

Reasons for Decision:

First, KIA, the only party who responded to NIRB's request for comments on this Application, asked that the "application be granted." *Evalik to Overvold, March 20, 2002, hereafter "KIA March 20th letter."* In the words of KIA, "[w]e ask that the current Application be approved without referral to a more detailed level of environmental review." *KIA March 20th letter, p. 3.* Indeed, KIA was very specific with its advice regarding which NLCA section 12.4.4 NIRB should follow. In KIA's words:

KIA requests that the proposal be processed under 12.4.4 (a) whereby the [NIRB] may recommend specific terms and conditions be attached to any approval.¹

While we agree and do recommend section 12.4.4 (a) as proposed by KIA, we wish to raise some of KIA's concerns for the Minister's Office:

1. Business Concerns over Governance of the Road. Essentially, KIA has well-established economic interests as outlined in its letters to us. In the words of KIA:

As Kitikmeot development projects come to fruition, they require timely access to the Joint Venture on terms that place them on an equal footing with other Joint Venture partners. We anticipate these projects to include new mines and the Bathurst Inlet Port and Road project, which will rely on the northerly extension of the current Winter Road.

Pricing policies are at the discretion of the Joint Venture. As transportation pricing is a critical component of project economics, these policies should not disadvantage potential development projects in the Kitikmeot.

The government jurisdiction for the Winter Road may be transferred in the future. This may be expected to result in attempts to advance NWT interests at the expense of Kitikmeot interests (e.g. taxes, tolls, preferential bidding policies).²

2. Use of Aboriginal Capacity. KIA is quite concerned that the Applicant's intention is to "unbundle" the winter road contracts. In KIA's language, here is the problem:

We note in both the documents supporting the Application and the attached correspondence that the stated intention of the applicant to

¹KIA March 28th letter, p. 1.

²KIA March 20th and 28th letters, pages 1 and 2 respectively.

unbundle the current Winter Road operating contracts. The purpose of unbundling the contract (i.e. breaking it into smaller parts) is to redistribute the work to non-Inuit-owned NWT companies that have not developed the proven capability to undertake the larger contracts.

To unbundle and reallocate the contracts solely to develop the same capacity in NWT Aboriginally-owned companies is not only an expensive duplication, it will also abandon the human and financial investment in the Nunavut capacity which has been built to date.

The Applicant reports that the Winter Road and associated projects on the economy of the NWT will peak at \$1,900,000,000 whereas they are expected to contribute only 4% of that amount, or \$72,000,000 to the economy of Nunavut. Likewise, only 2% of the employees from the Winter Road and associated projects are to be drawn from Nunavut. Any actions which served to further increase this imbalance would be manifestly unjust.

KIA strongly opposes any effort to unbundle the contracts. It will be less efficient and will result in higher transportation costs to the detriment of projects in Nunavut. We support open competition for Winter Road work, with all Aboriginal companies from impacted groups competing on an equal footing for the contracts as they are currently structured.³

3. Transboundary Concerns. KIA's request for a possible transboundary review is summarized in KIA's March 20th submission, p.3:

To the extent that any body leading the environmental review process decides to attach socio-economic conditions that affect the operations of the Winter Road and which negatively impact on the socio-economic benefits flowing to the Kitikmeot Inuit, we ask that a Trans-Boundary Review take place, as contemplated in the Nunavut Land Claim Agreement.

This matter is more complex, because by definition we believe a transboundary review contemplates: (a) any related cross-border projects, as identified by KIA to be the Bathurst Inlet Port and Road Project (*March 28th submission, p.2*) and (b) a project located close to a border with impacts extending into the other jurisdiction (which KIA argues the current project does to Nunavut—and one could assume the Port and Road project might do to the Northwest Territories). Additionally, NIRB will have to take into account cumulative effects of projects that may be closely related. In the words of KIA:

In the case of the Bathurst Inlet Port and Road Project the nature of development is somewhat different, and **KIA requests that NIRB attach a recommendation that this project would join the Joint Venture on the same terms as the current Joint Venture members once its Project Description has been submitted.**⁴

We look forward to any direction the Minister has for NIRB on this Transboundary issue, because, if our Recommendation is 12.4.4(a), which it is, and in particular must be since it is only a very small portion of the Winter Road that egresses Nunavut, then, any delay for the Bathurst Port and Road would affect not only the Bathurst Port and Road but also the current Winter Road Application. This is neither desirable for Industry or the NIRB, and it is inconsistent with KIA's request to process the Winter Road application without "... undue delay." *KIA March 20th letter, p.1.* only a very small portion of the Winter road egresses Nunavut, then any delay for the Winter Road Application due to transboundary or cumulative effects concerns of the Bathurst Port and Road, would affect both the Bathurst Port and Road and the current Winter Road Application. We recognize that, to the extent either project re-supplies the same mine or community, there could be direct or indirect impacts on the other project in the region and we therefore look forward to any advise you may have especially in light of your direction to us in August of last year vis-à-vis increasing NIRB's assessment of regional impacts.

NIRB's decision is also based on specific considerations that reflect the primary objectives of the Land Claims Agreement including:

- the movement of vehicles and equipment, and their impact on wildlife;
- the movement of vehicles and equipment and their impact on the terrain;
- impact to archaeological and cultural landmarks;
- storage and disposal of fuel, garbage, and sewage; and
- clean up and restoration upon abandonment.

Terms and Conditions:

- That the terms and conditions attached to this screening report will apply.

Wildlife

1. That the Licensee abide by the attached Caribou Protection Measures for the Kaminuriak and Beverly Herds
2. The Licensee shall not conduct any activity associated with the land use operation during critical periods of wildlife cycles (e.g. caribou migration, calving, fish spawning or raptor nesting).

3. That the Licensee shall ensure that there is no hunting along the winter roadway by employees of the company or any contractors hired.
4. The Licensee shall report any road kills or other wildlife problems to the nearest Renewable Resources Officer.
5. The Licensee shall not damage wildlife habitat in conducting this land use operation.
6. The Licensee shall ensure that the road alignment avoids known environmentally sensitive areas (denning, nesting etc.) by a minimum of 250 metres.
7. The harmful alteration, disruption or destruction of fish habitat is prohibited under the *Fisheries Act*.
8. The Licensee shall ensure compliance with Section 36 of the Fisheries Act, which requires that no person shall deposit or permit the deposit of a deleterious substance on any type in water frequented by fish or in any place under any conditions where the deleterious substance may enter such a water body.

Environmental

9. The Licensee shall ensure that public vehicle access is controlled by monitoring and possible limited. Requiring the public to register to go on the road and signing off on returning can achieve this.
10. The Licensee shall ensure that the public does not access the road once it is closed for the haul season for the commercial hauling.
11. The Licensee shall not use any material other than water in the construction of ice bridges. Stream crossings shall be removed or notched prior to spring break-up.
12. The Licensee shall remove all snow fills from stream crossings prior to spring break up.
13. The Licensee shall not allow any ice bridge to hinder the flow of water of any stream.
14. The Licensee shall scout all lines and select the best route prior to the movement of equipment.
15. The Licensee shall not move any equipment or vehicles without prior testing the thickness of the ice to ensure the lake is in a state capable of fully supporting the equipment or vehicles.
16. The Licensee shall prepare the site in such a manner as to prevent rutting of the ground surface.
17. The Licensee shall not move any equipment or vehicles unless the ground surface is in a state capable of fully supporting the equipment or vehicles without rutting or gouging.
18. The Licensee shall suspend overland travel of equipment or vehicles if rutting occurs.
19. The Licensee shall construct and maintain winter roads with a minimum of ten (10) centimetres of packed snow at all times during this land use operation.
20. The Licensee shall widen road portages for safety reasons due to larger and wider loads being hauled on the winter road in recent years.

21. The construction or disturbance of any stream/lake bed or banks of any definable watercourse is not permitted unless authorized by the Department of Fisheries and Oceans.
22. The Licensee shall ensure that stream crossings are located to minimize approach grades. Bank disturbance is to be avoided, and mechanized clearing should not be done immediately adjacent to any watercourse.
23. The Licensee shall not erect camps or store material on the surface ice of lakes or streams.

Archaeology

24. The Licensee shall follow all terms and conditions for the protection and restoration of archaeological resources as outlined by the Department of Culture, Language, elders and Youths (CLEY) see the attached letter.

Waste

25. Licensee shall keep all garbage and debris in a covered metal container until disposed of.
26. The Licensee shall not place any petroleum fuel storage containers within thirty (30) metres of the normal high water mark of any water body.
27. The Licensee shall not allow petroleum products to spread to surrounding lands or water bodies.
28. The Licensee shall have a spill contingency plan in place prior to commencement of the land use operation. Waste tracking, or "manifesting" should be implemented to ensure proper use, storage, and management of materials.
29. The Licensee shall report all spills immediately to the Twenty four (24) hour spill report line (403) 920-8130.
30. The Licensee shall ensure that all ethylene glycol (antifreeze) is managed in accordance with the Environmental Protection Act (EPA) of NWT, and Transportation of Dangerous Goods Act (TDGA).
31. The Licensee shall ensure that all spills are contained and completely cleaned up with shovels and absorbent rags and that any leaks detected are repaired and monitored at all times.
32. The Licensee shall ensure that the land use area is kept clean and tidy at all times.

Reclamation

33. The Licensee shall remove from Territorial Lands; all scrap metal, discarded machinery and parts, barrels and kegs, buildings and building material upon abandonment.
34. The Licensee shall complete all clean up and restoration of the lands used prior to the expiry date of the permit.

Other Recommendations

1. NIRB would like to encourage the proponent to hire local people and services, to the extent possible.
2. NIRB advises the Licensee to consult with the local residents regarding their activities in the region.
3. The Licensee should identify that an environmental monitoring plan is required as the project (volume of traffic) changes relative to the activities in the area, allowing for sufficient time to develop the plan, subsequent approval and an implementation schedule.
4. RWED & DSD monitoring of wildlife harvesting on the road for potential over harvesting of wildlife species, specifically for caribou, wolves, wolverines and etc. should be implemented.
5. Aboriginal monitoring and enforcement should be a requirement due to their lands and waters being affected the most where their traditional livelihood maybe at stake.
6. An annual operating policy might be considered to address the issue of "Road Junk" left on any portion (Land & Water) of the road over the winter season.
7. Any amendment requests deemed by NIRB to be outside the original scope of the project will be considered as a new project.

Validity of Land Claims Agreement

Section 2.12.2

Where there is any inconsistency or conflict between any federal, territorial and local government laws, and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict.

Dated _____ at Arviat, NU

Elizabeth Copland, Chairperson

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