



# Sahtu Land Use Planning Board

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## **\*Disclaimer**

These summary notes were recorded by SLUP staff. They are subject to errors of interpretation or omission. This document presents a summary of key discussion points. It is not intended to serve as transcripts of the meetings.

Requested changes documented in these notes do not mean that the Board will make these changes. Some requests are beyond the Board's mandate or jurisdiction to address. The Board must consider all comments and requests and balance the interests of multiple parties. The Board will revise the Plan as it deems appropriate to achieve the right balance.

## GNWT Comment Follow-up

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**Date: November 15, 2010, 1:00 pm - 5:00 pm**

**Where: ENR Land & Water Division 2<sup>nd</sup> Flr Boardroom Scotia Center, Yellowknife**

### **Participants:**

Bob Overvold, SLUPB Board Member

Danny Bayha, SLUPB Board Member

Heidi Wiebe, SLUPB, Plan Development Lead

Richard Spaulding, SLUPB Legal Counsel (via teleconference)

Glen MacKay, Prince of Wales Northern Heritage Centre, GNWT

Kelly Mahoney, GNWT, ITI, MOG

Roshan Begg, GNWT, DAAIR

Kris Johnson, GNWT, ITI, Policy, Legislation and Communications

Rhonda Batchelor, GNWT, DOT, Policy, Planning and Environment Division

Joel Holder, GNWT, ENR

Peter Lennie-Misgeld, NWT Hydro Corporation

### **Cover Letter – Significant Issues**

- 1. Lack of fit with integrated system of land and water management - Issues with CRs**
- 2. Effective and efficient implementation of the Plan - Issues with Actions and Recommendations.**

Heidi: We're here to understand each other, to have an informal dialogue about the intent of the draft Plan and the intent of the GNWT's comments. The Board's practice has been to have meetings as comments on the draft Plan come in. Our notes will go up on our website as part of the public record of comments prior to the hearing. I will send you a draft of our notes for your review before posting them – we don't have a note-taker available today.



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Joel: We are concerned about a lack of fit for some terms of the Plan in an integrated management system. Some of what the SLUPB is proposing looks like duplication of what other boards, such as LWBs, MVEIRB, and regulators are doing, and their roles. Regarding implementation, the GNWT needs clarity regarding the role of District Land Corporations, and whether actions and recommendations are intended to be binding.

Rhonda: The Plan seems to buttress legislation or would amount to an amendment of legislation. The Plan's CRs become legislative requirements upon approval.

Heidi: We should discuss details. The CRs are meant to be consistent with existing legislation and not create legislative amendments. Actions are written to be legally binding in Draft 3. District land corporations have the same implementation responsibilities for CRs, Actions and Recommendations as other regulators. If that is not clear in the Plan, we will have to address it.

Bob: Interested in the comment on regulatory duplication. A plan by definition is a limiting influence. There are different options but there will always be some duplication. Eg. Conformity determinations can be done by us or the SLWB.

Joel: For example, on p. 289 the Plan describes the SLUPB making internal conformity determinations. We don't see that in the MVRMA. We're concerned about adding time to the process.

Heidi: Many people look at the Plan's CRs and tell us that they are duplicating existing processes, when in fact they are supporting existing processes. The Plan is intended to direct land use decisions made by regulatory authorities so that all decisions contribute to achieving the goals of the region. The Plan was intended to be completed years ago and provide this broad direction so everyone knew how to make decisions in the best interests of the region. In the absence of a plan, all the land use issues have fallen on regulators and they have developed processes to address these issues. The SLWB has developed application requirements for consultation, access agreements, and collection of traditional knowledge for example because these are the things that communities are concerned about and raise repeatedly.

Just because the process is already in place, doesn't mean we shouldn't now provide that direction in the Plan. We've had these discussions with the SLWB and they want that direction as it supports their existing processes. To not provide that direction in the Plan would actually be misleading as others could interpret that to mean that there are no community concerns in that regard and then question why such processes are in place.

The perception of regulatory duplication exists because the Plan is coming along much later than expected. Because of this, we are taking extra care to ensure that we are harmonizing and aligning with existing processes wherever that's appropriate. Where new measures or changes are required, we are situating that within the current regulatory context and providing rationale to support the new requirements.

Danny: Talked about the implementation workshop and how we can sort out some of these implementation issues and at the same time address community concerns. The Plan should be a road map for everyone. These questions should be raised at the Board Forum – it provides a different forum to discuss these questions.



Dick Spaulding: Spoke to the limiting influence of a Plan under the MVRMA. Under the MVRMA, planning for land use necessarily involves planning for the regulation of land use. MVRMA plans have regulatory effect. The Plan has to support S. 46 and 47 of the MVRMA. If a regulator has some authority, the Plan will provide direction that will require the regulator to act in a given way. S. 47 (Conformity Determination) requires the SLUPB, where an application is referred to the Board, to be able to determine whether the activity being applied for is in conformity with the Plan. The determination is final and binding, subject only to judicial review. Conformity Requirements have to support that process. There can be confusion between whether a proposed Conformity Requirement should be approved as a matter of planning policy, and whether the requirement is in the Board's jurisdiction to propose. If a party is objecting to a proposal on the legal basis of jurisdiction, the Board needs to know this, and the objection needs to be dealt with, but some of today's discussion may be describing policy concerns in legal terms. The Public hearing will be most constructive if it discusses what a plan should do and look like.

Danny: MVEIRB has no EAs in the Gwichin Settlement Area because the Plan is there. His hope for the Plan is to provide the necessary clarity to do the same thing for the Sahtu.

### Conformity Requirements

- **Scope of CRs – “a number of the CRs go beyond the scope of what the GNWT accepts as the role of a land use plan.” (see comments P. 4)**
- **Who should we direct CRs at? Developers vs regulators; specific regulators vs just “regulators” (see comments P. 9)**
- **Use of “shall” vs. “should” or “encourage”**
- **Prescriptive vs. goal-based**
- **How does goal-based provide clarity for implementation?**

Rhonda: Two areas of concern are permitting and project delivery. Some CRs will be challenging to live up to for DOT, e.g. setbacks for bear dens. They move so it reduces clarity and consistency; would we have to keep doing the conformity check over again? The consultation and closure and reclamation terms could be a challenge for delivery.

Joel: We have questions about who is responsible for making sure the CRs are met. Where information needs updating, will it be ENR or the proponent?

Heidi: Talked about wildlife CR (#7). This CR was built through detailed discussions with ENR, CWS and the SRRB and the wording and intent vetted through them. They agreed that this was the direction that they wanted locked in for all applications because they provide this direction consistently anyways. The discussion today seems to reverse that previous direction. We need consistent comments and direction from the GNWT on this issue.

**Action:** GNWT to provide consistent direction on issues related to CR #7.

Joel: Some of the CRs should maybe say “should” for regulators to provide sufficient flexibility. Maybe some shouldn't be in the Plan – maybe that direction should be provided elsewhere in legislation or policy or through other instruments.



Danny: SLWB has asked for more clarity and the foundation to direct their work, so for them “shall” can be better in some cases.

Dick: It’s not up to a Plan to determine its legal effect. Parliament set out the effect of Plan approval in the MVRMA. The language in Draft 3 is meant to reflect the MVRMA as much as possible – S. 46(1). The mandatory language of the Plan reflects the mandatory language of the Act.

Bob: Joel talked about whether some CRs should be in the Plan or somewhere else in the regulatory system. Bob talked with Neil McCrank who said that the Plan is the appropriate place for First Nations involvement in land and resource decisions. Especially if the conclusion is that with a plan you don’t need community involvement in each decision, then you need an even stronger plan. The Auditor General and Environmental Audit say that plans will improve the regulatory system, and we can expect First Nations to want strong CRs and Actions. Finding the right balance is the tricky part. Everyone wants a plan, but a plan that they like.

Heidi: Even assuming the system permitted it, how would replacing “shalls” with “shoulds” add clarity to Plan implementation?

Joel: The bigger concern for the GNWT are words like “relevant”, or “potentially affected” in the CRs. They are ambiguous and would present challenges for determining conformity.

Heidi: The draft implementation guide addresses that type of detail.

Danny: What are the GNWT’s priority concerns?

Kris: There must be some areas where everyone has agreement so maybe you move those areas forward first for approval while you work on the more problematic areas.

## **P. 9 – CR 1 - Concerns related to potential conflict with Hydro development.**

Peter: The GNWT comments submitted to the Board did not necessarily reflect the comments he had submitted internally regarding hydro and they would have to follow-up on this. Heidi asked for clarification on how the zoning impacts the Mackenzie River Islands and additional information or suggestions related to the conflicts between hydro development and CR 5. Peter suggested that these are not significant issues for them.

**Action:** Peter to follow-up and provide clarification on hydro issues to the SLUPB.

There was general discussion regarding what was meant by the GNWT’s suggestions for the definition of “power development”.

**Action:** Peter and Kris will follow-up on a clearer suggestion for the definition of “power development”.



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**P. 10 - CR 2 – Community Engagement and Traditional Knowledge – Discuss intent, implementation guide, and GNWT concerns**

Rhonda: The Plan should speak to community participation in consultations (not just others' responsibility to hold consultations) – perhaps should require First Nations to attend. The CR should also speak to scale of the activity – communities don't want the DOT to consult on every culvert.

Kris: Why say it in the Plan if regulators already do it?

Heidi: The CR is meant to provide an opportunity for the communities. The CR does not require regulators to make sure that communities engage. If the applicant has made genuine efforts to engage the community, and for whatever reason the community has not engaged, this CR has been fulfilled. The draft implementation guide explains this. This is consistent with the SLWB's current practices and they support this CR.

Peter: Hydro development doesn't occur without community support anyway.

**P. 11 - CR 3 – Community Benefits – Discuss intent, implementation guide, and GNWT concerns**

Kris: The uncertainty in this CR could be enough to send up a public concern flag and send a project to EA. She was concerned that communities may disagree on whether they've benefited sufficiently and challenge the decision.

Heidi: We used MVRMA language. The organization doing the conformity determination has the responsibility to decide whether the community will benefit from this development. If that is the preliminary screener, then they make the call. If the application is referred to the SLUPB, then the SLUPB makes the call. Communities do not determine conformity of an application with the Plan.

Danny: The hope for this CR is to help ensure communities benefit from development.

Kris: An exploration project that only has 3 people involved, would not require an impact benefit agreement. So it would fail this CR.

Heidi: The conformity test is not a test for an IBA; the two should not be confused.

Kelly: She supports the principle but small projects wouldn't be able to meet this test. You may have 2 university students doing a mapping project. It may benefit the academic community or the industry but not the community. Does that mean it shouldn't go ahead? Maybe this is a threshold question where small projects should be exempt from this CR.

Heidi: Research is a particularly sticky issue for communities so we may not be able to exempt it. Stated that benefits are not limited to financial benefits, but other ways in which communities might benefit – construction of access, infrastructure, training, provision of new information.



Kris: People will assume that benefits means jobs or money

Joel: This is a good example of subjective language. Is a road a benefit or a cost? It may be a benefit now but it might drive down caribou populations later. This would be a very subjective decision.

Danny: This discussion could be good for the public hearing or the implementation workshop. Community representatives will be concerned about it.

### **P. 12 – CR 4 – Archaeological Sites, Historic Sites and Burial Sites – Discussion of flexibility**

Glen: Concerned about the 500 m buffer; could be highly restrictive where there are many sites. They need more flexibility. Following an assessment, they may choose a variety of mitigation options – avoidance, surveys, etc. They always prefer avoidance of archaeological sites as the best option. PWNHC requested the SLWB use the 150 m. MVLWB uses 100 m, GLWB still uses 30 m. PWNHC have asked everyone use a 150 m buffer (this setback is based on a shift in GIS data caused by switching from NAD 27 to NAD 83).

Heidi: communities put forward the 500m buffer; they were mainly concerned about grave sites.

Glen: Could understand the desire for a larger buffer for burial sites. The buffers have not been discussed with communities, just land and water boards.

### **P. 12-13 – CR 6 (2) Drinking Water – Discuss intent and use of GNWT mapping and proposed revisions.**

Joel: There is no definition of contamination, so CR 6 (2) could be dropped, leaving 6(1) to deal with impacts.

Heidi: 6(1) only requires the assessment. You would then want to require that the regulator acts on the findings made in the assessment. I discussed this term in depth with Jane McMullen to understand the intent of the mapping that the GNWT referred us to in Draft 2 comments and how that should be referenced in the CR. I thought we were in agreement with how it would be used. Additional clarity is provided in the CR Implementation Guide with how it would be used. In our discussions, the intent is that this would raise a flag in the regulatory system when a project has the potential to impact community drinking water sources.

Kris: Can maybe use some of the wording from the implementation guide instead as that provides more clarity.

Peter: this is regulatory overlap.



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**Action:** Joel to follow up as to how the GNWT would see this rewritten and used.

**P. 14 – CR 9 – Discuss options and alternatives to proposed change.**

Joel: The issue is with the wording “including but not limited to”. How many factors need to be considered before this has been met?

Heidi: Can’t end the CR after “factors” as requested because they are actually individual requirements that were combined. The permafrost section was a separate CR in Draft 2 that comes from the GBLWMP and needs to be included. The climate change portion was another GNWT request to be included. If the above clause is the source of concern, then maybe breaking this CR back into separate pieces would address the concern.

Kris: Any road will impact permafrost, but the regulator can’t know in advance how much.

Heidi: The requirement is only to “take into account” impacts, not measure them. This is one of the goal-based CRs.

Joel: Could be seen as the best of both worlds for the regulator: Plan directs you to do it, but you decide how.

Bob: the North is the region of the country most impacted by climate change. We have to plan for it.

Kris: How are oil and gas developers burning fossil fuels going to minimize their impacts?

**P. 14-15 – CR 10- Incidental Harvest – Discussion of GNWT comment that this does not speak to land use**

Joel: Is this type of requirement appropriate? The concern is with the wording “wherever reasonably feasible”.

Heidi: The Plan deals with impacts for communities of how the land is used, not just where uses can occur. The Board recognizes that sometimes there is no community need for this, or its just not economical so we use that language to provide flexibility. The intent is to ensure that resources are not wasted.

Several issues with the CR were discussed by different GNWT department representatives; some perspectives differed. One view was that such a requirement could discourage sharing of byproducts with communities – where it is cheaper to burn remnant lumber than carry it away from the site. Another was that compliance could be hard to measure. A removal requirement could increase the environmental impact of the activity (result in wider seismic lines for trucking, for example). Another was that a Plan requirement might reduce room for communities to work out with the developer how they could benefit most. .

**Action:** Joel is to follow-up further and provide clarity on the GNWT position on this CR.



Bob asked what kind of wood we were talking about because communities need firewood, not live green wood.

Heidi: This would likely be live green wood cut to make a right of way or seismic line.

Danny asked about the status of the low impact seismic guidelines. Wood can be moved by skidoo to minimize impacts.

**P. 15 – CR 11- Species Introductions – Reverses previous GNWT direction from GBLWMP integration**

Joel: Keep the GBLWMP integration wording as agreed to previously.

Heidi: Asked about Alasdair Veitch's concerns raised during Norman Wells' consultation to remove the clause regarding "except by special approval by ENR."

Joel: The GNWT wants that wording kept in.

**P. 16 - CR 13- Closure and Reclamation – Discuss intent, competing comments and roles regarding security and reclamation decisions**

Heidi: This CR is in place to implement an INAC policy that the SLWB implements. What role does the GNWT have in the security regime?

Joel: The GNWT's position on this CR comes from their role as future land owners through devolution. They question whether the Plan is the best place to put this direction.

Dick: S. 46(1) and 61(1) direct the SLWB to act in accordance with the Plan in carrying out its powers. The SLWB's power to set security is subject to planning guidance as much as its power to set other types of conditions for the use of waters. The Plan's role is to provide direction on how the SLWB sets conditions, where appropriate. The question that is being asked in this discussion seems to be whether it is appropriate for the Plan to provide this type of direction.

Heidi: It sounds like the bigger issue here is what issues are appropriate for a land use plan to address. GNWT comments suggest that many of the CRs are outside our mandate. How did the GNWT arrive at that conclusion? We look at social, cultural and economic values associated with land use.

Kris: An applicant should be able to sit down and write an application that they can have certainty meets the Plan's CRs. They spend a lot of money developing applications and need to have certainty.

Heidi: That speaks to clarity and certainty of direction, not the scope or subject of the direction. What are the determining factors the GNWT is considering in determining which CRs are outside our scope?



Kris: There are other issues – who holds the security? At what threshold should security always be required? If the project is small, what should the security be?

Heidi: INAC has a calculation model that it currently applies to all land and water projects. The Sahtu is the only LWB that does not require security to be collected. The communities and INAC have asked for this CR.

Bob: It appears to be a fundamental planning issue. The communities want it and it isn't being done.

Danny: It is also a legacy issue. Some communities are still dealing with messes left behind when security wasn't put up.

Kris: Developers will have issues – how will they know if reclamation has been done to a high enough standard to get their security back? This doesn't speak to progressive reclamation.

Joel: The GNWT will likely have a smaller role in the final decision on this CR than INAC and the SLWB. Point taken that the MVRMA says that a regulator "may" do something and also mandates Plans to require that the regulator "shall" do it where appropriate. Can you give us something in writing on that? Would you say it's the Plan's mandate to change notice periods in regulators' procedures, for example?

Bob: Yes, where the Act only says may, it can be a planning decision to say "shall", but there has been confusion in this region because a plan hasn't come forward after ten years of work.

Heidi: For the most part the role of the Plan will be at the high level, such as in this case. The Plan does fetter regulators' discretion where this is appropriate. In some cases, up front Plan requirements can save time and \$ that would be spent on arguing whether the regulator should take the step otherwise. The CR does not set amounts, only that security must be collected. It's up to the Boards and INAC to determine how much needs to be collected. The reclamation standard (the specific wording) comes directly from the INAC policy.

Kris: She wants to see something about progressive reclamation in this CR.

**Action:** Kris to provide more comments on this CR.

### **P. 17 – CR 14 – Assessment and Mitigation – Suggested revision too weak to address community interests – alternatives?**

Heidi: Explained the intent of this CR and CR 15 – these define what a Special Management Zone is. They allow the Plan to rely less on Conservation zones to meet planning goals and objectives.

There was considerable discussion on the intent of the CR.

Joel stated that this is central to the land use plan and the wording should be stronger, not weaker. There was a suggestion to move these CRs under the zoning CR to make that linkage.



**Action:** Joel to follow-up further with final direction on this CR.

**P. 18 – CR 16 – Ecological and Cultural Integrity – Discuss options to meet Déline’s interests.**

Joel: Changing “ensure” to “assess” might improve clarity, similar to CR 14. This is another goal-based CR.

**Actions and Recommendations**

**P. 3 – General discussion of scope and appropriateness of Actions and Recommendations. There are no other comments on Chapter 6 - Actions and Recommendations. Need a much clearer understanding of GNWT expectations and issues.**

Heidi: Reviewed specific GNWT comments on Actions. We understand that there may be fiscal constraints. Another commenter has suggested wording such as “within fiscal and human constraints.” Regarding Actions in the GLUP, some are mandatory, though most are written as recommendations. Regarding overlap between the SLUP and initiatives in the MVRMA or SDMSLCA, there is no duplication. In some cases, we are asking for something beyond what is there to address an ongoing land use issue. In every case, we are drawing linkages to existing initiatives but either building on them or trying to fill gaps.

Joel and Kris said the Actions will be problematic if they are mandatory because many set new requirements that the government can’t afford to act on. Kris said that many of these actions are already required elsewhere. She suggested taking Actions and Recommendations out of the Plan and putting them into an Implementation Plan. The government needs a lot more clarity for a number of these actions. People need to know what they are signing on to. Maybe the SLUPB needs to pick priorities. This can’t all get done. No one has the capacity to do these things now so putting it in the Plan isn’t going to help. Why would you want to hold the Plan up for this?

Dick: Mostly hearing a policy discussion but from a legal perspective, S. 46(1) of the MVRMA provides the mandate for actions in the Plan. Departments and agencies have a role separate from regulators under s. 46(1). In the municipal contexts, plans generally restrict land users but also include a set of directions that the local government will commit to take on.

Dick asked Joel if there were objections to actions like #10. Joel responded that there were no objections to that one.

Heidi requested detailed comments on Actions and Recommendations. Some are directed at others. Some are direction to send us paperwork so we can monitor Plan implementation. They create no new costs. A blanket statement that Actions are problematic and should be removed at this stage of the process is not workable. Everyone else has commented as if the Actions will be part of the Plan and have made suggestions to make them workable. If we were to remove



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Actions, it would likely change the conclusions and comments of all others participating in the process. The GNWT needs to comment on every Action and Recommendation individually.

**Action:** GNWT will provide further clarity on actions and recommendations.

**Meeting ended at 5 pm and a follow-up meeting was scheduled for November 17<sup>th</sup>.**

## **Wednesday, November 17, 2010**

**2:00 pm – 3:00 pm**

### **Participants**

Judith Wright-Bird, Chair

Danny Bayha, Board member

Heidi Wiebe, Plan Development Lead

Ida Mak, Communications Coordinator/Planner

Joel Holder, GNWT

Kris Johnson, GNWT

Meeting start: 2:08 pm

### **P. 18 – Broad implementation discussion in relation to GNWT comments**

Kris: It would save time if a proponent could request an exception at the time that they submit their application. They should know beforehand whether or not they're in conformity with the plan. It doesn't make sense for a proponent to knowingly send in an application that does not conform and have to wait for a regulator to tell them that they don't conform before they can send in an application for exemption. I'm trying to avoid adding more time to the current regulatory process.

Heidi: This has to be worked out at the implementation workshop. A proponent would have to submit an application and a request for an exception separately – i.e. they are separate forms and processes. We haven't worked out the timelines though. If they know they won't conform though, then there is no reason why they can't be submitted at the same time.

Kris: When does the 42 days start?

Heidi: When the SLWB deems an application complete.

Danny: The implementation workshop should allow us to work through issues like this.

Judith: Didn't you mention that you would have some test cases at the implementation workshop?

Heidi went through some ideas for the implementation workshop which would include running 2 applications through the conformity determination process to test the process.



Danny: When you go through the test cases, you should first speak about what is currently happening on the ground and show how and where the communities and are involved. Then you should show where and at what stages different partners like community members will be involved once the plan is approved.

There was discussion about timelines for the public hearing, follow up meetings in Tulita and the implementation workshop.

**P. 19 – Scope of authorizations subject to the Plan (scope of Part 2 vs. Part 5 MVRMA)**

Heidi: The GNWT's comments suggest an interpretation that the Plan does not apply to below-threshold activities. This is false. The MVRMA is written such that the Plan applies to all activities that require a licence, permit or authorization. Part 2 of the MVRMA is written to have the plan capture all activities including for example, prospecting permits. Activities like tourism may not be restricted in any way by the zoning (i.e. they are allowed), but they must still adhere to the other 19 CRs in the Plan.

Kris: Tourism licences are granted by the Minister. If tourism is allowed in the Plan does that mean that the activities still need to conform to the Plan? Would activities with limited impact on the land like wildlife photography need to conform to the land use plan?

Heidi: Yes. All activities, even below threshold activities, including tourism activities that require a permit, licence or authorization would have to follow the Plan's CRs.

Kris: That's an issue because a number of tourism licences would need to follow the CRs even though they are very low impact. Applying the Plan's terms to them would not provide added ecological protection. It would just be more work for everybody.

Heidi: Part 2 of the MVRMA is written very broadly to give the Plan broad application. I have seen a table drawn up for the Dehcho Plan in which the Parties have specified a list of authorizations that the plan will apply to and how each CR would be implemented. Doing something similar here might provide greater clarity on the scope of application of the Plan so everyone would know which authorizations are subject to the Plan. If that is desired, I would expect the GNWT and INAC to do the work on this based on authorizations in their respective jurisdictions as they did with the Dehcho Plan.

Action: Joel was going to follow-up with Mark Warren on what they were doing for authorizations on the Dehcho Plan and whether that was appropriate here.

Kris: If the Plan applies to all authorizations, having it apply to authorizations even when it doesn't provide added environmental protection will be a waste of resources and time.

Heidi: Who is your legal counsel? You should get them to review the Plan.

Joel: Our legal council is James Fulford. He has reviewed the Plan.



Heidi: We took our language directly from S. 46(1) of the MVRMA which says that the Plan applies to all licenses, permits and authorizations. Our direction is broad so we have kept the same language in the Plan to capture the intent of the MVRMA.

Kris: For CRs where the SLWB has no authority of enforcement (orphan measures), having CRs in the plan may just make proponents do more work that nobody will be able to enforce.

Heidi: This just points out some regulatory gaps in the system but it does not mean that the plan should be silent on issues of concern.

## **P. 2 – Concern over SLUPB conducting internal conformity determinations**

Heidi: I see in your comments that the GNWT is concerned with the Board conducting its own conformity determinations. The permitting process will not be delayed by the Board making internal conformity determinations. The Board needs to monitor for the proper application of the plan. Our decisions will not be made public nor will they become part of the public record when done for monitoring purposes. The Board's role is not that of a regulator. The Board will only make its decision known when it an application is referred to us and then our decision is final. The MVRMA gives the SLUPB final say in determining conformity in those cases.

Joel: So does that mean that there are 2 bodies checking for conformity, the SLUPB and the SLWB?

Heidi: Yes, we might both be doing it, but for different reasons and there wouldn't be 2 determinations in the public domain. Under the MVRMA, even if we disagreed with the SLWB's decision, we don't have the right to contest or challenge their decision on the public record. The Board does not have a strong implementation role. We would likely call them, write a letter, or hold a meeting to let them know our concerns about their interpretation to correct the situation for future determinations. We would work with them to make sure that we're all interpreting the plan in the same way. But we would not release our own conformity determination just because we disagree with someone else's. We only come into the picture when someone refers an application to us. But then we do have final say.

Kris: Does the referral have to be done within the 42 days?

Heidi: Yes because a referral has to happen before an authorization is issued by the SLWB. The worst case scenario is that the referral happens at the eleventh hour. We have been asked before whether or not a party can directly refer the application to us. For example, CAPP asked us if a company could refer their applications to us to avoid an 11<sup>th</sup> hour referral and then work with us from the start to make sure that their application did conform. That would be fine. We would then make our decision and it would be final.

## **P. 8 – Existing Rights – Discuss GNWT position vs. Board intent.**



Kris: As far as we understand, the practice of grandfathering as described in Draft 3, is not legal. Take for example a company has an authorization to drill holes. If their permit comes up for renewal but the new rules do not allow them to continue to drill because they're too close to an archaeological site, what happens then? I'm thinking of Diavik as an example. They had a water treatment plant but then their licence had to be renewed. They were asked to build a new plant to bring the treated effluent to a higher level. The case was dragged out for years. We don't want this to happen again.

Heidi: First, the wording has been carefully worked out through legal and we've had considerable back and forth on this with INAC's legal counsel as well. If the Plan's conditions interfere with the exercise of a grandfathered right then we have the ability to grant exceptions for that.

Joel: Who gauges what changes are too onerous on exceptions? This makes the considerations very difficult because it is subjective.

Heidi: The SLUPB is the sole decision maker in deciding whether to grant an exception or not. I believe we laid out some criteria for considering exceptions in the Plan. We've received comments from INAC and they don't have a big issue with grandfathering as it is currently written.

Joel: If there are significant issues with the plan then they will get worked out at the 5-year review.

Kris: I think the grandfathering section will be the biggest issue.

Joel: We should talk to INAC after your meeting on Friday and address any issues that we or they might have. If you want to ask the grandfathering question with INAC it might give us a better idea.

**Action:** Joel agreed to speak with INAC about the grandfathering term.

### **Community Catchment Maps for CR #6**

Joel: When you say that the maps came from us, can you tell us where they came from? Because I spoke with Jane and she did not recognize it and she said to remove it.

Heidi: I spoke to Jane McMullen about this CR and I have emails from her. It was ENR that did the mapping. She pointed us to the website where we discussed them at length, including how they were created. She must have forgotten.

Joel: If you could remove the community catchment map then you could just re-word the CR. We have better, updated maps but do you want visual info that will need continual updating?

Heidi: Ideally, I'd like to have an online data portal on the website so that everyone could go directly to the source to get shapefiles and do their own overlays. But for now, yes we need maps that show the spatial extent to which the CR applies.



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Meeting ended: 3:30 pm

**Meeting Note: Remaining agenda items not addressed. The SLUPB will follow-up if required during the course of final plan revisions.**