



March 13, 2017

Mr. Andrew Nakashuk
Chair, Nunavut Planning Commission
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Dear Mr. Chair:

RE: Procedural Concerns regarding the 2016 Draft Nunavut Land Use Plan Process and Final Public Hearing

This letter is with respect to the scheduled Nunavut Land Use Plan (NLUP) Public Hearing and in response to the release of the “Notice of Change to Regional Public Hearings” issued on March 3, 2017 (the Notice of Change). For many years, the NWT & Nunavut Chamber of Mines (Chamber) has provided support and advice to the Nunavut Planning Commission (NPC), commented on all three drafts of the draft NLUP (2011-2012, 2014, 2016), and attended the series of technical meetings on the draft NLUP held during 2015 and 2016. We ask that this letter be placed on the consultation record.

We are writing to express the profound concerns that the Chamber has with respect to the 2016 Draft NLUP, the final public hearings and the process to date. The Chamber believes the process is seriously conflicted, does not represent stakeholder input, and has been far from transparent.

1. The 2016 Draft NLUP should not be advanced to public hearings until it is revised.

The Chamber and our members view Inuit, Inuit organizations and Indigenous groups, Northern residents, IPGs established under the Nunavut Agreement, and the territorial and federal government as our partners in ensuring that Nunavut has a strong and responsible mining industry. As such, we stand with our planning partners who signal that the final public hearings should be delayed until after a revised Draft NLUP is presented:

“The current DNLUP does not adequately address Inuit concerns, goals and objectives... subsurface IOLs were selected to support the exercise of mineral rights... constraining activities on subsurface IOLs directly detracts from promoting economic development in Nunavut, which is identified in the DNLUP 2016 as one of the key priority of Inuit and is an NPC Goal.” - Joint written submission of Nunavut Tunngavik Inc. (NTI) and the three Regional Inuit Associations, January 13, 2017

“The NPC has neglected to consult with residents of Nunavut communities regarding the latest two drafts of the NLUP and that the NPC cannot possibly draw conclusions whether the 2016 version reflects the priorities and values of Nunavummiut (per NLCA 11.2.1c), since no formal mechanism for communities to provide feedback to the NPC has been provided since 2013.” - Nunavut Association of Municipalities, January 13, 2017

“Under the present proposed timetable, communities have complained that they don’t have the time or resources to do this final round of community consultations properly. The plan must also be redrafted to address many concerns that have been expressed about omissions and changes in

the 2016 draft. The public hearing process should be halted to allow this to take place.” – Letter to Andrew Nakashuk, NPC Chair from Senator Dennis Patterson, January 13, 2017

The Government of Canada has also expressed "significant concerns" with respect to the 2016 Draft NLUP, and has indicated that the draft requires "substantial revision" (see Government of Canada Comments and Recommendations on the 2016 Draft Nunavut Land Use Plan, January 24, 2017) before it should be considered final. Similarly, the Government of Nunavut states:

"The GN is concerned that the DNLUP may not be reflective of the full range of planning partner or public feedback provided to the Commission, concerning its 2014 DNLUP. Rather than mediating competing interests for certain critical issues, the DNLUP applies blanket precautionary protections, disproportionately impacting certain communities or regions. For this reason the GN asserts that if approved, as written, the DNLUP may have serious negative impacts to the territory's resource economy, thereby compromising the long-term socio-economic well-being of Nunavummiut." - Government of Nunavut's 2016 Draft Nunavut Land Use Plan Review, January 13, 2017

Communities have also expressed serious concerns about the process that has been followed to date and its compliance with the Nunavut Agreement. As stated by the Hamlet of Arviat:

"The Hamlet was encouraged to have been involved in consultations undertaken by the NPC in 2013 as such related to the earlier 2012 draft of the NLUP. Since that time, the Hamlet has not been approached by the NPC for particular input, nor have residents of the Hamlet been consulted on the two drafts that have been released since that time. While the Hamlet has been copied on correspondence relating to the ongoing development of the NLUP, it has not provided any technical or written comment. The Hamlet's participation in regard to the current draft NLUP released in June 2016 has been limited to its being invited to send participants to attend a regional Pre-Hearing Conference in Rankin Inlet in October; two delegates were selected and participated in the one-day meeting... Unfortunately, with no community consultation on this current draft of the NLUP and very little support from the NPC, the Hamlet has prepared and provided this submission for the NPC's consideration out of a sense of duty... This submission is limited, owing to the fact that it has been prepared by the Hamlet, and does not represent the perspectives of individual community members...." - Hamlet of Arviat Submission to the NPC - 2016 Draft NLUP, January 13, 2017

In correspondence dated December 8, 2016, Mayor Redfern of Iqaluit told NPC that:

“The City appreciates that NPC wants to complete and approve the Nunavut Land Use Plan within its stated schedule but if the majority of communities and key stakeholders are not fully engaged, confident or approve the Plan, then I would hope the Commission would reconsider, amend the schedule and extend the deadline for review and approve... At the November meeting, NPC referred to a “rationalization document” and we’re wondering when this will be made available. It is very difficult for parties to comment on the current draft without knowing the rationale behind the changes from the 2014 land use plan... a lot of important and necessary land use information may be missing from the latest draft... The City has concerns about the schedule, hardcopies, translation, community capacity, Commissioner engagement, completeness and adequacy of the plan and conflicts.” Ultimately, the capital of Nunavut was not able to make a substantive submission on the 2016 Draft NLUP within the timelines set by NPC, as Mayor Redfern explained in a letter to NPC dated January 30, 2017, “... it became abundantly clear and obvious that the community absolutely requires additional resources and assistance to develop a sufficiently accurate, complete and comprehensive submission to NPC about known and planned plus possible and hoped for activities, developments and/or projects in the reasonable foreseeable future.”

The Chamber remains highly concerned about the significant and long-term negative impact that the 2016 Draft NLUP, as presently drafted, will have on mineral exploration and development in Nunavut, and the overall economic development of the territory for decades to come. The 2016 Draft NLUP ignores scientific evidence and does not reflect the engagement that NPC staff has had with the Chamber or with industry. The previously held workshops themselves have been facilitated with what appears to be a significant bias towards no economic development.

Advancing the 2016 DNLUP to the final public hearing stage without revising the draft to reflect the substantial consultation that has been undertaken since June 2016 does not respect the time and investment that all parties have put into this process to date. Therefore, it is the position of the Chamber that the 2016 Draft NLUP not be advanced and that the public hearings be postponed until after a revised Draft NLUP is presented, one that adequately balances economic, environmental and social priorities of Nunavummiut, as outlined in the Nunavut Agreement, Article 11.2.1:

“...social, cultural, and economic endeavours of the human community must be central to land use planning and implementation...the primary purpose of land use planning in the Nunavut Settlement Area shall be to protect and promote the existing and future well being of those persons ordinarily resident and communities of the Nunavut Settlement Area taking into account the interests of all Canadians.”

2. The Chamber has significant procedural concerns with respect to the Qikiqtani Regional Informal Public Hearing as currently planned.

Article 11.2.1 (d) of the Nunavut Agreement states (in part) that, *"the public planning process shall provide an opportunity for the active and informed participation and support of Inuit and other residents affected by the land use plans, such participation shall be promoted through various means, including ready access to all relevant materials, appropriate and realistic schedules."*

The late notice change to a Regional Public Hearing, while more appropriate than a single Nunavut-wide hearing, has been confusing to all participants, and participants have not been granted *"ready access to all relevant materials"*. No documents have been posted to the public registry since the Notice of Change was issued. No update to the revised Direction on Procedure has been issued.

Further, we do not believe that an *"appropriate and realistic schedule"* has been given for the Qikiqtani Regional Informal Public Hearing. The Notice of Change did not give adequate notice and gives participants in the Qikiqtani Region only two weeks to prepare for this new format from a single Nunavut-wide final hearing to a series of regional public hearings. If the NPC intends to hold a final regional public hearing in the Qikiqtani Region on the 2016 DNLUP, we are of the view that for reasons of procedural fairness, the NPC must postpone the hearing and extend the notice period for individuals or companies in the Qikiqtani Region who may wish to participate.

The Chamber objects to the Qikiqtani Regional Informal Public Hearing agenda. The agenda was circulated too late to adequately assist participants in preparing for the hearing (March 3, 2017) and the structure of the agenda is not appropriate. As advised by the Government of Canada during the Pre-hearing conference in Iqaluit on September 27, 2016, *"the NPC should incorporate into the process opportunities to advance issues on a topic by topic basis"*. The agenda as presented is party by party, not topic by topic. We believe this will create a divisive process and will not provide the Commissioners with an appropriate understanding of the contrasting evidence that has been presented on the various topics.

Scheduling within the agenda is also prejudicial to industry. All industry members are slated to appear together on Saturday evening, March 25, 2017. This is an inappropriate placement and restricts industry's ability to participate effectively throughout the public hearing process.

No locations or agendas have been set for the Kivalliq Regional Informal Public Hearing in June 23 – 27, 2017 or in the Kitikmeot Regional Informal Public Hearing, October 24 – 27, 2017, which further impedes our ability to fully prepare and participate in the regional public hearing process.

In our view, the three regional "*informal, oral public hearings*" which were announced on March 3, 2017 should not proceed as public hearings but instead as workshops attended by the Commissioners. As noted above, a new Draft NLUP should be developed and circulated for comment prior to any final public hearings.

3. During all workshops and public hearings, the NPC should provide the opportunity to participate by teleconference, or at minimum, the opportunity to listen by teleconference.

NPC has the technical capacity to provide for teleconferencing. In our view, the NPC requirement that parties must be present in person in order to be heard will further reduce our members' ability to participate in the process. There is no practical reason why a teleconference line cannot be established to allow participation by all parties to the process. This restriction will have the effect of further reducing any opportunity for engagement by those who may be impacted by the NLUP but work or live outside of Iqaluit. At a minimum, NPC should establish a teleconference line so that interested persons outside of Iqaluit can listen in.

4. The NPC has not consulted adequately with industry and has not provided an adequate response to the concerns presented by industry and others within the DNLUP process to date.

There has not been an industry focused session or even a general session during the previous consultation period. The Chamber is concerned that its input in the process to date (in particular, with respect to expert and other evidence regarding caribou) appears to have been completely disregarded by NPC staff with no supporting rationale for doing so. The Kitikmeot Inuit Association has expressed similar concerns regarding the treatment of evidence within the 2016 Draft NLUP:

"Although we focussed on the west Kitikmeot Region, we believe the facts of this analysis applies to the Mainland caribou herds in the rest of the Kitikmeot region. KIA has a serious concern about the DNLUP 2016 regarding the static polygons proposed to protect caribou calving grounds on the mainland of the Kitikmeot region, and specifically the west Kitikmeot region. KIA believes that traditional knowledge, a scientific re-examination of the caribou collar data used by the Government of Nunavut (GN) to generate these polygons, and prior failed attempts to delineate caribou calving grounds with legal boundaries all demonstrate that the polygons provided by the Government of Nunavut (the "GN Polygons") to the NPC for the DNLUP 2016. We believe using the GN Polygons as a proposed method of protecting caribou calving grounds is fraught with problems and inaccuracies... One of the most important uncertainties in the DNLUP 2016 is whether there is any effect on caribou populations as a result of properly planned development. So far there is little evidence and scant scientific literature that a direct relationship exists. Observational evidence suggested that that mineral exploration and development has occurred in the West Kitikmeot region when large and increasing populations of caribou existed. In recent years there have been caribou population declines, on the mainland of the West Kitikmeot. This decline has occurred during one of the lowest levels of mineral development activity in the Kitikmeot region in decades. West of Kugluktuk there is no development and yet the Bluenose East herd is in decline. ... Caribou are central to the cultural identity of Kitikmeot Inuit. KIA believes in careful management of caribou and their calving grounds...The evidence provided in this submission regarding how fluid caribou calving grounds

are over space and time will make it apparent why KIA believes that mobile protection offers a far more effective means to manage caribou compared to delineated protected areas.” - Kitikmeot Regional Association, Final Hearing Written Submission for the 2016 Draft Nunavut Land Use Plan, January 13, 2017

The Municipality of Cambridge Bay notes,

"Sometime between 2014 and 2016, the NLUP changed the designation of caribou habitat from "Special Management Areas" to "Prohibited and Protected". The data for the Plan does not include any scientific evidence that links caribou decline with resource development when development is done correctly. This would be compromising the potential for development of other opportunities while not contributing to better caribou management measures... The protocols on marine transportation are already a solid process under Transport Canada, Northern Marine Services. Transport Canada has the expertise in this regard and should be the lead agency for marine traffic in the North." - Municipality of Cambridge Bay, Pre Hearing Written Submission, January 13, 2017

The NPC workshops, to date, have been neither helpful nor effective. We are dissatisfied with the facilitation that has been provided at the technical workshops and pre-hearing conferences and question the procurement process by which these services have been obtained. The facilitator is non-Nunavummiut, has demonstrated bias against industry, and actively limits the ability of some participants to speak candidly and without interruption.

We note, as well, that the NPC Chair and Commissioners have been largely publicly absent from the planning process. We are of the view that the Commissioners should attend regional consultation meetings as well as any subsequent final public hearings, with NPC staff acting as facilitator.

5. The 2016 DNLUP does not adequately take into account the natural resource base and existing patterns of natural resource use, or economic opportunities and needs, as required by the Nunavut Agreement.

As per section 11.3.1 of the Nunavut Agreement, a land use plan shall take "*into account factors such as ... (b) the natural resource base and existing patterns of natural resource use*" as well as "*(c) economic opportunities and needs.*" The 2016 DNLUP does not adequately do so. As an example, the Kivalliq Inuit Association states that they "*continue to have several concerns with the overall approach taken in the [2016] DNLUP*" and that:

"Based on the 2016 DNLUP the Kivalliq Region will be impacted much more than other regions, with loss of 46% of its IOLs, which were negotiated for their mineral rights. In addition, if using only the 422,324 square kilometres that comprise the mainland portion of the Kivalliq Region (i.e. does not include Hudson Bay or the islands within) the recommendations of the 2016 DNLUP will eliminate 40% of this area from any form of economic development. This is a significant loss and will have a significant negative impact on future generations of Inuit and also the rest of Canada." - Kivalliq Inuit Association, Final Technical Review of the 2016 Draft Nunavut Land Use Plan, January 12, 2017

The Kitikmeot Inuit Association echos:

"KIA believes that the GN Polygons designated as protected areas will have a significantly negative impact on KIA's membership and mandate. KIA's Board-approved mandate is "To Manage Kitikmeot Inuit Lands and Resources, and protect and promote the social, cultural, political, environmental, and economic well-being of Kitikmeot Inuit". The protected area status of the GN Polygons will significantly affect KIA choices for careful multiple use management of

Inuit Owned Lands, and prevent benefitting from carefully planned activities on federally owned lands in areas where caribou calving is not present, or present for only a short time in a year. Caribou calving only occurs for a brief period of the year, and banning carefully planned multiple uses so that caribou are not affected in these areas will affect KIA's socio-economic interests." - Kitikmeot Regional Association, Final Hearing Written Submission for the 2016 Draft Nunavut Land Use Plan, January 13, 2017

The Municipality of Cambridge Bay has stated, "*It is believed that the NLUP does not provide a balance between Economic Development opportunity, Conservation and Environmental Protection... The NLUP could be considered a blanket Land Use Plan. There is no accounting for the individuality of the Regional needs and priorities. Because of this, it is believed that the NLUP would have long term negative effect on the community residents and community development.*" (see Pre Hearing Written Submission, January 13, 2017). These concerns are shared by the Kugluktuk HTO:

"This information to KIA, KHTO, and Hamlet of Kugluktuk that this NPC draft plan will hurt our future and your kid's future for Kugluktukmiut, we will have nothing left to do in our Nunavut lands... the KHTO is not in favor of this support, as there is too much restrictions for the Kugluktukmiut people." - Kugluktuk HTO submission, December 15, 2016

The Hamlet of Arviat raises similar concerns with respect to "*overall balance among competing interests on important issues*":

"As the NPC has failed to consult with our community on the two most recent versions of the NLUP and related revisions to the 2012 draft, the Hamlet cannot assume that the NPC has provided for sufficient balance between competing interests on important issues affecting Arviarimut. For instance, areas of high mineral potential that also overlap with important caribou and other wildlife habitat may be subject to proposed restrictions on development. In many cases, this may be an appropriate approach, and one that could be supported by our community. However, community input relating to a particular area may, in other circumstances, indicate that development should be allowed, regardless of implications to wildlife, and that economic development should be prioritized. As it has not consulted with community members on this version of the Plan, the NLUP, including its approach to balancing proposed interests is, in the opinion of the Hamlet, inadequately informed as it concerns areas near Arviat and within the Kivialliq region." - Hamlet of Arviat Submission to the NPC, 2016 Draft NLUP, January 13, 2017.

In the Chamber's view, the 2016 Draft NLUP is already negatively affecting investment in the Nunavut economy. The territory must do all it can to regain investor confidence. Natural Resources Canada's latest report *Exploration and Deposit Appraisal Expenditures, by Province and Territory* projects that exploration investment in Nunavut continues to decrease. Despite the tremendously strong mineral potential in this region, the tide of investment leaving Nunavut has yet to turn. The *2016 Fraser Survey of Mining Companies* paints Nunavut as one of the slowest provinces to permit and with substantially the highest level of regulatory uncertainty. Over 80% of respondents indicated that uncertainty about the administration, interpretation, and enforcement of existing regulations is a deterrent to investment in Nunavut; A total of 72% of respondents stated that, to some degree, uncertainty over which areas will be protected as Wilderness, Parks, or Archeological Sites is a deterrent to them investing in Nunavut.

Nunavut is suffering from a land use planning process that threatens mineral investment, both on Crown and Inuit owned land. If approved, the 2016 Draft NLUP will have a serious impact on the Nunavut and Canadian resource economy, with little to no corresponding environmental or social benefit.

6. Conclusion

Despite its deep concerns, given the importance of the land use planning process to the future of Nunavut, the industry and our workers, the Chamber intends to attend each of the public hearings currently scheduled in the Qikiqtani, Kivalliq and Kitikmeot regions. The Chamber may read statements on behalf of its members that have been granted standing at each of those hearings but cannot attend in person.

The Chamber notes that, "*The values underlying the duty of procedural fairness relate to the principle that the individual or individual affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.*"¹ In the Chamber's view, the process that has been followed to date fails to meet this very high standard as well as the standard of the Nunavut Agreement.

The Chamber will continue to work with the NPC and others to try to find a constructive resolution to these planning challenges. As the NPC has noted throughout this process, the final NLUP will reflect a compromise between participants. However, we believe that with changes to the process and a further revision of the 2016 DNLUP prior to holding any regional public hearing, there remains an opportunity to address the serious concerns that have been expressed by numerous key participants and to develop a land use plan which better reflects the priorities and values of those that live and work in Nunavut.

Sincerely,

The NWT & Nunavut Chamber of Mines



Gary Vivian
President

cc Ms. Aluki Kotierk, President of Nunavut Tunngavik Incorporated
Mr. Stanley Anablak, President of Kitimeot Inuit Association
Mr. David Ningeongan, President of Kivalliq Inuit Association
Mr. P.J. Akeegok, President of Qikiqtani Inuit Association
The Honourable Peter Taptuna, Premier of Nunavut Legislative Assembly
The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs
The Honourable Dennis Patterson, Senator for Nunavut
The Honourable Monica Ell-Kanayuk, Minister of Economic Development and Transportation and Minister of Mines
MP Hunter Tootoo, MP for Nunavut
Mr. Brian Fleming, Executive Director of the Nunavut Association of Municipalities
Mayor Madeleine Refern, City of Iqaluit
Hamlet of Cambridge Bay
Hamlet of Arviat
Kugluktuk Hunters and Trappers Organization
Ms. Sharon Ehloak, Executive Director of the Nunavut Planning Commission
Mr. Percy Kabloona, Commissioner of the Nunavut Planning Commission
Mr. Peter Alareak, Commissioner of the Nunavut Planning Commission

¹ *Baker v. Canada (Minister of Citizenship & Immigration)* 2 SCR 817 at para. 21-28.

Mr. Ovide Alakanauruk, Commissioner of the Nunavut Planning Commission