



Nihtat Gwich'in Council

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February 27, 2019

Gwich'in Land and Water Board
P.O. Box 2018
Inuvik, NT X0E 0t0

Dear Sir/Madam:

Ref: LUP Application - Inuvik Wind Project - NWT Energy Corporation (03) Ltd.

On behalf of the Nihtat Gwich'in Council, I write with reference to the project mentioned above. Specifically, we write to address the issue of engagement required by the proponents to recognize our rights embedded in the Gwich'in Settlement Agreement, to satisfy the requirements of the Gwich'in Land and Water Board, and as required by the federal government, directed to the Government of the Northwest Territories (GNWT) through their Bi-Lateral Agreement.

Gwich'in Land and Water Board Responsibilities

The role of the GLWB is to regulate the use of land and water ... through the issuance and management of LUP's ..." (Mackenzie Valley Land and Water Board, "MVLWB Engagement and Consultation Policy" (June 1, 2013, Page 8).

"The objective of the Board is to provide for the conservation, development, and utilization of land and water resources in a manner that will provide the optimum benefit ... in particular for residents of the Mackenzie Valley (Ibid., 8).

In exercising the authority to accomplish its role and objectives, "the Board must ensure that the concerns of Aboriginal people have been taken into account." (Ibid.,8), and "the potential impacts of proposed projects are understood and carefully considered before decisions are made with respect to the issuance of LUP's and WL's." (Ibid, 8).

“It is the responsibility of the GLWB to ensure that the concerns of Aboriginal people are taken into account, and that their decisions have regard for the protection of the social, cultural, and economic well-being and way of life of Aboriginal peoples....” (Ibid., 9).

Following, in the remainder of our response to engagement by the GNWT and NWT Energy Corporation (03) Ltd., we will describe how the engagement has not been adequate:

- To satisfy any level of standard.
- To allow the GLWB to achieve their objective to ensure optimum benefit, and,
- To ensure the concerns of the Nihtat Gwich'in have been considered and addressed fully.
- To compensate for the present and future loss of income from wildlife harvesting, and other losses and damage suffered by the Nihtat Gwich'in as a result of the Project.

Guiding Principles

In addressing the issues required for appropriate engagement, the Guiding Principles establish that the proponents must provide reasonable resources (to First Nations), where appropriate for carrying out and participating in consultation and engagement process. (Ibid., 9). In preparing their submission to the GLWB, the GNWT and NWT Energy Corporation (03) Ltd., retained highly qualified specialists in a number of scientific fields.

As outlined in Section 1.5, Guiding Principles (Ibid., 9) the proponents should expect to provide adequate funding to the Nihtat Gwich'in to retain appropriate professionals for review of the submissions and to engage with the proponents. This has not occurred and the Nihtat Gwich'in Council is severely hamstrung to adequately respond to the social, cultural, environmental and economic issues that will directly affect the Nihtat Gwich'in if this project is to proceed.

This is only one reason of many where it is sufficient for the Nihtat Council to request of the GLWB, that permitting not proceed until there has been adequate funding provided by the proponents and time allowed for the Nihtat Gwich'in Council to review and present evidence to the GLWB. Only by taking this action, will the Board be able to ensure that the concerns of the Nihtat Gwich'in are adequately considered and that their decisions have regard for the protection of the Nihtat Gwich'in social, cultural, environmental and economic interests.

Engagement

In addition to not receiving funding to retain appropriate professionals, engagement with the Nihtat Council has been woefully inadequate, to the point of almost non-existent. We request of the GLWB, that permitting not proceed until adequate funding is provided by the proponents to permit effective engagement, and the Nihtat Gwich'in is satisfied that engagement and consultation with the proponents has addressed the significant and ongoing social, economic, environmental and cultural impacts that may result because of the project.

The Engagement Record attached as Appendix A shows in total, only four times there may have been discussions between the Nihtat Gwich'in and the project proponents, which we argue has been taken out of context and is not consultation with the Nihtat Gwich'in Council:

Date(s)	Agenda	Discussion
July 11 – 13, 2016	Multi-Agency meeting to share an update on the wind data monitoring program.	This does not meet the requirements for consultation as defined by the GLWB as required to address social, cultural, economic, and environmental issues that should form part of any mutually developed Value Components for assessing the potential impact of a project on the Nihtat Gwich'in. This was not done through the Nihtat Gwich'in Council.
May 15 – 17, 2017	Multi-Agency meeting to share update on the results of preliminary feasibility study.	This is not consultation as defined by the GLWB as required to address social, cultural, economic, and environmental issues that should form part of any mutually developed Value Components for assessing the potential impact of a project.
Oct. 13, 2017	Technical Workshop	This was not between Nihtat Gwich'in Council and GNWT. The objective of the meeting was to review civil-related costs to access High Point. There was no consultation as defined by the GLWB as required to address social, cultural, economic, and environmental issues that should form part of any mutually developed Value Components for assessing the potential impact of a project on the Nihtat Gwich'in.
Sept. 30, 2018	Meeting and Site Visit to High Point	This was a visit between GNWT and Nihtat Corporation a firm retained by the GNWT to conduct a study in the area. Two representatives, who happened to be members of NGC attended the visit, but the objective was not to address engagement or consultation issues.
Oct. 2, 2018	Meeting to review transportation access	This was not a meeting to discuss any engagement or consultation issues. This was

	through Inuvik for wind tower components.	actually done by Northwind Industries Ltd. and not the Nihtat Gwich'in Council.
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It is readily apparent from the information provided by the project proponents that engagement and consultation with the Nihtat Gwich'in does not meet any established requirements. We therefore, respectfully reiterate of the GLWB, that permitting not proceed until adequate funding is provided by the proponents to permit effective engagement, and that the Nihtat Gwich'in is satisfied that engagement and consultation with the proponents has addressed the significant and ongoing social, economic, environmental and cultural impacts that may result because of the project.

Reserve Amendment

Further to consultation on issues related directly to the social, cultural, environmental and economic issues, which form part of our aboriginal rights and title, in a letter dated October 1, 2018 to the Deputy Minister of Infrastructure, was advised by the Deputy Minister of Lands that a revision to the land reserve was being processed. There are two issues that arise from this:

1. A potential conflict of interest, with the Deputy Minister, Infrastructure and Deputy Minister Lands, both holding positions on the Board of the proponent.
2. The notice of the revision was buried in the proponents' application to the GLWB. The Nihtat Gwich'in Council has not been consulted on the issue of any land reserve expansion. With no opportunity, how are we to address any potential infringements or impacts to our aboriginal rights and title interests?

This issue alone should be sufficient for the GLWB to return the application to the proponents with instructions to provide adequate funding to the Nihtat Gwich'in to allow for a proper and fulsome review and consultation, possibly leading to accommodation for the potential impacts to our aboriginal rights and interest.

Components of an Appropriate Engagement and Consultation Process

To satisfy the role and objectives of the GLWB, where the Board must ensure that the concerns of Aboriginal people have been taken into account." (Mackenzie Valley Land and Water Board, "MVLWB Engagement and Consultation Policy" (June 1, 2013, Page 8), and "the potential impacts of proposed projects are understood and carefully considered before decisions are made with respect to the issuance of LUP's and WL's." (Ibid, 8) the following must occur between the project proponents and the Nihtat Gwich'in Council:

1. Development of a mutually-agreed to Engagement and Consultation Plan that addresses funding to the Nihtat Gwich'in Council, as well as, establishes timeframes, participants and appropriate working tables.

2. Use of best practices for the selection of Valued Components (VC's) and the assessment of potential effects including, but not limited to, scoping through the evaluation, determination of residual effects, cumulative effects and developing follow-up monitoring and restoration and mitigation programs.

There has been no discussion with the Nihtat Gwich'in Council regarding Value Components and their selection and/or rejection as presently discussed in the submission by the proponents. The VC's presented provide a very narrow framework. Best practices would dictate scoping between the Nihtat Gwich'in Council and the proponents to inform the selection of appropriate VC's and the specific considerations when selecting VC's. As well, the need for careful documentation of VC selection methods, criteria and rationale must be present to permit the Nihtat Gwich'in Council to adequately engage the Nihtat Gwich'in members in discussions required to work towards Nihtat support for this project.

In addition to the above, there is a need to describe and agree on existing conditions in sufficient detail to enable potential project-VC interactions and effects, including cumulative effects to be identified, understood and assessed.

3. Further, and of primary importance, is a full understanding and agreement on the definition of boundaries that should be considered. These may include:
 - a) Spatial Boundaries encompass the area where the project may have an impact on VC's selected for study. This also must include the potential zone of influence of the project. For example, there may be noise impacts that affect humans and animals well beyond the footprint of the project. There may also be downstream water quality impacts, and other impacts that will result well beyond the limited scope of the boundary presently presented by the project proponents.
 - b) Temporal Boundaries address the area(s) expected to be impacted during the life of a project and are defined through a refinement of a study of VC impacts.
 - c) Technical Boundaries relate to areas that are inaccessible, making it difficult to assess the effects of a project.
 - d) Administrative Boundaries encompass areas that are constrained by social, political, or economic constraints.

As well, the various types of risk management and mitigation are important to be discussed, and described how these should be considered to avoid or reduce potential adverse residual impacts.

It is clear there has been insufficient discussion regarding VC's, or discussions regarding the potential impacts, and mitigation measures.

This matter provides further evidence to support the Nihtat Gwich'in Council's position that the GLWB not consider issuing a Land Use Permit until the Nihtat Gwich'in is satisfied engagement

and consultation with the proponents has addressed the significant and ongoing social, economic, environmental and cultural impacts that may result because of the project and identified through an appropriate VC engagement and evaluation process.

Only by taking the action outlined above, will the Board be able to fulfill its own statutory requirements and ensure that the concerns of the Nihtat Gwich'in are adequately considered and addressed.

The following are principles supported by the Nihtat Gwich'in Council for development and carrying out a robust and fulsome process to address the significant and ongoing social, economic, environmental and cultural impacts that may result because of the project.

Guiding Principles

The International Association for Impact Assessments (<https://www.iaia.org>), outline the general principles for environmental assessments should be:

1. **Transparent** There has been no transparency as there has been little or no discussion regarding VC's
2. **Participative** The Nihtat Council has not been involved in any agree-to process for evaluation of VC's
3. **Integrated** There has been no integration of the social, cultural, economic and environmental values that are held by the Nihtat Gwich'in.
4. **Efficient** There has been no efficient process presented to, nor agreed to by the Nihtat Gwich'in Council in the proponents pursuing the Land Use Permit.
5. **Purposive** The Nihtat Gwich'in Council assert the purpose of the proponents with respect to engagement and consultation with the Nihtat Gwich'in Council has been minimalist, and therefore does not allow for consideration and incorporation of our social, cultural, economic and environmental values.
6. **Rigorous** There has been no rigorous process that allowed the Nihtat Gwich'in Council to be involved.
7. **Practical** The Nihtat Gwich'in Council would support a practical process that is agreed to and allows for consideration and integration of our social, cultural, economic and environmental values.
8. **Relevant** The Nihtat Gwich'in Council would support a process that is relevant.
9. **Cost-effective** The Nihtat Gwich'in Council would look forward to working with the proponents to develop a cost-effective process that addresses

consideration and integration of our social, cultural, economic and environmental values.

10. Focused The Nihtat Gwich'in Council would welcome a focused approach to an assessment process.
11. Adaptive The Nihtat Gwich'in Council is willing to work with the proponents on a process that is adaptive to the particular circumstances of the project.
12. Inter-Disciplinary The Nihtat Gwich'in Council has no comment at this time with respect to inter-disciplinary involvement.
13. Credible The Nihtat Gwich'in Council does not support the process followed by the proponents and embedded within their application to the GLWB. The Nihtat Gwichin Council would support a process that is mutually agreed to, and considers and incorporates our social, cultural, economic and environmental values.

Further to the Guiding Principles, cumulative Impacts are a serious consideration of the Nihtat Gwich'in Council and the proponents have not addressed these adequately, or at all. A Cumulative Impact assessment should be a critical part of any application for a Land Use Permit within the Gwich'in Settlement Area.

Conclusion

The Nihtat Gwich'in Council requests that the GLWB not proceed with approval of a Land Use Permit to the proponents until adequate funding is provided by the proponents, to the Nihtat Gwich'in Council, to allow effective and rigorous engagement, allowing the Nihtat Gwich'in to be satisfied that engagement and consultation with the proponents has addressed the significant and ongoing social, economic, environmental and cultural impacts that may result because of the project.

The engagement by the proponents has not been adequate:

- To satisfy any level of standard.
- To allow the GLWB to achieve their objective to ensure optimum benefit, and,
- To ensure the concerns of the Nihtat Gwich'in have been considered and addressed fully.
- To address compensation for the present and future loss of income from wildlife harvesting, and other losses and damage suffered by the Nihtat Gwich'in as a result of the Project.

On behalf of the Nihtat Gwich'in Council, I look forward to your earliest confirmation that no Land Use Permit will be issued at this time by the GLWB, and that no permit will be issued until our significant and ongoing social, economic, environmental and cultural impacts that may result because of the project are adequately addressed.

All of which is respectfully submitted,

Yours truly,



Jozef Carnogursky
President

Cc: NWT Energy Corporation (03) Ltd.

: Assistant Deputy Minister
Program Operations
Infrastructure Canada