



October 29, 2019

David Rochette  
Regional Director General  
Nunavut Regional Office  
Crown-Indigenous Relations and Northern Affairs  
Canada  
By email: [david.rochette@canada.ca](mailto:david.rochette@canada.ca)

**RE: Response to Comments on Nunavut Planning Commission Draft Rules for Public Proceedings released for comment July 26, 2019**

Thank you for your comments on the Commission's Draft Rules for Public Proceedings (**Draft Rules**) received September 24, 2019. The Commissioners have considered your comments of the Draft Rules, as well as the comments of others received within the 60-day period for public comment, and as a result of those comments will be making revisions to the Draft Rules. Please be advised that pursuant to section 38(4) of the *Nunavut Planning and Project Assessment Act* (Canada) (**NuPPAA**), the Commission will not be publishing any further notices before enacting amended Rules for Public Proceedings.

Please note that the Commission anticipates some rules will be renumbered due to the comments received, and this response addresses the comments made based on the original numbering of the draft rules released for public comment on July 26, 2019.

The Commission considered your comments and provides the following responses:

- In response to the comment that the Commission amend Rule 2(2) to exempt conformity determinations in accordance with subsection 77(1) of the *NuPPAA*, the Commission will be amending the rule as suggested.
- In response to the comment that the definition of "Evidence" in rule 3 be amended to remove types of evidence to rule 15 and provide a reference, the Commission will be amending the rule as suggested.
- In response to the comment that the definitions of "Hearing" and "Public Review" in rule 3 be amended to provide these are to be open to the public unless otherwise directed under these Rules, the Commission will amend the rule as suggested, and based on other comments received, and will retain the discretion to close a proceeding to the public as the circumstances may require.
- In response to the comment that the definition of "Interested Person" in rule 3 be removed, the Commission will be amending the Draft Rules as suggested, and will be moving the language describing what constitutes an interested person ("information, knowledge or a view useful for the resolution of a matter") to rule 8 to explain in what circumstances the Commissioners will decide to grant standing in their discretion, and requiring persons submitting a written Registration as Participant in Form 1 to include this information.

- In response to the comment that the definition of “Inuktitut” in rule 3 be removed, the Commission received multiple comments on the term and will be amending the rules to remove the definition entirely so the term “Inuktitut” will be interpreted as it is defined in the *NuPPAA*, which includes Inuinnaqtun.
- In response to the comment on rule 3 that the definition of “minor variance” be reworded, the Commission received multiple comments on this definition and will be amending this definition in light of those comments.
- In response to the comment on rule 3 that the definition “Notice to Public” be amended to remove the reference to non-Participants and to include an “and/” in the list of types of notices that may be published, the Commission will be amending the rules as suggested. The Commission is also amending the rule to delete redundant wording contained in the definition.
- In response to the comment that the definition of “Participant” in rule 3 of the Draft Rules be amended to move wording from the definition to rule 8, the Commission will be amending the rule as suggested.
- In response to the comment on rule 5(1) of the Draft Rules that the phrase “whether generally on a short term basis or” should be removed, the Commission will be amending the rule as suggested.
- In response to the comment that rule 5(3) be removed and replaced with a new section providing that the Commission give Participants and other Persons affected by a direction on procedure a meaningful opportunity to provide their views and to solicit public comment on directions on procedure, the Commission will be amending the rules as suggested, recognizing that if a direction on procedure is issued at a Hearing Participants may ask for an adjournment.
- In response to the comment on rule 7 recommending replacing the word “as many people” with Persons, the Commission will amend the rule as suggested.
- In response to the comment on rule 8 of the Draft Rules to import wording from the defined term “Participant”, providing additional clarity regarding the Commission’s discretion to allow participation, and to fix a typo in a cross-reference, the Commission will be amending the rules to incorporate the wording from former definition of “Participant” and adding a new subrule setting out the conditions in which the Commissioners may grant participant standing. The Commission will also make a consequential amendment to Form 1, asking people to advise the Commission they have “information, knowledge or a view” on issues identified.
- In response to the comments on Rule 11 relating to the Record of Proceedings noting that the rules should:
  - set out a process to challenge the record by way of a formal Motion;
  - clarify when gaps may invalidate proceedings;
  - include a timeframe to challenge the record; and
  - to enable a Participant prejudiced by a fault with the record to be heard again,
 the Commission received multiple comments asking it to simplify this rule and will amend the rules to:
  - require a formal Motion to challenge the adequacy of the record;
  - set a threshold for Commissioner intervention as a significant gap, omission, error or other inaccuracy that may cause prejudice, noting that prejudice or invalidity is not to be presumed;
  - set a time limit to challenge the record within 7 days of the close of the record; and
  - Provide a Participant prejudiced by a significant gap, omission, error or other inaccuracy an opportunity to correct the record.
- In response to the comment that rule 12(1) of the Draft Rules should not be changed, the Commission confirms it will not be making any amendments to that rule.
- In response to the comment suggesting the correction of typos in rule 12(2), the Commission will be amending the rules as suggested.
- In response to the comment suggesting rule 12(3) allow for alternative means for receiving notices the Commission will be amending the rule to refer to Notices to Participants.
- In response to the comment that rule 13(2) should make it mandatory that the Commission provide a Notice to Participants upon receiving a Motion, the Commission will be amending the rules as suggested.

- In response to the comment that rule 15(1) include details on the various types of evidence the Commission may admit as included in the definition of evidence in the Draft Rules circulated for public comment, and that rule 15(2) be amended to say the Commission will accept evidence in any form the Commission deems acceptable considering the nature of the Proceeding, the Commission will be amending the rules as suggested, but will move the types of Evidence previously listed in the definition of Evidence (“Documents or other physical object and Traditional Knowledge”) to rule 15(2) as amended which will deal with the forms of Evidence the Commission may accept.
- In response to the comment that Rule 15(4) more closely reflect the language in the Nunavut Agreement, the Commission received multiple comments on this rule, specifically that the Commission should be required to consider Traditional Knowledge as equal to scientific information, and will not be making the requested amendment.
- In response to the comment that Participants be allowed to submit any additional materials needed to clarify positions or resolve gaps, ambiguities or conflicts to the Commission to add to the public record following Meetings of Technical & Traditional Knowledge Experts under rule 16 of the Draft Rules, the Commission will be amending the rule to enable Participants to notify the Commission of their intention to file additional material, and the date on which the additional material will be filed, within 14 days of such a meeting being held.
- In response to the comment that rule 17 of the Draft Rules was repeated, the Commission will be amending the rules to fix the numbering of hearings.
- In response to the comments that Participants should be able to file materials after an Information Session, a procedural meeting, or a Participant meeting, and to modify rules 17(1), 17(2) and 17(3) which read these types of meetings are “open to the public unless otherwise directed but is not a Proceeding”, the Commission will be amending these rules to say Information Sessions, procedural meetings, and Participant meetings are open to the public unless directed otherwise, that hyperlinks to audio or video recordings and any transcripts of such meetings will form part of the record, and Participants will be allowed to file additional material within 14 days of such a meeting.
- In response to the comment that the erroneously numbered rule on confidentiality, rule 17, be renumbered or moved to Rule 12, the Commission will be amending the rules to include this rule under Rule 12 as suggested.
- In response to the comment that the rule heading “Commencement of Public Reviews” be changed to “Public Review Period”, the Commission will be amending the rule as suggested.
- In response to the comment that the list of options for Notices to the Public be removed from rule 19(1)(b), the Commission notes these already appear in the definition of “Notice to Public” and will be amending the rule as suggested.
- In response to the comment that notices under rule 19(2)(c) provide for timelines for Information Requests, as well as responses by Proponent’s or Amendment Applicants, the Commission will be amending the rule as suggested.
- In response to the comment that the heading for rule 20, Parties Entitled to Standing in a Public Review, be changed to “Standing of Amendment Applicant and Proponent seeking a Minor Variance”, the Commission will be amending the rule as suggested.
- In response to the comment that the separate rule 21 relating to Information Sessions in Public Review be removed on the basis it is redundant, the Commission will be amending the rule as suggested.
- In response to the comment that there should be timelines for Written Questions & Information Requests to avoid delays, the Commission will be amending the rule including a reference to timelines for Information Requests in notices. Based on other comments received, the Commission will also be distinguishing between the actions the Commission may take if a Participant does not respond to an Information Request.

- In response to the comment that rule 23 of the Draft Rules should allow Participants to make additional Information Requests and for responses to new arguments and materials filed following any Amendments to Application Materials, the Commission will be amending the rule as suggested.
- In response to the comment that the cross-reference and missing comma should be addressed in rule 23(3), the Commission will be amending the rule as suggested.
- In response to the comment that the rule 24 for Oral Evidence in a Public Review be moved to Rule 15 and rephrased to reflect the general nature of Rule, and to provide for a way for the Proponent and Participants to have access to the actual evidence provided orally if they were not present, the Commission will be amending the rule as suggested and will amend the rules in several places to provide that hyperlinks to audio and video recordings will be placed on the public registry as the NPC registry cannot accommodate large multimedia files.
- In response to the comment that rule 25, should set out the factors the Commissioners should consider when reopening the record or extending the timeline for closing the record, the Commission will be including these factors as suggested.
- In response to the comment that rule 25(3)(b) should entitle the Proponent and other Participants to be present at any meeting or Information Session, and to make submissions in response to any further arguments or responses provided by Participants, the Commission will be amending the rules to give Amendment Applicants and Proponents seeking Minor Variances the right to attend all Meetings of Technical & Traditional Knowledge Experts, Information Sessions, procedural meetings and Participant meetings in respect of Public Reviews of Amendment Applications and Minor Variances, and will not be amending rule 25(3)(b) as requested.
- In response to the comment that the heading of rule 26 be changed to “Hearing Period”, the Commission will be amending the heading as suggested.
- In response to the comment that rule 26(1) be edited to remove the reference to a draft land use plan under *NuPPAA*, or a Hearing in respect of a periodic review of a land use plan under *NuPPAA* or as a component of a Public Review under Part II of these rules, the Commission will amend the rule as suggested.
- In response to the comment that rule 26(1)(b) be edited to remove the list of possible means of publication for Notices to Public, the Commission will amend the rule as suggested.
- In response to the comment that rule 26(3) be edited to change the words “notice of Proceedings” to “Notice to Public”, the Commission will amend the rule as suggested.
- In response to the comment that rule 29 in respect of the Commission’s Authority over Hearing provide explain how Evidence heard during these Hearings will be made available to a quorum, and that these type of Hearings will not be used during Hearings held for plan amendments or minor variances, the Commission will amend the rule to say that it only applies to Proceedings other than Amendment Applications and Minor Variances, and that what is received and heard in such a Hearing will be put before a meeting of Commissioners where quorum is present as a report of a committee.
- In response to the comment that the Draft Rules should provide further clarity as to whether the record is open or closed for the purpose of rule 30, the Commission will amend subrule (1) using the factors Canada proposed the Commissioners consider for reopening the record or extending the timeline for closing the record in respect of Public Reviews, and will remove subrule (2) to resolve the internal inconsistency in the wording.

On behalf of the Commission, I want to thank you again for your input. The Commission will publish the notices required by section 38(5) of the *NuPPAA* when it makes the Rules amended based on the comments received. If you also provided comments on the Commission’s Draft Rules for Project Description, the Commission will be considering and responding to those comments separately in due course.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Nakashuk". The signature is fluid and cursive, with the first name "Andrew" and last name "Nakashuk" clearly distinguishable.

Andrew Nakashuk  
Chairperson  
Nunavut Planning Commission