



Indigenous and
Northern Affairs Canada

Affaires autochtones
et du Nord Canada

Mr. Andrew Nakashuk, Chairperson
Nunavut Planning Commission

Ms. Elizabeth Copland, Chairperson
Nunavut Impact Review Board

Mr. Lootie Toomasie, Chairperson
Nunavut Water Board

October 24, 2017

Re: Consistency of the term "Project" with the Nunavut Agreement

Dear Chairpersons:

This letter follows up on a letter from the three undersigned organisations on February 18, 2017 and an in-person workshop held May 25-26, 2017. A central topic on the agenda was the relationship between the term "project proposal" as it is used in the *Nunavut Agreement* and the term "project" as it is used in the *Nunavut Planning and Project Assessment Act*.

At its base, this issue is about whether the *Nunavut Agreement's* impact assessment regime applies to works or activities with insignificant impacts. We believe that it does not for reasons that we have explained in detailed letters and reports.

All participants in the May 25-26 workshop were encouraged to engage in exploratory discussions and to seek common ground where that was possible. The details of the discussion will therefore not be recanvassed in this letter, which instead will focus on forward-looking solutions.

Having given careful consideration to the issue, the undersigned organisations remain confident in the following:

- there is a *de minimis* threshold in the *Nunavut Agreement's* land use planning and impact assessment regime, and the regime does not apply to works or activities with insignificant impacts;
- the definition of "project" in the *Nunavut Planning and Project Assessment Act* is consistent with the definition of "project proposal" in the *Nunavut Agreement*; and more specifically,
- the definition of "project" in the *Nunavut Planning and Project Assessment Act* captures the *Nunavut Agreement's de minimis* threshold in a legally sound manner;
- stated another way, the *Nunavut Agreement* does not capture works or activities that are excluded from the *Nunavut Planning and Project Assessment Act*.

The rationale for these views is explained in greater length in the enclosed materials.

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We understand that some have expressed the view that these issues are not clear to their satisfaction, suggesting that the *Nunavut Agreement* should be amended to remove all doubt. With respect, the signatories to the *Nunavut Agreement* are comfortable with the *Agreement's* wording on this point, and with the compatibility of the implementing legislation.

Despite this, we understand and respect the right of each of the Institutions of Public Government to form an independent view on such matters, and to rely on independent legal analysis for that purpose.

If after such analysis, and having considered our input, an Institution of Public Government finds itself unable to operate within the bounds of its enabling statute because of a perceived inconsistency with the paramount *Nunavut Agreement*, we suggest that the course of action – consistent with the status of a tribunal empowered to do so – would be to refer a question of law or jurisdiction to the appropriate court under section 221 of the *Nunavut Planning and Project Assessment Act* or section 128 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*.

In the case of any such reference, the undersigned organisations would appreciate reasonable advance notice, as we would intend to participate fully in the reference.

As we know you understand, this is a matter of considerable importance for the functioning of Nunavut's land use planning, impact assessment and water licensing regimes. Systems that expend finite resources on insignificant matters have fewer resources to devote to priority issues. Likewise, organisations looking to do work in Nunavut are being caught up in regulatory processes that ought not to be applied to them. We therefore request that this matter be resolved quickly through a prompt reconsideration of practices or procedures, and a court reference only if necessary.

Thank you for your attention to this matter. We would appreciate a reply and an update on this issue at your earliest convenience.

Yours truly,



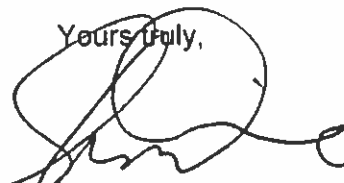
Nunavut Tunngavik
Incorporated

Yours truly,



Department of Environment
Government of Nunavut

Yours truly,



Indigenous and Northern
Affairs Canada
Government of Canada

c.c.: Sharon Ehloak, Executive Director, Nunavut Planning Commission
Ryan Barry, Executive Director, Nunavut Impact Review Board
Stephanie Autut, Executive Director, Nunavut Water Board

Enclosures:

Joint letter to IPG Executive Directors (February 18, 2017)

NTI Comments on the Application of the Nunavut Planning and Project Assessment Act (November 29, 2016)

Expert Report – The Terms "Project" in NUPPAA and "Project Proposal" in the Nunavut Agreement Have the Same Meaning (Justice Canada, November 15, 2016)