approved plan.
- *Precise definitions and legal scrutiny* - once approved, the NLUP will become a source of law. Therefore the drafting needs to be sufficiently precise to convey the meaning of the plan. Imprecise drafting would challenge the use and enforcement of the plan.
- *Cumulative Impact Referrals* – The GoC expects that the process for cumulative impact referrals as part of the conformity determination process be based on objective criteria and stated in the plan. While some guidance is given in NPC’s draft implementation document⁹, the criteria are too open-ended to provide certainty for users.

The GoC believes that conformity requirements and a framework for cumulative impact referral should be further developed through dialogue with NIRB and NWB, as recommended by the Independent Review.

2.5.2 Plan Amendment and Review

GoC Expectation: ***The procedures for plan amendment and review must be clear and the overall process must be based on principles of adaptive management.***

The GoC recognizes that the existing information base is incomplete and presents a challenge to land use planning, especially at the territorial level. The GoC also acknowledges that the pace of development in Nunavut is on the increase and will likely continue to increase in the decade to come. Significant resource development activity

⁹ “Working Together, Implementing the Nunavut Land Use Plan (undated)

and the related impact assessment processes are now underway or being seriously pursued. Climate change will also increasingly become a major factor with respect the use of land in the NSA.

The GoC acknowledges and supports reference to a formalized approach to adaptive management¹⁰ within the current DNLUP. An adaptive management approach, formalized within the plan review cycle, provides all planning parties, stakeholders and Nunavummiut with the flexibility to adapt to new improved information and evolving values over time. It recognizes that monitoring, research and information gathering are ongoing processes that should be committed to over the long term, continually improving the information base on which land use decisions are based.

The NLCA anticipates that the Nunavut General Monitoring Plan is one multi-stakeholder forum where socio-economic and ecosystemic monitoring and land use planning information needs can be addressed. The GoC will return to this point in its review of the draft *“Working Together: Implementing the Nunavut Land Use Plan”*.

Current information gaps and uncertainties should be identified in the DNLUP along with a commitment that future iterations of the plan will address these gaps through continued research and data gathering. For example, it is likely that critical habitat and management approaches for a number of avian, terrestrial and marine species will be identified in the short to medium term. Similarly, the Government of Canada has committed to establishing new national parks and new marine conservation areas over time in all un-represented or under-represented natural regions within Nunavut. Such new information is expected to inform future iterations (plan reviews) of the NLUP or be incorporated through plan amendment

¹⁰ Adaptive management is a systematic approach for improving resource management by learning from outcomes.

2.5.2.1 Plan Amendment

Both the NLCA and NUPPAA instruct the Planning Commission to consider all proposals for plan amendments received by government, Inuit organizations or persons affected by the plan. Plan amendment provides for flexibility in a plan. However, the GoC expects that plan amendments will not be used as a substitute for substantiated land use planning decisions that can be made in a first generation plan or through plan reviews. There is an administrative burden attached to a plan amendment, as outlined in NLCA and NUPPAA, that involve possible public hearings and requires ministerial and NTI approval. As noted in the Independent Review (pg.87-88) the NPC should specify the criteria in the DNLUP to be used to review proposed plan amendments.

2.5.2.2 Plan Review

The plan review cycle should occur regularly at set intervals. A first generation land use plan initially could set a shorter review period, i.e. 5 years. This would accommodate additional research data and management approaches to fill current gaps as well as any changing values and priorities. The review period could then be altered to a longer interval once outstanding land use decisions are sufficiently supported by fact and confirmation of values.

2.6 Regulatory Efficiency

GoC Expectation: ***The DNLUP should contribute positively to Nunavut's integrated regulatory system.***

The GoC views land use plans as supporting regulatory improvement, responsible resource development and sound environmental management. The GoC recognizes that land use planning is the appropriate forum to address and resolve conflicts over land use, rather than relying solely on project-specific environmental assessment processes. A positive contribution toward Nunavut's integrated regulatory system can be achieved by having clear land use designations and supporting definitions of land use terms and conditions. Meeting the planning process expectations previously described in Section 2.2 will make a significant and positive contribution by directing development to suitable areas where land use designations and terms and conditions have been established through a transparent process of considering options based on all available facts and values for the area.

A second crucial step toward contributing positively toward Nunavut's integrated regulatory system is through the implementation of the Independent Review's first

recommendation, namely a facilitated dialogue involving NPC, NIRB and NWB. The expectation is that this engagement will lead to a joint, improved understanding of the role land use planning should play within Nunavut's regulatory system. This engagement could identify opportunities for streamlining the environmental assessment and other regulatory processes making them more predictable, less expensive and time consuming. Specific topics that should form part of this important dialogue should include the opportunity to incorporate climate change considerations and objective criteria for cumulative impact referrals.

3 Conclusion

In response to the *Independent Review of the Draft Nunavut Land Use Plan, Final Report*, the GoC committed to clarifying its priorities and interests for a *first generation* land use plan. This document presents the GoC's core expectations, forming the basis for the GoC's eventual re-engagement with the GN, NTI and NPC – Step 3 of the Independent Review. The GoC recognizes that the expectations expressed herein may require alignment with those of the GN and NTI and that it is a shared responsibility with the NPC to clarify, align and implement the core expectations of government, NTI, the public and other stakeholders.