

2016 Draft Nunavut Land Use Plan Public Hearing: Government of Canada Presentation

March 21 to 28, 2017
Iqaluit, Nunavut



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Purpose of Presentation

This presentation:

- Summarizes the comments and recommendations of the Government of Canada's (GoC) written submission on the 2016 Draft Nunavut Land Use Plan.
- Seeks to assist in identifying opportunities to make progress toward developing a sound, balanced, well-supported, clear and implementable first-generation land use plan.



Contributing Departments and Agencies

- Joint submission on behalf of the GoC:
 - Canadian Coast Guard
 - Department of National Defence
 - Environment and Climate Change Canada
 - Fisheries and Oceans Canada
 - Global Affairs Canada
 - Indigenous and Northern Affairs Canada
 - Justice Canada
 - Natural Resources Canada
 - Parks Canada
 - Transport Canada

Principles Used to Review the DNLUP

- GoC comments and recommendations to the Nunavut Planning Commission (NPC) are guided by the following considerations:
 - Fulfill the objectives of the Nunavut Agreement
 - Legal compliance
 - Policy consistency
 - Planning process credibility
 - Clarity and certainty
 - Implementation
 - Regulatory efficiency

Overview

1. General Comments

- Scope
- Finding a Balance
- Use of Planning Tools
- Process

2. Specific Comments

- Marine Transportation
- Linear Terrestrial Infrastructure
- Caribou Protections
- Key Migratory Bird Habitat Sites
- Mineral Potential
- Existing Rights
- Drafting
- Overlapping Designations / GIS
- NPC's recommendations to Government (Annex C)
- Scientific Research

3. Process Moving Forward



Scope

Summary:

- Developing a territory-wide land use plan for Nunavut is challenging. The geographic expanse and regional diversity of the territory provide many competing interests.
- Not all issues can be resolved within a land use plan. Information gaps make firm planning decisions difficult and may be better managed through other processes.
- Establishing an appropriate scope for the Nunavut Land Use Plan will avoid duplication with other parts of the regulatory system.

Recommendation:

- It is important that the Plan approaches each issue in the context of the broader regulatory framework.
- In addition, further consideration must be given to identify issues that are beyond the scope of a first-generation Land Use Plan.

Finding a Balance

Summary:

- The Nunavut Land Use Plan must achieve an appropriate balance between broad social, cultural, environmental and economic goals.
- GoC is concerned that in some instances the draft Plan goes beyond what is required to achieve a given objective, which can lead to unintended consequences.
- Without rationales for the NPC's proposed recommendations within the draft Plan, it is difficult to determine why certain recommendations are proposed and what trade-offs were considered.

Recommendation:

- NPC should clarify its rationales for decision making.
- NPC should, as much as possible, outline the trade-offs made in the planning decisions and their consequences.

Use of Planning Tools

Summary:

- The land use plan must allow for clear and predictable decision-making.
- The draft Plan puts pre-conformity requirements on some project proposals, leaving considerable uncertainty as to whether an activity will meet conformity requirements.

Recommendation:

- The GoC suggests that the NPC ensure the conformity requirements in the draft Plan are based on objective criteria that can be met with a level of information that can reasonably be expected for a project in the early stages of development.

Process

Summary:

- The GoC has requested that the Commission consider adjustments to the planning process in order to work through some significant unresolved issues.
- It is expected that there will need to be significant changes to the draft Plan.

Recommendation:

- The GoC recommends that the next steps in the planning process are developed with input from the planning parties to ensure outstanding issues are resolved.

The process should include:

1. Transparent public involvement that includes greater input from community, regional, and indigenous peoples;
2. Analysis of Plan scope, to ensure that it is workable and appropriate for a first-generation land use plan.
3. Opportunity to complete a line-by-line legal and editorial review;
4. Collaboration between NPC and the three approving parties to find acceptable solutions to any remaining large issues of concern;

Marine Transportation

Summary:

- Proposed marine transportation restrictions within portions of the Nunavut Settlement Area could:
 - Impede search and rescue, and emergency response activities,
 - Impact national defence and national security operations;
 - Have unintended consequences on essential government and non-government operations and services (e.g. community resupply);
 - Potentially provoke a negative reaction from certain other states.

Marine Transportation

Recommendations:

- The GoC recommends that marine transportation restrictions be removed from the draft Plan, recognizing that seasonal marine setbacks around specific areas of wildlife concentrations (e.g. bird breeding colonies, walrus haulouts) are appropriate.
- The GoC recommends that a combined and collaborative approach be taken to address marine transportation needs and environmental protection using:
 - Existing robust marine vessel regulations with continued input from Indigenous peoples, territorial and federal departments, stakeholders and industry;
 - Engaging a more flexible forum that can better adapt to the ever-changing conditions in the North. For example, increased involvement of the Nunavut Marine Council (NMC), which allows for complex issues to be resolved in a consultative, inclusive and dynamic manner;
 - Canada's Oceans Protection Plan initiatives, which will offer opportunities for renewed and coordinated collaboration with co-management bodies like the NMC, as well as Indigenous groups, to provide recommendations related to marine transportation.

Marine Transportation

- The GoC is confident that there are multiple benefits to accepting this approach:
 - Collaborative and Dynamic;
 - Resolves Information Gaps;
 - Assesses Implementation Strategies;
 - Incorporates Inuit Qaujjimajatuqangit and Scientific Knowledge;
 - Avoids Unintended Consequences;
 - Avoids delaying First-Generation Land Use Plan while complex issues are worked out.

Marine Transportation

- Imposing marine restrictions on vessels engaged in search and rescue, emergency response operations or community resupply or support of resupply may jeopardize the health, safety and wellbeing of hunters and other mariners, aviators, passengers, communities and other land users.
- The GoC commits to undertaking consultations with representatives from the NPC, the NMC, Indigenous groups, communities, industry stakeholders, and other government departments throughout the planning and management of marine traffic.
- Utilizing the existing marine traffic regime with improved collaboration will achieve a stronger balance between safety, security and environmental protection.

Linear Terrestrial Infrastructure

Summary:

- The draft Plan would require a plan amendment for highways and railways.
- The draft Plan would require proponents to submit an alternatives analysis for linear infrastructure proposals. While alternatives assessment are crucial for impact assessment, this is not appropriate for a land use plan conformity determination.

Recommendation(s):

- Remove the requirement that all highway and railway proposals require a plan amendment.
- Permit linear infrastructure in all land use designations except where explicitly prohibited.
- Remove the requirement to include alternative assessments for linear infrastructure.

Caribou Protection

Summary:

- The GoC recognizes the importance of caribou to Nunavummiut, concern over population declines, the need to provide meaningful protection for caribou, and the desire to also provide economic opportunities.
- Areas proposed for caribou protection significantly overlap with areas of identified as high mineral potential.
- The proposed blanket prohibitions would not allow mineral exploration and development activity, including in areas where there are active mineral projects, regardless of whether caribou are present.
- The draft Plan would significantly impact economic development opportunities in the territory.

Recommendation:

- The GoC recommends replacing year round prohibitions with a combination of seasonal prohibitions and general protection measures.

Key Migratory Bird Habitat Sites

Summary:

- The GoC provided NPC with detailed technical information and advice regarding key bird habitat sites. This is the best scientific input available to guide the NPC in appropriate treatment of these sites in the land use plan.
- However, the GoC believes that individual community views on key bird habitat sites, on a site-by-site basis, are equally important to ensure the Nunavut Land Use Plan meets the expectations of communities.

Recommendation:

- In the next stages of the hearing process, the views of communities about key bird habitat need to be identified.

Mineral Potential

Summary:

- The well-being of Nunavut's residents depends largely on a healthy environment that can sustain both a traditional economy and a wage economy.
- Special management and protected areas propose prohibitions on activities related to mineral exploration and development. The restrictions in the draft Plan may go beyond what is necessary.
- Geoscience knowledge for the territory is still evolving. Therefore, it is important that designations, where appropriate, allow for exploration and development opportunities to progress provided they meet regulatory requirements.

Recommendation:

- The GoC recommends that NPC adopt a transparent and clear methodology for decision analysis to use when choosing among competing uses.
- The Plan should ensure the geographical extent of prohibitions on activities be kept to the minimum required to protect the value that is the focus of a given site.

Existing Rights & Interests

Summary:

- Year round prohibitions in Protected Areas would prevent some current rights holders from exercising their rights. Prohibitions could lead proponents to abandon current exploration projects and not pursue future activities.
- The negative impact on economic investment and future socio-economic benefits are expected to be significant. It is one of the many values the NPC must consider in its decision-making.
- The land use plan should promote certainty and clarity of rights to the use of lands and resources, consistent with the purposes of the Nunavut Agreement and *Nunavut Planning and Project Assessment Act* (NuPPAA).

Recommendation:

- If the year round prohibitions in Protected Areas on mineral exploration and development remain in the Plan, the GoC recommends adjusting the planning rules such that these prohibitions would not apply in specific locations where there are existing mineral rights & interests.

Drafting

Summary:

- The approved Nunavut land use plan will have the force of law. Therefore, clarity and predictability are fundamentally important objectives.
- Some language in the draft Plan is ambiguous or otherwise unclear, and some statements appear to contradict one another.
- The drafting concerns present issues for the interpretation and, by extension, the implementation of the Plan.

Recommendation:

- It is recommended that NPC work with the GoC and others to refine the language in the draft Plan from a legal and editorial perspective to ensure clarity and consistency.

Overlapping Designations / GIS

Summary:

- In many instances, the draft Plan applies multiple overlapping land use designations to the same parcel of land. These overlaps are not easy to see in Schedule A because of the way the GIS boundary layers are displayed.

Recommendation:

- The Plan should be clear on what land uses are allowed; the GoC recommends the NPC review the draft Plan with a view to limiting overlapping designations.

NPC's recommendations to Government (Annex C)

Summary:

- The draft Plan follows a discussion on a particular topic with a recommendation that government departments or agencies take, or consider taking, particular actions; these recommendations are compiled in Annex C of the draft Plan.
- It is not clear in the draft Plan whether the Commission intends the recommendations to be part of the government's general duty to implement the land use plan.

Recommendation:

- The GoC suggests NPC revise section 7.4 to state clearly that these recommendations to Government are not intended by the Commission to be subject to the implementation duty that arises from section 68 of the NuPPAA and 11.5.9 of the Nunavut Agreement.

Scientific Research

Summary:

- In locations designated as Protected Areas, the draft Plan prohibits research that is related to the prohibited land uses, except for “non-exploitive scientific research.”
- Scientific research contributes to the evidence base which can inform the development of land use designations.
- GoC has concerns that limiting research, may result in an unintended consequence of prohibiting research activities that are not harmful to the values on which the Protected Area land use designation is based.

Recommendation:

- GoC would like to see prohibitions on research removed from all Protected Areas. The Nunavut Impact Review Board’s impact assessment process will continue to ensure sensitive areas are protected.

Process Moving Forward

- In summary, significant issues remain to be resolved before a draft Plan could be finalized.
- The planning process needs to include appropriate opportunities to review and discuss the changes that that will be made as the planning process continues to progress.
- A collaborative approach to designing the next steps in the process is more likely to result in a draft that can be recommended for approval.
- The GoC supports leaving the record open to allow for further and deeper input at a regional and community level which will be key to the successful development of the Plan.