

DE BEERS GROUP

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Re: Draft Nunavut Land Use Plan

De Beers appreciates the opportunity to comment on the 2021 edition (3rd edition) of the Draft Nunavut Land Use Plan (DNLUP) and congratulates the Nunavut Planning Commission on its recent 25th year anniversary.

De Beers operates four projects on Crown Land in Nunavut with a combined aggregate area of 250,000 hectares. These projects are the Nanuq and Nanuq North projects in the Kivalliq Region of Nunavut, and the Qilaq and Chidliak Projects in the Qikiqtani (Baffin) Region. All projects are in excess of 10 years old and represent a significant investment in Nunavut's natural resource sector consistent with the Government of Nunavut's Mineral Exploration and Mining Strategy ("Parnautit").

De Beers has focussed our review of the DNLUP on the area surrounding our most significant resource interest, the Chidliak Project on Hall peninsula of southern Baffin Island. The Chidliak Project area was designated as High Mineral Potential in previous iterations of the DNLUP, but in the 2021 version the area has been reclassified as a Limited Use Area for caribou. If the DNLUP is approved, mineral development projects will be prohibited.

Although there is an exemption of the prohibitions for existing rights holders, De Beers remains concerned that such an exemption will not suffice through all stages of permitting, and that it would not apply to the terms and conditions that other regulatory agencies would be obliged to impose. Unless there are significant changes made, De Beers cannot support the 2021 edition of the DNLUP released on July 8, 2021.

De Beers believes that although the goals of the DNLUP are good and well aligned with our own goals for sustainable development, the methods by which they are achieved in the DNLUP are overly prescriptive and likely to result in reduced economic growth potential and loss of investment in Nunavut, including losing the opportunity of the Chidliak Project. Should this occur, it would be equivalent to a de facto expropriation because it will prevent De Beers from exploring for and developing the minerals in its mineral leases that were purchased for valuable consideration (\$110,000,000).

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We have tried to offer specific and detailed recommendations for how the DNLUP could be adjusted to address our concerns while still meeting the stated goals for the Plan. Our comments and analysis are enclosed. We thank you for taking the time to consider our comments and recommendations and for allowing us an opportunity to present our submission at a public hearing for the DNLUP scheduled later this fall.

Should you have any questions please do not hesitate to contact me by telephone or email at 867-688-9227 or by email at sarah.mclean@debeersgroup.com.

Sincerely,



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De Beers Group submission on the Draft Nunavut Land Use Plan, 2021

8 October 2021

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ACRONYMS AND ABBREVIATIONS

BICMP	Baffin Island Caribou Management Plan
dNLUP	Draft Nunavut Land Use Plan
GoC	Government of Canada
IQ	Inuit Qaujimajatuqangit
KIA	Kitikmeot Inuit Association
LU	Limited Use
NIRB	Nunavut Impact Review Board
NPC	Nunavut Planning Commission
QWB	Qikiqtaaluk Wildlife Board

1. INTRODUCTION

The Chidliak Project (the Project) is located on the Hall Peninsula on Baffin Island in the Qikiqtaaluk region of Nunavut. The Project is located approximately 120km east of Iqaluit and 200km south of Pangnirtung. It currently consists of 41 mining leases located entirely on Crown land. There are four exploration camps, a rudimentary airstrip, environmental monitoring stations including weather towers, and drilling sites.

The Project commenced in 2007 with the acquisition of the first mineral claims by Peregrine Diamonds Ltd. (Peregrine). Soon after, in 2008, the first few kimberlites were discovered. Since that time, Peregrine operated a seasonal camp with the primary function of collecting drilling and sample data to better define the resource and the surrounding environment. In 2018, De Beers Group (De Beers) acquired Peregrine at a cost of \$110,000,000 for the sole purpose of developing the Chidliak Project. Peregrine is now held as a wholly owned subsidiary of De Beers.

De Beers has continued to operate the Project as a seasonal advanced exploration site while studies are conducted to understand the environment and to design a FutureSmart mine to extract diamonds from the kimberlite ore bodies. In 2019 De Beers implemented an extensive field program to build on the 14 years of geological and environmental baseline data that had already been collected since 2009. This field program was maintained during the Covid-19 pandemic of 2020 and 2021 and the result is a sizable environmental baseline data set which will be utilized to support an environmental impact assessment for the Project.

A total of 74 kimberlites have so far been discovered on the Hall Peninsula as a result of field exploration work. In 2020 De Beers returned 39 of these kimberlites to the CIRNAC Mining Recorder and maintained 35 within the confines of the mining lease boundary. The most prospective kimberlites are CH-6 and CH-7 for which there are inferred mineral resource statements. In addition, several other kimberlites within the cluster require further evaluation to determine their economic potential.

Diamond FutureSmart is an initiative by De Beers to utilize cutting edge technologies to reduce the overall footprint of the next diamond mine. Technologies being evaluated include low carbon energy sources, modular, mobile and scalable equipment and infrastructure, low impact mining methods, employment models that enable people to work close to home, and environmental monitoring methods that minimize human presence on the landscape. Chidliak is to be the location where the Diamond FutureSmart initiative is fully implemented. It is an exciting Project and one which has the potential to catalyze a shift in the local economy to a high tech, environmentally friendly, creative, and healthy economy. There are multiple synergies between community needs in the region and the technologies De Beers is planning to employ at the Project, most notably' in the areas of energy, communications, logistics and skill development.

Diamond FutureSmart is the engineering/technological component of De Beers' broader business strategy called Building Forever. Building Forever is our commitment to creating a positive legacy that will endure well beyond the recovery of our last diamond. It is our blueprint for a holistic, integrated approach to create a better future – one that is fairer, safer, cleaner and healthier, where safety, human rights and

ethical integrity continue to be paramount, where communities thrive, and the environment is protected. Our Building Forever strategy focuses on four key pillars:

1. Partnering for Thriving Communities,
2. Protecting the Natural World,
3. Accelerating Equal Opportunity, and
4. Leading Ethical Practices Across Industry.

Should the Project be deemed in conformance with the final Nunavut Land Use Plan (NLUP) and receive approval following a robust environmental impact assessment process, De Beers plans to implement the Building Forever Strategy in tandem with the Project. This will be done in partnership and consultation with the communities of Iqaluit and Pangnirtung, the Government of Nunavut, Inuit organizations, regulatory bodies, and NGOs.

2. SHARED INTEREST

The dNLUP also envisions a socio-economic future for Nunavut where development will be sustainable, and the environment will be protected. The dNLUP is guided by the Commission's 2007 Broad Planning Policies, Objectives and Goals document, and specifically the five goals including:

1. Strengthening Partnerships and Institutions
2. Protecting and Sustaining the Environment
3. Encouraging Conservation Planning
4. Building Healthier Communities
5. Encouraging Sustainable Economic Development

De Beers believes that our Chidliak Project, guided by the Building Forever Strategy, is very well aligned to the goals of the dNLUP.

The NLUP's goals 1 and 4 seek to strengthen Nunavut's governance and institutions as well as promoting and strengthening Inuit culture, and the well-being of Nunavut's residents. One of the major pillars of De Beers' Building Forever Strategy is Partnering for Thriving Communities. Under this pillar, De Beers will strive to improve the health and education outcomes for communities while also increasing livelihood opportunities to support community resilience and economic diversification. De Beers plans to seek opportunities to collaborate and partner with Inuit institutions, organizations, communities, and businesses as we design and implement the Project.

The NLUP's goals 2 and 3 seek to protect Nunavut's environment to sustain communities, Inuit culture and the continuation of a viable long-term economy including the establishment of parks and conservation area initiatives. De Beers' Building Forever Strategy includes a pillar called is Protecting the

Natural World. Under this pillar, it is our goal to be carbon neutral, to minimize our water footprint, to deliver a net positive impact on biodiversity, and to contribute to conservation initiatives. At the Project site, this will mean utilizing renewable energy solutions, minimizing the footprint, minimizing water consumption, minimizing the closure impact, contributing to research, and supporting conservation initiatives in the region.

The NLUP's goal 5 seeks to achieve economic well-being of communities, incorporating a range of economic opportunities in a variety of sectors to encourage self-reliance and long-term healthy and sustainable economy. This goal is well aligned to the Building Forever pillars of Accelerating Equal Opportunity and Leading Ethical Practices Across Industry. De Beers will accelerate economic inclusion and support diverse voices to help shape the future of our business, communities and society. We will continue to work to advance industry standards, enhance transparency of diamond provenance and improve the livelihoods. At the Project site, this means developing local employment models that support Inuit culture and values and provide equal opportunity regardless of gender or race.

The dNLUP goals, together with the Building Forever goals will guide decision making and planning for the Project. De Beers believes that, if given a chance to advance the Project, we can contribute significantly to the goals outlined in the dNLUP.

3. HISTORY OF LAND USE DESIGNATION AT THE PROJECT SITE

The land use designation at the Project area has changed significantly from the 2014 and 2016 editions of the NLUP. In 2014 and 2016 the dNLUP designated the Project area as 'high mineral potential' (Figure 3.1 and Figure 3.2). De Beers purchased the Project, along with Peregrine Diamonds, in 2018, when the area was designed as high mineral potential. De Beers converted mineral claims to mining leases in 2020 to further secure our interest in developing a mine in the area. The 2021 dNLUP however proposes to change the designation for the area to a Limited Use (LU) zone for caribou calving and post-calving (Figure 3.3). This change in land use designation poses a significant risk to the prospect of developing a mine at the Project site.

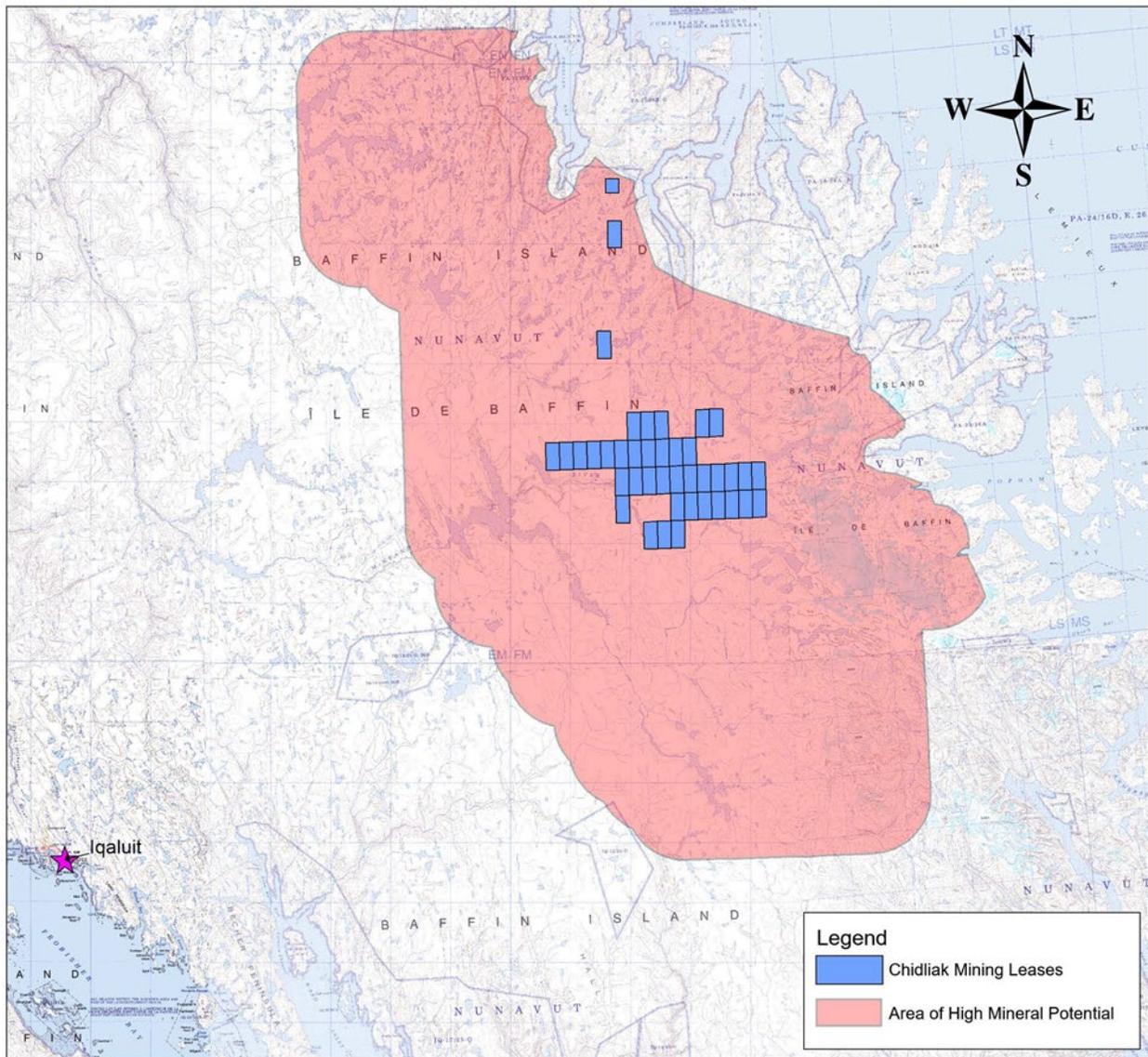


Figure 3.1 The land use designation in the 2014 edition of the dNLUP. The Project area was designated High Mineral Potential (draft Nunavut Land Use Plan, 2014).

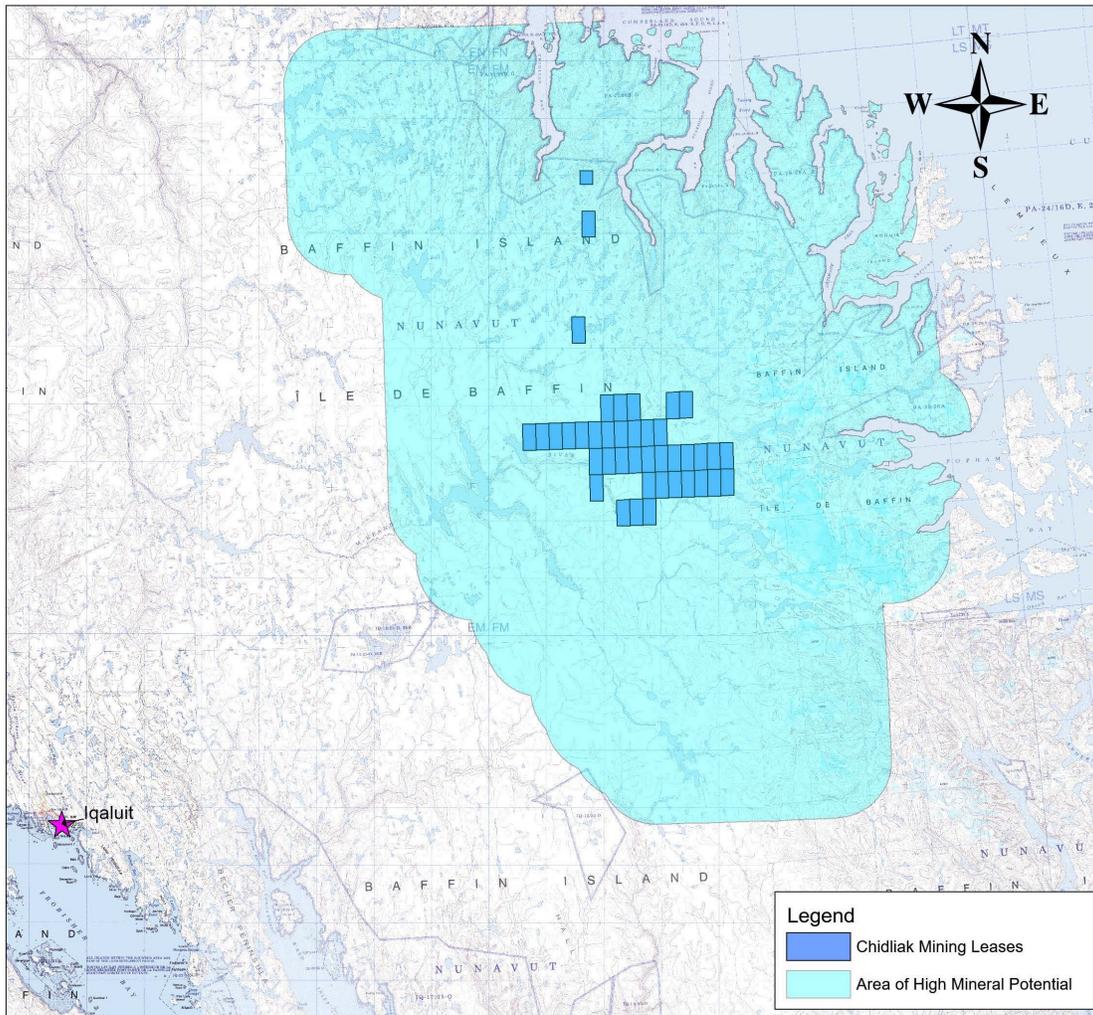


Figure 3.2 The land use designation in the 2016 edition of the dNLUP. The Project area was designated High Mineral Potential (draft Nunavut Land Use Plan, 2016).

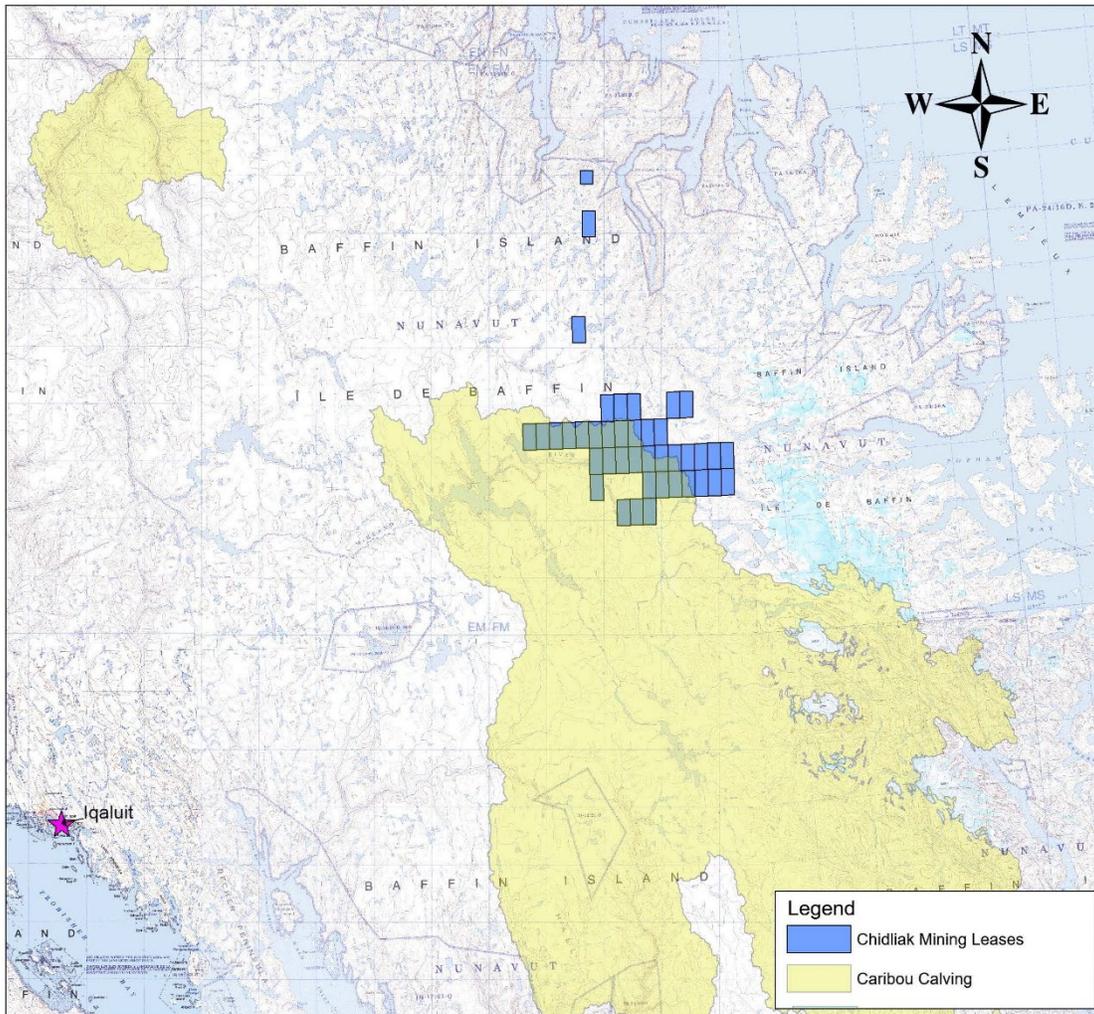


Figure 3.3 The land use designation in the 2021 edition of the dNLUP. The Project area is currently designated as Caribou Calving (draft Nunavut Land Use Plan, 2021).

4. COMMITMENT TO CARIBOU CONSERVATION

The value of caribou to the people and the ecology of Nunavut cannot be overstated. Caribou are a vital resource, both culturally and ecologically, and it is clear that there is widespread interest from communities, governments, non-governmental organizations and industry in ensuring the long-term viability of caribou populations. De Beers is committed to caribou conservation and understands the need to put protective measures in place to protect caribou, particularly at sensitive times of the year such as calving and post-calving.

Barren-ground caribou in Canada are currently designated as threatened by COSEWIC (2016) and they are believed to be at a low-point in their 50–90-year cycle on Baffin Island (GN, 2018). Both scientific and Inuit Qaujimagatuqangit (IQ) indicate that barren-ground caribou populations experience dramatic cyclical increases and decreases in abundance throughout their Arctic distribution (GN, 2018). These population cycles are natural and understood to be the result of the interaction among caribou, vegetation, predation, and disease. Never-the-less, there is widespread interest in ensuring that during the low population period in particular, additional stressors to the population are minimized.

De Beers is supportive of protective measures for caribou and wishes to work with caribou biologists and Inuit knowledge holders to develop state-of-the art measures to protect caribou. Caribou protection measures will be supported by De Beers regardless of the designation in the NLUP. We plan to develop such measures collaboratively with Inuit organizations and scientists as part of our environmental impact assessment for the Project. De Beers is also committed to helping maintain and recover caribou populations in Nunavut, and in particular on the Hall Peninsula of southern Baffin Island. As a starting point, De Beers would like to work with other agencies to address the data gaps identified in the Baffin Island Caribou Management Plan (2018). We feel that addressing those known gaps in knowledge is an important step that should be addressed before prescriptive land use designations are applied through the NLUP.

De Beers believes that we can construct and operate the Project in harmony with caribou and that we can contribute to the recovery of caribou in the region through contributions to research and collaborations with other organizations in the region. We are planning to prepare an environmental impact statement (EIS) for review by the Nunavut Impact Review Board (NIRB) in which we will fully address all potential impacts of the Project, including any potential impacts on caribou. That EIS will be subject to a robust public review process in which all individuals and parties are able to contribute their ideas and recommendations on how the Project should be developed. However, to get to that point, we must first receive a positive conformance check by the NPC against the NLUP and we must have confidence that there is a fair prospect of approval through the NIRB process, as well as other subsequent regulatory processes.

5. PURPOSE

The purpose of this submission is to provide input into the draft Nunavut Land Use Plan (dNLUP), provided by the Nunavut Planning Commission (NPC) in July of 2021 for public review (NPC, 2021a).

De Beers has focused our submission on the proposed establishment of a caribou calving and post calving Limited Use (LU) zone on the Hall Peninsula. This proposed LU zone, which overlaps with most of the Project area, is new to this draft of the NLUP and was not suggested in previous drafts of the plan. The dNLUP sets out strict prohibitions for activities within the zone including prohibition of all mineral exploration and development projects. These prohibitions are absolute, and do not leave room for consideration of low-impact activities that may be associated with mining or exploration. De Beers believes that use of such a designation unnecessarily limits the potential for a FutureSmart mine to be developed in the area and puts our Project at significant risk.

De Beers is recommending the following changes to the dNLUP related to the proposed caribou calving and post-calving limited use area on the Hall Peninsula:

1. The land use designation for the proposed caribou protection zone on the central Hall Peninsula should be re-classified as Option 4 – Valued Ecosystem Component.
2. In keeping with the BICMP gap analysis and implementation plan, conduct a thorough review of existing scientific (e.g., telemetry, aerial, and calving surveys) and IQ data sources both historical and recent, identify data gaps required to understand the use of the peninsula by caribou, and work with other government bodies, researchers and industry to address the data gaps. Conduct consultation and verification with all stakeholders for any newly proposed boundaries.
3. Apply an adaptive management framework to caribou management rather than utilizing static polygons with absolute prohibitions.
4. Consider the use of mobile protection measures around calving and post-calving caribou rather than static Limited Use zones.
5. Low impact activities, including geophysical surveys, high elevation flights, geological soil sampling, and research, should be permitted to occur within caribou protection zones. Allow the regulators who issue permits and licences to make the determination regarding approval of these activities, based on the land use objectives outlined in the dNLUP and following proper environmental screening.
6. Remove Existing Rights Areas from LU zones. In the case of the Project, this would mean removing the proposed Project Area from the LU zone on Hall Peninsula, if such a zone is established in contradiction to our earlier recommendations.

The rationale for each of these recommendations is provided below for consideration by the NPC. De Beers would like to thank the NPC for the opportunity to contribute this submission.

6. LAND USE DESIGNATION

The NPC selected 'Limited Use' as the designation for caribou calving areas and caribou post-calving areas. This designation, as currently proposed, prohibits mineral exploration and production, linear infrastructure, wind turbines and related infrastructure as well as other activities. It also prohibits "all

other uses”, other than research and tourism related to caribou conservation during seasonal closure periods (Options and Recommendations, Section 2.2.8.7 Pg.79). Essentially this designation means no development whatsoever can occur in these zones.

Because the LU designation is so restrictive, there should be a higher level of confidence that such a designation is required to achieve the objective for a given valued ecosystem component. For example, if a given objective is achievable without the LU designation, then the LU designation may not be warranted. No evidence was provided in the dNLUP and supporting information that the LU zone proposed on Hall Peninsula is required to maintain a healthy caribou population in the area.

There must also be a high level of certainty that a given LU zone is supported by scientific knowledge and IQ. Strong evidence should be provided that a given area is used year after year as a calving ground, that it is used preferentially over other areas for calving, and that establishment of a LU zone would have a measurable influence on the success of the population. It does not appear that these aspects have been demonstrated for the Hall Peninsula LU zone. It is worth noting that there is very little development on the Hall Peninsula at this time, and very little additional development is proposed.

The LU zone on Hall Peninsula was proposed by the QWB in 2018 (QWB et al. 2018), and it appears that the NPC have adopted the proposed boundaries without corroboration against other data sources. De Beers suggests that verification with additional data sources is a critical step prior to establishment of restrictive land use designations. If corroborating data do not yet exist, they should be collected. De Beers is willing to work with and assist other agencies in collecting additional data to address known data gaps.

The NPC indicates that in areas where insufficient information exists to support specific land use prohibitions, and yet a valued ecosystem component also exists, the designation of Option 4-VEC will be used (Options and Recommendations, Section 1.4, pg.14). De Beers believes that the Option 4-VEC is the correct designation for the central Hall Peninsula given a valued ecosystem component exists in the area and there is insufficient information to support establishment of a restrictive zone.

Option 4-VEC is an appropriate designation because a) caribou are believed to use the area in the calving and post-calving season, however b) the boundaries of such activity are not well understood, c) the patterns of caribou use of the area are not known, d) there has been insufficient corroborating evidence provided, and e) it is not clear that the proposed LU zone is required to ensure the objective of continued caribou calving and post calving is met.

Along this theme, the Kitikmeot Inuit Association (KitIA) stated, *“One of the most important uncertainties in the dNLUP 2016 is whether there is any effect on caribou populations as a result of properly planned development. So far there is little evidence and scant scientific literature that a direct relationship exists. Observational evidence suggested that mineral exploration and development has occurred in the West Kitikmeot region when large and increasing populations of caribou existed. In recent years there have been caribou population declines, on the mainland of the West Kitikmeot. This decline has occurred during one of the lowest levels of mineral development activity in the Kitikmeot region in decades. West of Kugluktuk there is no development and yet the Bluenose East herd is in decline.”* (Options and Recommendations, Section 2.2.3, Pg. 37).

The Baffin Island caribou population is at a low point in its cycle despite the near absence of industrial development over much of south Baffin Island, including the Hall Peninsula.

The VEC designation, rather than the LU designation, would ensure that any proposed development is assessed and mitigated for potential impacts on caribou. All regulatory agencies operating in this jurisdiction would be required to assess the impacts of proposed projects on the VEC and judge the proposed mitigation accordingly. The appropriate level of guidance will have been provided by the NPC to NIRB, as per their request to NPC (Options and Recommendations, Section 2.2.8.7, Pg.78), to guide their decision making and assessment. Projects found to be compatible with the VEC designation following environmental assessment could be permitted within the zone.

However, if the LU designation is applied, even low to moderate footprint projects, such as the Chidliak Project, may be in jeopardy. If the LU designation results in a cancellation of the Chidliak Project, this may well occur without providing any improvement in the outlook for caribou on Hall Peninsula. It would however have a measurable impact on the socio-economic prospects for the communities of Iqaluit and Pangnirtung as well as investors such as De Beers.

Recommendation 1

The land use designation for the proposed caribou protection zone on the central Hall Peninsula should be re-classified as Option 4 – Valued Ecosystem Component.

7. BOUNDARIES

The boundaries of the proposed caribou LU zone on the Hall Peninsula are taken directly from the QWB submission made in 2018 (QWB et al, 2018). To our knowledge, no other party suggested a caribou conservation zone for the Hall Peninsula and no other organization provided input directly into the boundaries of such a zone.

The QWB indicates that their submission was developed following a workshop with the Hunters and Trappers Organizations (HTO's). This work represents a valuable contribution by Inuit knowledge holders to the land use planning process. Unfortunately supporting information was not included in the dNLUP to describe the process of selection of the geographic boundaries of the zone.

Based on our understanding of the habitat features in the area, the proposed boundaries do not appear to be set using ecotypes or other habitat variables. Habitat features, including vegetation classification, is known to be an important factor driving caribou calving and post-calving habitat selection.

Caribou may select different areas in the future from what they selected in the past. Variation in spatial distribution at any point in time may depend on the stage of their population cycle (e.g., Low-point or high point), changes in vegetation, disease, and predation pressures.

Because it is difficult to predict where on the landscape caribou will occur in the future, particularly considering the increased variability in temperature and weather expected as a result of climate change,

protection measures that follow the animals and do not remain in a single static location on the landscape may be more effective than fixed protection polygons.

7.1 Insufficient evidence to support proposed boundary

The NLUP indicates (Options and Recommendations, Section 1.5.2, Pg.15) that the rating criteria for setting the degree of confidence in the geographic boundaries was determined based on:

- The scale and precision with which the area can be defined by boundaries;
- Whether the information is current;
- The level of consensus among participants regarding confidence and accuracy of the boundaries, as well as
- Whether participants have had an opportunity to comment on the boundaries.

In each of these areas, the LU zone proposed on the Hall Peninsula comes up short as described below.

7.1.1 Scale and precision

The polygon boundary appears to be substantially represented by the upper boundaries of the McKeand River watershed as well as Cyrus Field Bay. This is an enormous area with substantial variation in habitat quality and utility for calving and post-calving activity. While caribou are likely using some of this area for calving and post-calving, it is unlikely that they use the entire area preferentially for this purpose.

Based on our understanding of the habitat and caribou occurrence in the area, De Beers believes that the zone as currently delineated, includes large tracts of land that are not suitable caribou calving and post-calving habitats.

By establishing an imprecise and large-scale LU zone, the NPC may be unnecessarily limiting economic development opportunities in areas that are not even used as caribou calving and post-calving grounds.

7.1.2 Whether the information is current

The polygon boundary appears to draw somewhat from Inuit experience in the 1940's. "In the 1940s, Inuit used to hike inland to these areas in Aujaq to find caribou when they were scarce elsewhere. During calving and post-calving, cows and their calves are known to usually remain in certain valley systems or water basins; as a result, we have proposed designation of those water basins known through IQ" (QWB et al., 2018).

The QWB submission also referenced aerial surveys by the GN in June of 1979 and 1982. Those survey data are now approximately 40 years old.

While historic information such as these sources are valuable and should be considered, additional, more current data are also needed to inform the boundaries of any proposed zone.

A 2016 caribou IQ workshop hosted jointly by the QWB and the Nunavut Wildlife Management Board, as presented in a 2017 QWB submission to NPC, identified caribou migration routes, areas where caribou do not migrate, and caribou calving grounds (QWB, 2017). No caribou calving areas were identified on the Hall Peninsula in that submission.

It appears that there is not sufficient current information available to support the proposed boundaries of this LU zone at this time.

7.1.3 Level of consensus

It seems that the only data source considered with respect to the establishment of the boundaries of the Hall Peninsula LU zone was the QWB Submission, 2018. No other proposed boundaries were included in the Options and Recommendations package to consider.

It appears that no other party submitted a proposal for the establishment of a caribou calving or post-calving limited use area on the Hall Peninsula.

Despite recommendations from many stakeholders that multiple IQ and scientific data sources are needed before a caribou calving area can be delineated (KivIA Pg.37, BQCMB Pg.41, North Arrow Minerals, Options and Recommendations, dNLUP 2016), the following potential data sources do not seem to have been considered:

- Radio-telemetry from the Hall Peninsula, recent or historic
- Calving surveys from the Hall Peninsula, recent or historic
- Aerial surveys from the Hall Peninsula, recent or historic
- IQ contributed by other organizations or Nunavummiut

De Beers understands that some of these data sources may exist but may not have been made available to the NPC for consideration in the dNLUP, 2021. Some of these data may not yet have been collected. De Beers would be pleased to work with government and non-government organizations to address any data gaps necessary to better understand caribou use of Hall Peninsula and to inform future iterations of the NLUP.

Based on the information provided in the dNLUP, it does not appear that there is consensus among relevant parties for the establishment of the Hall Peninsula Limited Use zone.

7.1.4 Opportunity to comment

The proposed boundaries for the LU zone on Hall Peninsula were provided for the first time in July 2021. De Beers, and perhaps other organizations as well, has not previously had an opportunity to review the proposed boundaries.

The input period for the dNLUP is approximately 3 months (July 8 to October 8). While this may be a sufficient review period for areas that had previously been considered in the dNLUP 2016, and verified by

multiple data sources, it is not a long enough period to gather and analyze other existing data sources to inform the boundaries of a newly proposed caribou LU zone.

De Beers agrees with the Beverly and Qamanirjuaq Caribou Management Board (BQCMB) that it is important that boundaries of any proposed zones consider not only IQ, but also radio telemetry data, results of calving surveys, and other available data. These information sources should be provided for NPC and public review and verification before the establishment of a limited use area on Hall Peninsula.

While it is understandable that the NPC can only work with the data that is available, and that they must make land use decisions even where data gaps exist, it is concerning that the NPC would impose sweeping restrictions on activities over such a large area of Hall Peninsula without more evidence to support the proposed polygon.

7.2 Addressing the gaps, together

The Baffin Island Caribou Management Plan (BICMP) identifies gaps in the current knowledge of caribou use of Hall Peninsula and provides an action plan and timeline for addressing these gaps. Several of these gaps are important to address prior to establishment of a LU zone.

De Beers would be pleased to collaborate with other interested parties in addressing data gaps as a matter of priority to develop a more robust understanding of caribou use of the peninsula necessary for future land use decisions.

Recommendation 2

In keeping with the BICMP gap analysis and implementation plan, conduct a thorough review of existing scientific (e.g., telemetry, aerial, and calving surveys) and IQ data sources both historical and recent, identify data gaps required to understand the use of the peninsula by caribou, and work with other government bodies, researchers and industry to address the data gaps. Conduct consultation and verification with all stakeholders for any newly proposed boundaries.

8. RESTRICTIONS

8.1 Management framework, not prohibitions

The approach taken by the dNLUP for the proposed caribou protection zones is highly prescriptive. It establishes absolute prohibitions for certain activities, including mineral exploration and production, quarries, hydro-electric and related infrastructure, wind turbines, linear infrastructure. It also prohibits all uses except research and tourism related to caribou conservation during certain periods of time (Table 2 of the dNLUP).

This prescriptive approach is counter to the input received from many of the reviewers of the earlier drafts of the dNLUP. As documented in the Options and Recommendations report, the BQCMB recommended that delineation of caribou areas should be redefined based on all available telemetry and survey data

every 5 years (Section 2.2.9.1 Page 79, Options and Recommendations). They did not recommend a static caribou zone which would be fixed on the landscape indefinitely, but rather one which would be adjusted over time according to use.

The 2017 GNWT submission to the NPC on the 2015 dNLUP, indicated support for Special Management Areas (equivalent to Option 2 in the current dNLUP) for caribou calving and post-calving areas. Their submission did not recommend absolute prohibitions on activities, but rather advises a) to set seasonal restrictions and b) to require developers to provide detailed plans for how impacts to post-calving and migrating caribou habitats will be monitored and mitigated. The GNWT submission also recommended developing interim habitat disturbance thresholds in post-calving areas and/or recommendations to initiate processes to develop disturbance thresholds for all seasonal ranges for inclusion in future versions of the NLUP. In other words, the GNWT recommended that although caribou protection zones should be established with seasonal activity restrictions, there would still be an opportunity for developers to propose how their project could co-exist with caribou in those zones (Section 2.2.7, Options and Recommendations, Pg.56).

GN/NPC, together with other agencies may consider investing in a process to determine what level of disturbance footprint would be possible in various sensitive zones across the territory to ensure the recovery and long-term viability of caribou (and other wildlife).

A Baffin Island adaptive caribou-centric plan that is based on the stages of the annual cycle, would allow land users to respond to caribou as they interact with them. This sort of dynamic approach to managing potentially sensitive times could be quite effective.

Recommendation 3

Apply an adaptive management framework to caribou management rather than utilizing static polygons with absolute prohibitions.
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8.2 Calving and post-calving areas are not static

Available data suggest that the annual activity patterns of Baffin Island caribou may not follow fixed spatial routes (e.g., calving can occur in different locations in different years).

A fixed protection zone on the map may not be appropriate to protect the value of caribou conservation given that caribou move around according to vegetation availability, among other environmental factors.

It is understood that the Hall Peninsula proposed LU zone is less about protecting the habitat (which is not at risk in an area with almost no development and little development prospects), but rather to protect the animals themselves from disturbance during a sensitive period.

Mobile conservation zones, which follow the animals as they enter key periods of their lifecycle (e.g., calving), may be more appropriate for protecting sensitive animals during sensitive periods. The KivIA submission in 2016 argued that mobile protection offered a far more effective means to manage caribou compared to delineated protection areas.

The Kitikmeot Inuit Association (KIA) also recommended against a static caribou zone, stating, “The evidence provided in this submission regarding how fluid caribou calving grounds are over space and time will make it apparent why KIA believes that mobile protection offers a far more effective means to manage caribou compared to delineated protected areas.... As a summary, our assessment shows that caribou calving areas exhibit variability over short periods (i.e. 2-10 years) and are highly dynamic over a longer term. If land managers used longer timeframes of 50-100 years for management decisions of the land, it becomes obvious that using fixed delineated areas to protect caribou will be fruitless. Caribou do not respect these human-defined boundaries.” (Options and Recommendations Section 2.2.3, Pg. 37)

Tundra and wetland ecotypes are known to be preferentially utilized by caribou over regolith, blockfield, and bedrock yet the currently proposed zone contains large areas of these lesser used ecotypes. If habitat protection is the main interest or driver behind the proposed LU zone, then habitat maps should be provided to support the proposed boundary and areas known to provide little value to caribou should be excluded to the extent possible.

The NPC has recognized that the biophysical environment is dynamic, always changing. Caribou may not calf in the same area year after year, rather their decisions of where to calve may be driven by the availability of safe areas far from wolves, and productive vegetation to support their calves. Vegetation takes a long time to recover from intensive grazing during short growing seasons; as a result, it is likely that caribou select different calving and post-calving areas each year.

The establishment of highly restrictive and static caribou calving protection zones is not entirely compatible with this dynamic biophysical and behavioral annual activity and it may not offer the caribou the protection from disturbance the NPC is seeking.

If the polygon is not accurate, the NPC risks (i) excluding development for areas that aren't important to caribou and (ii) allowing development in areas that are important to caribou. Neither is a desirable outcome for caribou or for Inuit.

Recommendation 4

Consider the use of mobile protection measures around calving and post-calving caribou rather than static Limited Use zones.
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8.3 Low Impact activities should be allowed

Exploration activity is prohibited within the proposed designated LU zone on Hall Peninsula. Exploration is a very broad category, and includes activities such as geophysical surveys, geological soil sampling, and high elevation fly-over monitoring which have negligible to no impact on the land or wildlife.

Certainly, there are some exploration activities which would have a physical footprint on the land, albeit normally minimal effects on wildlife (e.g., core hole drilling and bulk sample collection). These activities can often be scheduled to occur outside of the caribou calving and post-calving season and would not be expected to have a significant impact on caribou.

In the dNLUP, wind turbines are explicitly prohibited within the proposed LU zone on Hall Peninsula. Wind turbines are one of the leading sources of renewable energy currently contemplated for the Project. The 5km restriction on proximity of wind turbines to the boundary of the proposed caribou zone would effectively eliminate the possibility of utilizing renewable energy to support the mine.

The Project is isolated. It is more than 120km from Iqaluit, there are no other existing or proposed projects in the area, and there is no road. There is also very little snowpack to support a large-scale annual winter road suitable for hauling diesel fuel.

If the Project is constructed, it will require a local, renewable energy source. The renewable energy source will be modular, for easy transport in and out of the Project area at the end of the life of mine. Such an installation will be designed to have minimal impact on the surrounding land and wildlife.

Recommendation 5

Low impact activities, including geophysical surveys, high elevation flights, geological soil sampling, and research, should be permitted to occur within caribou protection zones. Allow the regulators who issue permits and licences to make the determination regarding approval of these activities, based on the land use objectives outlined in the dNLUP and following proper environmental screening.

9. EXISTING RIGHTS

The dNLUP indicates that existing rights holders, as identified in Appendix A, are exempt from the prohibitions outlined in the dNLUP in any overlapping Limited Use Areas so long as the projects do not expand in size from what is described in Appendix A.

De Beers appreciates the intent of the proposed exemption however we believe that the exemption as currently proposed is insufficient to protect existing rights holders. There are three primary issues remaining with this approach.

- Existing rights holders may no longer pass the legally required conformity test against the dNLUP due to variation in the nature of the rights, alignment of the rights with the proposed project, or variation in spatial extent of project components compared to the existing rights as described in Appendix A.
- The NPC holds limited regulatory authority/influence over other regulatory bodies such as the NIRB, GN, or DFO. These organizations may not recognize the exemptions proposed within Limited Use prohibitions, and rather take a more conservative view when they issue their own permits and licences. Moreover, they may be required to set terms and conditions to align with the NLUP which could effectively result in denial of projects, or issuance of permits with conditions so limiting as to hinder or prevent Project implementation.
- The parameters for determination of the boundaries of existing rights areas is not clear.

9.1 Variations in project areas could lead to rejection by NPC

In their 2017 submission to the NPC, the GoC indicates that the NPC has no right to exempt projects from conformity determinations (dNLUP Options and Recommendations, section 6.2.8.2, Pg. 477). In the subsequent Considerations section, NPC agreed with this interpretation. If this interpretation is correct in principle, then the grandfathering clauses as currently written, may not provide sufficient legal protection for existing rights, particularly if challenged in court.

“... it is the Government of Canada’s view that only the Nunavut Agreement, or the Nunavut Planning and Project Assessment Act if it is consistent with the Nunavut Agreement, can exempt or authorize the exemption of projects from the requirement for an assessment and the application of the plan. There is no jurisdiction for the Commission, or for the terms of the plan, to exempt projects from the application of the plan...”

If the legal authority of the NPC to grant existing rights holders exemptions from designations within the dNLUP is limited or absent, then any existing project within a LU zone could be required to conform to those designations, following a court challenge or alternative interpretation by the NPC in the future.

Even if the exemption for existing rights holders was upheld as lawful, there is uncertainty regarding how the NPC would determine conformity for proposed projects by existing rights holders. Would any project proposed by an existing rights holder be considered as conforming or would NPC evaluate the activities proposed against the original rights, and the overall objectives for the area, before determining conformance?

The methods by which the NPC assesses conformity for existing rights holders is critical to understand.

Some essential aspects of a given project footprint may need to extend beyond the boundaries of the existing rights boundaries (e.g., access road, transmission line, water pipelines, environmental sampling stations). These are necessary aspects of most mineral projects and yet ‘rights’ are rarely obtained during the early phases of project planning for these activities. Under the current grandfathering language of the NLUP, these activities would be prohibited which may sink many projects.

9.2 The exemptions may not extend to other regulatory agencies

Even if the Chidliak Project were to pass a conformity determination by the NPC, there is uncertainty in how other regulatory agencies would interpret and apply the NLUP to their own regulatory processes.

In the concluding paragraph following consideration of the submissions of various parties on this point, the NPC concludes:

“As explained by both the GoC and Ecojustice, under the NuPPAA, projects submitted to the NPC before the bringing into force or amendment of a plan are exempt from the new or amended plan, except to the extent that licences, permits or other authorizations issued by regulatory authorities must implement provisions of the NLUP”. – NPC Options and Recommendations, Section 6.2.8.2 Pg. 483

The conclusion is that regulatory authorities are required implement provisions of the NLUP despite the exemptions. How can they do that and still consider a Project exempt from those provisions? These concepts are in contradiction, at least in the case of a Limited Use zone that prohibits mineral exploration and production where there is an existing right for mineral exploration.

The NPC indicates that conformity could be confirmed for such a Project “as long as they do not expand in size, and that any terms and conditions of the NLUP applicable to the area shall be incorporated into any licences, permits or other authorizations by regulatory authorities.” (Options and Recommendations, Section 6.2.8.3.1, pg.483).

The NPC evaluated several options for addressing Existing Rights. They selected Option 5: Adjust LUs to Not Prohibit Existing Rights (Options and Recommendations, Section 6.2.8.3.5, Pg.485). De Beers agrees with the intent of this selection.

De Beers does not believe however that the means of accomplishing this intent are sufficient as currently proposed. Because the regulatory authorities still have the requirement to consider the dNLUP when issuing permits and licences, and because the NPC cannot change the legal mandates of other organizations, the NPC has no control over how those agencies consider the dNLUP. It is entirely possible one or more regulatory agencies will find it impossible to issue permits and licences that both authorize the Project and conform to the NLUP. The result will likely be delay, and potentially followed by denial of Project proposals by existing rights holders.

The only way to protect existing rights so that Projects can be realized is to remove them from proposed LU zones entirely. This would meet the intent to protect existing rights from the prohibitions imposed in LU zones, without hand-cuffing other regulatory agencies into imposing terms and conditions that effectively kill projects.

9.3 The method of defining the spatial extent of existing rights is unclear

The dNLUP indicates that Existing Rights holders are exempt so long as they remain within the boundaries of the Project as defined by Appendix A. This exemption reflects a static point in time evaluation the spatial boundaries of Projects. It severely limits the potential for young projects, such as the Chidliak Project, to fully develop.

Moreover, it is unclear as to which ‘Existing Rights’ are used for the determination of an exempt area. Is it the mining leases or the surface leases? If the two areas differ, will it be the combination of both or the larger of the two? What if a proponent hasn’t yet obtained their surface lease, but does envision requiring one to support associated infrastructure that is likely to extend beyond the spatial boundaries of the mining lease?

If it is NPC’s intention to enable the full assessment and potential approval of existing rights holders Projects, then it is imperative that the Project Areas, as provided by these existing rights holders, are excluded from proposed LU zones.

Furthermore, given that the Chidliak Project includes a potential wind farm, it is imperative that the boundaries of any Limited Use area, if one is to be established, are established no closer than 5km from

the nearest infrastructure associated with the Project. This is to avoid a potential conflict with the specific prohibitions of such wind infrastructure currently listed in the dNLUP.

Recommendation 6

Remove Existing Rights Areas from LU zones. In the case of the Project, this would mean removing the proposed Project Area from the LU zone on Hall Peninsula, if such a zone is established in contradiction to our earlier recommendations.

10. OPPORTUNITY AT RISK

De Beers believes that Project can co-exist with the dNLUP stated goals, such as protecting and sustaining the environment and building healthier communities. However, we are concerned that prohibitions set out within the dNLUP for the Project area will limit the potential of the Project to be realized. The LU zone prohibitions, as currently proposed, do not allow sufficient leeway for the NIRB, or other regulatory bodies, to assess the Project on its merits.

De Beers believes that the language in the dNLUP is overly prescriptive and limiting. In some cases, such as in Limited Use zones, it would completely eliminate the possibility of most Projects even getting to the assessment stage at all. We believe the heavy reliance on Limited Use zones in the NLUP is not in the best interest of Nunavut and that Projects should be permitted to be evaluated by the responsible regulatory agency for their potential effects on environment, social, and economic well-being of Inuit. The NLUP should guide regulators, not make the decisions for them.

We are also concerned that by closing off such a large portion of Hall Peninsula to development, the dNLUP is limiting the potential to meet the economic development goals for the region. The possibility of sustainable economic development for places like Pangnirtung and Iqaluit is substantially reduced by the prohibition of mineral or resource activity over a large area of the Hall peninsula.

De Beers requests that the NPC reconsider the prohibition on mineral activity within the proposed caribou zone on Hall Peninsula and replace it with a prioritization of caribou conservation (Option 4 – VEC) over an area that is corroborated with multiple data sources. De Beers believes this would allow for thoughtful economic development that remains compatible with caribou conservation, as evaluated by regulatory agencies and communities. In other words, only the best projects, with minimal impact and robust management plans to protect caribou will be permissible.

Finally, in addition to losing out on the socioeconomic benefits associated with responsible resource development, the proposed LU zone, if approved, will constitute a *de facto* expropriation because it will prevent De Beers from exploring for and developing the minerals in its mineral leases that were purchased for valuable consideration (\$110,000,000). Since this purchase, the Project area has been designated as ‘high mineral potential’ and if approved, the LU zone will reverse this based on little if any evidence justifying such a prescriptive and dramatic change (see Section 4 of this submission). Claims for *de facto* expropriation have been repeatedly recognized by Canadian courts (*R v Tener*, [1985] 1 SCR

533; *Casamiro Resource Corp v British Columbia (AG)*, 1991 CanLII 211 (BC CA); *Rock Resources Inc v British Columbia*, 2003 BCCA 324)

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