



public review necessary, we intend to jointly cooperate and coordinate our review with the Nunavut Water Board (“NWB”) pursuant to Section 13.6.1 of the NLCA.<sup>2</sup>

### ***Procedural History***

As you are aware, on July 8, 2002, the results of NIRB’s initial screening of the Project were released. However, in November 2002, the Proponent wrote to the NWB stating that the scope and timing of the Project had been reassessed due to the depressed state of global base metal prices, and that the Project Description submitted on April 5, 2002 had been amended to exclude certain components. After providing you with an update of the status of the Project, NIRB received your letter of April 10, 2003 requesting a revised project description from the Proponent for the purposes of re-screening. Accordingly, NIRB relayed your request to the Proponent and stressed that the implications of the changes must be provided for review by the Board and interested parties. To this end, NIRB asked the Proponent for clarification of the issues identified in your letter, particularly the primary purpose and need for, as well as, the feasibility of, the Project.

In May 2003, the Proponent submitted a revised Project Description to the Kitikmeot Inuit Association (“KIA”), Indian and Northern Affairs Canada (“INAC”) and the NWB. According to usual practice, NIRB invited any interested or affected parties to review the revised document and forward comments to the Board by August 13, 2003. At the request of the Inuvialuit Game Council, this deadline was extended until August 21, 2003, to enable the isolated community of Holman to comment on the revised project description. The submissions received will be summarized, following a brief outline of the changes to the Project.

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<sup>2</sup> 13.6.1 of the NLCA states: “The NPC, NIRB and the NWB shall co-operate and co-ordinate their efforts in the review, screening and processing of water applications to ensure they are dealt with in a timely fashion.”

### *Outline of Revised Project*

Although the Proponent has reduced (as indicated below) some components of the Project and has deferred those components relating to the Izok Project until global based metal prices recover sufficiently, the Project by and large, remains essentially unchanged.

Specifically, the Project's main components and proposed changes\* are as follows:

- A marine port in Bathurst Inlet with a wharf to serve 50,000 tonne ice class vessels – no change;
- A dock to handle barges serving Kitikmeot communities [Kugluktuk, Bathurst Inlet, Cambridge Bay, Umingmaktok, Gjoa Haven and Taloyoak] – no change;
- A 180 million litre fuel oil tank farm at the port – **reduced from 220 million litres;**
- A 150 person camp at the port – **reduced from 200 persons;**
- A truck and trailer maintenance shop at the port – no change;
- A 1200 metre airstrip at the port – no change;
- A 211 km all-weather road to Contwoyto Lake – no change;
- A barge site at km 211 of the road on Contwoyto Lake – **deferred;**
- A barge site at Lupin Mine on Contwoyto Lake – **deferred;**
- A summer barge operating on Contwoyto Lake – **deferred;**
- A 79 km all-weather road to the Izok zinc/copper deposit – **deferred.**<sup>3</sup>

[\*All Project changes are bolded]

In the revised project description, the Proponent states that, as a result of the delays in 2003, port construction will be delayed one year and is now proposed to begin in September 2005 and be completed in January 2007. Road construction will occur in two phases and will begin at the port in January 2006 and at Contwoyto Lake in February 2005. Road construction will be complete in December 2006. The revised Project will require road operation during the winter only, but the

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<sup>3</sup> This list was included in the Proponent's November 27, 2002 letter to the NWB signed by Mervyn Hempenstall, President and Charlie Lyall, Chairman.

road will be constructed for all-weather use based on future usage for hauling concentrates and supplies.<sup>4</sup>

The Proponent maintains that Project construction will require disturbance to approximately 512 hectares of terrestrial habitat, and 2.3 hectares of marine habitat at the port. The road alignment will cross 111 streams, however, the effect of road construction on fish habitat is planned to be negligible. On land, animals will have right of way over traffic on the road.<sup>5</sup>

According to the revised Project Description, the estimated capital construction cost of the Project is \$164 million. The Project, as planned, will be financed and developed as a Public Private Partnership (P3), where the costs and risks of the Project can be shared between the public and private sectors. The Proponent states that the Project is expected to create 2,800 months of employment and 31 seasonal jobs each year.<sup>6</sup>

### ***Rationale for Public Review***

Subsection 12.4.2(a) of the NLCA directs NIRB, when screening a project, to recommend a public review when, in its judgment:

- (i) the project may have significant adverse effects on the ecosystem, wildlife habitat or Inuit harvesting activities,
- (ii) the project may have significant adverse socio-economic effects on northerners,
- (iii) the project will cause significant public concern...

Pursuant to Subsection 12.4.2(b), a review is generally not required when, in NIRB's judgment, the project is unlikely to arouse significant public concern and:

- (i) the adverse ecosystemic and socio-economic effects are not likely to be significant, or
- (ii) the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology...

Subsection 12.4.2(c) instructs NIRB to give greater weight to the provisions of 12.4.2(a) in determining whether a review is required or not.

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<sup>4</sup> Bathurst Inlet Port and Road Project Joint Venture Ltd. Bathurst Inlet Port and Road Project: Project Description, dated May 2003 at p. iii of the Executive Summary.

<sup>5</sup> *Ibid*, at p. iv.

<sup>6</sup> *Ibid*.

In making the determination that a public review is necessary, NIRB gave consideration to the following factors. Firstly, the Proponent from the outset has expected that a public review pursuant to NLCA Section 12.4.4 is necessary since the Project clearly poses “significant impact potential.”<sup>7</sup> In fact, since the release of the revised project description, the Proponent has conceded the eventuality of a public review and has specifically requested a Part 5 review of the proposal by NIRB. Secondly, having reviewed the revised proposal, and based on NLCA Section 12.4.2(a)(i), NIRB feels that many of the Project’s effects and potential impacts on caribou, Inuit harvesting activities, and wildlife habitat are uncertain. Moreover, the socio-economic impacts, on Northerners are unclear. This factor is identified in NLCA Section 12.4.2(a)(ii). Thirdly, due primarily to the possibility of trans-boundary and cumulative effects, NIRB has witnessed and continues to anticipate a high level of public concern regarding the effects of construction and operation on the environment and impacted communities. This factor is recognized in NLCA Section 12.4.2(a)(iii).

Many of the impacted and interested parties who submitted comments to NIRB agree that a public hearing is necessary in the circumstances. The primary issue addressed by most parties in their submissions was not whether a public review should take place, but whether this review should take place under Part 5 or Part 6 of Article 12 of the NLCA. As stated in NIRB’s initial screening decision, this “Part 5 vs. Part 6” issue is not for the Board to decide and we defer to your discretion under Section 12.4.7 of the NLCA regarding the answer to this important question. Section 12.4.7 states:

Where NIRB indicates to the Minister that a proposal requires review, the Minister shall:

- (a) where required, by law or otherwise, refer the proposal to the Minister of the Environment for review by a federal environmental assessment panel; such review shall include both socio-economic and ecosystemic impacts;
- (b) where a proposal is not to be reviewed by a federal environmental assessment panel, refer the proposal to NIRB for a review of the ecosystemic and socio-economic impacts in the Nunavut Settlement Area; or
- (c) where the proposal is not in the national or regional interest, inform the proponent that the proposal should be abandoned or modified and resubmitted to NIRB to be dealt with in accordance with Section 12.4.4.

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<sup>7</sup> Statements to this effect were included in the proponent’s Project Description and three letters of application from the Bathurst Inlet Port and Road Project dated June 2, 2002 to the Nunavut Water Board, KIA Manager of Lands and the DIAND Manager of Land Administration.

NIRB's only comment on this section of Article 12 is that, unless there is a clear reason to refer to a Part 6 panel "by law or otherwise", which in this case is not clear, NIRB has plenary authority in Article 12 Part 5 to address all issues raised by the Parties. The procedure to do this would include hearing from non-residents, ENGOs, governments, and sister boards and NIRB would ensure this process would be met.

#### **D. Review of Submissions**

To facilitate your determination of the potential implications of the revised Project and for ease of reading, the following summary of submissions has been divided into four categories: (1) a general category of individuals and parties who either oppose the Project, recommend that the proposal be referred back to the Proponent due to insufficient detail and development, and/or feel that additional studies need to be conducted to properly determine impacts; (2) parties supporting a public review who are neutral on the issue of what type of review is required; (3) those supporting a Part 6 review; and (4) those supporting a Part 5 review.<sup>8</sup>

##### **(1) Opposition to Project and/or Proposal Referred back to Proponent for More Development and/or Additional Studies Necessary**

###### **Bathurst Inlet Lodge Ltd.**

In a letter to NIRB dated August 17, 2003, Glen Warner, President of Bathurst Inlet Lodge expressed complete opposition to the Project proposal.<sup>9</sup> According to Warner, the Lodge is known internationally as one of the top 25 eco-lodge destinations in the world and has operated within the community of Bathurst Inlet since 1969. The Lodge has provided employment for many of the people of Bathurst and has functioned as an employment training ground for the young people of the community by introducing them into the workforce and the tourism industry. Since the Lodge depends on a remote, wilderness location, Warner maintains that the Bathurst Inlet Lodge would cease to exist if the Project is developed. Mr. Warner's concerns

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<sup>8</sup> No comments on the revised Project Description were received from the Kitikmeot Inuit Association (KIA), Environment Canada (EC), or the Mackenzie Valley Environmental Impact Review Board (MVEIRB).

<sup>9</sup> Letter to NIRB dated August 17, 2003, from Glen Warner, President of Bathurst Inlet Lodge Ltd.

regarding the Project's impacts are evidence that the Project will cause significant public concern, and, pursuant to Subsection 12.4.2(a) (iii), should be subject to a public review.

#### Canadian Arctic Resources Committee (CARC)

NIRB received a submission dated August 6, 2003 from CARC outlining four primary concerns related to the Project and its possible impacts on the environment and local communities.<sup>10</sup> Firstly, the Committee expressed concern that the people of Bathurst Inlet and Contwoyto Lake have not been properly consulted in the development of the Project and recommended that further consultation take place. Secondly, CARC disputed the validity of the Proponent's claim that the port site is not located in the calving grounds of the Bathurst caribou herd and stated that their visit to the proposed site disclosed evidence of very recent and historic use by caribou and muskoxen. Further, CARC asserted that the port site is also an historic hunting site and strongly urged that potential impacts on the caribou and cultural heritage resources of Bathurst Inlet should be more closely examined. Thirdly, CARC questioned the proposed route of the Project and stated that alternative routes and port sites, which the Committee believes to be less costly and more logical from a navigational perspective, should be re-examined. CARC noted that the previously proposed and extensively studied route from Izok Lake to a point east of Kugluktuk has the distinct advantages of avoiding the calving and post-calving grounds for the Bathurst and Bluenose caribou herds, and providing a safer, more easily accessible port site. Fourthly, CARC expressed doubts concerning the purpose and need for the project and stated:

“With respect to mine resupply, we observe that presently operating and proposed mines are currently meeting or anticipating meeting their fuel needs by winter road. If these mines can operate profitably under these conditions, we submit that there is no current need for the project.”<sup>11</sup>

The Committee remarked that the Proponent's rationale for the Project appears to be opening up new mines in the West Kitikmeot region, and questioned this “build it and they will come” proposition on the basis that it is not borne out by current market conditions or the behaviour of private capital. Accordingly, CARC requested that the Proponent clarify the need for the Project on the basis of mine supply and be required to file and make public its economic feasibility

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<sup>10</sup> Letter to NIRB dated August 6, 2003, from Karen G. Wristen, Executive Director of the Canadian Arctic Resources Committee (CARC).

<sup>11</sup> *Ibid*, at p. 2.

study. Additionally, CARC called for a comparative full cost and risk analysis for community re-supply, including an examination of all sites that offer reasonable potential. The Committee recommended that, since the project proposal is insufficiently developed and detailed for assessment, it should be referred back to the Proponent. CARC's concerns regarding the Project's impacts, many of which are included in Subsection 12.4.2(a) of the NLCA, are further evidence that the Project should be subject to a public review.

#### Inuvialuit Game Council (IGC)

IGC submitted a letter to NIRB advising the Board that the Holman Hunters and Trappers Committee (HTC) requested, pursuant to Section 11.(1) c and 13.(7) of the Inuvialuit Final Agreement, that the IGC ask for an environmental impact screening of the Project by the Inuvialuit Impact Screening Committee.<sup>12</sup> The basis for this request is the potential impact of the Project on the Dolphin-Union caribou herd, which migrates across the frozen channel from the mainland to Victoria Island. IGC requested that the Proponent provide clarification of the shipping route, the anticipated amount of marine traffic both on the Mackenzie River and through the Inuvialuit Settlement Region, and any proposed mitigative measures that address the potential impact to the Dolphin-Union herd. The IGC's concerns regarding wildlife and Inuit harvesting activities are included in the guiding principles in Subsection 12.4.2(a), which direct NIRB to recommend that the Project should be subject to a public review.

#### Wildlife Management Advisory Council N.W.T. (WMAC)

WMAC, a co-management organization in the Inuvialuit Settlement Region (ISR), established under the Inuvialuit Final Agreement (IFA), submitted comments to NIRB regarding the Project in a letter dated August 18, 2003.<sup>13</sup> The issues raised by WMAC regarding the effects of the Project on Inuit harvesting activities and wildlife are included in the guiding principles in Subsection 12.4.2(a), which direct NIRB to recommend that the Project be subject to a public review. The Council expressed concerns over the possible impact of the shipping route on the Dolphin-Union caribou herd that migrates between the mainland of Nunavut and Victoria Island, through areas within the ISR. WMAC noted that there was no mention in the Project description

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<sup>12</sup> Letter to NIRB dated August 19, 2003, from Duane Smith, Chair of the Inuvialuit Game Council (IGC).

<sup>13</sup> Letter to NIRB dated August 18, 2003, from Larry Carpenter, Chair of the Wildlife Management Advisory Council N.W.T.



of the potential impact on the Dolphin-Union herd and recommended that a broader range of potential effects be identified and additional mitigative measures developed beyond what was included in the revised Project description. The Council stated:

“This herd is of great importance for subsistence use to the people of Holman on Victoria Island, especially considering that since 1993 they have voluntarily agreed not to harvest the endangered Peary Caribou, the only other caribou herd available to them. The proposed all-weather road, and the quarries required to build and maintain that road, may also have an impact on the caribou. The project description does not explain why an all weather road was chosen instead of a winter road...In addition, the increase in shipping from the Project, and potential spills, could affect sea ducks and polar bears, and the marine ecosystem in general.”<sup>14</sup>

WMAC requested that the Proponent verify that the shipping season will not be extended beyond the natural open water season and stated that if the Proponent does plan to operate outside of this season, the Council will be compelled to request the IFA Environmental Impact Screening Committee to screen the Project.

#### Olokhaktomiut Hunters and Trappers Committee

In a letter to NIRB dated August 19, 2003, Mary Banksland, Chair of the Olokhaktomiut Hunters and Trappers Committee, expressed concern over the possible impact of the Project on the migratory route of the Dolphin-Union caribou herd and the lack of consultation with the community of Holman.<sup>15</sup> Banksland stated:

“Past caribou studies and traditional knowledge have shown us that the Dolphin Union Caribou herd uses winter habitat both East and West of Bathurst Inlet and spends from spring to early winter on Victoria Island. In 2001, the Dolphin-Union caribou herd migrated over to Victoria Island from April to July and back to the mainland for September to December.”<sup>16</sup>

Due to the concern over the Project affecting local harvesting, Banksland advised NIRB that the Committee has asked the Inuvialuit Game Council to refer the project to the Inuvialuit Environmental Impact Screening Committee. Again, these concerns over wildlife and Inuit harvesting activities, are outlined in Subsection 12.4.2(a), and are evidence that the proposal should be subject to a public review.

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<sup>14</sup> *Ibid.*

<sup>15</sup> Letter to NIRB dated August 19, 2003, from Mary Banksland, Chair of the Olokhaktomiut Hunters and Trappers Committee.

<sup>16</sup> *Ibid.*

### Page M. Burt

In a letter to NIRB dated August 18, 2003, Ms. Burt, Program Director and Staff Naturalist for Bathurst Inlet Lodge, stated her concerns over the potential impacts of the Project.<sup>17</sup> Firstly, Burt believes that the Project would result in a loss of tourist potential and a corresponding loss of local employment. In speaking with guests of the Lodge, Burt stated that it is apparent that the area is valued for its unique natural attributes:

“...people wish to visit Bathurst Inlet because they perceive that it is a tiny community in a remote wilderness area with a world-class interpretive program and an opportunity to get to know the local Inuit on a personal basis.”<sup>18</sup>

The second area of concern for Burt is the Proponent’s use of risky shipping routes without conducting sufficient studies to assess the impact on the ecology of the Inlet or the socio-economic effect on the local people. Burt recommended that NIRB require the Proponent to conduct these studies before the Project commences development.

### John Panegyuk

A native of Bathurst Inlet, John Panegyuk expressed his opposition to the Project in two letters to NIRB dated February 7, 2001 and August 6, 2003.<sup>19</sup> Panegyuk relayed grave concerns over the impact of the Project on the migration routes of the caribou, the impact of pollution and harmful chemicals on the environment and the health of the people, as well as the long-term socio-economic impact of the project on the Bathurst Inlet community. He concluded with this message:

“There are many factors which contribute to the negative consequences of the development of this sea port and highway project. Please take into consideration when it involves ours and our children’s Inuit way of life.”<sup>20</sup>

### Janet Watkinson

Watkinson, a recent guest at Bathurst Inlet Lodge and a regular visitor to the Canadian Arctic, wrote to NIRB on August 12, 2003 to express her dismay over the proposed Project.<sup>21</sup>

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<sup>17</sup> Letter to NIRB dated August 18, 2003, from Page M. Burt, Program Director and Staff Naturalist for Bathurst Inlet Lodge.

<sup>18</sup> *Ibid*, at p. 2.

<sup>19</sup> Letters to NIRB dated February 7, 2001 and August 6, 2003, from John Panegyuk.

<sup>20</sup> *Ibid*, February 7, 2001 letter.

Watkinson dismissed the argument that the Project will provide jobs for locals and asserted that in these situations companies usually employ their own people, the excuse being that the local people are not qualified. She continued on to say that the environmental impact on the Inlet has not been properly assessed and that more studies, specifically hydrological studies need to be carried out. Watkinson stated:

“The Inlet itself is of archaeological and historical interest and importance, the flowers and fauna quite unique. To destroy these attributes without adequate information as to the total impact, is short sighted in the extreme.”<sup>22</sup>

### Peter Heyes

Peter Heyes lived in the Arctic for twelve years and submitted a letter to NIRB to convey his deep concern about the impact of the Project on the environment and people of Bathurst Inlet.<sup>23</sup> His letter discussed the likely socio-economic effect on the local inhabitants and argued that the development will not, in reality, create new jobs for locals due to their lack of qualifications and reluctance to move in order to upgrade their education. In fact, Heyes stated that those who currently live and work in Bathurst will lose their livelihood if the Project is developed. He concluded:

“I would therefore suggest that no decision is made until experts have fully reviewed the situation and the impact of the port on the environment and people of the north. The first step should be a complete hydrological study to make sure that the project is feasible in the first place.”<sup>24</sup>

The ecosystem, wildlife, harvesting and socio-economic concerns identified by the four preceding individuals, Page M. Burt, John Panegyuk, Janet Watkinson, and Peter Heyes are outlined in Subsection 12.4.2(a), and are evidence that the Project should be subject to a public review.

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<sup>21</sup> Letter to NIRB dated August 12, 2003, from Janet Watkinson.

<sup>22</sup> *Ibid.*

<sup>23</sup> Letter to NIRB dated August 14, 2003, from Peter Heyes.

<sup>24</sup> *Ibid.*

## **(2) Public Review Pursuant to 12.4.4(b) NLCA**

### Indian and Northern Affairs Canada (INAC)

In a letter dated August 11, 2003, INAC reiterated that the Department, after reviewing the revised project description and with the support of Fisheries and Oceans Canada (DFO), Natural Resources Canada (NRCan), Parks Canada (PC), Environment Canada (EC), Transport Canada (TC), Health Canada (HC), and the Canadian Environmental Assessment Agency (CEA Agency), continues to believe that a public review under Part 5 or 6 of the NLCA is appropriate since "...there is the potential for this project to cause adverse environmental impacts..."<sup>25</sup> Some of the issues the federal authorities considered in making their decision included the impacts on the marine environment, human health, the Bathurst and Queen Maud caribou herds, the ecological reserves and parks adjacent to the Northwest Passage, as well as the need to conduct a thorough alternatives assessment. INAC requested that the Proponent provide: clearer evidence of the ability of the proposal to meet its objectives; technically and economically feasible alternative means of carrying out the Project and their potential effects; a thorough assessment of socio-economic impacts on the communities in Nunavut and the NWT; consideration of human health effects, the health and safety of BIPAR workers and appropriate monitoring methods; a review of comments received from the public and discussion of their concerns; and further detailed examination of cumulative effects.

### World Wildlife Fund Canada (WWF)

Tony Iacobelli, Senior Manager, Landscape Conservation Planning – Arctic and North American Conservation Programs, identified three critically important issues surrounding the proposed Project: potential adverse impacts to marine ecosystems which fall mainly under federal jurisdiction; transboundary issues such as the management and monitoring of the Bathurst caribou herd, wildlife movements of top predators, and the potential development of a transportation corridor through the NWT to Bathurst Inlet; and concerns regarding cumulative effects and their impact on wildlife populations and habitats, regional landscapes, and culturally

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<sup>25</sup> Letter to NIRB dated August 11, 2003, from Janice Traynor, acting for Glen Stephens, Manager, Environment.

significant areas.<sup>26</sup> WWF suggested that the Proponent consider the establishment of a network of conservation areas that represent the natural regions affected by the proposed development and safeguard key wildlife habitats and culturally significant areas. Due to the importance of the issues identified, WWF believes that a public review under Section 12.4.4(b) of the NLCA is necessary.

### **(3) Public Review Pursuant to Part 6 of Article 12**

Government of the Northwest Territories (GNWT)

Robert McLeod, Deputy Minister of the Department of Resources, Wildlife and Economic Development, faxed a letter to NIRB restating the GNWT's position that the Project should be referred to a review under Part 6 of the NLCA.<sup>27</sup> McLeod noted that businesses, northern communities, Aboriginal organizations and environmental groups at the regional, national and international level have raised serious concerns to the Department over the impacts of the proposed development. Further, he pointed out that during the Mackenzie Valley Environmental Impact Review Board (MVEIRB) review of the Snap Lake Diamond Project, many of these same groups "expressed extreme concern for the cumulative effects of projects throughout the Slave Geologic Province on the Bathurst Caribou Herd, wolverine and grizzly bears." McLeod concluded:

"Given the direction given by the MVEIRB to the GNWT and the strong sentiments of concern raised by all Aboriginal organizations, I re-endorse the GNWT's request that you consider the environmental impact review of the proposed Bathurst Inlet Port and Road under Part 6 of Section 12 of the NLCA. The basis for this request is that the Part 6 process provides for a more clearly defined path to consider the broader regional and national interests of the proposed development."<sup>28</sup>

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<sup>26</sup> Letter to NIRB dated August 11, 2003, from Tony Iacobelli, Senior Manager, Landscape Conservation Planning – Arctic and North American Conservation Programs, World Wildlife Fund – Canada.

<sup>27</sup> Letter to NIRB dated August 11, 2003 from Robert McLeod, Deputy Minister of the Department of Resources, Wildlife and Economic Development, Government of the Northwest Territories.

<sup>28</sup> *Ibid*, at p. 2.

### Leon Lafferty – NWT Legislative Member for North Slave

On behalf of his constituents, Mr. Lafferty submitted a letter to NIRB on August 11, 2003, recommending a Part 6 Environmental Review of the Project.<sup>29</sup> Due to the transboundary impacts of the Project on the Bathurst caribou herd, muskoxen, moose and bears, Lafferty stated that the development of a road could seriously affect these animals, particularly the caribou, which the local people rely on for food. Further, Lafferty maintained that the creation of a new road and port would likely disrupt the established mine re-supply system and have negative economic implications for the Northwest Territories. Because of the “significant social, economic, and environmental implications for the western Arctic” and the transboundary nature of the Project, Lafferty concluded:

“...I encourage you to ensure that a Part 6 environmental review of this project is undertaken. This will ...ensure that the interests of the western Arctic are represented.”<sup>30</sup>

### Yellowknives Dene First Nation

The Land & Environment Committee of the Yellowknives Dene First Nation identified two areas of particular concern, and recommended a Part 6 public review in its submission to NIRB.<sup>31</sup> Firstly, the Committee voiced concern over the possible cumulative effects of the Project, and the lack of detailed information regarding the additional impacts of the Izok project and other future mine developments in the region. Secondly, the Committee expressed concern over the impacts to the migration routes of the caribou, especially to the Bathurst herd, which all peoples of the North rely upon for sustenance and indeed, survival. In reference to the changes taking place in the western Territories the Committee stated:

“It is no longer reasonable to assume that a project that is developed in the Nunavut settlement area might not have some considerable impact on people as far away as Yellowknife and its surrounding areas. Clearly, the necessity of the full and comprehensive Part 6 review is the only way in which this matter can be dealt with effectively.”<sup>32</sup>

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<sup>29</sup> Letter to NIRB dated August 11, 2003, from Leon Lafferty, NWT Legislative Member for North Slave.

<sup>30</sup> *Ibid*, at p. 2.

<sup>31</sup> Letter to NIRB dated August 11, 2003, from the Land & Environment Committee of the Yellowknives Dene First Nation and signed by Dettah Chief Peter Liske and Ndilo Chief Darrell Beaulieu.

<sup>32</sup> *Ibid*, at p. 2.

### Dogrib Treaty 11 Council

In a letter dated August 8, 2003, the Council expressed agreement with the preliminary issues identified in the Minister's letter of April 10, 2003 to NIRB, and stated that, even as revised, the Project will likely have profound and long-term impacts that reach beyond Nunavut.<sup>33</sup> The Council pointed out that the Project would extend into lands covered by the recently completed Tlicho Agreement, the area on which the Tlicho rely for hunting caribou. As a result, of the Tlicho's "...very direct and important interests that stand to be affected by this project," the Council recommended that the appropriate course of action is to refer the project to the Minister for a Part 6 review by a federal environmental assessment panel pursuant to 12.4.7(a) of the NLCA.

### Bob and Enid Fanning

Bob and Enid Fanning have spent a significant amount of time in the Bathurst Inlet and Contwoyto Lake areas and submitted their concerns about the Project to NIRB in a letter dated August 15, 2003.<sup>34</sup> According to the Fannings, the Project would have major impacts on the landscape, plants, animals and people. They pointed out that the proposed shipping route presents navigational challenges and raises questions about Canadian sovereignty over international shipping. Additionally, they noted that both the people of Bathurst Inlet and the Dene from the Great Slave Lake area use the Bathurst caribou herd, which will be impacted by the Project. They recommended that all affected people have input in assessing the proposal, and that a Part 6 public review be held to ensure the best possible input from all of the interested parties.

## **(4) Public Review Pursuant to Part 5 of Article 12**

### Nunavut Tunngavik Incorporated (NTI)

In a letter dated August 8, 2003 from Stefan Lopatka, Senior Advisor, Environmental, Water and Marine Management, Department of Lands and Resources, NTI re-confirmed its support for a

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<sup>33</sup> Letter to NIRB dated August 8, 2003, from the Dogrib Treaty 11 Council and signed by Grand Chief Joe Rabesca.

<sup>34</sup> Letter to NIRB dated August 15, 2003, from Bob and Enid Fanning.

public review and specifically requested that one be held pursuant to Part 5 of the NLCA.<sup>35</sup> NTI included a response to the issues raised by the Minister in the April 10, 2003 letter to NIRB. Firstly, regarding the issue of environmental concerns over the marine ecosystem related to shipping in “newly established” marine transport corridors, NTI noted that marine transport activities have been ongoing for approximately the last 25 years along the route proposed by the Proponent. With access to the “multitude of reviews and studies, produced to date on marine transport in this area”, NTI believes NIRB will be able to effectively incorporate these concerns into the review process.<sup>36</sup>

Secondly, NTI pointed out that the potential and real impacts of mining operations on the Bathurst caribou herd have already been studied in great detail and have resulted in the formation of the Bathurst Caribou Management Board and Plan which involved the input of a variety of stakeholders. NTI believes that, due to access to these studies, as well as those that exist from marine transport in the area, NIRB will be able to effectively incorporate these concerns into the review process. Thirdly, on the issue of impacting existing re-supply routes, NTI asserted that the Project will create more business opportunities, and all will benefit in the long term. In conclusion, NTI recommended that NIRB undertake a Part 5 review because:

“NIRB...will have access to the many studies on the environmental concerns [including caribou]... In this way, we believe that the intent of the NLCA will be best met, ensuring that Inuit have the appropriate level of input into the environmental regulatory process on this important project.”<sup>37</sup>

#### Government of Nunavut Department of Sustainable Development (GN DSD)

In a letter dated August 19, 2003, Earle Baddaloo, Environmental Protection Services reaffirmed that the Department supports a Section 12.4.4(b) review of the Project and stated that, although the information provided in the project description lacks detail in the area of anticipated environmental impacts, it is sufficient to determine the next stage of the process.<sup>38</sup> As indicated in earlier correspondence, the Department, and probably the Government of Nunavut generally,

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<sup>35</sup> Letter to NIRB dated August 8, 2003, from Stefan Lopatka, Senior Advisor, Environmental, Water and Marine Management, Department of Lands and Resources, Nunavut Tunngavik Incorporated.

<sup>36</sup> *Ibid*, at p. 2

<sup>37</sup> *Ibid*, at p. 3.

<sup>38</sup> Letter to NIRB dated August 19, 2003, from Earle Baddaloo, Environmental Protection Services, Nunavut Department of Sustainable Development.



continues to recommend a Part 5 review because “...the Bathurst Road and Port Project is located solely within the Territorial Boundaries of Nunavut...”<sup>39</sup>

#### Bathurst Inlet Port and Road Project (Proponent)

As mentioned previously, the Proponent believes that the revised Project should be reviewed pursuant to Part 5 of the NLCA. In a letter to INAC dated December 18, 2002, A.J. Keen, Project Manager clarified the revised scope of the project by stating:

“Our letter of November 27, 2002 [the project revision] has not changed any aspect of the Project as described in the Project Description. All the elements of the project that are proposed for completion in the initial construction campaign remains as described...The Project facilities at the port such as the camp and tank farm are reduced somewhat in capacity in order to reduce capital costs, but will still occupy the same footprint on the land.”<sup>40</sup>

The letter continued on to explain that, due to the deferral of elements required by the Izok Project, there has been a reduction in Crown Land requirements, specifically the withdrawal of the Application for Lease, bed of body of water, Contwoyto Lake, and the Application for License, road from Lupin to Izok. Keen concluded:

“We believe that deferring the Project elements that are required only for the Izok Project significantly simplifies the Project scope and in no way compromises NIRB’s ability to develop guidelines for preparing a Project EIS.”<sup>41</sup>

On August 21, 2003, NIRB received a written response from the Proponent directed at clarifying some of the specific issues raised in the written submissions.<sup>42</sup> One of the issues addressed by A. J. Keen, Project Manager, was the type of review necessary for a project with transboundary impacts. Keen disputed the position of the GNWT, Yellowknives Dene First Nation and the Dogrib Treaty 11 Council, which maintains that a federal environmental assessment panel is necessary due to the impacts beyond the boundaries of Nunavut. He pointed out that pursuant to Articles 12.11.1 and 12.11.2, NIRB has jurisdiction to review projects with transboundary impacts. Further, in situations where NIRB conducts a review under Part 5 and reports its

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<sup>39</sup> *Ibid*, at p. 2.

<sup>40</sup> Letter to Mr. Carl McLean, Manager, Land Administration, Department of Indian and Northern Affairs Canada dated December 18, 2002, from A.J. Keen, Project Manager of the Bathurst Inlet Port and Road Project.

<sup>41</sup> *Ibid*, at pp. 1-2.

<sup>42</sup> Letter to NIRB dated August 21, 2003, from A.J. Keen, Project Manager of the Bathurst Inlet Port and Road Project.

findings to the Minister, the NLCA authorizes the Minister to reject a NIRB determination that the project shall proceed “...on the basis that the proposal is not in the national or regional interest...” NIRB agree with this jurisdictional point.

Another issue addressed was the impact of the Project on caribou. Keen pointed out that, since the Project is a Joint Venture between two Kitikmeot Inuit companies, the Kitikmeot Inuit will ensure that the Project has minimal impact on the Bathurst caribou herd. The letter continued on to state:

“There is no doubt that this caribou herd is a transboundary resource shared by the people of Nunavut and the Northwest Territories. This herd has featured in almost every recent environmental review in the region. NIRB has the capacity to deal with this issue under a Part 5 review.”<sup>43</sup>

In response to the concerns expressed by the Inuvialuit over the impact to the Dolphin-Union caribou herd, Keen stated that shipping operations would not interfere with their migration patterns because no ice breaking will be used to extend the normal open-water shipping season.

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Keen also addressed the issues of purpose and alternatives and stated that the purpose of the Project is to “...provide cheaper transportation for fuel and supplies to the Kitikmeot communities and to the mines in the northern part of the Slave Geological Province including Ekati™, Diavik and Tahera.”<sup>45</sup> In response to the issue of alternative routing as discussed in the CARC submission, Keen stated that the previously studied route was based on one from Izok to the coast and since the current project description does not include Izok, it appears from the response that this route will not be considered.<sup>46</sup>

Keen dismissed the suggestion that an economic feasibility study should be filed with NIRB as being unnecessary and premature at this time. The feasibility of the Project, along with the concerns expressed by individuals in their submissions can instead be properly dealt with when

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<sup>43</sup> *Ibid*, at p. 2.

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid*, at p. 3.

<sup>46</sup> *Ibid*, at p. 4.

developing the Terms of Reference for the EIS. Without deciding the point, feasibility is in the Board's mind, still a relevant consideration in several respects, including but not limited to the Nunavut Water Board's statutory information requirements should the Project proceed.

In conclusion, Keen emphasized the issue of time sensitivity and the importance of moving ahead as quickly as possible to allow for the submission of an Environmental Impact Statement for review by NIRB and other parties.

It is of importance to note that the Proponent addressed the issue of whether a review should proceed under Part 5 or 6 of the NLCA, in the revised Project Description. A memorandum of law prepared by David H. Searle, C.M., Q.C., dated May 8, 2003, is attached to the document as Appendix 5.<sup>47</sup> According to Searle, in deciding the underlying legal issue of whether a Part 5 or 6 review is required, the Minister is directed by NLCA Section 12.4.7, to refer the proposal to the Minister of the Environment for a review by a federal environmental assessment panel "where required by law or otherwise..." Searle states:

"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...Hence the only appropriate review is a Part 5 review by NIRB."<sup>48</sup> [Emphasis in original]

If Searle is right, and the Board cannot see a flaw with his reasoning on this point, there is no Section 12.4.7 authority for a Part 6 referral.

#### ***E. Issues of Concern to NIRB***

In brief summary, even after the Proponent's assurances, NIRB believes there are a number of issues that need to be more fully addressed by the Project Proponent and feels strongly that public input into these issues is necessary to ensure that the concerns of those directly impacted are taken into account and dealt with effectively. A public review must proceed, due, among other things, to the following issues that remain a concern to NIRB:

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<sup>47</sup> Memorandum of Law, Bathurst Inlet Port and Road Project Joint Venture Ltd. Bathurst Inlet Port and Road Project: Project Description, dated May 8, 2003 at Appendix 5.

<sup>48</sup> *Ibid*, at p.2.

- **Project operations and wildlife.** As stated above, the Project area includes the traditional migratory passages for the Bathurst and Dolphin-Union caribou herds, grizzly bear, wolverine and wolf. Since the caribou form an integral part of traditional subsistence activities, significant public concern will, and has already been raised.
- **Transboundary Impacts:** Consideration of potential transboundary impacts of the project, including impacts upon the Bathurst and Dolphin-Union caribou herds and other wildlife. A Project with this potential for transboundary ecosystemic effects should be fully described and EIS alternatives fully considered.
- **Socio-economic effects and the impact on Inuit harvesting activities** need to be addressed in greater detail and Valued Socio-economic Components (VSECs) identified.
- The creation of **baseline inventories** of wildlife, fish and their habitat, Valued Ecosystemic Components (VECs) identified, and a plan for their continued monitoring.
- **Water quality** regarding the dock and wharf areas.
- The creation of **emergency clean-up procedures** for the fuel storage site and general marine area.
- The effect of **noise** on wildlife from blasting activities and heavy truck traffic. Noise abatement should consider the potential negative effects on wildlife behaviour in addition to humans.
- The assessment of impacts on wildlife, lands and resources from **port site construction and operation.**
- The potential for **additional wildlife and perhaps hunting pressure** due to possible road access. The issue of private vehicle access needs to be dealt with in more detail.
- **Residual and cumulative environmental effects** need to be addressed in more detail, especially with regard to the future operation of the Izok deposit and future development in the Bathurst Inlet area.
- **Alternatives** need to be more seriously analysed and addressed in more detail. Specifically, clarification on whether the proposed route is the only viable means to facilitate mine development in the West Kitikmeot region.

NIRB agrees that the Board's jurisdiction over projects located in Nunavut does in fact extend to transboundary impacts as NTI and the Proponent maintain. Articles 12.2.5 and 12.5.5 of the NLCA direct NIRB to take into account the interests and well-being of residents of Canada outside the Nunavut Settlement Area when carrying out any of its functions and, specifically, when reviewing project proposals under Part 5 of Article 12. In addition to possessing the necessary jurisdiction, NIRB believes it has the ability and expertise to assess the impact of the project on caribou, particularly in light of the Board's access and knowledge regarding the caribou and associated studies.

Yours truly,

Elizabeth Copland  
Chairperson

cc: Distribution List

Attachment: David Searle, May 8 Letter