



ATTAWAPISKAT FIRST NATION

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SENT BY EMAIL

Caitlin Cafaro
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Impact Assessment Agency of Canada
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Dear Ms. Cafaro,

Re: Draft Tailored Impact Statement Guidelines and Draft Indigenous Engagement and Partnership Plan for the Northern Road Link Project

As per the Impact Assessment Agency of Canada's request, Attawapiskat First Nation is providing preliminary comments on the Northern Road Link - Draft Tailored Impact Statement Guidelines (TISG) and the Draft Indigenous Engagement and Partnership Plan.

Please note that submission of these comments does not signal the consent of Attawapiskat First Nation for any developments within the area commonly known as the "Ring of Fire," including developments related to transport and resource exploitation within that area.

The following is a summary of our concerns.

1. Your regulatory process for approving the Northern Road Link project does not meet the Crown's duty to consult Attawapiskat First Nation on the impact of the Northern Road Link to our inherent and Treaty rights.

Attawapiskat is being presented with a project that will open our homeland to industrial development. We believe that if this road were to be built, it would transform our lands, waters, and way of life forever.

Under your current regulatory process, we are presented with a series of technical documents, on which we are expected to provide comments by a certain deadline. Given the technical nature of the documents, the comments we provide are prepared by our advisors.

This process is not sufficient to gain our consent to the project. We have not had the opportunity to sit down with the Crown, our Treaty partner, to discuss in a complete and thorough manner what our people want for the future of their territory. We remind you that as Treaty partners, we allowed settlers to live on our lands, but we did not give up the right to manage the land and control development in our territory.

Our people have not had the opportunity to speak, in their own language and in their own way, about what their experience and lives lead them to believe the impact of an all-season road to the Ring of Fire would be. Canada and Ontario need to come to Attawapiskat to hear about our goals and aspirations and to understand what is really going on in our communities. These discussions cannot be had within the narrow regulatory process and time frames under which you are operating.

It is also important to understand that Attawapiskat is experiencing multiple, overlapping crises, rooted in the colonial relationship and the lack of proper housing, infrastructure, and services, and the forced poverty we are enduring. Our people are suffering. Our current reality includes an opioid overdose crisis, severely overcrowded living conditions, and a mental health and child suicide crisis. Leadership's time and attention is focused on addressing the immediate needs of the community. How can we be meaningfully consulted on, and consent, to a project that will transform the lives of future generations, when our community is in crisis and our immediate needs are not being met?

2. The plan for cumulative effects analysis in the draft TISG for the Northern Road Link impact assessment is inadequate and will not support meaningful consultation. It relies on the Agency's general policy guidance on cumulative effects analysis, which has a restrictive approach to considering future development. We require a cumulative effects assessment that looks at induced development across our territory. The definition of "reasonably foreseeable" projects needs to be expanded within a revised TISG.

We are concerned about the proposed road and its immediate impacts on wildlife habitat and our waters. But we are equally, if not more, concerned about everything that the proposed road would bring in its wake.

Our overriding concern is the fact that the Northern Road Link is not just any project. It is a frontier development. What we mean by this is that the Northern Road Link will open the door to regional development on a massive scale – a door that, once opened, can never be closed again.

Most of our territory has so far been untouched by industrial and commercial development, as well as non-Native settlement. It has remained relatively untouched because of the lack of road access.

The Northern Road Link is the critical piece of road that will link the Ring of Fire to the Marten Falls Community Access Road, which connects to the provincial highway network. We know that an access road will very likely lead to the development of secondary road networks, hydroelectric projects, and transmission lines, and the expansion of mining and other industries beyond the Ring of Fire and into the James Bay lowlands.

To give an example of what we mean by this, Ontario Power Generation is already eyeing hydroelectric potential on the Kattawapiskak River and has publicly stated its interest in exploring these opportunities if an access road is built.¹ This is just the tip of the iceberg of regional development that would be facilitated by an access road. Mining claims are expanding into the James Bay lowlands, as the hype around the proposed access road grows. The eventual projects are not yet likely, proposed, or even remotely "reasonably foreseeable," as the investors speculate and wait for an access road to be built.

As you know, "reasonably foreseeable" has a very specific definition within the federal impact assessment policy guidance. Under the updated, May 2023, Policy Framework for Assessing Cumulative Effects under the Impact Assessment Act, "reasonably foreseeable" is defined as: "the physical activity is expected to proceed, e.g. the proponent has publicly disclosed its intention to seek the necessary impact assessment

¹ Ontario Power Generation. 2022. Made in Ontario Northern Hydro-Electric Opportunities. 66 pp. p. 29.

or other authorizations required to proceed.”² To our knowledge, thus far only the proposed all-season road and the Eagle's Nest mine fit this definition.

The construction of an access road will lead to the construction of secondary roads and the expansion of all types of industry. In Eeyou Istchee on the other side of James Bay, for example, for every 1km of road developed for the primary purpose (access to hydroelectric developments), between 5 and 6km of secondary roads were built for forestry development which spurred a large expansion of the outfitting industry and mineral exploration activity – and this in a time frame of less than 50 years.³

It is therefore only reasonable that in the case of a frontier development, the definition of “reasonably foreseeable” be widened to include future induced development.

Consider, for example, the 2004 Mackenzie Valley Environmental Review Board’s *Environmental Impact Assessment Guidelines*, which state:

The Review Board will accept less detail and more predictive uncertainty the further in the future or the less certain the reasonably foreseeable development is. For example, a developer proposing a pipeline through a previously inaccessible area with little existing development should consider reasonably foreseeable future developments. That developer could determine what is reasonably foreseeable by looking at other comparable developments in areas with similar characteristics. If looking at similar cases indicated that a certain type and intensity of induced development routinely followed, then these types of induced developments should be considered reasonably foreseeable for the proposed development, even though no applications for them have been submitted. Relevant uncertainties (such as key differences between the proposed development setting and those of the case studies) should be made explicit [underlining added].⁴

As explained above, we are concerned about the cumulative effect of a development that would open our territory to development. Such a development would have irreversible impacts on future generations of our Kattawapiskak people. The time frame and geographic scope of that concern must match the time frame and geographic scope considered in the cumulative effects analysis. It is therefore not reasonable to restrict the definition of “reasonably foreseeable” to projects that are expected to proceed or where the proponent has announced their intention to seek the necessary authorizations.

As Canada acknowledges, reconciliation and respect for Indigenous self-determination includes the government’s responsibility to make “changes in the operating practices and processes of the federal government” and to make “changes in perspectives and actions.”⁵

A change in the working definition of what is “reasonably foreseeable” is needed. Please revise the draft TISG to broaden the definition of “reasonably foreseeable,” consistent with what we have outlined above. If this is not done, and we are left with the generic definition of “reasonably foreseeable” available on the

² <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/policy-framework-assessing-cumulative-effects-under-impact-assessment-act.html>

³ Cree Nation Government. 2011. *Cree Vision of Plan Nord*. p. 34.

⁴ Mackenzie Valley Review Board, *Environmental Impact Assessment Guidelines*, 2004. p. 81-82. Available at: https://reviewboard.ca/process_information/guidance_documentation/guidelines

⁵ <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

IAAC website, then the cumulative effects analysis for this project will not contribute to meaningful consultation and will not uphold the honour of the Crown.

3. Attawapiskat First Nation is interested in doing its own impacts to rights assessment. This is an option under IAAC's policy guidance, but we require the necessary support to do so. So far, we have not received the preliminary information and analyses that would enable us to assess impacts to rights.

Your Agency's policy guidance, Assessment of Potential Impacts on the Rights of Indigenous Peoples, states the following:

If an Indigenous community is interested in doing so, they should lead the assessment of impacts on their rights as they are best placed to understand how their rights and their relationship with the landscape may be impacted by the project. In such cases, the Agency would work with the Indigenous community on the assessment while coordinating the process with other federal authorities and the proponent, as needed.

Other federal authorities have an important role to play in contributing technical information or knowledge within their mandate to inform the assessment of potential impacts flowing from the project. Other federal departments should be involved in the assessment process as early as possible, in order to contribute to the early identification of issues and to provide advice within their mandate on the assessment approach, the evaluation of potential impacts, and the development of potential mitigation and/or accommodation measures.⁶

And, as stated in Section 10.4.2 (p. 139) of the Northern Road Link draft TISG, "impacts on rights may be assessed using a methodology identified by Indigenous communities, including community-led assessments, and agreed upon between the Indigenous community and the Agency."

We have received numerous requests from the all-season road proponents to provide them with land use and occupancy information and other Indigenous knowledge that would feed into the proponent's impact statement. We have been very clear in saying that we will not provide this type of information to the proponent, and that Attawapiskat First Nation will undertake its own impacts to rights assessment.

However, in order to be able to undertake our own impacts to rights assessment, we require the Agency's assistance:

First, we request that you follow up with the proponent of the Northern Road Link project and ask them to provide us with all of the baseline data they are collecting, including caribou data, and that they provide us with draft chapters of the impact statement as they become available. Despite repeated requests (under the provincial EA process for the Northern Road Link), the proponent has thus far been completely unwilling to share with us baseline data or draft chapters.

We appreciate that the TISG for the Northern Road Link contains much stronger language than previous TISGs about the responsibility of the proponent to "share with Indigenous communities project information frequently, transparently and at the earliest opportunity, including information about methodologies proposed or followed and/or collected baseline data when requested by a potentially

⁶ <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-assessment-potential-impacts-rights-indigenous-peoples.html>

impacted Indigenous community” (section 6, p. 26). The Agency must ensure that the proponent follows this direction.

Second, we request that Environment Canada become involved now in contributing their technical opinion on impacts of the Northern Road Link to species at risk. Note that this level of involvement of the federal authorities is specifically addressed in your own policy guidance, quoted above. It is important that this input be provided now, and not later once the proponent has submitted their impact statement.

Third, we require a thorough and complete cumulative effects analysis that includes scenarios for induced industrial and commercial development and settlement resulting from all-season road access, and the future impact of this induced development on our wildlife, waters, and lands. This analysis must be done as part of the current individual project assessment because we do not yet know whether or under what Terms of Reference the Regional Assessment will proceed, and whether it will be completed by the time Canada needs to decide on the Northern Road Link project.

4. The assessment scheme presented in Section 7.8 of the draft TISG, “Extent to Which Effects are Significant” is inappropriate for assessing the severity of impacts to our waters, lands, and wildlife species including species at risk.

The scheme for organizing information on the scope, severity, and irreversibility of impacts to various “valued components” is presented in Section 7.8. The goal appears to be to create “rules of thumb” for assessing impacts. Ratings for the “scope” and “severity” of impact are multiplied together to create a rating for “magnitude” of impact. The “magnitude” of impact is then multiplied by the “irreversibility” to create a score for “degree of effect.”

The various possible combinations, combining scope and severity, and magnitude and irreversibility, are presented in decision tables in Section 7.8 (p. 54). These decision tables are fairly standard threat assessment tools used in various contexts, such as for assessing flood risk, where Medium on one dimension plus High on another dimension equals an overall rating of Medium. There is nothing that is validated empirically in these decision tables. They are just a way of organizing expert knowledge to create rules of thumb.

This is where we run into problems – conservation problems can’t be solved by “rules of thumb”. Context matters (context is everything) and we need to see in each case how a threat intersects with other threats (threats don’t operate in isolation), the details and history of the local context, and how the “scope” and “severity” of a threat might combine in ways that don’t fit the “rule of thumb”. For example, you can have a high severity threat over a small area, but because of location, this might generate a large overall impact. In the decision table, the result of “extreme severity” and “small scope” automatically results in “low magnitude” of impact. There are many real-world examples where this is not the case. This goes to show that “scope” and “severity” are related; they are not independent variables, but operate together and it is not always helpful, and sometimes very misleading, to try to pull them apart.

We are also alarmed to see that the draft TISG provides generic thresholds for the various dimensions of impact. In the case of “scope of impact,” for example, the following definitions are used:

- o pervasive: the effect is likely to be pervasive in its scope, affecting the valued component across all or most (71-100%) of its occurrence or population within the study areas;

o large: the effect is likely to be widespread in its scope, affecting the valued component across much (31-70%) of its occurrence or population within the study areas;

o restricted: the effect is likely to be restricted in its scope, affecting the valued component across some (11-30%) of its occurrence or population within the study areas; and

o small: the effect is likely to be very narrow in its scope, affecting the valued component across a small proportion (1-10%) of its occurrence or population within the study areas.

How is this sort of generic guidance useful, particularly in the case of species at risk? What is the basis for concluding, for example, that the scope of impact is “restricted” if up to 30% of the occurrence or population of a “valued component” is affected (substitute, for example, boreal caribou, wolverine, or sturgeon here) is affected?

On p. 52 of the draft TISG, it is stated that these criteria will be applied to Sections 8.5, 8.6, 8.9, 8.10, 8.11 – meaning: Riparian and Wetland Environments; Vegetation; Birds; Terrestrial Wildlife and Habitat; and Species at Risk. It is troubling to see that IAAC believes that assessment of the significance of effects can be done using simplistic decision tables that bypass any real understanding of ecological processes and local conditions.

The entire approach in Section 7.8 needs to be scrapped and re-written. Impact analysis must be guided by the advice of trained ecologists and conservation biologists, as well as the expertise of Indigenous peoples who know the land and the significance of effects better than anyone.

Regarding our above-stated concerns, please respond to me, and those copied here, as soon as possible.

Sincerely,

<Original signed by>

Chief Sylvia Koostachin-Metatawabin
Attawapiskat First Nation

cc.

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