



## GHOTLENENE K'ODTINEH DENE



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### NORTH OF 60 DENE NÉNÉ LAND CLAIM NEGOTIATIONS

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December 5, 2014

Nunavut Planning Commission  
Acting Chairperson, Percy Kabloona,  
P.O. Box 2101  
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**BY FAX:867 983 4626**

Dear Mr. Kabloona;

Thank-you for your letter of October 31, 2014. We are encouraged to hear the NPC has not made a decision on whether or not it will revise the DNLUP prior to the public hearing or in the manner requested, and the NPC will consider all submissions and input received on the DNLUP with an open mind. Your letter provides the NPC's perspective on the processes and events which led to the decision to propose that the lands subject to OIC PC# 2013-625 be designated as a Protected Area in the 2014 DNLUP and the legal and practical effect of that decision on our ratification process. We would like to provide you with the GKD perspective on these. Our hope is that we can reach a solution that meets the interests of both the NPC and GKD through a more thorough exchange and discussion of information and views. This process has worked well in the past and we would like to build upon the relationship developed over the last 5 ½ years to reach a mutually acceptable solution.

#### **Process and Events Leading to the Decision**

GKD have been engaged with the NPC regarding the NLUP process since April 2009. On June 17, 2009 our technical advisors participated in a conference call with NPC staff. NPC staff outlined the process of preparing a NLUP and GKD provided NPC with an overview of GKD interests as they related to the NLUP process. The key question discussed during this call was ***“how to incorporate an area of Nunavut that is subject to ongoing land claims negotiations into the land use planning process in a way that meets the objectives of both NPC and GKD.”*** Addressing this question has been the focus of our ongoing discussions with NPC and a primary objective of GKD participation in the NLUP process ever since. In our view, this objective was one that NPC shared with GKD.



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Throughout the remainder of 2009, there was continued communication and information exchange. NPC provided GKD with relevant planning information including broad planning policies, goals and objectives; the Issues to be Addressed in the NLUP and the Issues and Priorities Compilation documents. NPC requested GKD provide NPC with traditional knowledge and land use information. GKD responded to this request on September 30, 2009 and provided NPC with a map describing GKD land use in Nunavut. The September 30 letter also included a request to discuss arrangements for GKD inclusion in the NLUP process that reflected our asserted rights as per the Samuel Thorassie Statement of Claim and recognized the progress made since 1999 in negotiations with Canada, GN, NTI and KIA. In November 2009, NPC facilitated a conference call where the requests in the September letter were discussed in addition to various aspects of an approach to move forward in a way that met the objectives of both NPC and GKD.

In February 2010, GKD representatives met with NPC representatives in Winnipeg. NPC requested digital format data for the land use information provided to NPC in September 2009 and digital data representative of the area subject to the Samuel/Thorassie negotiations. In May 2010, GKD provided NPC with digital format data regarding GKD land use in Nunavut, the area under negotiation to resolve the Samuel/Thorassie litigation and the Area of Asserted Aboriginal Title under the Samuel/Thorassie litigation. In May 2010, GKD representatives attended the NPC Technical Workshop in Edmonton. In June 2010, NPC informed GKD that the June 17<sup>th</sup> 2010 version of the Draft NLUP and associated documents were available for review. The 2010 Draft NLUP included the Area of Asserted Aboriginal Title under the Samuel/Thorassie litigation with the following notation;

*Since 1999, the Samuel/Thorassie litigation has been in abeyance. Manitoba Denesuline and Government are actively negotiating resolution of the issues raised in the litigation including Manitoba Denesuline Aboriginal and Treaty rights in Nunavut and Manitoba Denesuline Aboriginal title in Nunavut.*

In our view, the inclusion of the area, the notation and the provision to NPC of the digital format data referenced above substantially addressed the key question agreed upon during the June 17<sup>th</sup>, 2009 conversation with NPC staff.

In September 2012, NPC notified GKD that the 2012 version of the Draft NLUP and associated documents were available for review. The 2012 Draft NLUP contained the same information regarding the Samuel Thorassie negotiations as was in the 2010 version of the Draft NLUP. The 2012 Draft NLUP also designated the Area of Asserted Aboriginal Title as Mixed Use (Schedule A) and recommended in Schedule B that;

- Project Proposals located in areas of traditional land use should take into account impacts on the culture and value of the area (BHC –R2) for a portion of the Area of Asserted Aboriginal Title and;
- Project Proposals located in and or near a Heritage River should take into account the guidelines and criteria contained in the Heritage River’s management plan (ECP-R1) for the Kazan River.

In our view, these provisions of the 2012 version of the Draft NLUP continued to substantially address the key question agreed upon during June 17<sup>th</sup>, 2009 conversation with NPC staff.

In June 2013, NPC invited GKD to participate in the Cambridge Bay Workshop. Logistics and cost were factors considered regarding GKD attendance, but also considered was the fact that the Draft 2012 plan substantially addressed concerns regarding the land claims negotiations and GKD had provided NPC with all data requested. Based on these factors, GKD decided not to send a representative to the Cambridge Bay Workshop. In September 2013, NPC provided GKD with the Filling in the Gaps Workshop Report. A review of this document did not raise any concerns regarding GKD interests. We saw no reason to make a submission confirming our interests were adequately addressed by the 2012 Draft NLUP as there was no indication in the Workshop Report that changes had been proposed to compromise those interests. The OIC PC# 2013-625 was made public prior to the Workshop. A submission by GKD to NPC specifically to inform NPC of a public withdrawal did not seem necessary. While the withdrawal is an indication that the negotiations are proceeding to conclusion, incorporating it or excluding it in the NLUP would, from our perspective, neither have enhanced or detracted from addressing the key question agreed upon during the June 17<sup>th</sup>, 2009 call.

In April 2014, NPC held community meetings in Lac Brochet and Tadoule Lake. At both community meetings, GKD leaders and technical advisors informed NPC representatives that they were negotiating a land claim in Nunavut and that they did not want the planning process to hinder or interfere with the land claim negotiations. The materials NPC presented and discussed at these meeting were all consistent with the 2012 version of the Draft NLUP including the Schedule A and B information referenced previously. These materials confirmed again that the 2012 version of the Draft NLUP continued to substantially address the key question as it was mutually stated during the June 17<sup>th</sup>, 2009 conversation with NPC staff.

At these community meetings, NPC staff also were advised of the land withdrawal. The existence of the land withdrawal was raised for information purposes only and in the context of an update on the land claims negotiations progress. GKD representatives did not request inclusion of the withdrawal area in the next version of the Draft NLUP or suggest that the withdrawal area should be designated a Protected Area in the next version of the Draft NLUP.

On May 7<sup>th</sup> 2014, NPC requested the digital version of the land withdrawal area and other generalized data for the areas important to GKD. On May 7, GKD provided NPC with the digital data for the withdrawal area and requested keeping the Area of Asserted Title Claim as it was depicted in the 2012 Draft NLUP with a recommendation for the area consistent with the BHC-R2 recommendation in Schedule B of the 2012 Draft NLUP.

On May 18 and 25, leadership for Sayisi Dene First Nation and Northlands First Nation submitted letters to NPC requesting protection for caribou calving and post-calving areas consistent with previous requests to NPC from the B/Q Management Board.

On June 19, 2014 GKD received notification via e-mail that NPC had decided to propose a Protected Area designation for the withdrawal area in the 2014 Draft NLUP. On June 20, 2014, the 2014 version of the Draft NLUP was made public.

This overview of the events illustrates that until June 19, 2014, GKD and NPC had worked cooperatively to incorporate recognition of the area subject to the land claims negotiations into the NLUP process. Mutual objectives had been achieved based on open communication and an exchange of requested information. GKD was not provided with an opportunity to comment on the NPC decision to propose a Protected Area Designation for the withdrawal area before the 2014 Draft NLUP was made public. Our review of the communications and documents exchanged between April 2009 and June 2014 has not found any submissions by any planning partner including GKD, other interested party or NPC that requested or suggested a Protected Area Designation for the withdrawal area, prior to June 19, 2014. The only rationale provided for the Protected Area Designation in the 2014 Options and Recommendations document is the land withdrawal. NPC was only aware of the land withdrawal in May 2014, several months past the February 2014 deadline for submissions. Using the withdrawal area as the only rationale for the Protected Area Designation, when NPC only became aware of the existence of the withdrawal data after the deadline for submissions, appears to be contrary to the procedures outlined in the Filling in the Gaps Workshop Report (September 2013) and the Draft NLUP Timeline graphic (September 2013).

**The Legal and Practical effect of the decision on the GKD ratification process**

We understand that the Draft 2014 NLUP has no legal effect. We also understand that if the Draft NLUP is not corrected prior to the Public Hearings, revision of the plan will be dependent upon the Public Hearing and subsequent processes of plan approval and amendment, which are governed by the NLCA provisions and the NUPPA legislative framework .

The outcomes of these legal processes are uncertain. We can advise our members that a strong case can be made at any stage of the plan review, approval or amendment process for removal of the Protected Area Designation, but we also must advise them that there is no assurance that the Protected Area Designation will be changed. If the plan is approved by government (and NTI) with the protected area designation in place, before the ratification process begins, it could significantly undermine the chances of a successful ratification. If we are still engaged in the legal process of plan review, approval or amendment prior to the ratification process, it will complicate the ratification process and add uncertainty to the likelihood of a successful ratification. The effect of the decision is that it sets in motion a legal process that has the practical effect of adding uncertainty to the successful ratification of our land claims negotiations. Unless the plan is corrected, our members will have to decide to ratify a Treaty knowing that the lands provided either cannot or may not be able to be used for the purposes intended.

We understand the risk associated with correcting the Protected Area Designation prior to a public hearing, in terms of the possibility of the Protected Area designation being implemented at the Public Hearing or subsequent stages of plan approval or amendment. We see this risk as more acceptable than the ones described in the previous paragraph. Given that there do not appear to have been any submissions by

any planning partner or other interested party advocating for the Protected Area Designation for the withdrawal area, prior to June 19, 2014, the risk of such a designation appears minimal. Further, it is more appropriate for the onus to be on others to provide a rationale for a Protected Area Designation, rather than placing the onus on GKD to explain why there is no rationale for the Protected Area Designation and how it complicates resolution of the land claims negotiations.

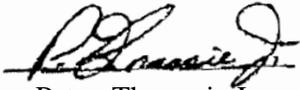
### Next Steps

We share the mutual objective of not introducing any uncertainty into the GKD ratification process. We would like to continue working towards this mutual objective by building upon the positive relationship we have had with NPC since April 2009. We hope providing you with the GKD perspective on events leading to the NPC decision and the legal and practical effect of the decision will contribute to a more thorough discussion of information and views. We propose a conference call between NPC staff and the GKD legal/technical team as soon as possible. We suggest that both parties consider the following in preparing for this call.

- The land use disposition limitations authorized by the withdrawal order are sufficient to protect GKD interests for the remainder of the negotiations. A Protected Area Designation as part of a Draft Plan or approved plan is contrary to GKD interests and adds uncertainty to the ratification process.
- Leaving the designation in the draft plan, for no apparent reason, forces GKD to expend scarce resources on a process of getting the designation removed. This undermines GKD negotiating efforts, which are directed at real issues at the table.
- The only rationale for the Protected Area Designation is the withdrawal. The withdrawal is a temporary measure. When the withdrawal lapses, there will be no rationale for the Protected Area Designation.
- It appears NPC obtained the withdrawal data after the deadline for submissions. Including it in the plan may be contrary to NPC procedures.
- GKD had a reasonable expectation to be consulted regarding the NPC decision to recommend the Protected Area Designation. The 2014 Draft Plan was public one day after NPC informed GKD of their decision. This process denied GKD a fair opportunity to be consulted.
- Including the withdrawal area in the 2014 Draft Plan may be appropriate if it is included for information purposes only. The 2014 Draft Plan could be changed to acknowledge the withdrawal area, its purpose, term, and the types of land dispositions prohibited. The 2014 Draft Plan would then accurately reflect circumstances relating to the land claim negotiations without having to propose a Protected Area Designation.
- Are there any impediments (legal or otherwise) to correcting the 2014 Draft Plan before the Public Hearing?

Someone from the GKD legal/technical team will contact the NPC to arrange a date for the conference call.

Sincerely,



Peter Thorassie Jr  
Chief Negotiator,  
Sayisi Dene First Nation



Benji Denechezhe  
Chief Negotiator  
Northlands Denesuline First Nation

c.c. NPC Executive Director Sharon Ehaloak,  
NPC Policy Director Adrian Boyd.  
Andrew Walker, Chief Federal Negotiator, AANDC