

June 27, 2019

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

Attention: Ryan Barry, Executive Director

Dear Mr. Barry:

Re: NIRB Draft Rules of Procedure and Standard Impact Statement Guidelines

Thank you for the continuing opportunity to comment on the Nunavut Impact Review Board's ("NIRB" or the "Board") draft Rules of Procedure and Standard Impact Statement Guidelines ("IS Guidelines") as well as for hosting the engagement session held on April 2, 2019 at the offices of the Northwest Territories and Nunavut Chamber of Mines. On behalf of the Kitikmeot Inuit Association ("KIA"), we are submitting the following comments as a follow up to the discussions in Iqaluit and to assist the Board in revising the Rules of Procedure as well as the IS Guidelines.

RULES OF PROCEDURE

The Rules of Procedure are comprehensive; however, KIA is concerned that the level of detail provided in the Rules of Procedure could formalize the NIRB process in a manner that is inconsistent with the community context in which NIRB has operated to date. As a result, careful attention should be paid to the application of the Rules of Procedure. In particular, the application in practice of **Rule 5** (the Board emphasizing flexibility and informality in all its Proceedings) and **Rule 8** (the Board supplementing, varying or dispensing with these Rules) will be very important in order to ensure that hearings do not become highly formal proceedings that serve to reduce community engagement and understanding.

KIA's specific concerns regarding the Rules of Procedure are as follows:

- ♦ **Transcripts – Rule 51** provides that the Board shall make final written transcripts available on the public registry within a reasonable time after the conclusion of the oral component of Proceedings. In KIA's view, the final transcripts should also be made available on the public registry before written final arguments are submitted or decisions are made by the Board.
- ♦ **Formal Intervenors – Rule 60(c)** permits the Board to dismiss an intervention request and does not allow for reply by the party seeking intervenor status. This is procedurally unfair and should be revised to allow for reply argument.

- ◆ **Summons – Rules 61-63** allow the Board to issue a summons to a person/party requiring them to provide information or Documents to the Board. KIA suggests that as a practical matter and as a first step, the Board may want to simply request that a party provide information or documents to the Board.
- ◆ **Experts – Rule 65** suggests that where NIRB engages an expert, NIRB may determine whether Participants will have an opportunity to (1) file submissions in response to NIRB expert’s written submissions or (2) question NIRB’s expert. If the Board engages an expert, the Board should advise Participants of the expert’s role and participation. Participants should know what advice the expert is giving and have the opportunity to respond, including the opportunity to ask questions of the expert.
- ◆ **Pre-Hearing Conference**
 - **Rule 94** states that the Board may hold a Pre-Hearing Conference to facilitate the Board’s Public Hearing processes and to assess whether the project proposal can move forward to the Public Hearing stage. KIA agrees that the purpose of a Pre-Hearing Conference is to facilitate the Board’s public hearing processes. However, a Pre-Hearing Conference should not include consideration of whether the project proposal can move forward to the Public Hearing stage. That decision should be made before the Pre-Hearing Conference occurs;
 - **Rule 95(c)** provides that the Pre-Hearing Conference may include discussion of the identification of any issues or outstanding Information Requests that parties are required to address prior to, or at the Public Hearing. In KIA’s view, by the time the Pre-Hearing Conference occurs, there should be no outstanding Information Requests.
- ◆ **Community Roundtable Session – Rule 102** requires the Board to keep a summary of comments, questions and perspectives shared by the Community Representatives during the Community Roundtable, and that the summary shall form part of the Record of Proceedings. If the summary is to form part of the Record of Proceedings, parties should have the opportunity to review and comment on the accuracy of the summary before it is finalized and forms part of the Record of Proceedings.
- ◆ **Pre-Hearings Conducted in Communities**
 - **Presentation of Evidence and Exhibits – Rules 111 and 112** provide that the Board may permit a party to lead new evidence at a Public Hearing. In KIA’s view, permitting new evidence at this stage of the Proceeding is problematic and does not give other parties the opportunity to fully consider and respond to the new evidence being introduced.

- **Questioning – Rule 116** provides that the questioning of a witness or panel of witnesses by another party shall be limited to the scope of the evidence provided by the witness/witnesses. Under this rule, KIA would be unable to ask Intervenors about the evidence of other Intervenors, which is unduly restrictive and will not result in a comprehensive testing of all of the evidence being introduced.
- ♦ **Public Hearings Conducted in Writing – Rules 129 and 130** allow the Board to issue a project-specific Procedural Direction to Authorizing Agencies (like KIA) about monitoring, and give the Board’s Monitoring Officer authority to issue Procedural Directions. In our view, the Board does not have the authority to issue a mandatory monitoring direction. The Monitoring Officer is Board employee, not an officer under a statute.

IS GUIDELINES

In KIA’s view, and as stated at the meeting in Iqaluit, the IS Guidelines are unnecessarily complex and in a number of instances go beyond the framework of an IS as illustrated by the following:

- ♦ In **section 6.3**, the Proponent must reference; (i) its record of compliance with governmental policies and regulations pertaining to environmental and socio-economic issues in past operations; (ii) its record in honouring past commitments on environmental and socio-economic matters; (iii) prior experience with any Impact Benefit Agreements; and (iv) its record in incorporating environmental and socio-economic considerations into each of construction, operations, temporary closure, final closure and post-closure. KIA is particularly concerned about the disclosure of details regarding Impact Benefit Agreements;
- ♦ In **section 6.3**, the Proponent shall provide information on the current status of Project financing and financial preparedness to meet the requirements for reclamation and security should the Project proceed;
- ♦ In **section 6.4**, the Proponent should include a discussion of any steps it proposes to take to ensure it meets its Project related tax obligations (including fuel and payroll taxes) with the Government of Nunavut; and
- ♦ In **section 10.7**, the Proponent shall include in its follow-up and adaptive management plans provisions for enforcement and penalties.

OTHER ISSUES

Section 3.0 – Scope of the NIRB Assessment – The IS Guidelines provide that “if the NIRB determines that an inclusion or exclusion to the scope of the Project should be made, the Board would consult with the Proponent and would amend the scope after considering any comments the Proponent may provide.” In our view, the Board should also seek comments from other parties before making a decision to amend the scope of the Project.

Section 8.1.1 – Scope of the Environmental Assessment – Factors to be considered – Section 103(1) of the *NuPPA* sets out the factors that must be considered by the Proponent as part of an IS. They cannot be scoped out of the IS.

We look forward to discussions with you regarding the concerns outlined above together with comments raised by other parties.

Regards,

A handwritten signature in blue ink that reads "John Donihee".

John Donihee

cc: Geoff Clark, Kitikmeot Inuit Association

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