



Good afternoon,

You will find below comments from the Nunatsiavut Government regarding both the draft Indigenous engagement and Partnership plan and the draft Joint impact statement guidelines. Thank you for the opportunity to participate.

### **Comments on the draft Indigenous Engagement and Partnership Plan**

As previously discussed, the Nunatsiavut Government would like to continue holding regular meetings with the regulators going forward.

Any potential for collaboration on the review of this project will be welcome, including working with the IAAC to establish a collaborative approach on assessing impacts on Labrador Inuit, up to potentially cowriting sections of reports if possible, and to develop consultation plans for the communities.

Consultations by authorities in the region should be centered around in-person meetings. As has been expressed by community members, the presence of actual decision makers in the communities during consultations would be a major element in building trust in the IA process.

Considering the seriousness of the project's potential impacts on the environment and indigenous rights and way of life, as well as the significant level of public concern in the region, the Nunatsiavut Government reiterates that the project would benefit from the assessment being conducted by a review panel.

### **Comments on the draft Joint Impact Statement Guidelines**

The current draft raises a few significant comments, but it is important to note that the rationale for a number of these comments is similar. While the EA process is barely started, the proponent has already broken a crucial engagement it had made to Nunatsiavut Inuit, to include both road designs until all studies would be completed. At this point, there is little reason to believe the proponent is acting in good faith in its work towards the Impact Assessment of its project, and the integrity of the process going forward should rely on holding the proponent to very clear and strict standards.

The fact that a number of elements proposed by the Nunatsiavut Government during discussions on tripartite joint guidelines talks have been included in this version is noted, and definitely appreciated.

#### **Hypothetical/uncertain requirements**

While these types of requirements (using for example language such as "if possible" or "if relevant") are ultimately unavoidable in any impact assessment, it is a specific concern in the case of this review. In many cases, the use of this language would cause reliance on the proponent to identify needs and make the choice to include elements that might be more expensive or not in their best interest to discuss. The Nunatsiavut Government has no trust in the proponent to make these types of determinations on its own.

NG would recommend reworking the language to specify expectations throughout the JISGs, unless it is absolutely impossible to do so.

An example of good wording for these types of requirements, already present in the JISGs, would be the requirement for vibration and sound impact assessment (p68):

“Where there is public or Indigenous group concern associated with an increase in sound levels during construction and operation, provide a vibration and sound impact assessment, including an overview of the concerns”.

This wording unambiguously identifies what would trigger the requirements and places the role of identifying the needs on the public and indigenous groups voicing concerns, rather than the proponent.

While there are numerous examples of this hypothetical language in the JISGs that NG believes should be reworded, one particular concern is where it comes to the requirement to distinctly discuss baseline, impacts, and mitigation for each Indigenous group. For example, the mention on p12 to include information “specific to the individual Indigenous groups involved (to the extent possible and if relevant)”, or in terms of economic impacts (p118) the requirement to indicate the hiring targets and number of jobs potentially created for each Indigenous groups “to the extent possible”.

There should be an overarching unambiguous requirement for the proponent to assess baseline conditions, impacts of the projects, and impacts of proposed mitigation/enhancement measures on each Indigenous group distinctly, unless a different approach has been proposed by or approved in discussion with particular groups. There could be wording indicating the need for the proponent to justify itself if it turns out it was unable to do so for specific elements, but it should be clear that this would be a flaw in the EIS.

Another example of where it would be important to modify the wording is the potential hunter/harvester roundtable, that is only included in this draft “if relevant”. The determination of this relevance should unambiguously not be let to the proponent. Similar wording to the requirement of a sound impact assessment (discussed above) should be chosen, potentially requiring the establishment of such a roundtable in response to a request from any of the identified indigenous groups.

### **Sources/references**

The requirements for the proponent to include clear references, sources or supporting data to support its statement and choices are quite uneven throughout the JISGs. This is (very unfortunately) common in impact assessments, but is especially problematic in this case, again due to the limited trust that should be afforded to the proponent.

The section on Baseline methodology (7.1) includes relatively extensive requirements for the proponent to disclose sources, data and include a bibliography, but it does not seem to include clear requirements for the proponent to justify (with references) the methodological choices themselves.

The section on the selection of mitigation measures includes reference requirements that are mostly in line with what had been suggested by the Nunatsiavut Government, but they are made potentially inoperative by the use of “where possible”:

“The Impact Statement, where possible, should provide relevant information to demonstrate anticipated mitigation effectiveness, including technical information from analogous projects and projects in the region, peer-reviewed studies, and local Indigenous Knowledge and community knowledge. Where relevant, the proponent should provide relevant information to demonstrate the efficiency of the combination of selected mitigation measures. Mitigation failure should be discussed with respect to risk and severity of consequence.”

Expectations should be clearer. The use of “where possible” makes it seem like it is likely that the proponent would use measures where it is not possible to provide any references on effectiveness. This should only truly be the case in the very rare situation where the proponent is using innovative measures never before tested, or where common measures have never been properly assessed. It should be expressly required of the proponent to justify if that is the situation, if only because, in the latter case, it would identify a failure of the whole impact assessment process to review its effectiveness through follow-up programs.

The specific mitigation subsections regarding each category of impacts also have very uneven requirements in terms of referencing, including some cases where, in our understanding, it would directly contradict the general requirements.

This is most obviously the case in the section on the Effects to the atmospheric, acoustic, and visual environment (p68), where it is required to “describe all methods and practices to be deployed to reduce and control air contaminants emissions. If the best available technologies are not included in the project design, the proponent should provide a rationale for the technologies selected;”

This seems to leave the proponent open to not provide rationale or references if it deems it is using “best available technologies”, without requiring the proponent to clearly state the sources and references it used to determine what the “best available technologies” were.

Most importantly, two crucial aspects of the JISGs seem to contain little to no requirements for the proponent to provide references, data, or sources to support its statements, conclusions, or choices: the identification of potential impacts in general, as well as the assessment of cumulative effects. Ultimately, an EIS should not contain any unsubstantiated statement, especially if there are reasons to distrust the willingness of a proponent to respect its engagements.

The EIS should include a clear umbrella requirement to justify any statement, conclusion or choice made (including methodology, mitigation measures, effectiveness, identification of impacts, etc.) with a clear reference. This could be sources from the scientific literature (ideally), the grey literature (such as non-peer reviewed reports from other projects’ follow-up or monitoring program), reference to data or, in the very unlikely case where a statement or a proposed measure is entirely novel, a detailed rationale/justification.

### **Best practices**

This is closely related to the comment on references, but in addition to the one mentioned above for Effects to the atmospheric, acoustic, and visual environment (p68), there are a number of other mentions in the JISGs of “best” practices or technologies without mention of how these can be identified or who should determine what is “best”, for example p16 (best management practices for the storage of waste dangerous goods) or p52 (best available technology and best environmental practice). While it is not necessarily inaccurate, NG would recommend saving this type of wording for situations where there exists an established authority to list and determine “best practices” (in which case it should be identified in the JISGs), and use language around referenced detailed justifications otherwise.

### **Effect of accidents and spills**

One of the very significant concerns of Nunatsiavut Inuit is the potential impacts of the project on the environment in the event of accidents and spills, notably road or marine accidents (from cargo or vehicle fuel) or accidents during cargo transfer at the dock or to/from the barges. While there is a specific section on spills and accidents, the question is unevenly included in the requirements of other sections of the JISGs. For example, sections on Vegetation riparian and wetland environments, the marine environment, and Birds and their habitat specifically single out spills and/or accidents, but not the sections on Groundwater and surface water, or Terrestrial wildlife and wildlife habitat, or Fish and fish habitat, for which it is still a significant concern.

The assessment of impacts of the project on these VCs relies heavily on the assessment of risks and impacts of spills, and it would be beneficial if this was specifically included in the requirements, not only in a separate section.

### **Cumulative effects of climate change**

The Nunatsiavut Government has already commented that the impacts of the projects should not just be evaluated by themselves, but also for their potential cumulative effect with climate change. Climate change is having significant environmental impacts in the region, and it will get worse. Impacts of the project on

ecosystem components that are impacted by climate change (notably the marine environment, Arctic char, caribou) cannot be properly assessed without this context.

A number of elements in the JISGs seem to be addressing this issue, but insufficiently. The section on cumulative effects mentions they need to be assessed “in consideration of climate change” p53, which is relatively vague and doesn’t specify if/how climate change could be considered a source of cumulative effect in itself.

The section on effect assessment methodology mentions accounting for potential changes in baseline conditions due to climate change (p49), but the phrasing doesn’t make it a requirement (“in some cases, it may be appropriate”) and only mentions climate change as an example.

NG would recommend including in the JISGs more specific requirements to assess interactions or additions of impacts from the project and climate change, either as a source of cumulative effects proper or as a requirement for each VCs.

### **Climate change and seasonality**

Climate change is significantly affecting most seasonal phenomenon in the region, with important implications for the planning of baseline studies, and for mitigation measures focused on avoiding migration or nesting periods, for example. Referring to established guidelines such as the Guidelines to reduce risk to migratory birds and to the General nesting periods for migratory birds (p97) is not a sufficient way to determine risks and plan mitigation in this context.

This is acknowledged in a way on p41 with the requirement to potentially conduct original surveys and research according to local knowledge “if the information available from government or other agencies is insufficient or no longer representative of current conditions”, but it is the position of NG that this is not a hypothetical situation, and standard information available should be considered by default insufficient and in need of confirmation.

Requirements to address this should be included in the JISGs, potentially in terms of fieldwork, targeted local consultations, or through the recommended hunter/harvester roundtable.

### **Follow-up Programs and Plans (section 15).**

In terms of communication, there should be more specific requirements to ensure results, reports and actual data from the Follow-up Programs and Plans are usable by authorities, indigenous groups and future proponents in their assessment of effects of similar projects, cumulative effects in the region, and effectiveness of mitigation measures.

### **Requirements for freshwater fish, marine fish and anadromous species.**

Some baseline requirements for Fish and fish habitat are only included for freshwater fish (p85-86)

When it comes to the requirements to provide baseline measurements of contaminants in fish, as well as to describe parameters and ecological processes relevant to predicted effects, saltwater and anadromous species (especially those present in Voisey’s bay) are important to Inuit and should not be excluded.

### **Unfinished sentence:**

P101, the last item of the list of requirements “Specifically for Eastern Migratory Caribou” ends with a “and” but does not continue. Is this leftover from a reorganization, or is there an additional requirement that was supposed to be listed afterward?