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November 15, 2021

Kaviq Kaluraq
Chairperson
Nunavut Impact Review Board
PO Box 1360
Cambridge Bay, NU X0B 0C0
via email: info@nirb.ca

Dear Ms. Kaluraq:

Re: Comments of the Qikiqtani Inuit Association (“QIA”) on the admissibility of materials submitted by the Government of Canada on behalf of Denmark and Greenland (the “Espoo Documents”) under *The Convention on Environmental Impact Assessment in a Transboundary Context* (“Espoo Convention”) – NIRB File No. 08MN053 Hearing on Baffinland’s Phase 2 Development Proposal

On November 1, 2021, the Nunavut Impact Review Board (“NIRB”) invited Parties in the Phase 2 Project Public Hearing to comment on the admissibility of the Espoo Documents.

QIA submits that NIRB should admit the Espoo Documents because they are relevant to this proceeding. The Espoo Documents describe the Proposal’s transboundary effects, and the *Nunavut Planning and Project Assessment Act* (“NuPPAA”) requires NIRB to consider transboundary effects as it considers whether to recommend that the Proposal proceed. Moreover, Canada has clearly indicated that it intends to rely on the NIRB process to meet its obligations under the Espoo Convention for a review of transboundary project impacts.

Admitting the Espoo Documents will not prejudice any Party in this Hearing because the Parties will have an opportunity to comment on them should NIRB allow Parties to do so. In any event, there can be no prejudice from NIRB considering documents it is required to consider (a) under NuPPAA; and (b) to satisfy Canada’s international obligations.

If NIRB admits the Espoo Documents, it should establish a process that permits the Parties to submit written questions to the authors of the Espoo Documents, receive their responses, and integrate those responses into their final written submissions. Or, in the alternative, NIRB could

invite the Parties to comment on the substance of the evidence in the Espoo Documents in their final written submissions.

NIRB is required to consider transboundary ecosystemic effects

NIRB has jurisdiction to consider the Proposal's transboundary impacts, including impacts of Mine-related activities outside of the Nunavut Settlement Area and the Outer Land Fast Ice Zone, such as Mine-related shipping in international or foreign waters.¹ Because ecosystemic effects do not stop at the boundary of the Nunavut Settlement Area and the Outer Land Fast Ice Zone, s. 113 of NuPPAA expressly requires NIRB to consider transboundary ecosystemic effects in its application of the factors under s. 103 of NuPPAA.² The factors in s. 103 that will require NIRB to consider the Proposal's transboundary effects include:

- (d) the anticipated effects of the environment on the project, including effects associated with natural phenomena, such as meteorological and seismological activity, and climate change;
- (e) the anticipated ecosystemic and socio-economic impacts of the project, including those arising from the effects referred to in paragraph (d);
- (f) the cumulative ecosystemic and socio-economic impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out;
- (i) the significance of the impacts referred to in paragraphs (e) and (f), taking into account the measures referred to in paragraph (h); and
- (j) the capacity of renewable resources that are likely to be significantly affected by the project to meet the existing and future needs of the residents of the designated area.

The Espoo Documents describe the Proposal's transboundary effects

The Espoo Documents describe the Proposal's transboundary effects in and around Greenland. NIRB is therefore required to consider them in its application of those factors in s. 103 of NuPPAA.

There are eight Espoo Documents: a letter from Greenland's Ministry for Agriculture, Self-Sufficiency, Energy and Environment³ the ("Ministry's Report") which describes the Proposal's potential transboundary effects and comments on a report prepared by BIMC pursuant to the Espoo Convention (the "Espoo Report"), and seven letters from parties in Greenland and international non-governmental organizations commenting on the Ministry's Report.

¹ Section 5(2) of NuPPAA says "[t]his Act also applies to projects to be carried out wholly or partly outside the designated area and to impacts outside that area to the extent necessary to give effect to sections 80, 98, 113, 133, 156 to 162, 168 and 185 to 187" [emphasis added]."

² Section 113 of NuPPAA says: "[t]he ecosystemic and socio-economic impacts of the project, both inside and outside of the designated area, must be taken into account for the purposes of sections 101 to 112" [emphasis added].

³ 211029-08MN053

The Ministry's Report explains that BIMC has failed to adequately consider the Proposal's transboundary effects, including "the consequences of shipping iron ore with large cargo ships through Baffin Bay and along the west coast of Greenland in periods and areas where there have not previously been disturbances from ship traffic."⁴ The Report indicates that the transboundary effects BIMC ought to have considered but did not include Mine-related shipping impacts on:

- narwhals, and "whether the ship traffic in the waters between Canada and Greenland coincides with the narwhals' migration periods and routes between Canada and Greenland and whether this could negatively affect the narwhal population;"⁵
- bowhead whales, and "whether ship traffic coincides with the species' migration routes and periods," and whether mitigation measures, such as speed limitations, will apply to shipping outside of Canadian waters;⁶
- walrus in Greenland, and "whether ship traffic can affect the walrus population at Store Hellefiskebanke, as well as in Baffin Bay and Hudson Strait;"⁷ and
- Store Hellefiskebanke, an ecologically sensitive area off the west coast of Greenland that is a vital habitat and foraging area for many species of marine mammals and seabirds, and which BIMC may use as a temporary anchoring site for ships before the ice breaks up and the ships can navigate Pond Inlet.⁸

The Ministry recommends that the Proposal go through an environmental assessment that includes consideration of impacts along the proposed shipping routes outside of Canada.

The remaining Espoo Documents are letters from Greenland's Ministry of Fisheries and Hunting;⁹ Qeqqata Kommunia (a municipality in western Greenland);¹⁰ the Association of Fishers & Hunters in Greenland;¹¹ Greenland's Institute of Natural Resources;¹² Oceans North;¹³ the WWF Verdensnaturfonden (Denmark);¹⁴ and the Greenland Business Association.¹⁵

These documents support and affirm the conclusions in the Ministry's Report and add additional information about the Proposal's transboundary impacts. For example, the World Wildlife

⁴ 211029-08MN053, p. 1

⁵ 211029-08MN053, p. 2

⁶ 211029-08MN053, p. 3

⁷ 211029-08MN053, pp. 2-3

⁸ 211029-08MN053, p. 3

⁹ 211029-08MN053

¹⁰ 211029-08MN053

¹¹ 211029-08MN053

¹² 211029-08MN053

¹³ 211029-08MN053

¹⁴ 211029-08MN053

¹⁵ 211029-08MN053

Federation (Denmark)'s letter adds additional information about the adverse impacts of noise from existing shipping on wildlife in the Arctic, as well as the potential impacts of substantially increased noise resulting from increased shipping.¹⁶

The Espoo Documents raise serious concerns about the Proposal's transboundary effects, and the extent to which BIMC has adequately considered and/or proposed mitigation measures for those effects. They are therefore directly relevant to NIRB's consideration of transboundary effects in its application of the factors in s. 103 of NuPPAA.

No prejudice from admitting the Espoo Documents

No party in this proceeding will be prejudiced if NIRB admits the Espoo Documents, as NIRB can establish a process permitting the Parties a reasonable opportunity to comment on and challenge the Espoo Documents (described below).

In any event, there can be no inordinate prejudice from NIRB considering the Espoo Documents because it has a statutory obligation to do so under NuPPAA (as the materials describe transboundary effects), and because considering these documents is necessary to satisfy Canada's international obligations under the Espoo Convention. Indeed, Canada committed to Greenland that the Espoo Documents would be added to NIRB's record in this Hearing. It would therefore be prejudicial to the statutory scheme set out in NuPPAA, Canada's commitment to Greenland, and Canada's international obligations under the Espoo Convention, if NIRB does not consider the Espoo Documents. This prejudice outweighs any inconvenience that admitting the Espoo Documents may cause to the Parties.

The process for commenting on the Espoo Documents

If NIRB admits the Espoo Documents, QIA suggests that NIRB could adopt the following process and timelines for the Parties to comment on the substance of those documents:

- Parties in the NIRB Hearing send questions to the authors of the Espoo Documents not later than one week after the date on which NIRB admits the Espoo Documents.
- The authors of the Espoo Documents provide their responses, if any, not later than two weeks after the date on which questions are sent to them.
- The Parties submit their final written submissions, including comments, if any, on the exchanges with the authors of the Espoo Documents not later than one week after the deadline for the authors of the Espoo Documents to respond to the Parties' questions.

This proposal adds only minimal delay to this Hearing, and gives the Parties a full opportunity to test the substance of the Espoo Documents.

¹⁶ 211029-08MN053, pp. 1-2

In the alternative, NIRB should allow the Parties in this Hearing to include their comments on the Espoo Documents in their final written submissions. To give the Parties adequate opportunity to do so, NIRB should extend the deadline for the Parties to submit their final written submissions for two additional weeks from the date on which it determines the Espoo Documents are admissible.

QIA thanks the Board for the opportunity to provide these comments.

Sincerely,



Lorraine Land
Legal Counsel for QIA

cc. Teresa Meadows, Legal Counsel for NIRB