

## REASONS FOR DECISION ON THE SCOPE OF THE ENVIRONMENTAL ASSESSMENT

### *Howard's Pass Access Road Upgrade Project – EA1516-01*

**March 17, 2016**

The Howard's Pass Access Road (HPAR) is an existing 79 km gravel road located in southwestern Northwest Territories. It branches off the Nahanni Range Road, near Tungsten, and ends at the height of land in Howard's Pass at the NWT–Yukon border. Selwyn Chihong Mining Limited (Selwyn or the developer) is now proposing to upgrade the existing HPAR to a two-lane all-season mine access road and to use the access road to support the evolving needs of the Selwyn mine in the Yukon, including the bulk transport of zinc and lead concentrates after mining begins.

This document provides the Review Board's rationale and decision on the scope of the development and the scope of assessment for this EA. It describes the Board's reasons for including or excluding certain components from the scope of the development, and its reasons for including or excluding certain issues and effects from the scope of assessment.

### **1 Requirements under the MVRMA**

The Review Board's mandate is outlined in the *Mackenzie Valley Resource Management Act*. Relevant sections of the Act that are referred to in this document are listed below.

Section 115(1)(c) of the MVRMA requires the Review Board to have regard to the way of life of Aboriginal peoples who use areas of the Mackenzie Valley.

Section 117(1) of the MVRMA requires that “[e]very environmental assessment of a proposal for a development shall include a determination by the Review Board of the scope of the development, subject to any guidelines made under section 120”. Once a referral to EA has taken place the Review Board has sole responsibility under Part 5 of the MVRMA to determine the scope of a development.

Section 117(2)(a) of the MVRMA requires that the Review Board determine the scope of assessment, or in other words, what project related effects the EA will assess. Section 117(2)(a) states “every environmental assessment and environmental impact review of a proposal for a development shall include a consideration of the impact of the development on the environment...”.

Section 140 (1) of the MVRMA states “where it appears to the Review Board, during the environmental assessment of a development proposed to be carried out wholly within the Mackenzie Valley, that the development might have a significant adverse impact on the environment in a region outside the Mackenzie Valley, the Review Board shall so advise the authority responsible for the examination of environmental effects in that region and request its cooperation in the conduct of the assessment.”

Under section 157.1 of the MVRMA, certain undertakings permitted or licensed prior to June 22, 1984 may be exempt from part 5 of the Act. The exemption under section 157.1 applies if such historic



undertakings are sufficiently related to the current undertaking and if the current undertaking does not involve abandonment, decommissioning or significant alteration the development.

## **2 Assessment and Regulatory History of the Existing HPAR and Proposed HPAR Upgrade Project**

### **2.1 HPAR History**

The HPAR was originally built in 1978 to 1979 for access to the extensive zinc-lead deposit that straddles the Yukon–NWT border at Howard’s Pass in the Selwyn Mountains. The road underwent an assessment and approval prior to its construction. Nahanni National Park was created in 1972 and had a smaller footprint than it has today. It did not overlap with the area of the new mine access road. The expansion of Nahanni National Park Reserve in 2009 and the creation of Nááts’ihch’oh National Park Reserve in 2014 resulted in the section of the HPAR from km 14 to km 60 being within national park reserve and the jurisdiction of Parks Canada. The HPAR also passes through the Sahtu Settlement Area, Dehcho Traditional Territory, and (overlapping) Kaska Dena Traditional Territory.

When mineral exploration activity declined in the 1980s, the road fell into disuse and gradually deteriorated. Interest in the Howard’s Pass mineral deposit since 2005 has renewed the need for access to this potential mine site, both for exploration and mine development, and as part of a route for transporting zinc and lead concentrates to market when the mine is operational. Based on this renewed interest, Selwyn is currently conducting a pre-feasibility study for a prospective zinc-lead mine on the Yukon side of Howard’s Pass, referred to as the Selwyn Project. A mine has not yet been formally proposed.

Selwyn has held a number of authorizations that allow for the maintenance, reconstruction and use of the HPAR to provide access to the Selwyn Project areas for exploration purposes. The road was reconstructed to a single-lane all-season road under these authorizations during 2014. The purpose of the reconstruction was to return the road to its original purpose as a single-lane all-season access road for exploration purposes. As part of this reconstruction, new bridges and culverts were installed.

### **2.2 The Proposed HPAR Upgrade Project**

Selwyn is now proposing to upgrade the HPAR to a two-lane all-season mine access road and to use this upgraded access road to support the evolving needs of the Selwyn Project in the Yukon, including the bulk transport of zinc and lead concentrates. According to the developer, the intent of the proposed upgrade is to make the road sufficient to meet the long-term needs of the Selwyn Project.

The proposed HPAR Upgrade Project is to widen the road to 8.5 m and make adjustments in alignment to improve the road design. The current surface area disturbed is approximately 35.6 ha for the road footprint, 63.2 ha for cut/fill slopes and areas cleared of vegetation along the HPAR right of way, and a 2.3 ha area that was cleared for the construction camp and laydown area for the 2014 road reconstruction. Road widening and local re-alignments associated with the HPAR Upgrade Project would result in a further estimated 85.9 ha being directly disturbed. In addition, construction activities will require land for additional temporary camps/laydown areas and for quarries, resulting in a disturbance of about 20.4 ha. Overall, the Project will approximately double the disturbed surface area



(from 101 ha to 207 ha), including land that will be progressively reclaimed during and immediately following the construction period.

The existing HPAR is a single-lane road with very little traffic. The road was not readily passable until reconstruction in 2014. In 2014 and 2015 the main use was for access by Selwyn and its contractors to the Selwyn Project site and to undertake baseline studies on the road itself. Estimated current traffic, including mine access and public use, is less than one vehicle per day.

The proposed HPAR Upgrade Project would be used for transportation of equipment and supplies during the period of development of the prospective Selwyn Project mine. Once the mine is in operation, the zinc and lead concentrates would be hauled by truck and trailer from the mine along the upgraded HPAR to the road's beginning near Tungsten, then southwest along the Nahanni Range Road, crossing into the Yukon about 5 km from the start of the HPAR. Trucks would continue on to port facilities at Stewart, BC. Fuel and supplies would be hauled to the mine site along the upgraded HPAR. Personnel, however, would access the mine by air transport, not via the HPAR. The estimated traffic volume on the upgraded HPAR during mine operation is 200 daily trips - 100 trips per day in each direction.

### **2.3 Referral to Environmental Assessment**

On July 3, 2015 Selwyn applied to Parks Canada for a land use permit and water licence for the proposed HPAR Upgrade Project. On July 10, 2015, pursuant to section 126 of the Mackenzie Valley Resources Management Act (MVRMA), Parks Canada referred the HPAR Upgrade project to the Review Board for an environmental assessment before any preliminary screening was completed (PR#4). Parks Canada referred the application over concerns that the project might have significant adverse impacts to the environment including: wildlife, water resources, cultural and archeological resources, and the Nahanni and Nááts'icho'oh national parks. Parks Canada also raised concerns over impacts from potential accidents and malfunctions.

## **3 Grandfathering and Existing HPAR Infrastructure**

### **3.1 Grandfathering**

Section 157.1 of the MVRMA is an exemption clause. It states that an undertaking authorized before June 22, 1984 is not subject to Part 5 of the MVRMA. The only exception occurs if an application is made for a license, permit, or authorization to abandon or decommission the development or if the application is for a significant alteration of the project. The original HPAR was constructed for exploration purposes and was constructed prior to June 22, 1984.



For the following reasons, the Review Board has concluded that section 157.1 of the MVRMA does not apply to the proposed HPAR Upgrade Project EA:

1. The proposed HPAR Upgrade Project would widen the road and change its intended use. This is a significant alteration of the existing HPAR, both physically (two lane road as opposed to a single lane) and in its purpose (exploration use to an industrial haul road).
2. For the proposed HPAR Upgrade Project the developer applied for a land use permit and water licence to Parks Canada and to the Mackenzie Valley Land and Water Board. Parks Canada referred the proposed HPAR Upgrade Project, including all components required for the project to proceed, to EA. The developer had the opportunity to assert that the proposed Project was grandfathered when Parks Canada referred the HPAR Upgrade Project but did not do so.
3. Now that the project is being considered in an Environmental Assessment (EA1516-01) the entire HPAR Upgrade Project is being assessed, including a consideration of all existing components required for the development to occur.

### **3.2 Existing Infrastructure**

The Review Board recognizes that the proposed Project intends to use existing components, such as bridges, and potentially other infrastructure associated with the existing HPAR. The developer is required in the DAR to provide a detailed description of the proposed Project, which includes all existing or proposed components required for its construction and use. Specifically, this will include a detailed description of any existing components, such as bridges, and the environment that interacts with it.

This description of existing project components must provide sufficient detail to allow for an assessment of these project components as they relate to the Key Lines of Inquiry and Subjects of Note. Depending on the Key Line of Inquiry or Subject of Note being considered the level of detail required to describe a project component may require providing design standards, such as peak flow and geotechnical stability and detailed hydrological information of the watercourses the bridges cross. The information will be used in this EA to determine whether there is the potential for significant adverse environmental effects.

To be clear, this EA will not assess the effects associated with the *construction* of existing project components, such as bridges. The environmental assessment process set out in the MVRMA is forward looking and not retrospective. If the proposed Project requires new uses of this existing infrastructure, then these must be considered in the current Environmental Assessment.

These bridges were permitted under MV2006L8-0001. This licensing process was for rehabilitating the road (including bridges) *for exploration purposes*. The HPAR road was original assessed and permitted for exploration. As stated previously, the HPAR Upgrade Project is a significant alteration of the existing HPAR. The onus is on the developer to clearly demonstrate that any component required for the HPAR Upgrade Project to proceed is appropriate for that purpose.



For clarity, any changes in access resulting from the proposed Project will be considered in the environmental assessment. Past and existing access may be considered in combination with the proposed Project in the cumulative effects assessment.

## 4 Exclusions from Scope of Assessment

### 4.1 The Selwyn Mine

The developer states in its Project Description Report that the proposed HPAR Upgrade Project will be used by the prospective Selwyn mine<sup>1</sup> and that the road is built for that purpose. During scoping, parties questioned why the mine is not part of this assessment and expressed concerns about project splitting<sup>2</sup>. The Review Board understands these concerns, but finds that project splitting is not occurring. The HPAR Upgrade Project is undergoing an EA. It is expected that the prospective Selwyn mine will also be subject to impact assessment by the relevant jurisdiction. This may include an assessment by YESAB on its own, or jointly with the Review Board.

If the Selwyn mine is proposed for development, it will be considered in a separate Environmental Impact Assessment process in accordance with legislation. Because of this, both projects will be subject to an appropriate level of examination of project effects on the environment. Separating the road and mine applications has not avoided environmental assessment, as might have resulted if project splitting had occurred. Further, in this EA, the cumulative effects assessment will ensure that the combined impacts of all relevant human activities, including the potential impacts of a foreseeable future mine, as they relate to this EA, are considered.

The assessment of the HPAR Upgrade Project will include in its cumulative effects analysis a consideration of the effects of the haul traffic, which is an activity associated with the prospective Selwyn mine. This mine has not been proposed, since no permits have yet been applied for. Regardless, the developer included the use of the upgraded HPAR by the mine as a reasonably foreseeable activity in its Project Description Report. Haul traffic is an activity from the prospective mine that is also related to this project. The Review Board considers this traffic to be a reasonably foreseeable future activity with impacts that could add cumulatively to the effects of the HPAR Upgrade Project.

The effects of the haul traffic once it leaves the upgraded HPAR are not part of this assessment because the mine haul traffic is not part of the proposed project. As described above, the effects associated with the haul traffic along the upgraded HPAR, and also past the terminus of the upgraded HPAR, will be considered as a direct effect of the mine when it undergoes an Environmental Impact Assessment. For clarification, this EA will not assess the effects of haul traffic on areas outside of the upgraded HPAR, such as along the prospective haul route from the Selwyn mine to its ultimate destination in BC.

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<sup>1</sup> The developer has indicated that it will propose this mine, for which it is now proposing to upgrade the HPAR. The developer has not yet submitted an actual proposal for the mine.

<sup>2</sup> Project splitting refers to an instance where the individual parts of a project are only considered separately, at the risk of missing the bigger picture.



## **4.2 Existing Infrastructure Outside of the Upgraded HPAR Corridor**

The industrial haul traffic from the prospective Selwyn Mine will use the Nahanni Range Road, part of the existing NWT highway infrastructure. This existing road will likely require upgrades to accommodate the traffic types and volumes associated with the prospective Selwyn mine traffic. Considerations of effects of the haul traffic on the Nahanni Range Road and any potential upgrades will occur if the mine undergoes an assessment.

# **5 Reasons for Decision on the Scope of Assessment**

## **5.1 Scope of Environmental Assessment**

As described, the purpose of the proposed HPAR Upgrade project is to widen the existing HPAR and to use this proposed upgraded road as an industrial haul road to meet the needs of the prospective Selwyn Mine. The HPAR is currently authorized for exploration purposes only.

This Environmental Assessment will include an assessment of all components required for this upgrade of the road and its use as an industrial haul road. This includes considerations of existing infrastructure as described in section 3.2.

## **5.2 Potentially Affected Aboriginal Groups**

The Review Board has identified potentially affected Aboriginal groups based on the following evidence: identification by the developer, community scoping and participation in the EA. To date, these include:

- the Liard First Nation (LFN)
- the Ross River Dena Council (RRDC)
- Sahtu Dene and Métis (specifically beneficiaries residing in Tulita and Norman Wells)
- The Dechho First Nation, including the Nahzà Dehé Dene Band (NDDB)

The Review Board notes that members of the LFN and RRDC reside mostly in the Yukon (Ross River and Watson Lake). If Project impacts adversely affect valued components related to Aboriginal well-being and way of life, mitigation efforts should focus on reducing the impact at the source (in the NWT) such that there are no residual effects occurring in Yukon communities.

## **5.3 Cumulative Effects**

The MVRMA requires the Review Board to consider the effects of proposed projects in combination with the effects of past, present, and reasonably foreseeable human activities and developments. Haul traffic and existing infrastructure were both discussed by parties during scoping. The Board has decided to include their consideration in this EA as part of the cumulative assessment as follows:

**Haul Traffic** – This EA will consider the effects of the haul traffic as a cumulative effect. This haul traffic is an activity from the prospective Selwyn Mine, which is a separate but reasonably foreseeable project.



**Existing infrastructure** – As described in section 3.2, effects that resulted from the construction of existing components will not be re-assessed, because these have already occurred. However, impacts from existing components will be considered, where applicable, through the cumulative effects assessment. This will consider how the effects of the currently proposed development interact with the effects of past, present, and reasonably foreseeable human activities and developments.

## 6 Transboundary Effects

Where it appears to the Review Board, during an environmental assessment of a development that is wholly within the Mackenzie Valley, that the development might have a significant adverse impact on the environment in a region outside the Mackenzie Valley, the Review Board is required to advise the authority responsible for the examination of the environment in that region. Under subsection 140(1) of the MVRMA, the Review Board must request the cooperation of that authority in the conduct of the assessment. On September 11, 2015 the Review Board notified the Yukon Environmental and Socio-economic Assessment Board that the HPAR Upgrade Project might have a significant adverse impact in the Yukon and requested cooperation in the conduct of the assessment (PR#12). Both Boards agreed to cooperate on this assessment, recognizing that the Project itself is entirely within the NWT and is not considered a transboundary project.

The Review Board determined that due to the Project's location it is likely that Project effects identified by Parks Canada in its referral might extend into the Yukon Territory. The Review Board's determination was based on:

- the referral letter by Parks Canada determined that the Project might have significant effects to the environment in the NWT, described in section 2.3; and
- the proximity of these effects to the Yukon.

The Review Board also understands that the Project might have effects on people who reside in the Yukon. The evidence provided to date and the developer's consultation and engagement record, indicates that this includes the communities of Ross River and Watson Lake and Aboriginal groups including the Ross River Dena Council (RRDC) and Liard First Nation (LFN).

Because of the considerations described above, the Review Board held scoping sessions in the Yukon on December 2<sup>nd</sup> and 3<sup>rd</sup>, 2015 in order to hear from the Liard First Nation and Ross River Dena Council, and the communities of Watson Lake and Ross River. This scoping was used to identify and prioritize any concerns these Aboriginal groups and communities may have about the Project area within the NWT and also, to identify and prioritize any concerns about potential effects of the Project in the Yukon.

If, during this EA, the Review Board determines that: (1) the HPARU Project is likely to have a significant adverse impact on the environment in the Yukon, and (2) there are no feasible mitigation measures that can be applied in the NWT to reduce these effects so that they are no longer significant, then the Review Board may engage the federal Minister and YESAB to take steps in accordance with s. 140(2) of the MVRMA.



## 7 Conclusion

The reasons above explain the scope of development decided on by the Review Board. The EA process will assess the impacts of the proposed development and outline potential mitigation steps. It is the responsibility of the regulatory agencies to implement any commitments and measures approved by the Minister at the conclusion of this EA. The Review Board expects the above to help the developer and parties focus their efforts during the EA.

A handwritten signature in black ink, which appears to read "JoAnne Deneron", is positioned above a horizontal line.

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JoAnne Deneron  
Chairperson

