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April 26, 2002

Mr. Godfrey W. McDonald  
Vice-President  
BREAKWATER RESOURCES LTD.  
95 Wellington St. West, Suite 2000  
Toronto, ON  
M5J 2N7

And to: NLRB Distribution List

Dear Mr. McDonald:

**Re: Update on Screening of the Closure and Reclamation (A & R) Plan for Nanisivik Mine**

The Nunavut Impact Review Board (NIRB or Board) has received and reviewed the various submissions regarding the above. (Letters enclosed.) The Board has also recently received a new Land Use/Quarry Application for screening (cover letters enclosed) again, relative to the above because it includes closure cover and related road and construction matters.

The Board *does* see the need for a public hearing of some kind, as suggested by NTI and the Department of Sustainable Development (DSD) of the Government of Nunavut. At the same time, the Board sees merit in moving forward on the basis of screening and terms and conditions (12.4.4(a)) *without* a formal NIRB hearing - as long as our sister Board, the Nunavut Water Board (NWB), conducts a public hearing on Nanisivik's application for mine decommissioning and closure. The NIRB Board members from the Baffin Region would be in attendance at the NWB hearing, but not in a formal Article 12 hearing role.

It is very important to NIRB that a mechanism to address the public concern (NLCA 12.4.2 (a)(iii)) be in place. The Board has concluded: (1) the essence of Nanisivik's project proposal is for abandonment and restoration, in other words, mine closure; (2) the NWB's licencing process has included and we believe will continue to require a broad range of information (see, e.g., NLCA 13.8.1); (3) specific matters of A & R are licenced by the NWB, not the NIRB; and (4)

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the NWB has in the past viewed the water mandate in the broadest possible terms.<sup>1</sup> NIRB recognizes the need for a holistic assessment of projects (see NLCA 12.2.5) and we have full confidence in the approach of our sister Board, the NWB, to fully listen to the public's concerns, and especially when the essence of a project is within the NWB's current licensing mandate.

Thus the recommendation of NIRB, subject to a two-week comment period specifically discussed below, is section 12.4.4(a) of the NLCA. Again, this section states:

Upon receipt of a project proposal, NIRB shall screen the proposal and indicate to the Minister in writing that:

- (a) the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5;

Having selected 12.4.4(a), two questions remain for the Board: First, are there any matters related to the mine closure for which authorizations are required which clearly cannot be heard by the NWB and must be screened separately by NIRB? Some possible examples might be those listed in Schedule A of DSD's April 12, 2002 submission (*Nunavut Wildlife Act, Environmental Protection Act, Public Health Act*). Second, should new land use quarry screenings such as the package received by NIRB from Breakwater (April 2002) be the subject of a separate screening?

In answering these questions, once again, NIRB believes at this point that: (1) the proper decision is still 12.4.4(a) of the NLCA as cited above, including the new related quarry application, assuming the NWB conducts a public hearing, and (2) that this screening procedure still meets with the requirements of regulators who will issue a licence, permit or other authorization for the mine closure to proceed. In other words, the Board is giving the GN-DSD (and any other party if it wishes) **until May 3, 2002**, to provide a written submission specifically

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<sup>1</sup>

BHP Diamonds, 29 C.E.L.R. (NS) 248 (April 21, 1999) paras 36-42 [insert]

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listing the exact statutory section (Act or Regulation) where an authorization *not* linked to the A & R proposed by Nanisivik, requires a NIRB screening pursuant to S. 12.4.1.<sup>2</sup> We also note that in accordance with S. 13.7.2 of the NLCA, the NWB shall hold a public hearing before approving any application, and that it may waive this requirement if no public concern is expressed. We assume that the NWB will hold a public hearing before approving this licence application, unless it formally notifies NIRB of the contrary.

Again, the deadline for submissions on this proposed decision is **May 3, 2002**. At that point, NIRB will make its final procedural decision under part 4 of Article 12. We believe that timing is of the essence and that one of the key issues is to ensure that Breakwater will be able to start on schedule the decommissioning and closure of the mine under the requirement of a new water licence immediately after the end of mining and milling operations in September 2002.

If you have any questions, please do not hesitate to call me.

Yours truly,



Stephanie Briscoe  
Executive Director

cc: Honourable R. Nault

<sup>2</sup>

For example, we note the leases under the Commission's legislation, but the A & R plan, including all of the issues that the mine would have to meet, could be met by the NWB - only hearing; with the government taking into account all of the evidence and information tabled at the NWB hearing. In other words, is there the need for an additional Article 12 hearing, knowing that the major purpose of the project is to abandon and reclaim the mine, and that the NWB, which NIRB believes will go to a hearing, can review all of these issues. In short, unless we know who we report to, what are we screening, etc., one believes the best route is to use 12.4.4(a) and thus begin the process; timing is of the essence as stated by NTI and the proponent. And, from an environmental perspective, most of the key environmental issues are related to water.

**Date: April 26, 2002****Project Name: Bathurst Inlet Port and Road Project (BIRAP)****Distribution List**# of Pages 9

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