



NS Lands
nova scotia lands

Suite 412, Centennial Building
1660 Hollis Street
PO Box 397, Stn Central
Halifax, NS B3J 2P8

April 8, 2022

Mr. Mike Atkinson
Regional Director
Impact Assessment Agency of Canada
200-1801 Hollis St
Halifax, NS B3J 3N4

Subject: Boat Harbour Remediation Project – Application for an Extension to the Three-Year Time Limit to Submit Required Information and Studies Under CEAA 2012

Dear Mr. Atkinson:

Nova Scotia Lands Inc. (the proponent) is following up on correspondence of March 3, 2022, as well as prior correspondence on August 12, 2019 and April 27, 2021, on the above noted matter. We had discussed this matter with Impact Assessment Agency of Canada (IAAC) officials following prior correspondence and were provided verbal assurance that the Boat Harbour Remediation Project was sufficiently advanced in the assessment process such that a request for an extension to the legislated timeline would be approved. Based upon these discussions, we understand that given the advanced stage of this Project's assessment, that the assessment for this Project will remain within Canadian Environmental Assessment Act 2012 process.

Accordingly, our request is submitted herein based upon the required information laid out in the IAAC correspondence dated April 27, 2021.

Reasons, directly related to the environmental assessment process, for requesting an extension of the time limit.

There were some instances where issues relative to IAAC's process management led to some delay in Environmental Impact Statement (EIS) development and finalization, including but not limited to:

1. Final EIS guidelines were issued for the Project on May 31, 2019, which included the requirement for baseline information on health, including the state of physical, mental and social well-being. At the time, there was no guidance available on a "well-being assessment" and the guidance was not provided by IAAC to the proponent until August 23, 2019.

2. The public comment period for comments on the conformed EIS ended on February 1, 2021, however Pictou Landing First Nation (PLFN) technical comments were only provided on June 16, 2021.
3. There were delays in IAAC arranging meetings to discuss technical comments from regulatory and technical departments, due to scheduling issues in the availability of PLFN leadership. PLFN's attendance at any discussions about Boat Harbour is a requirement of the PLFN Indian Band Settlement Agreement (1993).
4. There were delays and impediments in IAAC being able to engage other federal government departments and enable the proponent's collaboration with their subject matter experts, relative to the assessment of and response to technical comments being raised.

The most significant driver to delay in moving through the assessment process relates to the way Information Requirements (IRs) have been provided from IAAC to the proponent. IAAC provided four sets of IRs to the proponent in 2021, totaling 82 separate IRs, as follows:

- Round 1, Part 1 issued on March 1, 2021
- Round 1, Part 2 on May 11, 2021
- Round 1, Part 3 on September 15, 2021
- Round 1, Part 4 on October 8, 2021

During this process, the proponent has provided timely responses to these IRs during the calendar year of 2021. One response remains outstanding to IR 82. All other Round 1 IRs have been addressed by the proponent, and IAAC has advised that the proponent's responses have conformed to the information request requirements.

On March 10, 2022, the proponent engaged IAAC to discuss this application for an extension to the CEAA 2012 legislated time limit. During the discussion, the proponent noted the issuance of the IRs over the period, as noted above, and asked IAAC for an indication as to whether there are forthcoming IRs and when they may be issued, so there could be an understanding of the future timeline involved in the process. IAAC was not able to provide a clear timeline or guidance on the IR process. Therefore, while the proponent has been continuously responding to IRs issued over the period since March 1, 2021, there is no clarity on when IR issuance will continue and be completed.

On April 5, 2022, the proponent received draft Round 2 IRs, totaling twenty-three (23), which IAAC has described as being based upon comments from an assessment of the Round 1 responses submitted by the proponent. The proponent is currently assessing them and preparing responses with an intent to provide them to IAAC in a timely manner. In this correspondence, IAAC indicates that additional IRs may be forthcoming, but no timeline is provided.

Changes to the environment at the project location, or to the project itself, that have occurred and may affect the environmental assessment.

There are no changes to the environment at the project location, or to the project itself, that have occurred and may affect the environmental assessment.

List of all engagement activities, linked to the development of required information and studies, undertaken with Indigenous groups and the public

Until the commencement of the environmental assessment process in early 2019, the proponent Nova Scotia Lands Inc., in collaboration with the Nova Scotia Office of L'nu Affairs (formerly Office of Aboriginal Affairs), led Crown consultation on the Project.

At the commencement of the Federal environmental assessment process, (CEAA 2012), the Canadian Environmental Assessment Agency (CEAA) with the Nova Scotia Office of Aboriginal Affairs assumed a co-leadership role on behalf of the Crown, with respect to the environmental assessment of the Project.

The **Annex** to this correspondence outlines an assessment and a history of engagement and consultation on this Project at a point in early 2019, at about the time the environmental assessment commenced. This detail was shared with CEAA regional officials, at the time.

We do note that during the period since May 2019, when CEAA/IAAC took the lead on the Crown consultation process, there were few instances when the proponent was invited to meetings with PLFN and CEAA/IAAC to discuss the Project and the EA process.

We were advised that these meetings only ever involved discussions around the environmental assessment process. However, it became apparent in 2021 that there was significant discussion and engagement around the issue which led to the development of IR82. It is clear there was discussion between IAAC and PLFN of a significant project component alternative issue in the absence of the proponent.

Sections 5 and 6 of the EIS provide significant information on the engagement of, and consultation with, Nova Scotia Mi'kmaw communities and PLFN.

Documentation demonstrating the advancement of the environmental assessment that began in 2019.

1. The proponent has been engaging Pictou Landing First Nation since 2015, following the enactment of the Boat Harbour Act in May 2015.
2. The proponent supported a PLFN community led consultation in 2015 to determine the remedial objective of "a return to tidal".

3. The proponent has been working on studies to support an environmental assessment of the Boat Harbour study area since 2016.
4. The proponent started formal consultation with the Nova Scotia Mi'kmaw in April 2018.
5. Nova Scotia Executive Council approved the project scope and concept in August 2018 and directed the proponent to proceed to an environmental assessment.
6. CEAA accepted the proponent's Project Description as suitable for environmental assessment in January 2019.
7. Final EIS Guidelines were issued by CEAA on May 31, 2019
8. The proponent's EIS was accepted as conforming to the EIS Guidelines on December 17, 2020
9. Eighty-two (82) Information Requirements were submitted to the proponent commencing with Round 1, Part 1 on March 1, 2021; Round 1, Part 2 on May 11, 2021; Round 1, Part 3 on September 15, 2021; and Round 1, Part 4 on October 8, 2021. The proponent has responded to 81 Information Requirements with information, documentation and/or study conforming to the response requirement. Only one, IR82, remains outstanding from the Round 1 IRs. On April 5, 2022, the proponent received draft Round 2 IRs, totaling twenty-three (23), which IAAC has described as being based upon comments from an assessment of the Round 1 responses submitted by the proponent. The proponent is currently assessing them and preparing responses with an intent to provide them to IAAC in a timely manner.
10. All 82 Information Requirements from Round 1 are posted on the IAAC registry. Despite answering with conformed responses to 81 of the 82 Information Requirements, as of the date of this correspondence, these responses are not posted on the IAAC registry. To the public or other stakeholders, there may be an appearance that the Information Requirements posted by IAAC have not been addressed by the proponent when this is not the case.

Work plan detailing the progress made to date and how the additional time requested would be utilized to provide all the required information and studies, including: any required information and studies resulting from the public comment period on the EIS; and the technical review by the Agency, federal authorities, and consultation and engagement by the Agency with Indigenous communities.

The response provided under the previous heading, details the progress made to date.

On March 10, 2022, the proponent engaged IAAC to discuss the matter of the CEAA 2012 legislated time limit and to situate where the proponent stands in the process. During the discussion, the proponent noted the issuance of the IRs over the period, as in the foregoing. IAAC was asked for an indication as to whether there are forthcoming IRs and when they may be issued, so there could be an understanding of the future timeline involved in the process. IAAC provided no response to this request. Therefore, while the proponent has been continuously responding to IRs issued over the period since March 1, 2021, there is no clarity on when IR issuance will be completed.

On March 10, 2022, the proponent sought guidance from IAAC on what they deemed a reasonable extension request may be to the CEAA 2012 legislated time limit on August 28, 2022. This request was made, as there is no clarity being provided to the proponent as to when IR issuance will be completed. The response conveyed to the proponent by IAAC is that we should ask for an extension for two (2) years. The proponent has neither control over the issuance of IRs nor confidence with assessing the duration when IAAC will continue to put forward IRs.

The proponent is seeking an extension for two years as recommended by IAAC, on the condition that if IAAC prolongs the period of provision of Information Requirements, then the proponent may be compelled to seek a further extension.

The proponent continues to have the project team, other public stakeholders, third party consultants and academic advisors available to respond to further environmental assessment process requirements, notwithstanding the need for clarity with respect to future Information Requirements, their timing and the level of effort and timing for a compliant response.

The proponent continues to engage with senior government officials, industry and PLFN leadership and community members throughout. The proponent does note that government stakeholders and industry express concern with the time required to complete the environmental assessment and to start the project. This concern may be exacerbated by the fact that while the Agency IRs are posted to the public registry, none of the proponent responses are posted.

Given the current economic environment, the proponent and its government stakeholders recognize the cost escalation, attributable to delayed project implementation pending an environmental assessment decision, and the concomitant impact it is having on taxpayers' future spending.

The proponent has a need to understand at least an outline of next steps.

If the extension is related to impacts of the COVID-19 pandemic, details of how specifically the COVID-19 pandemic impacted advancement of the assessment. This could be included in a work plan outlining which activities were delayed or cancelled.

The COVID-19 pandemic, since March 2020, presented some challenge associated with the ability to meet and have collaborative discussions between proponent, regulators, other stakeholders and PLFN. Notwithstanding, we have not tracked specific impacts on how COVID-19 may have impacted the timeliness or effectiveness of the assessment. However, the proponent opines that COVID-19 has had no appreciable impact on the environmental assessment timeline.

Conclusion and Request

The proponent, Nova Scotia Lands Inc., is of the opinion that we have been responding in a timely manner and are meeting the regulatory requirements of this CEAA 2012 process. We are seeking consideration of IAAC in approving a two (2) year extension to the legislated time limit of August 28, 2022, for a time limit of August 28, 2024.

It is our understanding that requesting this extension is consistent with the Boat Harbour Remediation Project remaining within CEAA 2012 process and will be approved based upon prior discussions with IAAC. Accordingly, we request confirmation that the Boat Harbour Remediation Project will continue to be assessed under CEAA 2012. Further, that the additional time required due to the delays referenced above will not result in this project being moved into the new federal impact assessment process under the Impact Assessment Act 2019.

Yours truly,

<Original signed by>

Ken Swain
Project Lead
Boat Harbour Remediation Project

KS:ki

Attachment

*cc: Terence Hubbard, President, IAAC
Lachlan MacLean, Project Manager, IAAC
Peter Hackett, Deputy Minister, NS Public Works
Justin Huston, Deputy Minister, NS L'n'u Affairs
Debbie Brown, Managing Lawyer, NS Justice
Angela Swaine, NS Lands Inc.*

Annex to Correspondence to IAAC from Nova Scotia Lands

Boat Harbour Remediation Project (the Project)

This document was developed in early 2019 at environmental assessment commencement by the proponent, Nova Scotia Lands Inc., in collaboration with the Nova Scotia Office of Aboriginal Affairs.

Nova Scotia's Engagement and Consultation with Pictou Landing First Nation

This document outlines the Project's existing governance around engagement, participation and consultation and outlines briefly some of the engagement and participation activities managed to date; refers to Nova Scotia's formal consultation during project development; and, proposes an understanding of engagement and consultation throughout the environmental assessment process.

Existing Coordination, Cooperation, Engagement and Consultation

The Project governance has had the existing committees in place from early in the project planning stage, with the **Boat Harbour Cleanup Committee (BHCC)** commencing with monthly meetings in mid-2015 and the **Boat Harbour Environmental Advisory Committee (BHEAC)** commencing monthly meetings in May 2016. Both meetings involve some form of consultation and information sharing with Pictou Landing First Nation (PLFN). BHCC meetings are held in the PLFN community and BHEAC meetings are held in Halifax. The PLFN Community Liaison Coordinator for the Project sits on both committees. The committees will continue to convene throughout and after the environmental assessment processes. As has been the case since the inception of these committees' operations, PLFN representatives have been actively invited to share their views and provide their input to Project plans.

Boat Harbour Cleanup Committee

Nova Scotia Lands and Office of Aboriginal Affairs and Pictou Landing First Nation representatives focus on collaboration and engagement opportunities. Committee members will engage the decision makers in their respective governments for advice and approvals as plans move forward. Representatives on the Cleanup Committee sit on and are informed by the Boat Harbour Environmental Advisory Committee. This Committee allows for timely and orderly exchange of information, views and concerns allowing PLFN to understand, assess and respond to work on planning and engagement; negotiates any agreements and activities including economic participation; and, with the Community Liaison Coordinator, gives direction and takes advice on public and community relations and manages and responds to community perspectives and expectations.

Boat Harbour Environmental Advisory Committee

This committee is comprised of subject matter experts from several provincial and federal departments, academic experts from Dalhousie, Acadia, St. F.X. and Cape Breton Universities, and Pictou Landing First Nation. The committee deals with the Project's strategies and plans from science, technology and legal perspectives and informs the decision makers and collaborators. The committee advises the project team on the full scope of scientific and regulatory matters including project boundaries, the development of an environmental management plan and environmental effects plan; bridges discussions between PLFN, project managers, project consultant resources, regulators, scientists, academic advisors and Aboriginal Affairs subject matter specialists; and, provides peer review of terms of reference and reports from work plans, assessments, studies, frameworks and other scientific data generated by the project. The committee continues to enable a more technical sharing of information with PLFN representatives.

Other Engagement and Participation from 2015 to 2019

Various other activities involving significant engagement and participation opportunities have been realized as planning progresses, including but not limited to:

- Funding a full time Community Liaison Coordinator from PLFN, commencing in April 2016.
- Funding PLFN community members direct participation in planning field work and applied research studies
- Mi'kmaq cultural awareness session with PLFN community and Project stakeholders
- Holding regular PLFN community meetings for specific subjects, called A'se'k Socials
- Holding PLFN community focus groups on long term containment cell project component
- Supported and funded PLFN training opportunities and funded safety equipment purchases
- Supported and funded PLFN community members mentoring opportunities
- Supported and funded a long-term land use plan for PLFN's vision of future site use

Nova Scotia Lands will prepare a detailed report on engagement, participation and consultation during the Project planning period, to date.

Nova Scotia's Formal Consultation and Project Development

The summary of a Remedial Options Decision Document was presented to Pictou Landing First Nation through formal consultation on April 19, 2018, and their position on the remedial options was formally communicated to the Team by correspondence dated May 29, 2018. This information led to the presentation of recommendations to Nova Scotia Executive Council in August 2018. Direction was given by Executive Council, which then led to Nova Scotia Lands' finalization of the project concept, embodied in a Project Description Document which was submitted to CEAA, accepted by CEAA and determined to require a CEAA environmental assessment, with a Notice of Commencement issued on April 10, 2019.

Engagement and Consultation during Regulatory Environmental Assessment

For the duration of the CEAA environmental assessment process there will be a requirement to convene regular and ad hoc discussions and collaboration between the various stakeholders to ensure an effective and timely environmental assessment process with appropriate coordination, cooperation and consultation between the parties.

Boat Harbour Environmental Assessment Coordination, Cooperation and Consultation Committee

Coordination and consultation throughout the environmental assessment (EA) process, administrative coordination to be provided by CEAA, with the following stakeholders participating in regular discussions:

Canadian Environmental Assessment Agency	EA Coordination and Consultation Lead
Nova Scotia Lands	Project Proponent
GHD	Consultant to Project Proponent
Nova Scotia Environment	Provincial Authority, Technical Reviewer
Nova Scotia Lands and Forestry	Provincial Authority, Technical Reviewer
Nova Scotia Office of Aboriginal Affairs	Consultation Lead
Pictou Landing First Nation	Indigenous Community Representative
Indigenous Services Canada	Federal Authority, Technical Reviewer
Environment and Climate Change Canada	Federal Authority, Technical Reviewer
Health Canada	Federal Authority, Technical Reviewer
Fisheries and Oceans Canada	Federal Authority, Technical Reviewer
Transport Canada	Federal Authority, Technical Reviewer

Notes:

1. There may be issue specific technical discussions between the proponent and technical reviewers which will require ad hoc meetings which will be coordinated through CEAA.
2. Project documentation will be shared through Nova Scotia Lands SharePoint site, with stakeholders' access and support being provided by Nova Scotia Lands.