April 26, 2019

**Senator Rosa Galvez**  
Senate Committee on Energy, the Environment and Natural Resources

**BILL C-69 AND THE PROPOSED IMPACT ASSESSMENT ACT**

Senator Galvez,

Thank you again for inviting Golder Associates Ltd. (Golder) to present to the March 19, 2019 session of the Senate Committee on Energy, the Environment and Natural Resources to share our thoughts as impact assessment practitioners on Bill C-69, and specifically related to the proposed Impact Assessment Act (IAA).

As requested during that session, this paper expands on the information we provided on March 19, 2019. In addition, this paper discusses two items we were specifically asked to address during the session. First, Senator Neufeld asked that we provide our thoughts on specific modifications to Bill C-69 to address the challenges with timeline certainty and predictability. Second, Senator Carignan asked about Golder’s experience on the Trans Anatolian Pipeline (TANAP) project in Turkey, and how it passed through the regulatory process in three years, considering the multi-country geographic scope of the project. We have included information on both of these topics in Sections 6.0 and 7.0 below.

Golder is an environmental consulting company with over 2,700 Canadian employees and 6,500 employees worldwide. Golder has a long history of conducting impact assessments across Canada and internationally for projects in the oil and gas, mining, infrastructure and power sectors. This paper presents our views on Bill C-69 as independent professionals, and not on behalf of our clients or their projects.

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For the purposes of this paper, the terms environmental impact assessment, environmental assessment or environmental and social impact assessment are all referred to as “impact assessment”.

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1.0 THE EARLY PLANNING PHASE

The proposed Early Planning Phase has the potential to create an environment that is more transparent and engaging. The inclusion of Early Planning is aligned with best practice in impact assessment and three key benefits are:

- Early involvement of all interested parties will increase credibility and trust in the process and also increase the potential to establish a detailed scope for an assessment that will not require future modification.
- Early engagement with Indigenous groups may allow for enhanced opportunities to integrate Indigenous knowledge into an assessment.
- The five deliverables from Early Planning can increase certainty and predictability by laying out a clear process roadmap for everyone involved.

Effective and efficient implementation will be the key to the success of this new statutory requirement. If implemented well, with everyone participating in good faith, the key benefits can be realized. If not implemented well, the result could be just an additional step adding more time. For the proposed Impact Assessment Agency, strong facilitation of differing views during this process will be critical, and this strength will need to be maintained throughout the entire impact assessment review process.

Tailored Impact Statement Guidelines will play a critical role in effective and efficient implementation of the new impact assessment review process. We recommend the Tailored Impact Statement Guidelines:

- Be prepared to a level of detail needed to provide clarity for the preparation of the Impact Statement and reduce supplemental information requests after the Impact Statement is submitted.
- Explicitly identify items that are outside the scope of the impact assessment, as applicable.

2.0 SOCIAL FACTORS

The explicit inclusion of social, health and economic factors is another improvement and aligns with what the Northern territories and some provinces already consider. Many federal impact assessments have included these factors to some degree for years. Essentially, the federal government is explicitly aligning with well-known international environmental and social standards from financial institutions around the world. As impact assessment practitioners that go into the communities talking with those that may be affected by development, we feel this change facilitates more open and transparent dialogue.

The inclusion of social factors under Section 22 of Bill C-69 is an important addition. However, social factors, or social impacts, are not defined in the proposed legislation and there may be some confusion as to what is expected in this regard. We recommend that a definition of either social factors, or social impacts, be included in Section 2 of the IAA, or further explanation as to what is meant to be included in Section 22. Future regulations outlining expected requirements for the assessment of social impacts would also be beneficial.

A social impact is something that is experienced or felt, in a perceptual or a physical sense, at the level of an individual, economic unit (family or household), social group, or by the community as a whole. Drawing upon definitions of social impacts from Canadian and international environmental and social impact assessment frameworks, an added definition of social impacts to Section 2 of the IAA could encompass the following:
• people’s way of life and lifestyle – including how they live, work, play and interact
• culture – including shared beliefs, customs, values, and language or dialect
• community – including cohesion, stability, character, services, infrastructure and facilities
• political systems – including the extent to which people are able to participate in political decision making
• people’s environment – including the quality of air and water and noise, availability and quality of food, hazard and risks, adequacy of sanitation, physical safety, access to and control over resources
• health and wellbeing – including mental, physical and spiritual wellbeing
• personal and property assets and rights – particularly whether people are economically affected, or experience personal disadvantage
• fears and aspirations – including perceptions about safety, and future aspirations

Social impacts would be specific to the project under consideration, and their characterization depends upon the interactions between the specifics of the project, the proposed mitigation measures, the community, and individuals in the community. As such, the issues to be addressed through a social impact assessment should be derived from discussions with the potentially affected individuals and communities, and other stakeholders during the new Early Planning Phase. During this phase, the detailed Tailored Impact Statement Guidelines should describe the social issues that require consideration in the impact assessment for that particular project.

3.0 OTHER SECTION 22 FACTORS

There are a number of factors to be included in an assessment, whether it be conducted by the Agency or a Panel, as prescribed in Section 22 of Bill C-69. We recommend a number of points of clarification that may assist with the scoping of the impact assessments as they related to this Section.

• Section 22(1) states that a number of factors must be taken into account in the impact assessment. However, we understand that one of the purposes of the Early Planning Phase is to understand the most important issues related to a project based upon input from communities, Indigenous people and stakeholders. These consultations are to result in the development of a summary of issues (Section 14(1)). In turn, the proponent is to provide the Agency with a plan that sets out how it intends to address the issues, and a detailed description of the designated project. It should be made clear in the legislation that the Early Planning Phase, while starting with the full list of Section 22(1) factors, may result in a smaller more defined scope for the impact assessment, based on what comes from early consultations during that Phase. In other words, as a result of discussions with all concerned in the Early Planning Phase, the final list of factors to be included in the impact assessment may in fact be a subset of Section 22(1) factors.

• Section 22(s) includes a factor currently described as “the intersection of sex and gender with other identity factors,” which in its current form, is not clearly described. This results in potential for confusion around how to include and evaluate this factor in impact assessments. A proposed revision to Section 22(s) to support clarity on this factor is as follows:
  ▪ The differential impacts the designated project may have on groups of women, men and gender-diverse people, taking into consideration the intersection of sex and gender with other identify factors such as age, race, ethnicity, mental and physical disability, through a gender-based analysis.
Gender-based analysis is a lens of analysis that examines existing differences between women's and men's socio-economic realities, as well as the differential impacts, of proposed and existing policies, programs, legislative options, and agreements on women and men. The aim of gender-based analysis is to identify the assumptions on which policies, programs and services are based. Gender-based analysis aims to raise relevant questions on gender equality and equity issues. The responses obtained from the collected data, both qualitative and quantitative, will confirm or refute the initial assumptions, and will ideally improve the development of the policy, program or agreement under consideration. While used mainly in Canada for policies and programs, gender-based analysis is also applied to impact assessments both in Canada and internationally.

Guidance on what exactly this Section 22(s) factor is, how to include it in the assessment, and expectations of proponents to fulfill this requirement will be important to ensure that Agency and Panel expectations in this regard are met. This guidance should highlight the importance of consultation and engagement specifically with women and other potentially affected groups, in assessing differential impacts across groups.

Section 22(t) states that the Minister may add in “any other matter relevant to the impact assessment.” If the Minister adds in factors to the scope of assessment under Section 22(t), then there should be an additional clause in the legislation stating that the Minister must provide the rationale for those additional factors.

4.0 IMPACT ASSESSMENT REVIEW DECISION FACTORS

Under the Canadian Environmental Assessment Act, 2012 (CEAA 2012), decision-makers must consider the likelihood of a project causing significant adverse environmental effects and, if likely, whether those effects are justified. In most cases, Bill C-69 replaces the “likelihood of significant adverse effects” test with a Section 63 “public interest” test designed to consider:

a) the extent to which the designated project contributes to sustainability

b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are adverse

c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate

d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by Section 35 of the Constitution Act, 1982

e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change

Comments on each of these factors follows.

4.1 Sustainability

A key focus of Bill C-69 is the broadening of issues of concern from mainly environmental to a broader range of contributors to **sustainability**, which is defined as “the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations”. These broader issues include potential social, health and economic impacts. In taking this more comprehensive approach, Bill C-69 will bring the federal impact assessment review process more in line with many other jurisdictions in Canada and in many parts of the world.
In keeping with a focus on sustainability, Bill C-69 emphasizes the importance of considering not just the mitigation of potential adverse effects, but also giving serious consideration to potential benefits and positive impacts of projects. As written, there is a disconnect between decision factor 63(a), which looks at contributions to sustainability, and decision factor 63(b) which focuses on adverse effects. A revision to decision factor 63(b) that aligns better with an approach that has sustainability as a guiding tenet is proposed in the following section.

### 4.2 Potential Effects and Proposed Mitigation

With respect to decision factor 63(b), there is certain awkwardness to the phrasing of this factor that may confuse its interpretation and application to impact assessment review decisions. There is further potential for confounding the “extent to which adverse effects … are adverse” with the areal extent over which potential effects are predicted, a standard component of the broadly-accepted impact assessment methodology that also considers the magnitude, duration, frequency, reversibility, context and likelihood of potential effects to develop predictions of potential impacts. These characteristics are typically considered by impact assessment practitioners in evaluating potential residual effects (i.e., after the application of mitigation measures contemplated by decisions factor 63(c)). It is these findings in relation to potential residual effects that are material to impact assessment conclusions of predicted project impacts.

As impact assessment practitioners, we are concerned that the wording of the Section 63 factors that tie most directly to standard impact assessment methodologies (b and c) are unnecessarily confusing and will be difficult for decision makers to apply in a manner that is defensible and that is based on impact predictions that are meaningful and verifiable through monitoring and other follow-up programs. A proposed revision to Section 63 decision factors (b) and (c) that may provide clarity and align better with broadly-accepted impact assessment methods, as well as reflect a focus on sustainability, is as follows:

b) the nature and extent to which the adverse of potential effects of the designated project within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are adverse;

c) the implementation of the mitigation measures proposed to mitigate or enhance potential effects of the designated project that the Minister or the Governor in Council, as the case may be, considers appropriate;

d) the nature and extent of potential residual direct or incidental effects that are indicated in the impact assessment report in respect of the designated project;

### 4.3 Impacts on Indigenous Groups

The consideration of potential effects on Indigenous groups and on the rights of the Indigenous peoples of Canada is consistent with impact assessment decision factors in other jurisdictions in Canada and in many parts of the world. Decision factor 63(d) seems designed to address obligations that are otherwise required by case law in Canada. The level of consultation required to identify and assess potential effects is not as important as the timing and effectiveness of engagement with Indigenous groups, and how their input is considered or incorporated into the impact assessment. The emphasis on early planning means that issues and concerns can be considered in scoping the assessment and designing the project. Consultation activities should be tailored to meet specific needs of each project.
4.4 Climate Change

Potential climate change impacts have been a component of impact assessments in Canada for years and is considered best practice. Guidance on how to incorporate climate change considerations in impact assessments for federal and provincial/territorial assessments were released in 2003. Decision factor 63(e) is an extension of this work that focuses on designated projects’ influence on the Government of Canada’s ability to meet its climate change obligations and commitments. Additional guidance will be required on how climate change effects may be considered following the release of the Strategic Assessment on Climate Change, what are the prevailing obligations and commitments of the Government of Canada in relation to each project, and how project contributions to these targets will be considered by decision makers.

4.5 Decision Factors for Federal Projects

Although impact assessment review decisions on designated projects under Bill C-69 are to be subject to a "public interest" test as described above, it appears that projects on federal lands or designated under Section 87 are not required to meet the same standard. Instead, decision makers in relation to these projects revert to the "likelihood of significant adverse effects" test similar to that prescribed by CEAA 2012. It is unclear why there would be a different standard for federal projects, or whether this differential treatment is consistent with the guiding tenets of Bill C-69.

5.0 NON-INDIGENOUS HERITAGE RESOURCES

Bill C-69 appears to limit the consideration of potential impacts to heritage resources that are not determined to be “with respect to the Indigenous peoples of Canada”.

Under CEAA 2012, environmental effects to be considered are defined within Section 5 (1) and (2). Section 5(1) of CEAA 2012 is replaced by Bill C-69 definitions of effects and effects within federal jurisdiction, the latter of which includes:

(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on

(i) physical and cultural heritage,
(ii) the current use of lands and resources for traditional purposes, or
(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance

There does not appear to be, within Bill C-69, a comparable replacement of the broader provisions contemplated by Section 5(2) of CEAA 2012 which specifically considers effects to heritage resources (i.e., physical and cultural heritage and any structure, site or thing that is of historical, archaeological, paleontological or architectural significance) other than those determined to be “with respect to the Indigenous peoples of Canada”. This omission could mean that heritage values such as non-Indigenous historical sites or maritime wrecks of historical significance are not within the scope of an impact assessment, even if the resources are federally protected.

A related suggestion is to remove “paleontological” from item (c)(iii) of the definition of effects within federal jurisdiction, as well as any future replacement of CEAA Section 5(2). Paleontology is a branch of science concerned with fossils of animals and plants. As such, it is more appropriately addressed through natural environment components of an impact assessment (e.g., biological or geological) rather than as a heritage resource. Moreover, although fossils may have public value as part of our natural heritage, such value is not necessarily specific to Indigenous peoples.
6.0 TIMELINE CERTAINTY AND PREDICTABILITY

Timeline certainty and predictability remain challenges. Under CEAA 2012, timeline issues are numerous: assessment scope creep, years of supplemental information requests, the stop-start approach to the federal clock, project design updates, and the discretion to pause or extend the federal timeline. Some of these issues are addressed in the Early Planning Phase, if implemented well; however, these are the issues that need to be addressed to achieve timeline certainty and predictability, recognizing they are more likely to be addressed in regulations or guidance documents. As already mentioned, strong facilitation of differing views by the proposed Agency will be critical.

As requested by Senator Neufeld, the following recommendations outline specific modifications to Bill C-69 to address the challenges with timeline certainty and predictability:

- In Section 18, require the Agency to also provide a document outlining decisions on issues and items that are out of scope of the assessment so that those decisions are enduring.
- In Sections 26, 38, 52 and 56 for “Studies and collection of information”, limit the number of supplemental information requests for additional information to two rounds.
- In Sections 26, 38, 52 and 56 for “Studies and collection of information”, require face-to-face meetings between the Agency reviewers and the proponent prior to release of any supplemental information requests to improve this process. This has been common practice under the Mackenzie Valley Environmental Impact Review Board.
- Upon acceptance of the proponent’s Impact Statement under “Impact Assessment by Agency” and “Impact Assessment by a Review Panel”, require the Agency to post a schedule outlining all steps for the remainder of the impact assessment process out to the Decision Statement. This also has been common practice under the Mackenzie Valley Environmental Impact Review Board.
- In Sections 18, 28, 37 and 65, limit time extensions to two extensions and do not allow unlimited extensions.
- Any sections allowing an extension of time by the Minister or Governor in Council within Bill C-69 should also include the requirements outlined in Section 65(7).

7.0 TANAP PROJECT

Senator Carignan asked Golder about the Trans Anatolian Pipeline (TANAP) project and how it could have been assessed and approved in what appeared to be 2 to 3 years. Golder staff attending the hearing did not have first-hand knowledge of that project, and at the time understood that the shorter timeline may have been related to limited consultations. We have received information from our colleagues in Europe that were leading that impact assessment work and provide the following insight.

The TANAP project is a gas pipeline crossing Turkey from east to west, approximately 1,800 km in length, including an offshore component across the Bosphorus Sea. Golder was contracted to prepare the impact assessment and livelihood restoration plan according to International Finance Corporation and European Bank for Reconstruction and Development environmental and social standards. Prior to commencing the assessment, another environmental consulting company had already been contracted to prepare the impact assessment according to Turkish standards, collect baseline data and conduct stakeholder engagement activities. Therefore, an information basis was already in existence when Golder started the work.
The impact assessment was completed relatively quickly, over approximately one year, and the baseline data collected and consultation process that was conducted was less intensive than required under Canadian standards. That said, the impact assessment report withstood review by International Finance Corporation and European Bank for Reconstruction and Development. One of the main reasons for the short timeline for the approval process is due to the regulatory framework. The regulatory process in Turkey is such that projects that are identified by the government as ‘strategic’ receive reduced scrutiny.

8.0 CLOSURE

Overall, we see Bill C-69 as an improved impact assessment review process over CEAA 2012, but with some of the same challenges with certainty and predictability that exist in CEAA 2012.

We appreciate the opportunity to provide our views on Bill C-69 and the proposed Impact Assessment Act.

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