

Sent by Email

July 18, 2024

Nunavut Impact Review Board
29 Mitik Street
Cambridge Bay, NU X0B 0C0

Attention: Ryan Barry, Interim Executive Director

Dear Mr. Barry:

Re: NIRB Revised Draft Standard Impact Statement Guidelines

Thank you for the opportunity to comment on the Nunavut Impact Review Board's ("NIRB" or the "Board") Revised Draft Standard Impact Statement Guidelines ("IS Guidelines"). On behalf of the Kitikmeot Inuit Association ("KIA"), we are submitting the following comments to assist the Board in revising the IS Guidelines. This letter provides an overview of some key comments from KIA regarding NIRB's project review process. Detailed comments on specific sections of the IS Guidelines can be found in the attached table.

KIA COMMENTS ON IS GUIDELINES

KIA has reviewed the IS Guidelines from a lens of ensuring that KIA can meaningfully participate in NIRB's project review process. As a Regional Inuit Association ("RIA"), KIA has a mandate to advocate for Inuit living in the Kitikmeot region, and to carry out certain obligations under the *Nunavut Agreement*.

The following are some of the main themes commented on by KIA in relation to the IS Guidelines:

1 Ensuring a meaningful and appropriate role for Regional Inuit Associations in the project review process:

One of KIA's key comments is the need for increased clarity and emphasis on the role of RIAs in NIRB's project review process, particularly in sections of the IS Guidelines that provide guidance to proponents on how to carry out adequate engagement.

In some key areas of the IS Guidelines, direction to engage with RIAs is absent. For example, Appendix C of the IS Guidelines provide specific suggestions to proponents on the organizations that proponents should engage with when developing an Impact Statement ("IS"). Under the subheading "Inuit Associations," Appendix C lists: Designated Inuit Organizations ("DIOs"),

Inuit Regional Development Corporations, Land Claim Organizations, and Hunters and Trappers Organizations (“HTOs”). RIAs should be referenced specifically. Guidance related to engagement with RIAs is included in a footnote at the bottom of Appendix C.

KIA suggests that Appendix C provide additional detail and guidance on how proponents should be engaging these various Inuit Associations, and on what topics, by pulling further detail from the *Nunavut Agreement*. For example, Appendix C could emphasize the role of RIAs for projects proposed on Inuit Owned Land, and the role of HTOs in the harvesting of wildlife.

2 Challenges with the integration of southern impact assessment concepts in the northern context:

The IS Guidelines are very detailed and prescriptive, and bring a lot of southern impact assessment concepts to the northern context. KIA is concerned that an increasingly bureaucratic project review process will lead make it more costly and resource-intensive for KIA to meaningfully participate in NIRB’s process.

From our experience with the federal impact assessment process in the south, some challenges with applying this approach in the north include:

a) Increased time needed by proponents to progress through the regulatory process:

It takes proponents a significant amount of time to gather the required information (e.g., complete baseline studies, assess potential impacts on valued components, engage with participants on valued components and potential impacts, enable participants to conduct their own studies).

In the federal impact assessment process, proponents of large projects (such as mines) are generally unable to submit their Impact Statement to the Impact Assessment Agency of Canada within the 3-year timeline legislated under the *Impact Assessment Act* unless the proponent begins their baseline studies well in advance of formally beginning the impact assessment process. Where proponents fail to begin their baseline studies well in advance, proponents often request a timeline pause (when available), or seek an extension of the impact assessment timelines in order to fulfil their information requirements.

While KIA appreciates the rigorous information gathering requirements set out in the IS Guidelines, KIA notes that this may discourage or slow proponents from investing in projects in Nunavut.

b) Increased capacity required of Inuit to meaningfully participate in the regulatory process:

With increased information gathering requirements comes increased time and effort required by Inuit in the project review process to review the materials prepared by the proponent.

Proponents often underestimate the length of time that it can take to properly engage participants on the volume of information contained in an Impact Statement. Inuit need technical expertise and capacity to review the information, which may require retaining external expertise. Participants require time to review all of the information, communicate internally to determine which issues are of highest importance to the community to raise, and to provide feedback to the proponent.

Where engagement obligations fall towards the higher end of the spectrum, proponents must also provide participants with an opportunity to review the draft information and studies before they are finalized and submitted to NIRB, or to jointly or independently conduct certain studies.

KIA is concerned about the increased time, cost, and resources required to meaningfully engage in an increasingly complex and demanding project review process.

3 Obligation to negotiate an Inuit Impact and Benefit Agreement under the *Nunavut Agreement*:

Currently, the IS Guidelines do not include reference to a proponent's obligation to negotiate an Inuit Impact and Benefit Agreement ("IIBA") under Article 26 of the *Nunavut Agreement*. Article 26 of the *Nunavut Agreement* states that no major development project may commence until an IIBA is finalized in accordance with Article 26. The IS Guidelines should include a reminder to proponents on this separate requirement, as this is a unique feature of operating in Nunavut that proponents may not be familiar with.

4 Measurable Guidance on Proponent Engagement with Inuit:

The IS Guidelines lack measurable guidance on proponent engagement with Inuit. For example, in section 4.4.1.2 – Participants in Engagement, the IS Guidelines note that proponents are responsible for identifying the communities that could be potentially impacted by a proposed project. In a "guidance" box within this section, NIRB recommends that proponents engage with the applicable Regional Inuit Association ("RIA") (which includes KIA), HTOs and hamlets for guidance and best practices for engaging potentially impacted communities in Nunavut. Section 4.4.1.3 requires the proponent to document methods of engagement, and Section 4.4.1.4 requires the proponent to detail the outcomes of engagement efforts.

The IS Guidelines refers to the Proponent's Public Engagement Guidance Document on the NIRB website, but we were unable to locate the document on the NIRB website. However, as stated above, proponents need to seek guidance and information about engagement protocols from the applicable RIA(s). The sufficiency of the proponent's engagement process will be guided by the RIA's protocols.

Thank you for the opportunity to comment on the IS Guidelines. We look forward to discussions with you regarding the concerns outlined above to continue to improve the NIRB project assessment process.

Yours truly,



Julie Abouchar

Partner

*Certified as a Specialist in Environmental Law and in Indigenous Legal Issues
by the Law Society of Ontario*

cc: client

DETAILED KIA COMMENTS ON IS GUIDELINES

Comment	Page Number and Heading in IS Guidelines	Excerpt from IS Guidelines (if applicable)	Comment from KIA
1	Page 10 4.2.4 – Regulatory Regime	“The Proponent shall present its understanding of the regulatory regime in which it would be operating by identifying the legislation and other regulatory approvals applicable to the proposed project as required by all relevant federal, territorial, regional, municipal, or Inuit owned lands. This would include laws, standards, Inuit societal laws, regulations, policies, guidelines resource management plans, land use plans, any relevant regional studies or strategic assessments relating to all project phases from project approval to post-closure activities. [...]”	As set out in the letter, the IS Guidelines currently do not include reference to a proponent’s obligation to negotiate an IIBA under Article 26 of the <i>Nunavut Agreement</i> . KIA suggests that NIRB include mention of this obligation in Section 4.2.4 – Regulatory Regime. KIA recognizes that negotiation of an IIBA is not a requirement of NIRB’s project review process; however, it is a requirement of any proponent operating in Nunavut.
2	Page 25 4.4.2 – Inuit Qaujimajatuqangit, Indigenous Knowledge, and Community Knowledge	“The Proponent shall describe how Inuit Qaujimajatuqangit, Indigenous Knowledge, and/or Community Knowledge has been gathered, evaluated, and considered in the conclusions presented in the impact statement. [...] Proponents are strongly encouraged to engage with the applicable Regional Inuit Organization and local organizations for their respective processes and best practices	KIA appreciates the emphasis on proponent engagement with Regional Inuit Organizations (which we assume was intended to read RIAs) when gathering and considering Inuit Qaujimajatuqangit throughout the project review process. KIA, as an RIA, has its own approach to gathering and sharing Inuit Qaujimajatuqangit with proponents, including development of a database and an Inuit Environmental Advisory

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		developed (see Appendix C for a list of potential organizations to engage with in Nunavut as well as neighbouring jurisdictions). [...].”	<p>Committee. KIA should be the first and primary contact for the Kitikmeot Region.</p> <p>KIA notes that the blue box on page 25 of the IS Guidelines encourages proponents to work with Designated Inuit Organizations (“DIOs”) on the collection, protection, and use of Inuit Qaujimajatuqangit. KIA suggests that NIRB reiterate the importance of engaging with RIAs as the first and primary contact.</p>
3	<p>Page 74</p> <p>Appendix C – Engagement Organizations</p>	<p>“Proponents should consider engaging with the following non-exhaustive list of Nunavut-specific potentially impacted parties:</p> <p>Inuit Associations:</p> <ul style="list-style-type: none"> ♦ Designated Inuit Organizations (DIOs) ♦ Inuit Regional Development Corporations ♦ Land Claim Organizations ♦ Hunters and Trappers Organizations 	<p>Throughout the portions of the IS Guidelines addressing proponent engagement guidelines, NIRB refers the proponent to Appendix C for a list of “Inuit Associations” that proponents should engage with throughout the project review process.</p> <p>The list of Inuit Associations in the table does not specifically include RIAs. The role and importance of RIAs is mentioned in a footnote on page 74, and may not be noticed by proponents.</p> <p>KIA suggests that the list of “Inuit Associations” in Appendix C be amended to include and specifically name the RIAs,</p>

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		<p>♦ (HTOs)</p> <p>“[...] The NIRB recommends that Proponents engage with the applicable Regional Inuit Association, Hunters and Trappers Organizations and Associations and Hamlets for guidance and best practices for engaging potentially impacted communities in Nunavut. Proponents should further engage with the with applicable Regional Inuit Association on the respectful protocols, expectations, and potential participant groups and individuals for the collection, protection, and use of Inuit Qaujimajatuqangit.”</p>	<p>as RIAs have the mandate to play a key role in engagement for projects on Inuit Owned Land.</p> <p>KIA further suggests that the text in the footnote be integrated into the body of the IS Guidelines, preferably within Section 4.4.2.</p>
4	<p>Page 77</p> <p>Appendix D – Checklist to Demonstrate Meaningful Engagement</p>	N/A	<p>The use of a “checklist” when referring to Indigenous engagement diminishes the process of engagement, and is generally not appreciated by Indigenous peoples. The use of a “checklist” fails to convey the context-specific nature of engagement. The engagement process should be responsive and flexible, and adjusted as new information about potential impacts of a project come to light.</p>