

NUNAVUT PLANNING COMMISSION
PUBLIC HEARING ON THE 2016 DRAFT NUNAVUT LAND USE PLAN

NUNAVUT WATER BOARD

PRE-HEARING WRITTEN SUBMISSIONS

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Nunavut Water Board
Submission for the Public Hearing on the 2016 Draft Nunavut Land Use Plan

1/13/2017

1 Background and Objectives

These submissions are provided on behalf of the Nunavut Water Board (subsequently the Board or NWB), an Institution of Public Government established under Articles 10 and 13 of the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (the *Nunavut Agreement*). Article 13, Section 13.2.1 of the *Nunavut Agreement* establishes that the NWB: “...shall have responsibilities and powers over the regulation, use and management of water in the Nunavut Settlement Area.”

The NWB fulfills its role in Nunavut’s integrated regulatory system primarily through processing and on-going administration of authorizations (licences and approvals without licences) for the use of freshwater in the Nunavut Settlement Area and the deposit of waste into such waters. In addition, under the *Nunavut Agreement* the NWB has specific rights and responsibilities to participate in Nunavut’s land use planning processes. Article 13, Section 13.4.1 of the *Nunavut Agreement* states: “*The NWB shall contribute fully to the development of land use plans as they relate to water in the Nunavut Settlement Area by providing its recommendations to the NPC.*” In addition, the legislative bases applicable to both the Nunavut Planning Commission (the Commission) and the NWB elaborate further on the respective roles of the Commission and the NWB in the context of land use planning; see for example s. 56¹ of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14 (NuPPAA) and s. 36² of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10.

Recognizing both the NWB’s mandate and the Board’s express roles and responsibilities to participate in the land use planning process, the NWB offers the following comments in respect of the Draft Nunavut Land Use Plan, 2016 version (DNLUP 2016). As expressed at the Pre-hearing Conference hosted by the Commission in November 2016, the NWB also intends to present the Board’s views by participating in the relevant component of the Commission’s Public Hearing in respect of the DNLUP 2016 scheduled for March 2017.

2 General Comments and Recommendations

In general, the NWB recognizes and supports the Commission’s approach to move from the initial development of regional plans to a comprehensive, Nunavut-wide land use plan as evidenced in the DNLUP 2016. However, as recognized by the Commission, the DNLUP 2016 has deferred the integration of water management planning and land use planning to a subsequent version of the Plan. Stating:

¹ Section 56 of NuPPAA states: The Commission must, in exercising its powers and performing its duties and functions under sections 49 and 52 and subsection 54(2), consult with the Nunavut Water Board and take into account any recommendations provided by that Board under subsection 36(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*.

² Section 36 of the NWNSRTA states: The Board shall contribute fully to the development of land use plans so far as they concern waters in Nunavut, by providing recommendations to the Nunavut Planning Commission.

*Land use management within these water management areas is expected to be an important component of future generations of the NLUP because of the inter-connectivity between land and water throughout the NSA.*³

As such, the NWB's input in terms of the content of the current plan is necessarily limited. However, as the NWB also recognizes the central importance of integrating land use planning and water management planning throughout the Nunavut Settlement Area and commits to working with the Commission on future iterations of the DNLUP 2016 to achieve these ends the NWB has offered general comments and observations as appropriate.

In general, the NWB notes that despite the acknowledgement of the importance of future integration, the DNLUP 2016 does not contain any additional detail regarding how subsequent revisions to the DNLUP 2016 that will be necessary to integrate water management planning considerations into the NLUP will occur. For example, will these important measures be confined to the general cycle of NLUP updating or will the revisions only be considered if other formal plan revisions are triggered, or is it contemplated that the NWB and the Commission will engage in specific integration measures throughout the implementation cycle of the DNLUP once approved. The NWB recommends that the Commission provide greater clarity regarding how the Commission expects future generations of the NLUP to reflect the integration of land use planning with water management, given the importance of this issue to not only the NWB, but Nunavummiut in general.

Overall structure and clarity of the DNLUP;

As noted above, the DNLUP 2016 deferral of general water management issues to subsequent versions of the NLUP raises questions for the NWB regarding the overall plan amendment process and timing associated with making substantive changes of this nature to the DNLUP 2016. In the absence of details in respect of the expected process for making the amendments required to fully reflect the integrated nature of land and water management, it is difficult for the NWB to ensure that the Board's water management planning activities do not duplicate, overlap or create inconsistency with the Commission's amendment process. In the NWB's view, greater clarity on the process for, and timing of, substantive DNLUP 2016 revisions will benefit all contributors to the Commission's review of the current version.

Issues 2.2-2.8

The NWB does not have any comments to add to the specific Issues listed as 2.2-2.8 in the Written Submission Template.

3 Specific Comments and Recommendations

The NWB offers the following detailed comments, analysis and specific recommended changes to the DNLUP 2016:

Guidance on Adaptation and Changes to Identified Freshwater Caribou Crossings

3.1.1 Reference in DNLUP

Page 27, section 2.2.1.4.

³ Page 20, Section 1.5, DNLUP 2016.

3.1.2 Comment

Although the management of caribou specifically is not within the NWB's jurisdiction, the management of the freshwater bodies identified in the DNLUP 2016 as having freshwater caribou crossings could be subject to water licensing processes by the NWB. As the NWB anticipates that during water licensing processes the NWB will be required to consider the presence of crossings and may also hear from affected communities about changes to the locations of freshwater caribou crossings over time, the NWB would benefit from additional direction regarding how changes to the crossings as identified in the DNLUP 2016 may occur and be communicated by the Commission.

Commission Recommendation Regarding Protection of Communities' Drinking Water Supplies Outside of Municipal Boundaries

3.2.1 Reference in the DNLUP

Page 38, section 4.4.1.

3.2.2 Comment

One of the Commission's current recommendations under section 4.4.1 reads as follows:

The NPC recommends that in implementing the Nunavut Land Use [sic] NLUP, federal or territorial ministers, department agencies, municipalities, Institutions of Public Government, the National Energy Board, federal environmental assessment panels, and other Regulatory Authorities ensure Proponents give reasonable consideration to ensure the protection of communities' drinking water supplies.

The NWB is unclear regarding the extent to which the Commission views this recommendation and the implementation of the DNLUP 2016 as adding to the regulatory requirements of any of the agencies listed and that would have a regulatory role in assessing and/or approving activities that could impact a community water supply based outside the municipal boundaries. In addition, the direction appears to be to regulatory agencies, but requires activity on the part of project proponents. Accordingly, it is unclear whether the Commission intended for this recommendation to add to the application requirements of proponents and/or add to the factors already considered by agencies such as the NWB in the fulfillment of their general project assessment/approval processes or not.

3.2.3 Recommendations

To reflect the Commission's intention, this recommendation should be clarified as to which party the Commission intends to direct (Proponents or regulators) and also whether this recommendation is intended to create an additional obligation for regulatory agencies. From the NWB's perspective, if the present wording is intended to direct regulators to ensure protection of communities' drinking water supplies, it is a recommendation to consider a factor that the Board is already mandated to consider.

Preamble to Terrestrial Linear Infrastructure Section

3.3.1 Reference in the DNLUP

Page 43, section 5.5.1.

3.3.2 Comment

In the introductory comments in section 5.5.1, the DNLUP 2016 indicates:

The environmental assessment and water licensing processes, through NIRB and NWB, will look at the works and activities involved in creating a corridor in Nunavut.

However, the NWB must point out that depending upon the water use and potential waste deposits associated with specific infrastructure, not all terrestrial infrastructure may trigger the requirement for a water licence.

3.3.3 Recommendation

To reflect that the regulatory requirements may vary, the NWB recommends revision to the sentence in section 5.5.1 as follows:

Depending upon the applicable ~~The environmental assessment and water licensing processes, through the NIRB and the NWB, will~~ may look at the works and activities involved in creating a corridor in Nunavut.

Referrals Based on Cumulative Impacts to the Nunavut Impact Review Board

3.4.1 Reference in the DNLUP

Page 50, section 6.3.2.

3.4.2 Comment

In the event that the Commission determines that a project proposal that would otherwise be exempt from screening by the Nunavut Impact Review Board (NIRB) should, nonetheless be referred to the NIRB for screening on the basis of cumulative impacts, the NWB's licensing process cannot proceed until the NIRB has concluded the required assessment. Consequently, the NWB (and water licence applicants) would benefit greatly from clearer direction on the considerations the Commission will take into account in determining whether to trigger a cumulative effects referral to the NIRB. The DNLUP 2016 expressly notes that the Commission: "...*may develop policies and procedures, including a list of factors to be considered to determine the likelihood and severity of cumulative impacts*" but there are no further details regarding what considerations inform the Commission's decision to refer on the basis of cumulative impacts.

In addition, the NWB notes that information regarding potential cumulative effects is often provided to the NWB by participants in the Board's licensing processes, and may also be included in the monitoring reports received by the NWB under active water licences. In the Commission's discussion of cumulative impacts currently contained in the DNLUP 2016, there is also no reference to the Commission's receipt of this type of updated cumulative effects information. Although the details of these mechanism are perhaps best addressed in the policies and procedures to be developed by the Commission, the NWB would like to see in the NLUP an express reference that establishes that the Commission's assessment of cumulative effects can, and will, be supported by information and consultation with other agencies such as the NWB and the NIRB that may be in receipt of the most up to date cumulative effects data in a given area.

3.4.3 Recommendations

The NWB recommends that the Commission provide greater detail regarding the Commission's approach to determining cumulative impacts such as including a general list of factors that will be considered by the Commission. In addition, the NWB recommends that the Commission reference the role of other agencies in contributing current cumulative effects information to the Commission for consideration when assessing cumulative effects.

NLUP Amendments and Reviews and Monitoring

3.5.1 Reference in the DNLUP

Page 51, sections 6.3.4 and 6.3.5

3.5.2 Comment

As noted above as the DNLUP 2016 has deferred the integration of general water management requirements into subsequent versions of the NLUP, the NWB would have expected to see, included as an express “major change” to the NLUP, changes required to more fully incorporate water management planning considerations into the next version of the NLUP. Alternatively, this express recognition that integration initiatives between the Commission and the NWB may trigger periodic review of the NLUP may be appropriate. The NWB notes in section 6.3.5 the Commission has clearly indicated that “*both IQ and community feedback*” can act as triggers to commence a plan review, but has not indicated that requests from the other Institutions of Public Government in Nunavut’s integrated regulatory system such as the NWB, the Nunavut Wildlife Management Board, the Nunavut Impact Review Board and the Nunavut Surface Rights Tribunal could also trigger periodic reviews. Given that the IPGs are both bound by, and responsible for implementing certain aspects of the NLUP the NWB would recommend inclusion of a more express reference to the role of IPGs in the NLUP amendment, review and monitoring processes.

3.5.3 Recommendations

The NWB recommends the DNLUP 2016 be supplemented to include express reference to the commitment of the Commission to making substantive revisions to the NLUP to reflect incorporation of water management considerations into the plan. The NWB also recommends that additional general details regarding the process and timing associated with NLUP amendments, reviews and monitoring be added to this section of the DNLUP.

Research Priorities for Cumulative Impacts

3.6.1 Reference in the DNLUP

Pages 53-54, section 6.8.5.

3.6.2 Comment

The NWB affirms the Board’s strong support for the research priority identified under this section of the DNLUP 2016 as follows:

Identify acceptable thresholds and baseline indicators to manage the impacts from commercial and industrial Project/Project Proposals on:

- 1) Fresh water quality within Nunavut’s water management areas and smaller watersheds under development pressures;*

The NWB also wishes to clearly communicate the Board’s expectation that to the extent research on these issues is conducted and thresholds/baseline indicators end up being considered by the Commission as a result, the NWB would expect to be consulted by the Commission and to work collaboratively with the Commission to review and provide the NWB’s advice regarding this important and timely research.

4 Editorial Recommendations and Considerations

The NWB does not have any comments for this section.