



October 8, 2021

Andrew Nakashuk  
Nunavut Planning Commission  
P.O. Box 1797  
Iqaluit, Nunavut X0A 0H0

Dear: Mr Chairperson

**RE: Comments on the 2021 Draft Nunavut Land Use Plan**

The NWT & Nunavut Chamber of Mines (Chamber) welcomes the opportunity to provide the Nunavut Planning Commission (NPC) with the following comments on the latest draft Nunavut Land Use Plan released in July 2021 (2021 DNLUP). We reinforce the importance of the land use planning process to the economic development of Nunavut and the critically important benefits that the minerals industry can continue to bring to the territory and Nunavummiut.

The Chamber has been a participant in the land use planning process since its inception, providing comments and advice on the various draft plans produced over that period. Our involvement includes providing feedback to the NPC on both the 2014 and the 2016 draft plans. Unfortunately, our members' strong and consistent message is that, relative to previous versions of the plan, the 2021 DNLUP is more prescriptive and complex with increasing use of Limited Use Areas (LUAs; previously Protected Areas) over wide areas of the territory.

Jurisdictions across the globe compete for the financial capital needed to find and develop mining projects based on geology, as well as certainty around the regulatory approval process, social license and land use decision making. The 2021 DNLUP, if adopted, will reduce the potential for proponents to develop operating mines successfully and consequently result in reduced private sector investment and deterioration in the economic prospects in Nunavut. In turn, this will limit the ability of governments and Inuit Organizations to take the actions and to provide the services and supports needed to ensure Nunavummiut and Inuit Beneficiaries can benefit from healthy and resilient communities.

Drafting a Nunavut-wide land use plan is a huge undertaking. This is reflected in the length of the planning process to date and the complexity and size of the 2021 DNLUP, and the accompanying Options & Recommendations (2021 O&R) document. Like many stakeholders, the Chamber and our 175 member companies have not had sufficient time to absorb and fully understand the plan's implications. While we acknowledge and appreciate the NPC staff for their availability and willingness to discuss and provide further information and context on the draft plan, the consultation and engagement has not been sufficient to allow mineral sector proponents and service providers to be adequately informed about this plan to effectively participate in the upcoming hearings.

In light of the complexity of the 2021 DNLUP and the limited time afforded for the public review process, the Chamber's comments will focus on high-level questions and concerns expressed by our members.

### Comparison to 2016 Draft Plan

After reviewing the 2016 DNLUP, NTI and the governments of Nunavut and Canada (the Signatories) indicated to the NPC that a final LUP should focus on guidance rather than prescriptive solutions with the aim of:

- i) achieving an appropriate and flexible balance of economic, cultural and conservation interests,
- ii) working effectively as an integral part of the overall regulatory system as laid out in the Nunavut Agreement and enabling legislation, and
- iii) being implementable.

Unfortunately, these Signatory recommendations are not reflected in the 2021 DNLUP. Instead, the 2021 DNLUP, with its heavy reliance on LUAs and their embedded prohibitions, has further constrained land use decision-making flexibility to the point that private and public sector economic and infrastructure development will most certainly be negatively impacted.

Our members have long indicated that conservation, cultural and economic interests need not be treated as mutually exclusive goals/ideals. The co-management system embedded in the Nunavut Agreement was carefully constructed to ensure these three pillars remain respected and in balance when land use decisions are being made. However, the 2021 DNLUP will undo this work by providing an inflexible, overly prescriptive, and unnecessarily exclusionary approach, effectively limiting the influence communities can exercise in the regulatory system to determine the appropriate type, size and scope of land use activities in the future.

### Planning Process – Collaboration and Timelines

Development of a land use plan of this size, scope and importance should be a collaborative effort with the Participants and Signatories. The planning approach to date has focused on allowing windows of time for Participants to comment on draft plans as they are released and on the submissions of other Participants. Between commenting windows, the process has included long periods with little communication or engagement with stakeholders while plan drafting occurs. We suggest that a more appropriate approach would consist of ongoing interaction during the drafting stages. A truly collaborative and transparent planning process would allow the participants, and most importantly the Signatories, to be fully informed of the plan's contents throughout the process, removing the possibility for surprises and allowing for a well-informed public discussion of the draft plan when it is released.

The 2021 DNLUP is complex and contains many material changes from earlier plans. Requiring participants to review, try to understand, and meaningfully comment on the plan in a short time frame is unfair. Our members have also noted that the LUP process has had very little visibility in many of the communities where we work. In some cases, there has been new leadership in hamlet councils and HTOs since the 2016 DNLUP. Careful consideration should be given to ensuring communities, and Nunavummiut have every opportunity to fully understand the draft plan and its implications for future land use decisions in their municipalities and surrounding areas that could influence the prospects for the development of mineral resources, including subsurface IOL.

Given the many technical issues inherent in the process of finalizing a land use plan of this scope and scale, there is a critical need for a venue to resolve myriad technical issues. As was done during the review process for previous versions of the plan in 2014 and 2016, having a series of technical meetings would provide the opportunity for the NPC to receive detailed input from stakeholders and address those issues ahead of the final public hearings.

Furthermore, given the recent federal election, the upcoming territorial election, and ongoing travel and gathering uncertainties related to the COVID-19 pandemic, our members feel strongly that careful consideration be given to deferring the public hearings until 2022. In addition, we note that the time allowed for review of this version of the plan is extremely short (approximately 90 days) relative to the review periods provided for previous drafts (2012 – 17 months, 2014 – 21 months, 2016 – 9 months). Given the substantial changes made to arrive at the 2021 DNLUP, we request that the review process be substantially extended.

#### Planning Process – Scenario Analysis

Considering the tremendously large planning area, the first-generation Nunavut-wide Land Use Plan should be strategic, providing guidance to environmental assessment (also a planning tool) and other regulatory approval processes, but not unduly constraining the statutory decision-making power of other IPGs such as the NIRB. The NPC indicates it has taken an incremental approach to developing the 2021 DNLUP; however, we are concerned this approach is not reflected in the plan's heavy reliance on LUAs. This reliance on land use prohibitions is overly prescriptive. We are concerned that this level of prescriptive operational direction will prevent the other co-management boards and surface owners from effectively discharging their responsibilities. The O&R document provides little indication of whether and to what degree NPC used scenario analysis approaches or tools to facilitate informed decision-making and input by community representatives and other participants in the planning process. A broad and balanced method of weighing or estimating the impacts or trade-offs that various land use designations may have on social, biological or economic factors in the future is an essential element of a robust planning process.

All parties need to be aware that a very high proportion of Nunavut's current mineral exploration and mining projects are located wholly or partially within LUAs that specifically prohibit mineral exploration and mining. The advancement of these projects (and the associated capital investment by companies and their shareholders) will have to rely on the 'Existing Rights' exemption provided in section 6.1.8 of the 2021 DNLUP. The high percentage of current projects located in LUAs can be considered a reasonable proxy to estimate the proportion of future projects and investment that will not happen if the 2021 DNLUP is adopted. The Chamber would appreciate some additional information regarding any consideration given to using different planning models that would be less prescriptive while providing similar levels of protection, while maintaining flexibility for possible future developments (e.g., cumulative impact thresholds). As Nunavut has seen relatively little development to date, NPC has the advantage of considering a variety of planning approaches and tools. We suggest that these alternatives be evaluated as part of a full and appropriate analysis of the plan's impacts.

Chamber members have also expressed concern that the NPC will not consider minor variances in an area with land use prohibitions. In making this decision, has the NPC evaluated the degree to which potential impacts of allowing minor variances to prohibitions in different circumstances might affect the goals of the planning process? Has the NPC considered whether the existing Nunavut regulatory

approvals process has worked to avoid or minimize potential negative effects and promote sustainable land uses?

### Limited Use Area Polygons

Many of the LUAs outlined in the plan are designated based on a strong desire to protect caribou and important habitat areas — calving and post-calving grounds, freshwater crossings etc. The minerals industry fully acknowledges and agrees that maintaining healthy caribou populations is important to the health and wellbeing of Nunavummiut. However, it is very clear from the public record that there is a great deal of variability in opinions and evidence regarding the definition and delineation of these areas and the appropriateness of various mitigation or management approaches. However, despite these questions, particularly concerning the data behind the delineation of the areas by the GN DOE, the NPC has not sought further clarity from the DOE and instead has expanded these areas based on additional community input.

Section 5.1 of the 2021 DNLUP states, “*...The land use planning and environmental assessment processes in Nunavut have been established to proactively resolve potential conflicts between exploration parties requiring access and wildlife and community uses.*” The prescriptive nature of the 2021 DNLUP LUAs reduces the ability of these processes to function effectively and removes decision-making power from communities. Instead, these important and impactful decisions are made at the Plan level without any opportunity for consideration of the facts and details surrounding potential land use. Also, as technological developments and corporate ESG commitments continue to improve the sustainability of mining projects, the potential for adverse effects will be reduced. Unfortunately, the prescriptive nature of the Plan will not allow communities to consider whether these future projects could be compatible with their community objectives related to conservation and social and economic factors.

### Marine Conservation Areas

The Chamber feels strongly that the 2021 DNLUP should not be preempting the defined processes required to establish National Marine Conservation Areas (NMCA) under the National Marine Conservation Areas Act (NMCAA). Our members are concerned the approach outlined in the 2021 DNLUP has the practical effect of establishing a marine conservation area before the Government of Canada and Inuit have made that decision in accordance with the applicable legislation and land claim agreements.

The 2021 DNLUP at Section 3.1.2 includes the statement that, “*Until the Tallurutiup Imanga NMCA is fully established, the area requires interim management.*” However, it is noted that processes established under the NMCAA explicitly require the development of an interim management plan before a marine conservation area is established. As referenced in the 2021 O&R, an interim management plan, including a preliminary zoning plan for the NMCA, is being prepared by the QIA and the Governments of Canada and Nunavut, including public and stakeholder consultation. Including prohibitions relating to the pending Tallurutiup Imanga NMCA (TINMCA) in the 2021 DNLUP increases risk of conflict between the NLUP and the interim management plan being developed in accordance with the IIBA and the NMCAA.

As an alternative approach in the NLUP, the TINMCA could be designated as “Option 4 Valued Component” lands, which would ensure that its pending status would be considered by regulatory

authorities in relation to any project proposals within the area up to the time the TINMCA is established by the Government of Canada.

We also recommend that definitions of “National Marine Conservation Area” included in the 2021 DNLUP should be revised to mirror those found in the NMCAA, to avoid any potential for confusion.

### Linear Infrastructure

The Chamber appreciates that the plan has recognized the importance of linear infrastructure by designating two proposed linear infrastructure corridors (Kivalliq-Manitoba and Mary River-Milne Inlet) as Limited Use Areas that provide certainty to the proponents of these projects. However, the restrictive nature of this land use designation does raise some concerns with respect to other activities within these large corridors and the ability to adjust corridor alignment to accommodate future changes as the planning for these projects evolves. We also note that previous drafts of the Nunavut Land Use plan have included map notations or valued components for several other proposed transportation corridors that are not formally designated as linear infrastructure corridors in the 2021 DNLUP. Instead, these transportation corridors are depicted as single lines on a map of Valued Socio-Economic Components in Appendix B of the draft plan and appear to be afforded less importance and a lower level of certainty than was the case in earlier drafts of the plan. There do not appear to be clear criteria that explain or support the variable treatment of linear infrastructure features that have been included in previous drafts of the land use plan.

Given that the Government of Nunavut’s Transportation Strategy (Ingirrasiliqta) is guided by the following Mission Statement: *We will build a transportation system that enables full participation in Canada and its economy*, we would expect to see this strategic direction reflected in the DNLUP. The GN’s strategic policy is underpinned by a number of objectives and supporting actions including connecting Nunavut to Canada with north south road infrastructure and connecting Nunavut communities to one another, as well as attracting private sector investment to enable major resource developments. Unfortunately, this strategy that reflects the aspirations of the Government of Nunavut on behalf of Nunavummiut is not referenced in the DNLUP and does not seem to be reflected in the functional elements of the plan.

Proponents with existing rights ostensibly have the ability to develop their projects. However, we note the following restriction under clause 6.1.8-6, *“The construction of permanent all-season linear infrastructure in an area outside of the footprint of a project identified in Appendix A is not authorized if that type of project is prohibited in that area”*. As a substantial proportion of mineral development projects with existing rights require some year round transportation infrastructure to support project construction, operations and resupply, many projects may not be able to proceed due to severe accessibility limitations.

### Existing Rights

Existing Rights in Appendix A of the 2021 DNLUP have not been accurately captured. Further, the Chamber suggests all valid mineral rights should be recognized at the time the plan comes into force. The NPC should ensure a process is in place for all mineral tenure to be recognized in the plan, perhaps through information provided by NTI and the Nunavut Mining Recorder with an option to be confirmed by mineral tenure holders. Requiring existing rights to be listed in Appendix A may be unfair to small

operators and community prospectors who are unaware of or do not have the capacity to participate in the land use planning process.

Our members have also expressed concern that many Existing Rights may still be subject to stranding due to the inability to expand project boundaries based on mineral deposit locations or future infrastructure needs. This potential for the prohibition of required but related land use activities in the same or adjacent LUAs adds risk and uncertainty. A number of our members are reviewing and considering if future investment in projects identified as Existing Rights would be warranted if the plan is adopted as written.

#### Percentage of Nunavut's land and marine areas impacted by Limited Use Area designations

The 2021 DNLUP plan should more clearly outline the proportion of Nunavut's land and waters covered by the various land use designations. As drafted, the plan may mislead the reader. Section 1.2 of the 2021 DNLUP refers to the Nunavut Settlement Area as including an area of 2.1M km<sup>2</sup>, and Section 1.5.2 of the O&R document says the DNLUP spans an area of 2,093 km<sup>2</sup>. However, throughout the O&R document, the percentages of areas impacted by various designations only work if they are referencing a larger total area of approximately 3.2M km<sup>2</sup>. We understand that the NPC is working to clarify these numbers and to present the results in an 'easy to understand' manner. We would suggest this work should be completed and distributed to Participants before the Public Hearing dates.

Many of our comments reflect our members' view that the sheer scale of the Nunavut land use planning area makes it tremendously challenging to balance regional and community visions and needs. We therefore urge the NPC to focus on and proceed with a less prescriptive plan, one focused on stewardship and clear guidance to regulatory authorities rather than rigid land use restrictions. One way to do this is through use of Land Use Policy Option 4 as outlined in the 2021 O&R, combined with clear guidance to regulatory authorities on how Valued Components should be taken into account when considering project proposals. This approach would help maintain the influence communities can exercise in the co-management regulatory system to determine the appropriate type, size and scope of future land use activities.

The Chamber looks forward to participating in the upcoming Public Hearings on the 2021 DNLUP and providing further comments on the plan after a more thorough review by ourselves and our members. Should you have any questions with any Chamber issues in the submission, please contact me at your convenience.

Sincerely,



Ken Armstrong  
President, NWT & Nunavut Chamber of Mines