



February 14, 2014

Adrian Boyd
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Nunavut Planning Commission
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Sent via Email: aboyd@nunavut.ca

Re: NIRB Comments regarding the Nunavut Planning Commission's Draft Nunavut Land Use Plan (2011/2012) and supporting documentation

Dear Adrian Boyd:

The Nunavut Impact Review Board (NIRB or Board) thanks the Nunavut Planning Commission (NPC) for the opportunity to provide comment with respect to the Draft Nunavut Land Use Plan (DNLUP) and supporting documents, and provides the following information for the NPC's consideration.

The current submission reflects the NIRB's comprehensive review of the following documents:

1. NIRB comments on the Working Draft NLUP and Draft NLUP Implementation Strategy, *August 27, 2010*
2. NIRB Comments on draft Public Comments from NIRB and NWB Public Registries, *December 31, 2012*
3. Public Comments from NIRB and NWB Public Registries (prepared by Dillon), *February 2013*
4. NPC Response to NIRB's 2010 Comments, *March 19, 2012*
5. DNLUP (dated March 2013), *2011/2012*
6. Options and Recommendations (dated March 2013), *2011/2012*
7. Working Together, *December 2013*
8. A guide for engagement, *April 2013*

Please note that our comments are explained in detail below, while also having been summarized within the enclosed table for the ease of the NPC's review.

A. Working Together Document

The comments pertaining to the Working Together Document relate to clarification of NPC's role in the NSA and the role of each partner involved in the implementation of the NLUP. The NPC has identified itself as the authority responsible for reviewing all projects within the NSA within the Working Together document, though it remains unclear from our review whether the jurisdiction of the NLUP and the NPC's consideration of projects would extend into National Parks, historic places, or within established municipal boundaries.

The document references "partners in the implementation" of the NLUP, however the roles that each partner would play in that implementation were not clear to our reviewers. It does not appear that the document describes how these partners would be involved in the monitoring of projects, or what, if any, their responsibility for reporting on the effectiveness of the NLUP would be and what the process for reporting would be. It is suggested that NPC provide further clarification on what it expects the role of each partner as identified in the Working Together Document would be, and how they would be involved with the implementation of the NLUP, including a discussion of the potential monitoring roles and responsibilities of agencies as applicable.

B. Draft Nunavut Land Use Plan & the Options and Recommendations Document

1. Definitions

While a list of definitions was provided within the DNLUP, some of the terms as defined may be inconsistent with the working definitions of other agencies (e.g., Inuit Qaujimajatuqangit). Some terms used throughout the DNLUP and Options and Recommendations document were not included within the list of definitions. It is recommended that these be included, especially where working definitions may vary between organizations or may be open to interpretation. The NIRB recommends that the NPC include definitions for terms used within the NLUP and in supporting documents, and that it consider updating the definitions provided to reflect those definitions as may be currently utilized by other agencies. A table of definitions within the Options and Recommendations document would be a helpful reference tool and resource for readers.

2. Data Gaps

The NPC has identified data gaps within the DNLUP, however it does not appear that any indication was provided regarding plans to address these gaps, nor any discussion of the application of the NLUP in the absence of known gaps. It is recommended that the NPC include a discussion on how data gaps will be treated by the NLUP and how the NPC and the NLUP may be prepared to compensate for known data gaps. Additionally, it is recommended that the NPC discuss its plans to obtain the information necessary to address these gaps as well as a timeline for these plans and any updates to the NLUP which may be required as a result.

3. Application of the DNLUP within Municipality Boundaries

As noted above, the applicability of the DNLUP within established municipal boundaries is not clear and it is recommended that this be further defined and described. Where section 1.3.4 of the DNLUP discusses application of the plan, it is recommended that this section include clarification regarding projects proposed within municipal boundaries, as it does not appear that the DNLUP discusses the management of developments within municipal boundaries. While community maps are provided as Appendix A to the DNLUP, it is not clear whether or how these maps were intended to assist with the consideration of potential land use activities within municipal boundaries, or in determining whether such developments conform with the DNLUP. It is recommended that the NPC provide further clarification regarding conformity requirements, if any, of proposals within municipal boundaries and also to discuss the intended use of community maps as presented in Appendix A. Including discussion of the overall applicability of the DNLUP within municipal boundaries would be a helpful addition to the Options and Recommendations document as well.

It was noted that the Options and Recommendations document sets out a designation to permit all uses for land use within community watersheds. This option designation would also appear to apply to communities that have not considered development within their own watershed(s). It is recommended that the NPC consider providing a recommendation as part of the Options and Recommendations document or the DNLUP which applies to municipalities that have not accounted for development within their watershed(s) and to discuss whether the NPC may consider recommending that this be included within applicable municipal plans.

The option designation to permit all uses was assigned to manage land uses for aerodromes within municipalities. It is unclear whether the DNLUP would apply to these lands in cases where aerodromes fall under federal jurisdiction and as such, the NIRB requests that the NPC clarify the selection of this option.

4. Application of the DNLUP in Areas of Equal Use and Areas with Title Claims

The DNLUP and Options and Recommendations documents do not appear to describe how Areas of Equal Use and Occupancy of the Inuit of Nunavut and Nunavik have been included within the land use planning process. In addition, the DNLUP does not appear to describe how areas where other Aboriginal groups (Athabasca Denesuline and the Manitoba Denesuline) with title claims that overlap with the NSA would be managed by the NLUP. No discussion was provided on whether or not these Aboriginal groups with title claims were consulted and it remains unclear whether these parties have been otherwise involved in the land use planning process. Furthermore, no discussion is provided regarding how these lands would be managed and accounted for within the NLUP nor whether any designations would be applied. It is suggested that the DNLUP and Options and Recommendations documents be updated to include relevant sections which provide further detail on how these areas would be managed, and which outline the NPC's planned approach to revisit these areas should the status of these lands change.

5. Land use designations

The DNLUP identifies certain areas with the "permitted use" status while identifying a "prohibited use" status for sites which already have "permitted use" status assigned. These land

use designations are ambiguous, for instance, where a PSE-2 permitted use includes “tourism, research and recreation” but does not identify any specifically “prohibited use”. Identifying such uses which may not be permitted would be helpful in further delineating restrictions or limitations to development activity in specific areas. While the DNLUP is helpful in identifying specific areas of importance in the NSA to be protected, it appears to lack clear guidance in establishing methods to protect areas that identify “permitted use” status by restricting activities. The DNLUP and Options and Recommendations document should clearly define what would be allowed in areas with a “permitted use” status when no specifically “prohibited use” is identified for the area. As noted, it would also be useful to provide an explanation of the types of land use that would be restricted where a “permitted use” was identified, a rationale provided on why no “prohibited use” was identified, and to possibly include a third option of potential other uses that could be permitted with a plan amendment.

6. Selection of Options

The selection of options as described within the Options and Recommendation document is unclear as these relate to considerations of climate change and the Hiukitak River.

The DNLUP states the NPC’s objectives relating to climate change and outlines that in achieving its objective, the NPC’s policy is to where appropriate, provide direction to the NIRB, regulators and Inuit land managers to manage climate change issues, including Greenhouse gas emissions. The NIRB also notes that the Commission considers climate change to be an important factor for all Project Proposals in the NSA. While the NIRB notes that the NPC has a policy to provide direction to the NIRB, the nature of such direction and circumstances under which it may be provided to the NIRB remains unclear; the NIRB recommends that the NPC provide further clarification within the NLUP and supporting documents, While the DNLUP assigns the entire NSA with a Recommendation to manage climate change, Option 2 that is put forth in the Options and Recommendations document encourages the Minister to advise the NIRB of potential issues or concerns regarding climate change to be considered during the review of project proposals. The NIRB agrees with the NPC’s position that climate change is an important factor for all Project Proposals in the NSA, however, the NIRB’s current understanding of the Option selected would involve the Minister providing advice to the NIRB only in the instance that it is undertaking a Review of a proposal pursuant to Part 5, Article 12 of the NLCA. The NIRB is not aware of the mechanism by which the Minister would provide the NIRB with advice regarding climate change in its consideration of project proposals which enter the regulatory regime and require only a screening level assessment in accordance with Part 4, Article 12 NLCA. The NIRB recommends that the NPC clarify the mechanism by which the Minister may provide such advice for screening level assessments, and whether or in which case further direction from the NPC may be warranted as pertaining to a consideration of climate change.

The selection of Option 1 as a designation that permits all uses for the Hiukitak River appears to conflict with the Kitikmeot Inuit Association’s directive to close Inuit Owned Lands (IOL) parcels in the area to mineral exploration. The Hiukitak River was identified as a special area of interest to the people of Bathurst Inlet and Umingmaktok. It is requested that the Options and Recommendations document provide additional justification for the selection of Option 1. The other options discussed restrict development in the area and appear to be more in line with the Kitikmeot Inuit Association’s directive to close IOL parcels in the area to mineral exploration.

7. DNLUP Chapter 2 – Protecting and Sustaining the Environment

During its review of the DNLUP, the NIRB noted that some important considerations appear to have been omitted from the document. These include a consideration of marine shipping, muskox and polar bear habitat, protected marine areas, Species at Risk, areas of biological importance, Conservation Areas, areas of significance to Inuit, Areas of Interest, and areas adjacent to National and Territorial Parks. It is recommended that the NLUP include a section that discusses these key components or, if no discussion is to be provided, include a section which identifies these components as areas of data gaps and confirm whether these could be considered for inclusion as may be appropriate at some later date. A clear plan and timeline for any future consideration and/or inclusion should be provided. Further to this, the NIRB notes that habitat fragmentation may occur if areas of key importance are granted status as areas where all uses are permitted. It is suggested that areas of key importance, once identified in the NLUP, be considered for more restricted designations.

i. Caribou

While the DNLUP recommends that project proposals located within historic calving grounds take into consideration impacts on caribou calving, post calving and migration routes, no specific land use designation was assigned to any caribou calving grounds within Nunavut. Further, this section of the DNLUP lists the general caribou calving period as occurring between May 15 and July 15 but does not appear to place any restrictions on land use activities during this period. It is recommended that the NPC clarify whether it had considered imposing “seasonal restrictions” for activities located in areas designated as recommended caribou calving grounds (PSE-R2). Further, page 18 of the Options and Recommendations document lists an option to assign a designation that provides seasonal restrictions (Caribou Protection Measures), however this option has not been contemplated further for inclusion within the DNLUP. The NIRB also notes that no discussion of caribou management objectives in regions neighboring the NSA was not provided, and suggests that the NLUP identify and discuss how caribou management objectives, policies, and individual measures in neighbouring jurisdictions have been contemplated within the DNLUP.

ii. Cumulative Impacts

The DNLUP notes that the cumulative impacts of a project are an important component of managing land use in the NSA. However, no explanation regarding how cumulative impacts would be considered in land use planning was provided, nor were the steps that would be followed in making this consideration, or what the criteria or process would be for NPC to refer a project to the NIRB for screening on the basis of concern for cumulative impacts. The NIRB also notes that the NPC had previously indicated that the consideration of cumulative effects and referral of proposals to the NIRB on this basis may be removed from the DNLUP and would be dealt with in a separate framework. While it appears from our review that the consideration of cumulative effects has been included within the DNLUP at this stage, it appears that the relevant sections of the DNLUP and the Options and Recommendations document do not include a clear discussion of how the NLUP would address projects with the potential to contribute to cumulative impacts. It is recommended that the DNLUP and Operations and Recommendations document describe how cumulative impacts would be considered through land use planning, and discuss the management of any such impacts over time.

In addition, the DNLUP does not appear to contain information regarding the thresholds that would be used for considering potential cumulative impacts. The Options and Recommendations document does reference the fact that there are currently no agreed-upon thresholds, however the NIRB considers the development of thresholds for the consideration of cumulative impacts to be an essential component of this land use plan. It is suggested that NPC consider conducting extensive public consultation with land owners, environmental assessment practitioners and agencies like the NIRB, interest groups, and authorizing agencies to facilitate the development of agreed-upon thresholds for the consideration of potential cumulative impacts.

iii. Transboundary

With respect to the option assigned to Great Bear Lake Watershed, the DNLUP identifies the importance of the area and reflects the fact that management direction for the area in the Sahtu region of the Northwest Territories has yet to be finalized. The option also builds upon an existing planning policy framework but notes that it would become effective only at such time as the management direction for this area is agreed upon. The NIRB recommends that the NPC provide clarification with regard to how this designation would change once the management direction is approved and/or the Sahtu land use plan comes into effect.

It does not appear that transboundary considerations within the DNLUP include a discussion on the Heritage Rivers that flow across the Nunavut border to/from other jurisdictions including the Thelon, Kazan and Coppermine (nominated) rivers. These rivers, with the exception of the Coppermine River, are discussed in Chapter 3 of the DNLUP and are assigned land use designations based on the management plans of each Heritage River. The NIRB notes however, the importance of transboundary considerations for these rivers when dealing with land use issues. It is suggested that the DNLUP include a discussion on how transboundary considerations were considered for these areas.

The DLUP identifies oil and gas and hydroelectric development in neighboring jurisdictions in terms of considering developments having potential transboundary implications and possible impacts to the NSA. The NIRB suggests that the NPC consider revising this listing to include the potential development of linear infrastructure in jurisdictions adjacent to Nunavut which may have the potential to impact upon transboundary caribou herds and/or their habitat, as well as other species which are migratory in nature. Specifically related to caribou, the NIRB recognizes their importance as an essential species to Nunavummiut for subsistence and cultural purposes. Given this importance, development decisions and activities outside of the NSA which have the potential to impact upon caribou migration patterns, calving or post-calving areas and overall species health may be an important consideration for the NLUP and the planning process. Similarly, decisions to manage caribou in areas outside of the NSA (i.e. harvest quotas) may have implications for the species within Nunavut and the residents who depend upon them, as mentioned above. It is unclear whether this has been considered in the NPC's current DNLUP and supporting documentation and the NIRB recommends that any considerations or assumptions which are built into these materials which pertain to the consideration of transboundary impacts to caribou be clarified.

It was unclear from the NIRB's review of the materials provided whether and to what extent the NPC may have consulted with government departments, other agencies and the general public

within neighbouring jurisdictions. As the discussion relating to caribou and rivers provided above is similar, it may be useful to consider the various management, conservation, and development objectives developed and in place in neighboring jurisdictions when developing a Nunavut wide land use plan, especially where certain resources are transboundary by their very nature, and must be shared with other jurisdictions. The NIRB recommends that the NPC ensure those parties are informed and have had an opportunity to comment on the DNLUP..

8. DNLUP Chapter 3 – Encouraging Conservation Planning

The NIRB recommends that the NPC confirm the list of areas and issues as identified within Chapter 3 and confirm whether it is meant to be consistent with the list identified in Article 9 of the NLCA for Conservation Areas, or if not, explain why this would be the case, and why certain conservation areas may not be represented within the DNLUP.

i. Proposed Parks

The DNLUP has not identified any lands slated for withdrawal in the Bluenose Lake Area to be considered for a park, though the “Permitted Uses – Tourism, Recreation and Research” designation has been assigned. The DNLUP also refers to two other natural regions (Southampton Plain and Ungava Tundra Plateau) within Nunavut that are important but which have no formal park status ascribed to them. As no designation was assigned to the land use for these two regions, the NIRB recommends that the DNLUP and/or Options and Recommendations document provide a discussion as to how future proposed parks would be designated within the NLUP. Specifically, the NIRB recommends that the NPC confirm whether the designation under the NLUP for the Bluenose Lake Area would be subject to change if there were a land withdrawal, and whether the NPC would consider designations for the other two natural regions that are mentioned in the DNLUP?

The NIRB noted that the status or designation ascribed to ‘National Parks Awaiting Full Establishment’ and ‘Proposed Parks’ is unclear from our review of the DNLUP. It is recommended that the NPC provide clarification with respect to the difference between these two land descriptions and provide for the inclusion of each in the Definitions section of the document.

ii. Heritage Rivers

This section does not provide a description of land use management for “Heritage Rivers Awaiting Designation (or nominated rivers)”. As an example, no discussion appears to be provided regarding the management of the Coppermine River prior to a potential future designation as a Heritage River. It is recommended that a section be included in Chapter 3 of the NLUP that describes how rivers nominated for heritage status would be managed until such time as the status is granted, and discuss whether the NPC considered assigning a similar designation as would be provided for formal Heritage Rivers.

9. Chapter 5 – Encouraging Sustainable Economic Development

The Analysis and Recommendation for Mineral Exploration and Production section within the Options and Recommendations document focused on 8 potential mines that were identified in the Government of Nunavut’s 2010 Nunavut Economic Outlook document. This information

may be outdated as compared to projects currently undergoing assessment by the NIRB. The NIRB would be happy to provide updated information regarding ongoing assessments to the NPC for inclusion within a future NLUP and associated documents. Furthermore, the NPC may wish to consider including within the list of mines presented within the Options and Recommendations document, other advanced exploration sites, and mines currently undergoing assessment by the NIRB. The NIRB also recommends that the NLUP and Options and Recommendations document describe how the NPC may consider the assessment and/or approval of new major project developments, or significant amendments to previously approved major projects in terms of the NLUP and associated materials.

In order to ensure the NLUP maintains current and up to date information, the NIRB recommends that the NLUP or Options and Recommendations document provide a list of criteria that would identify whether or not a proposal would be considered under the Mineral Exploration and Productions section of the NLUP and which identifies whether or not the NPC would then assign the Encouraging Sustainable Economic Development (ESED-1) Land Use Designation to a specific proposal.

i. Oil and Gas Exploration

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 DNLUP or discussed as part of the considered information when developing the options for managing oil and gas exploration and production. Reference was made to the North Baffin Regional Land Use Plan within the Options and Recommendations document as identifying oil and gas as influencing the regional mixed economy. It is recommended that NPC provide clarification regarding the exclusion of the moratorium on oil and gas in the Kivalliq region around the Southampton Island from the DNLUP, and indicate whether consultation has been conducted or is being considered regarding oil and gas exploration throughout any regions in Nunavut. The NIRB also recommends that the NPC provide a discussion regarding the consideration of potential future development of oil and gas resources as well as exploration activities.

10. Chapter 6 – Mixed Uses

This chapter discusses areas that can support a diverse mix of land uses to promote the well-being of communities; however in Table 1 of the DNLUP where mixed use (MU) is defined, it states that ‘all uses are permitted’. It is unclear to the NIRB whether or how proposals would be assessed in a ‘mixed use’ region where potentially conflicting activities might occur, if all uses are to be permitted. It is recommended that the NPC more clearly describe this particular land use designation and provide clarification on how proposals would be assessed in a mixed use region. Further, the mixed use designation does not appear to be discussed within the Options and Recommendations document; the NIRB requests that the NPC confirm whether and which sections of the document may describe mixed uses and the consideration of land use activities within these areas.

C. NPC’s 2012 response to NIRB’s 2010 DNLUP comments

1. Process Maps & NuPPAA

The NPC previously indicated that it continues to assess the value of process maps and while it recognized the NIRB's assistance in the creation of these maps, the NPC did not indicate whether or which of these maps would be included within the DNLUP. The current versions of the DNLUP and supporting documents do not clearly describe the NPC's process of receiving and considering project proposals submitted for a conformity determination against the NLUP, nor any details regarding the referral of those project proposals which conform, to the NIRB or other regulatory agencies. It is again recommended that the NPC provide within the NLUP or supporting documents, details or process mapping which outlines the current approach to conformity with the DNLUP. Further to the NIRB's prior submission and recognizing the timing for the NPC's finalization of the NLUP, the NIRB would also request that the NPC clarify its intended process for potentially revisiting the NLUP or its processes to reflect the coming into force of the *Nunavut Project Planning and Assessment Act*, should such revisions be required.

2. NLUP Procedures

This section has been removed from the previous working draft of the NLUP and now is referred to in Section 1.1.3 of the "Working Together" document. As part of the NPC's response to the NIRB's 2010 comments, it indicated that specific details regarding procedures and rules the Commission may use to assess land use applications were being developed outside of the NLUP. While no timeline was provided as to when the NPC anticipated these would be made available to the public, the NIRB notes that this information has not yet been provided. The NIRB again notes that the rules and procedures which are developed by the NPC remain of specific interest to the NIRB and are central to the provisions of NIRB's comments on the NLUP.

From the NIRB's review, it did not appear that either of the DNLUP or the Options and Recommendations document address the potential for Ministerial exemptions as per NLCA Section 11.5.11 for a project proposal. It is suggested that Chapter 7 of the DNLUP include a discussion of this possibility and any relation to, or processes involved for minor variances.

CONCLUSION

In closing, the NIRB wishes to acknowledge the work undertaken by the NPC over the past number of years in developing the NLUP. The NIRB maintains a vested interest in participating in the land use planning process to the extent it is able, and confirms that our staff remain open to continued dialogue and would be happy to clarify or discuss any of the above and enclosed comments further. We look forward to continuing engagement with the NPC throughout its development of the NLUP, and thank you for the opportunity to contribute our input to this very important initiative.

Should you have any questions regarding the NIRB's submission, please contact me directly at (867) 983-4615 or via email at ahanson@nirb.ca.

Sincerely,



Amanda Hanson
Director, Technical Services
Nunavut Impact Review Board

cc: Sharon Ehloak, Nunavut Planning Commission

Enclosed: NIRB Tabulated Comments to the DNLUP (*February 14, 2014*)