

the **BATHURST INLET**
PORT AND ROAD PROJECT

April 30, 2003

Ms. Stephanie Briscoe
Executive Director
Nunavut Impact Review Board
PO Box 2370
Cambridge Bay, Nunavut
X0B 0C0

Dear Ms. Briscoe:

RE: BATHURST INLET PORT AND ROAD PROJECT

We have carefully reviewed your letter to us of April 14, 2003 along with the letter from Minister Nault to Ms. Elizabeth Copland of April 10, 2003.

We wish to provide the following response to the above mentioned letters:

Decision Delay

In light of the current situation it is appropriate to review the slow progress of our project over the last year:

- Our project description was sent to DIAND, the Kitikmeot Inuit Association and the Nunavut Water Board on April 5, 2002. These agencies referred the project to the Nunavut Impact Review Board (NIRB).
- NIRB screened the project and concluded in a letter to Minister Nault on July 8, 2002 that the project should be reviewed under Part 5 or Part 6, as required by the Nunavut Land Claims Agreement (NLCA).
- On November 27, 2002, we notified all parties that Inmet's Izok project had been deferred and should not be considered a part of the Bathurst Inlet Port and Road Project at this time.
- Minister Nault notified NIRB on April 10, 2003 that "*he would like the NIRB to request a revised project description from the proponent for the purposes of re screening and submission to me*"

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During this process the proponent, NIRB, KIA, NTI and the Government of Nunavut communicated their thoughts on the process to the Minister. We contend that:

1. a decision could have been made in the period immediately following July 8, 2002 and
2. the current decision by the Minister could have been made in January of this year.

We are very concerned that the Minister has failed to render his decision in a "reasonable timeframe" as should normally be expected and which is absolutely essential to attract investment in projects of this nature. We sincerely hope that future projects in Nunavut receive much more timely decision making otherwise much needed northern development will not take place.

Part 5 vs. Part 6

We, along with others, including KIA, NTI and the Government of Nunavut, have maintained from the start that this project should be reviewed under Part 5 of Article 12 of the Nunavut Land Claims Agreement (NLCA). In order to confirm and clarify our position on this we have obtained a legal opinion from an experienced northern legal counsel. His opinion follows:

"The underlying legal issue, simply put, is whether NIRB's requested review should proceed under Part 5 or under Part 6 of the NLCA.

The issue arises in the following way. Pursuant to Article 12.4.4, upon receipt of a project proposal, NIRB is required to screen the proposal and to indicate to the Minister in writing whether the proposal should proceed without a review, or whether the proposal requires a review under Part 5 or 6. In this case, NIRB has decided that a review is required and so recommended to the Minister, stating, as they are required to do, that the proposal requires review under Part 5 or 6.

This then takes us to Article 12.4.7 of the NCLA, which provides that where NIRB indicates to the Minister that a proposal requires review, the Minister shall "where required, by law or otherwise, refer the proposal to the Minister of the Environment for review by a federal environmental assessment panel..." That is the review contemplated pursuant to Part 6. Further, where a proposal is not to be reviewed by a federal environmental assessment panel, then the Minister is required to refer the proposal to NIRB for a review, which is a Part 5 review.

In our view, the keywords are "where required, by law or otherwise". Simply put, we know of no law that requires the Minister, in these circumstances, to refer the proposal to the Minister of the Environment for review by a federal environmental assessment panel. This position is ably stated in a letter dated March 18, 2003, directed to the Honourable Robert Nault from Kathy Towtongie, President, Nunavut Tunngavik Inc. In coming to this conclusion, we have reviewed the Canadian Environmental Assessment Act ("CEAA") and we particularly considered the applicability of Section 48(1) (b) of CEAA. We have concluded, however, that Section 48(1) (b) does not apply because the reference there to the "Minister" is not to the Minister of Indian Affairs and Northern Development but rather to the Minister of the Environment. That distinction, in our opinion, is sufficient to make that section inapplicable. Hence the only appropriate review is a Part 5 review by NIRB."

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We believe that this opinion confirms and clarifies our position and the positions of others earlier. It should be noted that there has been no rebuttal to any of the previous arguments by INAC or Justice.

Other Issues

Turning back to the Minister of Indian Affairs and Northern Development's letter to Elizabeth Copland of April 10, 2003, there is a discussion of three other issues.

In considering these other issues, it should be remembered that Article 12.5.5 (a) of the NCLA enables NIRB to review any project "taking into account the interests of all Canadians".

These three issues are the following:

1. ***...the associated shipping of cargo, fuel and ultimately concentrates east or west to overseas smelters in newly established marine transport corridors, raises environmental concerns for the marine ecosystem as well as national and International questions regarding the jurisdiction and use of Arctic waters."***

It seems to us that Canadian sovereignty in Arctic waters is well established and that marine pollution is adequately addressed in other federal legislation. To our knowledge no project specific permits or approvals are required for the type of activity envisioned by this project. Further, we doubt that the proposed route can be described as "newly established marine transportation corridors". All portions of the route, except perhaps the short section to the south of the community of Bathurst Inlet, are currently being used for commercial shipping, in the form of cruise ships, tugs and barges and other vessels. Cargo, fuel and concentrates have been successfully and safely shipped from Polaris and Nanisivik mines for over 20 years along the northern sections of the proposed route.

The Canadian Hydrographic Service, together with the Kitikmeot Inuit Association, Kitikmeot Corporation, Department of Fisheries and Oceans, Government of the Northwest Territories and industry have spent considerable funds carrying out detailed charting of certain sections of the proposed route, including Bathurst Inlet, and are currently in the process of issuing final charts. This work was designed to establish shipping channels in support of a port located in Bathurst Inlet.

But assuming, for a moment, that the route chosen is a newly established marine transportation corridor, then surely our proposal assists the establishment of Canadian sovereignty in the Arctic, if that is said to be in doubt.

2. ***The construction of an all-weather road to Contwoyto Lake has the potential to impact the Bathurst Caribou herd and its habitat, which herd is a trans-boundary resource shared by the people of Nunavut and the Northwest Territories."***

There is no doubt that this caribou herd is a trans-boundary resource shared by the people of Nunavut and the Northwest Territories. Indeed this trans-boundary resource has featured prominently in almost every recent environmental assessment in the region, whether it has been conducted under the Mackenzie Valley Resource Management Act or the Nunavut Land Claims Agreement. Each of the regulatory entities holds the health

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and welfare of the Bathurst Caribou Herd and its habitat dear to their hearts. None of them would permit this resource to be threatened and a Part 6 review has not been required to ensure this.

As a point of clarification, NGO's such as CARC have been stating that our project is located in the calving grounds of the Bathurst herd. This is incorrect. The calving grounds are to the north of the proposed road route. Collaring information provided by GNWT (RWED) indicates that each year the herd will have migrated south, away from the project area, during the proposed period of operation of the road.

3. *“...the change in direction of re-supply routes to Northern Canada has the potential to impact regions outside the Nunavut Territory.”*

While there is little doubt that, should the Bathurst Inlet Port and Road Project proceed, there will be changes in the direction of re-supply to Arctic mining operations and Arctic communities. That change will result in a substantial savings, in particular in respect of the cost of fuel in the region. This should be a big incentive to the development of this part of the Arctic, something entirely in the interest of Nunavut and all northerners. Southern based oil companies will still have the opportunity to gain these supply contracts and southern based trucking companies will be required to supplement any Nunavut trucking companies during the peak winter trucking season from Bathurst Inlet to the mines. When one weighs what is gained against what is lost, the economic impact of gain to Nunavut substantially outweighs any potential minor loss to the south.

In a country like Canada, and especially in northern Canada, with huge distances facing any group wishing to move freight and supplies, some adjustments to supply routes will be necessary from time to time to ensure logistic and economic efficiencies. These adjustments will often result in a re-distribution of business, which is all part of the free enterprise system expected in Canada.

Revised Project Proposal

You have asked that we re-submit a revised project proposal by May 12, 2003. While this timeline seems very short compared with the length of time taken by the Minister to respond, we will of course endeavour to comply. In doing so we expect that our project will be handled with all expediency possible by NIRB and that the Minister will make his next decision in a timely manner.

As mentioned above we have been very disappointed by the progress to date. When all things are considered, including the legal opinions and the NIRB Guidance letter (October 2002) which strengthens the Part 5 review process, we have demonstrated that there are no grounds for a Part 6 review and so there is no need for another indeterminate and prolonged examination of "what do we do with this project", by the Minister and his staff.

Natural challenges induced by the arctic climate impose rigorous timing constraints on construction projects. The Minister's delay in responding to this proposal has already cost the project at least a year along with attendant direct costs in the hundreds of thousands of dollars, not to mention the delay in providing the benefits it will bring. We hope for the sake of other new economic development projects which will determine the social and economic future of the

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Kitikmeot Region and Nunavut in general that there is much more consideration given to the reality than has been the case with this project.

This Bathurst Inlet Port and Road initiative is an excellent example of how Inuit organizations and business can work together in partnership with governments and various industry sectors to develop a project which can benefit all parties and ensure a brighter future for the young people of Nunavut.

Yours truly,

the BATHURST INLET PORT AND ROAD PROJECT



Charlie Lyell,
Chairman



Mervyn Hempenstall
President

cc: Robert D. Nault, PC, MP
Nancy Karetak-Lindel, MP
K.Towtongie, President NTI
Premier P. Okalik



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