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Municipality of Pond Inlet
P.O Box 180
Pond Inlet, Nunavut
X0A 0S0

Sent via Email: info@nirb.ca

August 11, 2020

Karen Costello
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay, NU
X08 0C0

Response to Affidavit of Mr. Brian Penney, August 4, 2020 and letter of July 24, 2020

Dear Ms. Castello,

We are asking the NIRB to commence public hearings no sooner than mid to late November, 2020.

We appreciate the difficulties faced by the N.I.R.B. in dealing with technical meetings, community consultations and public hearings, especially because of the Covid-19 pandemic.

Baffinland has argued that a resumption of technical meetings is not required. Baffinland maintains that 92% of the technical issues have been resolved and has submitted material in support of this claim. We dispute the number of issues that Baffinland claims to have resolved, and the calculations found in the letter and attachments submitted to NIRB on July 24.

Our request that public hearings be delayed until mid-November is based on the following.

Technical meetings are required. Before Community Consultations and Public Hearings are held, we need time to communicate the results of the Technical Meetings to residents of Pond Inlet and the other 5 affected communities, so that they can be fully informed and are prepared to participate in a Public Hearing. Given the importance of outstanding issues and the content and status of the Inuit Certainty Agreement, this is a substantial undertaking.

We are asking for a period of 6 – 8 weeks after Technical Meetings are held, to communicate the results to Mittimatalingmiut: to prepare them for participation in the public hearings. If Technical Meetings are held the end of September, we are asking that Community Consultations and Public hearings be held no sooner than mid-November 2020.

We have previously made a case for holding the Technical Meetings at the end of September. We cannot prepare ourselves to participate effectively in Technical Meetings to be held in several weeks. Mittimatalingmiut – including members of the MHTO and Hamlet Council have been hunting on the ice since early spring and are now travelling, camping and hunting in open water season. We need the time to bring councillors together and to discuss with them, documents

that have, only recently, been made available to us. These include the recently signed Inuit Certainty Agreement (ICA) noted in Brian Penney's affidavit. We still do not have an Inuktitut translation of this document. The content was to be explained to us by QIA. This has not yet happened. Our technical advisor met recently with technical staff of QIA and is preparing a document that will outline the major features of the Agreement. We will need time to discuss this before participating in Technical Meetings.

Mr. Penney's affidavit makes no mention of the impact of the Covid-19 pandemic on our capacity to function as a Council. The required two weeks of isolation, after making trips outside of the territory has interfered with our ability to bring Councilors together. I am an example of this disruption, having accompanied my wife out of territory for health reasons.

We want the opportunity to question Baffinland with respect to the ICA and the claim that it "substantially addresses outstanding issues". It appears that much of the agreement deals with matters of monitoring and project management. Our concern is that matters that should have been researched, and research results that should have been submitted to Baffinland in support claims made in its Addendum to the Final Environmental Impact Statement, Mary River Project – Phase 2 Proposal, have now been relegated to monitoring and management issues that will take place if the Phase 2 Project is approved. Baffinland must still defend the claims it made in the Addendum document.

We do not agree that holding Technical Meeting in late September constitutes a "breach of procedural fairness". In fact, doing otherwise seriously disadvantages our communities, for the reasons outlined.

Baffinland is currently paying for a considerable amount of equipment it had constructed and imported to Milne Inlet, in anticipation of receiving speedy approval for the Phase 2 Project. While there are financial implications for project delay, we should be pressured into a less than full and fair hearing process in order to accommodate assumptions and choices made by Baffinland, with obvious financial consequences, before a decision was made on this Project.

Mr. Penney refers to a letter of July 8 that summarizes work done by Baffinland and others to "address and resolve outstanding technical issues", with "territorial and federal regulators, and other interested parties. The list of meetings provided does not include any meetings with parties other than territorial and federal regulators, 2 meetings held with the MHTO, and 1 with the WWF. No meetings with other interveners are indicated. No meetings were held with Hamlet Council. (Attachement 1, Letter to Karen Costello, July 8, 2020)

Mr. Penney makes reference to the Inuit Certainty Agreement. The relevance and role of the ICA in addressing technical concerns needs to be examined. This has implications for the timing of Technical Meetings and, subsequently, for scheduling of the Public Hearings given that we have only recently received this document, have had no briefing on the content and have no Inuktitut version of the text.

Mr. Penney supports his case for moving forward quickly with reference to the number of technical issues that have been resolved. It is not the number of issues that have been resolved

that is important. It is the significance, complexity and importance to Mittimatalik of those issues that have not been resolved that counts. Not all issues are of equal importance.

We are unsure as to what issues have actually been resolved and dispute the figure of 92% provided by Mr. Penney. This includes issues of different status in relation to being resolved.

Attachment 2 is a disposition table.

A careful examination of the wording used to describe the outcome of discussions around many of the issues, raises legitimate question as to whether some issues indicated as “resolved”, have in fact been resolved.

For example, the text accompanying DFO 3.5, a request of Baffinland regarding possible ship strikes of marine mammals, does not indicate that this issue is resolved. Yet it is indicated as resolved.

With regard to DFO 3.5 NEW (Attachment 2, Letter of July 8 to Karen Costello) the DFO issue concerns the presence of MWOs for the shipping season on all project related vessels. Having addressed the issue, Baffinland states: “Baffinland *expects* that this commitment will satisfy DFO’s concern and the comment will now be considered resolved”.

In other words, Baffinland has decided the issue is resolved, based on an expectation that DFO will be satisfied. The wording is entirely misleading. This issue is not resolved until DFO indicates that it is resolved. Baffinland cannot unilaterally decide that something is resolved because it is convenient to do so.

This wording appears in regard to a long list of issues raised by DFO, including matters related to ballast discharge in DFO 3.6.1, DFO 3.6.2, DFO 3.6.3, DFO 3.6.4

With regard to DFO 3.6.8, the text reveals that there is an outstanding dispute between DFO and Baffinland over who is responsible for identification of high-risk biological species in relation to ballast water and vessel hulls. Yet this issue is coded as “resolved”.

With regard to DFO 3.6.9, the development of a response plan in the event of the introduction of a nonindigenous species, Baffinland states that it commits to developing a plan and that “Baffinland *expects* that this commitment will satisfy DFO’s concern. It then proceeds to rate the issue as “resolved”. Obviously nothing is resolved until DFO agrees with the yet to be developed response plan.

What is interesting and inconsistent with this pattern of rating as “resolved”, matters that clearly are not resolved, is illustrated by DFO 3.7., a recommendation that Baffinland conduct a thorough analysis and assessment examining all the combined impacts of all the project activities inside and outside of the study area. Despite repeating the commonly used phrase “Baffinland expects that this commitment will satisfy DFO’s concern and the comment will now be considered resolved”, the rating given is “Outstanding – in Progress”. This is both revealing and entirely inconsistent.

The above are only illustrative. A detailed examination of the claims made is required.

The issues raised in our reading of the texts support the request for a resumption of Technical Meetings and the need for time to examine closely, claims made about the resolution of issues. The status of the content of the Inuit Certainty Agreement needs careful consideration. It is a lengthy and complex document. Important issues raised by Environment Canada, Department of Fisheries and Oceans and Parks Canada are still outstanding. We need to hear from Environment Canada, DFO and Parks Canada in this regard.

In conclusion, the information provided by Brian Penney in support of his affidavit raises important questions that need to be further explored at a Technical Meeting. The ratings given and texts that accompany the issues do not support his claim that a large percentage of issues have been resolved.

For the reasons noted above, we are asking that Technical Meetings resume in late September/early October, followed by Community Consultations and Public Hearings to commence no earlier than mid-November.

Respectfully

A handwritten signature in blue ink, appearing to read "Joshua Arreak".

Joshua Arreak

Mayor, Hamlet of Pond Inlet