

# Lı́ıdlı́j Kúé First Nation

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December 27, 2017

## SENT VIA E-MAIL

Umar Hasany  
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Canadian Northern Economic Development Agency  
Government of Canada  
5019 52<sup>nd</sup> Street  
Yellowknife, NT X1A 1T5

Attention: Matthew Spence, General Director & Kate Hearn, Assistant Deputy Minister

Dear Sirs/Mesdames:

**Re: Proponent's Letter of Response Dated November 21, 2017  
Report of Environmental Assessment on the proposed Prairie Creek All Season  
Road  
Your File No. EA1415-01**

Further to the Mackenzie Valley Environmental Review Board's (Review Board) *Report of Environmental Assessment and Reasons for Decision on Canadian Zinc's proposed Prairie Creek All Season Road Project EA1415-01* (the "Report"), Lı́ıdlı́j Kúé First Nation ("LKFN") has reviewed Canadian Zinc's ("CanZinc") letter dated November 21 concerning "Responses from Indigenous Groups to Letter September 12, 2017."

In the above referenced letter, CanZinc claims that the IBA concluded between LKFN and CanZinc in 2011 "include commitments by Canadian Zinc to provide for monitoring of the mine access road by NBDB members and monitoring of the mine site by LKFN members. Each Band was and is aware of the other's area of responsibility and, in this way, there is a clear division of tasks and responsibility."

CanZinc's claim that LKFN's monitoring role is contractually confined by the 2011 IBA to the mine site is incorrect. CanZinc is misconstruing both the scope of the project under the 2011 LKFN IBA, which deals only with the mine and winter access road as proposed in 2008, and the commitments under the IBA in respect to monitoring, which address the entirety of the project as permitted and proposed in 2011. The 2011 LKFN IBA does not address the All-Season Road Project. To the extent that that 2011

LKFN IBA is relevant, it contains terms which support LKFN participation in monitoring the entire project, including the access road.

LKFN maintains that it has the right and responsibility to be involved in monitoring the All-Weather Road as proposed by the Review Board, and provides the following details of the IBA in order to refute CanZinc's claim that LKFN had agreed to limit its monitoring activities to the minesite.

The 2011 LKFN IBA with CanZinc contractually defined "the Project" with reference to specific land use permits, including the mine access road authorized by LUP MV2003F0028 (Winter Road - Prairie Creek Mine Site to Liard Highway) and in respect to changes sought by CanZinc in their 2008 Project Description Report for the purposes of Environmental Assessment EA0809-002, which was ongoing at the time the IBA was signed. It does not address the All-Weather Road Project, which was brought forward by CanZinc after EA0809-002 was completed, and constitutes a subsequent separate project not captured by or subject to the terms of the 2011 LKFN IBA.

The 2011 LKFN IBA contains terms under which CanZinc committed to provide opportunities for a LKFN monitor to access the Project (as defined in the IBA) in order to monitor CZN's environmental compliance with the terms and conditions of their regulatory permits, and describes responsibilities of the monitor including:

- monitoring compliance with the Project's regulatory permits with respect of wildlife and environmental issues;
- monitoring and tracking impacts on the environment or wildlife such as the case may be;
- working with on-site supervisor(s) to mitigate or prevent impacts;

Contrary to what CanZinc now claims, the 2011 LKFN IBA supports the direct participation of LKFN in monitoring the entirety of the Project, including the winter access road, as the Project was then conceived. There is nothing in the 2011 LKFN IBA addressing LKFN's role in monitoring the All-Season Road, as the All-Season Road was not contemplated at the time the 2011 LKFN IBA was signed.

CanZinc's November 21, 2017 letter also claims that "At the outset of the recent EA...LKFN were generally supportive of the all-season road, understood and accepted NBDB as the nearest and most impacted community to the Prairie Creek project, and did not voice any concerns with respect to items such as additional benefits or support for traditional knowledge studies."

CanZinc is again misconstruing and misrepresenting LKFN's interests and positions with regard to the All-Season Road. CanZinc is well aware of the fact that the existing Project and the proposed All-Season Road are within LKFN territory. LKFN's concerns about the All-Season Road and LKFN's position that the All-Season Road is a new project not contemplated in the 2011 LKFN IBA and that additional measures are required to address the impacts of the All-Season Road have been consistently communicated to CanZinc.

LKFN accordingly reiterates our strong support for the Review Board's proposed measures in respect to the All-Season road. LKFN further submits that CanZinc's November 21, 2017 misrepresentations of the 2011 LKFN IBA as constituting an agreement by LKFN that it was not going to be involved in monitoring the access road, and CanZinc's dismissive attitude towards LKFN's interests and concerns is further evidence of the need for regulators to require CanZinc to enter into enforceable agreements with LKFN and other affected First Nations (either individually or collectively) to ensure the measures recommended by the Review Board in the the Report of EA and the commitments that CZN made during the course of the EA will be implemented.

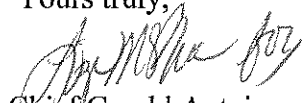
Finally, we would like to draw the attention of the Ministers to our recent correspondence to the Mackenzie Valley Land and Water Board concerning CanZinc's recent application for a two-year extension to Land Use Permit MV2012F0007. Land Use Permit MV2012F0007 allows CanZinc to build and operate a winter road to its Prairie Creek Mine Site, and expires on January 9, 2018. CanZinc is asking the MVLWB to extend the permit for the Winter Road alignment in order to construct a Winter Road —in addition to the All-Season Road that is the subject of the pending Ministerial decision in

LKFN opposes the extension of Land Use Permit MV2012F0007, as it is contrary to the plan that CanZinc put forward in EA1415-01. During the All-Season Road EA, CanZinc specifically represented that it would not construct a Winter Road along the permitted Winter Road alignment, but would instead construct and operate a winter road on the alignment of the proposed All-Season Road, if needed, during the early phases of the All-Season Road project. The Review Board specifically relied on this representation, noting:

“The Review Board has not assessed the combined impacts that may occur if CanZinc's Permitted Winter Road and the proposed All Season Road were to both be constructed and used. With the exception of the two sections (upper Sundog and Fishtrap creeks) of the Permitted Winter Road that CanZinc proposed to construct to support All Season Road construction ... the Review Board understands that CanZinc intends to construct a winter road along the All Season Road alignment, not the Permitted Winter Road Alignment.” (Report of EA, page 30).

For the reasons more fully set out in the attached submission to the MVLWB, LKFN requests that the Minister's seek clarification from CanZinc regarding their intentions for access to the mine. If CanZinc intends to proceed with their request for an extension of Land Use Permit MV2012F0007 and the construction of the Permitted Winter Road in addition to the All Weather Road, the All-Weather Road Project contemplated in EA1415-01 must be referred back to the Review Board for additional consideration of the cumulative impacts of proceeding with both road corridors pursuant to Section 130(1)(b)(i) of the MVRMA.

Yours truly,



Chief Gerald Antoine  
Liidlii Kue First Nation

- cc. Grand Chief Herb Norwegian, Dehcho First Nation  
Chief Peter Marsellais, Nahanni Butte Dene Band  
Mackenzie Valley Impact Review Board  
Mackenzie Valley Land and Water Board



12 December 2017

Julian Morse and Jacqueline Ho  
Regulatory Specialists  
Mackenzie Valley Review Board

Re: Canadian Zinc Corporation - Land Use Permit Extension Request (MV2012F0007)

Dear Mr. Morse and Ms. Ho:

Líídljį Kúé First Nation ("LKFN") is responding to the Mackenzie Valley Land and Water Board's ("MVLWB") request for comments on Canadian Zinc Corporation's ("CanZinc") proposed 2-year extension of Land Use Permit MV2012F0007 (the "Winter Road").

Granting an extension to Land Use Permit MV2012F0007 would enable CanZinc to build and operate a Winter Road to its Prairie Creek Mine Site while the All-Weather Road EA is under consideration. Such an authorization would undermine two regulatory processes under the Mackenzie Valley Resource Management Act ("MVRMA"), enable CanZinc to avoid legislated requirements for environmental assessment through project splitting, and disregard the constitutional duty to consult with LKFN.

Accordingly, LKFN submits that the MVLWB must deny CanZinc's request for a two-year extension of Land Use Permit MV2012F0007, for the reasons more fully set out below.

If there are any questions in respect of this request, please contact the undersigned.

All of which is respectfully submitted,

  
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Liza McPherson  
Executive Director  
Líídljį Kúé First Nation

## Łíídlíj Kúé First Nation (“LKFN”)

### Comments on Canadian Zinc Corporation (“CanZinc”) Proposed 2-year extension of Land Use Permit MV2012F0007 (the “Winter Road”)

December 12, 2017

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#### Overview

In 2012, CanZinc applied for a permit to build and operate a winter road to its Prairie Creek Mine Site. On January 10, 2013, the MVLWB granted CanZinc the requested permit for a Winter Road along a specific route under Land Use Permit MV2012F0007. Land Use Permit MV2012F0007 expires on January 9, 2018.

In 2014, CanZinc put forward a new proposal to build and operate a different, all-weather road to the Prairie Creek Mine Site (the “All-Season Road”), along a route that incorporated key portions of the previously permitted Winter Road alignment.<sup>1</sup>

In 2016, the Mackenzie Valley Environmental Review Board (“Review Board”) commenced an EA of the All-Seasons Road proposal. The *Report of Environmental Assessment and Reasons for Decision on Canadian Zinc’s proposed Prairie Creek All Season Road Project EA1415-01* (“All-Season Road EA Report”) concluded that the proposed All-Season Road was likely to cause significant adverse impacts on the environment,<sup>2</sup> but recommended approval subject to the implementation of a suite of measures and recommendations designed to prevent or minimize impacts on the environment and Dene rights.

A final Ministerial decision on the All-Season Road remains outstanding.

However, now that the All-Season Road EA Report has been completed and is before the Minister, CanZinc is asking the MVLWB to extend the permit for the Winter Road alignment in order to construct a Winter Road —*in addition to the All-Season Road*.

CanZinc now claims that building the proposed Winter Road is (or may be) required because of the delay in obtaining the All-Season Road authorization, and is (or may be) required for care, maintenance, and construction of the mine over the next two winters.

This is contrary to the plan that CanZinc put forward during the All-Seasons Road EA. During the All-Season Road EA, CanZinc specifically represented that it would not construct a Winter Road along the permitted Winter Road alignment, but would instead construct and operate a winter road on the alignment of the proposed All-Season Road, if needed during the early phases of the All-Season Road project.

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<sup>1</sup> *Report of Environmental Assessment and Reasons for Decision on Canadian Zinc’s proposed Prairie Creek All Season Road Project EA1415-01* (“EA Report”), page 6.

<sup>2</sup> EA Report, page 17.

The Review Board conducted its review based on CanZinc's representation that the Winter Road alignment was abandoned. It noted:

"The Review Board has not assessed the combined impacts that may occur if CanZinc's Permitted Winter Road and the proposed All Season Road were to both be constructed and used. With the exception of the two sections (upper Sundog and Fishtrap creeks) of the Permitted Winter Road that CanZinc proposed to construct to support All Season Road construction ... the Review Board understands that CanZinc intends to construct a winter road along the All Season Road alignment, not the Permitted Winter Road Alignment."<sup>3</sup> [emphasis in original]

CanZinc's new proposal will result in the construction of two roads, instead of one. The potential impacts of this "Two Road Proposal" (especially the cumulative impacts) will obviously expand the development footprint and require additional activities and infrastructure.

None of the requirements to build both roads have been described, none of the additional or cumulative impacts have been assessed, no consultation has occurred, and no mitigation measures have been proposed.

#### **(1) No Permit May Be Issued Until The All-Weather Road EA Process Concludes**

Because the Winter Road alignment overlaps with the route of the All-Season Road, granting the extension of Land Use Permit MV2012F0007 would allow CanZinc to build parts of the All-Season Road before it has been legally approved. This is contrary to the MVRMA.

The *Mackenzie Valley Land Use Regulations* provide that this Board **may** extend the terms of a permit for up to two years.<sup>4</sup> However, there is no right to an extension; to the contrary, the Board is required to use discretion, and where an application does not meet the requirements of the legislative scheme set out in the *Act*, the Board must refuse it.<sup>5</sup>

Section 118 of the MVRMA states that no license, permit or other authorization required for the carrying out of a development can be issued until a Part 5 Environmental Assessment Review has been carried out and complied with:

118 (1) A licence, permit or other authorization required for the carrying out of a development shall not be issued under any federal, territorial, Tlicho or Déline law unless the requirements of this Part have been complied with in relation to the development.<sup>6</sup> [Emphasis added.]

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<sup>3</sup> EA Report, page 30.

<sup>4</sup> *Mackenzie Valley Land Use Regulations*, SOR/98-429, r 26(6) ("On receipt of a written request from a permittee, prior to the expiration of the permit, for an extension of the term of the permit, the Board **may** extend the term of the permit for an additional period not exceeding two years, subject to any conditions referred to in subsection").

<sup>5</sup> See eg *MV03Q19 Extension Refusal July10-08*, online: <mvllwb.ca/Registry> ("the MVLWB cannot approve the extension").

<sup>6</sup> *Mackenzie Valley Resource Management Act*, SC 1998, c 25 ("MVRMA") s. 118(1).

The Federal Court has confirmed that the MVLWB has no discretion to avoid the application of Section 118.<sup>7</sup>

LKFN submits that the scope of the development assessed under the All-Season Road EA includes significant elements of the Winter Road alignment. For the MVLWB to grant an extension of the Winter Road Alignment Permit while the All-Season Road EA is still under consideration would be contrary to Section 118, as it would enable CanZinc to carry out portions of the development still being assessed as the All-Season Road. It would also prevent assessment of the cumulative impacts associated with the new Two Road Proposal.

## **(2) No Permit May Be Issued until Cumulative Effects are Considered**

The MVRMA is also clear that a cumulative environmental impact assessment is required:

117 (2) Every environmental assessment and environmental impact review of a proposal for a development shall include a consideration of

(a) the impact of the development on the environment, including the impact of malfunctions or accidents that may occur in connection with the development and any cumulative impact that is likely to result from the development in combination with other developments;<sup>8</sup> [emphasis added]

The Federal Court of Appeal has noted that cumulative environmental effects or impacts may be defined as “the effects on the environment...resulting from the effects of a project when combined with those of other past, existing, or imminent projects and activities.”<sup>9</sup>

Under the requested extension of Land Use Permit MV2012F0007, CanZinc is proposing to undertake the construction and operation of a Winter Road along the Winter Road alignment, in combination with the proposed construction and operation of an All-Weather Road. This new Two Road Proposal has not been considered in any EA. It was not assessed during the All-Weather Road EA, where CanZinc specifically said the Winter Road would not be built, nor could it have been considered during the environmental assessment of the Winter Road in 2012, as the All-Season Road was not yet contemplated.<sup>10</sup> There has therefore been no assessment of the cumulative impacts of what CanZinc is now proposing: the construction and operation of two roads.

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<sup>7</sup> *Nahanni Butte Dene Band v. Canadian Zinc Corporation*, 2005 FC 1724 (CanLII), para 28 (finding that it exceeded the Board’s jurisdiction to issue a license without the mitigation measures identified in the Part 5 environmental assessment, and that the Board has no discretion regarding implementation of Section 118).

<sup>8</sup> MVRMA, s 117.

<sup>9</sup> *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, [2001] 2 FCR 461, 2001 CanLII 22029 (FCA), para 40.

<sup>10</sup> See EA0809-002. The 2012 EA was referenced in the Review Board’s 2016 EA of the proposed All-Season Road, but continued use of that the Winter Road was not considered, because CanZinc represented that it would construct a new winter road along the All Season Road alignment, not continue to use the current Winter Road. See EA Report, section 2.2.2, page 29-30.



It is reasonable to conclude that the construction and operation of two roads—in a highly sensitive environment where the construction and operation of a single road has been found to be likely to cause significant adverse impacts—will result in cumulative adverse environmental impacts. It will increase the amount of road in a fragile ecosystem, require physical alterations to the roads where they merge and diverge, and is likely to amplify both the extent and severity of impacts, leading to requirements for additional mitigation.

The combination of these activities poses risks to the environment and to Dene rights that have not been assessed or mitigated under as required under Part 5 of the MVRMA.

LKFN submits that CanZinc must accept the consequence of having scoped the All-Weather Road project in this manner. It is the proponent's responsibility to put forward a plan of development in order to determine the scope of the project undergoing an EA. This must occur early on in the EA process, and an EA can only account for the impact of a project based on that scope:

the Review Board could not, after undertaking the EA process, reasonably or logically make a determination of whether a development is likely to have a significant impact on the environment if the scope of a development that was the subject of the EA process is subsequently changed just before the final decision-making stage.”<sup>11</sup>

LKFN submits that the Board cannot issue a permit extension for the Winter Road Alignment unless CanZinc indicates that it intends to abandon the plans for an All-Season Road, and intends to only proceed with the Winter Road Alignment.

### **(3) MVRMA Must Not Be Circumvented**

The Supreme Court of Canada has described protection of the environment as “one of the major challenges of our time”.<sup>12</sup> The purpose of the MVRMA scheme is to manage environmental impacts in a way that enables the participation of residents, and reflects their values.<sup>13</sup>

Section 117 outlines the participatory environmental assessment procedure required under MVRMA under Part 5 before a license can be approved. As noted by the All-Season Road EA Report, retroactive changes to the initial scope that is identified through that process raise “serious concerns about procedural fairness”:

“The procedural framework for EAs ensures that the Review Board can reach a fully informed decision on how, and if, a proposed project should proceed. When considering this process as a whole and in sequence, it is clear that making

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<sup>11</sup> EA report, page 26.

<sup>12</sup> *Friends of the Oldman River Society v Canada (Minister of Transport)*, 1992 CanLII 110 (SCC), [1992] 1 SCR 3 at pp 16-17.

<sup>13</sup> MVRMA, s 9.1.

changes to the scope of development after a hearing and during Review Board deliberations is inconsistent with the intent of the MVRMA and the Review Board's [Environmental Impact Assessment] Guidelines, and that such a change would raise both fairness issues and create procedural difficulties for the parties and the Review Board."<sup>14</sup>

In addition, the Supreme Court of Canada has noted that environmental legislation may be stymied where a proponent engages in "project splitting" by representing a large project as separate, smaller projects "in order to circumvent additional assessment obligations."<sup>15</sup> Similarly, appellate courts have found that where a decision-maker authorizes part of a larger undertaking linked to significant environmental impacts as a "separate undertaking," it may act beyond its jurisdiction.<sup>16</sup> These principles apply to the MVRMA: the Supreme Court of the Northwest Territories has ruled that in circumstances where a project is divided into components such that one or more component is exempt from the procedural requirements of Part 5, it may violate natural justice, and a Board's decisions may be quashed.<sup>17</sup>

LKFN believes that CanZinc engaged in "project splitting" by failing to notify regulators and intervenors during the All-Season Road EA of its intention to construct a road along the Winter Road alignment in combination with the All-Season Road, and failing to bring forward information which would have allowed consideration of the potential impacts of proceeding with both developments.

In fact, CanZinc explicitly represented that it planned to abandon the Winter Road alignment in favour of the All-Weather Road. Although it had ample opportunity to disclose any change of plans during the EA process, and did in fact make several changes to the project during the EA<sup>18</sup> that were incorporated by the Review Board,<sup>19</sup> none of these changes put forward by CanZinc during the All-Weather Road EA process contemplated the Two Road Proposal.

The onus is on the proponent to ensure its plans are clearly presented to regulatory bodies and Indigenous communities for consideration and review. CanZinc has failed in this respect. Protection of the environment and the rights of LKFN should not be jeopardized, nor should CanZinc be rewarded for their own failures to disclose material information during an EA review.

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<sup>14</sup> EA Report, page 26.

<sup>15</sup> *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 (CanLII), [2010] 1 SCR 6, para 40.

<sup>16</sup> See eg: *Labrador Inuit Association v Newfoundland (Minister of Environment and Labour)*, 1997 CanLII 14612 (NL CA) at paras 75-79.

<sup>17</sup> *Chicot v Paramount Resources Ltd et al*, 2006 NWTSC 30, paras 51-60. The Court also commented on the integrative nature of the procedure set out in Part 5: "one cannot say that Part 5 has been satisfied unless the steps in Part 5 have been completed. This is reflected in s. 114, which states that the purpose of Part 5 is to establish a process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments." *Ibid* at para 36.

<sup>18</sup> See: *June 24, 2014 Amended Applications*, page 1 (submitted to "clear up ... inconsistencies so that there is clarity as we progress through the EA process."). See also: EA report, page 24 (reviewing CanZinc's "several changes to the Project").

<sup>19</sup> EA Report, page 22.

LKFN submits that granting an extension of the Winter Road alignment permit would violate natural justice in the All-Season Road EA. It would effectively change the scope of the All-Season Road EA after hearings have been completed and findings have been made. In addition to the substantive violations of the MVRMA described above, such an extension would jeopardize the procedural fairness of the All-Season Road EA.

#### **(4) Duty to Consult Has Not Been Discharged**

LKFN was not informed about CanZinc's Two Road Proposal during the EA of the All-Season Road, nor was LKFN was not consulted about it after the hearings had concluded. LKFN had no meaningful opportunity to seek information from or raise concerns about the potential impacts on the environment or Dene rights before the request for a two-year extension of Land Use Permit MV2012F0007 with filed with the MVLWB. CanZinc's failure to consult with LKFN constitutes an additional basis on which the MVLWB should deny CanZinc's request for an extension of the Land Use Permit.

The Review Board's EA Report makes it clear that construction of the All-Season Road presents a significant risk to lands and waters on which LKFN Dene rely, and on which LKFN Dene exercise Aboriginal and Treaty rights. The EA Report also makes it clear that the construction and operation of the Winter Road together with the construction and operation the All-Season Road were not assessed during the All Season Road EA.

Given the history of the Prairie Creek Mine and the activities which are proposed occur within a sensitive and spiritually significant part of LKFN territory – recognized internationally by UNESCO as a World Heritage Site and by Canada and the Dehcho First Nations as a National Park Reserve – and the importance to LKFN of the ecosystems and land potentially impacted by this decision, consultation with LKFN falls at the highest end of the duty to consult spectrum.

Instead of discharging this duty, CZC only notified LKFN of a future intention to request the Land Use Permit extension by way of a letter dated October 12, 2017. The content of the letter addressing the Land Use Permit extension request is reproduced below:

CZN needs to maintain the ability to build a winter road to the Mine in the interim to bring in supplies to support site care and maintenance activities, and perhaps to start preparing the site for construction. Therefore, CZN will apply to the MVLWB for a 2 year extension to MV2012F0007, in the event the Company wishes to use it next winter or the following winter.

This barely meets the threshold for notification, much less consultation. The letter does not explain the undertaking or its potential impacts, nor does it acknowledge that the circumstances surrounding the use of the Winter Road have materially changed since the Land Use Permit was first granted. It does not clearly notify LKFN of CanZinc's intention to proceed with the construction and operation of both the Winter Road and the All-Season Road, or that the combination of these two activities may result in cumulative impacts, or that such cumulative impacts have not been assessed. In short, CZC's letter offers virtually no relevant information on which LKFN could reasonably be consulted.

CanZinc also claims to have conducted follow-up engagement with LKFN and other Dene occurred during the week of October 23, 2017 in Fort Simpson. At that time, LKFN and several other Dehcho Dene First Nations were working as active intervenors in the National Energy Board and Mackenzie Valley Land and Water Board's oral hearings on an unrelated Enbridge project near Łíídljį Kúé. This was an inopportune time for any meaningful engagement on the CanZinc proposal, given that LKFN and other First Nations were fully engaged in the Enbridge hearings.

The engagement log filed with CZC's request for a Land Use Permit extension demonstrates the inadequacy of the purposed engagement. The log indicates that the parties "discussed [the] Oct. 12 letter". As noted, the letter itself provides no details about CanZinc's intention to proceed with the construction and operation of both the Winter Road and the All-Season Road or the potential associated impacts and the uncertainty around impacts associated with the Two Road Proposal.

The engagement log shows that CZC had two meetings with two separate First Nations during the morning break of the National Energy Board hearings on October 26, 2017. Transcripts from that day's proceedings indicate that the break started at 10:11 a.m. and the hearing resumed at 10:24 a.m.<sup>20</sup> That leaves a combined 13 minutes for meetings with two First Nations. This is barely enough time to review the letter (which also addresses two Water License applications) much less to engage in any discussion of potential impacts to the environment and to Dene rights arising from the Two Road Proposal.

This is reflected in the engagement record, which discloses no information on potential impacts to the environment, potential impacts to Dene rights, issues raised by LKFN and other potentially affected First Nations, recommendations made by potentially affected First Nations, CZC's response to issues and recommendations, or outstanding issues.

Granting an extension of the Land Use Permit on the basis of inadequate consultation would undermine the MVRMA. The concerns of LKFN have not been taken into account due to the inadequacy of CZC's engagement.

## **Conclusion**

The proposed extension to Land Use Permit MV2012F0007 must not be granted. To extend that permit while the All-Weather Road EA is under consideration would undermine the regulatory processes under the MVRMA for two interrelated projects, enable CanZinc to avoid legislated requirements for environmental assessment through project splitting, and disregard the duty to consult with LKFN.

Under the legislation, the MVLWB must reject CanZinc's request for an extension, unless CanZinc indicates that it intends to abandon the plans for an All-Season Road, and only proceed with the Winter Road.

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<sup>20</sup> National Energy Board Exhibit A87283-1 to Hearing MH-001-2017, para. 3741, online: <<https://apps.neb-one.gc.ca/REGDOCS/Item/View/3349494>>.

However, given CanZinc's stated intention to proceed with the Two Road Proposal, LKFN will additionally be making further submissions to the Responsible Ministers that the All Weather Road project should be referred back to the Review Board for additional consideration of the Two Road Proposal under Section 130(1)(b)(i) of the MVRMA. The proposed extension to Land Use Permit MV2012F0007 must not be granted until that process has ensured that both developments are subject to an environmental assessment which takes into account the cumulative effects of proceeding with both the Winter Road and the All-Season Winter Road.

LKFN submits that in no circumstances should an extension of the existing Winter Road alignment permit be granted by the MVLWB unless the cumulative impacts of the full scope of projects and activities now being put forward by CanZinc have been fully considered.