



MEMORANDUM OF UNDERSTANDING

COORDINATED PROCESS APPLICABLE TO TYPE “A” WATER LICENCE APPLICATIONS FOR MUNICIPAL UNDERTAKINGS

BETWEEN:

THE NUNAVUT IMPACT REVIEW BOARD

AND THE NUNAVUT WATER BOARD

(the Parties)

PREAMBLE

WHEREAS pursuant to Articles 10 and 12 of the *Nunavut Land Claims Agreement* (NLCA), the Nunavut Impact Review Board (NIRB) was established on July 9, 1996, as an institution of public government responsible for the impact assessment of project proposals in the Nunavut Settlement Area (NSA); and

WHEREAS pursuant to Articles 10 and 13 of the NLCA, the Nunavut Water Board (NWB) was established on July 9, 1996, as an institution of public government with responsibilities and powers over the regulation, use and management of fresh water in the NSA; and

WHEREAS the NWB has statutory responsibilities pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA); and

WHEREAS Sections 12.10.1 and 13.5.4 of the NLCA prohibit the NWB from issuing a licence to use water or dispose of waste in the NSA where a project requires screening by the NIRB until NIRB has completed the review; and

WHEREAS Sections 13.5.2 and 13.6.1 of the NLCA and section 35 of the NWNSRTA requires the NWB and a review body pursuant to Article 12 to cooperate and coordinate their efforts in order to avoid unnecessary duplication and ensure the timely review and processing of an application.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. GENERAL

DEFINITIONS

For the purposes of this Memorandum of Understanding (MOU) and associated Coordinated Process, these terms will have the following meanings:

“Municipal Undertakings”: activities including the construction, operation and maintenance of a municipal water supply, landfill, sewage lagoon or other waste management facilities undertaken within a municipality on behalf of the residents of the municipality that are not otherwise exempt from screening by the NIRB under Schedule 12-1, Items 3 and 5 of the NLCA;

“Coordinated Process”: the process developed by mutual agreement between the NIRB and NWB to ensure the cooperative, coordinated and timely review of municipal undertakings while discharging the mutual obligations of the NIRB and NWB as outlined and appended to this Agreement.

- 1.1. The purpose of this Memorandum of Understanding (MOU) is to identify the objectives and key elements of the Coordinated Process associated with considering Municipal Undertakings in a manner consistent with Articles 12 and 13 of the NLCA, including maintaining a high standard of environmental protection and ensuring that the conservation and utilization of water provides the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.
- 1.2. This MOU must be interpreted in a manner consistent with the NLCA, the NWNSRTA and any regulations or legislation that may become applicable to the parties and Municipal Undertakings while the Coordinated Process is in place.

2. DETERMINATION OF WHETHER A MUNICIPAL UNDERTAKING WILL BE HANDLED UNDER THE COORDINATED PROCESS

- 2.1. The parties have agreed that they will consider the following list of factors to determine whether a given Municipal Undertaking will be handled in accordance with this MOU and the associated Coordinated Process:
 - 2.1.1. The municipal undertaking will not result in land disturbances that exceed the nature and extent of land disturbances that are acceptable under a Class B land use permit.

- 2.1.2. Any disturbance to the land will be remediated such that the land is returned to its original state.
 - 2.1.3. The Municipal Undertaking will not take place in an area that is habitat for any rare, threatened, or endangered, plant, aquatic or animal species, including bird nesting sites and other critical habitats.
 - 2.1.4. The Municipal Undertaking will not occur on land that has cultural or historical significance.
 - 2.1.5. The Municipal Undertaking will not interfere with Inuit harvesting activities, including travel routes or traditional camp locations.
 - 2.1.6. The Municipal Undertaking will not have the potential to cause any negative socioeconomic effects on northerners, including the movement of peoples.
 - 2.1.7. The Municipal Undertaking does not involve the use of technological innovations for which the effects may be unknown.
 - 2.1.8. Any harvesting of wildlife associated with the Municipal Undertaking is approved by the NWMB pursuant to Article 5 of the NLCA.
 - 2.1.9. The Municipal Undertaking will not have the potential to cause any negative effects on human health.
 - 2.1.10. Overall, the Municipal Undertaking is the type where the effects are highly predictable, and any adverse effects will be insignificant and mitigated.
- 2.2. If, on the basis of the factors in Clause 2.1 above, the Parties agree that a given Municipal Undertaking will be handled under the Coordinated Process, in the event any of the issues set out in Clause 2.3 below arise the Parties may revisit the appropriateness of continuing with the Coordinated Process. If, based on the issues in Clause 2.3, the Parties determine that a Municipal Undertaking should no longer be subject to the Coordinated Process, the Parties will provide notice to the proponent/applicant/ licensee that the Coordinated Process no longer applies and the generally applicable NIRB screening and environmental review process and the generally applicable NWB licensing process may be conducted independently.
- 2.3. The following issues may cause the Parties to revisit the appropriateness of continuing with the Coordinated Process for a given Municipal Undertaking:

- 2.3.1. Where it is determined that the proposed Municipal Undertaking will have significant and unmitigable impacts which were not foreseen at the time the determination to proceed under the Coordinated Process.
- 2.3.2. Where it is determined that there are matters of public concern which were not foreseen at the time the determination to proceed under the Coordinated Process occurred which extend beyond those related to the conservation and utilization of inland waters in Nunavut and relate to concerns regarding regional, ecosystemic, or socio-economic impacts or land disturbance.
- 2.3.3. Where the Municipal Undertaking is a new facility within a municipality and therefore the scope and scale of its impacts cannot be reliably ascertained.
- 2.3.4. Where once the scale and scope of the proposed undertaking becomes fully understood by the Parties, it is determined that the scope of the undertaking exceeds that of a Municipal Undertaking, and is rather more appropriately included in the scope of a different form of undertaking, such as an industrial undertaking, power plant, etc.

3. KEY ELEMENTS OF THE COORDINATED PROCESS

- 3.1. In designing the Coordinated Process the NIRB and NWB shall respect the authority and decision powers of the Minister set out in Articles 12 and 13 of the NLCA and section 56 of the NWNSRTA and reflects the current and future object, mandates and requirements established under applicable legislation.
- 3.2. The NIRB and NWB shall ensure that the Coordinated Process does not significantly add risk to a Municipal Undertaking, and minimizes risk to the environment and to the Inuit relationship with the land and its resources.
- 3.3. Upon passage by Parliament of development impact review legislation to implement the substantive powers, functions, objects and duties of the NIRB as contemplated by Section 10.2.1 of the NLCA, the NIRB and NWB shall review and revise the Coordinated Process framework to address any conflicts or inconsistencies arising.
- 3.4. Upon passage by Parliament of new water regulations, the NIRB and NWB shall review and revise the Coordinated Process framework to address any conflicts or inconsistencies arising.

- 3.5. To aid in the development of an open and transparent Coordinated Process, the NIRB and NWB shall ensure effective and efficient communication is maintained throughout the implementation of the Coordinated Process and agree to review and revise the Coordinated Process to ensure that the Coordinated Process remains relevant, effective and is modified appropriately to reflect circumstances and feedback from other parties who are participants in the Coordinated Process.
- 3.6. To aid in ensuring the process is fair and respects the rules of natural justice, the NIRB and NWB shall design the Coordinated Process to be consistent with the NLCA principles for giving due regard and weight to Inuit customs and knowledge, the *Rules of Practice and Procedure* for NWB, and the NWB's role in discharging its responsibilities and powers over the regulation, use and management of water in the Nunavut Settlement Area.
- 3.7. The Parties agree that a key objective to be achieved through the MOU and Coordinated Process is to create certainty for both the NIRB and NWB concerning the scope of Municipal Undertakings proposed to be handled in accordance with the Coordinated Process.
- 3.8. The Parties agree that another key objective to be achieved by the Coordinated Process is to ensure that the decision that a Municipal Undertaking is governed by this MOU and the associated Coordinated Process fulfills the responsibilities and powers of both the NIRB and NWB as set out in the NLCA and the NWSRSTA. The Coordinated Process, while placing the emphasis on the NWB licensing activity, will still ensure an appropriate degree of involvement of the NIRB and will ensure that the NIRB remains informed regarding issues arising in the NWB water licensing process; and is made aware of concerns identified relating to regional, ecosystemic, or socio-economic impacts or land disturbance.
- 3.9. If it becomes apparent that implementation of the Coordinated Process is not fulfilling the objectives set out in paragraphs 3.7 and 3.8, the NIRB and NWB standard processes shall be applied.
- 3.10. The Parties shall periodically evaluate the effectiveness and accountability of the Coordinated Process, soliciting input from Government, the Designated Inuit Organization, and, where appropriate the public, in an open and transparent manner.

4. REPORTING

- 4.1. The Parties shall each report on the Coordinated Process in their Annual Activity Report to the Federal Government.

5. EFFECTIVE DATE

- 5.1. This MOU comes into effect on signing.

6. TERMINATION

- 6.1. Upon agreement of the Chairpersons of the NIRB and NWB, or after consultation with the other party, the Chairperson of NIRB or the Chairperson of the NWB may terminate this MOU at any time.

IN WITNESS WHEREOF, the Parties to this Memorandum of Understanding have signed on the 21st day of February 2013.



Thomas Kabloona
Chairperson
Nunavut Water Board



Elizabeth Copland
Chairperson
Nunavut Impact Review Board