



NIRB File No.: 13UN034
AANDC File No.: 865340

October 21, 2014

James Neary
Acting Manager, Environmental Assessment
Aboriginal Affairs and Northern Development Canada
Nunavut Regional Office
P.O. Box 100
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Sent via email: james.neary@aandc-aadnc.gc.ca

Re: AANDC Comment Submission for NIRB's Screening of the City of Iqaluit's "Application for Water Licence Renewal" Project Proposal (NIRB File No. 13UN034)

Dear Mr. James Neary:

Please find in the text that follows the response of the Nunavut Impact Review Board (NIRB or Board) to Aboriginal Affairs and Northern Development Canada's (AANDC) recent correspondence of October 16, 2014 providing the Board with AANDC's comments on the City of Iqaluit Application for renewal/amendment to its Type "A" Water Licence with the Nunavut Water Board (NIRB File No. 13UN034). In that correspondence, AANDC indicated the following:

It is our view that the City of Iqaluit's Licence Renewal proposal is concerned with the provision of a service within an established municipality and is, therefore, exempt from screening under Schedule 12-1(3) of the Nunavut Land Claims Agreement.

This conclusion clearly differs from the Board's view that the project proposal is required to undergo a screening as set out under Article 12, Part 4 of the Nunavut Land Claims Agreement (NLCA) and puts at issue a question central to the Board's jurisdiction, namely whether this project proposal should be exempt from the requirement to undergo environmental assessment under NLCA Schedule 12-1. Given the fundamental nature of this issue in terms of the Board's decision to continue with the screening of this project proposal, and recognizing the importance and potential future implications of exempting these types of activities from future screenings, the Board has prepared this correspondence to specifically address AANDC's comments and clearly state the Board's position.

As noted in AANDC's correspondence, the exemptions list in Schedule 12-1 of the NLCA can support varying interpretations, but the Board's starting point to interpreting the exemptions listed in Schedule 12-1 is that the exemptions list must be construed narrowly. In the Board's view, this approach is not only consistent with general rules of statutory interpretation, but is also required to recognize that one of the primary objectives of the NLCA is to provide Inuit with the opportunity to participate in decision-making concerning the use of land, water, and resources, and therefore any actions which may affect Inuit participation in substantive decision-making should be limited.

Bearing this in mind, but also reflecting the structure and practical application of the NLCA, the NIRB has consistently put forward the view that the primary purpose of Schedule 12-1 is to exempt from the normal screening requirements of Article 12 only those types of project proposals that by their nature do not have the potential for significant environmental or socio-economic impact, alone or cumulatively. This purposive approach to Schedule 12-1 is consistent with the types of land use activities exempted in Schedule 12-1(1) and (2), and is also consistent with the approach to exemptions from screening found in the Northwest Territories under the preliminary screening exemptions set out in the *Mackenzie Valley Resource Management Act*, S.C. 1998, c. 25 (s. 124).

Reflecting this approach, and as indicated by the Board in the existing *Guide 4: Project Proposals Exempt from Screening* (issued in August 2007), Items 1-7 under Schedule 12-1 should be read and interpreted together, not as standalone items. In practice, this means that each item in Schedule 12-1 must be considered before a project proposal can be exempted from the requirement for NIRB screening. Consequently, the Nunavut Planning Commission, the authorizing agency, or the NIRB (when guidance is sought with respect to whether an exemption applies) compares all activities that make up the project proposal to all items in Schedule 12-1. **If there is an activity or component of the project proposal that is not exempted under the Schedule, the NIRB takes the view that the project proposal is not exempt and conducts a screening of the whole project proposal.**

Given that the listing in Schedule 12-1 varies in the descriptions of exemptions, referring to project types, activities and water use thresholds, it is the Board's view that reading the items from the Schedule in isolation is not consistent with the purpose of this exemption listing which is to only exempt from assessment those types of project proposal that have only limited potential for environmental impacts. For example, even though a project proposal may not require a land use permit from a Federal or Territorial Government and would meet the criteria to be exempt from screening under Items 1 and 2 of Schedule 12-1, if the water use or deposit of waste for the project requires a Type "A" Water Licence as established by the *Nunavut Waters Regulations* and would require a public hearing and consequently would not meet the criteria under Schedule 12-1 Item 5, the Board would consider that the project proposal requires assessment via a NIRB screening.

Applying this integrated approach to interpreting the exemptions in Schedule 12-1 for this specific project proposal means that regardless of the applicability of Schedule 12-1 Item 3, as the water use required is sufficient to trigger the requirement for a Type "A" Water Licence, would mean that the potential impacts associated with water use warrant assessment of the

project proposal as the criterion in Schedule 12-1 Item 5 are not met. It should be noted that the Government of Nunavut, in the discussions with the NIRB leading to the development of an agreement under Schedule 12-1, Item 7 to clarify the exemption of specific types of community developments from screening, has recognized that if a project proposal meets the thresholds for a Type “A” Water Licence that it is appropriate for such a project proposal to be subject to a NIRB screening.¹ The NIRB’s recent screening of the Rankin Inlet Type “A” Water Licence Amendment Application (NIRB File No. 13UN037) affirms this approach and is consistent with the Board’s position with respect to screening the current project proposal. As with the current project proposal, in screening the Rankin Inlet water licence application, parties were invited to comment during the Board’s screening process and the question of the extent to which Schedule 12-1 exemptions apply was not identified by any participants.

In addition, with respect to the exemption under Schedule 12-1 Item 3 specifically, the Board has worked with the Government of Nunavut (the primary proponent of activities that would be typically be included within this exemption) to provide greater certainty regarding the scope of this exemption in practice. One of the outcomes of these discussions was for the Board and GN to provide a working definition of “industrial activity”. As set out in Guide 4: Project Proposals Exempt from Screening, the definition is as follows:

Industrial activity: activities whose aim is the manufacture, assembly or processing of goods or commodities or the exploitation of natural resources.

1. This includes the following:

- a. Land farms...
- c. Recycling Depot
- d. Hazardous waste or chemical storage or use
- e. Quarries – the initial development or the expansion of an existing quarry and the disestablishment thereof where the same was not included as part of the initial screening
- ...

The NIRB notes that components and activities associated with the City of Iqaluit’s water licence application include the upgrade, operation and/or decommissioning of the following facilities: water treatment plant, solid waste management facility, wastewater treatment plant, sewage lagoon, access road, associated infrastructure. The Board would consider that this project proposal may be included within the working definition of “industrial activity” which would have the effect of removing the project proposal from the exemption as set out in Schedule 12-1 Item 3.

On the basis of the preceding analysis, the Board has concluded, in contrast to the view provided in AANDC’s comment submission, that the exemption in Schedule 12-1 Item 3 does not apply to this project proposal. Alternatively, the Board notes that even if Schedule 12-1 Item 3 could be

¹ R. Chapple, Government of Nunavut letter to K.Buck, NIRB, dated June 21, 2007 and available from the NIRB’s online public registry at:
<http://ftp.nirb.ca/01SCREENINGS/EXEMPT%20FROM%20SCREENING/AGREEMENTS/GOVERNMENT%20OF%20NUNAVUT/GN-CGS/070621-GN-CGS%20Ltr%20to%20NIRB%20Re%20NLCA%20-%20Project%20Permitting-IMAE.pdf>, at p 3.

said to apply, given that the Nunavut Water Board has indicated that a public hearing will be required in its consideration of the Type “A” Water Licence for the project proposal,² when the exemptions in Schedule 12-1 are strictly applied in an integrated manner that reads the Schedule in its entirety, the NIRB also concludes that a screening of the project proposal is required.

Reflecting the Board’s application of this long-standing approach to interpretation of the exemptions in Schedule 12-1 and the Board’s specific analysis of this project proposal, the NIRB intends to conclude the screening of this file and will be issuing a Screening Decision Report to the Minister shortly.

However, the Board is mindful that AANDC’s comments may be reflective of a fundamental difference in approach to the general question of interpretation of the exemptions set out in Schedule 12-1 of the NLCA from the established approach developed by the NIRB over time. Given the NIRB’s understanding that categories of exemptions under exemption agreements with specific government agencies is currently being discussed in the context of the development of Schedule 3 to the *Nunavut Planning and Project Assessment Act*, more detailed discussions of AANDC’s differing approach may be timely and central to the appropriate development of the Schedule. The Board would welcome the opportunity to discuss these broader questions associated with exemptions from assessment with AANDC and the other parties with an interest in these provisions, including the Government of Nunavut, Nunavut Tunngavik Inc., the Regional Inuit Associations, the Nunavut Planning Commission and the Nunavut Water Board.

Should you have any questions or concerns regarding this matter, please contact the undersigned directly at (867) 983-4608 or via email at rbarry@nirb.ca.

Sincerely,



Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Stephen Traynor, Aboriginal Affairs and Northern Development Canada
Distribution List

² P. Beaulieu, Nunavut Water Board letter to J. Hussey, City of Iqaluit, dated October 21, 2013 and available from the NIRB’s online public registry at: <http://ftp.nirb.ca/01-SCREENINGS/ACTIVE%20SCREENINGS/13UN034-City%20of%20Iqaluit%20Type%20A%20Water%20Licence%20Renewal/01-APPLICATION/131021-13UN034-NWB%20Referral-IA1E.pdf>, at p. 2.