



## **Nunavut Tunngavik Incorporated and Regional Inuit Associations' Final Joint Written Submission on the Draft Nunavut Land Use Plan 2021**

Dated: February 10, 2023

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## INTRODUCTION

Nunavut Tunngavik Incorporated (NTI) and the three Regional Inuit Associations (RIAs), that include the Kitikmeot Inuit Association (KitIA), the Kivalliq Inuit Association (KivIA) and the Qikiqtani Inuit Association (QIA), are providing a final joint written submission to the Nunavut Planning Commission (Commission) on the Draft Nunavut Land Use Plan (DNLUP) 2021. On July 23, 2021, the Commission opened the record on the DNLUP 2021 and requested all parties to provide written submissions. NTI and RIAs provided joint written submissions on October 13, 2021 and April 15, 2022 and the RIAs have also supplemented these joint submissions with individual submissions. NTI and the RIAs also participated in the Regional Public Hearings that took place in the Fall 2022 including in Cambridge Bay (September 12-15, 2022), Rankin Inlet (September 19-23, 2022), Thompson, Manitoba (September 26 and 27, 2022), Pond Inlet (October 24-27, 2022) and Iqaluit (November 14-19, 2022). NTI presented and answered questions at all five Regional Public Hearings.

For several months, NTI and the RIAs have been engaged in discussions with the Government of Canada (GoC) and the Government of Nunavut (GN) on land use planning issues and we have been working to build consensus on various land use planning issues to assist the Commission in providing a final DNLUP that can be accepted by the parties. In this submission, we discuss the consensus achieved with the GoC and GN as described more fully in the GoC-GN-NTI joint submission.

NTI and the RIAs appreciate the extension provided by the Commission in response to the requests of participants during the public hearing process for more time to allow for more complete written submissions. The one-month extension allowed the parties to continue to have important discussions on land use planning proposals and resolve some issues. Unfortunately, it did not allow enough time to fully address all priority issues; a longer extension would have furthered discussions on outstanding issues.

The completion of the NLUP is a priority for NTI and the RIAs and we will continue to work with the governments, Inuit organizations such as the Hunter and Trappers Organizations (HTOs) and Regional Wildlife Organizations (RWOs) to achieve consensus as much as possible on a first-generation Nunavut Land Use Plan (NLUP).

### *Content of this Submission*

Part 1 of this submission focusses on important overarching issues within the DNLUP 2021 that require significant amendments. Resolution of these issues is required to successfully reach the goal of establishing a NLUP. Specifically, these issues include:

- the treatment of Inuit Owned Lands (IOLs) in the DNLUP 2021 and related impacts on Inuit property rights;
- the impact of the DNLUP 2021 on other Inuit rights including the negotiation and implementation of Inuit Impact and Benefit Agreements (IIBAs);

- the approach in the DNLUP 2021 to existing rights under the *Nunavut Planning and Project Assessment Act* (NuPPAA); and
- shortcomings regarding the approach to Inuit and community consultations.

Part 2 of this submission provides feedback on substantive content of the DNLUP 2021 by chapter and on the proposed designations.

In addition to this joint submission, the RIAs may make individual submissions. Unless indicated otherwise in this submission, the previous joint submissions of NTI and RIAs, as well as previous submissions of each RIA, continue to reflect the views of NTI and the RIAs regarding land use planning issues and proposals.

## PART 1: OVERARCHING ISSUES

### 1.1 IOLs AND INUIT RIGHTS

As expressed in previous written submissions, NTI and the RIAs continue to object to the impact of the DNLUP 2021 on Inuit property rights, including the right of decision-making and management over IOLs pursuant to Article 17 and section 19.3.1 of the *Nunavut Agreement*. The right of NTI and the RIAs to manage IOLs on behalf of Nunavut Inuit is a critical component of the *Nunavut Agreement* and fundamental to Inuit self-determination and economic self-sufficiency.

The Commission is aware of the extent of overlap between land use designations and IOLs, particularly with respect to Limited Use areas.<sup>1</sup> For example, although NTI only holds 1.8% of subsurface lands in Nunavut on behalf of Inuit, Limited Use designations prohibit activities on 43% of that small percentage, largely eliminating NTI decision-making on those subsurface IOLs. Regionally, the subsurface lands in the Kitikmeot and the Kivalliq are constrained at a higher percentage (47% and 57%, respectively).

As indicated to the Commission previously, the majority of subsurface IOLs were chosen during the land selection process to support the exercise of mineral rights. DNLUP designations must not detract from the right to develop minerals on subsurface IOLs. The proposed prohibitions of mineral activities on subsurface IOLs will seriously affect potential benefits to Inuit and are not compatible with Inuit goals and objectives. For these reasons, subsurface IOLs must not be designated as Limited Use.

In the context of land use planning, the goal of NTI and the RIAs is to maintain their *Nunavut Agreement* assigned property rights and decision-making authority as Designated Inuit Organizations (DIOs) over surface and subsurface IOLs. To date, the Commission has not adjusted its approach to designations to accommodate the right of NTI and the RIAs to manage IOLs, or to adequately address the goal of NTI and the RIAs to retain a decision-making role over IOLs.

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<sup>1</sup> See Table 1: Limited Use and Conditional Use Designations Impacting IOLs in the NTI-RIA Joint Submission of April 15, 2022, at p. 6.

NTI and the RIAs call on the Commission to accommodate this goal by adopting distinct approaches to Plan requirements over IOLs to reduce, and where possible eliminate, the impact of the DNLUP on the property and land management rights of Inuit.

As presented by the Commission at the Regional Public Hearings, and in its Options and Recommendations document, the main 'Rating Criteria' used by the Commission in assessing which designations (Limited Use, Conditional Use or Mixed Use) were appropriate to apply in the DNLUP 2021 did not include consideration of IOLs or impacts of the designations on IOLs, particularly on surface IOLs. This was a significant oversight. The Commission's Rating Criteria must consider the effects of designations on IOLs and on Inuit property rights. It is inappropriate for the Commission to make land use planning decisions without considering how to minimize the effect of the designations on the right of Inuit to manage IOLs.

At the Regional Public Hearings, participants stressed that section 17.1.1 of the *Nunavut Agreement* states that "Inuit Owned Lands shall be to provide Inuit with rights in land that promote economic self-sufficiency of Inuit through time in a manner consistent with Inuit social and cultural needs and aspirations". NTI and the RIAs understand that promoting economic self-sufficiency through the management of IOLs requires both providing for the long-term health and well-being of Nunavut's wildlife that Inuit rely upon and supporting economic opportunities. NTI and the RIAs emphasize that achieving the right balance requires a final NLUP which respects Inuit independence and decision-making authority over IOLs.

#### *Nunavut Agreement – Sections 11.8.2 and 11.2.1 (b)*

Section 11.8.2 of the *Nunavut Agreement* states that:

The land use planning process shall apply to Inuit Owned Lands. Land use plans shall take into account Inuit goals and objective for Inuit Owned Lands.

NTI and the RIAs do not dispute that the land use planning process applies to IOLs. The question is how should the NLUP apply to IOLs? The main direction provided by section 11.8.2 is that the NLUP shall consider Inuit goals and objectives for IOLs. This obligation requires that the Commission ensure that the content of the NLUP is significantly shaped by the goals and objectives for IOLs and takes into account the preferences of each RIA. To respect the different vision of each RIA for their IOLs as title holders, there cannot be a uniform land use planning approach to IOLs across Nunavut. There must be flexibility to accommodate regional differences in the final NLUP.

The complexity involved for the Commission to accommodate the goals and objectives for IOLs of all the DIOs makes it vital that the procedural intent of section 11.8.2 of the *Nunavut Agreement* be met. The Commission must engage NTI and the RIAs directly to meet its obligation to consider Inuit goals and objectives for IOLs. We call on the Commission to hold a formal meeting (or meetings) with NTI and the RIAs on reaching consensus on how the final NLUP can best address the goals and objectives for IOLs of the DIOs. A formal consultation with the DIOs is

necessary to ensure the Commission has a thorough understanding of the distinct proposals of each DIO, fulfills *Nunavut Agreement* consultation obligations, and has a complete public record before embarking on revising the DNLUP 2021.

The *Nunavut Agreement* also sets out at subsection 11.2.1 (b) that “special attention shall be devoted to protecting and promoting the existing and future well-being of Inuit and Inuit Owned Lands”. From the perspective of NTI and the RIAs, protecting and promoting IOLs requires special attention and greater emphasis on IOLs in the final NLUP. As discussed, failing to consider the impacts on all IOLs within the main Rating Criteria for designations is a clear indication that the DNLUP 2021 does not provide the level of consideration needed to IOLs. The Commission must demonstrate how they have paid special attention to protecting IOLs and accommodating the goals and objectives for IOLs of the DIOs in the final NLUP, including through further consultation, amending the Rating Criteria to fully address IOLs, and setting out the steps that have been taken in a revised Options and Recommendations document.

#### 1.1.1 Path Forward - IOLs

NTI and the RIAs remain optimistic that the Commission will make changes to the DNLUP to ensure that Inuit land ownership and decision-making rights on IOLs are respected. In Part 2 below, there are specific recommendations to strengthen the language in Chapter 1 of the DNLUP regarding NTI’s and the RIA’s jurisdiction over IOLs. Additionally, the following section sets out joint recommendations for addressing IOLs, as well as specific preferences of each RIA.

Taking into account Inuit goals and objectives for their lands, regional preferences, and the need for access to IOLs, NTI and the RIAs make the following submissions for the inclusion of IOLs within land use planning designations:

- KitlIA intends on retaining its *Nunavut Agreement*-assigned property rights and decision-making authority on Kitikmeot surface IOLs, as well as on what projects can proceed on these IOLs. Specifically, the KitlIA:
  - o requests that surface IOLs in the Kitikmeot region be placed in a Mixed Use designation;
  - o agrees that surface IOLs may be placed in a Conditional Use designation in the case of Class 2 migratory bird sites and polar bear denning areas as the proposed terms and conditions are deemed not to interfere with the DIO’s property rights and management authority on IOLs.
- Generally, the RIAs support Conditional Use designations that do not interfere with their property rights and authority to manage IOLs. Management authority includes the ability to continue to facilitate the review of applications for activities on IOLs in accordance with IOL rules and procedures. NTI and the RIAs work to achieve a balanced approach to IOL management through their IOL rules and procedures, which include ensuring community participation in decision-making. Key to the process is the review of land use applications by Community Land and Resource Committees (CLARCs) in the Kivalliq and Qikiqtani

regions and Community Beneficiary Committees (CBCs) in the Kitikmeot region. These Committees receive and review land use applications, inform community members of land use proposals, and recommend land use decisions, including any conditions that should be attached in the case that applications are approved. To assist the Commission in understanding the IOL management regime, a summary of procedures is found at Appendix A.

- QIA is supportive of the Commission's efforts to protect wildlife habitat and land protection through Limited Use areas in the Qikiqtani region. However, QIA, with NTI's support, is calling for a distinct approach to surface IOLs within Limited Use areas in the Qikiqtani region as detailed below. For the Commission's reference, several options for a distinct approach to IOLs have been considered and canvassed with the GoC and the GN. In particular, there was consideration of the option of allowing for prohibitions to apply conditionally within Limited Use designations to allow QIA on an exceptional basis to approve an application for a use that is normally prohibited on IOLs. Due to concerns that this type of exception could constitute a sub-delegation of the Commission's authority under NuPPAA, this option is not being recommended at this time.

#### *1.1.1.1 Distinct Approach to IOLs within Limited Use areas in the Qikiqtani Region*

To facilitate a distinct approach that minimizes impacts on QIA's management rights on surface IOLs, QIA proposes to establish Indigenous Protected and Conserved Areas (IPCAs) over surface IOLs within Limited Use areas to achieve the conservation objectives of the Qikiqtani Inuit. IPCAs can be established by QIA through a Board Resolution and according to its by-laws. The establishment provisions for IPCAs can support Limited Use areas by mirroring its prohibitions and setting out review mechanisms that match the periodic review commitments within the final NLUP. The land use planning intent of Limited Use designations would drive the scope and boundaries of IPCAs providing a strong link and integration between IPCAs and the final NLUP.

An IPCA approach that supports Limited Use areas within a final NLUP would allow QIA to consider applications for activities within an IPCA on an exceptional basis and in accordance with the establishment provisions for the IPCA. This approach provides key advantages and benefits, including:

- Prioritizes Inuit self-determination and maintaining Inuit decision-making authority over IOLs;
- Maintains land use planning objectives, specifically for the protection of wildlife and land values;
- Conforms to NuPPAA; and
- Meets the expectations of Qikiqtani Inuit that critical wildlife habitats, lands and waters in the Qikiqtani region will be protected and recognized in the final NLUP.

To operationalize the IPCA approach, the following steps would be required:



- QIA establishes IPCAs over surface IOLs within Limited Use areas that are for conservation;
- QIA and the GoC (in cooperation with the GN) conclude an IIBA for these IPCAs that support Inuit governance over IOLs and the conservation values of the Limited Use areas; and
- the Commission recognizes QIA's IPCAs within the Limited Use area designations.

In Limited Use areas where QIA establishes IPCAs over IOLs, the Limited Use prohibitions would apply over public lands and QIA's IPCA prohibitions would apply on the IOLs. The Limited Use area designation could summarize the prohibitions set out within QIA's IPCA, however no Plan requirements would be applied on the IOLs.

#### 1.1.2 Further Dialogue on IOLs

NTI and the RIAs recognize that the submissions on IOLs are diverse and complex and would benefit from further discussion with the Commission. Before the Commission begins deliberations on changes to the 2021 DNLUP, it is incumbent on the Commission to fully understand the concerns and solutions being proposed by NTI and the RIAs for addressing IOLs within the final draft of the NLUP. NTI and the RIAs call on the Commission to hold formal consultations with the DIOs to build consensus on the potential paths forward for addressing IOLs within the final draft of the NLUP.

### 1.2 EXISTING AND FUTURE INUIT IMPACT AND BENEFIT AGREEMENTS (IIBAs)

#### 1.2.1 Existing IIBAs

As set out in the joint statement on existing IIBAs to the Commission on behalf of NTI, the RIAs, the GoC and the GN, there is consensus on how the DNLUP should address existing IIBAs. Specifically, the NLUP designations should not prevent the signatories of existing IIBAs, as negotiated under Articles 8 and 9 of the *Nunavut Agreement*, from fully implementing the terms of that IIBA. Existing IIBAs provide important benefits to Inuit, address potential detrimental impacts, and set out joint management frameworks over parks and conservation areas. IIBAs reflect the understandings and obligations of the parties related to parks and conservation areas in Nunavut and have been carefully negotiated.

In summary, the joint statement with the two levels of Government recommend the following changes to the DNLUP:

- National Parks Awaiting Full Establishment (3.1.1-1) be designated as a Valued Ecosystem Component and that these areas be identified on Map B.
- Migratory Bird Sanctuaries (3.2.2-1) and National Wildlife Areas (3.2.3-1) be designated under a unique land use designation such as 'Established Conservation Management Areas' with no Plan requirements.

- National Historic Sites (3.2.5-1) and Territorial Historic Sites (3.2.6-1) be designated as Valued Socio-economic Components and that these areas be identified on Map B.
- Soper River Watershed (3.2.7-1) and Small Areas of Significance Thelon and Kazan Rivers (3.2.7-2) be changed to Valued Ecosystem Components and that these areas be identified on Map B.

The DNLUP 2021 designations must be adjusted to ensure that the signatories to IIBAs are not precluded from meeting their legal obligations under IIBAs. The final NLUP must support the full implementation of existing IIBAs.

#### 1.2.2 Future IIBAs

NTI and the RIAs maintain that Limited Use designations in the NLUP that are intended to achieve conservation goals require the negotiation of IIBAs. If areas designated as Limited Use are put forward by the GoC as counting towards meeting their terrestrial or marine conservation targets, IIBAs must be negotiated with NTI and the RIAs.

The GoC has initiated discussions with NTI, the RIAs, and the GN for funding arrangements, including IIBAs, to support the counting of Limited Use areas to meet the GoC's conservation commitments. These discussions are on-going. The support of NTI and the RIAs for Limited Use designations is contingent upon the resolution of this issue with the GoC and the GN due to its important tie to the negotiated right within the *Nunavut Agreement*.

In the Kitikmeot, the KitIA is willing to consider both the Hiukitak and the Boothia Peninsula Community Areas of Interest as potential conservation areas that can be used towards the GoC's international commitments to meet its biodiversity targets, based on the following requirements: (1) as stated above, IIBAs must be negotiated between either the GoC or GN, and KitIA; and (2) the IOLs within the two Community Areas of Interest remain designated as Mixed Use until IIBAs are finalized, with assurances from the KitIA that biodiversity will not be compromised in the interim. The finalized IIBA would speak to the appropriate future designation of those IOLs.

For the Qikiqtani region, QIA is proposing an IPCA approach for IOLs within Limited Use areas that would require negotiations of an IIBA for the IPCAs, as well as for the Limited Use designations within which the IPCAs are found.

#### 1.3 EXISTING RIGHTS

As the Commission is aware, NTI has raised questions regarding the consistency of the Commission's approach to grandfathering of existing rights in the DNLUP 2021 with NuPPAA. From NTI's perspective it is fundamental that the final NLUP be in conformity with NuPPAA and as much as possible be free of legal uncertainty. For this reason, NTI has sought an independent legal opinion from Olthuis Kleer Townshend LLP (OKT) on the conformity of the approach to grandfathering as described in section 6.1.8 of the DNLUP 2021 with NuPPAA. Specifically, NTI has obtained an independent legal opinion from OKT on the following questions:

1. Does the current DNLUP conform with the legal requirements of NuPPAA regarding the treatment of existing rights in land use planning? More specifically, do the current DNLUP section 6.1.8 and Appendix A: Existing Rights, which exempt a specific list of Projects with “existing rights” from LUP conformity in the event of a significant modification to the Project, comply with NuPPAA?
2. Does the DNLUP treatment of ancillary Projects (such as roads and railways), which directly relate to but require a new and related land use for a Project with “existing rights”, conform with the legal requirements of NuPPAA?

The OKT legal opinion concludes that:

- the current DNLUP s. 6.1.8 and list in Appendix A: Existing Rights do not comply with NuPPAA; and
- the DNLUP provisions dealing with ancillary land uses for Projects with “existing rights” are consistent with the provisions of NuPPAA, as new ancillary land uses are subject to LUP conformity review.

Separately from this joint submission, NTI is submitting the OKT legal opinion to the Commission to assist the Commission in its deliberations regarding necessary amendments to the DNLUP.

After carefully reviewing the OKT opinion, NTI has concluded that the approach to grandfathering of “existing rights” in the DNLUP 2021 as described in Chapter 6 and Appendix A raises serious concerns and creates a substantial risk to completing and implementing a first generation NLUP.

NTI and the RIAs recommend that, in light of the OKT legal opinion, the Commission re-examine its conclusions about existing rights. The Commission must take an approach to grandfathering of existing rights in the final DNLUP that is consistent with NuPPAA, straight forward, transparent, and easily understood by all participants. Specific recommendations regarding grandfathering of existing rights are located at section 2.6.3 of this joint submission.

#### 1.4 CONSULTATION

The *Nunavut Agreement* and NuPPAA require the Commission to consult with Inuit, and by extension DIOs, in developing the land use plan. Specifically, the *Nunavut Agreement* sets out at subsections 11.2.1 (c) and (d) that the planning process “shall ensure land use plans reflect the priorities and values of the residents of the planning region” and “shall provide an opportunity for the active and informed participation and support of Inuit and other residents affected by the land use plans...”

NuPPAA at subsection 50(2) requires the Commission to:

solicit written and oral comments on the draft land use plan from appropriate departments or agencies, appropriate designated Inuit organizations, affected municipalities, interested corporations and organizations, Inuit and other residents of the designated area and the general public.

These are substantial consultation obligations and require a more rigorous process than what is required by the common law duty to consult. Given the potential impacts on Inuit rights as a result of the DNLUP, including on Inuit land ownership and Inuit access to lands for harvesting, the Commission's consultation requirements on the DNLUP with NTI and the RIAs are significant.

NTI and the RIAs have previously raised concerns on the level and approach to consultation conducted by the Commission on the impact of land designations on Inuit rights and over the management of IOLs. As noted, at the 2019-2020 community engagement sessions in the Kivalliq and Kitikmeot Regions, the Commission prohibited representatives of NTI and the RIAs from speaking and answering questions raised, in particular regarding IOLs. This approach was at best unfortunate, inadequate, and it has resulted in some of the problems identified in this submission.

As the managers of IOL, NTI and the RIAs were best placed to address impacts of the proposed designations on IOLs with community members. The Commission's approach impeded an open and in-depth discussion on potential impacts. As a result, the Commission did not sufficiently explore Inuit goals and objectives for IOLs during the community engagements and this gap is reflected in the DNLUP 2021, which has not adequately addressed Inuit goals and objectives for IOLs. As discussed, the Commission continues to have the opportunity to hold consultations with NTI and the RIAs before the close of the public record to explore Inuit goals and objectives for IOLs and solutions for addressing IOLs in the final draft of the NLUP that would fulfill its consultation obligations.

At the close of the land use planning process, NTI and the RIAs will be considering the full public record, including the community engagements, the Regional Public Hearings, final written submissions, and any additional consultations, in assessing whether consultations obligations have been met by the Commission.

## PART 2: DNLUP 2021 CONTENT

### 2.1 DNLUP 2021 – Submissions on Chapter 1

#### 2.1.1 Recommendations on “1.2.2 Inuit Owned Lands”

The current text of 1.2.2 does not accurately convey the significance of IOLs in a final land use plan, or the jurisdiction of NTI and the RIAs over IOLs as title holders and managers of IOLs on behalf of Inuit.

NTI and the RIAs recommend that 1.2.2 be amended to fully describe the direction provided in the *Nunavut Agreement* regarding how IOLs should be treated in the context of a final NLUP. Specifically, section 1.2.2 of the DNLUP should indicate that subsection 11.2.1 (b) of the *Nunavut Agreement* sets out that land use planning pay special attention “to protecting and promoting the existing and future well-being of Inuit and Inuit Owned Lands”. Additionally, section 1.2.2 of a final NLUP should indicate that section 11.8.2 of the *Nunavut Agreement* requires both that:

- the land use planning process applies to IOLs; and
- land use plans shall take into account Inuit goals and objectives for IOLs.

This second requirement of section 11.8.2 is a key obligation that must be emphasized and reflected more fully in the NLUP. The final NLUP must clearly state that the obligation in section 11.8.2 of the *Nunavut Agreement* cannot be met through the land use planning process alone and requires that the substance of the NLUP reflect Inuit goals and objectives for IOLs of NTI and the RIAs as the DIOs with the responsibility of managing IOLs on behalf of Inuit.

The final NLUP should also clearly state that the primary goal of NTI and the RIAs is to maintain their *Nunavut Agreement* assigned property rights and decision-making authority over IOLs, and that the NLUP must, to the extent possible, accommodate this goal.

### 2.2 DNLUP 2021 - Submissions on Chapter 2

#### 2.2.1 Key Migratory Bird Habitats (2.1-1 and 2.1-3 in the DNLUP)

The Commission proposes that Class 1 migratory bird habitat sites be placed in Limited Use areas and that Class 2 migratory bird habitat sites be placed in Conditional Use areas within which seasonal setbacks apply.

NTI and the RIAs support the use of the Conditional Use designation with seasonal setbacks for Class 2 migratory bird habitat sites. NTI and the RIAs recognize that in some cases the proposed Conditional Use areas overlap with IOLs; however, the proposed migratory bird setbacks on project activities are unlikely to interfere significantly with the management of IOLs. As NTI and

the RIAs will retain decision-making authority over IOLs, and in particular over what projects can proceed, there is support for the Class 2 migratory bird habitat sites Conditional Use designation.

NTI and the RIAs do not support the proposed Limited Use designation for migratory bird habitat unless several conditions are met. The first condition is that IIBAs be negotiated for these areas to ensure Inuit receive benefits from any Limited Use designation that is focussed on habitat conservation. This condition applies both in instances where the migratory bird Limited Use area is exclusively on public lands and in the case that the designation is both on public lands and IOLs.

Additionally, for the proposed migratory bird Limited Use areas that are both on public lands and IOLs (this only occurs in the Kitikmeot and Qikiqtaaluk regions) a regional approach is required to accommodate regional differences. In the Kitikmeot region, surface IOLs should be placed in the Mixed Use designation. This designation does not preclude the establishment of a conservation area or the negotiation of an IIBA in the Kitikmeot, if the GoC and/or the GN so desire. KitIA is willing to provide assurances that biodiversity will not be compromised while IIBAs are being negotiated or finalized. In the Qikiqtaaluk region, QIA is proposing to establish IPCAs on surface IOLs that fall within Limited Use areas for Class 1 migratory bird habitat sites that would require the negotiation of an IIBA for the IPCA and the overall Limited Use designation.

## 2.2.2 Caribou

### *2.2.2.1 NTI comments on caribou and the Regional Public Hearings*

NTI participated in all five of the Regional Public Hearings on the DNLUP 2021 that took place in the Fall 2022 in Cambridge Bay, Rankin Inlet, Thompson, Manitoba, Pond Inlet and Iqaluit. NTI recognizes that the protection of caribou populations and habitat were key issues during the Regional Public Hearings and that NTI committed to responding to the requests and concerns expressed about caribou protection in its final written submissions.

NTI acknowledges the requests of community representatives, and several HTOs and RWOs, that caribou habitat be protected in a final DNLUP. These requests align with the advice of NTI's Wildlife and Environment Department that industrial activities on core calving grounds of major migratory caribou subpopulations should be prohibited year-round while caribou continue to calve in these areas across their population cycle, and that seasonal restrictions and/or mobile measures may be appropriate for other seasonal ranges of caribou, such as post-calving areas. Some of the Kitikmeot major migratory caribou subpopulations which exhibit significant interannual shifts in calving areas may also benefit from consideration of other approaches to conserve habitat and processes important to caribou calving.

To make progress in resolving outstanding concerns, NTI has been working closely with the RIAs to support the inclusion of strategies to protect caribou in the final NLUP. NTI continues to

recognize that each region is facing different challenges and that regional approaches to caribou protection measures are necessary.

For greater clarity, in the context of supporting regional approaches, if an RIA decides that certain caribou habitat areas should be in a Limited Use designation, NTI will support this position as long as the following conditions are met:

1. The Limited Use designation must respect and recognize Inuit decision-making authority over IOLs to the satisfaction of the RIA and NTI;
2. The Limited use designation must provide benefits to Inuit through the negotiation of IIBAs;
3. Agreements with the GoC and GN are necessary for caribou monitoring with the cooperation of the RIAs, NTI, HTOs and RWOs during the implementation of the Nunavut Land Use Plan; and
4. Caribou designations in the NLUP must be reviewed and adjusted within an agreed to timeframe and a review should consider the Inuit Qaujimajatuqangit on wildlife and environmental stewardship and western science collected during the implementation period for the Nunavut Land Use Plan.

#### *2.2.2.2 Regional Approaches to Caribou Protection (terrestrial caribou habitat)*

The following is a summary of the recommendations for caribou protection of each RIA for their region:

##### QIA

QIA is submitting jointly with the Qikiqtaaluk Wildlife Board on caribou areas for protection under the final NLUP, based on Inuit Qaujimajatuqangit and western science, and guided by input from HTOs. The joint submission includes:

- To protect caribou and their habitat during their most vulnerable seasons:
  - Limited use designations for core calving, post-calving, and winter habitat, with QIA IPCA designations on IOLs;
- To ensure connectivity of habitat:
  - Limited use designations, with QIA IPCA designations on IOLs, within 10 km radius of freshwater and terrestrial movement corridors;
  - Conditional use designations for sea ice crossings;
  - Conditional use designations supported by mobile protection measures for open channel crossings.
- To ensure continued revisions to the plan based on the best available Inuit Qaujimajatuqangit and western science:

- a monitoring program guided by HTOs to support revisions to these designations;
- support for a formal process to review designations with HTOs in keeping with the 10-year revision cycle for the NLUP.

QIA is recommending other measures to protect caribou and their habitat outside of these designated areas, including mobile protection measures and limits to total habitat disturbance. These recommendations fall outside of the NLUP and will be addressed through the regulatory process.

#### KitIA

The KitIA has articulated its position relative to caribou protection through multiple submissions to the Commission and during the Cambridge Bay Regional Public Hearing. In summary:

- Several of the Kitikmeot major migratory caribou subpopulations exhibit significant interannual shifts in calving areas, and caribou calving grounds have changed regularly in the Kitikmeot. Calving caribou will benefit from conservation approaches focussing on where calving actually occurs, rather than relying on polygons that delineate historical calving grounds.
- In 2016, KitIA adopted a resolution supporting reasonable mobile protection measures for concentrations of caribou, including calving caribou, wherever they may be, irrespective of the season.
- Caribou protection tools (i.e., regulations, environmental assessments, etc) already exist and they should be used.

#### KivIA

In technical submissions to the Commission, KivIA has supported:

- Limited use designation for the immediate area around the identified freshwater crossings with a size of the area being 1-3 km radius, and surrounding the 1-3 km radius, a 10 km radius with a Conditional Use designation within which seasonal restrictions and Mobile Measures would be applied;
- Conditional use designations for caribou calving, post-calving, and sea-ice crossings, including seasonal restrictions and Mobile Measures;
- Caribou Valued Ecosystem Components for rutting areas, migration corridors, summer and late summer areas, fall areas, winter ranges (mainland) to specifically include Mobile Measures; and
- The use of Mobile Measures as a Plan requirement as part of the Conditional Use designations.



#### *2.2.2.3 Caribou Sea Ice Crossings (2.2.5-1 in the DNLUP)*

The Commission proposes that caribou sea ice crossings identified on Map A be placed in Conditional Use areas within which, except as required for safe navigation, ice-breaking activities are not allowed during specified seasons.

NTI and the RIAs support the use of the Conditional Use designation with terms and conditions as a mechanism for protecting sea ice that is critical to caribou populations. Sea ice crossings used by caribou (Dolphin-Union, Peary and Barren Ground) are essential to ensure the long-term survival of the species and, in turn, support long term food security for Inuit. Ice breaking activities can result in areas of open water that negatively impact caribou, as well as the safety of Inuit harvesters relying on the sea ice for transportation.

Sea ice crossings are particularly important for the Barren Ground caribou of Baffin Island that rely upon crossings to the Melville Peninsula and the adjacent islands that are important during particular periods of their population cycle. Adjustments to Plan requirements to address concerns with the designation should take the importance of these sea ice crossings into consideration.

Since the close of the Regional Public Hearings, NTI and the RIAs have had several discussions with GoC and the GN on marine shipping issues in the DNLUP 2021. NTI and the RIAs recognize that with respect the proposed Conditional Use designation for caribou sea ice crossings that the GoC is requesting an exception for navigation through waters and ice that is required for Canada to meet its international obligations and foreign policy imperatives. NTI and the RIAs support the inclusion of the requested exception to allow the GoC to meet its international obligations and foreign policy objectives related to Arctic sovereignty. As the GoC intends to use such an exception in limited circumstances, NTI and the RIAs recommend that the Plan requirements:

- provide for communication of its use to the Commission, as well as land use planning participants including NTI, RIAs and HTOs;
- allow for DIOs and HTOs to request a meeting with the Commission, GoC and other interested parties on the implementation of the exception.

NTI and the RIAs also support the final NLUP including collaborative tools as they are developed between the Governments and Inuit to address marine shipping concerns such as the impacts of increased vessel traffic on wildlife, floe edges, polynyas, on-ice travel routes, Inuit harvesting, and Inuit safety. As collaborative tools are developed, it may be appropriate to review and amend the approach to the Conditional Use designation for caribou sea ice crossings.

#### *2.2.3 Polar Bear Denning Areas (2.3.1 to 2.3-5 in the DNLUP)*

The Commission proposes that polar bear denning areas as identified on Map A in the DNLUP 2021 be placed in Conditional Use areas with specific terms and conditions applying to these areas.

NTI and the RIAs support the use of the Conditional Use designation for polar bear denning areas with terms and conditions. NTI and the RIAs recognize that in some cases the proposed Conditional Use areas overlap with IOLs; however, the proposed terms and conditions for polar bear denning areas are unlikely to significantly interfere with the management of IOLs. As NTI and the RIAs will retain decision-making authority over IOLs, and in particular over what projects can proceed, there is support for the polar bear denning areas Conditional Use designation.

#### 2.2.4 Walrus Terrestrial Haul-Outs (2.4-1 to 2.4-5 in the DNLUP)

The Commission proposes that walrus terrestrial haul-outs as identified on Map A in the DNLUP 2021 be placed in Limited Use areas where a number of activities are prohibited.

The identified walrus terrestrial haul-outs are located in the Kivalliq and Qikiqtaaluk regions and are geographically small areas. As walrus are significantly impacted from activities at, or adjacent to, walrus terrestrial haul-outs, there is general support the designation. KivIA supports the proposed Limited Use designation for walrus terrestrial haul-outs on both public lands and IOLs. In the Qikiqtaaluk region, QIA is proposing to establish IPCAs on surface IOLs that fall within Limited Use areas for Walrus Terrestrial Haul-Outs.

#### 2.2.5 Whale Calving Areas (2.5.1-1 to 2.5.1-4 in the DNLUP)

The Commission proposes that beluga calving areas adjacent to Southampton Island and Clearwater Fiord and bowhead and narwhal calving identified on Map A in the DNLUP 2021 be placed in Limited Use areas with oil and gas exploration and production prohibited, and terms and conditions restricting vessel navigation.

NTI and the RIAs continue to support the Limited Use area designations for the whale calving areas. We will be reviewing the final written submissions of HTOs, RWOs, and other participants to assess whether additional areas should be added to these designations based on both Inuit Qaujimajatuqangit and western science, and whether the terms and conditions should be adjusted.

### 2.3 DNLUP 2021 – Submissions on Chapter 3

#### 2.3.1 Future Parks (3.1.1-1 in the DNLUP)

The Commission proposes that future parks identified on Map A in the DNLUP 2021 be placed in Limited Use areas. The future parks identified on Map A are territorial parks awaiting establishment, proposed territorial parks, and national parks awaiting establishment.

Discussions between NTI and the RIAs and the two levels of Government has resulted in a consensus position that the final NLUP land use designations should not prevent the parties to existing IIBAs negotiated under Articles 8 and 9 of the *Nunavut Agreement* from fully implementing them.

As previously submitted by NTI and the RIAs, the proposed future parks Limited Use area interferes with the fulfillment of obligations under the “Umbrella Inuit impact and Benefit Agreement for Territorial Parks in the Nunavut Settlement Agreement” (Territorial Parks IIBA). Specifically, the Territorial Parks IIBA obligations to allow Inuit activities such as removing of carving stone, and the establishment of cabins, as well as the ability to support infrastructure needs for the development of mineral resources in the vicinity of a park or on IOLs must not be prohibited the final NLUP.

With respect to territorial parks, there has not been a consensus reached with the GN on how Territorial Parks Awaiting Full Establishment and Proposed Territorial Parks should be designated in the final NLUP. NTI and the RIAs recommend that to facilitate implementation of the provisions of the Territorial Parks IIBA and to provide for consistency with the management framework that will exist once Territorial Parks are formally established, that the current Limited Use area designation for Territorial Parks Awaiting Full Establishment and Proposed Territorial Parks be changed to a Valued Ecosystem Component and that these areas be identified on Map B. As set out in the joint submission of the GoC, GN and NTI, the GoC agrees that National Parks Awaiting Full Establishment be included in the final NLUP as a Valued Ecosystem Component.

#### 2.3.3 Migratory Bird Sanctuaries and National Wildlife Areas (3.2.2-1-3.2.3-1 in the DNLUP)

The Commission proposes that Migratory Bird Sanctuaries (MBSs) and National Wildlife Areas (NWAs) identified on Map A in the DNLUP 2021 be placed in Limited Use areas.

Discussions between NTI, the RIAs and the GoC have resulted in a consensus position that the final NLUP land use designations should not prevent the parties to existing IIBAs negotiated under Articles 8 and 9 of the *Nunavut Agreement* from fully implementing them. With respect to MBSs and NWAs, the final NLUP must not conflict with the implementation of the terms of the “2016 to 2023 Inuit Impact and Benefit Agreement for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area” (NWA-MBS IIBA).

As previously submitted by NTI and the RIAs, the proposed Limited Use areas for MBSs and NWAs interfere with NWA-MBS IIBA obligations, including:

- allowing for applications for activities on IOLs through “RIA-Supported Permit Application”;
- allowing for the removal of carving stone from Crown lands and on IOLs; and
- the implementation of a co-management framework for decisions related to activities within MBSs and NWAs taking into account Inuit Qaujimajatuqangit.

NTI, the RIAs and the GoC agree that to facilitate full implementation of the provisions of the NWA-MBS IIBA, and to enhance the protection already afforded to MBSs and NWAs through federal legislation, that these areas be designated under a unique land use designation such as ‘Established Conservation Management Area’ with no Plan requirements. The unique land use designation should recognize that MBSs and NWAs are existing conservation areas that are

already protected through legislation. Please see the joint submission of NTI, the GoC and the GN for further details on the recommendations for MBSs and NWAs within the final NLUP.

#### 2.3.4 National Historic Sites and Territorial Historic Sites (3.2.5-1 and 3.2.6-1 in the DNLUP)

The Commission proposes that National Historic Sites and Territorial Historic Sites identified on Map A in the DNLUP 2021 be placed in Limited Use areas.

Discussions between NTI and the RIAs and the two levels of Government have resulted in a consensus position: the final NLUP land use designations must reflect the intended land uses for areas where an IIBA is currently being negotiated, or may be negotiated, including for National Historic Sites and Territorial Historic Sites. Both National Historic Sites and Territorial Historic Sites are designated under legislation. The designations are commemorative and do not create land use restrictions on Crown lands or IOLs. For this reason, NTI, the RIAs, the GoC, and the GN support that the current Limited Use area designations for National Historic Sites and Territorial Historic Sites be changed to Valued Socio-economic Components and that these areas be identified on Map B.

Please see the joint submission of NTI, the GoC and the GN for further details on the recommendations for National Historic Sites and Territorial Historic Sites within the final DNLUP.

#### 2.3.5 Canadian Heritage Rivers (3.2.7-1 and 3.2.7-2 in the DNLUP)

The Commission proposes that portions of the Soper River watershed outside Katannilik Territorial Park and small areas of significance identified in the heritage river management plans for the Thelon and Kazan rivers identified on Map A in the DNLUP 2021 be placed in Limited Use areas within which several uses are prohibited.

Discussions between NTI and the RIAs and the two levels of Government have resulted in a consensus position that the final NLUP land use designations should not prevent the parties to existing IIBAs negotiated under Articles 8 and 9 of the *Nunavut Agreement* from fully implementing them. With respect to the areas within the Soper river watershed, and on the Thelon and Kazan rivers, the final NLUP must not conflict with the implementation of the terms of the “Umbrella Inuit Impact and Benefit Agreement for Canadian Heritage Rivers in Nunavut” (CHR IIBA).

As previously submitted by NTI and the RIAs, the Limited Use areas for Canadian Heritage Rivers (CHRs) cannot interfere with the obligation in the CHR IIBA that decisions and activities related CHRs will not affect or impose any obligations or restrictions on the ownership and management of IOLs by RIAs or NTI or affect land use activities on those IOLs, without the agreement of the owner of the IOL.

NTI, the RIAs, the GoC and GN agree that to facilitate full implementation of the provisions of the CHR IIBA, that the CHR areas identified in the DNLUP 2021 be designated as Valued Ecosystem Components and that these areas be identified on Map B. Please see the joint submission of NTI, the GoC and the GN for further details on the recommendations for CHRs within the final DNLUP.

## 2.4 DNLUP 2021 – Submissions on Chapter 4

### 2.4.1 Community Areas of Interest (4.1 in the DNLUP)

The Commission has identified nine areas on Map A across Nunavut as Community Areas of Interest as Limited Use Areas. In addition, the Commission has identified one Community Area of Interest as a Conditional Use area, namely for on-ice travel routes.

NTI and the RIAs have provided recommendations on the proposed Community Area of Interest for on-ice travel routes in the next section of this submission. For Community Areas of Interest in the Kivalliq and the Qikiqtaaluk regions, KivIA and QIA are respectively addressing these proposals in their own final submissions.

In the Kitikmeot region, as previously stated, the KitIA is willing to consider both the Hiukitak and the Boothia Peninsula Community Areas of Interest as potential conservation areas that can be used towards the GoC's international commitments to meet its biodiversity targets, with the following caveats: (1) IIBAs must be negotiated between the GoC or GN and KitIA; and (2) the IOLs within the two Community Areas of Interest remain designated as Mixed Use until IIBAs are finalized, with assurances from the KitIA that biodiversity will not be compromised in the interim.

#### *2.4.1.1 Conditional Use designation for On-Ice-Travel Routes (4.1.1 in the DNLUP)*

The term and condition for on-ice travel routes provides that a proponent of a project that will disrupt or destroy on ice travel routes seasonally must consult with all municipal councils, HTOs and RWOs within a 300 km radius of the route and develop an ice-bridging plan before undertaking the project and explains that this term and condition does not apply to vessels engaged in community resupply or emergency response.

NTI and the RIAs, in a written question to the Commission, asked why the term and condition for on-ice travel routes provides less protection than what is afforded in the North Baffin Regional Land Use Plan which has been interpreted by the Commission as not allowing the ice-breaking of Inuit on-ice travel routes. The Commission replied that the participants have consistently advocated for clear conformity requirements that do not potentially involve the subjective determinations by the Commission. In this context, NTI and the RIAs recommend that the term and condition for on-ice travel routes be amended to more closely align with the interpretation given to provisions in the North Baffin Regional Land Use Plan and with the requests of HTOs and RWOs. As documented in the Commission's Options and Recommendations document, HTOs and RWOs are advocating for seasonal restrictions for ice-breaking of on-ice travel routes and floe edges, and that proponents gain the consent of HTOs and RWOs before ice-breaking is conducted.

At a minimum, the timing of consultations with HTOs and RWOs regarding a proponent's proposal for ice-breaking must occur earlier in the process before a decision has been taken to

approve the project proposal. In addition, a positive conformity determination should not be given to ice-breaking proposals in the context of opposition from HTOs and RWOs. The term and condition would be strengthened by stating: *...a proponent of a project that may disrupt or destroy on-ice travel routes...must consult and come to agreement with all municipal councils, HTOs and RWOs on whether ice-breaking is advisable and under what circumstances.*

#### 2.4.2 Denesuline Areas (4.2.2 in the DNLUP)

The Commission has identified Denesuline areas of asserted title claim identified on Map B as Valued Socio-Economic Components.

NTI and the RIAs have a few submissions related to this designation. As previously submitted, NTI and the RIAs recommend that the designation be titled the "Order in Council (P.C. 2019-576) Withdrawn Area". Titling it "Denesuline Areas" does not take into account that this area is not solely a Denesuline Area, but also a Nunavut Inuit area. NTI and the RIAs recommend that the text of the DNLUP 2021 clearly state that the Withdrawn Area is designated as a Mixed Use area.

In addition, NTI and the RIAs reiterate that the Commission has not used the proper data set to map out the Withdrawn Areas. NTI and the RIAs recommend that the Commission work with the GoC to obtain the proper data set and update the Withdrawn Areas accordingly. Lastly, the DNLUP 2021 lacks clarity with respect to how overlapping designations apply to the Withdrawn Areas. NTI and the RIAs require confirmation that in a case of an overlapping designation with the Withdrawn Area, that the Withdrawn Area designation as Mixed Use will take precedence. To support the intentions of the OIC Withdrawal Area, the Withdrawn Area designation as Mixed Use must take priority in the event of an overlapping designation, including with the overlap that currently exists with the Kivalliq- Manitoba Linear Infrastructure Corridor. The lands that were withdrawn were selected as part of ongoing treaty negotiations and it is the position of NTI and the RIAs that all withdrawn areas should be subject to a Mixed Use designation. Designating part of the Withdrawn Areas as Limited Use will detract from the overall purpose of land selections and possibly prevent the settling of the outstanding claim. NTI and the RIAs further submit that the whole Withdrawn Area should be designated as Mixed Use.

#### 2.4.3 Community Drinking Water Supplies Outside Municipal Boundaries (4.2.5-1 in the DNLUP)

For Community Drinking Water Supplies Outside Municipal Boundaries in the Kivalliq region, KivIA is addressing these proposals in their own final submission. In the Qikiqtani region, QIA supports the Limited Use areas for Community Drinking Water Supplies Outside Municipal Boundaries.

#### 2.4.4 Military Facilities (4.7-1 in the DNLUP)

The Commission proposes that military facilities outside of municipal boundaries identified on Map A be placed in Limited Use areas within which all uses are prohibited, except uses by Canada, the Government of Nunavut or municipal governments.

NTI and the RIAs understand that the GoC has suggested that there could be more flexibility provided for uses within the Limited Use designation for military facilities. NTI and the RIAs will

be reviewing the final written submission of the GoC and may provide further comments on treatment of military facilities in the DNLUP.

## 2.5 DNLUP 2021 – Submissions on Chapter 5

### 2.5.1 Kivalliq-Manitoba Linear Infrastructure (5.3.1-1 in the DNLUP)

The Commission proposes that the Kivalliq-Manitoba linear infrastructure corridor identified on Map A in the DNLUP 2021 be placed in a Limited Use area.

NTI, KitIA and QIA support the KivIA position that the Kivalliq-Manitoba linear infrastructure corridor be designated as Conditional Use and that the Plan requirements list specific permitted uses and specify a distinct approach for IOLs. KivIA recommends that when a permitted land use is on IOLs that the KivIA will review the land use application through the CLARC process and determine the applicable terms and conditions for access, including seasonal restrictions, and the application of KivIA's Mobile Measures. Please see the submission of the KivIA for further details on proposed Plan requirements. Consistent with previous submissions of NTI and the RIAs, the Conditional Use designation should be located on post-calving caribou habitat.

### 2.5.2 Gray's Bay Road and Port

The Commission has not provided a designation for the Gray's Bay Road and Port corridor. NTI and the RIAs have previously provided joint submissions calling for a designation for the Gray's Bay Road and Port corridor (see submissions in 2017 and 2018). NTI and the RIAs support a similar corridor designation for the Gray's Bay Road and Port as has been proposed in this joint submission for the Kivalliq-Manitoba corridor.

We note that the Options and Recommendations document does not acknowledge the request for a designation for the Gray's Bay Road and Port corridor by NTI and the RIAs, or any of the supporting rationale submitted. As discussed in previous submissions, the Commission does not appear to have considered the recommendation for a corridor designation for the Gray's Bay Road and Port and the omission of such a significant recommendation is unacceptable (see the joint submission of October 13, 2021).

## 2.6 DNLUP 2021 – Submissions on Chapter 6

### 2.6.1 Plan Amendment (6.1.5-1 in the DNLUP)

The Commission sets out at 6.1.5 that a NLUP amendment may be proposed at any time and sets out Plan requirements for additional information that will be required when a NLUP amendment is proposed.

NTI and the RIAs recommend that the Plan requirements include a commitment to create a streamlined amendment process for some types of amendments. For example, when a new IIBA

is concluded between the GoC or the GN with NTI and/or the RIAs, there should be a process to allow for a timely review of NLUP amendments that may be necessary for consistency with the new IIBA. In this case, the public review process could be undertaken without a public meeting or hearing.

Specifically, NTI and the RIAs recommend that the Commission amend Plan requirement 6.1.5-1 to state that the Commission commits to:

- i. creating a streamlined amendment process for some NLUP amendments; and
- ii. to set out this streamlined process, and criteria for this process, in a revised procedures document, specifically the 'Internal Procedure – Amendments to Land Use Plans'.

#### 2.6.2 Periodic Review (6.1.6 in the DNLUP)

Section 6.1.6 states that the Commission:

- is committed to ensuring that the NLUP “continues to reflect the changing needs and environment of the designated area and its residents”; and
- will commence a review of the NLUP within 7 years of the Plan’s approval and will complete the review within 3 years thereafter.

NTI and the RIAs recommend that the Commission’s commitment to a periodic review of the NLUP be set out in a Plan requirement. Many participants, including NTI and the RIAs, have expressed that there must be certainty regarding the periodic review and amendment to the NLUP. For this reason, it is essential that the Commission’s commitment to a periodic review be included in a Plan requirement within the final NLUP.

The Commission also provides a list of what will be included within in the scope of the NLUP review. This list must explicitly include a review of each Conditional and Limited Use area in the NLUP. For each Conditional and Limited Use area there must a be a review of:

- the Plan requirements for the designation and whether the requirements have been effective in protecting the value for which the designation was created; and
- the boundaries and geographic scope of the designation and whether the boundaries continue to be appropriate.

The Commission’s review must consider Inuit Qaujimajatuqangit for designations related to culture, land, marine and wildlife values, as well as western science collected during the implementation period for the NLUP. The Commission’s review should also provide an assessment that is publicly available of the Conditional and Limited Use designations and recommendations for adjustments to Plan requirements and boundaries, including recommendations regarding designations that may be withdrawn based in Inuit Qaujimajatuqangit and western science.



Please see the section below on monitoring for the recommendations of NTI and the RIAs on steps that need to be taken to ensure the Commission has the necessary access to Inuit Qaujimajatuqangit and western science to allow for a comprehensive review of the NLUP.

#### 2.6.3 Monitoring Project Conformity (6.1.7 in the DNLUP)

In section 6.1.7, the Commission states that it monitors the on-going conformity of projects, using the information provided by proponents annually and information made public by other regulatory authorities.

NTI and the RIAs are concerned that this level of monitoring will not provide the Commission the information, knowledge and data that will be required to successfully conduct a comprehensive review of the NLUP as committed to in under section 6.1.6 of the DNLUP 2021.

As referenced above, the comprehensive review of the NLUP requires access to Inuit Qaujimajatuqangit and western science to assess the effectiveness of the land use designations (e.g. Conditional Use and Limited) set out in the NLUP. For example, there has been evidence tabled with the Commission that the fidelity of caribou herds to certain geographic areas may be changing due to factors such as climate change. It is critical that caribou designations, other wildlife designations, and associated wildlife populations, be monitored during the implementation period of the NLUP, to ensure a comprehensive review of the NLUP can take place.

The NLUP must provide for the establishment of a Monitoring Plan through a Plan requirement to ensure that the necessary Inuit Qaujimajatuqangit and western science is collected during the implementation of the NLUP in cooperation with governments, DIOs, and other land use planning participants. NTI and the RIAs recommend that a Plan requirement be included in section 6.1.7 that sets out that a Monitoring Plan be developed by the Commission in cooperation with the two levels of Government and DIOs and be completed within two years of the final NLUP coming into effect.

#### 2.6.3 Existing Rights (6.1.8-1 in the DNLUP)

Section 6.1.8 explains that the Commission has identified projects with existing mineral rights in Limited Use areas listed in Appendix A that “will not be subject to the prohibitions on that type of activity at the time they undergo significant modification but will require a further conformity determination under the Act”. This approach is further described in the Plan Requirements under 6.1.8-1.

As explained in Part 1 of this submission, NTI has obtained an independent legal opinion from OKT that finds that the current approach in section 6.1.8 and the list in Appendix A: Existing Rights does not comply with NuPPAA. NTI has carefully reviewed the OKT opinion and concluded that the approach to grandfathering of “existing rights” in the DNLUP 2021 as described in Chapter 6 and Appendix A raises serious concerns and creates a risk that the relevant sections of NLUP will be successfully challenged.

NTI and the RIAs recommend that the Commission take a new approach to grandfathering of existing rights in the final DNLUP that is consistent with NuPPAA, straight forward, transparent, and easily understood by all participants.

The recommended approach should consider the following:

- Projects that are excluded from the application of the NLUP under section 235 of NuPPAA should not be included within a Conditional Use or Limited Use designation and only highlighted for reference within a Mixed Use designation as the NLUP cannot apply to these Projects;
- Projects with preserved rights should not be placed in a Limited Use designation as prohibitions cannot apply to these Projects under NuPPAA; however terms and conditions may apply to these Projects allowing them to be placed in a Conditional Use designation;
- If Projects with preserved rights are included in a Limited Use area, the Plan requirements must explicitly provide that the prohibitions do not apply to the Project in accordance with NuPPAA;
- In the case of mineral claims or mineral tenure that are not Projects under NuPPAA, NTI and the RIAs support the GoC's request that these claims and tenure be designated as Mixed Use, except where NTI and the RIAs support a Conditional Use or Limited Use to protect wildlife.
- In the case where mineral claims or tenure are placed within a Limited Use designation, discussions may need to occur with the proponent on the status of their mineral claims and the options for relinquishing the claims.

## Appendix A

### **Summary of Management Rules and Procedures for Inuit Owned Lands (IOLs)**

#### **Background**

Community participation is a key goal of the Inuit land management regime. This is accomplished through Community Land and Resource Committees (CLARCs) in the Kivalliq and Qikiqtani regions and Community Beneficiary Committees (CBCs) in the Kitikmeot region. Generally, these Committees are made up of representatives from the Hunter and Trapper Organizations, Hamlet, Elders, Youth, and a Regional Inuit Association (RIA) director. CLARCs and CBCs include community members that are respected for their knowledge of their lands, waters and wildlife, as well as Inuit land use activities including harvesting, and they represent the beneficiaries of each community.

These Committees receive and review land use applications, inform community members of land use proposals, and recommend land use decisions, including any conditions that should be attached where applications are approved. It is also a goal that the Committees will assist in the monitoring of land use activities.

Through the active participation of CLARCS and CBCs, the RIAs and Nunavut Tunngavik Incorporated (NTI) determine the manner in which land use development proceeds throughout Nunavut.

#### **General Overview of Land Use Decision-making Process on IOLs**

Below are general considerations for land use decision-making processes on IOLs throughout the Nunavut Settlement Area. With respect to Subsurface Inuit Owned Lands, NTI shall only grant an Exploration Agreement on a portion of lands that:

- a. has been declared open to mineral exploration and mining by the RIA, in writing, after consultation with their CLARCs/CBCs, and
  - b. is not subject to an Exploration Agreement, a Production Lease, or a mining claim or lease under the Canada Mining Regulations.
- With respect to the Surface Inuit Owned Lands, once a land use application is received, RIAs have the responsibility to ensure that Inuit rights with respect to land and other interests (e.g. state of environment, wildlife including access for hunting and harvesting,

economic, society) are considered in all land use applications along with the impacts of such use.

- RIAs rely on the information of their CLARCs or CBCs to assist them in decision making regarding land use applications and developments that may affect that community or the areas near them.
- CLARCs and CBCs provide RIAs with local knowledge of the environment including information on local land uses, important wildlife information and considerations (e.g. camp sites, breeding grounds, migration routes).
- RIAs are responsible for responding to land use applications on surface IOLs and forwarding applications to the CLARCs or CBCs for their review, advice and recommendations.
- RIAs inform the CLARCs and CBCs of the deadline for meeting on a land use application and reporting back to the RIA. RIAs provide all the information necessary to assist the CLARC or CBC in making recommendations to the RIAs.
- As a result of the CLARC or CBC providing the RIA with local information and advice regarding the land use applications, RIAs can then assess whether or not the requested land use application should go ahead or not and if so, under what conditions the project should be allowed to proceed.
- Based on the information, advice and recommendations of the CLARCs and CBCs on a land use application on surface IOL, the RIA makes a decision on whether to approve, or not approve a land use application on IOL.
- RIAs inform the CLARCs or CBCs of its decision.
- The processes of the Kivalliq Inuit Association and the Qikiqtani Inuit Association provide that if there is no consensus between the CLARC and the RIA, the issue may be resolved by the Board of Directors of the RIA.