



Henvey Inlet First Nation LAND LAW 2015/16-011

Henvey Inlet First Nation Environmental Stewardship Regime for the proposed HIW Energy Centre on Henvey Inlet Reserve #2 Lands: ENVIRONMENTAL PROTECTION

Land Law enacted pursuant to Henvey Inlet First Nation's Land Code with respect to environmental protection for the proposed HIW Energy Centre on lands within Henvey Inlet First Nation Reserve No.2.

PART 1 SHORT TITLE AND DEFINITIONS

1. (1) This Land Law may be cited as the "EP Land Law."

(2) In this Land Law:

"adverse effect" means one or more of,

- (a) impairment of the quality of the environment for any use that can be made of it,
- (b) injury or damage to Nishshing Aki, land or organic and inorganic matter and living organisms,
- (c) harm or material discomfort to any person,
- (d) an adverse impact on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any land or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of land, resource, structure, or thing, and
- (h) interference with the normal conduct of business as a result of an effect described in paragraphs (a)-(g), above;

"Claimant" means any Party that commences an arbitration resolution under Part 5.5 of this Land Law;

"Commissioner" means a person appointed by Council to act independently of Council who has environmental and administrative expertise and relevant experience;

"Community" means the membership from time to time of HIFN;

"contaminant" means any solid, liquid, gas, odour, heat, sound, vibration, radiation, or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;

"Disputes" has the meaning set out in section 19(1);

"EA and Permitting Land Law" means Henvey Inlet First Nation Land Law 2015/16-009, entitled "Henvey Inlet First Nation Environmental Stewardship Regime for the proposed HIW Energy Centre on Henvey Inlet Reserve #2 Lands: ENVIRONMENTAL ASSESSMENT AND PERMITTING";

"EA coordinator" means the qualified person retained by Council to assist with carrying out the Energy Centre environmental assessment pursuant to the EA and Permitting Land Law;

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“EA Guidance Instrument” means Henvey Inlet First Nation Land Law 2015/16-010, entitled “Henvey Inlet First Nation Environmental Stewardship Regime for the proposed HIW Energy Centre on Henvey Inlet Reserve #2 Lands: GUIDANCE INSTRUMENT”;

“Energy Centre” means the wind energy physical works and activities which are located on Reserve No.2 lands pursuant to the 2011 FIT Contract Identification # F-001556-WIN-130-601, issued by Ontario Power Authority to Nigig Power Corporation;

“environment” means the components of the Earth and includes:

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

“environmental effect” means, in respect of the Energy Centre,

- (a) any change that the Energy Centre may cause in the environment;
- (b) any effect of any change referred to in paragraph (a) on:
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) the current use of land and resources for traditional purposes by aboriginal persons, or
 - (iv) any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance; or
- (c) any change to the Energy Centre that may be caused by the environment,

whether such change or effect occurs on or off Reserve lands;

“Environmental Permit” means a permit enacted as a Land Law by Council for the Energy Centre under and in accordance with Part 3 of the EA and Permitting Land Law, including any modifications or amendments approved by the *Commissioner* or *Council* respectively;

“FIT” means feed-in-tariff, under the laws of Ontario;

“HIFN” means Henvey Inlet First Nation;

“HIW” means Henvey Inlet Wind LP and its successors, transferees, and assigns with respect to the Energy Centre;

“Nishshing Aki” means an existing social or cultural feature or condition that has been (i) identified as valued by HIFN, or (ii) designated as valued by HIFN with Community Input as provided in the Land Code;

“Notice of Arbitration” is defined in section 24;

“Officer” means a person appointed by Council or the Commissioner to act independently of Council who has law enforcement expertise and relevant experience;

“pollutant” means a substance present in the environment in a concentration that is likely to cause an adverse effect;

“principles” means the principles set out in section 2;

“proponent” means HIW and includes agents appointed in writing by it;

“public” means persons who are not members of HIFN;

“Reserve lands” means lands subject to the Land Code;

“Respondent” means a party to an arbitration under Part 5.5 of this Land Law who is not the Claimant;

“significant adverse environmental effect” means an adverse environmental effect that has been assessed as significant in accordance with the criteria established by the EA Guidance Instrument; and

“Single Arbitrator” is defined in section 24.

(3) Headers are part of this Land Law.

(4) Where this Land Law uses a term defined in the Land Code, the Land Code definition applies.

**PART 2
ENVIRONMENTAL PROTECTION PRINCIPLES**

2. The following principles apply to the interpretation of this Land Law:
- (1) Protection of the environment for present and future generations of the Henvey Inlet First Nation is the fundamental objective of this Land Law.
 - (2) Environmental protection is provided through two Land Laws:
 - (a) an Environmental Permit which provides the standards of environmental protection that must be met by the Energy Centre; and
 - (b) the EP Land Law which provides Council with powers to inspect Energy Centre construction and operations for compliance with the standards set out in the Environmental Permit, take appropriate action from a range of options to address non-compliance, and impose appropriate punishments for non-compliance.
 - (3) Together the Environmental Permit and EP Land Law contain all the environmental requirements and standards of the HIFN for the construction, operation and decommissioning of the Energy Centre.
 - (4) The aim of the EP Land Law is to ensure that environmental protection is administered and enforced in a manner that is :
 - (a) independent, by providing for the administration of the EP Land Law by a Commissioner who will have security of tenure and remuneration and powers to appoint abatement and enforcement officers;
 - (b) proportional, by providing that for any instance of non-compliance with the Environmental Permit, any resulting enforcement decision or action is commensurate to the risk to the environment presented by the non-compliance, the compliance history, and the response of the violator to the incident;
 - (c) just, by providing several means of dispute resolution, including negotiation, arbitration, and, where required, proceedings before courts; and
 - (d) fair, by providing means for HIFN to recover the full costs of any action required beyond abatement to protect the environment in compliance with the terms of the Environmental Permit.
 - (5) The EP Land Law provides HIFN stewardship over the environmental protection of Reserve lands by ensuring that Council retains ultimate authority to make decisions and take actions where necessary to address or justify activities that are contrary to the Environmental Permit and risk causing adverse effects to these lands.
 - (6) The powers and responsibilities under this Land Law are comparable to the environmental protection laws of other jurisdictions such that any punishments imposed for non-compliance with the Environmental Permit:
 - (a) have been harmonized with federal environmental protection regimes and processes and Ontario's environmental protection regimes and processes, to promote effective and consistent environmental protection and avoid uncertainty and duplication; and
 - (b) are at least equivalent in their effect to standards established and punishments imposed by the laws of Ontario.

**PART 3
ENVIRONMENTAL PROTECTION STANDARDS**

3. (1) Subject to subsection (2), the standards of environmental protection applicable to the Energy Centre on Reserve lands shall be set out in an Environmental Permit issued to HIW.
- (2) For greater certainty, HIW is prohibited from constructing or operating the Energy Centre except in compliance with all terms and conditions of the Environmental Permit.

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- (3) If, for any reason, the Environmental Permit issued to HIW is determined to be of no force or effect, in whole or in part, HIW shall have no authority to, as applicable, construct or operate the Energy Centre until Council has amended the Environmental Permit or issued a new Environmental Permit to authorize the Energy Centre.

PART 4
ADMINISTRATION OF ENVIRONMENTAL PROTECTION

4. (1) Council shall ensure that, at all material times, there are qualified personnel in place to address all requirements set out in this Land Law to administer and enforce the Environmental Permit.
- (2) To administer and enforce the Environmental Permit, Council will appoint and retain a Commissioner throughout the duration of the Environmental Permit.
- (3) To assist in the administration and enforcement of the Environmental Permit, the Commissioner shall retain an abatement Officer.
- (4) To investigate potential violations of the Environmental Permit, the Commissioner may retain an enforcement Officer.
- (5) At no time shall the Commissioner appoint the same individual as the abatement Officer and enforcement Officer.
- (6) The Commissioner may retain technical experts to provide technical advice on matters related to the administration, modification or enforcement of the Environmental Permit.
- (7) To ensure the fair and impartial administration of this Land Law, the Commissioner, abatement Officer and any enforcement Officer shall perform their tasks in a manner that is independent of the Council. To safeguard this independence, the Commissioner, abatement Officer and any enforcement Officer shall be guaranteed security of tenure, such that none of them can be removed from his or her respective office during his or her tenure, except for cause. In particular, the Commissioner, abatement Officer and any enforcement Officer shall be guaranteed security of tenure for employment during renewable terms of at least four years on a full-time, part-time or *per diem* basis. Whether the Commissioner, abatement Officer and any enforcement Officer shall be employed on a full-time, part-time, *per diem* basis or some combination thereof shall be determined at the outset of the Commissioner or Officer's term. The Commissioner, abatement Officer and any enforcement Officer shall enjoy security of compensation, such that each is guaranteed the receipt of their full agreed-upon remuneration and benefits for the entirety of their tenure in their respective offices.
5. (1) If a Commissioner has not been appointed by Council prior to commencement of the physical activities permitted by this Land Law, the EA coordinator shall act as Commissioner on an interim basis and have all the duties and authority provided to a Commissioner under this Land Law.
- (2) The interim Commissioner shall appoint an interim abatement Officer who shall have all the duties and authority provided to an abatement Officer under this Land Law.
- (3) The interim Commissioner and abatement Officer's tenure shall terminate on the earlier of:
- (a) the appointment of a Commissioner pursuant to subsection 4(2); or
- (b) the end of pre-construction activities.
- (4) The EA coordinator shall not be eligible for appointment as Commissioner pursuant to subsection 4(2).
6. (1) HIW shall ensure that it provides the Commissioner concurrently with an electronic copy of all documents prepared by it in response to requirements of the Environmental Permit.
- (2) All documents, records, or things provided to or prepared by an Officer or Commissioner are owned by HIFN and shall be maintained in an electronic and physical manner to ensure convenient access by Council.
- (3) No Officer or Commissioner has any authority to destroy or remove from convenient access by Council any document, record, or thing owned by Council except in accordance with express written direction of Council.

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7. (1) Despite any other provision in this Land Law, where Council finds that there is an exceptional circumstance that has resulted, will result or is likely to result in an adverse environmental effect that was not identified in the HIW Energy Centre environmental assessment or not assessed as likely to occur, Council may conclude by Band Council Resolution that:
- (a) the exceptional circumstance is not likely to cause a significant adverse environmental effect or is not likely to cause a significant adverse environmental effect with additional mitigation and may deem the effect to be compliant with the Environmental Permit; or
 - (b) the exceptional circumstance is likely to cause a significant adverse environmental effect, but the significant adverse environmental effect is justified in the circumstances, and may deem the effect to be compliant with the Environmental Permit,
- and take any action consistent with its conclusion, including requiring additional mitigation.
- (2) Before enacting a Band Council Resolution pursuant to subsection (1), Council shall:
- (a) ensure that it has before it information on the potential environmental effects of the exceptional circumstance, the significance and likelihood of any adverse environmental effect, and any measures proposed by HIW to avoid or mitigate the adverse environmental effect; and
 - (b) prior to amending the Environmental Permit, obtain Community Input in the manner prescribed for a Land Law under the Land Code with such procedural modifications as Council deems appropriate.
- (3) Any conclusion, decision, or action taken by Council under subsection (1) is not subject to review by an Officer or Commissioner.

PART 5
CIVIL ENFORCEMENT OF ENVIRONMENTAL PROTECTION

PART 5.1
INSPECTIONS

8. (1) For the administration of this Land Law on Reserve lands, the abatement Officer may, without a warrant or court order, at any time and with any reasonable assistance make an inspection regarding compliance with the conditions of the Environmental Permit.
- (2) HIW is required to provide all reasonable assistance, including the provision of reasonably requested information, to enable the abatement Officer to carry out his or her duties and functions under this Land Law.
- (3) HIW is prohibited from preventing or interfering with an inspection carried out by the abatement Officer, including the provision of false information to an abatement Officer, acting in accordance with this section.
- (4) An inspection may include:
- (a) entering any part of the environment to ascertain the extent, if any, to which contaminants released by the Energy Centre are contrary to the Environmental Permit, the causes of any release contrary to the Environmental Permit, and how any release that is contrary to the Environmental Permit may be prevented, eliminated, or ameliorated and the environment restored;
 - (b) entering any place in which the abatement Officer reasonably believes can be found anything that is governed or regulated under the Environmental Permit or anything the dealing with which is governed or regulated under the Environmental Permit;
 - (c) entering any place in or from which the abatement Officer reasonably believes a contaminant is being, has been, or may be discharged into the environment contrary to the Environmental Permit;
 - (d) entering any place that the abatement Officer reasonably believes is, or is required to be, subject to or referred to in the Environmental Permit, agreement, or order under this Land Law;
 - (e) stopping, re-routing or detaining any conveyance which the abatement Officer reasonably believes may contain anything that is governed or regulated under the Environmental Permit or that is related to an offence under this Land Law; and

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- (f) entering any place where a pollutant is spilled contrary to the Environmental Permit.
- (5) During an inspection under subsection (1), the abatement Officer may take any action or require that an action be taken by HIW or others under conditions specified by the abatement Officer in order to assist the inspection, including:
 - (a) make necessary excavations;
 - (b) require that any thing be operated, used, or set in motion under conditions specified by the abatement Officer;
 - (c) take samples for analysis;
 - (d) conduct tests or take measurements;
 - (e) examine, record, or copy any document or data, in any form, by any method;
 - (f) record the condition of a place or the environment by means of photograph, video recording, or other visual recording;
 - (g) require the production of any document or data, in any form, required to be kept under the Environmental Permit and of any other document or data, in any form, related to the purposes of the inspection;
 - (h) remove from a place documents or data, in any form, produced under clause (g) for the purpose of making copies; and
 - (i) make reasonable inquiries of any person, orally or in writing.
- (6) The abatement Officer shall not remove any document or data under subsection (5)(h) without giving a receipt for it or them and shall promptly return the document or data to the person who produced them.
- (7) The abatement Officer who exercises the power set out in subsection (5)(i) may exclude from the questioning any person except counsel for the individual being questioned.
- (8) During an inspection under this Part, an abatement Officer may, without a warrant or a court order, seize any thing that is produced to the abatement Officer or is in plain view, if,
 - (a) the abatement Officer reasonably believes that the thing will afford evidence of an offence under this Land Law;
 - (b) the abatement Officer reasonably believes that the thing was used or is being used in connection with the commission of an offence under this Land Law and that the seizure is necessary to prevent the continuation or repetition of the offence; or
 - (c) the thing is discharging or is likely to discharge a contaminant into the natural environment and an adverse effect has resulted or is likely to result from the discharge.
- (9) An abatement Officer who seizes a thing under subsection (8) may remove the thing or detain it in the place where it is seized.
- (10) An abatement Officer shall not seize any thing without providing a written receipt for same.
- (11) Pursuant to Part 5.2, the Commissioner may order that a thing seized under subsection (9) be forfeited to the HIFN.
- (12) The abatement Officer engaged in an inspection shall prepare and complete forthwith a written report describing all material actions undertaken, information gathered and items seized from the inspection and relating these actions, information, and items to compliance with the terms and conditions of the Environmental Permit.
- (13) On completion of an inspection report, the abatement Officer shall provide the report to the Commissioner.

**PART 5.2
ORDERS**

- 9. (1) The Commissioner may issue a notice of contravention of or non-compliance with the Environmental Permit to HIW or to any person that the Commissioner reasonably believes is or has contravened or not complied with the Environmental Permit and such notice may direct action to achieve compliance under the Environmental Permit and prevent continuation of such contravention or non-compliance.
- (2) When a copy of an order is served upon any person, that person:
 - (a) shall comply with the order forthwith; or

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- (b) shall, if the order sets out a future date by which it is to be complied with, comply with the order on or not later than such future date.
- 10.
- (1) When the abatement Officer completes an inspection report or an enforcement Officer completes an investigation report that contains a finding that a contaminant has been or is being discharged into the natural environment in contravention of the Environmental Permit, the Officer shall provide a copy of the report to the Commissioner forthwith.
 - (2) On receipt of a report under subsection (1), the Commissioner may issue a control order directed to:
 - (a) HIW as owner of the source of contaminant;
 - (b) a person who is or was in occupation of the source of contaminant; or
 - (c) a person who has or had the charge, management, or control of the source of contaminant.
 - (3) No order shall be issued under subsection (2) as a result of a finding that a contaminant is being discharged in contravention of the Environmental Permit unless the contravention causes or is likely to cause an adverse effect.
 - (4) Where the Commissioner concludes that a control order is appropriate and prepares such an order for issuance, the Commissioner shall seek to ensure that the order will be sufficient in scope to redress non-compliance, and is otherwise appropriate and proportional in relation to the non-compliance.
 - (5) Where the Commissioner proposes to issue a control order, the Commissioner shall serve notice of its intention, together with written reasons therefore and a copy of the report of the Officer or other person upon which the reasons are based, and shall not issue the control order until 15 days after the service thereof.
 - (6) On receipt of a notice under subsection (5), the person receiving the control order may make submissions to the Commissioner at any time before the control order is issued.
 - (7) The Commissioner shall give notice of the control order to Council and the Community in such manner as the Commissioner considers appropriate.
- 11.
- (1) When the Commissioner, upon reasonable and probable grounds, is of the opinion that a source of contaminant is discharging into the environment any contaminant in contravention of the Environmental Permit and that constitutes, or the amount, concentration, or level of which constitutes, an immediate danger to human life, the health of any persons, or to property, the Commissioner may issue a stop order directed to:
 - (a) HIW as owner of the source of contaminant;
 - (b) a person who is or was in occupation of the source of contaminant; or
 - (c) a person who has or had the charge, management, or control of the source of contaminant.
 - (2) Where the Commissioner concludes that a stop order is appropriate and prepares such an order for issuance, the Commissioner shall seek to ensure that the scope of the order appropriately and proportionately reflects the scope of non-compliance.
 - (3) The Commissioner shall give notice of the stop order to Council and to the Community in such manner as the Commissioner considers appropriate.
- 12.
- Where any person causes or permits the discharge of a contaminant into the natural environment in contravention of the Environmental Permit which is likely to have an adverse effect, the Commissioner may issue an abatement order to the person to:
- (a) repair the injury or damage; or
 - (b) prevent future injury or damage.
- 13.
- (1) The Commissioner may, where authorized by this Land Law to issue an abatement order to a person, include in that order the following additional requirements:
 - (a) to stop, limit, or control the rate of discharge of the contaminant into the environment in accordance with the directions set out in the order;

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- (b) to comply with any directions set out in the order relating to the manner in which the contaminant may be discharged into the environment;
 - (c) to ameliorate the adverse effects of the discharge and to restore the environment to its pre-discharge condition;
 - (d) to comply with any directions set out in the order relating to the procedures to be followed in the control or elimination of the discharge of the contaminant into the environment;
 - (e) to install, replace, or alter any equipment or thing designed to control or eliminate the addition, emission, or discharge of the contaminant into the environment;
 - (f) to monitor and record, both in the manner specified in the order, the discharge into the environment of the contaminant specified in the order and to report thereon to the Commissioner;
 - (g) to study and to report to the Commissioner upon,
 - (i) measures to control the discharge into the environment of the contaminant specified in the order,
 - (ii) the effects of the discharge into the environment of the contaminant specified in the order,
 - (iii) the environment into which the contaminant specified in the order is being or is likely to be discharged; and
 - (h) to report to the Commissioner in respect of fuel, materials, and methods of production used and intended to be used, and the wastes that will or are likely to be generated.
- (2) Where subsection (1) includes the requirement to study and to report to the Commissioner on a matter, the person subject to the order shall report to the Commissioner in the manner, at the times, and with the information specified by the Commissioner in the order.
14. When a copy of an order is served upon any person, that person:
- (a) shall comply with the order forthwith; or
 - (b) shall, if the order sets out a future date by which it is to be complied with, comply with the order on or not later than such future date.
15. The Commissioner may, by a further order, amend, vary, or revoke an order made under this Land Law and in each case shall cause a copy of the order to be served upon the person subject to the original order and HIW.
16. Notwithstanding Part 5.5, an order under this Part takes effect immediately upon service of the order in accordance with this Part.

**PART 5.3
ACCIDENT AND EMERGENCY POWERS**

17. (1) Where an Officer or the Commissioner identifies on Reserve lands an accident or an emergency that, in his or her opinion, requires immediate attention in order to:
- (a) prevent or minimize a breach of the Environmental Permit that may cause an adverse effect; or
 - (b) prevent or minimize an adverse effect to Reserve No. 2 Lands or the Energy Centre,
- the Officer may cause to be done any thing required by him or her to prevent or minimize that adverse effect.
- (2) The Officer shall make reasonable efforts to give immediate notice to HIW and the Commissioner of his or her intention to take action under subsection (1).
- (3) A person other than the Commissioner who receives a notice under subsection (2) shall not take the action referred to in the notice without the permission of the Commissioner.

**PART 5.4
RECOVERY OF COSTS**

18. (1) Where an Officer or the Commissioner takes action or causes action to be taken under this Land Law, other than an inspection, in respect of a breach of this Land Law or the Environmental Permit, the Commissioner may issue an order to pay costs to any person considered by the Commissioner on reasonable grounds to be responsible, in whole or in part, for the action or costs.
- (2) An order to pay costs shall include:

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- (a) a description of the action that the Commissioner or Officer caused to be done under this Land Law;
 - (b) a detailed account of the costs incurred in taking the action; and
 - (c) a direction that the person to whom the order is issued pay the costs to the Commissioner.
- (3) An order under subsection (2) to pay costs shall also include a brief statement of the circumstances giving rise to the decision to take or cause action.
- (4) To the extent persons not responsible were required to take action by the Officer or Commissioner, the Commissioner may use payments made in accordance with this section to reimburse any such person for expenses incurred in taking such action.
- (5) Where two or more persons are liable to pay costs pursuant to an order under subsection (1), they are jointly and severally liable to the Council.
- (6) Where the Commissioner has authority to issue an order to two or more persons under subsection (1), as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:
- (a) Where the Commissioner is entitled to issue an order to two or more persons under subsection (1) or (2) in respect of costs and one or more of them caused or contributed to the costs by fault or negligence, such one or more of them shall make contribution to and indemnify,
 - (i) where one person is found at fault or negligent, any other person to whom the Commissioner is entitled to issue an order under subsection (1) or (2), and
 - (ii) where two or more persons are found at fault or negligent, each other and any other person to whom the Commissioner is entitled to issue an order under subsection (1) or (2) in the degree in which each of such two or more persons caused or contributed to the costs by fault or negligence.
 - (b) For the purpose of subparagraph 1(ii), if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the Commissioner is entitled to issue an order under subsection (1) or (2) caused or contributed to the costs, such two or more persons shall be deemed to be equally at fault or negligent.
 - (c) Where no person to whom the Commissioner is entitled to issue an order under subsection (1) or (2) caused or contributed to the costs by fault or negligence, each of the persons to whom the Commissioner is entitled to issue an order under subsection (1) or (2) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.
- (7) The right to contribution or indemnification under subsection (5) may be enforced by an action or application in a court of competent jurisdiction in Ontario.
- (8) Wherever it appears that a person not already a party to an action under subsection (6) may be a person to whom the Commissioner is entitled to issue an order under subsection (1) or (2) in respect of the costs, the person may be added as a party to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the Ontario *Rules of Civil Procedure* for adding third parties.
- (9) In considering whether to issue an order under subsection (1), the Commissioner shall consider:
- (a) whether a person other than an Officer or Commissioner could have been ordered to do the action that was taken by the Officer or Commissioner; and
 - (b) whether to order the withdrawal of any monies from funds created for the Energy Centre under the lease with HIFN.

**PART 5.5
DISPUTE RESOLUTION**

19. (1) Any disputes, disagreements, controversies, questions, or claims arising out of or relating to this Land Law and the Environmental Permit including, without limitation, their formation, execution, validity, application, interpretation, performance, breach, termination, or enforcement (collectively, “**Disputes**”), will be determined in accordance with this Part which sets out the exclusive procedure for the resolution of Disputes.
- (2) All processes to resolve Disputes shall be carried out expeditiously and subject to the following timetable:

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- (a) Step 1 – initiating a Dispute: within 15 days of the decision or event giving rise to the Dispute;
 - (b) Step 2 – negotiation: commenced within 30 days of the receipt of the Notice of the Dispute;
 - (c) Step 3 – where the Dispute has not been resolved, an appeal under section 23 or an arbitration under section 24 may be commenced within 30 days of Step 2 having been completed; and
 - (d) Step 4 – in the case of arbitration, the arbitration shall be completed within 4 months of the receipt of the Notice of Dispute.
- (3) Where there is a Dispute about requirements that have caused or may cause an adverse effect, the Parties agree that, subject to subsection (4), dispute resolution shall be carried out in a way that does not cause or increase an adverse effect.
- (4) Where there is a Dispute and the Parties cannot agree on how to carry out dispute resolution in a way that does not cause or increase an adverse effect, either Party may apply to a court of competent jurisdiction in Ontario for an order that addresses how dispute resolution may occur in the circumstance of avoiding or minimizing an adverse effect.
20. The Commissioner or the proponent (for the purposes of this Part, the “Party” or collectively the “Parties”) will give notice of a Dispute by delivering a written notice of dispute (the “Notice of Dispute”) to the other Party (the “Respondent”).
21. The Notice of Dispute will include:
- (a) the full names, descriptions, and addresses of the Parties;
 - (b) a general description of the Dispute; and
 - (c) the relief or remedy sought.
22. Following a Notice of Dispute, the Parties will give first priority to resolve the Dispute by negotiation and will participate in negotiations in good faith.
23. (1) Within 30 days of the completion of Step 2 under section 19(2)(b), where all issues have not been resolved, any person subject to an order, notice of contravention or notice of non-compliance issued under Part 5.2 or Part 5.4 of this Land Law may, with written notice to the Commissioner, appeal such order, notice of contravention or notice of non-compliance to the Ontario Superior Court of Justice.
- (2) The Parties may by mutual written agreement extend the time for Appeal provided under subsection (1) above.
- (3) The Superior Court of Justice may set aside, confirm or vary the order, notice of contravention or notice of non-compliance, or may remit it to the Commissioner for reconsideration with such directions as the Court deems proper.
- (4) An appeal under subsection (1), and any subsequent appeal from the order of the Superior Court of Justice, shall be governed by the Ontario *Courts of Justice Act* and the *Rules of Civil Procedure* enacted thereunder.
- (5) The Commissioner may retain a lawyer to respond to an appeal under subsection (1).
24. (1) Upon completion of Step 2 under section 19(2)(b), where all issues have not been resolved, a Party may require that the Parties submit to arbitration under this Part with respect to any unresolved issues by delivering a written notice of arbitration (“Notice of Arbitration”) to the other Party. The Notice of Arbitration will include:
- (a) the full names, descriptions, and addresses of the Parties;
 - (b) a demand that the Dispute be referred to arbitration under this section;
 - (c) a general description of the Dispute;
 - (d) the relief or remedy sought;
 - (e) the proposed location of the arbitration; and
 - (f) the name of the person whom the Commissioner, proponent, or Disputant (the “Applicant”) nominates as an arbitrator.
- (2) The Parties may by mutual written agreement extend the time for the delivery of the Notice of Arbitration provided under subsection 23(1) above.
- (3) Arbitrations will be conducted in Ontario in accordance with the *Arbitration Act*, SO 1991, Chapter 17.

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- (4) The arbitrator nominated by the Applicant will be the single arbitrator (the “**Single Arbitrator**”) to resolve the Dispute unless, within 5 days of service of the Notice of Arbitration on the Respondent, the Respondent, by notice to the Applicant, appoints a second arbitrator to serve on the panel of Arbitrators who will resolve the Dispute, and the arbitrator nominated by the Applicant will be deemed to have also been so appointed.
25. (1) A Party may not proceed with both an appeal under section 23 and an arbitration under section 24 with regard to the same order, notice of contravention or notice of non-compliance.
- (2) The Commissioner may retain a lawyer to respond to an arbitration under section 24.
- (3) If the Respondent has appointed a second arbitrator under this section, then, within 5 days of that appointment, the appointees of the Applicant and Respondent will, by notice to the Parties, appoint a third and final arbitrator to act as chair of the Arbitrators, failing which a chair will be appointed by a judge of the Superior Court of Justice of Ontario on the application of any Party on notice to all other Parties.
- (4) Subject to the *Arbitration Act*, and this Land Law, the Arbitrators may conduct the arbitration in the manner the Arbitrators consider appropriate. The Parties or, as applicable, the Commissioner and Disputant intend and will take such reasonable action necessary or desirable to ensure that there be a speedy resolution to any Dispute, and the Arbitrators will conduct the arbitration of the Dispute with a view to making a determination and written, reasoned order as soon as possible.
26. As provided for by section 50 of the *Arbitration Act*, the Party entitled to enforcement of an arbitral award made pursuant to this section may make an application to the court to that effect.
27. Notwithstanding any other remedy available under this Part, if, following the Commissioner’s notice to HIW of non-compliance or notice of contravention with the Environmental Permit under section 9 above, the non-compliance or contravention persists and presents a risk of harm to the environment or human health, the Commissioner has authority to initiate judicial proceedings for injunctive and other relief to provide compliance.
28. (1) An order to pay costs under this Part may be filed with a local registrar of the Superior Court of Justice and enforced as if it were an order of the court.
- (2) Section 129 of the *Courts of Justice Act* applies in respect of an order filed with the Superior Court of Justice under subsection (1) and, for the purpose, the date of filing shall be deemed to be the date of the order.
29. Where an order to pay costs under this Part is directed to a person who has given a deposit or financial assurance under the Environmental Permit for the lease of Reserve lands, the deposit or financial assurance may be used to recover amounts specified in the order to pay costs.
30. No aspect of this Part is intended to affect the exclusive jurisdiction of the Federal Courts of Canada under the *Federal Courts Act*, as amended.

PART 6
PENAL ENFORCEMENT OF ENVIRONMENTAL PROTECTION

PART 6.1
GENERAL

31. Where the Commissioner obtains information which provides the Commissioner with reasonable and probable grounds for believing that there is non-compliance with the Environmental Permit or any order under Part 5.2 and the Commissioner determines that civil means of dispute resolution available under Part 5.5 are not adequate to appropriately resolve matters relating to the non-compliance, the Commissioner may retain an enforcement Officer, pursuant to s. 4(4) for the purpose of investigating whether a person has committed an offence under section 34.

**PART 6.2
PENAL ENFORCEMENT BY ONTARIO**

32. (1) Council may reach agreement with the Province of Ontario to:
- (a) provide penal investigation or enforcement of non-compliance with the Environmental Permit, for some or all of the offences under Part 6.4, including use of Ontario laws for, among other things, investigations, offences, prosecution, and punishments; or
 - (b) avoid double enforcement by HIFN and the Province of Ontario where the same acts or omissions give rise to an offence under Ontario law and under this Land Law.
- (2) Where, consistent with subsection (1)(a), Council has reached agreement on penal enforcement with the Province of Ontario, the Commissioner may, for the purpose of ensuring compliance with the Environmental Permit, refer the non-compliance to enforcement personnel at the Province of Ontario in accordance with the terms of the agreement.

**PART 6.3
INVESTIGATION OF OFFENCES**

33. (1) The Commissioner, or an enforcement Officer retained under subsection 4(4) may, for the purpose of ensuring compliance with the Environmental Permit, enter on or into any land or place without an order if:
- (a) the entry is made with the consent of an occupier or owner of the land or place; or
 - (b) the delay necessary to obtain an order under subsection (2) would result in,
 - (i) danger to the health or safety of any person,
 - (ii) impairment or serious risk of impairment of the quality of the environment for any use that can be made of it, or
 - (iii) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.
- (2) Where subsection (1) does not apply, an application by the Commissioner or the enforcement Officer to a court of competent jurisdiction of Ontario may be brought on the basis of evidence under oath demonstrating reasonable grounds for the belief that entry on land or into or on a place is necessary for the purpose of ensuring compliance with the Environmental Permit and such court may issue an order authorizing the Commissioner or the enforcement Officer to make the entry and do the thing.
- (3) An order issued under subsection (2) shall:
- (a) specify the times, which may be 24 hours each day, during which the order may be carried out; and
 - (b) state when the order expires.
- (4) Before or after the order expires, the court may renew the order for such additional periods as it considers necessary.
- (5) The Commissioner or the enforcement Officer authorized under subsection (1)(b) or (2) to enter land or a place for the purpose of ensuring compliance with this Land Law may call on police officers as necessary and may use force as reasonably necessary to make the entry and do the thing.
- (6) The Commissioner or the enforcement Officer named in an order issued under subsection (2) may call on any other persons he or she considers advisable to execute the order.
- (7) An application for an order or renewal of an order under this section may be made without notice to the owner or occupier of the land or place.
- (8) On the request of an owner or occupier of the land or place, the Commissioner or the enforcement Officer who exercises a power conferred under subsection (1) or (2) shall identify himself or herself and shall explain the purpose of the entry.
- (9) During an investigation under this part, the Commissioner or an enforcement Officer may, without a warrant or a court order, seize any thing that is produced or is in plain view, if,

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- (a) the Commissioner or enforcement Officer reasonably believes that the thing will afford evidence of an offence under this Land Law;
 - (b) the Commissioner or enforcement Officer reasonably believes that the thing was used or is being used in connection with the commission of an offence under this Land Law and that the seizure is necessary to prevent the continuation or repetition of the offence; or
 - (c) the thing is discharging or is likely to discharge a contaminant into the natural environment and an adverse effect has resulted or is likely to result from the discharge.
- (10) The Commissioner or an enforcement Officer who seizes a thing under subsection (9) may remove the thing or detain it in the place where it is seized.
- (11) The Commissioner or an enforcement Officer shall not seize any thing without providing a written receipt for same.
- (12) Pursuant to Part 5.2, the Commissioner may order that a thing seized under subsection (9) be forfeited to the HIFN.
- (13) The Commissioner or the enforcement Officer engaged in an investigation shall prepare and complete forthwith a written report, an investigation report, describing all material actions undertaken, information gathered and items seized from the investigation and relating these actions, information and items to compliance with the terms and conditions of the Environmental Permit.
- (14) On completion of an investigation report by the enforcement Officer, the Officer shall provide the report to the Commissioner.

**PART 6.4
OFFENCES**

34. (1) It is an offence for:
- (a) any person to breach this Land Law, the Environmental Permit, an order made by the Commissioner or a notice of contravention or notice of non-compliance issued by the Commissioner; or
 - (b) any person who is a director or officer of a corporation to fail to take all reasonable care to prevent the corporation from:
 - (i) a breach of an order made by the Commissioner or a breach of a notice of contravention or notice of non-compliance issued by the Commissioner, or
 - (ii) discharging a contaminant to the environment in contravention of this Land Law or the Environmental Permit or failing to notify the Commissioner of such a discharge.
- (2) For the purposes of this Land Law, an act done or omitted to be done by an officer, official, employee, or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed to also be an act done or omitted to be done by the corporation.
- (3) Where the Commissioner prepares or receives an investigation report under section 33 of this Land Law, the Commissioner may conclude that the person has committed an offence under this Land Law.
- (4) Within 60 days of the Commissioner reaching a conclusion that a person has committed of an offence under this Land Law, the Commissioner shall deliver notice of offence to that person.

**PART 6.5
PROSECUTION OF OFFENCES**

35. Prosecution under this Land Law will be conducted through courts of competent jurisdiction of the Province of Ontario, pursuant to section 24(5) the *First Nations Land Management Act*.
- (1) Such prosecutions, including any appeals, shall be conducted in a manner consistent with Part XXVII of the *Criminal Code*.
 - (2) Prosecutors shall be appointed in accordance with section 22(3) of the *First Nations Land Management Act*, and may be:

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- (a) retained by the Commissioner,
 - (b) appointed pursuant to an agreement between HIFN and the federal and provincial governments for the use of provincial prosecutors, or
 - (c) appointed pursuant to an agreement with the federal government for the use of agents engaged by the federal government.
- (3) The Commissioner shall not initiate any prosecution under this Land Law more than 2 years after the date on which evidence of the offence first came to the attention of the Commissioner.
36. (1) In respect of federally protected species at risk the Commissioner shall not prosecute a person:
- (a) where a prosecution is proceeding for an offence under the Canadian *Species at Risk Act* in respect of the same act or omission by the same person;
 - (b) the charges under the *Species at Risk Act* have not been withdrawn; and
 - (c) the essential elements of the offence under the *EP Land Law* and the Canadian *Species at Risk Act* are the same.
- (2) Where subsection (1) applies, and charges under the Canadian *Species at Risk Act* have subsequently been withdrawn, the limitation period under subsection 35(3) shall be tolled for a period equal to the period for which the prosecution under the Canadian *Species at Risk Act* proceeded before it was withdrawn.

PART 6.6
PUNISHMENTS FOR BREACH OF ENVIRONMENTAL PERMIT

37. (1) Where the Commissioner has delivered a notice of offence to a person for breach of the Environmental Permit and the offence does not involve harm or possible harm to the environment, that person is liable on conviction to a fine of not more than \$25,000.00 on a first conviction and \$50,000.00 on each subsequent conviction.
- (2) Where the Commissioner has delivered a notice of offence to a person for breach of the Environmental Permit and the offence does involve harm or possible harm to the environment, that person is liable on conviction:
- (a) in the case of a corporation, other than a non-profit corporation, to a fine of not more than \$1,000,000.00, for each day or part of a day on which the offence occurs;
 - (b) in the case of a non-profit corporation, to a fine of not more than \$250,000.00, for each day or part of a day on which the offence occurs; and
 - (c) in the case of any other person, to a fine of not more than \$250,000.00, for each day or part of a day on which the offence occurs or to imprisonment for a term of not more than one year, or to both.
- (3) The penalties set out under subsection (2) are commensurate with those imposed under section 40 of the *Endangered Species Act, 2007* and shall automatically increase in accordance with any increase in the relevant penalties under that legislation.
- (4) Where a person in receipt of a notice of offence has been previously convicted of an offence for breach of the Environmental Permit, that person is liable on conviction to a fine that is double the fine available on a first conviction.
- (5) In addition to being subject to any fine payable under subsections (2) or (3), a person guilty of an offence may be subject to an order to pay:
- (a) reasonable expenses incurred by the Commissioner to respond to any damage caused by the commission of the offence; and
 - (b) an amount equal to the amount of monetary benefit acquired by or that accrued to the person as a result of non-compliance with the Environmental Permit.
- (6) Any fine payable under this EP Land Law shall be payable to HIFN.

**PART 7
SERVICE OF DOCUMENTS**

38. Any document given or served under this Act or the regulations is sufficiently given or served if it is,
- (1) delivered personally;
 - (2) sent by mail addressed to the person to whom delivery or service is required to be made to the last address for service provided by the person or, if no such address has been provided, to the person's last known address;
 - (3) if the person consents, by emailing a copy of the document to the person; or
 - (4) on application without notice, a court of competent jurisdiction in Ontario, on being satisfied that service cannot be made effectively in accordance with subsections (1) to (3), may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the person.
39. A document is delivered personally:
- (1) to a corporation, by delivering the document personally to the manager, secretary or other officer of the corporation or to a person apparently in charge of a branch office of the corporation; or
 - (2) to a partnership or sole proprietorship by delivering the document personally to a partner or the sole proprietor, or to a person apparently in charge of the office or the partnership or sole proprietorship.
40. Service is deemed to be effective:
- (1) in the case of personal delivery, at the time of delivery;
 - (2) in the case of service by mail, on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control receive the notice or order until a later date; or
 - (3) in the case of service by email, at the time the person receiving the email acknowledges and accepts receipt.

**PART 8
AMENDMENT**

41. This Land Law may be amended by a Land Law enacted with Community Input.

[Enacted in open Council on 26 January 2016.]