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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

Discussion Brief

Nunavut Land Claims Agreement Amendments, July 9, 2015:
NWB Implementation Issues

**Prepared by Teresa Meadows, Shores Jardine LLP
On behalf of the Nunavut Water Board**

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Introduction

In the aftermath of amendments to Articles 11, 12 and 13 of the Nunavut Land Claims Agreement (NLCA) in July 2015 to support the coming into force of the *Nunavut Planning and Project Assessment Act*, 2013, c. 14 (NuPPAA or the Act), the Nunavut Water Board (NWB) has identified a number of practical implementation issues that warrant further discussion of possible short and long term solutions. The text and attachments that follow are being circulated informally as background to support these discussions with Indigenous and Northern Affairs Canada (INAC), Nunavut Tunngavik Inc. (NTI), the Nunavut Planning Commission (the Commission) and the Nunavut Impact Review Board (NIRB).

In circulating this draft, the NWB recognizes that the focus of these materials is solely on the issues and potential effects of the amendments on the NWB's licensing processes and that INAC, NTI, the Commission and the NIRB may identify their own additional implementation issues as these discussions unfold. Similarly, the aspect of these materials canvassing possible mechanisms to manage the implementation issues has been drafted with the focus of addressing the key issues identified by the NWB.

As set out in greater detail following this Introduction, the NWB has identified a few key implementation issues:

- As there are no transition provisions under the amended NLCA, there are now situations where although excluded from the application of NuPPAA by the transition provisions and definition of "project" under that Act, all physical works and activities that meet the amended definition of "project proposal" under the NLCA would nonetheless be required to be received by the Commission and processed under the terms of the amended NLCA. This has resulted in a category of project proposals that are excluded from NuPPAA but that are NOT excluded from being processed by the Commission under the amended terms of the NLCA, including applications for amendments of existing water licences.
- The amendments to Article 13 of the NLCA now requires that all project proposals involving "an application" to the NWB must be provided to the Commission. This broad wording includes applications for *de minimus* water uses or waste deposits that can be approved by the Board without the grant of a licence under the *Nunavut Waters Regulations*.
- There appears to be confusion amongst the parties (including municipal licensees in general) as to whether the amendment to the definition of project proposal to the NLCA that excludes certain types of municipal projects operates to exclude municipalities from having to submit their water licence applications to the Commission for processing under the amended NLCA.
- For amendments to existing licences and for applications involving an approved water use and/or deposit of waste without a licence, applicants do not appear to be aware of the amendments to the NLCA and have not anticipated the associated requirements for submission of these types of project proposal to the Commission and the potential changes to processing timelines associated with these steps.

The NWB looks forward to discussing the current situation informally with INAC, NTI, the Commission and the NIRB and to working together to address the implementation issues in a consistent manner that reflects the parties' respective jurisdiction, the objects of the NLCA and intent of the amendments.

1. No Transition Provisions under the Amended NLCA

Under the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, (NuPPAA or the Act) s. 235 unless there has been a significant modification (as set out in ss. 145-146) to a project that has been assessed under the Nunavut Land Claims Agreement (NLCA) and/or that has been lawfully carried out within 5 years of NuPPAA coming into force, the Act does not apply and the project remains to be considered under the NLCA.

However, there are no parallel transition provisions for the amendments to the NLCA. As a result, from the date of the amendments coming into force on July 9, 2015, all physical works and activities that meet the amended definition of “project proposal” under the NLCA are now required to be processed under the terms of the amended NLCA, regardless of whether these project proposals had already been considered under the previous version of the NLCA. It is also important to highlight that the definition of “project proposal” expressly includes a modification of a physical work or any form of “physical activity” that a proponent proposes to carry out in the Nunavut Settlement Area.

As a result, as set out in Article 11, and specifically the new Section 11.5.9A, the proponent of any project proposal (which includes an activity or work that constitutes an amendment/modification to an existing licence) is required to submit the project proposal to the Commission for processing under the amended NLCA prior to submitting an application to the Nunavut Water Board.

a. Potential Implications for Water Licence Processing

From the NWB’s perspective, the net result of the NLCA not having transition provisions analogous to NuPPAA is that even though NuPPAA may not apply to projects that were previously assessed under the NLCA, the amended NLCA DOES apply to such project proposals, regardless of whether the project proposal had previously been assessed and licensed under the prior version of the NLCA. Practically speaking, this means the proponent must submit all project proposals, even for amendments to existing licences directly to the Commission. This is in contrast to the prior practice under the previous version of the NLCA where the NWB would typically receive applications for amendments to existing water licences directly, would undertake preliminary completeness checks of the application, and would concurrently seek confirmation from the Commission regarding conformity and direction from the NIRB as to whether the amendment application was exempt from the requirement for NIRB screening under the NLCA.

The absence of transition provisions in the amended NLCA means that from July 9, 2015 onward even for water licence amendment applications that do not trigger NuPPAA, the NWB cannot proceed to formal processing of the application until the project proposal has been provided to the Commission and the Commission has reviewed the project proposal and made the following determinations (as required by the amended Article 11, Section 11.5.10 and Article 12, Section 12.3.6):

- If there is a land use plan in place, the Commission has indicated that the project proposal conforms with applicable land use plans or a variance has been granted;
- If the Commission finds the project proposal to be in conformity or there is no land use plan in place, the Commission provides direction as to whether the project proposal is:
 - exempt from screening by the NIRB under Article 12, Schedule 12-1; and
 - even if the project proposal is exempt from screening the Commission provides further direction as to whether the Commission has concerns regarding cumulative effects of the project in relation to other development activities in the planning region and has chosen to refer the project proposal to the NIRB for screening under Article 12, Section 12.3.3.

The NWB recognizes that for amendments to existing licences (especially Type B licences) the Commission may wish to streamline their consideration of these types of project proposals. However, in the short term at least, the Commission can expect to receive a significant volume of these types of project proposals that may not have been planned for and anticipated. The Commission, NIRB and the NWB had previously assumed that it was likely that the grandfathering provisions of NuPPAA would be reflected in the NLCA amendments, and therefore, proponents of amendments to existing licences would be able to proceed in accordance with the previous practices under the NLCA. . Consequently, there has been no opportunity to anticipate or plan for the increased volume of project proposal, or to communicate with applications regarding the implications to the processing of water licence applications.

In preliminary discussions with the regulated community it appears unlikely that applicants for amendments (particularly to Type B licences) will have accounted for the Commission's receipt and review timelines as a precursor to the NWB's ability to formally engage in processing an amendment application.

In addition to the potential for unanticipated effects on timelines for renewals and other types of amendments, there are potential process implications that may result from the requirement for amendments to existing licences (regardless of the scale of the amendment) to be submitted to the Commission at the outset. At a workshop in September 2015 in Cambridge Bay, the NWB raised with the Commission and with the NIRB concerns that unless proponents are encouraged to consult with the NWB regarding the scope and content of the water licence application associated with a project proposal submitted to the Commission early on in the process, the first the NWB may see of an application is after the Commission (and if a screening is conducted) the NIRB, processes are complete.

In the NWB's experience, it is not unusual for applicants to fail to properly or adequately describe the scope of the undertaking sought to be included in the scope of a licence. In such cases, the NWB's technical staff must spend considerable time in exchanges with the applicant before the NWB is satisfied that the scope of the application has been properly defined. Given the importance of reviewing the proper scope of the project proposal for the Commission to properly discharge their land use planning and assessment referral functions, particularly for determining cumulative effects, the NWB recognizes that as soon as there has been a change in the scope of the application that could be considered a change to the scope of the project

proposal previously considered by the Commission (and if subject to screening, the NIRB) an updated version of the previously considered project proposal would likely be required. In such a case, a revised project proposal, reflecting the change in scope would have to be resubmitted to the Commission, potentially starting the conformity and assessment process all over again. The NWB recognizes that this kind of regulatory “snakes and ladders” is unlikely to be well received by applicants and has the potential to create a considerable and unanticipated addition to the Commission’s work load.

b. Possible Mechanisms to Manage These Issues

In respect of applications to amend existing licences previously handled under the NLCA and excluded from NuPPAA under the “grandfathering” provisions, the NWB recognizes that the Commission and the NIRB may develop mechanisms for a more abbreviated or otherwise streamlined approach to their processing of this type of amendment application under the amended NLCA. However, the NWB also recognizes that the Commission and the NIRB cannot, in developing a streamlined approach, take measures that would fetter their discretion in respect of individual applications, and as such, the individual circumstances of any application may dictate changes to a routine approach that may be developed by the Commission and the NIRB.

With respect to the second issue of the potential for detrimental effects on timelines and additional processing requirements when re-scoping occurs after the Commission has completed their work, the NWB has inquired as to whether the Commission could permit and expressly encourage project proponents to engage informally with the NWB’s technical staff to discuss the scope and completeness of the water licence application before the Commission has completed its work. Perhaps inclusion of a sentence to this effect could be included in the Commission’s acknowledgement of the receipt of a project proposal. If the Commission is willing to consider this approach, the NWB would be happy to jointly develop the wording for this type of notification.

2. Amendments to Article 13 Involving a Project Proposal Requiring an Application to the NWB

Under the amended NLCA, a project proposal “requiring an application to the NWB” must be processed under the NLCA in accordance with the requirements of Article 13 (and in particular) Sections 13.4.2-13.4.6. At the time that these amendments were prepared, the NWB had two types of applications, both of which were for a specified category of licences. However, in 2013, the *Nunavut Waters Regulations*, (NWR) SOR/2013-69 came into force. The NWR created an additional type of application, an “Application for Approval of Use of Waters or Deposit of Waste Without A Licence” (see s. 3 of the NWR). These types of uses water and/or deposits of waste without a licence were established by definition under the NWR as *de minimus* water uses or very limited deposits of waste that pose little risk to the environment. The NWR establishes a simple and expedient means of the NWB considering and approving these types of applications without a licence (typically within 10-14 business days).

However as the NWR very clearly establishes, someone seeking the NWB's approval to use water or deposit waste without a licence must prepare an "application to the NWB". Consequently, when the works or activities requiring an application to the NWB for approval without a licence are sufficient to meet the definition of "project proposal" under the amended NLCA, the project proposal must be submitted to the Commission for their consideration. The Commission must conclude their consideration of the project proposal before the NWB's consideration of the application for an approval without a licence under the NWR.

a. Potential Implications for Water Licence Processing

At the outset, the NWB notes that the number of Approvals without a Licence (WOL) received by the NWB continues to grow steadily since the NWR came into force in 2013. The NWB expects these numbers to continue to rise as licensees holding existing Type B Licences that are coming up to expiry for activities and undertakings that now, under the NWR would only require a WOL, choose to let their Type B Licences lapse and apply for a new WOL instead.

The process and timelines for the NWB to review WOL applications are very abridged (10-14 days, no public comments received) and many of these types of applications are associated with research and small-scale exploration that has significant seasonal constraints and involve activities that need to be undertaken during the short field seasons in Nunavut. As a result, these types of applications tend to come in concentrated bursts with high volumes in just a few weeks of the year. On this basis, the NWB anticipates that the Commission will receive a significant number of time-sensitive project proposals involving this type of application all at the same time in the spring of each year. Further, the term of a WOL is only one year. This timeline requires applicants to bring a new application on an annual basis, so unless activities cease at the site, the number of these types of applications is cumulative and will continue to increase.

In preliminary discussions with the Commission about this issue, Commission staff indicated that the Commission did not expect to review these types of applications because they did not meet the definition of "project" under NuPPAA (as the definition of project does not include an undertaking, work or activity if its adverse ecosystemic impacts are "manifestly insignificant"). However, the amended NLCA does NOT contain a similar definition of project. Consequently, with no mechanism for excluding this type of *de minimus* activity, all physical works and activities that meet the definition of "project proposal" under the amended NLCA and require an application to the NWB for a WOL or a licence are now required to be processed under the terms of the amended NLCA. The NWB highlights that it is our view that based on the current wording of the amendment to the NLCA, processing under the amended NLCA is likely required regardless of the significance/insignificance of the project proposal's potential adverse ecosystemic impacts.

b. Possible Mechanisms to Manage These Issues

To address the NWB's concern that although NuPPAA may not apply to these types of applications, the amended NLCA process (analogous in most respects to the NuPPAA process) does apply, the Commission may develop a type of "class determinations" approach to these types of *de minimus* applications. A class determinations approach may enable the Commission

to process these types of project proposals expeditiously and without requiring a full 45 day time period. However, the NWB recognizes that while the Commission may develop standardized approaches that may help to process this kind of project proposal, in each case, and particularly with respect to the Commission's consideration of concerns about the potential cumulative effects from high volumes of these types of project proposals, the Commission must preserve the Commission's ability to determine that a given project proposal (including this kind of project) should be referred to the NIRB for screening.

Therefore, in the NWB's view, the most direct mechanism to exclude WOL applications from the application of the project planning and assessment provisions of the amended NLCA is to further amend the language in Article 13 to clarify that it is only applications for a water licence that trigger the requirements of conformity, assessment and licensing established under the NLCA. Appendix C outlines potential revised wording that may achieve this result.

3. Revision to the Definition of Project Proposal to Exclude Certain Types of Municipal Projects

The definition of project proposal under the NLCA was amended to exclude certain types of municipal works or activities involving the construction, operation and maintenance of a building or provision of service within a municipality. In preliminary discussions with the proponents of municipal project proposals, it appears that some municipalities have assumed that ALL activities and services conducted by a municipality are excluded from the definition of project proposal and therefore the NLCA does not apply to any municipal project proposals. This assumption is problematic, because upon further consideration by the NWB, it was determined that the vast majority of municipal water licences involve not only water use by the municipality (which would generally be excluded from the definition and the NLCA), but these uses are almost always combined with the deposit of waste.

In particular, the NWB's records establish that with the exception of very few licences, the scope of most municipal water licensees are such that they would NOT be excluded by the additions to the amended definition. On this basis, the NWB expects that the majority of municipal water licences continue to be included under the scope of the definition of project proposal even as amended under NLCA. Therefore municipal water licensees are governed by the requirements of the land use planning and assessment provisions as set out in the amended NLCA.

a. Potential Implications for Water Licence Processing

The NWB has concerns that hamlets and the Government of Nunavut, Community and Government Services (GN-CGS) do not appear to understand that their activities do constitute project proposals even under the amended definition of the NLCA. Consequently there appears to be considerable confusion about the regulatory requirements for these types of water license applications and, at times, failures on the part of the applicant to submit the project proposal to the Commission at the outset.

b. Potential Implications for Water Licence Processing

The NWB recognizes that all the participants in the integrated regulatory process will likely need to communicate clearly and often with the regulated community as to how the NLCA amendments do/do not apply and will also be required to work together to map out the path going forward for a wide variety of members of the regulated community. To date, however, the NWB has focused on internal discussions to ensure that, where possible, the key regulatory players can develop a consistent message and practical guidance regarding the implications of the amendments for the benefit of the regulated community.

Appendix A:

Excerpts of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14

“project” means the carrying out, including the construction, operation, modification, decommissioning or abandonment, of a physical work or the undertaking or carrying out of a physical activity that involves the use of land, waters or other resources. It does not include

(a) the undertaking or carrying out of a work or activity if its adverse ecosystemic impacts are manifestly insignificant, taking into account in particular the factors set out in paragraphs 90(a) to (i);

(b) the undertaking or carrying out of a work or activity that is part of a class of works or activities prescribed by regulation; or

(c) the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydroelectric power or any industrial activities.

Modifications to Project after Assessment

145. If the carrying out of a work or activity is a project within the meaning of subsection 2(1) and modifies a project that has been approved under this Part, that work or activity is, despite paragraphs 74(a) and (b), not subject to an assessment under this Part unless that work or activity is a significant modification to the original project.

146.(1) For greater certainty, if the work or activity referred to in section 145 is a significant modification to the original project, it is subject to an assessment under this Part.

(2) Any person or body exercising powers or performing duties or functions under this Part in relation to the assessment of the modifying project must consider, and may rely on, any assessment carried out under this Part in relation to the original project.

235.(1) This Act does not apply in respect of:

- (a) a project that is being assessed under the Agreement or is being, or has been, lawfully carried out on the day on which this section comes into force;
- (b) a project that was approved under the Agreement before the day on which this section comes into force, was commenced and then stopped or shut down for a period of less than five years, calculated from that day;

- (c) the rebuilding of a work that has been closed for a period of less than five years calculated from the day on which this section comes into force, if it relates to a project that was approved under the Agreement before that day and lawfully carried out; and
 - (d) a project that was approved under the Agreement before the day on which this section comes into force and commenced within five years of that day.
- (2) Despite subsection (1), if, after this section comes into force, there is a significant modification, within the meaning of section 145, to a project referred to in any of paragraphs (1)(a) to (d), this Act applies to that project.

Appendix B:

Excerpts of Amendments to the NLCA in force July 9, 2015

Amendment to Definition of “Project Proposal” of the NLCA

"project proposal" means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out, or a physical activity that a proponent proposes to undertake or otherwise carry out, such work or activity being within the Nunavut Settlement Area, except as provided in Section 12.11.1 but does not include the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activity.;

Amendments to Article 11 of the NLCA

11.5.9A The proponent of any project proposal shall submit the project proposal to the NPC.

11.5.10 The NPC shall review all ~~project proposals.~~~~applications for project proposals.~~ Upon receipt and review of a project proposal, the NPC or members thereof or officers reporting to the NPC shall:

- (a) determine whether the project proposals are in conformity with plans; and
- (b) forward the project proposals with its determination and any recommendations to the appropriate federal and territorial agencies.

The land use plan may make provision for the NPC to approve minor variances.

PART 10: EMERGENCY SITUATIONS

11.10.1 Subject to Section 11.10.2, this Article and Article 12 do not apply to a physical work or activity that is carried out in response to

- (a) a national emergency for which special temporary measures are taken under the *Emergencies Act*;
- (b) an emergency if a Minister who is authorized under any legislation to declare a state of emergency, to take measures to prevent an emergency or to remedy or minimize its effects is of the opinion that an emergency exists; or
- (c) an emergency if the Minister of Indian Affairs and Northern Development certifies that an emergency exists and that it is in the interest of ensuring the health or safety of an

individual or the general public, or of protecting property or the environment that the physical work or activity be carried out without delay.

11.10.2 As soon as practicable after undertaking a physical work or activity referred to in Section 11.10.1, the person or entity carrying it out must submit a written report to the NPC, NIRB and the Minister of Indian Affairs and Northern Development describing

(a) all of the works or activities that have been undertaken or carried out in response to the emergency referred to in Sub-sections 11.10.1(a), (b) or (c), as the case may be; and

(b) any further work or activities required after the end of that emergency to complete an activity or to complete or maintain a work referred to in paragraph (a).

11.10.3 After receiving a report under Section 11.10.2, the NPC shall submit a written report to the Minister of Indian Affairs and Northern Development that contains an assessment of the conformity of any works or activities referred to in 11.10.2(a) or (b) with any applicable land use plan.

11.10.4 After receiving a report under Section 11.10.2, NIRB shall submit a written report to the Minister of Indian Affairs and Northern Development with terms and conditions that it recommends, with reasons, should apply in respect of the works or activities referred to in Sub-section 11.10.2(b).

11.10.5 The person or entity referred to in Section 11.10.2 shall provide any additional information that the NPC or NIRB considers necessary to prepare its report under 11.10.3 or 11.10.4, as the case may be.

11.10.6 After receiving a report under Section 11.10.2 and reports under Sections 11.10.3 and 11.10.4, if any, the Minister of Indian Affairs and Northern Development may impose terms and conditions on the carrying out of the works or activities referred to in Sub-section 11.10.2(b), in which case such works and activities may only be carried out in accordance with such terms and conditions and Sections 12.7.1 to 12.7.5 shall apply *mutatis mutandis*.

Amendments to Article 12 of the NLCA

12.3.5 Sections 12.3.1 to 12.3.4 shall apply where a land use plan has been approved pursuant to Section 11.5.9. In the absence of an approved land use plan, all project proposals other than those that fall within Schedule 12-1 shall be referred directly to NIRB for screening where there is no approved land use plan applicable to a proposed project, the NPC shall, subject to Sections 12.3.2, 12.3.3 and 12.4.3, forward the project proposal to NIRB for screening.

12.3.6 Where there is no approved land use plan applicable to a proposed project, and where the proposed project falls within Schedule 12-1, the NPC shall forward the project proposal to the appropriate departments and agencies for disposition, unless the NPC exercises its authority under Section 12.2.3.

12.4.3 Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

- (a) such component or activity was not part of the original proposal; or
- (b) its inclusion would significantly modify the project.

12.4.7 Where NIRB indicates to the Minister that a proposal requires review, the Minister shall:

(a) refer the project proposal to the Minister of the Environment for review, including a review of both socio-economic and ecosystemic impacts, by a federal environmental assessment panel in accordance with Part 6 where:

(i) the project proposal involves a matter of important national interest and a federal Minister determines that, for reasons stated in writing, the project proposal would be best reviewed under Part 6, provided that:

A. a review pursuant to this subparagraph shall occur only on an exceptional basis and shall reflect the primary objectives of section 12.2.5;

B. such determination shall be made within 90 days or within a further consecutive 90 day period where the federal Minister notifies NIRB in writing that such an extended period is required to make the determination; and

C. such determination shall be made following consultation with the Minister of the Environment, the territorial minister responsible for the environment and NIRB; or

~~Or,~~

(ii) the project proposal is to be carried out partly within and partly outside the geographic area to which this Article applies, unless the Minister, the Minister of the Environment and NIRB agree that the project proposal will be reviewed pursuant to Part 5; ~~or~~

(b) notwithstanding paragraph (a)(ii), where the only activity relating to the project proposal to be carried out outside the geographic area to which this Article applies is the transportation of persons or goods, refer the project proposal to NIRB for a review pursuant to Part 5, unless the Minister determines that the transportation of persons or goods is a significant element of the project and that it is more appropriate for the review to be conducted by a federal environmental assessment panel in accordance with Part 6 and the Minister of the Environment agrees with that determination;

Amendments to Article 13 of the NLCA

Lack of Conformity with Land Use Plans

13.4.2 Where pursuant to Section 11.5.10, the NPC informs the appropriate agencies that a ~~water application~~project proposal requiring an application to the NWB does not conform to land use plans or a variance has not been approved, the water application shall be rejected. If, pursuant to Section 11.5.11, the applicant subsequently requests and receives an exemption from planning conformity requirements, the application shall be processed by the NWB, or the project proposal shall be processed by ~~or~~ NIRB, as required.

Conformity with Land Use Plans

13.4.3 Where the NPC determines, pursuant to Section 11.5.10, that a ~~water application~~project proposal requiring an application to the NWB is in conformity with land use plans or a variance has been approved, and where the ~~application-proposal~~ falls within Schedule 12-1, the NPC shall forward the ~~application-proposal~~ with its determination and recommendations to the NWB for disposition, unless the NPC exercises its authority under Section 13.4.4.

13.4.4 Where the NPC has concerns respecting the cumulative impact of development activities in a planning region, it may refer ~~water applications~~a project proposal requiring an application to the NWB to NIRB for screening even though the application falls within Schedule 12-1.

13.4.5 Where the NPC determines, pursuant to Section 11.5.10, that a ~~water project proposal requiring an~~ application to the NWB is in conformity with the land use plans or when a variance has been approved, and where the ~~application-proposal~~ does not fall within Schedule 12-1, the NPC shall forward the ~~application-proposal~~ with its determination and recommendations to NIRB for screening.

Absence of Land Use Plans

13.4.6 ~~Sections 13.4.3, 13.4.4 and 13.4.5 shall apply where a land use plan has been approved pursuant to Section 11.5.9. In the absence of a land use plan, water applications requiring screening by NIRB shall be forwarded directly to NIRB. Where there is no approved land use plan applicable to a project proposal requiring an application to the NWB and where the proposed project falls within Schedule 12-1, the NPC shall forward the project proposal to the NWB for disposition, unless the NPC exercises its authority under Section 13.4.4.~~

13.4.7 Where there is no approved land use plan applicable to a project proposal requiring an application to the NWB, and where the proposed project does not fall within Schedule 12-1, the NPC shall forward the project proposal to NIRB for screening.

PART 5: RELATIONSHIP TO DEVELOPMENT IMPACT REVIEW

13.5.1 Following receipt of a ~~water application~~project proposal requiring an application to the NWB for screening, NIRB shall determine whether it requires a review pursuant to Article 12 and shall so advise the NWB.

13.5.2 Where the ~~water application~~project proposal is referred for review under Article 12, the

NWB and the review body shall coordinate their efforts to avoid unnecessary duplication in the review and processing of the applicationproposal. Legislation may provide for joint hearings or authorize the NWB to forego public hearings on any water application where it has participated in a public review of the relevant ~~water-applicationproposal~~ pursuant to Article 12.

13.5.3 Where the ~~water-applicationproposal~~ is not referred for review under Article 12, the NWB may process the related water application.

13.5.4 Subject to Sections 12.10.2 and 13.5.5, where a review of a proposed project is required pursuant to Article 12, the NWB shall not approve any water application relating to that project ~~that forms part of that review~~ until Article 12 has been complied with.

13.5.5 Notwithstanding Section 12.10.1, the NWB shall not be precluded from issuing interim, short-term approvals for water uses related to exploration or developmental work for a proposal under development impact review.

Appendix C:

Excerpts of NWB Suggested Revisions to the Amendments to the NLCA in force July 9, 2015

Suggested revisions to the July 9, 2015 amended NLCA to exclude Board approved water uses and waste deposits without a Licence from land use planning and assessment requirements under the NLCA.

Lack of Conformity with Land Use Plans

- 13.4.2 Where pursuant to Section 11.5.10, the NPC informs the appropriate agencies that a ~~water application~~project proposal requiring an application for a water licence to the NWB does not conform to land use plans or a variance has not been approved, the water licence application shall be rejected. If, pursuant to Section 11.5.11, the applicant subsequently requests and receives an exemption from planning conformity requirements, the application shall be processed by the NWB, or the project proposal shall be processed by ~~or~~ NIRB, as required.

Conformity with Land Use Plans

- 13.4.3 Where the NPC determines, pursuant to Section 11.5.10, that a ~~water application~~project proposal requiring an application for a water licence to the NWB is in conformity with land use plans or a variance has been approved, and where the ~~application-proposal~~ falls within Schedule 12-1, the NPC shall forward the ~~application-proposal~~ with its determination and recommendations to the NWB for disposition, unless the NPC exercises its authority under Section 13.4.4.
- 13.4.4 Where the NPC has concerns respecting the cumulative impact of development activities in a planning region, it may refer ~~water applications~~a project proposal requiring an application for a water licence to the NWB to NIRB for screening even though the application falls within Schedule 12-1.
- 13.4.5 Where the NPC determines, pursuant to Section 11.5.10, that a ~~water-project proposal requiring an~~ application for a water licence to the NWB is in conformity with the land use plans or when a variance has been approved, and where the ~~application-proposal~~ does not fall within Schedule 12-1, the NPC shall forward the ~~application-proposal~~ with its determination and recommendations to NIRB for screening.

Absence of Land Use Plans

- 13.4.6 ~~Sections 13.4.3, 13.4.4 and 13.4.5 shall apply where a land use plan has been approved pursuant to Section 11.5.9. In the absence of a land use plan, water applications requiring~~

~~screening by NIRB shall be forwarded directly to NIRB~~Where there is no approved land use plan applicable to a project proposal requiring an application for a water licence to the NWB and where the proposed project falls within Schedule 12-1, the NPC shall forward the project proposal to the NWB for disposition, unless the NPC exercises its authority under Section 13.4.4.

13.4.7 ~~Where there is no approved land use plan applicable to a project proposal requiring an application for a water licence to the NWB, and where the proposed project does not fall within Schedule 12-1, the NPC shall forward the project proposal to NIRB for screening.~~

PART 5: RELATIONSHIP TO DEVELOPMENT IMPACT REVIEW

13.5.1 Following receipt of a ~~water application project proposal requiring an application for a~~ water licence to the NWB for screening, NIRB shall determine whether it requires a review pursuant to Article 12 and shall so advise the NWB.

13.5.2 Where the ~~water application project proposal~~ is referred for review under Article 12, the NWB and the review body shall coordinate their efforts to avoid unnecessary duplication in the review and processing of the ~~application proposal~~. Legislation may provide for joint hearings or authorize the NWB to forego public hearings on any water application where it has participated in a public review of the relevant ~~water application proposal~~ pursuant to Article 12.

13.5.3 Where the ~~water application proposal~~ is not referred for review under Article 12, the NWB may process the ~~related water licence~~ application.

13.5.4 Subject to Sections 12.10.2 and 13.5.5, where a review ~~of a proposed project~~ is required pursuant to Article 12, the NWB shall not approve any water licence application ~~relating to that project that forms part of that review~~ until Article 12 has been complied with.

13.5.5 Notwithstanding Section 12.10.1, the NWB shall not be precluded from issuing interim, short-term approvals for water uses related to exploration or developmental work for a proposal under development impact review.