

08 March, 2023

Delivered via Email

Impact Assessment Agency of Canada (IAAC)
c/o Erin Norton, Project Analyst, Ontario Region
22nd Floor, Place Bell
160 Elgin St.
Ottawa ON K1A 0H3
Email: Crawford@iaac-aeic.gc.ca

RE: Review of the Crawford Nickel Project *Draft Indigenous Engagement and Partnership Plan* dated February 6, 2023

To Erin Norton and the IAAC Crawford Nickel Project team,

The Métis Nation of Ontario (“MNO”) has reviewed the Draft *Indigenous Engagement and Partnership Plan* (“IEPP”) dated February 6, 2023 for sufficiency in outlining the requirements of the Métis Nation of Ontario Region 3 Consultation Committee (“R3CC”).

It is our understanding that the main objective of the IEPP is to outline the opportunities and methods of Crown engagement and consultation with the MNO and other Indigenous groups throughout the assessment process for the Crawford Nickel Project. Our review focused on any gaps or deficiencies of note which relate to MNO consultation/engagement. Please see below for our key comments for your consideration.

Section 1 – Introduction

In this Section it is noted that “...communities may develop community-specific consultation plans, in collaboration with the Agency, to describe the community’s specific objectives for consultation, or any unique features of the impact assessment and consultation process pertaining to that community”.

The MNO Region 3 requires a community-specific consultation plan which can outline MNO’s standard consultation requirements, processes, and protocols. This community-specific consultation plan can also be used to articulate actions in the case of unforeseen circumstances (e.g., pandemic, community emergency) and how items like seasonal consideration can be outlined and adjusted for.

Section 3 – Objective of Indigenous Engagement and Partnership

This section outlines the Impact Assessment Agency of Canada’s objectives. The first listed objective notes that:

*“Conduct meaningful Crown consultation on the potential positive and adverse effects (direct indirect, cumulative, residual, and incidental) of the Project and adverse impacts of the Project on **the exercise** of Aboriginal and/or Treaty rights of the Indigenous Peoples of Canada recognized and affirmed in section 35 of the Constitution Act, 1982 (Aboriginal or Treaty rights);” [emphasis added]*

This is limiting language as not all rights are land based, and, not all rights are easily characterized solely through the expression of their exercise. The current *Impact Assessment Act*, 2019 has more expansive considerations within Section 22(1)(b) which requires the impact assessment of a designated project to take into account the impact the project may have on the rights of Indigenous peoples recognized and affirmed by Section 35 of the *Constitution Act, 1982*. Further, within the Practitioner's Guide to Impact Assessments there is guidance for completing this including contextualizing and assessing rights themselves rather than just the exercise of those right. This should be reflected within the language of the IEPP. For example, the *Practitioner's Guide to Federal Impact Assessments under the Impact Assessment Act* articulates within Section 3 (Indigenous Participation and Engagement) that assessment of potential impacts on the rights of Indigenous peoples is required. This is further clarified through the Policy Context (Section 3.3) and the Guidance (Section 3.4).

Therefore, in order to fully understand Section 35 rights, the rights must be considered holistically with a broader view than just the *exercise* of those rights. Instead, a consideration of the subsistence, social and ceremonial aspects of the right (among other aspects) must be incorporated.

Recommended Action: remove the phrasing of 'the exercise' from the above noted objective and subsequent objectives (e.g., objective 6). This removal of language should be applied throughout the IEPP

The second listed objective indicates:

"Meaningfully engage with Indigenous communities regarding Indigenous Knowledge they may wish to apply when considering potential effects and impacts of the Project and impacts on the exercise of Aboriginal or Treaty rights by referring to the Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions³ and guidance documents;"

While it is positive that the Impact Assessment Agency of Canada ("IAAC") has developed the above referenced policy framework, there is still language within the policy framework which situate Indigenous Knowledge within the western science framework. Therefore, it is critical that MNO specific protocols for sharing and use of this knowledge be respected and adhered to at all times. This is reflected in the Policy Framework and should be emphasized in the objectives as well to be explicit. Additionally, how Indigenous Knowledge and western science are synthesized or prioritized in the review process is not addressed. Both hold equal importance and wording must be reflected in that.

Recommended Action: add phrasing as follows '...Meaningfully engage with Indigenous communities regarding Indigenous Knowledge they may wish to apply when considering potential effects and impacts of the Project and impacts on the exercise of Aboriginal or Treaty rights by *adhering* referring to the Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions³ and guidance documents, *particularly in regards to established processes and protocols that govern matters related to Indigenous Knowledge*' [items in red added]

The third listed objective notes that the IAAC will:

"Meaningfully engage with Indigenous communities throughout the impact assessment process with opportunities to provide comments on key documents and the engagement process;"

This objective is encouraging, however, a key aspect for MNO and many other Indigenous groups in relation to meaningful engagement is adequate capacity funding. There is no objective listed which addresses the

provision of adequate capacity funding for involvement, instead it is identified as an engagement and consultation tool/method in Section 5 in relation to the Planning Phase only. In order to signal the IAAC's commitment to adequately funding MNO's participation, this should be added as an objective in addition to a tool/method.

To date the MNO has not received a response on the workplan for consultation concerning the provincial and federal Critical Mineral Strategy, although both strategies state that consultation will be conducted with Indigenous groups. As the Crawford Nickel Project is a critical mineral project consultation is required immediately with all relevant ministries.

Recommended Action: add in language to state “*Meaningfully engage with, and provide capacity to, Indigenous communities...*” [items in red added] or add an additional objective related to capacity provision.

This section of the IEPP also include objectives identified by Indigenous communities during the Planning Phase. As many of these items are related to the above noted IAAC objectives and recommended actions (e.g., adequate capacity funding, and respect of existing protocols), we recommend that the IAAC integrate the objectives identified by Indigenous communities with the IAAC objectives, where there is alignment, as shared objectives to truly reflect a collaborative and co-led approach to this assessment process.

Within bullet four of the Objectives identified by Indigenous communities during the Planning Phase, it is noted that for some Indigenous communities, there may be opportunity for an Indigenous-led evaluation of the impacts of the Project. While this is constructive and could result in a more comprehensive assessment process, the ‘focus’ of the evaluations are only related to the effects under federal jurisdiction (e.g., socio-economic conditions, the current use of lands and resources for traditional purposes, and cultural and physical heritage) rather than the factors to be considered within the impact assessment as per Section 22(1)(b). As noted above, the *Impact Assessment Act*, 2019 and subsequent guidance requires a broadened view of rights, therefore, the conditional ‘focuses’ should be expanded.

Recommended Action: remove or amend identified ‘focuses’ of the Indigenous-led evaluation of the impacts of the project as they are focused on previous repealed legislative direction. Include focuses related to Indigenous rights as per the ‘factors to be considered’.

Section 4 – Indigenous Communities

Within this Section, the language related to the **exercise** of rights persists and must be addressed (e.g., within the first paragraph of this section as well as Section 4.1 Crown Consultation list of Indigenous communities, paragraph 1). This language adjustment will better reflect the contents and guidance arising from the *Impact Assessment Act*, 2019, better address the factors to be considered, as well as work to the fulfillment of the purported commitment of renewing relationships with the MNO based on recognition of rights.

Additionally, while it is also acknowledged within this section that the impact assessment process is not a rights-determination process, it is positive that the MNO is acknowledged as having rights recognized and affirmed in Section 35 of the *Constitution Act*, 1982 which the Project may adversely impact.

Section 5 – Engagement and Consultation Tools, and Methods

This section outlines many tools and methods which can be at the disposal of the IAAC to ensure meaningful consultation. However, within the introductory paragraph it is noted that these tools and methods are meant for the Planning Phase. The IEPP is meant to describe the consultation and engagement opportunities and methods *throughout* the impact assessment process. Therefore, clarity must

be provided by the IAAC if these tools and methods will be applied throughout subsequent phases to the Planning Phase, including the Impact Statement Phase, the Impact Assessment Phase, the Decision Making Phase and the Post Decision Phase. This is an important distinction as tools and methods listed include providing funding under the Participant Funding Program which is a requirement of MNO participation in all phases. It is also imperative that the IEPP address how provincial and federal Critical Mineral Strategy consultation will occur in parallel with IAAC consultation.

Additionally, this section indicates that a tool/method that the IAAC can employ is the consideration of cultural needs including seasonal issues. Clarification is required on how this consideration interplays with the legislated timelines under which the Project operates. It is assumed that the Project timeline will continue despite consideration by the IAAC of seasonal requirements of the MNO. This tool/methods must also be expanded for consideration of unforeseen circumstances (e.g., pandemics or community emergencies) to foster greater situational empathy and process flexibility.

Table 1 – Table of Indigenous Engagement Approaches and Activities

This table provides descriptions of the main phases in the impact assessment process and details on how the IAAC and the MNO can be involved. As noted throughout this submission, within this Section, the language related to the **exercise** of rights persists and must be addressed (e.g., Expected Agency Activities under Impact Statement Phase).

For Phase 2 – the impact statement phase – the MNO has experienced some Projects whereby the original negotiated contribution agreement does not cover off or consider additional impact statement phase tasks such as multiple rounds of Information Requests issued to the proponent by the IAAC and the proponent's response; all of which require MNO review and response which may be in addition to the impact statement review. As part of the Agency expected activities, there must be a re-evaluation of provided funding should the project require multiple rounds of Information Requests prior to a completeness decision in order to ensure adequate capacity for the MNO.

Recommended Action: add to the already present bullet '*Agency administers participant funding throughout the impact assessment process, and re-evaluates allocated funding where applicable.*'

It is our hope that the information and recommended actions within this letter be discussed between the MNO and the IAAC. It is the expectation that through these discussions the IEPP can be adjusted to be more reflective of the *Impact Assessment Act*, 2019, the Practitioner's Guide, and the MNO's priorities for involvement on the Crawford Nickel Project.