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**Société Makivik**  
**Makivik Corporation**

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December 21<sup>st</sup>, 2016

**Expert Panel**  
**Environmental Assessment Review**  
[EAreview\\_participation@canada.ca](mailto:EAreview_participation@canada.ca)

*Submitted via email.*

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***REVIEW OF THE ENVIRONMENTAL ASSESSMENT PROCESSES ASSOCIATED WITH THE  
CANADIAN ENVIRONMENTAL ASSESSMENT ACT, 2012.***

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**1. Introduction**

This submission is made on behalf of the Inuit of Nunavik (“Nunavimmiut”), who have occupied and cared for their homeland for millennia. For clarity, Makivik Corporation (or, simply, “Makivik”), is the birthright organization established in 1975 to represent Nunavik Inuit ethnic rights pursuant to the James Bay and Northern Quebec Agreement (“JBNQA”)<sup>1</sup>, the first modern land claim agreement in Canada. Makivik, which in Inuktitut means “To Rise Up,” is a fitting name for an organization mandated to protect the Nunavik Inuit’s rights, interests and financial compensation provided by the aforementioned JBNQA. Makivik is also signatory to the Nunavik Inuit Land Claims Agreement (“NILCA”)<sup>2</sup>, which has been in effect since 2008. Through this agreement, Makivik, on behalf of Nunavimmiut, owns 80% of all the islands, including both surface and subsurface rights, in the Nunavik Marine Region, totalling some 5,300 sq. km. Certainty of rights is provided using a “non-assertion model” instead of the “surrender and extinguishment model” found in the JBNQA.

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<sup>1</sup> The James Bay and Northern Quebec Agreement, 1975, as amended. The JBNQA was brought into force by the James Bay and Northern Quebec Native Claims Settlement Act, S.C. 1976-77, c32.

<sup>2</sup> Nunavik Inuit Land Claims Agreement, An Agreement between Nunavik Inuit and Her Majesty the Queen in Right of Canada Concerning Nunavik Inuit Land Claims, 2006 (hereafter the “NILCA”). The NILCA was brought into force by the Nunavik Inuit Land Claims Agreement Act, S.C. 2008, c.2.

Although not-for-profit, Makivik Corporation's various mandates range from owning large subsidiary business enterprises and generating jobs, to social economic development, improving housing conditions, and protection of the Inuit language, culture and the natural environment. Makivik Corporation and its subsidiary companies collectively employ over 2000 people. In the case of Makivik alone there are 107 employees of which 68 are Inuit and 39 non Inuit. Its two airlines, operate a combined fleet of 43 aircraft providing passenger, charter and cargo services within Nunavik and the pan-Canadian Arctic.

Makivik is not the primary body mandated to make recommendations concerning changes to the environmental assessment regime under the JBNQA; that role belongs to the Kativik Environmental Advisory Committee (*see Section 3 - Environmental Protection in Nunavik*). We nonetheless consider that any changes to the legislation risk having a direct impacts on the rights of Nunavik Inuit. In light of this, we consider it Makivik's responsibility to provide input to the review of the Canadian Environmental Assessment Act, 2012 ("CEAA, 2012"), to ensure that these rights are protected. This is consistent with Makivik's role during previous reviews of the Act. In May 2012, as the previous government proceeded to adopt its C-38 omnibus budget legislation, Makivik provided notice to the Right Honourable Steven Harper, then Prime Minister of Canada, of its profound concerns with both the amendments to key environmental protection legislation and the process through which these changes were being made. Of particular concern was the utter lack of consultation with Nunavik Inuit.

By initiating the current process, the Minister of Environment and Climate Change ("the Minister") has ensured that the review of Canada's Environmental Assessment ("EA") processes allows significant opportunity for input from all Canadians. We trust that the Expert Panel members will give full consideration to Makivik's views as they prepare recommendations in fulfillment of the mandate that was conferred upon them by the Minister. However, Makivik considers it important to affirm that the Expert Panel process is not to be considered a substitute for the Crown's duty to consult Nunavik Inuit on this matter. Given the government's commitment to establish a new regime that incorporates modern safeguards and restores public confidence in Canada's EA process, legislative amendments are likely to ensue. Makivik fully expects that Inuit will be consulted at that time. This submission to the Expert Panel is therefore intended to ensure that the views of Nunavik Inuit are incorporated early in the development of new measures.

This submission provides a contextual overview of Nunavik Inuit and their homeland; noting the importance of implementing a rigorous and effective EA framework that ensures the preservation of these lands and the Inuit way of life, without unduly constraining economic development opportunities in our region. It also outlines the specific concerns that Nunavik Inuit have with the CEAA, 2012 and recommends possible pathways to resolve them. It is important that this submission be considered in the context of the broader review of Canada's overall environmental assessment tools (i.e. Fisheries Act review, National Energy Board Modernization and Navigation Protection Act) since these are closely interconnected and should not be considered entirely independent of one another. Makivik has made submissions to the Fisheries Act and Navigation Protection Act reviews and intends to do the same for the National Energy Board modernization process.

As a result of the Federal funding allocation to participate in the Review of Environmental Assessment Processes program, Makivik was able to host a one-day workshop about the CEEA review, held in Kuujuaq on October 25, 2016. The workshop brought together representatives from the Nunavik Landholding Corporations Association, the *Regional Nunavimmi Umajulirijiit Katujjiqatigiinninga*, the Nunavik Marine Region Wildlife Board, the Nunavik Marine Region Impact Review Board and the Nunavik Marine Region Planning Commission, as well as observers from the Kativik Environmental Advisory Committee, Environment and Climate Change Canada and the COFEX-North. While Makivik hopes to have captured all of the recommendations and concerns raised during the workshop within this submission, it is not our intention to represent the views of these organizations nor should this submission be interpreted as such.

## **2. Regional Context**

Nunavik is the homeland of Nunavik Inuit. It is located in northern Quebec and includes the surrounding offshore areas. The total surface area is 507,000 km<sup>2</sup> representing approximately one third of the land base in the province of Quebec. Over 12,000 Inuit, comprising more than 90% of the resident population, live in Nunavik's 14 communities. The largest community, with a population of 2,375 inhabitants, is Kuujuaq. It is the administrative centre of the region where Makivik has its principle corporate office and where the Kativik Regional Government equally has its head office.

Inuit entertain a close relationship with the natural environment and, through time, have developed a profound respect for the plants, wildlife and resources on which their survival has depended. Despite certain modernizations that have occurred in Nunavik, the sentiment of respect for the natural world remains a pillar of the Inuit culture. Nunavik Inuit rely heavily on the region's land and water bodies (be it Hudson Bay, Hudson Strait, Ungava Bay, the Atlantic Ocean or one of its thousands of lakes and rivers) for the harvesting of wildlife. "Country food" remains a major element in the Inuit diet and provides a healthy, affordable source of nutrients that cannot be matched by store-bought alternatives. For example, country foods are a particularly good source of vitamins, antioxidants, Omega-3 fatty acids, protein and other micronutrients, among others.

While the nutritional importance of fish and marine mammals is undeniable, an aspect that is often overlooked is their cultural importance to Inuit. The relationship between Inuit and wildlife has evolved over thousands of years and is reflected in many aspects of the Inuit society. The harvesting and use of traditional foods is essential to the transmission of *Inuit Qaujimagatuqangit*<sup>3</sup>. Accordingly, it is critical that Inuit continue to harvest fish and marine mammals in order for their traditional hunting, butchering and sharing practices<sup>4</sup> to be transferred to future generations. For many Inuit, harvesting traditional foods also instills a sense

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<sup>3</sup> *Inuit Qaujimagatuqangit*, or Inuit Traditional Knowledge. The term translates directly as "that which Inuit have always known to be true".

<sup>4</sup> Many components of the Inuktitut language are also associated with these practices and/or with the environment, life on the land, etc. and are subject to disappearing if these traditional practices are not maintained.

of pride, cultural identity and a sense of purpose. Given the socio-economic vulnerability of our communities, such benefits have never been more important and must be recognized in EA.

Despite their reliance on the land, Nunavik Inuit are no strangers to development and they have come a long way in the 40 years since the JBNQA was signed and play a central role in the development of their traditional territory. While most Inuit are open to development, they accept it on the condition that specific conditions and principles be adhered to. Foremost, they want to be part of this development from the onset, to control its pace and scope in their homeland and to improve the quality of life for future generations. They want to benefit socially and economically from it, while ensuring their traditional lifestyle, culture and reliance on the environment and wildlife resources are protected.

When Nunavik Inuit learned of the Quebec Government's Plan Nord project in 2010, they tabled Plan Nunavik<sup>5</sup>. Plan Nunavik was a sector by sector response to the Plan Nord; it described the Nunavik Inuit vision of development, told about life and current conditions in Nunavik communities and set out Inuit priorities for the next 25 years. Plan Nunavik also set pre-conditions for the development of the north. Given the tight timelines (since the Québec government was driving the political agenda and timetable) there was no time for community consultations during the preparation of Plan Nunavik. A change in government in 2012 gave Nunavik Inuit an opportunity to broaden regional discussion on Plan Nunavik. Consequently, Makivik along with other regional partners, undertook a two-year public consultation with all Nunavik Inuit communities to build upon the work that had been initiated under Plan Nunavik. This led to publication of the Parnasimautik Report<sup>6</sup>, which together with the Plan Nunavik lays out a detailed portrait of Nunavik as it currently stands along with the Inuit vision for future development (including views on areas such as housing, education, health, the environment, non-renewable resource development, etc.). Although these documents should be consulted in full to do justice to the significant effort and thought that went into their development, for Nunavik Inuit the main the principles of development include the following key points:

- Ensuring Nunavimmiut-controlled development of Nunavik's natural resources
- Respecting the legal commitments and rights provided for in agreements such as the JBNQA and the NILCA.
- Protecting Inuit culture and their lands.
- Securing Educational, training and employment opportunities for their youth.
- Enhancing social programs and community infrastructure.

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<sup>5</sup> Plan Nunavik. Published in 2010 for the Kativik Regional Government and Makivik Corporation.

<sup>6</sup> Parnasimautik consultation report on the consultations carried out with Nunavik Inuit in 2013. Published November 14<sup>th</sup> 2014 for Makivik Corporation, the Kativik Regional Government, the Nunavik Regional Board of Health and Social Services, the Kativik School Board, the Nunavik Landholding Corporations Association, the Avataq Cultural Institute and the Saputiit Youth Association of Nunavik.

### 3. Environmental Protection in Nunavik

Nunavik Inuit are fortunate (compared with other Indigenous peoples in Canada) to have environmental and social protection regimes built into their Land Claims Agreements. The James Bay and Northern Quebec Agreement was signed amidst the construction of one of Canada's most significant hydroelectric development projects (the La Grande complex). As a result of concerns stemming from the La Grande project, the need for a strong framework to guide future development was evident. For the Inuit and Cree parties, it was also clear that their knowledge, values and concerns would not be well represented in a government-led process and that they needed to play a significant role in determining how their lands would be used. Consistent with this, Section 23 of the JBNQA provides for the establishment of an environmental and social protection regime for the territory of Nunavik (i.e. Québec, north of the 55<sup>th</sup> parallel)<sup>7</sup>. The regime incorporates a complete process for assessing and reviewing the environmental and social impacts of development projects. There remains some concern about the true level of community engagement within the JBNQA processes (largely due to the lack of any prescriptive engagement mechanisms within the JBNQA<sup>8</sup>). However, it nonetheless goes farther than CEEA, 2012 in that it accords special status to the Inuit and allows them a greater involvement than would be the case for other members of the public, including the right to seats on the bodies created to ensure the implementation of this regime; that is:

- the Kativik Environmental Quality Commission (“KEQC”)<sup>9</sup> which is responsible to oversee environmental and social assessment processes related to matters of provincial jurisdiction;
- the Environmental and Social Impact Review Panel (“COFEX-N”)<sup>10</sup> and its “Screening Committee” which are responsible for review of projects subject to federal jurisdiction<sup>11</sup>;
- the Kativik Environmental Advisory Committee (“KEAC”)<sup>12</sup> which acts as a consultative body to responsible governments and is the preferential and official forum for responsible governments in the region concerning the formulation of laws and regulations relating to the Environmental and Social Protection Regime contemplated within the JBNQA.

The KEAC is mandated to make recommendations regarding government legislation, regulations and other applicable measures, and particularly with regards to how these might directly affect

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<sup>7</sup> JBNQA, par. 23.2.1: The environmental and social protection regime applicable to the region shall be established by and in accordance with the provisions of this Section.

<sup>8</sup> KEAC position paper on strengthening the environmental and social impact assessment and review procedure in Nunavik – April 2009. Available at: [http://keac-ccek.ca/medias/2016/03/avis-final-en\\_20091109162112.pdf](http://keac-ccek.ca/medias/2016/03/avis-final-en_20091109162112.pdf)

<sup>9</sup> JBNQA, ss.23.3: establishes the Kativik Environmental Quality Commission as the body responsible for assessment of projects within provincial jurisdiction

<sup>10</sup> JBNQA, ss.23.4: establishes the Environmental and Social Impact Review Panel as the body responsible for review of development projects subject to federal jurisdiction.

<sup>11</sup> JBNQA, par. 23.4.2: establishes the “Screening Committee” to act as an advisory body, under administrative supervision of the Environmental and Social Impact Review Panel, responsible for screening all development projects potentially subject to review

<sup>12</sup> JBNQA, ss. 23.5: the Kativik Environmental Advisory Committee, is a multipartite consultative body responsible for the review / recommendation of legislation, policies, regulations, etc. related to the Environmental and Social Impact Assessment regimes.

the rights of Nunavik Inuit. As such, it is important that input from the KEAC form an integral part of any recommendations being put forward to the Minister of Environment and Climate Change based on the current process. This is especially true given that their input does not appear to have been retained when the CEAA was last reviewed. Specifically, the KEAC has produced two briefs that provide a comprehensive assessment of the applicability of the federal regime within the JBNQA territory and of issues related to the duplicative nature of certain EA processes. Makivik agrees with the assessment and recommendations put forward by the KEAC, but for the purpose of expediency, will avoid reiterating the points made previously by the KEAC in any detail. We nonetheless strongly encourage members of the panel to consult these documents<sup>13,14</sup>.

In addition to the JBNQA's environmental and social impact assessment regime, the Nunavik Inuit Land Claims Agreement provides for a comprehensive system to oversee land use planning and development impact assessment. Although the processes established under the NILCA are meant to play a similar role to those created under the JBNQA, the two are fundamentally different. The bodies created under the JBNQA make recommendations to the Administrator and are more akin to consultative bodies than to decision-making bodies. On the other hand, the Institutions of Public Government created pursuant to the NILCA (*see below*) are in fact decision-making bodies, with a much more well-defined mandate and operating framework (decisions of the NMRIRB and NMRPC are also subject to Ministerial approval, but the process is more formal and is not simply a consultation as occurs under JBNQA). In the NILCA:

- Article 6 deals specifically with Land Use Planning and establishes the Nunavik Marine Region Planning Commission ("NMRPC")<sup>15</sup> to develop planning policies, priorities and objectives regarding the conservation, development, management and use of land in the NMR as well as to prepare and implement land use plans which guide and direct resource use and development in the NMR.
- Article 7, creates the Nunavik Marine Region Impact Review Board ("NMRIRB")<sup>16</sup> as the body responsible for project screening, scoping, environmental and socio-economic impact assessment as well as project monitoring.

The NMRPC and NMRIRB are, among others, intended to protect and promote the existing and future well-being of those communities resident in, or using the Nunavik Marine Region, while protecting the ecosystemic integrity of the NMR and taking into consideration the interests of all Canadians. The NILCA regime therefore begins with a land use plan that recognizes that people are a functional part of the environment and that, consequently, reflects the social, cultural and economic priorities of the human communities affected by it. All decisions of the Boards give full consideration to both environmental and socio-economic/cultural parameters. The active and

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<sup>13</sup> Opinion and recommendations of the KEAC regarding double environmental assessment of Nunavik projects by the federal government submitted to the Federal Administrator - March 21, 2002. Available at: [http://keac-ccek.ca/medias/2016/03/LCEE-Avis-recommandations-03-2002\\_en.pdf](http://keac-ccek.ca/medias/2016/03/LCEE-Avis-recommandations-03-2002_en.pdf)

<sup>14</sup> KEAC position paper on the review of the Canadian Environmental Assessment Act - February 2, 2011. Available at: <http://keac-ccek.ca/medias/2016/03/KEAC-position-paper-1BBF66.pdf>

<sup>15</sup> NILCA, Art. 6: Land Use Planning, led to creation of the Nunavik Marine Region Planning Commission.

<sup>16</sup> NILCA, Art. 7: Development Impact, led to creation of the Nunavik Marine Region Impact Review Board.

informed participation of Nunavik Inuit is encouraged at all steps of the NILCA process including as members of the Boards. The NMRPC and NMRIRB may also hold public hearings as part of their deliberation process and are expected to make significant efforts to hear from Nunavik Inuit before rendering decisions related to land use planning or EA.

#### **4. The role of Federal EA in Nunavik**

The JBNQA and the NILCA are protected by section 35 of the *Constitution Act, 1982* and are paramount to other federal and provincial laws. Specifically, s.23.2.3 of the JBNQA states that “All applicable federal and provincial laws of general application respecting environmental and social protection shall apply in the Region to the extent that they are not inconsistent with the provisions of the Agreement and in particular of this Section”. Similarly, s.2.11 of the NILCA indicates that “Where there is any inconsistency or conflict between any federal, territorial and local government laws, and this Agreement, this Agreement shall prevail to the extent of the inconsistency or conflict”. For example, this means that the timelines provided for by CEAA and the scope of assessments under CEAA must not prejudice the processes defined by the land claims agreements that have been painstakingly negotiated by Nunavik Inuit.

This question has been debated by the courts on a number of occasions, the results of which are well discussed within the 2002 and 2011 KEAC reports. In short, it was determined by the Supreme Court of Canada<sup>17</sup> that the CEAA is applicable within the JBNQA territory, but subsequent to the JBNQA process which is viewed as being internal to the territory (i.e. there can be multiple EA processes for a single project).

There have been no formal challenges about the paramountcy of the NILCA processes over CEAA, though events during the review of the Oceanic Iron Ore Corp’s *Hopes Advance* project lead to some conflict, due to the expectation that the NMRIRB’s timelines would need to reflect those required of the Federal Administrator under CEAA. The issue was never pursued, but there was concern that the CEAA timelines were too hasty and did not allow the NMRIRB process to unfold effectively. One notable difference between the NILCA regime and the JBNQA system is an explicit requirement, when a project is submitted to review by a federal environmental assessment panel, for the panel to consider ecosystemic and socio-economic impacts<sup>18</sup> and for at least one quarter of the panel members to be appointed from a list provided by a Makivik Designated Organization (“MDO”)<sup>19</sup>. Because Makivik generally is the MDO (and since MDOs also represent Inuit), the NILCA therefore provides for Inuit involvement in the federal review process.

Nunavik is one of the most jurisdictionally complex regions of Canada. This is in part due to the jurisdictional boundaries of Quebec and Nunavut (i.e. the Nunavik mainland and offshore islands of the Nunavik Marine Region, respectively), but also because of several overlap agreements signed with Indigenous groups in neighbouring regions (e.g. Nunavut Inuit, the Crees of Eeyou Istchee, etc.). As such, most development projects in Nunavik will include at least some trans-boundary elements and will therefore trigger the federal process. Consequently, it is particularly

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<sup>17</sup> Quebec (A. G.) v. Moses, [2010] 1 S.C.R. 557.

<sup>18</sup> NILCA, s.7.4.7 (a)

<sup>19</sup> NILCA, s.7.6.2

important for our region that the Expert Panel weigh-in with regards to harmonizing the CEAA to avoid duplicating the processes defined under NILCA and JBNQA.

CEAA, 2012 included mechanisms which could have allowed for substitution of the federal process with those included under the JBNQA and NILCA. These were never implemented in Nunavik. In light of that, it is imperative that clear guidelines with regards to the conduct of EA in areas where mechanisms for such have been negotiated within Land Claims Agreements (or modern treaties, self-government agreements, etc.) be included within Canada's next EA framework. Specifically, the CEAA should expressly defer matters to the bodies defined under Section 23 of the JBNQA and Articles 6&7 of the NILCA, as appropriate. An additional federal layer of EA should not apply in Nunavik unless it is absolutely necessary to address issues that cannot be dealt with by the JBNQA and NILCA bodies (e.g. projects of a trans-boundary nature). When the trans-boundary issue stems directly from the jurisdictional issues between the NILCA and JBNQA, the CEAA should provide for a framework that permits harmonization of the JBNQA and NILCA processes (without prejudicing either of them) rather than defaulting to a federal review panel. In the event that a federal review panel is nonetheless appointed to conduct an EA in Nunavik, then it should adhere at minimum to the process defined under the NILCA. In the broader review of Canada's environmental assessment regime, the same must hold true for assessments conducted by the National Energy Board ("NEB") or the Canadian Nuclear Safety Commission ("CNSC"). If Canada is to respect its engagement to the countries Indigenous Peoples, it must do so consistently.

Similarly, the special status of Nunavik Inuit during any decision-making process that affects their traditional territories must be recognized explicitly within Federal legislation. Language similar to that contemplated under the JBNQA and/or the NILCA should be integrated within the CEAA to preclude against instances where a federal assessment may be conducted, but without the same obligations to involve Inuit. In fact, all aspects of the CEAA should be reviewed thoroughly against the JBNQA and NILCA to ensure that they are consistent. This includes the list of projects automatically subjected/exempted from screenings, the requirement to recognize the oral traditions of Nunavik Inuit, the need for communication and consultation methods that are locally relevant, etc.

The importance of creating a harmonious framework for which EA can occur in Nunavik is essential to the success and efficiency of this practice. The duplication (or multiplication, as the case may be) of EA processes is a burden for all parties involved. For the federal government and the land claims bodies, it requires significant effort to attempt coordination and to avoid unduly delaying the screening/review process. For the proponent, it means uncertainty. Uncertainty with regards to the process, with regards to the timelines that will be imposed on them, with regards to mitigation measures that are expected from them, etc. For the public, it usually means confusion.

These formal decision-making and assessment processes are inherently abstract for many Nunavik Inuit. The active participation by Nunavik communities in government-led processes is relatively recent, and many Inuit are new to such undertakings. Most of the information that is made available during an assessment is very technical and is generally not translated into Inuktitut (which remains the primary language of most Nunavik Inuit), much less plain language

summaries. Adding to these challenges, broadband internet connections are limited or nonexistent throughout the region, making the electronic diffusion of critical information difficult to impossible. Together, these issues make it challenging to ensure meaningful participation in a single assessment process. If there are several processes taking place in parallel (even when each is playing a very distinct and important role), it will be practically impossible for communities to understand why they are being asked multiple times to participate in an assessment of the same project. For many, this will be perceived as though decision-makers have failed to listen the first time around and will simply add to the “consultation fatigue”<sup>20</sup> that many Nunavik Inuit are already subject to. If the government is serious about its commitment to build strong relationships with the Indigenous peoples of Canada, then it must recognize the unique situations and circumstances in which they live when drawing up legislation and/or policies. For Nunavik Inuit, this means that consultations must begin as soon as possible in the process and allow for informed and meaningful participation that is not kerbed by budgetary constraints or calls for a standardized approach to EA across the country.

## **5. Broader Elements of The Federal Environmental Assessment Regime**

### ***The Scope of Federal EA***

One of the major differences between CEAA, 2012 and the environmental and social impact assessment regimes provided for in the NILCA and JBNQA is that the former does not include socio-economic considerations. This issue has been raised earlier, as justification for the need to harmonize the EA process, but Makivik further recommends that socio-economic considerations become an integral component of the federal EA regime across the country. This includes cultural, health and economic considerations as well as indirect impacts resulting in changes in the biophysical environment. An important consideration to keep in mind when implementing such a system is that, for Indigenous peoples, the value wildlife harvesting (as one example) cannot be computed in simple economics terms and one must avoid turning the assessment of a project’s positive contributions to sustainability into a purely mathematical exercise.

### ***Considering Inuit Knowledge***

While this concern applies broadly to most government decisions (including policy-making, the drafting of legislation, application of law, etc.), in the case of the CEAA, the consideration of *Inuit Qaujimaqatuqangit* (Inuit Traditional Knowledge or “IQ”) is essential to ensure that any work, undertaking or activity carried out in our region is consistent and harmonious with current and historical use by Inuit.

Inuit have a detailed and intricate understanding of the environment in which they live and depend on. Given that scientific knowledge of northern ecosystems is limited in comparison, Inuit knowledge is extremely useful when attempting to understand possible effects of a development project, including synergistic or cumulative effects.

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<sup>20</sup> When there are multiple/parallel consultation processes ongoing for a single project, Inuit communities with limited capacity to engage in such work can become overwhelmed and disengaged in the process. Recall that these communities are also heavily solicited by researchers, etc.

If assessments / approvals under the Act are made locally (i.e. by the bodies established under Land Claims Agreements), there is a greater likelihood that they can take into account IQ, an important element that must be given full recognition during each step of the decision-making process and during implementation of those decisions. Although we salute Canada's commitment to consider IQ, it is difficult (if not impossible) for authorities from outside the region to possess the level of comprehension of this knowledge system that is expected of them by Inuit. Of particular concern in the past is the habit of decision-makers in the "South" to consider IQ credible only in cases when it is corroborated with scientific knowledge; an approach that implies that IQ is not credible on its own. Further complicating matters is the fact that IQ is generally not documented and when it has (i.e. IQ-based research), it is extremely difficult for an 'outsider' to grasp the complexities of this knowledge, even less to convey them in writing. Consequently, non-Inuit decision makers are left using only a subset of IQ for decision-making. That said, it would be beneficial to enhance Indigenous Traditional Knowledge expertise within the government structure and particularly for high-level bureaucrats.

### ***Cumulative Impact Assessment***

The JBNQA and NILCA both intended for development projects to be weighed against their environmental and socio-economic impacts and, generally, against the long-term net benefits that they provide to Nunavik Inuit. Considering this, it is clear that each new project must be considered in light of other ongoing initiatives such as to ensure that their combined effects will not adversely affect Nunavik Inuit rights. Although doing so is extremely difficult at the project level, it is an essential part of impact assessment in Nunavik and corresponds to the Inuit vision of their lands and waters (i.e. that every aspect is intertwined and that no two projects will occur completely in isolation from one another). Makivik supports the federal implementation of Regional or Strategic Environmental Assessment to address such matters as cumulative effects at a broader scale, as long as such initiatives do not undermine the authority of the NILCA and JBNQA bodies.

### ***Climate Change***

Given Canada's International commitments to address climate change, and because its implications are unavoidable (especially in an Arctic setting), Makivik fully expects that this will become a key consideration in future environmental and social impact assessments and that it will be explicitly integrated within new legislation. Nunavik is facing major impacts due to climate change and significant effort will be invested in the coming years towards ensuring that our communities are equipped to adapt to these changes. It is also important that any new development occurring within Nunavik be resilient to changes in the physical environment.

For example, it is important that climate projections be taken into account when determining the best course of action to proceed with a given project (e.g. construction methods, mitigation measures, etc.). In Nunavik, permafrost is melting in many areas which results in significant changes to the land, including its stability. It can no longer be assumed that our lands will remain frozen, and relying on permafrost during the evaluation of alternative design/mitigation options is no longer an option. While this is the most obvious example, it must be clear within EA

legislation that proponents are expected to consider the impacts of climate change on their project throughout its life-cycle.

Additionally, the impact of development projects on Canada's overall greenhouse gas emissions must be factored into environmental and social impact assessments. It is not sufficient to know how climate change will impact a project, we must also know how a given project will affect climate change. There must be clear policy and guidance on such matters provided within Canada's next EA regime.

### ***Meaningful Public Participation***

One of the primary responsibilities bestowed upon the Expert Panel by the Minister of Environment was to determine how to rebuild public trust in Canada's EA regime. Makivik is ill-placed to speak on behalf of all Canadians, but for Nunavik Inuit this begins by bringing Inuit into the discussions very early on in the process. Since we assume that the Expert Panel will be tasked with recommending pathways for meaningful consultation, we wish to provide some guidance on what that might look like in Nunavik. First, it is important to reiterate that any changes to legislation be subject to consultation with aboriginal rights holders whenever such changes have been proposed<sup>21</sup>.

All too often, communities are presented with what appears to them to be a *fait accompli*, and are left with a feeling that they are simply another checklist item that needs to be crossed-off. There is a long, and well-founded, history of mistrust between Nunavik Inuit and government which cannot be overlooked in the present discussion. If Inuit concerns are not taken seriously during the assessment process, or if they do not consider to have been meaningfully engaged, then they will not trust the outcome.

A key to ensuring meaningful engagement is communication. The tendency, by government, towards applying their standard means of communications to northern regions is problematic. Inuit are relatively new to the concept of written communication, and continue to rely heavily on oral transmission of knowledge and information. Consequently, whereas communication of public notices, relevant information, etc. via the Government of Canada media platforms may be an effective means of communication in southern Canada, it is largely ineffective in the North. It must be clear within legislation, or in the policy directives that guide its implementation, that there is no one-size-fits-all means of communication that can apply both to Northern and Southern Canada. This is the first step to recognizing the special standing of Inuit, when it comes to assessing the impacts of a project within their homeland.

Another important barrier has been the absence of information in the Inuktitut language. Many of the key knowledge holders in Nunavik are elders, who cannot read Canada's official languages. If the government is not willing to share key information (or at least a summary of it) in a way that is relevant and meaningful to Nunavik Inuit, then it is unlikely that they will be willing or able

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<sup>21</sup> The consultation process related to any legislative amendments that flow from this review will be good opportunity to apply the proposed consultation measures.

to engage appropriately. Because of the technical nature and volume of materials presented in the context of an assessment it is important to think-outside-the-box when it comes to ensuring that this information is accessible to Inuit. One suggestion that arose during Makivik's CEEA workshop in Kuujuaq was that proponents, critics, EA authorities meet with the community to present all sides of a future development project (i.e. the potential benefits, the risks, the approval process, etc.). This would serve as a sort of briefing session for the community, which could then prepare more effectively for the ensuing EA process.

It is necessary to allow sufficient time for Inuit to consider all of the information and to synthesize their thoughts accordingly. As noted previously, this concern is amplified by duplication of EA processes<sup>22</sup>. It would be beneficial to couple any future assessments with an educational effort to ensure that Nunavik Inuit are fully informed about the implication of said assessments.

Finally, as we have mentioned several times in this brief, Inuit must be at the decision-making table whenever a project has the potential to affect their constitutionally protected rights. Their role as decision-makers must be fully supported within Government agencies, by creating an environment where federal employees are intricately familiar with the Indigenous groups they work with. There is a feeling amongst Inuit that, owing to the high turnover within government, they must continually "train" new government employees about their culture and knowledge.

In short, if Canada intends to fully implement United Nations Declaration on the Rights of Indigenous Peoples with its EA framework, it must develop a consultation protocol that is in tune with the traditions and values of the people who live there. As well, it is important to avoid duplicating consultation processes to avoid "consultation fatigue". We cannot be more insistent: meaningful consultation is critical. That said, we, of course, understand that the degree of consultations should be scaled appropriately to reflect the magnitude of potential impacts.

Lastly, and as noted previously in this submission, the JBNQA and NILCA require specific consultation on policy/legislative matters with the bodies created pursuant to the JBNQA and the NILCA. This step must also be meaningful, and any input received from these organizations must be factored into all final decisions. Consultation with the KEAC, the NMRIRB, etc. cannot be anecdotal and should not simply be part of a long procedural checklist. Their recommendations must be considered at least at the same the level as that afforded to Provincial/Territorial governments (for example) and must certainly weigh more heavily than the opinion of industry groups and non-governmental organizations. As well, Makivik Corporation, on behalf of all Nunavik Inuit, must play a pivotal role in any consultations of concern to Nunavik.

### ***Canada's overall EA framework***

While our comments up to this point have mainly been specific to the CEEA review, we consider it important to consider this legislation in the broader context of the Canadian environmental assessment process review.

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<sup>22</sup> For example, Indigenous peoples should participate in the elaboration of consultation guides, assessment guides, etc. to ensure that the process will reflect their concerns and be respectful of their way of life.

Foremost, as indicated above, Makivik feels strongly that any review of potential environmental or social impacts related to development projects should be conducted by the relevant bodies created pursuant to the JBNQA and the NILCA whenever possible.

Furthermore, we consider it important that the modernization of Canada's environmental assessment process lead to a complete change in philosophy and result in a single authority responsible for the assessment of all projects with the potential to impact upon the natural environment and, going forward, including social impacts. Several regulatory and legislative changes are likely required to implement such a system, but doing so is essential to ensure a holistic approach and increased coherence in the way assessments are conducted, regardless of the nature of a project. Coherence will play a critical role in regaining public trust in Canada's environmental review process.

We therefore recommend that the Government of Canada consider a fundamental change in how it assesses projects and/or authorises them to proceed. Makivik has maintained this position throughout its submissions to other ongoing reviews (including the Fisheries Act and Navigation Protection Act Reviews) and will continue to do this at every opportunity. We have mentioned earlier that duplicative EA processes are a burden on our communities, the fact that several different agencies are involved in the assessment of development impacts compounds such issues.

## **6. Summary and Conclusions**

The JBNQA and NILCA are comprehensive land claims agreements protected under s.35 of the *Constitution Act*. Consequently the environmental and social impact assessment provisions included within them must be paramount to any provisions of the federal environmental assessment process. Nunavik Inuit demand that their environment as well as their socio-economic needs be protected to the highest standard, such that they will persist for generations to come. In light of the significant development slated to occur in our region in the years to come in addition, notwithstanding the major changes that will result due to climate change, a strong and coherent environmental assessment regime in Nunavik is needed. Nunavik Inuit are not opposed to development, but wish to ensure that it does not jeopardize their culture and way of life. The most suitable way of attaining this objective is by giving Inuit a meaningful role in decision-making.