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Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

October 28, 2024

Thomas Joe
Director, Aboriginal Policy
Impact Assessment Agency of Canada
Place Bell Canada 160 Elgin Street, 22nd Floor
Ottawa, ON
K1A 0H3

Subject: Comments on Indigenous Co-Administration Agreements

Dear Mr. Joe,

The Kativik Environmental Advisory Committee (KEAC) is the official forum for responsible governments regarding the development of laws, regulations and policies concerning environmental and social protection in the territory governed by the James Bay and Northern Quebec Agreement (JBNQA) and north of the 55th parallel.

Applicability of the Impact Assessment Act in Nunavik

As established by section 23.5.27 of the JBNQA, one of the KEAC's mandates is to study and make recommendations on the environmental and social impact assessment and review mechanisms and processes that apply in Nunavik. As part of this mandate, the KEAC has on numerous occasions addressed the issue of the multiplication of impact assessment procedures in Nunavik, particularly regarding projects under federal jurisdiction.

In 2002, the KEAC sent the Federal Administrator a letter with recommendations concerning the application of the federal impact assessment procedure in Nunavik. The Committee emphasized that Section 23 of the JBNQA recognizes the right of the Inuit and Naskapi of Nunavik to an environmental and social protection regime, and that the JBNQA takes precedence over ordinary Acts of Parliament, including impact assessment legislation. In this letter, the KEAC reiterated the importance of Section 23.7.6 of the JBNQA, which specifically prohibits the implementation of a double federal procedure. The observations shared with the Federal Administrator in the 2002 letter are still valid:

- The KEAC is of the opinion that the Federal Administrator, the federal government, its Minister of the Environment and Climate Change and the Impact Assessment Agency of Canada must respect the terms and overriding nature of the JBNQA's impact assessment regime:
 - By giving full effect to the mechanisms and institutions of Section 23.

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- By ensuring that the Impact Assessment Act (IAA) clearly recognizes the paramountcy of Section 23 of the JBNQA.
- By negotiating with the responsible Inuit and Naskapi authorities and other JBNQA signatories, any changes to the impact assessment regime applicable in Nunavik.

In 2013, in the context of the Hopes Advance iron mine project, the KEAC contacted the Federal Administrator regarding the duplication of impact assessment procedures in this file. The mine project triggered the provincial process under Chapter 23 of the JBNQA as well as the review process under the Nunavik Inuit Land Claims Agreement (NILCA). However, the federal government's decision to conduct both the federal assessment procedure under Section 23 of the JBNQA and the Canadian Environmental Assessment Act procedure resulted in four separate impact assessment procedures, leading to a multiplication of communications and consultations, and causing confusion and concern in the community of Aupaluk. In its letter, the KEAC reiterated that the federal procedure set out in Chapter 23 takes precedence over federal law, and that it would be necessary for projects under federal jurisdiction in Nunavik to be analyzed by COFEX-North, as provided for in the JBNQA.

In 2019, the adoption of the IAA was an interesting opportunity to reflect on and propose concrete solutions to the multiplication of impact assessment processes in Nunavik. A working group on the IAA was formed by the KEAC, Makivvik and the Naskapi Nation of Kawawachikamach (NNK) to study the impact assessment processes found in the JBNQA, the Northeastern Quebec Agreement (NEQA), the NILCA and the new IAA. The objective was to generate the knowledge and tools needed to analyze the various implementation options proposed in the new IAA, and to select the most appropriate option(s) for its implementation in Nunavik and the Nunavik Marine Region. In November 2020, the working group submitted [a report](#) to the Impact Assessment Agency of Canada which provided a description of the three impact assessment processes under the JBNQA, NEQA and NILCA, as well as a historical overview of the interactions between conventional and federal processes and the issues associated with the multiplication of these processes in Nunavik.

After comparing treaty processes and conducting interviews with agencies responsible for environmental assessments to identify the potential implications of the IAA, the working group examined the various options available for adapting this process to the region. In its [April 2022 report](#) the working group identified the preferred implementation options for Nunavik. The preferred long-term option is non-application of the IAA in Nunavik, which would:

- Reduce the fatigue and confusion associated with consultations.
- Reduce uncertainty regarding the triggering of the federal procedure under Section 23.
- Better adapt impact assessment procedures to the specific context of Nunavik.
- Ensure regional representativeness at all stages of the procedure.

Co-administration agreements

The new tools proposed by regulatory initiatives under the IAA, notably co-administration agreements, are still being analyzed by our regional partners. These agreements could make it possible to better integrate the contributions of the Inuit and Naskapi in all stages of impact assessment and could strengthen their role in

decision-making concerning projects developed on their territory. Whether or not these agreements are deemed relevant to Nunavik, it will be imperative that their negotiations be carried out with the appropriate stakeholders.

The KEAC remains interested in all new tools and initiatives concerning impact assessments in Nunavik and wishes to be kept informed of any new developments on this subject.

Best regards,



André-Anne Gagnon
Chairperson, KEAC

cc.

Chief Louise Nattawappio and Council, Naskapi Nation of Kawawachikamach
Pita Aatami, President, Makivvik