



July 21st, 2016

REASONS FOR DECISION FOR REFERRAL TO ENVIRONMENTAL ASSESSMENT

Tlicho All-Season Road

1. SUMMARY

- The evidence on the record indicates that the Tlicho All-Season Road proposed by the Government of the Northwest Territories (GNWT) might cause significant adverse biophysical and social impacts and public concern.
- For the reasons set out below the Mackenzie Valley Environmental Impact Review Board (the Board) has decided to conduct an environmental assessment of the road project.

2. DECISION

Under subsection 126(3) of Mackenzie Valley Resource Management Act (MVRMA), the Mackenzie Valley Environmental Impact Review Board has authority to conduct an environmental assessment of a development proposal, on its own motion. This authority is notwithstanding any determination on a preliminary screening, even if a preliminary screening has not been commenced or, if commenced, has not been completed, pursuant to subsection 126(4).

After review and consideration of the materials on the WLWB public registry and the comments provided on the Online Review System with regard to the Tlicho All-Season Road proposed by the Government of the Northwest Territories (GNWT), the Board has decided to refer the project to environmental assessment. Specifically, the Board has identified the following key areas of concern that might result in a significant adverse impact on the environment or be a cause of public concern:

- i) Change to access – new all-season access to the Community of Whatì
- ii) Changes causing stresses on existing social services – related to increased drug and alcohol addiction, and increased crime
- iii) Impacts on caribou – increased harvesting pressure, increased predation resulting from new access, increased road-induced mortality, and barrier effects to caribou – linear impediments, dust, noise, reduced air quality
- iv) Uncertainty regarding the effectiveness of mitigation measures

As a result of the potential for public concern and significant adverse impacts on the environment, and having due consideration for the purpose and intent of Part 5 of the MVRMA, the Board has decided to conduct an environmental assessment of the proposed Tlicho All-Season Road. Further detail regarding the Board's reasons for decisions is set out below.



3. BACKGROUND

2.1 Project Description

The proposed Tłı̄chq All-season Road (TASR or “the road project”) is set out in an application to construct an all-season two lane gravel road with culverts and/or double lane bridges over water crossings from Highway 3 northwest of Behchokq to Whatı̄. The road would be public, beginning at kilometre 196 on Highway 3 and terminating at the community of Whatı̄. The road would have a 60 m right-of-way and would be approximately 94 kilometres long. The estimated footprint of the proposed TASR corridor is 564 hectares. The road would be located entirely within the Wek’èezhı̄ Management Area. Approximately 17 km or 18% of the alignment will be located on Tłı̄chq lands, which are regulated and administered by the Department of Culture and Lands Protection of the Tłı̄chq Government. Approximately 77 km or 82% of the route will be located on Territorial lands, which are regulated and administered by the GNWT Department of Lands. The road project will extend the season for winter roads to Wekweti and Gameti, possibly up to 30 more days each winter road season.¹

Along the preferred road alignment, there are sixteen water crossings. Four of these crossings will require bridge structures; two will require structural culverts and the remaining ten sites will have banks of drainage culverts smaller than 1500 mm in diameter. An additional site with a defined channel was identified by the DOT that will require an arched culvert.

Granular resource requirements for the road will be met using gravel and sand from up to five selected borrow sources and possibly hauled from sources along Highway 3 and/or within the Whatı̄ area. An effort will be made to use borrow sources located within the right of way of the proposed TASR; however, potential sources have been identified at a distance of up to 2 km from the right of way. Additional access roads may be required to reach appropriate water sources intended for camp use. A rough footprint estimate of the combined quarries and access roads is expected to be in the range of 220 hectares; however this number can only be confirmed once the final sources have been identified.

Construction camps are likely to be 150-person facilities situated in borrow areas to minimize the development footprint. Two to three camps will be placed no more than 50 km apart to ensure a maximum driving distance of 25 km for project workers. It is anticipated that only one camp will operate at any given time.

Traffic for this proposed road is estimated at 20 to 40 vehicles per day. This estimate, by the GNWT Department of Transportation, has also taken into consideration the traffic volumes to and from the NICO mine north of Whatı̄, if it were to begin production.

¹ [Tlicho All Season Road Project Description Report p 5-10](#); Also in Appendix E, Engagement Plan and Log pp p343.434-435);



2.2 Preliminary Screening Process to Date

- GNWT-DOT Type A Land Use Permit and Type B Water Licence Applications (W2016E0004 & W2016L8-0001) for Tłı̄chǫ All-Season Road were submitted to the WLWB on March 31, 2016.
- WLWB deems application complete on April 8, 2016 and commences public review process in support of the Preliminary Screening process.
- Review comments were provided by parties by May 30, 2016.
- GNWT-DoT provided responses to review comments on July 4, 2016
- WLWB corresponds with GNWT-DoT requesting further consultation with the NSMA on July 8, 2016

2.2.1 Review Comments Overview

Based on information submitted to the WLWB public registry from reviewing parties, the Board has identified the following key areas of concern:

- Boreal Caribou – Boreal Caribou is a Species at Risk that utilizes the local study area of the TASR. Environment and Climate Change Canada (ECCC) in its review had concerns with the assessment of undisturbed habitat in the specific boreal caribou (NT1) range. In the TASR Project Description Report, the undisturbed habitat in the NT1 range was assessed at 66%, as of fall 2015.² Exceeding the threshold set out in the boreal caribou recovery strategy for undisturbed habitat (65%) could represent significant adverse effects, especially without a range management plan in place describing how the habitat will be managed over the long-term. The North Slave Metis Alliance (NSMA) has concerns that reasonably foreseeable projects and future natural disturbance, such as wildfires, may result in the possibility of the 65% threshold being exceeded.³ ECCC states that given that the NT1 disturbance level is very close to the threshold described in the recovery strategy, this issue needs to be closely monitored to ensure that there are no significant adverse effects to boreal caribou.⁴ The Wek'èezhì Renewable Resource Board expressed similar concerns with regards to habitat loss and habitat degradation.⁵
- Barren-ground Caribou – Historically the Bathurst Caribou herds could be found in the TASR study area. NSMA concluded that the combined effects of traffic, the barrier effect of the road, and increased accessibility to the hunters can have a detrimental effect on the already “suffering” Bathurst and Bluenose East Caribou herds.⁶ YKDFN expressed similar concerns.⁷
- Effects of the Road on Wildlife – The NSMA has identified concerns related to susceptibility of key wildlife species, such as Wood Bison, Boreal and Bathurst Caribou, to impacts from the TASR, particularly from dust and noise, as well as vehicle collisions. The NSMA believes that

² [Tlicho All Season Road Project Description Report March 2016 p 8-17](#)

³ [NSMA letter to WLWB 2-Jun-2016 p 9](#)

⁴ [ECCC correspondence to WLWB 30-May-2016](#)

⁵ [WRRB correspondence to WLWB on Online Review System 30-May-2016](#)

⁶ [NSMA letter to WLWB 2-Jun-2016 pp 4-7](#)

⁷ [YKDFN letter to WLWB 30-May-2016](#)



GNWT has underestimated the traffic volume (20-40/day) on the road and that potential future developments have not been considered.⁸

- Proposed Mitigation Measures – NSMA identified concerns with the feasibility and efficacy of some of GNWT-DoT’s proposed mitigations. In particular, it has concerns with the GNWT’s inability to stop operations when caribou are in the vicinity of the project area, as well as mitigations to limit increased wildlife harvesting pressure on Species at Risk (boreal caribou and wood bison), barren-ground caribou and moose. NSMA also expressed concerns regarding GNWT-DoT’s reliance on the Bathurst Caribou Range Plan and other initiatives that are not currently completed and are not likely to be completed before work begins on the road project.⁹
- Socio-Economic and Cultural Impacts – The Tlicho Government has recognized that people in Whatì may experience varying effects of change from the all-season road and have identified that people may see a number of positive impacts, while others may be affected in an undesirable way. It identified the following concerns:
 - Outsiders coming in – reduced safety and security and sense of community;
 - Increased hunting, trapping and fishing pressures around Whatì and around the road route;
 - Increased industrial development opened up by the road (not just the [NICO] mine), and effects on the lands and water;
 - Increased contamination risks;
 - Reduced emphasis on local cultural/harvesting activities;
 - Kids (especially) accessing drugs and alcohol;
 - People leaving the community far too often; and
 - Becoming like Behchokò (a strong stigma about social crisis in Behchokò was expressed).¹⁰

Public concern was identified in the community of Whatì in the developer’s Project Description Report.^{11,12} This included the concern that the road project could magnify existing vulnerabilities and weaknesses in the community.

Additionally, the YKDFN and NSMA stated that they have concerns that cultural and heritage resources may be impacted by the proposed development, and that their specific cultural interests had not been captured in the road project application.^{13,14} Both groups also raised concerns that the developer did not adequately consult with them and that they stand to be affected by the road project.^{15,16} Because of its concerns, the NSMA requested that the road project be referred to environmental assessment.¹⁷

⁸ [NSMA letter to WLWB 2-Jun-2016 pp 8-9](#)

⁹ [NSMA letter to WLWB 2-Jun-2016 p 5-7](#)

¹⁰ [Tlicho All Season Road Project Description Report – Appendix B pp ii-iii](#)

¹¹ [Tlicho All Season Road Project Description Report – p193](#)

¹² [Tlicho All Season Road Project Description Report – Appendix B pp ii](#)

¹³ [YKDFN letter to WLWB 30-May-2016 p 1](#)

¹⁴ [NSMA letter to GNWT 24-March-2016 p 1, 7 \(pdf page 15 and page 21 of NSMA letter to WLWB 2-Jun-2016\)](#)

¹⁵ [YKDFN letter to WLWB 30-May-2016 pp 1-2](#)

¹⁶ [NSMA letter to WLWB 2-Jun-2016 p 1](#)

¹⁷ [NSMA letter to WLWB 2-Jun-2016 p 11](#)



3 THE MIGHT TEST

The test to determine whether a project should be referred to the Review Board for an EA is set out under subsection 125(1) of the *MVRMA*. Subsection 125(1) states that if a proposed development “might have a significant adverse impact on the environment or might be a cause of public concern,” the preliminary screener shall “...refer the proposal to the Review Board for an environmental assessment.” “Impact on the environment” is defined in s.111 of the *MVRMA* as: “any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.”

The Review Board provides guidance on how to apply the “might test” in its Environmental Impact Assessment Guidelines.¹⁸ The “might test” is applied independently to determine if a development proposal:

- might have a significant adverse impact on the environment; or,
- might be a cause of public concern.

If either of these tests are met and there is likelihood for adverse impact or concern, a development must be referred to the Review Board for an environmental assessment.

A Preliminary Screening is not intended to be a detailed evaluation of the likelihood and significance of potential impacts from a proposed development; it need only determine whether or not a development might cause a significant adverse impact or public concern. Preliminary screener’s analyses should go no further than needed to determine that this test has been met, considering factors in s.114 and s.115 of the *MVRMA*. If there are relevant unanswered questions, then an environmental assessment should be considered. The purpose of preliminary screening is to identify whether or not there are questions that should be assessed further, not to embark on an in-depth investigation of such questions.

Might test for environmental impacts¹⁹

When evaluating whether a development might have significant adverse environmental impacts, the characteristics of the development and the characteristics of potential impacts may be considered:

- Characteristics of the proposed development:
 - Development **scale**: Larger developments *often* have more potential for impacts
 - Development **location**: Ecologically or culturally sensitive areas, protected areas, areas near communities or harvesting areas
 - Nature of **activity**:
 - Degree of disturbance
 - Hazardous chemicals or effluents
 - Changes to access

¹⁸ [MVEIRB Environmental Impact Assessment Guidelines, pp 17-20](#)

¹⁹ A list of characteristics used for determining the “might test” can be found on page 18 and 19 of the EIA Guidelines. The highlighted characteristics in this document represent ones relevant to this Reasons For Decision.



- Infrastructure needs
- New technology or setting
- Social changes to community structure (e.g. influx of workers to a community);
or,
- o Changes to stress on existing social services.

Might test for public concern

The evaluation of whether a development might be a cause of public concern may be informed by the specific characteristics of the development or potential impacts that are particularly relevant to the potential for public concern, such as:

- Development scale: Larger developments often affect more people, and their proposal may generate public concern.
- Development location:
 - o Proximity to communities: People are often more concerned with developments in their vicinity, so the closer a development is to a community, the more concern may be caused.
 - o Proximity to protected or sensitive areas: There is typically more potential for public concern for developments in, around or upstream of protected areas (such as parks or reserves), or ecologically sensitive areas (such as calving or spawning grounds).
 - o Proximity to areas known for harvesting: The closer a development is to a good hunting, fishing or trapping area, the more there may be public concern associated with it.

4 APPLYING THE MIGHT TEST TO THE PROPOSED TLICHO ALL-SEASON ROAD

After review and consideration of the materials on the WLWB public registry and the comments provided on the Online Review System for the preliminary screening, the Board concludes that the road project might be a cause of significant adverse impacts and might be a cause of public concern.²⁰

Some of the information on the record that the Board finds particularly compelling has been summarized in section 2.2.1 above. The Board has identified the following key areas of concern that **might** cause a significant adverse impact on the environment or be a cause of public concern:

- i. **Change to access – new all-season access to the Community of Whatì:** The development of the road project would represent a significant new public road for residents of the Mackenzie Valley, with particular implications to wildlife populations, community of Whatì residents, Tlicho citizens, YKDFN, NSMA and the private sector. There is evidence on the record that some of these groups feel they have not been adequately consulted on the road project and that they might be adversely affected.
- ii. **Impacts on existing social services – increase of drug and alcohol addiction, increased crime:** evidence on the record suggests that the road project could adversely affect the health and

²⁰ The Review Board notes that its discretion to conduct an EA notwithstanding any determination on a preliminary screening under section 126(3) does not specifically require it to conduct the might test.



well-being of residents of Whatì. This might result in pressures on already stressed policing, health and social services

- iii. **Impacts on caribou** – increased harvesting pressure, increased predation, increased road induced mortality, extended harvest season: the road project will travel through important habitat area for a species at risk and a culturally important species for Aboriginal peoples who use this area of the Mackenzie Valley. Evidence on the record suggests that the road project might adversely affect the species and Aboriginal harvesters. The developer has said that the road project will likely extend the season for winter roads to Wekweti and Gameti. This may extend the seasonal access to the Bathurst and Bluenose caribou herds, potentially increasing mortality from hunting. The road project might also cause barrier effects to caribou movements, in the form of linear impediments, and disturbance resulting from dust, noise, and reduced air quality. Public concern has been expressed on the effectiveness of the proposed mitigation measures to address impacts on Caribou.

The Board notes that a number of these concerns are not within the jurisdiction of the Wek'èezhì Land and Water Board and cannot be mitigated through conditions in a land use permit or water licence. In particular, the land and water boards have limited mitigative options outside of permit or licence conditions to mitigate potential impacts to wildlife populations or socio-economic or cultural values.

The Review Board observes that similar projects by the same developer have recently gone through an environmental assessment (Tuk-Inuvik Highway) or are currently undergoing environmental assessment (that is, the Mackenzie Valley Highway, which was referred directly to environmental assessment [EA1213-02] by the GNWT).

During the environmental assessment of the NICO Project (EA0809-002) the Review Board did not scope in the construction and operation of what is now called the Tlicho All Season Road, saying "(t)he Review Board expects that the potential realignment of the winter road through the Wek'èezhì Settlement Area will undergo appropriate environmental scrutiny once applications for that road have been received."²¹

In light of the above issues, and based on a careful review of the record, the Review Board concludes that the might test is satisfied, and that an environmental assessment is the appropriate level of environmental scrutiny for the currently proposed road project.

The Board acknowledges that the proposed TASR is to be a public road and, therefore, in making its decision to conduct an environmental assessment of the development proposal, has considered the public interest of Tlicho citizens and residents of the Mackenzie Valley.

6 CONCLUSIONS AND NEXT STEPS

The Board is committed to a timely and efficient EA process that is focussed on the substantive issues related to potential adverse impacts on the environment and potential public concern, and on

²¹ [EA0809-004 Final Terms of Reference - NICO Project 30-Nov-2009 p3](#)



mitigation measures to prevent or minimize such impacts. The Board would like to acknowledge the considerable effort and good works the GNWT, with assistance from the Tlicho Government, has undertaken as part of its land use permit and water licence application. In particular, the Board commends the effort to plan for mitigation of potential impacts caused by the road project. The Board believes that these initiatives and the detailed Project Description Report will prove beneficial in focusing the scope of the environmental assessment and contribute to an effective and timely environmental assessment.

ON BEHALF OF THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD:

JoAnne Deneron
Chairperson