



## NUNAVUT PLANNING COMMISSION

### Outstanding NTI Questions on the DNLUP 2021 and the Land Use Planning Process to the Nunavut Planning Commission- Questions taken from Appendix A (21-074E-2022-04-19-NTI Written Submission on 2021 DNLUP)

**Date: June 21, 2022**

The Nunavut Planning Commission (NPC) acknowledges the written submissions received from Nunavut Tunngavik Incorporated (NTI) and the three (3) Regional Inuit Associations (Kitikmeot Inuit Association, Kivalliq Inuit Association and Qikiqtani Inuit Association) (RIAs) on April 15, 2022 with respect to the **2021 Draft Nunavut Land Use Plan (DNLUP)**. The information provided below is intended to provide NTI and the RIAs with clarification requested and responses to the outstanding questions asked in Appendix A of the written submission (**Commission responses in green**).

#### **Land Use Planning Process Questions**

1. Can the date for written submissions be moved to a date after the community information sessions take place at the end of June 2022?
  - Yes. Participants can submit when they are ready, up to January 10, 2023 when the Record will formally close, but the Commission encourages earlier submissions to facilitate discussion among participants.
2. Will the Commission request written answers to questions received on August 6, 2022?
  - Yes. The Commission will request participants answer questions addressed to them in the form they are most comfortable, including written responses before August 31 or oral responses during the hearings. Also note the date for written questions to be received is June 30<sup>th</sup>.
3. Can the NPC explain how further Inuit knowledge and traditional knowledge will be incorporated within their designations and accompanying maps? Particularly, how will Inuit knowledge and traditional knowledge submitted orally at the regional public hearings be incorporated?
  - Yes. The hearings will be transcribed, and relevant quotes will be incorporated into the appropriate sections of the O&R document for consideration and potential revision to the Plan. This evidence as with all other evidence on the Public Record will be given full consideration by the Commission.

## **DNLUP 2021 Questions**

### **Chapter 1: Land Use Planning in the Nunavut Settlement Area**

#### *Section 1.2.2*

1. Can the Commission verify that the Commission will consult Nunavut Tunngavik Incorporated (NTI) and the Regional Inuit Associations (RIAs) directly as the landowners and managers of IOLs regarding the extent that Inuit goals and objectives for IOLs are adequately reflected in the DNLUP before the NPC submits a final DNLUP for approval?

Yes. The Commission welcomes feedback on any issue including Inuit goals and objectives for IOLs. The Record will close on January 10, 2023.

#### *Section 1.4.2 – Application of the Nunavut Land Use Plan*

2. Although the Commission's Plan Requirement 1.4.2-2 states that it will repeal the Keewatin Regional Land Use Plan and North Baffin Regional Land Use Plan, can the Commission allow certain provisions of the regional plans to survive and be incorporated through reference in the DNLUP?

The Commission has and will continue to take into consideration the relevant contents from the existing Regional Land Use Plans that are compatible and aligned with the DNLUP that is applicable to the entire area of NPC jurisdiction. The Commission's preference has been to include relevant content from existing plans directly in the NLUP, rather than through reference to the current regional plans (as was done for the Mary River corridor).

### **Chapter 2: Protecting and Sustaining the Environment**

#### ***Key Migratory Bird Habitat Sites – DNLUP 2021***

The DNLUP 2021 does not provide a list of the Key Migratory Bird Habitat Sites designated as Limited Use areas and Conditional Use areas. This important information can only be obtained by reviewing the GIS data associated with Map A.

3. Given that participants cannot not easily ascertain what Key Migratory Bird Habitat Sites are designated, can the NPC append the list of Key Migratory Bird Habitat Sites and the proposed designation for each site to the DNLUP 2021 and provide this information in a separate document for participants for use at the regional public hearings?

Yes. The list of sites is included in Table 1 of the 2021 DNLUP.

#### ***Caribou Generally***

4. How will NPC incorporate missing Inuit Qaujimajatuqangit and traditional knowledge about caribou in the designations and in the DNLUP 2021?

All available Inuit Qaujimajatuqangit and traditional knowledge about caribou that has been submitted to the Commission has been included in the O&R document. This detailed and technical companion document has informed the contents of the DNLUP. Additional evidence-based information will be taken into consideration and incorporated as it becomes available, up to January 10, 2023 when the Record will close. Subsequently, should additional information become available it will be

considered and incorporated as applicable into Plan revisions and mandated periodic reviews.

### ***Caribou – Proposed Limited Use designation***

There are two Plan Requirements for Caribou Calving Areas, Caribou Post-calving Areas and Caribou Key Access Corridors designated as Limited Use areas: the first Plan Requirement prohibits activities including oil and gas exploration, mineral exploration and production, quarries and linear infrastructure while the second Plan Requirement states that:

*Project proponents must cease all uses in those areas, except research and tourism related to caribou conservation, during the dates set out in Table 2: Caribou Seasonal Restrictions.*

This approach is confusing and requires substantial clarification. Our questions are:

5. Can the Commission explain how the two Plan Requirements for Caribou Calving Areas, Caribou Post-Calving Areas and Caribou Key Access Corridors are intended to be implemented simultaneously?

Yes. The proposed prohibited uses would not be allowed at any time of the year. Other uses not identified as being prohibited would need to follow the seasonal restrictions. For example, a military training exercise could occur in a calving area in the winter, but not during calving season.

6. Can the Commission explain the rationale for allowing research and tourism activities within the context of the second Plan Requirement and why terms and conditions are not applied to research and tourism activities to ensure impacts to caribou are minimized?

Yes. The Commission considered submissions from the GN (NPC Public Registry file # 14-063E) that recommended these uses be treated differently (see section 2.2.8.6.1 of the O&R for example). The NPC understands the GN recommendation is supported by the fact that to study or observe caribou calving, the researchers would need to go to the sites during the calving season for example.

7. Can the Commission explain why these Limited Use designations for caribou do not explain how the preservation of rights provided for in the *Nunavut Planning and Project Assessment Act* (NuPPAA) will be implemented in the context of these designations? For example, how will NPC's requirement for various caribou designations that "all proponents must cease all uses at those sites" be implemented taking into account the statement at p. 11 of the DNLUP 2021, which states "prohibitions set out in the Plan do not apply to projects referred to in subsections 207(1), 207(2), 208(1) and 208(6) of the Nunavut Planning and Project Assessment Act"?

Yes. NuPPAA s 69 differentiates between prohibitions (which do not apply) and other terms and conditions (which do apply), as appropriate. Participants have generally recommended that the NLUP not try to interpret often complex and inter-related legislative provisions.

### ***Post-Calving Caribou Areas***

For Post-Calving Caribou Areas, the Options and Recommendations document does not take into consideration the detailed analysis and recommendations for post-calving caribou areas provided

by NTI and the RIAs in its 2017 pre-hearing submission and particularly in “Appendix A: Comments and Recommendations for Mainland Migratory Caribou Post-Calving Areas in the Draft Nunavut Land Use Plan 2016”.

8. Will the Commission re-evaluate its approach to Post-Calving Caribou Areas taking into consideration the NTI and RIA joint submission that has been overlooked?

Yes. This submission (NPC public registry file # 16-073E) has been considered by Commissioners and a summary of the submission was included in the 2021 O&R document (section 2.2.9.6.2), but more background from this submission will be given further consideration when Commissioners revise the draft plan following closure of the Record on January 10, 2023.

### ***Caribou Fresh Water Crossings***

In the Options and Recommendations document, there were several different responses regarding how much area should be included within a “Protected Area” designation for caribou fresh water crossings based on local, community and regional knowledge of specific fresh water crossings.

9. Given the number of varying responses regarding fresh water crossings, why has the Commission chosen to apply the same buffer area (10 km radius from fresh water crossings) to all fresh water crossings when each water crossing is different and the size of the designation should be based on the local circumstances and needs?

Yes. Based on submissions, the Commission decided one consistent approach was appropriate and avoided unnecessary complexity of administering the Plan’s requirement. Following closure of the Record on January 10, 2023, other options will be considered when Commissioners revise the draft plan.

10. The NPC states that it chose a Limited Use designation for fresh water crossings as “the NPC has not received detailed recommendations on appropriate seasonal dates applicable to freshwater crossings in different locations” (Options and Recommendations document, p. 102). Can the NPC explain whether they asked community representatives during the Community Engagement Sessions that took place in 2019 and 2020 how protection measures for each caribou fresh water crossing should be tailored based on Inuit Qaujimagatugangit and Inuit knowledge generally?

Yes. Communities generally supported year-round prohibitions for freshwater crossings based on traditional knowledge and were not specifically asked about seasonal dates for each crossing. That said, communities are encouraged to express their views about more narrowly tailoring measures regarding fresh water crossings at any time prior to the Public Record closing. As noted above, even after approval, the Plan can be revised and amended as new, relevant information becomes available on the Public Record.

### ***Caribou Proposed Designations, the Preservation of Rights under NuPPAA and Additional Proposed Exemptions for Mineral Exploration and Development***

There is currently a lack of clarity and transparency on the application of preservation of rights under NuPPAA and additional proposed exemptions for mineral exploration and development on the proposed Limited Use designations for caribou habitat.

11. Can the NPC explicitly state in the Plan Requirements for each Limited Use designation within the DNLUP 2021 what exceptions exist to the prohibitions based on:
- i. the preservation of rights and transitional provision rights provided for in NuPPAA;
  - ii. additional proposed exemptions for Mineral Exploration and Development projects under Plan Requirement 6.1.8-1

and how these exceptions impact each designation and the geographic scope of each designation?

Parties generally recommended that the plan not attempt to interpret legislation. Existing mineral rights are not set out on a site by site basis, but are compiled in Appendix A of the 2021 DNLUP, and can be seen on the Commission's online interactive map: <https://www.nunavut.ca/land-use-plans/interactive-maps>

12. To understand how preservation of rights under NuPPAA and additional proposed exemptions (Appendix A of the 2021 DNLUP) overlap with the proposed designations for caribou habitat, can the NPC for each caribou habitat designation provide:
- i. a list of the projects that the preservation of rights and transitional provision rights apply to;
  - ii. a list of the proposed projects that would have additional exemptions under Plan Requirement 6.1.8-1; and
  - iii. for each project under i. and ii. indicate the geographic extent of the project within the designations?

Yes. The requested detailed information is publicly available in the online interactive maps of the 2021 DNLUP. The Commission recommends participants to refer to the online interactive maps: <https://www.nunavut.ca/land-use-plans/interactive-maps>

13. Can the Commission provide a map that shows the overlap between projects listed under 12 i. and ii and each Limited Use designation for caribou habitat?

Yes. The requested detailed information is publicly available on the online interactive maps of the 2021 DNLUP. The Commission recommends participants to refer to the online interactive maps: <https://www.nunavut.ca/land-use-plans/interactive-maps>

### ***Polar Bear Denning Areas***

It is unclear from the Options and Recommendations document the total area proposed as a Conditional Use area for polar bear denning sites as not all of the datasets submitted to the NPC were used in creating the designation.

14. Can the NPC confirm the datasets used to create the Conditional Use area designation for polar bear denning areas?

Yes. See section 2.3.6.1 of the O&R which notes that data from the GN, the Kitikmeot and Kivalliq community meetings, and QWB submissions was used.

15. A scan of the Conditional Use designation for polar bear denning areas indicates that there are sites missing from this designation. How will NPC incorporate missing Inuit Qaujimagatuqangit about polar bear denning areas in the designation and in the DNLUP

2021?

If information is on the Record when it closes on January 10, 2023 it will be considered, and incorporated into the revised O&R. As additional information becomes available following Plan approval, it will be considered in Plan amendments and mandated periodic reviews.

16. Currently, the Conditional Use area for polar bear denning areas overlaps in part with the area withdrawn by Order in Council to facilitate negotiations with the Dēnesuḡiné Nations. Does the NPC intend to remove this overlap in order that the area withdrawn by Order in Council remain fully in a Mixed Use designation?

This concern will be considered by Commissioners when revising the DNLUP.

### **Whale Calving Areas**

The Options and Recommendations document does not provide enough information regarding the whale calving areas and the rationale for some decisions.

17. More specifically, why is the operation of vessels not limited in Bowhead calving areas and Narwhal calving areas seasonally?

Section 2.5 of the O&R includes different ratings for transportation potential in various whale habitats. While these sections should be read and considered in their entirety, seasonal restrictions on vessels were only included for selected beluga calving areas with 'Low' transportation potential. Other habitats, including identified bowhead and narwhal calving areas were considered to have "Moderate" transportation potential where year-round or seasonal vessel restrictions may be unnecessarily restrictive.

### **Marine Areas of Importance– General**

18. The Qikiqtani Inuit Association will be submitting a report to NPC commissioned to document Inuit Qaujimajatuqangit for the Baffin Bay and Davis Straight marine environment entitled "The Qikiqtaaluk Inuit Qaujimajatuqangit and Inuit Qaujimajangit Iliqqusingitigut for the Baffin Bay and Davis Strait Marine Environment Report". Can the NPC commit to reviewing the report and incorporating Inuit Qaujimajatuqangit on the marine environment in the DNLUP 2021?

Yes. All information on the Record will be considered by Commissioners when they consider revisions to the Draft Plan in 2023.

### **Transboundary Considerations -North Water Polynya – Sarvarjuaq/Pikialasorsuaq**

It is unclear in the Options and Recommendations document whether the recommendation of the Qikiqtalluk Wildlife Board (QWB) to expand the boundaries of the Sarvarjuaq Polynya to include additional sites (e.g. Flagler Bay Polynya) has been accepted.

19. Can the NPC confirm whether the boundary of the Sarvarjuaq Polynya has been expanded to include additional areas recommended by the QWB?

QWB addition was not included. As stated before, the Commission will reconsider all the issues when revising the draft plan and welcomes any additional inputs and comments on the proposed expansion of the Sarvarjuaq Polynya before the Closure of the Record.

### **Chapter 3: Encouraging Conservation Planning**

#### ***Future Parks***

Section 3.1.1 of the DNLUP 2021 does not list “National Parks Awaiting Full Establishment”, “Territorial Parks Awaiting Full Establishment” or “Proposed Territorial Parks” making it impossible to know what sites are designated without cross referencing with the Options and Recommendations documents and maps.

20. Can the NPC provide the list of proposed parks in the DNLUP 2021 and provide this information in a separate document for participants before regional public hearings?

Yes.

National Parks Awaiting Full Establishment - Ward Hunt Island
Territorial Parks Awaiting Full Establishment - Mallikjuaq Territorial Park
Territorial Parks Awaiting Full Establishment - Iqalugaarjuup Nunanga Territorial Park
Territorial Parks Awaiting Full Establishment - Kugluk/Bloody Falls Territorial Park
Territorial Parks Awaiting Full Establishment - Inuujaarvik Territorial Park
Territorial Parks Awaiting Full Establishment - Pisuktinu Tunngavik Territorial Park
Territorial Parks Awaiting Full Establishment - Tamaarvik Territorial Park
Territorial Parks Awaiting Full Establishment - Tupirvik Territorial Park
Territorial Parks Awaiting Full Establishment - Taqaiqsirvik Territorial Park
Territorial Parks Awaiting Full Establishment - Katannilik Territorial Park
Territorial Parks Awaiting Full Establishment - Sylvia Grinnell Territorial Park
Territorial Parks Awaiting Full Establishment - Ovayok Territorial Park
Nuvuk Proposed Territorial Park
Kingaluuk to Sitiapiit Proposed Territorial Park
Napaqtulik/Napurtulik Proposed Territorial Park
Agguttinni Proposed Territorial Park

21. For each “Territorial Parks Awaiting Full Establishment” and “Proposed Territorial Parks” can the Commission list projects with preserved rights under NuPPAA, and for each project indicate the geographic extent of the right?

No. The Commission does not have a comprehensive list of all projects that have preserved rights under NuPPAA and does not have the resources to do so at this time. This would be difficult to prepare and changes almost daily. Note that the proposed annual reporting requirements to the NPC in Chapter 6 of the DNLUP would be helpful in this regard.

22. Can the NPC provide a map that shows the overlap of “Territorial Parks Awaiting Full Establishment” and “Proposed Territorial Parks” and projects with preserved rights under NuPPAA?

No. The Commission does not have a comprehensive list of all projects that have preserved rights under NuPPAA and does not have the resources to do so at this time. This would be difficult to prepare and changes almost daily. Note that the proposed annual reporting requirements to the NPC in Chapter 6 of the DNLUP would be helpful in this regard.

## **Tallurutiup Imanga National Marine Conservation Area (TI NMCA)**

23. Can the NPC explain why the TI NMCA Limited Use designation that includes the Lancaster Sound Polynya does not have terms and conditions to limit ice-breaking and marine navigation within the polynya and the NMCA? It is unclear why marine navigation and ice-breaking are not limited within the TI NMCA and why more protective measures are proposed for the Sarvarjuaq Polynya in comparison to the TI NMCA designation?

Polynyas are generally identified as VECs. Because the Commission expects that the TI NMCA will be fully established in the near future and be outside its jurisdiction, it has generally not designated other values within the area.

## **Chapter 4 – Building Healthier Communities**

### **Community Areas of Interest – On Ice Travel Routes**

24. Can the NPC explain why they did not include a term for On Ice Travel Routes designation that is similar to the one proposed for Caribou Sea Ice Crossings, namely including a term that restricts ice-breaking during certain seasons?

Yes. See the O&R for an explanation. In general, the transportation potential considerations were different and so merited a different approach.

25. Although the NPC acknowledges the submission of NTI and the RIAs that on-ice shipping travel routes should receive similar protection as exists in the North Baffin Regional Land Use Plan, the NPC does not provide a rationale for why it proposes to provide less protection under the DNLUP 2021. Can the NPC explain why less protection is offered for On Ice Travel Routes in the DNLUP 2021 in comparison to the North Baffin Regional Land Use Plan? Specifically, the North Baffin Regional Land Use Plan does not allow navigation through ice in instances that it conflicts with conformity requirements 3.2.1 and 3.3.1:

*3.2.1 All land users shall refer to the land values and concerns in Appendix G, and to the Areas of Importance map, to determine important land values and concerns in areas where they plan to work, as well as to adjust their work plans to conserve these values.*

- i. All land uses shall be conducted in keeping with the policy of sustainable development in order to protect the opportunities for domestic harvesting. All land users shall avoid harm to wildlife and wildlife habitat and damage to community travel routes through the timing of their operations, through careful selection of the location of their main camps and travel routes, and through other mitigative measures. In order to achieve these ends, all land users shall follow the Code of Good Conduct contained in Appendix H.*

Participants have consistently advocated for clear conformity requirements that do not involve potentially subjective determinations by the NPC.

26. With respect to the overlap between On Ice Travel Routes and projects with preserved rights under NuPPAA, can the NPC provide a list of projects with preserved rights and the geographic extent of the right? Can this information be provided to participants in a separate document before the regional public hearings?

No. As noted above, the Commission does not have a comprehensive list of all projects that have preserved rights under NuPPAA and does not have the resources to do so at this time. This would be difficult to prepare and changes

almost daily. Note that the proposed annual reporting requirements to the NPC in Chapter 6 of the 2021 DNLUP would be helpful in this regard.

## **Chapter 5 – Encouraging Sustainable Economic Development**

27. Can NPC commit to reviewing previous submissions of NTI and the RIAs supporting a designation for the Gray's Bay Corridor that are not considered in the Options and Recommendations document and revising the DNLUP 2021 to provide for a Gray's Bay Corridor?

Yes. The Commissioners reconsider all previous submissions as well as the new submissions on the Record when considering revisions to the DNLUP.

## **Chapter 6 – Implementation Strategy**

### ***Overlapping Designations***

Although the DNLUP 2021 does not discuss overlapping designations, a review of the maps shows that there are overlapping designations.

28. Can the Commission explain how overlapping designations will be addressed and which designations will take precedence?

Yes. See section 6.2.3 of the O&R. All prohibited uses and other plan requirements of overlapping designations are intended to apply in areas of overlap.

### ***Existing Rights***

Section 6.1.8 of the DNLUP 2021 is entitled "existing rights". In this section, the NPC generally references the preservation of rights for certain projects under NuPPAA. However, important detail about prohibitions within Limited Use areas not applying when projects have preserved rights is omitted from section 6.1.8. The only time that the DNLUP 2021 references the impacts on Limited Use areas is on p. 11:

*Note that the prohibitions set out in the Plan do not apply to projects referred to in subsections 207(1), 207(2), 208(1) and 208(6) of the Nunavut Planning and Project Assessment Act.*

29. Can the NPC commit to indicating in the existing rights section of the DNLUP 2021 what projects have preserved rights under NuPPAA and how this impacts the implementation of prohibitions within Limited Use areas and seasonal restrictions within Conditional Use areas?

No. Participants have generally recommended that the DNLUP not attempt to interpret or summarize legislative provisions in NuPPAA.

Section 6.1.8 on existing rights does not reference the transitional provisions of NuPPAA and specifically section 235, which provides that NuPPAA does not apply to projects and projects under assessment that were being carried out before NuPPAA came into force until there is a significant modification to those projects.

30. Can the NPC explain at section 6.1.8 on existing rights how the transitional provisions of

NuPPAA apply in the DNLUP 2021 and to the Limited Use and Continual Use designations?  
Participants have generally recommended that the DNLUP not attempt to interpret legislative provisions in NuPPAA.

- 31.** Does the NPC make a distinction between projects that existed before NuPPAA came into force and projects that existed prior to the approval of the Nunavut Land Use Plan? Or is NPC grouping these two types of projects together?

The 2021 DNLUP does not attempt to distinguish between projects that are subject to NuPPAA and those approved under the Agreement. Schedule A of the 2021 DNLUP attempts to identify projects with existing rights in proposed Limited Use areas that had entered the regulatory system prior to the drafting of the plan, with the data taken from spring 2021.

- 32.** To understand how preservation of rights/transitional rights under NuPPAA and additional proposed exemptions (Appendix A of the DNLUP 2021) overlap with the proposed Limited Use and Conditional Use designations, can the NPC for each Limited Use designation and Conditional Use designation provide:

- i. a list of the projects that the preservation of rights/transitional provision rights apply to;
- ii. a list of the proposed projects that would have additional exemptions under Plan Requirement 6.1.8-1; and
- iii. for each project under i. and ii. indicate the geographic extent of the project within the designations?

See above comments on projects with rights preserved under NuPPAA and see the online interactive map for those in Appendix A.

- 33.** Can the Commission provide a map for each Limited Use and Conditional Use designation that shows the overlap with projects listed under 32 i. and ii. including for:

- migratory birds,
- caribou,
- polar bear denning areas,
- terrestrial walrus-haul out sites,
- whale calving areas,
- Sarvarjuaq polynya
- proposed territorial parks,
- territorial parks awaiting establishment,
- TI NMCA,
- Migratory Bird Sanctuaries,
- National Wildlife Areas,
- National Historic Sites,
- Soper River watershed outside of Katannilik
- Areas for the Thelon and Kazan rivers
- Community Areas of Interest
- Community drinking watersheds
- Contaminated sites
- Military Facilities
- Linear infrastructure
- Cumberland Sound Turbot Management Area

The requested detailed information is publicly available on the online interactive

maps of the 2021 DNLUP. The Commission recommends participants to refer to the online interactive maps: <https://www.nunavut.ca/land-use-plans/interactive-maps>

- 34.** Can the NPC confirm that it procured an outside legal opinion regarding the Commission's legal authority to provide for grandfathering beyond what is set out in NuPPAA? If yes, can you share this legal opinion with participants?

The NPC has not retained an outside legal opinion and welcomes comments from all participants.