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LARP Review Panel
c/o Land Use Secretariat
9th Floor, Centre West Building
10035 – 108 Street N.W.
Edmonton, AB T5J 3E1

VIA EMAIL: LUF@gov.ab.ca

Dear LARP Review Panel:

Re: Review of Lower Athabasca Regional Panel
Information Request #1 Directed to the Crown

We write on behalf of Chipewyan Prairie Dene First Nation. On July 30, 2014, the Review Panel established to conduct a review of the Lower Athabasca Regional Plan Review Panel (the "**Panel**") issued Information Request #1 to the Crown ("**IR #1**"). On August 19, 2014, the Crown advised the Panel that it would not be responding to IR #1 as the information request a) is premature; and b) largely relates to concerns raised by the Applicants' regarding LARP's implementation; future activities and future consultations all of which the Crown claims are outside of the Panel's jurisdiction. Pursuant to the email of Carolyn Tralnberg of October 9, 2014, this letter is to respond to Crown's response to IR#1 of August 19, 2014. CPDFN also relies on its correspondence of August 20, 2014 and September 23, 2014.

Introduction

The Crown's response to IR #1 adopts a similar narrow interpretation of and uncooperative approach in responding to the Panel's Information Request #2 on September 18, 2014. CPDFN submits that both information requests seek valuable information "necessary to permit a full and satisfactory understanding of the matters in the review" and are "relevant to the proceeding" in accordance with Rules 28 & 29 of the *Rules of Practice for Conducting Reviews of Regional Plans (March 2014)*, including determining how CPDFN is directly and adversely by LARP and whether the regional plan meets the purposes and objectives of *Alberta Land Stewardship Act*, S.A. 2009 c.A-26.8 (the "*Act*") as required.

Information Request is not Premature

As submitted in our letter of August 20, 2014, the Crown has taken a technical interpretation of the Panel's issuance of IR#1, which would require the interpretation of word the "review" in IR#1 to mean "having read." As previously submitted, the reasonable interpretation of "review" in IR#1 means a completion of the review process provided by the *Act* and commenced by the Applicants' applications. This interpretation is reasonable and preferred given the Panel is presumed to know the *Rules of Practice for Conducting Reviews of Regional Plans (March 2014)* and the information requested indicates the Panel is aware of the issues raised by CPDFN's application, i.e. the ineffectiveness of LARP to protect CPDFN's rights and interests due to, among other things, incomplete nature of the mechanisms referenced in LARP to protect aboriginal interests and rights, and the Crown's response to Application that relies on the Crown's future implementation of LARP to address CPDFN's concerns (see for example para. 58 of Crown's Response Submissions).

In any event, the Panel is not prevented from re-issuing IR #1 now that it is abundantly clear that the Panel has received and reviewed the written submissions.

Necessary for a Full and Satisfactory Understanding of the Matters in Review

As an alternative argument, the Crown refuses to respond to IR#1 because the "vast majority" of the information request relates to matters raised by the Applicants that the Crown considers outside of the Panel's jurisdiction (note, the Crown does not identify this vast majority). In other words, the Crown refuses to respond to IR#1 because in *its view* the information is not "necessary to permit a full and satisfactory understanding" of *its view* of the "matters in the review" (Rule 28) and in *its view* are "not relevant to the proceeding" (Rule 29). However, the Crown is not the decision-maker in this of Review of LARP i.e. the Crown is not the independent panel established under the *Act* to conduct a review of LARP, including issuing information requests, and receiving responses to information requests. Therefore, while *the Crown's views* on the issue may helpful to the Panel, they are not dispositive of the Panel's jurisdiction in conducting the Review, and until such time as the Panel makes a decision on the Panel's jurisdiction, the Crown should be required to respond to IR#1.

As detailed in CPDFN's Reply Submissions of August 25, 2014, the Panel has a broad public interest mandate to ensure regional plans made by Alberta meet the broad public purposes of the Act, including ensuring the future needs of aboriginal peoples, consistent with the Crown's constitutional obligations. To discharge its mandate, the Panel must adopt a generous and liberal interpretation of its jurisdiction and reject the Crown's narrow interpretation of the Panel's authority and the scope of the Review as Alberta's interpretation would effectively defeat the legislative intent of the Act in providing an opportunity to review a regional plan within one year of it coming into force. As provided in CPDFN's Reply submissions of August 25, 2014, the Crown's slicing and dicing of CPDFN's concerns into categories of "future activities," "future consultation" and "implementation" are either a mischaracterization of CPDFN's concerns or do fall within the Panel's jurisdiction evident from correct interpretation of the Act. Therefore, the mere

dispute between CPDFN and the Crown on whether the concerns fall within the Panel's jurisdiction is sufficient to make the information requests "necessary to permit a full and satisfactory understanding of the matters in the review" (Rule 28) and "relevant to the proceeding" (Rule 29), and the Panel's decision to make such a request in fulfilling the requirements of *Rules of Practice* should be respected and afforded deference.

This is consistent with the principles of administrative law, which generally, afford decision-makers deference in interpreting its governing statute which confers upon it its jurisdiction (See, *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61); and defers a determination of an allegation that a decision-maker has no jurisdiction, until the decision-maker completes the administrative process. This is done so that the reviewing court has the benefit of the complete record before the Panel and the decision-makers' reasons in determining the reasonableness of the decision. (Brown D.J.M. & Evans J.M., (1998), *Judicial Review of Administrative Action in Canada*: Toronto: Canvasback Publishing at 3-67;). If the court prefers to avoid making assumptions about the Panel's decision on jurisdiction so should the Crown and participate in providing the Panel with the record it considers necessary How will the Crown remedy its failure to respond to IR#1 if at the end of the day the Panel does decide the concerns fall within the Panel's jurisdiction?

Even if the Crown is correct in its interpretation of the Panel's narrow jurisdiction, which CPDFN rejects, IR#1 is necessary to permit a full and satisfactory understanding of whether specific provisions of the Plan directly and adversely affect CPDFN. IR#1 references specific commitments made in LARP that the Crown relies on to address aboriginal peoples concerns and form the "content of LARP". Words on a page can never cause direct and adverse effects on persons but rather the impacts of the implementation of the words must be considered by the Panel. Therefore, the status of implementation of specific provisions of LARP "is necessary to permit a full and satisfactory understanding" of whether specific provisions directly and adversely affect the Applicants.

Concerns of Procedural Fairness

Pursuant to Rule 32 of the *Rules of Practice*, CPDFN is granted a right to respond to the substance of the Crown's response to IR#1. This forms part of its procedural rights in having its request for a review of LARP considered by the Panel. The Crown's refusal to respond to the information request because of its own narrow view on the substance of the Review, deprives CPDFN its procedural rights in the Panel's consideration of its Application. Rather the Crown response to IR#1 undermines the review process of LARP triggered by CPDFN's Application.

Purpose of Public Hearing Process

CPDFN agrees with the Panel that the Crown is the party in possession of the information requested and the appropriate party to provide the responses not only to address CPDFN's concerns raised by its application, but to fulfill the public purpose of the review process. The Crown should be mindful that this review of LARP is in effect a public hearing (*Act*,

s.19.2(4)). As stated by the Court of Appeal the "openness...and effectiveness of the hearing process is an end unto itself".... "Since one of the primary purposes of public hearings is to allow public input into development..... The process of the hearing is an end of itself" (*Kelly v Alberta (Energy Resources Conservation Board)*, 2012 ABCA 19 at paras. 31 & 34).

Frustration of the Panel's Duties

Pursuant to Rule 17 of the *Rules of Practice*, the duties of the Chair of the Panel include issuing information requests **and receiving responses to information requests.** As held by the Supreme Court of Canada in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at para. 51: "the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature." Rule 17 of the *Rules of Practice* acknowledges the Panel's duty to receive responses to information requests as powers and duties granted to it by the Act, and therefore, the Panel must have all necessary powers to ensure it can accomplish that duty. The Crown should not frustrate the Panel's duties by taking unreasonable interpretations of IR#1.

Update on the Status of LARP

As the Crown has not provided a response to IR#1, CPDFN submits that there is no information before the Panel demonstrating LARP is being implemented in accordance with timelines proposed in LARP or at all.

Conclusion

To conclude, CPDFN submits that IR#1 is not premature and is necessary for the full and satisfactory understanding of the matters raised in the review, which is clearly evident by the issues raised by CPDFN's application i.e. the inability of the content of LARP to protect its constitutional rights. The Crown should not be permitted to rely on its own views on the relevance of IR#1 to the matters raised in the review thereby depriving the Panel with information it considers relevant to considering CPDFN's application and discharging its mandate.

Sincerely,

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