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Nunavut Planning Commission
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Attention: Chairperson Andrew Nakashuk, Nunavut Planning Commission

Draft Rules for Public Proceedings and Rules for Project Descriptions

Thank you for the opportunity to comment on the NPC-Project Description Rules (Public Comment Version) and NPC-Rules For Public Proceedings (Public Comment Version), circulated by the Nunavut Planning Commission (NPC) on July 26, 2019.

Agnico Eagle Mines Limited (**Agnico Eagle**) wishes to express our sincere appreciation for the Nunavut Planning Commission's (**NPC** or the **Commission**) significant efforts to date to carry out conformity determinations in an efficient manner while meeting the requirements of the Nunavut Agreement, the Keewatin Regional Land Use Plan (**KRLUP**), and the *Nunavut Planning and Project Assessment Act* (**NuPPAA**). Agnico Eagle's experience with NPC is that conformity determinations for our projects are currently being made in a timely and responsive way, well within the timelines set out in the Nunavut Planning Commission, Internal Procedure, Conformity Determination (March 2015). In our view, the current information requirements provide NPC with the appropriate level of information needed to evaluate conformity of project proposal applications against the requirements of the KRLUP.

Agnico Eagle offers the following comments for the Commission's consideration from our perspective as an operator of the Meadowbank, Amaruq Whale Tail and Meliadine Mines as well as a proponent carrying out exploration activities in the Kivalliq region of Nunavut. Agnico Eagle would like to emphasise the importance of ensuring that regulatory processes recognize that phased development is an essential component of project development in the North. Where projects have been the subject of previous positive conformity determinations, environmental assessments and regulatory and Inuit approvals, and proponents propose subsequent changes that are within the original footprint, any required conformity determinations by the Commission and subsequent regulatory processes should be appropriately streamlined. The Commission should give consideration to adjusting required information requirements in the Rules for Project Description accordingly for phased development.



Draft Rules for Project Descriptions

Agnico Eagle assumes that once finalized, the Rules for Project Descriptions would replace the prescribed information currently included in the questionnaire on the NPC online portal. If this is not a correct assumption, Agnico Eagle requests that the Commission clarify where the Draft Rules for Project Descriptions fit within the current Commission policies and online project proposal application form.

- As the current system has been working it may not be necessary to include several of the definitions included in the Draft Rules for Project Descriptions. For example, the meaning of "equipment" and "fuel" are well understood. The definition of "waste" proposed in the Draft Rules for Project Descriptions is lengthy and complex. The current forms do not include this definition and instead request a description of "Type of Waste", "Projected Amount Generated", "Method of Disposal" and "Additional Treatment Procedures". Agnico Eagle suggests that since proponents are providing sufficient detail on these topics (based on the current direction from the Commission) for the purpose of conformity determinations, the project proposal application information requirements need not be significantly revised.
- The Draft Rules for Project Descriptions include what appears to be a new information requirement for a *"concise plain language summary"* (see generally Rule 5(d)). While the information proposed to be included in a concise plain language summary appears to be similar to items included in the current information requirements, Agnico has comments on the following three proposed new requirements:
 - **"the anticipated effects on land, including water and wildlife" (see Rule 5(d)(ii))**
- Agnico Eagle notes that only minimal, preliminary, summary high level information on the topic of effects assessment should be required at the conformity stage. Conformity determinations should be made based on straightforward identifiable criteria with limited to no subjective inputs, and a clear distinction between the NPC conformity determination phase and the NIRB environmental assessment phase should continue to be maintained. It is important to emphasise that proponents should not be required to carry out an environmental assessment for the purposes of preparing a project proposal application for the Commission. Once a conformity determination has been made, a thorough environmental assessment will be completed by NIRB during that phase of the application to determine effects, and a recommendation will be made as to whether a project proposal should proceed as well as what mitigations should be imposed.
 - **"whether Inuit use of lands affected by the Project will be limited, and if so, when this limitation would occur" (see Rule 5(d)(iv))** - As far as Agnico Eagle is



aware, this is not a current project proposal application information requirement. Agnico Eagle suggests that this information requirement should be removed as this information is not required in order for NPC to make a conformity determination. Inuit land use is protected under the Nunavut Agreement and is one of the key questions that would be answered at the NIRB environmental assessment stage, should a project proposal application receive a positive conformity determination. Currently, the Commission requires a *"Summary of any community consultation conducted including a summary of concerns expressed and strategies employed to address any concerns"*. Agnico Eagle suggests continuing to request that proponents include a summary of any community consultation conducted in project proposal applications would help identify any potential concerns that should be considered in detail by NIRB at the environmental assessment stage.

- **"Where a Proponent is applying to renew or amend a previous Project Proposal, all modifications made since the original Project Proposal was submitted." (See Rule 5(d)(v))** - For a production mine, notices of modification are frequently submitted under the Type A Water Licence. If all past modifications are required to be submitted with every project proposal application, this may result in the Commission being required to review (and the Proponent being required to gather) large volumes of material that have minimal relevance to a conformity decision. Currently, the project proposal application form requests Proponents to *"be sure to specify any modification you are making from the previous project. If there are no modifications, please clarify that there are no changes to the previous activities."* Agnico Eagle suggests that these current information requirements regarding modifications should be carried forward to the Rules for Project Descriptions.
- **Types of Land Uses (see Rule 5(e))** - Currently, the Commission includes a checklist of potential types of land uses on its online portal. Agnico Eagle requests that this approach continue with some refinement in consideration of phased development.
- **Information about Hazardous Materials to be used or produced in carrying out the project, if applicable (see Rule 5(j))** - It appears the Draft Rules for Project Descriptions include a new requirement to provide details on weight/volume of containers. It is suggested that this type of detailed information may be required at the environmental assessment stage (NIRB), but is not necessary at the conformity determination stage.
- **Information about Environmental Impacts (see Rule 5(l))** - The Draft Rules for Project Descriptions suggest that proponents include, *"a statement of anticipated environmental impacts that may reasonably be anticipated to be caused by the carrying out of the project, whether to land, water or natural resources including wildlife."* The



current form requires proponents to provide "*predicted environmental impacts of undertaking and proposed mitigation measures.*" As emphasized above, in Agnico Eagle's view it is important that the Commission continue to be mindful of the level of information that is appropriate for the conformity determination stage vs the NIRB environmental assessment stage. Under the Nunavut Agreement, NIRB is tasked with carrying out environmental assessments. The Commission should not require environmental assessments in order to carry out a conformity determination. Proponents should not be required to undertake the significant investment it takes to carry out an environmental effects analysis prior to completing the conformity determination stage.

- **List of Future Projects (see Rule 5(n))** - The Draft Rules for Project Description require "*If applicable, a list of any projects related to the Project Proposal that the Proponent has previously submitted to the NPC, is carrying out, or plans to submit to the NPC in the foreseeable future, including any NPC or NIRB file numbers if available.*" Agnico Eagle requests that the requirement to list future projects be removed from this list as the Commission would be requesting such information at too premature a stage. Future projects would be subject to conformity determinations on their own merits, once an application has been filed with the Commission.
- **Additional Information (see Rule 7)** - The Draft Rules for Project Descriptions indicate that "*Notwithstanding the required information listed in paragraph 5 above, NPC staff may request Proponents to provide any additional information that is necessary to carry out a review.*" The standard information requirements have been carefully crafted to provide the appropriate level of information for the Commission to make conformity determinations. In the Kivalliq region, the KRLUP requires additional information as set out in the current NPC online portal. Provided the proponent completes the information required by the forms, sufficient information should be available to NPC to make its conformity determination. Agnico Eagle suggests the rules should not grant the discretion to Commission staff to request additional information outside of the categories designed on the forms.
- **Confirmation of licences, permits or other authorizations (see Rule 8)** - The Draft Rules for Project Descriptions indicate the Commission may ask Proponents to obtain independent confirmation that the Proponent has correctly identified the licences, permits or other authorizations that will be required. Currently, the NPC Online Portal form includes a checklist of potential permits/licences and licencing agencies. This is a very helpful feature in ensuring that Proponents identify potential permits. However, Agnico Eagle suggests that it is not appropriate at the conformity stage to require proponents to obtain independent confirmation of permitting requirements from third parties. Often this determination cannot be made by agencies until well into or even after the environmental assessment process is complete. The level of design detail that



is required to identify permits is often not available at the conformity stage. Agnico Eagle suggests the current NPC information system respecting identification of licences, permits or other authorizations is working well and should not be revised at this time.

- **Use of NPC Proponent Portal (see Rule 9)** - Agnico Eagle finds the NPC Proponent Portal to be user friendly for the most part and supports the NPC electronic submission requirements, provided consideration be given to modifying information requirements for phased development within a footprint which has been subject to previous positive conformity determinations.

NPC-Rules For Public Proceedings

- **Rule 2(2)** - Agnico Eagle requests clarity on whether the rules are applicable to the conformity determination process. Should the Rules for Public Proceedings be applicable to the conformity determination process, Agnico Eagle requests a further opportunity to provide comments to NPC with this perspective in mind.
- **Rule 3 (Definitions & Interpretation)** - As a general comment, the definitions should be descriptive and the Commission should give consideration as to whether concepts expressed in the definitions would be more clearly expressed as separate rules. Agnico Eagle recommends that the Commission also give consideration to the following specific suggestions:
 - Simplify definition of "Commission" to "*means the Nunavut Planning Commission established as an institute of public government pursuant to Article 10 and 11 of the Agreement.*"
 - If a definition of evidence is required, simplify definition of evidence to the current Commission definition - "*information that tends to prove a fact and may be received orally or in writing as determined by the Commission in accordance with these rules*".
 - Simplify definition of hearing to the following, which is based on the current Commission definition, "*hearing means a written hearing or an oral hearing.*" The new proposed definition appears to remove the option for a written hearing, and some of the processes described is not consistent with what is commonly understood in Nunavut to be a "*hearing*", rather they are more consistent with a meeting. Agnico requests the Commission specifically exclude "*round-table discussions and visiting locations as determined by the Commission*" for example because labelling informal processes of this type as "*hearings*" may lead to significant confusion within the community. A community member sharing information in a roundtable discussion may take a very different approach to a



community member sharing information at a hearing at the end of which the Commission is making a formal decision that could impact the community. It is important that the context in which the community may be sharing information is well understood by the participants in the hearing.

As an example, a community member that identifies a traditional hunting area in a meeting would almost certainly also identify that they would like that area to be protected. However, a prohibition under a land use plan is not the only option for protection, and in making such statements the community member may not be intending that an outright prohibition be included in a land use plan. In Agnico's view the NIRB process is also protective of such areas. In soliciting feedback of this type, community members should be made aware that projects referred to NIRB for assessment are not necessarily approved, and if approved project proponents are directed by NIRB to apply mitigations to protect important areas. Community members should be made aware that including outright prohibitions in land use plans could have significant negative economic impacts on Inuit but would not necessarily increase protection of traditional use areas. Such transparency is important to accurately reflecting the views and wishes of the community. Individuals sharing information in an informal setting also may not be empowered to or wish to make decisions or recommendations on behalf of their entire communities.

- Simplify definition of "minor variance" as follows: "means relief or reasonable deviation from certain requirements of a land use plan."
- Simplify definition of "public review".
- Definitions of IQ and Traditional Knowledge should be adopted consistently by all IPGs. The Commission should collaborate with NIRB and NWB to ensure that all IPGs apply the same definition.
- **Rule 4 (Interpretation & Flexibility of Rules)/ Rule 5 (Directions on Procedure)** - The broad discretion granted to the Commission under these rules and under Rule 4(2) in particular is very broad and reduces procedural certainty for participants and the proponent. Agnico Eagle recommends Rule 4(2) should be removed in its entirety and the Commission should include criteria that gives better guidance on circumstances where it might exercise its discretion.
- **Rule 6 (Governing Procedures)** - Agnico Eagle notes that the Commission has only included the rationale set out at section 11.2.1 of the Nunavut Agreement. The Commission should give consideration to referencing other relevant sections of Article 11 of the Nunavut Agreement, such as section 11.2.3.



- **Rule 9 (Comments by Non-Participants)** - If the Commission were to accept Documents, Evidence or comments relating to a Proceeding on or prior to the last day for the submission of public comments, a fair opportunity for the Proponent (or person applying for an amendment) to respond to such comments in writing should be built into the process.
- **Rule 12 (Disclosure using Public Registry)** - Agnico Eagle requests that the Commission establish email distribution lists for each Amendment Application, Minor Variances, Hearings on draft land use plans, and applications requiring a Hearing, and circulate electronic notices to the email distribution list whenever new documents are posted.
- **Rule 13 (Motions for Orders on Rules and Procedures)** - Agnico Eagle recommends that for transparency, any motion made by a party to a proceeding should be made public.
- **Rule 15 (Evidence)** - Agnico Eagle encourages the Commission to disclose any issues that the Commission is considering in advance of making any decision, so that the proponent or amendment applicant has the opportunity to provide the Commission with relevant information on those issues.

As an impartial decision maker, the Commission should take care in its rules to avoid the perception that the Commission could erode its impartiality by choosing evidence. As an example, Rule 15(3) should be amended to "*may elect to receive comments*" as opposed to "*solicit comments*". Rule 15(4) should clarify that when dealing with knowledge gaps, traditional knowledge will be treated equally with scientific knowledge. When traditional knowledge is shared, care should be taken to treat it with respect and to acknowledge that even within the community, traditional knowledge on the same topic may be shared that can seemingly conflict. As well, care should be taken to consider when information being shared is being shared as traditional knowledge or IQ, and when the information being shared is more akin to sharing community concerns or perceptions about causation.

- **Rule 16 (Meetings of Technical & Traditional Knowledge Experts)** - In addition to its comments regarding traditional knowledge and IQ above, Agnico Eagle suggests that advance notice of more than seven days may be required in order to assemble such a meeting.
- **Rule 17 (Information Sessions and Participant Meetings) and Rule 21 (Information Sessions in a Public Review)** - Should the Commission establish information sessions or participant meetings, the proponent or applicant must be given the opportunity to attend sessions in order to answer questions from participants, and to hear first hand any community comments or knowledge that is shared at such meetings.



- **Rule 17 (Confidentiality)** - The Commission should give consideration to adopting the procedure with respect to motions for confidentiality that has been adopted by the NIRB.
- **Rule 20 (Parties Entitled to Standing in a Public Review)** - In Agnico Eagle's view, parties who wish to be granted participant status should be required to provide additional justification for their participation than as currently set out in Form V. Prior to granting intervenor status, the Commission should consider whether the intervenor may be sufficiently impacted by the Commissioner's decision to be awarded participant status. Agnico Eagle requests that the Commission give consideration to including a brief summary of the reasons for the intervenor's interest in the hearing, and the Commission should consider not granting intervenor status where required.
- **Rule 22 (Written Questions & Information Requests)** - Rule 22(3) states, "*If the Commission is of the opinion that the requested information is necessary to permit a full and satisfactory understanding of an issue in a Proceeding, it may take any actions it considers appropriate in the circumstances, including adjourning the Proceeding.*" Agnico suggests the Commission clarify that by using the phrase "*adjourning the Proceeding*" the Commission is referring to temporarily suspending the proceedings or extending timelines, rather than terminating the Proceeding altogether. Proponents should also be given a fair opportunity to provide their views on whether an adjournment is appropriate in the circumstances in advance of any such decision by the Commission.
- **Rule 25 (Concluding a Public Review) and Rule 30 (Concluding a Hearing)** - The discretion granted to the Commissioners under Rule 25 introduces uncertainty into the process which would make it challenging for proponents and applicants to predict the overall timeline for conclusion of a public review. Procedural certainty is an essential component for project planning. As noted above defined circumstances where such discretion may be exercised should be provided and this broad discretion should be scoped down.
- **Rule 28 (Questions in a Hearing)** - Agnico Eagle recommends that the Chair of the Hearing should determine whether a participant should be required to answer a question from any other participant or the Commission. Further, Agnico Eagle requests that the Commission direct its staff to answer any questions asked by Participants to clarify ambiguities or confirm facts relevant to the subject matter of the Hearing.
- **Rule 29 (Commission's Authority over Hearing)** - While Agnico Eagle understands that the Commission may delegate certain duties to staff, Agnico Eagle suggests that the Rules should clarify that the Commission will not delegate its decision making authority



to staff, and that only Commissioners appointed in accordance with NuPPAA and the Nunavut Agreement will preside over Hearings. Written directions on procedure should be given prior to the hearing wherever possible.

- **Rule 31 (Transition & Retrospective Effect)** - Agnico Eagle requests that the Commission should not revise the rules so that they are applied retrospectively to any ongoing Proceedings before the Commission. It would not be fair for proponents commencing applications under the current policies to be subject to new rules mid-application, unless they have explicitly consented to this.

Thank you for the opportunity to provide our comments. We would be pleased to make ourselves available to discuss any of these with you, should it be of assistance.

Sincerely,

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