



NIRB File No.: 08MN053
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February 4, 2022

The Honourable Daniel Vandal, P.C., M.P.
Minister of Northern Affairs
Government of Canada, House of Commons
10 Wellington, 21st Floor Gatineau, QC K1A 0H4

Sent via email: dan.vandal@parl.gc.ca

Re: Notification of updated timeline for the Nunavut Impact Review Board's completion of the Board's assessment of Baffinland Iron Mines Corporations' "Phase 2 Development" Proposal Related to the Mary River Project

Dear Honorable Minister:

This correspondence is provided on behalf of the Nunavut Impact Review Board (NIRB or Board) in respect of the Board's assessment of Baffinland Iron Mines Corporation's (Baffinland; the Proponent) "Phase 2 Development" proposal, an amendment to the existing Mary River Project (Phase 2 or the Phase 2 Development Proposal). The Board's assessment was conducted as a reconsideration of the terms and conditions of the existing NIRB Project Certificate No. 005 (as amended to reflect the approval of the Early Revenue Phase Proposal in 2014) which governs the current activities at the Mary River Iron Mine.

As summarized briefly below, following the closure of the Public Hearing Record for the file on January 28, 2022, the NIRB's duly appointed decision-making Panel for the file has concluded that due to many and various challenges and circumstances, largely outside of the NIRB's control, the Panel will be unable to complete its decision-making responsibilities and issue the *Reconsideration Report and Recommendations* associated with the Board's assessment of Phase 2

within the 45 day timeline set out in s. 112(5) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*).¹

While the Board recognizes that being unable to meet the prescribed 45-day timeline does not terminate the Board's authority to complete the assessment, nor invalidate the *Reconsideration Report and Recommendations* issued afterwards,² the Board also recognizes the importance of completing a thorough, but timely assessment of Phase 2 notwithstanding the exceptionally challenging circumstances. As explained in more detail below, to ensure that the Panel has sufficient time to consider the extensive Record associated with the file and engage in decision-making, the Panel has concluded that an additional 60 days must be added to the prescribed 45-day period to complete decision-making and issue the Board's *Reconsideration Report and Recommendations*. This updated timeline for decision-making will mean the Panel's decision will be conveyed in the *Reconsideration Report and Recommendations* issued to the Responsible Ministers on or before **Friday, May 13, 2022** (within 105 days of January 28, 2022, the close of the Public Hearing Record for the file). The Board understands that the Proponent and other parties may be disappointed and impacted by the extension of the Board's decision-making timeline, but the Panel has determined that the extra time is critical to the fulfillment of the Board's responsibilities associated with the assessment.

KEY FACTORS ADDING TO THE TIME REQUIRED FOR DECISION-MAKING

Public Health Restrictions Associated with the COVID-19 Pandemic

Since March 2020 when the NIRB cancelled planned in-person Technical Meetings, the Board's process and timelines for the assessment of Phase 2 have been impacted by several delays, suspensions of proceedings and modifications to the Board's existing practices to ensure compliance with changing public health restrictions (such as isolation requirements and other limitations on travel into and within Nunavut, gathering limits and social distancing requirements). Although the Board's modifications to its processes and development of unique COVID-19 Protocols has enabled the Board to nonetheless gather the information required to complete the assessment, the delays and disruptions and additional logistical challenges to the Board's processes

¹ Section 115(5) of *NuPPAA*, which sets out the NIRB's reporting obligation when conducting a reconsideration of the terms and conditions of a Project Certificate states:

Within 45 days after the end of the Board's reconsideration under subsection (1) or (2), the Board must submit a written report to the responsible Minister that contains

(a) an assessment of the terms and conditions in force; and

(b) any terms and conditions that it recommends should apply in respect of the project

² Section 226 of the *NuPPAA* states:

The failure of ...the Board... to exercise a power or perform a duty or function within a period limited by this Act does not terminate their authority or invalidate any document prepared or submitted or any decision or action taken in the exercise or performance of such a power, duty or function.

have added considerably to the Board's normal assessment timelines, with approximately half of the Board's assessment of the Phase 2 Development Proposal (which commenced on May 29, 2018), being conducted under various restrictions associated with the COVID-19 pandemic. It is expected that the public health restrictions on gathering and travel and associated logistical challenges will likely continue for the next few months.

Extensive Record and Protracted Timeline Associated with the Assessment of Phase 2

As summarized in Table 1 below, the Board's assessment of the Phase 2 Development Proposal has been the most extensive and protracted assessment ever undertaken by the Board. With numerous additional process steps required to ensure that the relevant evidence, viewpoints and Inuit knowledge has been shared with the Board.

Table 1: Key process steps in the NIRB's assessment of Phase 2

Date	Process Step
October 12 – November 23, 2018	Information Request and Response
December 21, 2018 - March 29, 2019	Technical Review Comment and Response
January 15-30, 2019	NIRB Community Information Sessions held in-person in each impacted community
April 8-10, 2019	Technical Meeting #1 held in-person in Iqaluit
June 17-19, 2019	Technical Meeting #2 held in-person in Iqaluit
November 2- 9, 2019	7-day Public Hearing held in-person in Iqaluit (suspended on day 5 due to a Motion from Nunavut Tunngavik Inc., and prior to sessions commencing in Pond Inlet)
September 14-18, 2020	Technical Meeting #3 held via teleconference (deferred from March 16-25, 2020 when pandemic initially declared)
September 28-October 1, 2020	Community Roundtable and Pre-Hearing Conference held in-person in Pond Inlet with video and audio linkages to hubs in Iqaluit, Winnipeg and Ottawa
January 25-February 6, 2021	12-day reconvened Public Hearing held in-person in Pond Inlet with video and audio linkages to a hub in Iqaluit and participants unable to travel into Nunavut via video or audio links (Extended Public Hearing session scheduled after a Motion from Ikajutit Hunters and Trappers Association)
April 12-21, 2021	9-day Extended Public Hearing held in-person in Iqaluit with video and audio linkage to a hub in Pond Inlet and for participants unable to travel into Nunavut (suspended on day 3 by CPHO due to a COVID-19 outbreak in Iqaluit which was declared over in July 2021)

November 1-6, 2021	6-day reconvened Extended Public Hearing held in-person in Iqaluit with video and audio linkages to a hub in Pond Inlet and for participants unable to travel to Nunavut.
November 7, 2021 - January 24, 2022	Opportunity for Intervenor and the Proponent to review last submissions provided during the reconvened Extended Public Hearing and provide closing statements to the Board.

This unprecedented process has resulted in an extensive and unparalleled Public Hearing Record for the file (the Record) that reflects the participation of 22 Registered Intervenor, more than 40 days of in-person proceedings, teleconference proceedings, approximately 5,000 pages of transcripts from four Public Hearing sessions, and tens of thousands of pages of written submissions, including the recent filing of written submissions related to an assessment of transboundary effects directed by the Government of Denmark/Greenland. All documentation associated with the Board's assessment of the "Phase 2 Development Proposal" is available on the NIRB's public registry www.nirb.ca/project/124701.

Additionally, the Board notes the unique challenges for decision-makers created by a protracted timeline and years elapsing between the start and end of the assessment process to ensure that all information, regardless of when it was received in the approximately four year assessment process, is adequately considered. On this basis, the Panel has concluded that in these exceptional circumstances, approximately two additional months will be required for the Panel to consider the unprecedented volume of information contained in the Record and to fulfill the Board's obligations to conduct a thorough and fair assessment and issue the Board's *Reconsideration Report and Recommendations*.


In closing, the NIRB appreciates the continued support of Crown-Indigenous Relations and Northern Affairs Canada, and the flexibility shown by all participants during the on-going assessment of the Phase 2 Development Proposal, as everyone has had to adapt in response to these exceptionally challenging times. If you have any questions regarding the Board's approach moving forward, please contact the Board's Executive Director directly at (867) 983-4608 or kcostello@nirb.ca.


Sincerely,




Kaviq Kaluraq
Chairperson
Nunavut Impact Review Board

cc: The Honourable Steven Guilbeault, Minister of Environment and Climate Change
The Honourable Joyce Murray, Minister of Fisheries and Oceans and the Canadian Coast Guard

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