NIRB File No. 08MN053

Nunavut Impact Review Board's Review ("Reconsideration")
of the
Baffinland Iron Mines Corporation's
"Sustaining Operations Proposal" Project Proposal ("SOP")

NOTICE OF MOTION
FROM THE QIKIQTANI INUIT ASSOCIATION ("QIA")

The Qikiqtani Inuit Association ("QIA") submits this motion to the Nunavut Impact Review Board ("NIRB or "the Board") on June 2, 2023 pursuant to Rule 7.1 of the *Nunavut Impact Review Board Rules of Procedure* (the "*Procedural Rules*")[1].

I. NATURE OF THE ORDER SOUGHT

1. This motion is for an order of the Board permitting Designated Inuit Organizations, Intervenors who participated in the Board's previous assessments of the Mary River Project, and those regulatory authorities with jurisdiction over components of the Mary River Project (collectively, "Parties") to file additional final submissions no later than Wednesday August 9, 2023, after the close of the Community Roundtables, and with an opportunity for the proponent by Baffinland Iron Mines Corporation ("Baffinland") to file additional final submissions no later than Monday, August 14.

[1] *Nunavut Impact Review Board Rules of Procedure*, Rule 7.1.

II. GROUNDS ON WHICH THE MOTION IS MADE

2. This motion concerns the procedure set by NIRB in this Reconsideration for the Parties to make submissions on the evidence and law which NIRB must consider in making its final determination regarding the SOP submitted by Baffinland.

3. NIRB has considerable procedural flexibility to ensure that its processes meet the requirements of procedural fairness and responsibilities for delegated consultation on matters impacting Inuit rights. NIRB is required to use that procedural flexibility to facilitate meaningful Inuit participation, including a process which accommodates Inuit oral knowledge and evidence.[2]

4. To support this submission regarding procedural flexibility, QIA relies on Rules 4.1, 4.2, 4.3, 4.4 and 4.5 of the *Procedural Rules.*

    a. Rule 4.1 of the *Procedural Rules* provides:

        "4.1 Consistent with the Agreement and the broad application of the principles of natural justice and procedural fairness, the Board may liberally construe these Rules in order to result in the just, expeditious and fair hearing of every matter properly before the Board."[3]

    b. Rule 4.2 of the *Procedural Rules* provides:

        "*4.2 Where any matter of procedure is not provided for by these Rules, the Board may at any time issue any direction on procedure to supplement*

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[2] *Nunavut Agreement*, Article 12.2.24; *Nunavut Project Planning and Assessment Act*, section 26(3); *Nunavut Impact Review Board Rules of Procedure*, Rules 4.1, 4.2, 4.3, 4.4, 4.5.
[3] *Nunavut Impact Review Board Rules of Procedure*, Rule 4.1.

these Rules that it considers necessary for the fair determination of an issue."[4]

c. Rule 4.3 of the Procedural Rules provides:

"4.3 The Board may, with or without a hearing, issue any direction on procedure to dispense with or vary any part of these Rules that it considers necessary for the fair determination of an issue."[5]

d. Rule 4.4 of the Procedural Rules provides:

"4.4 The Board may, on a motion from a party, issue any direction on procedure to dispense with or vary any part of these Rules that it considers necessary for the fair determination of an issue."[6]

5. NIRB's procedural process requirements are further informed by, and must comply with, the requirements of the *Nunavut Land Claim Agreement* ("*Nunavut Agreement*") and the *Nunavut Planning and Project Assessment Act* ("*NUPPAA*"). In support of this motion, QIA further relies on Article 12.2.24 of the *Nunavut Agreement* and Section 26(3) of the *NUPPAA*.

a. Article 12.2.24 of the *Nunavut Agreement* provides:

"12.2.24 In designing its by-laws and rules of procedure for the conduct of public hearings, NIRB shall:
(a) to the extent consistent with the broad application of the principles of natural justice and procedural fairness, emphasize flexibility and informality, and, specifically
(i) allow, where appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence, and

[4] *Nunavut Impact Review Board Rules of Procedure*, Rule 4.2.
[5] *Nunavut Impact Review Board Rules of Procedure*, Rule 4.3.
[6] *Nunavut Impact Review Board Rules of Procedure*, Rule 4.4.

(ii) give due regard and weight to the tradition of Inuit oral communication and decision-making; and

(b) with respect to any classification of intervenors, allow full standing to a DIO..”[7]

b. Section 26(3) of the *NUPPAA* provides:

“26 (3) By-laws and rules relating to the conduct of public hearings must

(a) emphasize flexibility and informality to the extent that is consistent with the general application of the rules of procedural fairness and natural justice and in particular must allow, if appropriate, the admission of evidence that would not normally be admissible under the strict rules of evidence; and

(b) with respect to any classification of intervenors, allow a designated Inuit organization full standing to appear at a public hearing for the purpose of making submissions on behalf of the people it represents.”[8]

6. The *Procedural Rules* specifically provide for the Board’s discretion to adjust its procedures at the end of the oral portion of a proceeding. NIRB may direct Parties to file written briefs after the close of an oral hearing, or direct that the record be left open if additional evidence is required for the Board to make its final decisions based on a full and proper evidentiary record.[9]

7. The relevant provisions that allow for this discretion can be found in Rules 47.1 and 48.1 of the *Procedural Rules.*

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[7] *Nunavut Agreement,* Article 12.2.24.
[8] *Nunavut Project Planning and Assessment Act*, section 26(3).
[9] *Nunavut Impact Review Board Rules of Procedure*, Rules 47.1 and 48.1.

a. Rule 47.1 of the *Procedural Rules* provides:

> "*47.1 At the close of an oral hearing, the Board may direct any party at the proceeding to file a written brief, to propose findings of fact and conclusions of law, or to do both.*"[10]

b. Rule 48.1 of the *Procedural Rules* provides:

> "*48.1 At the conclusion of an oral hearing, the record shall be closed unless the Board directs otherwise. Once the record is closed, no additional evidence shall be heard unless a written application is filed with the Board and the Board decides, following notification and submissions by the parties, that the evidence is material and that there was good cause for the failure to produce it in a timely fashion*."[11]

8. In response to currently-proposed amendments to the NIRB *Rules of Procedure,* and with respect to proposed revised Rules 123 – 125 regarding the Closing of the Public Record, QIA submitted that parties should, as a matter of course, have a right to make closing arguments after oral evidence:

> "[QIA recommends that] 'immediate closure' of the public record after a hearing NOT be the default setting. Often, there are undertakings … that need to be dealt with, and at minimum parties should be allowed to make a closing argument and/or review the transcripts prior to closure of the public record."[12]

III. OVERVIEW

9. On May 8, 2023, NIRB advised Parties in the SOP review that the current procedure for written submissions in the NIRB review process is:

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[10] *Nunavut Impact Review Board Rules of Procedure,* Rule 47.1.
[11] *Nunavut Impact Review Board Rules of Procedure,* Rule 48.1.
[12] *QIA Comments Re Draft Rules of Procedure, March 18, 2019,* available at: https://www.nirb.ca/portal/dms/script/dms_download.php?fileid=329093.

a. The Parties are permitted to file technical comments and final written submissions in respect of the SOP and the FEIS Addendum on or before Monday June 26, 2023.

b. Baffinland and Intervenors participating in the Community Roundtables are permitted to file presentation materials for the Community Roundtable on or before noon, Wednesday July 19, 2023, before the Community Roundtables take place.

10. Both of these opportunities to provide written submissions occur before a critical step in the review: the Community Roundtables. At the Community Roundtables, Inuit community participants will share Inuit oral evidence on specific impacts and proposals for mitigation and how those impacts should be addressed. The Proponent will respond with specific proposed commitments including proposed mitigation and monitoring to address concerns raised by the Inuit communities.

11. Parties should have the opportunity to provide additional and updated Final Submissions after it is possible to integrate the important Inuit oral evidence and new Proponent commitments provided during the Community Roundtables. This evidence is directly relevant to the decisions which the Board will make, and which will profoundly affect environmental management for the Project and Inuit rights.

12. By requiring that the Parties' written submissions about evidence (and law arising from that evidence) be submitted before the Community Roundtables occur, NIRB deprives the Parties of the opportunity to include Inuit oral evidence in their technical

and legal submissions. In doing so, NIRB deprives itself of the opportunity to fully consider all relevant options for Project Certificate Terms and Conditions and Commitments that will address impact concerns about the SOP.

13. A procedural approach which only allows final submissions to be made prior to the Community Roundtables and before consideration of Inuit oral evidence at the Community Roundtables:

    a. interferes with the evidentiary requirements imposed by the Minister's delegation to NIRB of the evidentiary aspects of the duty to consult and accommodate regarding impacts on Inuit rights as this is part of the larger "deep" consultation obligations under the duty to consult and accommodate;

    b. breaches the Parties' right to procedural fairness based on common law doctrines; and

    c. jeopardizes the efficiency of the hearing process as a likely delay will occur if this step is ignored and Inuit oral evidence must be considered "after the fact" in the Minister's discussions with the DIOs on whether the duty to consult and accommodate has been met, which may require additional Project Certificate changes and need for additional time to workshop Project Certificate amendments not considered by NIRB in its deliberations.

IV. BREACH OF CONSTITUTIONAL CONSULTATION REQUIREMENTS

Duty of Deep Consultation

14. The requirement to make final submissions without the ability for QIA to update those submissions based on the relevant Inuit oral evidence breaches constitutional legal principles regarding the application of section 35 and the duty of 'deep consultation'.

15. At the highest end of the spectrum of Aboriginal consultation obligations are "cases where a strong prima facie case for the claim is established, the right and potential infringement is of a high significance to the Aboriginal peoples, and the risk of non-compensable damage is high. In such cases, deep consultation, aimed at finding a satisfactory interim solution, may be required."[13]

16. Specifically, a situation involving decisions that deprive Inuit of the ability to harvest marine mammals, which jeopardizes a host of activities – the cultural tradition of sharing country food with others in the community; the opportunity to make traditional clothing; and the opportunity to participate in the hunt, all of which are "fundamental to being Inuk" – requires deep consultation.[14] The reconsideration of the Sustaining Operations Proposal is such a situation requiring deep consultation, given the Inuit rights confirmed in the *Nunavut Agreement* and given the high potential for non-compensable damage to Inuit rights.[15]

17. The "deep consultation" requirements in such situations include "the opportunity to make submissions for consideration … and provision of written reasons to show that

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[13] *Haida Nation v. British Columbia,* 2004 SCC 73 at para. 44.
[14] *Qikiqtani Inuit Assn. v Canada (Minister of Natural Resources),* 2010 NUCJ 12 at para. 25.
[15] *Clyde River v Petroleum Geo-Services Inc.,* 2017 SCC 40 at para. 41 and 47.

Aboriginal concerns were considered and to reveal the impact they had on the decision."[16]

18. In proceedings before a tribunal in situations of deep consultation, the tribunal "must usually address those concerns in reasons", typically written reasons, "explain[ing] how it considered and addressed them," to demonstrate that the tribunal (on whose process the Crown is relying to satisfy Aboriginal consultation obligations, "took the asserted Aboriginal and treaty rights into consideration and accommodated them where appropriate."[17]

19. Through the structures created by the *Nunavut Agreement*, NIRB is delegated a specific role in the Crown consultation process. Although regulatory tribunals such as NIRB are not, strictly speaking, an agent of the Crown, their decisions can attract the duty to consult because "they are the vehicle[s] through which the Crown acts."[18] In the case of NIRB, the procedural requirements for consultation are embedded as modern treaty commitments in the *Nunavut Agreement* (unlike the National Energy Board in the *Clyde River* case). In practice, the Minister relies on the NIRB process for collecting the evidence basis for the Crown's consultation decision, and for fulfilling much of the procedural aspect of the Crown's consultation obligations. The underlying obligation of the Crown to ultimately determine the sufficiency of Inuit consultation and accommodation does not absolve NIRB of the clearly delegated

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[16] *Haida*, supra, at para. 44.
[17] *Clyde River*, supra, at para. 41 and 47.
[18] *Clyde River*, supra, at para. 29.

procedural aspects of consultation, including deep consultation where that is the appropriate standard.

20. As the Designated Inuit Organization with responsibilities to represent regional Inuit interests, QIA has an obligation to ensure that concerns about impacts on Inuit rights and the appropriate accommodation to address those impacts are properly addressed in this review process to inform NIRB's final decision. In this review process, QIA must listen to and reflect what impacted Inuit are saying about project impacts, mitigation options and monitoring needs.

Right to Meaningful Participation

21. Key evidence on these matters will be presented by Inuit orally at the Community Roundtables. To meet constitutional requirements, QIA's right to participate in this proceeding must be meaningful.

22. Meaningful participation includes an effective opportunity for QIA to present its case to the NIRB, present oral evidence which factors into a meaningful analysis of the issues, and make final submissions based on all relevant facts and law.

23. Meaningful participation, in this case, requires the opportunity to make specific recommendations based on the entirety of the evidentiary record and evolving proponent commitments made during the Reconsideration process (including during the Community Roundtables).

24. The current process for submissions established by the NIRB constrains the ability of the Parties to provide informed final submissions based on the full evidentiary

record, and specifically constrains the ability to base Final Submissions on an analysis and integration of key Inuit oral evidence in the Community Roundtables. Being unable to rely on a transcript or record of the Community Roundtables also makes it more difficult for QIA to make or seek new commitments arising out of the evidence shared.

25. This constraint is magnified in the present matter because the expedited timeline requested by Baffinland and Canada, and implemented by NIRB, adversely impacts QIA's ability to effectively engage with community representatives in the ways they prefer.

26. Community Roundtables further enrich the technical information that is present in the record. They are often a forum where new technical information is added to the record in response to questions from the community, and where proponents will often provide supplemental written technical evidence in response to questions. As the current proceeding has not included an opportunity for Information Requests to be exchanged and has not made room for an iterative question and answer process to resolve outstanding technical questions, it is highly likely that new technical information will be provided during the Community Roundtables.

27. Written submissions filed before the Community Roundtables will necessarily be incomplete. They lack the Inuit oral evidence which arises during the Community Roundtables. They lack analysis based on emerging technical evidence, and shifts in the proponents' offered commitments, that arise during the Community

Roundtables. As such, final submissions based only on evidence available prior to Community Roundtables will be incomplete, and even inaccurate.

28. This process also devalues the Community Roundtables and their importance considering the oral nature of Inuit Qaujimajatuqangit. Relegating Inuit Qaujimajatuqangit to stand-alone processes which take place after submissions are filed, without a transcript, and without an opportunity for QIA to synthesize what emerges from those sessions, reduces the ability of the parties to make full and proper use of the Inuit oral evidence and information provided at the Community Roundtables.

29. Refusing to allow an opportunity to integrate this evidence into final submissions regarding the Sustaining Operations Proposal – which are a key aspect of Aboriginal consultation in this case – presents a serious barrier to QIA's ability, and that of the Parties, to provide specific recommendations to NIRB on the mitigation measures that are at the heart of constitutionally required accommodation of impacts on Inuit rights.

30. Therefore, QIA submits that the barrier in allowing for Parties to integrate evidence from the Community Roundtables into their final submissions breaches the requirements imposed by the Minister's decision to delegate to the NIRB the evidentiary aspects of the duty to consult and accommodate and is contrary to the intent of the Nunavut Agreement that NIRB's rules of procedure be designed, and by extension applied, to give due regard and weight to Inuit oral evidence and decision-making in the conduct of public hearings..

V. BREACH OF THE RULES OF PROCEDURAL FAIRNESS

Breach of the Rules of Procedural Fairness

31. A limit on the ability of the Parties to present final submissions based on the full evidentiary record, and which contain specific recommended conditions for the project that reflect all of the evidence, will in turn impact the NIRB's decision-making. For a project of this scale, NIRB's decision-making burden is substantial and involves a large volume of technical evidence and Inuit knowledge. A key purpose of final submissions is to assist NIRB in bearing that burden. Incomplete written arguments which do not reflect the Inuit oral evidence presented during the Community Roundtables cannot serve that function.

32. This procedural weakness is not cured by allowing the Parties to make brief oral submissions at the Community Roundtables. A ten-minute oral "summary of their written comment submissions" does not allow Parties to take into consideration new evidence and to make effective submissions which provide specific proposed Terms and Conditions that reflect the full evidentiary record including Inuit oral evidence. It also does not allow for integration of Inuit oral evidence.

33. The requirement to make final submissions without having seen or heard all of the evidence, and without any ability for Parties to update those submissions based on the entirety of the relevant evidentiary record, breaches basic rules of procedural fairness. The Supreme Court of Canada has affirmed that "there is, as a general common law principle, a duty of procedural fairness lying on every public authority

making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual".[19]

34. Public decision makers, such as the NIRB, are under a legal duty to afford interested persons with a fair opportunity to participate in the decision-making process before any action is taken that is detrimental to their interests.[20]

35. The content of the duty of procedural fairness varies depending on the circumstances. However, its principal purpose is to provide a meaningful opportunity for those interested in the proceeding to bring evidence and arguments that are relevant to the decision to be made to the attention of the decision-maker.[21] It follows that "once there is a right to a hearing, unduly restricting the ability of the applicant to present a case violates the doctrine of procedural fairness".[22]

36. At the high end, the duty of procedural fairness calls for a procedure that is barely distinguishable from that followed in the courts of law. This includes, for example, personal service of notice, full disclosure of relevant information, and an oral hearing before the decision-maker, with the right to be represented by counsel, to call witnesses, to produce evidence, and to cross-examine.[23]

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[19] *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 at p. 653.
[20] Brown and Evans, *Judicial Review of Administrative Action*, 7:1100.
[21] Brown and Evans, *Judicial Review of Administrative Action*, 7:3110; *Vakulenko v. Canada*, 2014 FC 667 at para. 16.
[22] *Mackey v. Saskatchewan*, 1988 CarswellSask 460, para. 34.
[23] Brown and Evans, *Judicial Review of Administrative Action*, 7:1100.

37. Courts apply the five factors from *Baker* to determine the content of the duty of fairness in each case. Those factors are:

    a. the nature of the decision and the decision-making process in making it;

    b. the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates;

    c. the importance of the decision to the individuals affected;

    d. the legitimate expectations of the party challenging the decision; and

    e. the nature of the deference accorded to the body.[24]

38. Applying the *Baker* factors to the administrative tribunal functions of NIRB, the Parties to this proceeding are owed a high level of procedural fairness. The NIRB proceeding is quasi-judicial. Its decisions are not subject to appeal. Its decision in this matter will have a significant impact on all Parties, and particularly on QIA as the DIO for the affected region. All Parties to this proceeding have a legitimate expectation that they will be given (a) full participatory rights; (b) a meaningful opportunity to present their case; and (c) based on NIRB's Rules of Procedure and standard practice in judicial and quasi-judicial settings, a right to make their closing written submissions on the basis of the complete record, after the close of evidence.

39. An important consideration in this process is the abbreviated nature of the NIRB review for the Sustaining Operations Proposal. The 'urgency' of hearing and

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[24] *Baker v. Canada*, [1999] 2 S.C.R. 817 at paras. 23-28; *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village) (2004)*, 2004 SCC 48 at para. 5.

deciding Baffinland's application has been caused by Baffinland's own regulatory practices, and QIA and the other participants in this process ought not be penalized for those practices. Indeed, QIA and others have been drawing NIRB's attention for several years to the regulatory challenges caused by Baffinland's near-constant flow of applications requiring review.

40. In a more typical regulatory proceeding, featuring a public hearing, an exchange of Information Requests and/or a technical conference, and multiple opportunities to receive, test and consider evidence, there would also be a variety of opportunities for QIA to engage with and receive feedback from the communities affected by the project. However, due to NIRB's expedited schedule, it is simply impossible for QIA to engage with the impacted communities to the extent it needs to. The expedited schedule does not allow for the testing of evidence, and Inuit evidence, much of which will come only at the Community Roundtables, will be impossible to integrate into QIA's submissions.

41. In this way, NIRB's process effectively deprives Inuit in general, and the Designated Inuit Organization for the Qikiqtani Region, of a proper voice in this proceeding.

42. QIA respectfully submits that, if there is not an opportunity to submit updated Final Submissions after the completion of the full evidentiary record, including the oral Inuit evidence in the Community Roundtables, QIA and other Parties would be deprived of the right to participate meaningfully as it would:

a. deprive QIA and other Parties of the ability to fully present their case because written submissions will be based only on a partial evidential record;

b. constrain the evidence before the Board overall, and distort the evidentiary basis for submissions (and thus decisions of the Board) as Inuit knowledge and oral evidence is necessarily peripheralized in a process that does not allow for integration of Inuit oral evidence into analysis and legal submissions;

c. deprive QIA and the other Parties of the ability to provide specific and updated recommended Project Certificate Terms and Conditions and updated Appendix B commitments which reflect the entire evidentiary record and the commitments made (or not made) by Baffinland during the Community Roundtable;

d. Interfere with QIA's internal governance processes which cannot be deployed at a moments' notice, as NIRB's expedited process requires.

43. Therefore, QIA submits that a procedural approach which only allows final submissions to be made prior to the Community Roundtables and before consideration of Inuit oral evidence breaches the Parties' right to procedural fairness based on common law doctrines.

VI. PROCEDURAL EFFICIENCY AND THE RISK OF DELAYS

44. QIA also submits that NIRB's refusal to allow supplemental written submissions puts the timelines for regulatory decision-making on the SOP at risk. Inuit oral evidence

regarding impacts and corresponding necessary Project Certificate Terms and Conditions and Commitments to address mitigation and monitoring needs will be forced into a section 35 consultation discussion between QIA and the Government of Canada after the evidentiary record closes for the SOP, requiring additional time for that consultation process and any subsequent resulting amendments to the Project Certificate beyond those recommended by NIRB.

45. QIA submits that a comparison of the procedural flexibility shown during the Phase 2 hearing process (where supplemental final submissions were allowed after the Community Roundtable) versus the 2022 Production Increase Renewal Proposal (PIPR), where supplemental final submissions were not allowed after the Community Roundtable, is instructive and shows the very real consequences and risk of delays in final regulatory decision making on the SOP.

46. In January 2021, QIA brought a motion requesting NIRB allow supplemental final submissions to be filed one week after the conclusion of oral evidence in the Community Roundtable for the NIRB hearings on Baffinland's Phase 2 proposal. QIA's motion was based on the breach to common law rules of procedural fairness and constitutional requirements for the procedural aspects of deep consultation where section 35 Inuit rights are impacted in a NIRB review process. NIRB granted the request for supplemental final submissions, allowing QIA and Nunavut Tunngavik Incorporated to fully integrate the Inuit oral evidence arising at the Community Roundtable and Baffinland's responses into the submissions on issues

requiring resolution and suggested necessary amendments to the Project Certificate, should the proposal be approved.

47. In contrast, the 2022 PIPR review ultimately resulted in delays in the final approval process for the amendments to the Project Certificate because the imposition of procedural barriers prevented proper integration of Inuit evidence into the NIRB evidentiary process. NIRB refused a request by QIA for a procedural amendment during the 2022 PIPR review, to allow the DIOs a short extension of three days after the submission of evidence from the Inuit communities that would have allowed the DIO submissions to be fully informed by the evidence on Inuit rights impacts and thus to make submissions to NIRB about what accommodations were required in the form of specific amendments to the Project Certificate.

48. As a result of NIRB's denial of that procedural request, the process for properly integrating and addressing the evidence of Inuit rights impacts was not fully included in the NIRB review of the evidence or the NIRB recommendations, as a number of matters requiring specific changes to the Project Certificate were not included in the submissions which the DIOs were required to file before all of the evidence – including evidence from the impacted Inuit communities – was available.

49. This left several issues to be resolved within the process used by the Minister to confirm the sufficiency of NIRB's process in fulfilling the Crown's s.35 consultation obligations.

50. The end result was that the final decision making process for the amended Project Certificate was delayed. A number of Project Certificate amendments had to be made after the NIRB recommendation report, in the absence of NIRB having taken submissions with analysis of the evidentiary basis for necessary amendments and suggested specific wording for amendments to the Project Certificate. The need to workshop the amendments took more time than would normally be the case, and under extreme time pressure.

    The proper place for resolution of evidentiary issues and resulting specific Project Certificate terms and conditions amendments is in the NIRB process, to which the Minister has delegated procedural and evidentiary aspects of consultation.

51. Denying procedural rights to properly integrate Inuit evidence into submissions does not make the constitutional requirements for deep consultation with Inuit go away: instead, it pushes the procedural need for that evidence to be properly integrated into the post-NIRB Report review by the Minister and requires additional work ‘after the fact’ of the NIRB Report to consider further Project Certificate amendments. This extends the overall regulatory decision making timelines. In the case of the 2023 SOP, it puts at risk the ability to get a final approval in time for 2023 shipping.

52. Therefore, in addition to the legal requirements for procedural fairness, and in addition to the constitutional requirements for the delegated procedural aspects of deep consultation and accommodation where there are impacts on Inuit rights, a NIRB refusal to allow sufficient integration of Inuit oral evidence and BIM responses

to that evidence arising in the Community Roundtable will very likely result in a delay, again, in the final Project Certificate approval process for the 2023 SOP.

VII. SUGGESTED ORDER

53. In the circumstances of this proceeding, requirements for procedural fairness and deep consultation with Inuit would be met if the Parties are given the opportunity to make supplemental submissions in writing on the basis of the full record, after the close of evidence, with a specific focus on matters not already covered in the Parties' pre-Community Roundtable submissions.

54. This is consistent with Rule 47.1 of NIRB's Rules of Procedure which provides that "at the close of an oral hearing, the Board may direct any party at the proceeding to file a written brief."[25] Rule 47.1 allows a process for Parties' submission of written briefs based on the entire record, including all evidence filed in the proceeding. NIRB could also rely on its discretion in Rule 48 to allow the Record of the proceeding to remain open for a limited amount of time, in order to permit Parties to properly summarize the key evidence and corresponding proposed Project Certificate Terms and Conditions in Final Submissions.[26]

55. For the foregoing reasons, QIA respectfully requests that the NIRB permit Parties to file additional final submissions on Wednesday August 9, after the close of all oral

[25] *Nunavut Impact Review Board Rules of Procedure*, Rule 47.1.
[26] *Nunavut Impact Review Board Rules of Procedure*, Rule 48.

evidence in the Community Roundtables, and with an opportunity for the proponent Baffinland Iron Mines Inc. to file additional final submissions on Monday, August 14.

VIII. EVIDENCE IN SUPPORT OF THE MOTION

56. The following evidence is provided in support of the motion:

    c. The Affidavit of Jared Ottenhof, affirmed May 31, 2023**.**

    d. The proceedings and process filed herein.

All of which is respectfully submitted this 2nd day of June, 2023

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