

## June 15, 2012: EIRB Staff - Developer Yellowknife Meeting Notes

### **PARTICIPANTS:**

John Donihee ( <b>JD</b> )	EIRB Legal Counsel
Gordon Stewart ( <b>GS</b> )	EIRB Support Staff
Eli Nasogaluak ( <b>EN</b> )	EIRB Staff
Jim Stevens ( <b>JS</b> )	GNWT – DOT Project Director
Gavin Moore ( <b>GM</b> )	GNWT –ENR
Tara Schmidt ( <b>TS</b> )	EBA Developer’s Consultants
Rick Hoos ( <b>RH</b> )	EBA Developer’s Consultants
Russell Newmark ( <b>RN</b> )	Hamlet of Tuktoyaktuk Working Group for ITH

### **1.0**

#### **JS**

- Started meeting at 1330
- Reviewed agenda (attached) and asked if there was anything to add (under item #9 other).
- Stated the purpose of the meeting: Developer is intending to ask for a schedule change to complete the Review sooner than proposed in the EIRB’s May 25, 2012 Directives and Decision (the “Decision”)

#### **EN**

- Opening remarks on behalf of EIRB: indicated the EIRB has received Developer’s letters expressing concern about the Decision and specifically about the proposed timelines for the proceeding. The Board directed staff and Counsel to meet with the Developer.
- Advised that this meeting would be restricted to discussion of procedural (timing and related matters) concerns only. Board staffs are not authorized to address substantive issues.

### **2.0**

#### **JS**

- Expressed frustration over the level of detail required in the EIS Terms of Reference and the difficulties that have resulted from that level of detail being required of a road project being constructed by government.

#### **JD**

- Explained the quasi-judicial nature of this proceeding being carried out by an independent Board established by the IFA.
- Reminded the Developers that the Board’s recommendations at the end of the Review go to the Ministers of AANDC and EC to satisfy both IFA and CEAA requirements.
- Stated that the integrity of the Board must be maintained throughout the Review process.
- The letters from the Developer to the Chair and direct contact by the Developer and other outside parties supporting the proposed development with the Chair and/or Board members create legal risks for the proceeding and could, if a legal challenge were mounted, lead to the overturning of the process (because of perceptions of bias) and the need to start it all over again.

- Explained the need to protect and preserve independence and impartiality of the EIRB going forward.

#### **RN**

- Suggested direct contact with the Chair and Board members was due to the frustration that the Inuvialuit leadership and some people have with the review process and thinking the length of the process will lead to loss of federal funding.

#### **JD**

- Explained there was a framework in place under the EIRB Rules of Procedure to enable communication that would allow the Developer to make requests of the EIRB for schedule/procedural changes, without compromising the integrity of the EIRB or the Review.
- Set out the Board's concern about a potential for apprehension of bias to be raised because RN, a senior representative of a potential contractor for the development (Grubens Transport), is present in the meeting; requested on behalf of the EIRB that he not participate in the meeting.
- Urged the Developer to seek advice from counsel on this concern.

Developer went in camera to discuss this issue.

Meeting resumed later.

#### **JS**

- Announced that after deliberation the Developers have decided to carry on with the meeting with RN present.

#### **JD**

- Indicated the record of the meeting would show the EIRB staff raised the issue, and Developer's decision. Advised the Developer that this meeting would be minuted and that the minutes would be placed on the EIRB Public Registry.

### **3.0 And 4.0**

#### **JD**

- Explained the need for the Review to meet IFA and CEAA requirements. Advised that the EIRB is the authority which decides when the evidence submitted is sufficient to proceed to a hearing and when the requirements of the Board's Terms of Reference have been met.
- Developer has the Burden of Proof. It is the Developer's responsibility to make sure the information it provides meets the Board's requirements, by providing what the EIRB has indicated (through the EIS Terms of Reference) it needs.
- Explained the review process and advised that Board rulings were not invitations to a debate such as that set out in the recent letters responding to the EIRB's May 25th decision. The EIRB rulings were final decisions.

- The Developer can, however, request a Ruling to seek clarification, change a schedule, get a legal ruling or ask a question of the Board.

## 5.0

### General Discussion

- General discussion about Tables 1 (Commitments to Provide Studies) and 2 (Commitments to Provide Plans) in the EIRB Directive to the Developer ensued.
- The Developer indicated there were some changes to the timelines set out in the tables and the schedule for release of the Table 1 reports; these could now be provided to the EIRB sooner than indicated in Table 1.
- The Developer also asked about the level of detail required in the various plans set out in Table 2 and indicated that a more detailed overview of several of these plans could be provided along with the Table 1 reports.

## 6.0

### TS/RH/RN

- Went through several of the instructions sent by the EIRB to the Developer and suggested that there was a change in the information being asked for, which they labelled as “scope creep”.
- Looking for specific direction on what EIRB is looking for, as Developer feels it has responded to every request of the EIRB.
- Expressed frustration, indicating that in their view, it seems the Developer could never fulfill the Terms of Reference.

### General Discussion

- Went through each of the Directives in the EIRB’s May 25 Ruling to understand what the Board was looking for and which of these requirements had been met by the Developer’s recent submissions (since the May 25 letter).

### General Discussion

- The Developer explained their understanding of the federal funding situation and that if they did not have a Review report before Christmas, to allow them to start some construction in early 2013, then they could lose the federal funding.
- The Request for Ruling process was explained to them and they were directed to the Rules of Procedure where they were also explained.
- Collectively we went through the schedule in the EIRB’s May 25 letter, and we discussed where some room might be found to shorten the timeline for completion.
- Developer indicated a Request for Ruling would be prepared and sent to the EIRB in the next week or so.
- The Developer was advised that any ruling on a Request would be subject to the process set out in the EIRB’s Rules of Procedure and to any submissions made by other parties.

**The meeting ended at 1530.**