



NTI and the RIAs continue to be committed to assisting the NPC in achieving the goal of establishing a Nunavut Land Use Plan that reflects the priorities and values of Inuit. We sincerely hope that the concerns raised will be corrected before the NPC proceeds further.

### Concerns and Recommendations

#### **1. Significant lapses in meeting the requirement that Inuit oral tradition be respected and Inuit participation be promoted**

The *Nunavut Agreement* is clear that Inuit oral tradition must be respected and given great weight in the hearing process. Section 11.4.17(a) states:

*“the NPC shall at all times, give weighty consideration to the tradition of Inuit oral communication and decision making.”*

Moreover, subsections 11.2.1 (c) and (d) require that the planning process provide for the active and informed participation of Inuit at all times through various means, including through the provision of relevant materials and realistic schedules.

At the Qikiqtani hearing, respect of Inuit oral tradition and decision-making was often lacking and failed to meet the requirements of the *Nunavut Agreement* in the following respects:

- the Chairperson at times interrupted Inuit participants when they were speaking to suggest that they provide their questions in writing;
- the Chairperson at times did not allow Inuit participants to speak at all;
- the very strict time limits for asking questions did not promote Inuit participation;
- on a few occasions, Inuit participants were asked to provide their questions in English when they initially spoke in Inuktitut.

This approach discouraged Inuit from participating at the hearing and was not in compliance with the *Nunavut Agreement*.

The Qikiqtani hearing was scheduled to take place from March 21-26. Due to inclement weather, the NPC changed the starting date to the 22<sup>nd</sup>. NPC's March 20, 2017 public notice indicated that the hearing dates were March 22 to 27. The hearing, however, still ended on the 26<sup>th</sup>. This created a sense of urgency and contributed to the practice of interrupting speakers or hurrying along with the agenda. It is our assessment that Inuit participants bore the brunt of an unnecessarily tightened schedule.

Under Article 11 of the *Nunavut Agreement*, the focus of hearings must be to support Inuit participants in providing comments and questions regarding the DNLUP 2016. The active participation of Inuit as set in the *Nunavut Agreement* cannot be curtailed.

## Recommendations:

- Without exception, allow Inuit participants to make comments and ask questions orally in Inuktitut or Inuinnaqtun. Under no circumstances should Inuit participants be requested to provide questions or comments in English when speaking in Inuktitut or Inuinnaqtun.
- Allow more time for Inuit participants to ask questions or make comments on the DNLUP 2016. The length of the hearings should accommodate the expected level of participation, and any unavoidable schedule changes should maintain total hearing time.

## **2. The organization of the hearing did not allow for the informed participation of Inuit**

Subsection 11.2.1 (c) and (d) of the *Nunavut Agreement* are key requirements, which must inform the land use planning process and hearings. Section 11.2.1 (d) states that the process “*shall provide an opportunity for the active and informed participation and support of Inuit*”. As discussed below, there is a serious question as to whether the hearing and process generally has provided that opportunity to Inuit.

### **Inuit participants not adequately informed of plan contents**

It is not at all clear that Inuit delegates were made aware of the contents of the DNLUP 2016 before the commencement of the hearing. Further, the organization and structure of the Qikiqtani hearing itself did not allow for Inuit delegates to become better acquainted with the contents of the DNLUP 2016. Tellingly, for the most part, the hearing did not illuminate the views of Inuit delegates about the specific land use proposals in the DNLUP 2016.

Some Inuit delegates had very limited, if any, prior experience participating in the land use planning process. The DNLUP 2016 is a complex and technical document with major implications and it was unclear how well the proposals in the DNLUP 2016 were understood. Many Inuit delegates were unsure of what was expected of them at the hearing and provided general comments about wildlife in their areas without referencing the DNLUP 2016. In fact, overall, throughout the community presentations there was very little direct reference to the DNLUP 2016, suggesting a lack of familiarity with the contents.

### **Inuit participants not adequately informed of the decisions to be made at the hearing**

Informed Inuit participation requires the Commission to clearly explain at the hearings the decision that is before the Commission, and the role of Inuit and other participants in the hearing process. It was not made clear at the Qikiqtani hearing that the decision before the Commission is whether (i) to submit the DNLUP 2016 as is for approval or (ii) to modify the DNLUP 2016 before submitting it for approval, and if so, in what respects should the plan be modified. To adequately address this choice, the Commission must present the contents of the DNLUP 2016, including the proposed land use designations to all participants at the hearings in enough detail to ensure the contents of the DNLUP 2016 are understood and to allow for informed comments and questions.

For example, on a number of occasions, Commissioners asked questions to participants in a binary or “black or white” fashion. They consistently presented the decision before the Commission as one of protection versus development without grounding the questions in the DNLUP 2016 land use proposals. This misrepresented the purpose of the hearing and unnecessarily placed Inuit participants in a position of having to answer vague and hypothetical questions without reference to the DNLUP 2016 itself, which was the supposed subject of the hearing.

Additionally, some speakers who suggested that there should be improvements to the consultation process were asked a similar binary question. The questions placed the concern for more community consultation directly at odds with caribou protection. This, once again, misrepresented the purpose of the hearing. Posing questions in a “all or nothing” fashion is not helpful.

The DNLUP 2016 proposes a number of different types of designations. These include Protected Areas, Special Management Areas and Mixed Use Areas that are intended to play a role in the protection of valued resources including wildlife. At the Qikiqtani hearing, there was little to no discussion of the role of each of the designations in addressing concerns. The land use plan as a whole is set within a context where legislative and regulatory regimes play a part in protecting resources. Major projects are screened and Nunavummiut are consulted about those projects. It is unfair to put community members in a position where they have to say, on the record, what their preference is on such a broad question like “protection or development” without being provided further information about specific land use proposals or the regulatory regime. It is important that Commissioners raise questions within the context of the specific proposals in the DNLUP 2016. Commissioners should be provided with more support to be able to play this role at the hearings.

### **The regional hearing failed to focus on regional issues**

At the Qikiqtani hearing, it was surprising that NPC's presentations addressed land use planning proposals primarily from a territorial focus with little emphasis on the Qikiqtani region, where the hearing was taking place. Additionally, maps that would have allowed for a discussion on a regional basis were not readily available. The NPC staff presented only a very general and broad overview of the DNLUP 2016. NTI and the RIAs were also disappointed that QIA was not provided the opportunity to make a closing statement, especially since the hearing was happening in the Qikiqtani region and that QIA is not currently planning on attending the other two hearings.

As a result of the above flaws, the obligation to garner informed Inuit support as required by section 11.2.1 (d) of the *Nunavut Agreement* was not met.

### **Recommendations:**

- Identify the decision before the Commissioners at the hearings, i.e. whether (i) to submit the current DNLUP 2016 for approval or (ii) to modify the DNLUP 2016 based on submissions and to submit a revised draft for approval) and if so, in what respects should the plan be modified.
- Present all proposed designations by community and other land use proposals pertinent within the region.

- Provide maps at a scale that focusses on the land use proposals at a community and regional level.
- Focus questions (by Commissioners) and invite submissions and discussion on the specific land use proposals and designations in the DNLUP 2016.

### **3. The process to provide new evidence was unclear**

A number of times NPC invited community participants to make further written submissions regarding new proposals for the DNLUP 2016. In one case, the Amarok HTA proposed a large new Community Area of Interest for eight communities. It is unclear what the process will be for evaluating this proposal or other new proposals or evidence and for allowing all participants to comment on these submissions. The NPC must outline the procedure for commenting on new proposals and evidence. Additionally, all participants should be notified as to what is considered as new evidence since the opening of the public hearings.

Also, during presentations, participants were provided a laser pointer to comment on maps that were displayed on the screen. It is uncertain if the information provided by the Inuit delegates using the pointer was recorded at all times during the hearing and if so, how that information will be utilized.

At a minimum, the NPC procedure should allow for all participants to provide:

- i. written submissions regarding the new evidence or proposals,
- ii. the ability to respond to written submissions of other participants, and
- iii. an oral hearing if the evidence or proposal is substantial and is one that NPC will seriously entertain (e.g. a proposal that impacts the interests of several communities or is related to an issue of regional or territorial significance).

Recommendation:

- Provide notice of what new proposals and evidence the NPC has received into the record since the opening of the public hearings.
- Provide an adequate procedure for addressing new evidence and proposals that allows for participants to provide written comments and/or oral comments and the ability to respond to the comments of other participants on the evidence or proposal.
- Capture the submissions that participants share by referring to maps in their oral submissions and explain to participants how this will be done so that everyone can have confidence that this input is being recorded and can know where to search for it in the hearing record.

### **4. Concerns regarding the role of the Commissioners**

#### **i) Maintenance of Objectivity**

In a few instances during the hearing, Commissioners made remarks and asked questions that suggested that they had already made up their minds about issues or that they might have a

perceived of lack of open-mindedness towards certain views or participants. This raises serious questions about the required objectivity of the Commissioners.

## **ii) Composition of the Hearing Panel**

The composition of the NPC panel at the Qikiqtani hearing raises serious concerns about balance and fairness. Two out of the six Commissioners at the hearing, one third, were nominated by Makivik Corporation. They appeared to be assessing input not only for Areas of Equal Use and Occupancy (AEUO), but also for the Nunavut Land Use Plan as a whole. There was no explanation or caveat given regarding the nature of the roles played by the Makivik nominees on the Commission.

Under section 40.2.14 of the *Nunavut Agreement*, Makivik Corporation was entitled to nominees on NPC hearing panels, only prior to the ratification of a Nunavik Inuit Land Claims Agreement (NILCA), and then only for decisions that apply to activities in the AEUO. Following ratification of the NILCA, Government, NTI and Makivik Corporation were to agree on a permanent regime for the AEUO, which has not happened. Given this, Makivik Corporation is not entitled to nominees on the Qikiqtani NPC hearing panel nor for the other regional public hearings.

In addition, the *Nunavut Planning and Project Assessment Act* (NuPPAA) does not provide for Makivik Corporation nominees on the hearing panel (s. 11(4)) and only provides for Makivik Corporation nominees to take part in conformity and screening/review decisions under Part 3 of NuPPAA in an AEUO. At most, Makivik Corporation nominees on a hearing panel should only be involved in planning decisions relating to the AEUO.

Given the above, the participation of Makivik Corporation nominees as one-third of the NPC panel, in NTI's view, upset the balance of the discussion at the hearing, resulting in unfairness to Nunavut Inuit.

Recommendation:

- The composition of the hearing panel should be corrected in the next two hearings.

## **5. Concerns regarding the hearing environment and overall fairness**

The Qikiqtani hearing was presented by NPC as being an “informal public hearing/informal hearing venue”. The term is defined in the NPC's *Rules of Procedure for Public Hearings and Public Review* as:

*an open forum community meeting which is held primarily to allow participants the opportunity to communicate their views about the proceeding in an informal environment, and submit evidence to the Commission relevant to its inquiry.*

In contrast to the NPC's stated intentions, the lines were often blurred between a “formal” and an “informal” public hearing. NPC's legal counsel and Commissioners asked questions of some participants as if conducting a cross-examination of witnesses, which conflicts sharply with the requirements of Article 11, and in particular, subsection 11.2.1 (d) and (g) and 11.4.4 (e) and

(g). This did not create an environment where parties were at ease to actively participate in the hearing. In contrast, subsection 11.4.4 (g) of the *Nunavut Agreement*, and other provisions, require that the NPC promote public awareness and discussion. The format of the hearing and the conduct of some of the Commissioners and staff discouraged discussion rather than promoting it.

To create an environment that encourages Inuit participation and overall participation, introductions of all participants and a general open-mindedness to receiving feedback are necessary. The agenda should include time for Inuit delegates, as well as organizations with standing, to introduce themselves at the start of the hearing. Additionally, the organizations with standing such as NTI, the RIAs and governments should present after NPC to allow Inuit delegates to hear all the views on the DNLUP 2016 before presenting.

For the next two hearings, the role of pre-written questions should be reconsidered. Participants were asked to submit pre-written questions addressed to the NPC. NPC staff read these pre-written questions into the record and then answered them. It was unclear when NPC read these questions whether the questions were from NPC staff or by other participants. It would be better if participants were allowed to read their own questions at the hearing. Additionally, NPC staff prepared questions to ask participants that they did not share with participants ahead of time. To ensure that participants are able to answer NPC questions at the hearings, NPC should share as many of their questions as possible with participants well before the hearings.

All these issues contributed to the overall result that Inuit were not adequately engaged in the process that the NPC is charged with leading under Article 11.

#### Recommendations:

- Allow the Inuit delegates and organizations with standing to introduce themselves at the start of the hearing.
- Allow participants to read their own pre-written questions.
- NPC to share as many of their questions as possible with participants ahead of the hearings.

#### Conclusion

The concerns and recommendations above are made with the view of ensuring the best possible hearing processes for all parties. These comments were also prepared in the absence of access to the transcripts and such transcripts may reveal additional or other concerns. Obligations contained within the *Nunavut Agreement* and principles of administrative law including procedural fairness must be upheld at all times.

Given the serious shortcomings in the hearing in Qikiqtani detailed above, NTI and the RIAs recommend strongly that the above deficiencies be remedied and recommendations followed at the next hearing in Rankin Inlet in June and the hearing in Cambridge Bay in October. Failure to correct the errors listed in this letter in the next two hearings will potentially jeopardize the land use planning process.

In closing, NTI and the RIAs continue to be committed to the land use planning process and continue to invest our resources to participate. We remain open to working with you and invite you to contact our offices if you have any questions or concerns.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'James Eetoolook', with a stylized, sweeping flourish.

James Eetoolook  
Vice-President, NTI

c.c.

Honourable Peter Taptuna, Premier of Nunavut  
Honourable Joe Savikataaq, Minister of Environment, Government of Nunavut  
Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, Government of Canada  
Mr. PJ Akeeagok, President, Qikiqtani Inuit Association  
Mr. David Ningeongan, President, Kivalliq Inuit Association  
Mr. Stanley Anablak, President, Kitikmeot Inuit Association