

EA1415-01

October 17, 2017

Mathew Spence
Director General
Northern Projects Management Office
Canadian Northern Economic Development Agency
5019 - 52nd Street
Yellowknife, NT X1A 2R3

Dear Mr. Spence,

Re: EA1415-01 Canadian Zinc Corporation's Prairie Creek All Season Road Report of Environmental Assessment, Measure 5-1

Thank you for your letter dated October 13, 2017 requesting clarification from the Mackenzie Valley Environmental Impact Review Board (Review Board) on Measure 5-1 in the *Report of Environmental Assessment and Reasons for Decision* (Report of EA) for the Prairie Creek All Season Road (the development).

Your letter underlines the following text in the introduction (Part 1) of Measure 5-1: "The developer will follow the final recommendations of the review panel with respect to road design." Your understanding, as described in your letter, is that Measure 5-1:

- "is not intended to... bind subsequent regulators or regulatory processes" and
- "would neither restrict subsequent regulators from establishing nor limit the developer from following any other requirements that are otherwise within the jurisdiction of those regulators."

In response to your request, the purpose of this letter is to clarify the Review Board's intended meaning and effect with respect to this aspect of measure 5-1. In short, the underlined sentence in your letter is not meant in any way to fetter any separate, additional, or related conditions that may be included in any required regulatory authorizations.

Regulatory oversight

In the Report of EA, Measure 5-1 makes several explicit references to the role of regulators in relation to the Independent technical review panel (the panel):

- Canadian Zinc Corporation Ltd. (CanZinc or the developer) will engage regulators, and others, on the panel composition (Part 3)



- The members of the panel will be independent and approved by regulators (Part 3).
- CanZinc will engage regulators, and others, with regard to the activities of the panel (Part 4).
- The panel's reports will be provided to regulators, including a preliminary report and a final report with findings and conclusions on final design (Part 4).
- The panel will work with the developer and regulators regard to the panel's activities during construction.

The preamble to Measure 5-1 says the Measure will increase confidence that traffic-related accidents, road failure and malfunctions will be adequately addressed. The Measure is intended to ensure that the developer and regulators (as well as other parties) have access to the information and expertise they need to ensure the road is built in a safe way and that the final road design is fully informed by the panel's recommendations and acceptable to the panel based on the mandate set out in Part 2 of the Measure.

The panel is not a replacement for regulatory rigour; it is meant to contribute to the project design and regulatory process. As with all Measures of the Review Board, Regulators may choose to apply more stringent conditions to the developer than those recommended by the Board or the panel. The Review Board's significance determination and recommended measures frame the space within which regulators can further exercise their discretion. Regarding engineering considerations related to the prevention of accidents and malfunctions, the Review Board expects that regulators will rely heavily on the independent expert panel's findings and recommendations when considering the overall approval of the development.

The Review Board's intention with its recommended measures is not to limit, in any way, a regulator's authority to seek more information, give direction to the developer, or reject something being proposed by the developer; on the contrary, the Board's intention is to ensure that there is regulatory oversight to: (a) set detailed operational requirements within the framework set by the Board's significance determinations and mitigation measures, and (b) ensure the intent of each EA measure is achieved.

Scope and focus of panel's activities

Part 2 of Measure 5-1 sets out the panel's mandate:

...to provide independent expert advice and recommendations on the design and construction of the road to minimize: traffic-related accidents, road failure or malfunctions, and any resulting significant adverse impacts on human safety or the environment.

As stated in the panel's mandate, the pathway of effect that the panel is to concern itself with is: "traffic-related accidents, road failure or malfunctions". The Review Board views this mandate as being focussed primarily on engineering and road design and specifically the engineering and design elements that have implications for human safety and the



prevention of accidents. The Review Board does not see the panel's role as comprising any legal authority at all.

While the Review Board clearly acknowledges the importance of good road design to help prevent impacts on other valued components of the environment (e.g. impacts on water from spills or wildlife from collisions), the focus of Measure 5-1 is on minimizing the risk of accidents. Beyond Chapter 5, the Report of EA discusses various pathways of effect and potential impacts which the Review Board has not included in the panel's mandate. Part 5 of Measure 5-1 lists various things the panel "will also consider"; such consideration is intended to be only and entirely in support of the panel's mandate and activities outlined in the other parts of the measure.

I hope that this letter helps clarify the Board's purpose and intent in setting out Measure 5-1. If you have any questions please contact our Executive Director, Mark Cliffe-Phillips, at 867-766-7055 or by email at mcliffephillips@reviewboard.ca.

Sincerely,

JoAnne Deneron
Chairperson