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Nunavunmi Parnaiyiit
Nunavut Planning Commission
Commission d'Aménagement du Nunavut

Nunavut Planning Commission Internal Procedure

Conformity Determination

October 2020

Effective Date: October 23, 2020

Approved Revisions:

Effective Date of Revisions	Summary of Changes
October 23, 2020	Revised cumulative effects referral criteria Updated references and language to reflect the enactment of NuPPAA

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PURPOSE

This procedure guides Nunavut Planning Commission (referred to herein as either the Commission or NPC) when undertaking a Conformity Determination.

This procedure is made in accordance with Section 11.4.4(K) of the Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (the Nunavut Agreement - NA) and the Nunavut Planning and Project Assessment Act, as may be amended (NUPPAA).

A Conformity Determination is a review of a project proposal to determine whether it complies with all conformity requirements of any applicable land use plan.

AUTHORITY

In accordance with the NUPPAA and the NA, the Commission determines if projects are in conformity with applicable land use plans, and determines whether a project that conforms to the plan (or that has received a minor variance or ministerial exemption, as the case may be) is exempt from screening or requires screening due to cumulative impacts concerns.

Relevant NUPPAA Sections (reproduced from the version current to October 21, 2020¹ for ease of reference in Appendix C of this procedure) include but are not limited to: 76, 77, 78, 79, 80, 81, 82, 83, 84, 144, 156(1), 174, 175, 176, 177, 182 (a), 200

¹ Department of Justice Canada, Justice Laws Website, online: laws-lois.justice.gc.ca (accessed October 21, 2020)

APPLICATION

This procedure applies to all project proposals that occur, in whole or in part, in areas of the Nunavut Settlement Area (NSA) and the Outer Land Fast Ice Zone (OLFIZ) (collectively the Designated Area) where a land use plan is in effect.

Cumulative effects considerations are not limited by the extent of the Designated Area.

DEFINITIONS

Unless the context requires otherwise, words and phrases in this procedure have the same meaning as in the NA and NUPPAA. If there is any inconsistency between the NA and NUPPAA, the meanings of words and phrases in the NA prevail.

In this procedure:

Proponent means a person or entity, including, but not limited to, a federal, provincial or territorial minister, department or agency, a municipality or a designated Inuit organisation or a delegate thereof that proposes the carrying out of a *project*.

Public Registry means the NPC's online public registry at www.nunavut.ca

Valued Components (VC's) comprise both Valued Ecosystem Components (VECs) and Valued Socio-Economic Component (VSECs). A VEC is an element of the environment that has ecological significance (for example: iconic animal species or clean water). A VSEC is an element of the environment that has economic, social, or cultural significance (for example: jobs or adequate housing).

PROCEDURE

1 Flow Chart

- 1.1 A flow chart illustrating the conformity determination process is contained in Appendix D.

2 Application Requirements

- 2.1 A project proposal to be carried out, in whole or in part, in the Designated Area where a land use plan is in effect must be submitted to and reviewed by the NPC for conformity with the requirements of the land use plan.
- 2.2 Any information required by the NPC on its online application form to undertake a conformity review, including a description of the project proposal, must be submitted as part of the conformity determination process.

3 Submitting a Project Proposal

- 3.1 NPC Staff receives materials outlined in Section 2 of this procedure through NPC's online public registry, and assists Proponents in person, through email or by phone to submit proposals if necessary.
- 3.2 The time within which the NPC must complete its conformity review commences on the day on which a complete project proposal is received. The day the project proposal is received is not counted and the day on which the determination is made is counted as the last day.

4 Review for Completeness

- 4.1 NPC staff shall review and determine if the required materials referred to in Section 2 of this procedure have been submitted, are complete, and whether any additional information is required. Notice of receipt of the application will also be placed on the Public Registry.
- 4.2 If the information referred to in Section 2 of this procedure has not been provided or is incomplete, it will be returned to the Proponent with a written explanation from the Executive Director, or delegate thereof, outlining the reasons why.
- 4.3 If the Proponent's project proposal is complete, NPC staff will send a notification to the Proponent that;
 - (a) the project proposal has been received and is being reviewed by NPC staff for conformity with the land use plan or land use plans; and
 - (b) NPC staff will determine if a project proposal is in conformity with the approved land use plan(s) within 45 days after the date the project proposal was received; and
 - (c) NPC staff may, at any time during the review of a project proposal, make a written request to the Proponent for additional information and that any time required by the Proponent to provide the required information will not count as part of the

45 days NPC has to conduct a conformity determination.

- 4.4 NPC Staff may make a note of all cases where additional information was requested to determine conformity for future revisions of Conformity Determination process.

5 Conformity Determination

- 5.1 NPC shall determine, within 45 days after the project proposal is received, if a project proposal conforms to the land use plan(s).
- 5.2 A project proposal will be determined to conform to the land use plan if it is a use that is consistent with the terms and conditions of the applicable land use plan, and is not prohibited by the land use plan.
- 5.3 A project proposal will be determined not to conform to the land use plan if it is a use that is not consistent with the terms and conditions of the applicable land use plan, or is prohibited by the land use plan.
- 5.4 NPC staff will prepare a letter outlining the results of the conformity determination including whether the project proposal conforms to the land use plan and any applicable terms, conditions, recommendations, or relevant information.

6 Project Proposal Conforms

- 6.1 If NPC staff determine that a project proposal conforms to a land use plan, it will be determined if the project proposal is exempt from screening by the NIRB as follows:
 - (a) A project proposal will be exempt from screening if each work or activity that compromises the project proposal belongs to a class of exempt works or activities set out in Schedule 12-1 of the NA (or Schedule 3 of NUPPAA), as outlined in Appendix A.
 - (b) The NPC may request the NIRB's opinion as to whether a particular project proposal is exempt from screening.
 - (c) NPC staff will consider the interpretation provided in the NIRB's *Authorizing Agencies Guide*, (NIRB Technical Guide Series, December 2018):

"As exemptions are generally interpreted strictly, the NIRB considers that the items set out in points 1 through 7 under Schedule 12-1 should be read and interpreted together, not as stand-alone items. This means that a project proposal needs to be included under the exemption in each Item of Schedule 12-1 before the project proposal should be considered to be exempted from the NIRB screening process."

- 6.2 If the project proposal is otherwise exempt from screening as determined under section 6.1 of this procedure, NPC staff will determine if there are any concerns regarding the cumulative impacts of the project proposal using questions listed in Appendix B as a guide.
- 6.3 If the project proposal is not exempt from screening, or if the NPC determines that it has concerns regarding the cumulative impacts of a project proposal that is otherwise exempt from screening as determined under section 6.2 of this procedure, above, the Executive Director, or a delegate thereof, will send the project proposal with the conformity determination and any recommendations to the NIRB in order for it to conduct a screening.
- 6.4 If it is determined that the project proposal is exempt from screening and there are no cumulative impacts concerns, the Executive Director, or a delegate thereof, will send the project proposal with the conformity determination and any recommendations to the regulatory authorities identified by the Proponent.

7 Project Proposal Does Not Conform

- 7.1 Where the NPC Staff are of the opinion a project proposal does not conform to the land use plan, the Conformity Officer must write up a report and recommendation, attaching all materials considered, to send to the Executive Director and advise the Executive Director of the negative conformity determination recommendation (NCDR).
- 7.2 The Executive Director, or a delegate thereof, will:
- a) disclose a copy of the Conformity Officer's project proposal summary, NCDR, and the materials considered to the Proponent;
 - b) notify the Proponent of the date of the Commissioners' next meeting to deliberate, if known, and advise that the Proponent may within 10 days of the NPC's notice (not counting the day on which the NPC sends the notice, and counting the day on which the Proponent must respond) either:
 - i. submit a written response to the Conformity Officer's recommendation to be considered by the Commissioners;
 - ii. seek a time extension; or
 - iii. advise the NPC that no response will be provided;
 - c) forward the Conformity Officer's project proposal summary, NCDR and the materials considered, and any response received from the Proponent to the Commissioners for their consideration.

- 7.3 If the Commissioners after consideration, decide the project proposal does conform to the applicable land use plan, the NPC staff will be directed to proceed to treat the project proposal as a positive conformity determination in accordance with section 6 of this procedure.
- 7.4 If the Commissioners decide the project proposal does not conform to the applicable land use plan, the NPC will provide written reasons for the negative conformity decision, explaining the decision, setting out legal and policy considerations and evidence, and how any conflicts were interpreted.
- 7.5 If a negative conformity determination is made, NPC staff will determine if the project proposal is eligible for a minor variance under the applicable land use plan.
- 7.6 If the project proposal is eligible for a minor variance, it will be considered in accordance with the NPC's *Minor Variance Internal Procedure*.
- 7.7 If a minor variance is approved, NPC staff will determine if the project proposal is exempt from screening in accordance with section 6 of this procedure.
- 7.8 If a project proposal does not conform to the land use plan and is not granted a minor variance, the Proponent will be advised that they may:
- a) amend the project proposal to comply with the land use plan and resubmit the project proposal;
 - b) re-evaluate the project proposal.
 - c) apply to the NPC to amend the land use plan in accordance with the Plan Amendment Procedure; or
 - d) apply to the federal Minister and / or territorial Minister for an exemption from the land use plan.

8 Communication of Decisions

- 8.1 NPC staff will communicate any decisions made under 5.1, 6.1, 6.3, 7.3 or 7.4 of this procedure to the Proponent, the NIRB, and the regulatory authorities identified by the Proponent.
- 8.2 NPC staff will include, as soon as practicable, any decisions made under 5.1, 6.1, 6.3, 7.3 or 7.4 of this procedure on the NPC Public Registry.

Appendix A: NA Schedule 12-1 Exemptions

Under Schedule 12-1 of the NA, the following categories of activities are exempt:

1. Land use activities not requiring a permit or authorization from the Government of Canada or Territorial Government.
2. Land use activities requiring only a Class B permit under the *Territorial Land Use Regulations, C.R.C., c. 1524*.
3. All construction, operation and maintenance of all buildings and services within an established municipality, except for the bulk storage of fuel, power generation with nuclear fuels, or hydro power and any industrial activity.
4. All hotels, motels or tourist facilities of 20 beds or less outside the boundaries of a municipality.
5. Water uses that do not require a public hearing under Article 13, Section 13.7.3 of the NA.
6. Prospecting, staking or locating a mineral claim unless it requires more than a Class B permit mentioned in item 2.
7. Such other categories of activities and projects as may be agreed upon by NIRB and the appropriate Minister.

For the purposes of item 3, and for ease of reference only, the following terms are defined by the NIRB and the Government of Nunavut (from the NIRB's *Authorizing Agencies Guide, NIRB Technical Guide Series, December 2018*), solely in the context of determining whether these activities within a municipality are exempted from the requirement for screening:

Bulk Storage of Fuel means the storage of fuel for resupply or resale but does not include individual residential or commercial users storing less than 80,000 L.

Industrial Activity means activities whose aim is the manufacture, assembly or processing of goods or commodities or the exploitation of natural resources.

This definition includes the following activities: land farms; manufacturing plants (steel, metal or chemical); recycling depots; hazardous waste or chemical storage or use; quarries (where the initial development or the expansion of an existing quarry and the closure, abandonment or reclamation of the quarry were not included as part of the initial screening); explosives storage; tanneries; meat and fish production facilities (establishment or change in operation); exploration, bulk sampling, mining and all associated mining activities.

This definition excludes the following activities: all institutional activities; the following commercial activities: building supply centre; animal hospital; custom workshop; construction equipment yard; heavy equipment sales and rentals; automotive commercial garage; extraction from existing quarries; and home occupations (any occupation, trade, profession, personal service, day care or craft carried on by an occupant of a residential building as a use secondary to the residential use of the building).

For the purposes of item 5, and for ease of reference only, the version current to February 4, 2015 of the *Nunavut Water Regulations SOR/2013-69*² identify the following uses for which no public hearing is required:

- 9.** (1) For the purposes of section 13.7.3 of the Agreement and subsection 52(1) of the Act, no public hearing is required in respect of an application for
- (a) an amendment to a type A licence that does not affect the use, flow or quality of waters or alter the term of the licence;
 - (b) one or several renewals of a type A licence if the total duration of the renewal or renewals does not exceed 180 days;
 - (c) the assignment of a type A licence; or
 - (d) the issuance, amendment, renewal, assignment or cancellation of a type B licence.
- (2) For the purposes of section 13.7.3 of the Agreement, no public hearing is required in respect of an application for a use of waters or deposit of waste without a licence.

For additional detail regarding exemptions under item 7 of Schedule 12-1 of the Nunavut Agreement, see the NIRB's *Authorizing Agencies Guide (December 2018)*. Note that uses exempt under item 7 of Schedule 12-1 of the NA are to be included in Schedule 3 of NUPPAA.

² Department of Justice Canada, Justice Laws Website, online: laws-lois.justice.gc.ca (accessed February 23, 2015)

Appendix B: Cumulative Impacts Concerns

Three criteria together must be met before a referral to the NIRB can be made: (i) the project must create an impact on a Valued Component, (ii) the impact could act cumulatively with those from other projects, and (iii) the resulting cumulative impact must be of concern. Questions such as, but not limited to the following, will assist NPC staff in determining if a project proposal that falls within Schedule 12-1 of the NA should be referred to the NIRB because of cumulative impact concerns:

- I. Could the project create an impact on a Valued Component?

[Factors to be considered]

- a. Does the project occur in, or in proximity to, an area where there is an identified Valued Component including areas used or relied on by communities or wildlife that is sensitive to disturbance?
- b. What is the timing and frequency of the project, for example, is it a continuous use all year, or is it an occasional use on a seasonal basis, and does the timing of the use coincide with any community uses or the presence of wildlife?
- c. What is the intensity of the activity and how large an area of land will be affected by the project's activities and by-products (e.g. vibrations, noise, dust, fumes and/or wastewater)?

- If the project will NOT impact on a VC, the project will not be referred to NIRB for cumulative impact concerns.

- If the project will impact on a VC, go to ii).

- II. Are there other projects that could impact the same Valued Component?

[Factors to be considered]

- a. Does the project occur in the same general location as a previous project OR where there is an existing project OR a proposed project?
- b. Does the timing of the project coincide with the activities of other nearby projects?
- c. Does the project use the same resources as past projects OR as a current project OR as a proposed project?
- d. Are there impacts from other projects that could combine or overlap with those of the project, (e.g. vibrations, noise, dust, fumes and/or wastewater)?

- If there are no other projects that could impact on the same Valued Component, the project will not be referred to NIRB for cumulative impact concerns

- If there are other projects that could impact on the same Valued Component, go to iii).

- III. Is the resulting cumulative impact on the Valued Component a concern?

[Factors to be considered]

- a. Are there reasonable concerns regarding potential cumulative impacts in the area of the project that have been raised by communities, Inuit organizations, academic/research organizations, government or regulatory bodies during previous planning or impact assessment exercises?
- b. Is the VC a species at risk?
- c. Are there any non-project related environmental stressors (drought or flood conditions) impacting the VC that could increase its sensitivity to disturbance?

- If the resulting cumulative impact on the Valued Component is not a concern, the project will not be referred to NIRB

- If the resulting cumulative impact on the Valued Component is a concern, the project will be forwarded to NIRB for screening.

Appendix C: Relevant NUPPAA Sections

The following NUPPAA excerpts (reproduced from the version current to October 21, 2020³) including marginal notes are provided here for reference only:

“76. Duty — proponent

(1) The proponent of a project to be carried out, in whole or in part, in the designated area must submit a project proposal to the Commission.

Content of Proposal

(2) A project proposal must contain a description of the project prepared in accordance with the by-laws and rules made under paragraph 17(1)(e).

Grouping of related projects

(3) A proponent who intends to undertake two or more projects that are so closely related that they can be considered to form a single project must submit a single project proposal in respect of those projects, and they are deemed to be a single project for the purposes of this Act.

Notice

(4) The Commission must publish in its public registry a notice of receipt of the project proposal. That notice must contain a summary of the project, including a description of its nature and an indication of where it is to be carried out, and the proponent’s name.

77. Conformity with plan

(1) The Commission must determine if a project is in conformity with the land use plan that is applicable to the place where the project is to be carried out.

Multiple plans

(2) If different portions of the project are subject to different land use plans, the Commission must determine if each portion is in conformity with the land use plan applicable to it, and if one portion of the project is not in conformity with the land use plan applicable to it, the entire project is deemed to not be in conformity.

78. Verification — Screening

(1) If the Commission determines that the project is in conformity with any applicable land use plan, it must verify whether the project is exempt from screening.

Exemption from Screening

(2) A project is exempt from screening if each work or activity that comprises the project belongs to a

class of exempt works or activities set out in items 1 to 6 of Schedule 12-1 to the Agreement or in Schedule 3 and does not belong to a class of non-exempt works or activities prescribed by regulation.

Commission may consult Board

(3) The Commission may request the Board’s opinion as to whether a particular project is exempt from screening.

79. Project not exempt from screening

If a project is not exempt from screening, the Commission must send the project proposal to the Board in order for it to conduct a screening.

80. Project exempt from screening

(1) If a project is exempt from screening and the Commission has concerns in respect of any cumulative ecosystemic and socio-economic impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out inside the designated area, or wholly or partly outside the designated area, it must send the project proposal to the Board in order for the Board to conduct a screening of the project.

No concerns — cumulative impacts

(2) If a project is exempt from screening and the Commission does not have concerns in respect of the cumulative impacts referred to in subsection (1), it must indicate in the decision that the assessment of the project has been completed and that the proponent may carry out the project, subject to paragraph 74(f) and to obtaining any licence, permit or other authorization required by or under any other Act of Parliament or any territorial law and complying with any other requirements set out in such an Act or law.

81. Minor variance

(1) If the Commission determines that the project is not in conformity with an applicable land use plan, it must verify whether that land use plan authorizes it to grant a minor variance with respect to such a project and whether the conditions set out under subsection 48(3), if any, are met.

Minor variance authorized

(2) If the land use plan authorizes the granting of minor variances and if the conditions, if any, are met, the Commission may, within 20 days after its determination that the project is not in conformity with the plan,
[...]

82. Request for ministerial exemption

³ Department of Justice Canada, Justice Laws Website, online: laws-lois.justice.gc.ca (accessed October 21, 2020)

(1) If the Commission determines that the project is not in conformity with an applicable land use plan, the proponent may request an exemption from the federal Minister or the territorial Minister, or both, taking into account their respective jurisdictions, within 60 days after

(a) that determination, if the land use plan does not authorize the granting of a minor variance or if it does and the conditions are not met; or

(b) the Commission's decision to refuse to grant a minor variance.

[...]

Limitation

(5) For greater certainty, the Commission is not authorized to send the project proposal to the Board under section 79 or subsection 80(1) if it has determined, under section 77, that the project is not in conformity with any applicable land use plan and no minor variance or ministerial exemption has been granted in respect of the project under paragraph 81(2)(a) or 82(2)(a), as the case may be.

Time Limit

83. Performance of certain functions

(1) The Commission must exercise its powers and perform its duties and functions under sections 77 to 80 within 45 days after receiving the project proposal.

Time not counted

(2) If the Commission determines that a project is not in conformity with an applicable land use plan, any time required for the exercise of powers or the performance of duties or functions relating to minor variances and ministerial exemptions does not count as part of the period referred to in subsection (1).

Time not counted — public review

(3) If the Commission conducts a public review under subsection 81(5), any time required to conduct it does not count as part of the period referred to in subsection 81(2).

Time not counted —additional information

84. Any time required for the proponent to provide information required under subsection 144(1) does not count as part of the periods referred to in subsections 81(2) and (4) and 83(1).

144. Additional information

(1) The Commission, the Board and any federal environmental assessment panel may require the proponent to provide any additional information that it considers necessary to carry out its review or screening or to determine the scope of a project, as the case may be.

Transboundary Projects Review by Commission

156. Application — entire project

(1) If a project is to be carried out partly outside the designated area, sections 76 and 80 apply in respect of the entire project.

Parks and Conservation Areas Establishment, Abolition and Alteration of Area Proposal

174 Duty — department or agency

(1) The department or agency proposing an initiative whose purpose is to establish or abolish a park or a conservation area, in whole or in part inside the designated area, or to expand or reduce its area, in whole or in part within the designated area, must submit a proposal to the Commission.

175. Conformity with plan

(1) The Commission must determine if an initiative is in conformity with any land use plan that is applicable to the place where the initiative is to be carried out.

Multiple plans

(2) If different portions of the initiative are subject to different land use plans, the Commission must determine if each portion is in conformity with the land use plan applicable to it, and if one portion of the initiative is not in conformity with the land use plan applicable to it, the entire initiative is deemed not to be in conformity.

176. Initiative in conformity with plan

If the Commission determines that the initiative is in conformity with any applicable land use plan, it must send the proposal relating to the initiative to the Board in order for the Board to conduct a screening.

177. Initiative not in conformity with plan

(1) If the Commission determines that the initiative is not in conformity with an applicable land use plan, it must verify whether that land use plan authorizes it to grant a minor variance with respect to that initiative and whether the conditions set out in accordance with subsection 48(3), if any, are met.

Minor variance permitted

(2) If the land use plan authorizes the granting of a minor variance and if the conditions, if any, are met, the Commission may, within 20 days after its determination that the initiative is not in conformity with the plan,

182. Application of certain provisions

Sections 73, 75, 86, 88 to 99, 101 to 146, 148 to 150 and 156 to 162 apply in respect of the initiative, subject to the following:

(a) in those sections, a reference to a project is a reference to the initiative and a reference to a proponent is a reference to a department or agency; [...]

Communication of Information and Documents

200. Decisions and reports — Commission

- (1) The Commission must provide
- (a) the proponent, the Board and the regulatory authorities identified by the proponent with any decision that it makes under section 77, subsection

78(1), section 80, subsection 81(2), 85(1), 142(1) or 144(2), section 175 or subsection 177(2);

(b) in the case of a decision made under subsection 80(2), the regulatory authorities identified by the proponent with the project proposal; [...]

Appendix D: Flow Chart of Conformity Determination Process

