



Mackenzie Valley
Review Board



**MEMORANDUM OF
UNDERSTANDING
BETWEEN:**

**THE NUNAVUT IMPACT REVIEW
BOARD
AND
THE MACKENZIE VALLEY
ENVIRONMENTAL IMPACT
REVIEW BOARD**

2022

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INTRODUCTION AND BACKGROUND

The Nunavut Impact Review Board (NIRB) and the Mackenzie Valley Environmental Impact Review Board (Review Board) (the Boards, or individually, a Board), have statutory responsibilities to carry out assessments of the potential environmental/ecosystemic and socio-economic impacts of various types of developments/projects in Nunavut (the designated area) or in the Northwest Territories (the Mackenzie Valley).

In fulfillment of their respective impact assessment functions, the Boards have identified that developments/projects located in the designated area or in the Mackenzie Valley may include undertakings, works or activities that cross boundaries and/or may have the potential for transboundary impacts, within the area under the other Board's jurisdiction. In such circumstances, the Boards recognize that they may be required to work together in order to carry out their respective impact assessment functions.

In addition, the Boards have almost two (2) decades of experience working cooperatively to enhance their respective capacities in the delivery of impact assessment programs and contribute to the effectiveness of their proceedings.

This Memorandum of Understanding (MOU) is intended to continue the framework that supports the Boards' actions in this regard, and to build on this history of cooperation.

Building on Prior Agreements

In 2004 and 2013, the Boards signed MOUs. These two (2) agreements were primarily designed to provide internal guidance to the Boards and their staff about the benefits and goals of cooperation, coordination and collaboration. This MOU builds on the Boards' experience implementing these prior agreements. While preserving much of the content of the prior agreements, this MOU is also intended for a wider audience, including the public and participants in the Boards' respective impact assessment processes. This MOU provides a general framework to guide the Boards' implementation of the Agreement; with the details about specific Board processes and procedures to carry out the MOU to be included in an MOU Implementation Plan, which will be developed by staff after the MOU is signed.

Statutory Base

The jurisdiction, mandate and established processes for the assessment of the impacts of developments/projects for each Board are set out in their respective statutes, regulations, guidance documents and rules, in accordance with the requirements of the applicable Land Claims Agreements. This includes the Boards' authorities with respect to addressing potential transboundary impacts, or for undertaking additional assessment functions in respect of transboundary projects/developments or impacts that may be delegated to a Board under legislation.

Each Board has a statutory base that recognizes the importance of entering into agreements, such as this MOU, to support:

- streamlining processes to assess transboundary impacts; and

- limiting duplication and overlap where there are multiple agencies with impact assessment roles and responsibilities in respect of a given development/project.

To the extent possible, the Boards have used plain language in this MOU. However, nothing in the MOU is intended to change the powers and duties of the Boards, or the rights and obligations of anyone governed by this statutory base. To understand specific legal rights or obligations arising from each Board's statutory base, any affected parties are advised to review and rely on the wording in the applicable Land Claims Agreements, laws and regulations. The statutory base, including applicable Land Claims Agreements and enabling federal and territorial legislation are paramount to this MOU.

The Boards acknowledge that when carrying out impact assessments they share similar obligations to consider factors, such as the following:

- The health and well-being of residents within each Board's respective jurisdiction, and within Canada as a whole;
- The importance of environmental/ecosystemic integrity to the well-being and way of life of the Indigenous Peoples of Canada, who may assert rights under s. 35 of the *Constitution Act, 1982* within the designated area or Mackenzie Valley; and
- The relevant scientific, Traditional, Indigenous and Community Knowledge shared with, and considered by the Boards during their impact assessment processes.

BUILDING ON THIS BACKGROUND AND WITH THIS UNDERSTANDING, THE BOARDS HAVE ENTERED INTO THIS AGREEMENT ON THE DATE SET OUT BELOW:

MEMORANDUM OF UNDERSTANDING

1. INTERPRETATION

1.1 This Agreement will be interpreted and applied in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights protected by section 35 of the *Constitution Act, 1982*.

1.2 Definitions and Acronyms

For the purposes of this MOU, the following key terms are defined as follows:

Acronym/Term	Definition
Agreement	Means this MOU between the Boards
biophysical	The biological and physical components of the environment.
Board or Boards	The Nunavut Impact Review Board (NIRB) and the Mackenzie Valley Environmental Impact Review Board (Review Board), referred to individually as a Board or collectively as the Boards.
collaboration	Includes joint efforts to conduct and complete impact assessment proceedings associated with the assessment of a specific development/project or conduct of a strategic impact assessment.
cooperation	Includes the general sharing of information, professional knowledge, practices and experience.
coordination	Includes working together to expedite and improve impact assessment proceedings.
designated area	The Nunavut Settlement Area and extending to the Outer Land Fast Ice Zone.
development	The carrying out, including the construction, operation, modification, decommissioning or abandonment, of a physical work or the undertaking or carrying out of a physical activity that involves the use of land, waters or other resources.
environment	Means the components of the Earth and includes land, water and air, including all layers of the atmosphere; all organic

Acronym/Term	Definition
	and inorganic matter and living organisms; and the interacting natural systems that include these components. t
ecosystemic	The broad term referenced in the <i>Nunavut Agreement</i> and the <i>NuPPAA</i> that encompasses the concepts included in the definitions of environment and biophysical.
Implementation Plan	The plan developed jointly by the Boards' staff after the MOU has been signed to provide the details of specific Board processes and procedures to carry out the MOU.
Land Claims Agreements	The land claims agreements within the meaning of s. 35 of the <i>Constitution Act, 1982</i> that contain provisions applicable to the roles and functions of either Board, and includes the Mackenzie Valley Land Claims and the <i>Nunavut Agreement</i> .
Mackenzie Valley	The part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by Yukon, on the north by the Inuvialuit Settlement Region, and on the east by the NSA, but does not include Wood Buffalo National Park.
Mackenzie Valley Land Claims	Includes the Gwich'in Comprehensive Land Claim Agreement, the Sahtu Dene and Metis Comprehensive Land Claim Agreement and the Tlicho Land Claims and Self-Government Agreement
<i>MVRMA</i>	<i>Mackenzie Valley Resource Management Act</i> , S.C. 1998, c. 25 as amended and applicable regulations.
MOU	This NIRB-Review Board Memorandum of Understanding
NIRB	Nunavut Impact Review Board
<i>Nunavut Agreement</i>	<i>The Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada</i>
<i>NuPPAA</i>	<i>Nunavut Planning and Project Assessment Act</i> , S.C. 2013, c. 14. s. 2 as amended and applicable regulations
NSA	Nunavut Settlement Area
Review Board	Mackenzie Valley Environmental Impact Review Board

Acronym/Term	Definition
project	The construction, operation, modification, decommissioning or abandonment, of a physical work or the undertaking or carrying out of a physical activity that involves the use of land, waters or other resources, but does not include projects with manifestly insignificant adverse ecosystemic impacts.

2. PURPOSES

The purposes of this MOU are to assist the Boards to:

- 2.1 Minimize duplication and overlap during the Boards' respective impact assessment processes;
- 2.2 Contribute to the timely review of developments/projects with the potential for transboundary components or effects;
- 2.3 Streamline processes and increase certainty for the participants in the Boards' assessments of developments/projects with the potential for transboundary impacts, including proponents, regulatory authorities or other intervenors, potentially affected communities, and the public;
- 2.4 Facilitate cooperation and the sharing of resources and best practices between the Boards where appropriate;
- 2.5 Encourage and support capacity-building for each Board's staff, including circumstances not explicitly addressed within their respective legislation;
- 2.6 Facilitate the Boards' negotiation of specific agreements in relation to the assessment of developments/projects with transboundary impacts, when required and authorized; and
- 2.7 Set out a framework for coordination and collaboration when agreements for the assessment of developments/projects with transboundary impacts are reached.

3. APPLICATION OF THIS MOU

No New Legal Powers and Duties Created

- 3.1 This MOU establishes a general framework for cooperation, coordination and collaboration between the Boards.
- 3.2 No new legal powers or duties are created by this MOU for the Boards, and the MOU does not change the Boards' existing powers and duties established under the *Nunavut Agreement*, *Mackenzie Valley Land Claims*, the *NuPPAA*, the *MVMRA*, and applicable regulations.
- 3.3 No contractual obligations between the Boards are created by this MOU, and this Agreement does not preclude either Board from entering into any other agreements

considered necessary for the effective and efficient fulfillment of their respective mandates.

- 3.4 Nothing in this MOU, any associated schedule or Implementation Plan creates any right or benefit, substantive or procedural, enforceable at law by any person or organization against either Board, its agents or officers, or any other person.

Expenditures and Funding

- 3.5 Nothing in this MOU is intended to impose any additional funding obligation on either of the Boards.
- 3.6 Each Board shall be responsible for the costs of their participation in any exchange of information, advice, or other forms of cooperation pursuant to this MOU.
- 3.7 It is acknowledged that additional funding arrangements may be established through separate agreements, on an as needed basis.

4. COOPERATION

- 4.1 The Boards commit to take steps to work together to fulfill the Boards' respective mandates and, when appropriate, joint obligations, to assess potential transboundary impacts in the designated area or Mackenzie Valley.
- 4.2 The Boards will communicate regularly in order to plan for and enhance opportunities for staff and program development and improvement.
- 4.3 The Boards will share information with each other about impact assessment practice and experiences as part of their commitment to improving program delivery.
- 4.4 Other examples of potential cooperation between the Boards under the MOU may include the following:
- sharing impact assessment best practices and standard operating procedures;
 - sharing technical expertise and local and regional information;
 - considering opportunities for capacity-building amongst staff;
 - conducting workshops and joint training sessions for staff and Board members with respect to common issues;
 - sharing guidance materials regarding the Boards' transboundary impact assessment processes;
 - development and adoption of general guidance materials explaining the Boards' approaches to collaborative transboundary impact assessment to participants in a specific development/project or strategic impact assessment process; and
 - sharing of technical resources in relation to a specific development/project or strategic impact assessment or on a subject-specific basis, including allowing for sharing of technical staff, sharing technical studies conducted by one Board, etc.

5. COORDINATION

- 5.1 The Boards commit to coordination of their respective impact assessment processes and to work together to effectively assess the potential for transboundary impacts.
- 5.2 The Boards will communicate, and when possible, coordinate impact assessment efforts to ensure that the transboundary effects of projects/developments proceeding without joint reviews are effectively reviewed and that consideration of transboundary effects is appropriate.
- 5.3 Examples of potential actions to contribute to coordination under the MOU may include the following:
 - streamlining the Boards' respective comment periods;
 - developing and issuing joint development/project or assessment-specific guidance to participants regarding the Boards' coordination of their respective impact assessment processes; and
 - identifying and implementing adaptations to each Board's typical impact assessment processes to facilitate coordination.

6. COLLABORATION

- 6.1 The Boards will, when authorized, enter into agreements to collaborate in the assessment of a development/project with potentially significant transboundary environmental/ecosystemic or socio-economic impacts or in the conduct of a strategic impact assessment that includes a consideration of transboundary impacts.
- 6.2 The Boards commit to collaboration in support of achieving the goals of conducting timely, thorough and effective assessments of potential transboundary impacts that reflect each Board's jurisdiction, mandates and objectives. Examples of collaboration under the MOU may include the following:
 - entering into a development/project or assessment-specific arrangement; and
 - providing assistance in the other Board's impact assessment process.

7. PRINCIPLES TO GUIDE COOPERATION, COORDINATION AND COLLABORATION BY THE BOARDS

In order to achieve the purposes of this MOU, the Boards agree to the following principles, which may be further specified in a development/project or assessment-specific arrangement and/or in greater details in the Implementation Plan.

7.1 Notification

Each Board agrees to provide timely notice of any matter relevant to this MOU and any future agreements negotiated under the MOU. Provision of timely notice is recognized as an essential element of the framework established between the Boards.

7.2 Information Sharing

Subject to legislation respecting privacy and access to information, the rules preventing the disclosure of confidential information, and applicable data-sharing agreements, the Boards agree to early and open sharing of available information relevant to each Board's respective environmental/ecosystemic and socio-economic impact assessment duties and processes in relation to the assessment of potential transboundary impacts.

7.3 Confidentiality and Use of information

If a Board wishes to share information with the other Board to this MOU on a confidential basis, that Board must make a specific request for confidentiality to the receiving Board and will only share the information if the other Board consents to handle the information in confidence as requested.

Each Board has the sole discretion to determine whether to make use of information or advice provided in whole or in part during their assessment of a development/project or conduct of a strategic impact assessment and fulfillment of their respective mandates.

7.4 Consultation

The framework established by this MOU will be enhanced by early consultation and on-going discussion of matters of mutual interest.

7.5 Identification of Opportunities for Cooperation, Coordination and Collaboration

The Boards commit to, and are encouraged to identify opportunities for cooperation, coordination and collaboration with each other on an on-going basis throughout the term of the MOU and will identify and explore such opportunities as they arise.

7.6 Transparency and accountability

Subject to confidentiality, privacy, and applicable data-sharing agreements, it is expected that the information exchanged by the Boards in the fulfillment of their mandates will typically be made available on each Board's respective public registries as legislated.

8. FOLLOW UP

The Boards commit to their staff working together to develop a detailed MOU Implementation Plan as soon as practicable.

The Boards will, with appropriate authorizations and in accordance with this MOU and the Implementation Plan, negotiate specific collaboration agreements for joint action on developments/projects with the potential for transboundary effects or in relation to the conduct of strategic impact assessment processes.

9. CONTACTS

The Boards designate the following individuals as principal contacts. Each Board's principal contact may be changed at its discretion and upon written notice to the other Board.

For the NIRB

Karen Costello, Executive Director
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay, Nu X0B 0C0
Direct phone: (867) 983-4608

For the Review Board

Mark Cliffe-Phillips, Executive Director
Mackenzie Valley Review Board
Box 938, 5102-50th Ave
Yellowknife, NT X1A 2N7
Direct phone: (867) 766-7055

10. MOU IS PUBLICLY AVAILABLE

The Boards shall, upon signing, make this MOU and any future amendments publicly available.

11. TERM

This MOU will remain in force from the Effective Date until one or both of the Boards provide written notice of their intention to terminate the MOU.

12. REVIEW OF MOU

The Boards agree to review the MOU on a periodic basis so that it remains current and reflects any changes to the Boards' statutory base.

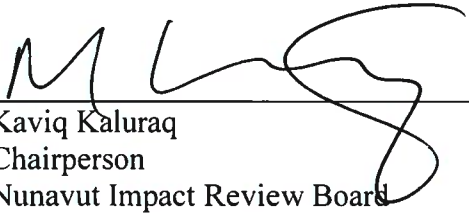
13. AMENDMENT

This MOU may be amended in writing at any time with the mutual consent of both Boards.


14. EFFECTIVE DATE

This MOU becomes effective on the date of the last signature of either Board.

IN WITNESS WHEREOF, the Boards to this Memorandum of Understanding have signed on the dates below:



Kaviq Kaluraq
Chairperson
Nunavut Impact Review Board



JoAnne Deneron
Chairperson
Mackenzie Valley Environmental
Impact Review Board

Date: SEPTEMBER 8, 2022

Date: SEPTEMBER 8, 2022