



NIRB File No. 08MN053

November 22, 2013

Sharon Ehaloak
Executive Director
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, NU X0B 0C0

Sent via email: sehaloak@nunavut.ca

Re: NPC-NIRB Joint Review of the NBRLUP Transportation Corridor Application associated with Baffinland's ERP Proposal

Dear Sharon Ehaloak:

Earlier this week on November 18, 2013 the Nunavut Impact Review Board (NIRB or 'the Board') received the enclosed email correspondence from the Nunavut Planning Commission (NPC or 'the Commission') regarding the NPC's intentions to conduct oral hearings associated with the NPC-NIRB joint review of the North Baffin Regional Land Use Plan (NBRLUP) transportation corridor application associated with Baffinland Iron Mines Corporation's (Baffinland) Early Revenue Phase (ERP) proposal for the Mary River Project (NIRB File No. 08MN053). It is the Board's understanding, after further discussion with the NPC staff that the enclosed documents, which were included with the NPC's email correspondence, were intended to serve as public notice of the Commission's intention to host public hearings in the communities of the North Baffin Region from January 7-10, 2014 as part of the Commission's information-gathering to support the ongoing NPC-NIRB joint review process.

The NIRB notes that in the notice the Commission has stated its intention that parties who fail to apply to the NPC in writing to become a participant within 14 days of publication of the enclosed November 18, 2013 notice, or who do not provide written or oral comments as a member of the public before the end of the last scheduled hearing (January 10, 2014) will not be entitled to receive any further notice from the NPC. Although representatives from Baffinland, the Qikiqtani Inuit Association, Aboriginal Affairs and Northern Development Canada and Fisheries and Oceans Canada were copied on the NPC's email correspondence, the NIRB notes with concern that the Board's follow up discussions with the NPC staff on November 20, 2013 revealed that the notice had not yet been provided to community organizations in the North Baffin, to the Government of Nunavut, or to the general public.

On this basis, the NIRB has concerns that these potentially affected parties may be unaware of the NPC's intended hearings and the pending deadline for submissions. The NIRB notes also

that the NPC does not appear to have directed potentially affected parties to where they can access the ERP proposal and the associated transportation corridor application on which these public hearings are predicated.

On a related matter, although the NIRB has previously cooperated with the NPC to fulfill a NPC-NIRB joint review (2009-2012) under the NBRLUP for a transportation corridor application associated with a portion of the proposed railway for the original Mary River project, the NPC has yet to conclude that joint review by either bringing forward a request to amend the NBRLUP or confirming that no such amendment request will be brought forward. The NPC originally committed to providing this direction shortly after the NIRB's issuance of a Project Certificate for the Mary River Project. The Project Certificate was issued on December 28, 2012 and it is the Board's understanding that the NPC's direction regarding the plan amendment is still outstanding. Consequently, the NIRB requests clarification from the NPC regarding its currently anticipated timeline for communicating a decision as to whether or not an NBRLUP amendment is required for the original Mary River project.

The NIRB appreciates that it was also copied on correspondence from the NPC to the Minister of Aboriginal Affairs and Northern Development ('the Minister') dated September 18, 2013 in which the Commission sought confirmation from the Minister that the NIRB (rather than a panel formed pursuant to Nunavut Land Claims Agreement (NLCA) Article 12, Section 12.4.7) would be the appropriate partner for the NPC to carry out the NBRLUP joint review process associated with Baffinland's transportation corridor application for its ERP proposal. As you are aware, it remains the NIRB's understanding that the Board is participating in the NBRLUP joint review process for the current application primarily under the provisions of the NLCA, Article 12, Section 12.8.2 and Section 3.5.12 of the NBRLUP. Recognizing that the NIRB's assessment of the ERP proposal is being conducted pursuant to the Board's jurisdiction under NLCA Article 12, Section 12.8.2, the provisions of Article 12, Section 12.4.7 are not applicable and references to the NBRLUP Section 3.5.12 process that are tied to Section 12.4.7 are also inapplicable or require modification to reflect the regulatory framework established by the NLCA under Section 12.8.2. However the NIRB respects that the NPC considers it necessary to receive the Minister's direction on this matter and the NIRB would welcome any further direction that the Minister may choose to offer in this regard.

In the absence of further direction from the Minister, both the NPC and the NIRB had previously committed to cooperate and coordinate on the joint review of the ERP proposal with the NIRB's process under NLCA 12.8.2 to the extent possible. Following multiple staff-level discussions between the Commission and the NIRB regarding how best to fulfill this objective, on September 23, 2013 the NIRB issued an updated process map for the information of parties, outlining the agreed-upon coordination of the NPC-NIRB joint review process with the NIRB's assessment of the ERP proposal pursuant to NLCA 12.8.2. Importantly, the NPC had opportunity to review and input into the NIRB's September 23, 2013 correspondence and process map prior to it being issued by the Board. It was the NIRB's understanding that the NPC felt that consultation with the communities of the North Baffin Region regarding the NBRLUP transportation corridor application was necessary, a position which was supported by the Board. The mutually agreed-upon format of this community level consultation had been information sessions which presented the application to the public and requested their feedback on the relevant criteria of the NBRLUP which must be addressed through the joint review process. At no time was the NIRB aware of or informed by the NPC that the Commission had changed its

position such that the information sessions would be replaced by public hearings and that Rules of Procedure would be passed by the NPC and applied to these proceedings without advance consultation with the NIRB or any potentially affected parties.

The NIRB respects that the NPC has discretion for setting its own processes as it deems appropriate, however the Board is concerned that the current joint review process is deviating significantly from the previous joint review process for the Mary River Project, with no supporting rationale for these significant changes to both the prior joint review process and also to processes on which the NIRB believed there to be mutual agreement with the Commission. With no prior discussion, no consultation and no notice the Board has been left in the untenable position of being approached by participants in the NIRB's on-going Article 12, Section 12.8.2 assessment of the ERP proposal for explanations regarding the basis and rationale for these significant deviations from the communicated process for the NPC-NIRB joint review, which the Board is unable to provide.

The Board is also concerned that while there had been agreement that the NIRB would have staff in attendance at NPC-led community information sessions in the North Baffin Region this coming January, there had been no discussion regarding the NPC's intention to host public hearings in place of these community sessions, nor have there been discussions regarding the NPC's development of the associated agenda, development and implementation of new Rules of Procedure for these hearings or provision of notice to the public. Further, the NIRB is unclear regarding the desired outcome of these public hearings and the process for capturing and considering the evidence gathered therein to contribute to the NPC-NIRB joint review.

The NIRB also notes that although the advertisement circulated by the NPC with regards to the planned public hearings references the Commission's application of its recently-passed Rules of Procedure to this process, Section 3.2 of the enclosed Rules of Procedure reads as follows:

"These rules are not applicable to public reviews of an Amendment Application conducted jointly by the Commission with another reviewing entity, unless the Commission and the other reviewing entity agree in writing that they shall so apply, otherwise the Commission and other reviewing entity may jointly prepare the rules of procedure"


As the NIRB was unaware of the NPC's intention to schedule public hearings for the NPC-NIRB joint review, and to date has had no reasonable opportunity or specific request from the Commission to consider the application of the NPC's new Rules of Procedure to the NPC-NIRB joint review, the Board regrets that the NIRB cannot, at this time, agree to the application of the NPC's Rules of Procedures to a public review conducted jointly by the NPC and the NIRB. Further, given the serious process, procedure and notice concerns outlined above, the Board is not prepared to participate in the NPC's planned public hearings. While the NIRB recognizes that the failure to provide the Board with information and reasonable notice of the NPC's planned joint review processes including, now, public hearings may have been the result of inadvertence, it does not change that this complete lack of communication has significantly limited the Board's ability to participate in a meaningful way in the collaborative conduct of the joint review.

In closing, the NIRB wishes to emphasize that despite these regrettable developments, it remains committed to providing the NPC with its assessment input regarding the transportation corridor application associated with Baffinland's ERP proposal and the criteria established by the NBRLUP for the joint review of transportation corridor applications. As previously communicated, the Board reaffirms its intention to solicit input from interested parties relevant to the NBRLUP criteria and Baffinland's application where possible through the NIRB's ongoing assessment of the ERP proposal under NLCA Section 12.8.2.

In closing, the NIRB appreciates the NPC's confirmed attendance for the upcoming technical meetings in Iqaluit, November 26-28 for the Board's assessment of the ERP proposal. As discussed recently with the NPC staff, Baffinland has requested that the NIRB schedule time on the meeting agenda for a discussion of the NPC-NIRB joint review process, which the Board has incorporated as a tentative evening session for the evening of Tuesday, November 26, 2013.

Should time permit the Board would welcome further dialogue with the NPC on the concerns raised in this correspondence in advance of this evening session – please contact me directly at (867) 983-4608 or via email at rbarry@nirb.ca at your convenience to schedule a suitable discussion time.

Sincerely,



Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: The Honorable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development
Erik Madsen, Baffinland Iron Mines Corporation
Brian Aglukark, Nunavut Planning Commission
Mary River Distribution List

Enclosures (4): NPC Email to Parties Re NPC-NIRB Joint Review (November 18, 2013)
NPC Advertisement Re Oral Hearings (November 18, 2013)
NPC Agenda Re Oral Hearings (November 18, 2013)
NPC Rules of Procedure (November 18, 2013)