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January 08, 2021

Karen Costello  
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Nunavut Impact Review Board  
P.O. Box 1360  
Cambridge Bay, NU X0B 0C0

Via Email: [kcostello@nirb.ca](mailto:kcostello@nirb.ca)

**Approach to Crown Consultation - Baffinland Iron Mines Corporation's "Mary River Phase 2 Development Proposal"**

Dear Ms. Costello,

As we approach the Public Hearing for Baffinland Iron Mines Corporation's Mary River Phase 2 Development Proposal (Phase 2 Proposal), the Government of Canada would like to clarify how the Crown's duty to consult is being discharged with respect to the Phase 2 Proposal currently under review by the Nunavut Impact Review Board (the Board) for the benefit of all parties and interveners. The Northern Projects Management Office (NPMO), on behalf of the Government of Canada, is expanding upon the responses provided during the November 2019 Public Hearing and third technical sessions.

**Government of Canada's Reliance on the NIRB Process:**

In the Government of Canada's view, the Board's assessment process, and associated proceedings, are relied upon to assist the Crown in discharging its duty to consult with Indigenous peoples. The Board has broad jurisdiction to review a project and its potential impacts, including any impacts on asserted or established s.35 rights. As established in the *Nunavut Agreement*, the Board's assessment process is designed to facilitate the participation of Inuit and other Indigenous groups in the assessment of Nunavut projects which may have an impact on those rights.

In developing the *Nunavut Agreement*, the Crown and Inuit negotiated how project review and approval decisions would be made, with an emphasis on Inuit participation in those decisions. Specifically, the Board's process provides potentially affected Inuit and other Indigenous peoples with an opportunity to understand the proposed project and its potential impacts, express their views and concerns with respect to potential project-related impacts on their treaty rights, consider ways these views and concerns can be addressed, and ensure those issues are considered both by the Board and the responsible Ministers.

The Government of Canada actively participates throughout the Board's assessment process, as the process provides the Crown opportunities to consider information about

Indigenous concerns and potential adverse effects on asserted or established s. 35 rights. While participating, the Government of Canada listens to and tracks Indigenous concerns and issues and how they may be addressed. The Board's final report and recommendations, along with Canada's tracking of concerns and potential solutions, provides federal decision-makers with information to assess the adequacy of Crown consultation prior to making Ministerial decisions.

#### **Government of Canada's Participation in the NIRB Process:**

To elaborate on the Government of Canada's activities during specific phases of the Board process: once the Board determines that a project proposal is significant enough to warrant a full impact assessment review, or when the Board determines that a full reconsideration of a project certificate is required, the Government of Canada sends notification letters encouraging participation of Inuit and other Indigenous groups. The Government of Canada also provides financial support through the Northern Participant Funding Program to Inuit and other Indigenous groups and organizations to facilitate their informed engagement in the Board's process. In return, the information gathered and shared by the Inuit and other Indigenous participants helps the Government of Canada ensure the Crown's duty to consult is met.

During the review phase, the Government of Canada participates directly in the proceedings by providing technical expertise about a project's potential impacts and possible ways of mitigating and monitoring those impacts through commitments and terms and conditions to the project certificate.

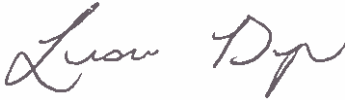
After the Board's review process has concluded, the Government of Canada sends a follow-up letter to Inuit and other Indigenous groups, in order to seek any further views on the Board's final report and recommendations as well as any outstanding concerns that may still exist. Responses to this letter help to inform the Government of Canada as to whether consultation and potential accommodation of any impacts on rights is sufficient prior to the making of a final Ministerial decision. After the Ministerial decision, the Government of Canada sends a letter to Inuit and other Indigenous groups that outlines its reasons for decision and highlights any potential accommodation measures, where relevant.

In order to avoid circumventing or duplicating the Board's process, the Crown generally does not carry out separate consultation activities outside the Board's process while the assessment is ongoing, except when the objective is to bring issues back before the Board. Within this broad framework, departments and agencies remain open to discussing project-related information and submissions with all parties and interveners, but always to reinforce and contribute to the Board's process.

The Government of Canada is confident that, given the design of the *Nunavut Agreement*, the Board's assessment process for the Phase 2 Proposal can be relied on to assist the Crown discharging its duty to consult. The Government of Canada will, therefore, focus its efforts, and respectfully urges others to focus their efforts, on providing the Board with all the information and evidence it will need to assess the Phase 2 Proposal, and how it might affect their rights and interests, including s.35 rights.

If you have any questions about the information outlined in this letter, please contact Saba Qazi, Senior Project Manager. She can be reached at [saba.qazi@canada.ca](mailto:saba.qazi@canada.ca) or 867-975-3758 at the NPM0 Iqaluit office.

Sincerely,



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