



**Tłı̨chǫ Government**

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October 22, 2009

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**RE: Fortune Minerals NICO Project Draft Terms of Reference**

Thank you for the opportunity to review the Draft Terms of Reference on the proposed Fortune Minerals mine: the NICO project. The Tłı̨chǫ Government has overarching comments to make as well as specific comments on the Draft Terms of Reference. These specific comments are provided by the section they refer to.

**Roads in Tłı̨chǫ Lands**— This proposed project will be undertaken on lands that are surrounded by Tłı̨chǫ Lands. This fact needs to be addressed in a careful and sensitive manner. It represents the first such project to be carried out contiguous to Tłı̨chǫ Lands. Present Tłı̨chǫ Law does not allow for any development on Tłı̨chǫ Lands and therefore any planning based on the assumption of access to or involvement of Tłı̨chǫ Lands needs cautious review. It is true that the Mining Rights relied on by Fortune Minerals is recognised in the *Tłı̨chǫ Agreement* but that in itself does not mean that access or impact to Tłı̨chǫ Lands is provided for. The nature of this project on existing Tłı̨chǫ Laws and Tłı̨chǫ Lands needs special and specific review by the MVEIRB.

Thus the Terms of Reference should be restricted to reviewing the issues around the mine site, the facilities, and the deposit. The *Amendment to the Tłı̨chǫ Lands Protection Law* from 2007 places a moratorium on development on Tłı̨chǫ Lands. Given that this proposed development is surrounded by Tłı̨chǫ Lands, this law applies to the proposed project. Until this moratorium is lifted, there is no possibility of discussing any road in the environmental assessment.

As a result there should be no consideration of the issues of a road that may access or cross Tłıchq Lands, nor any reference made to them. To consider a road in the face of the moratorium is quite disrespectful, wrong in law and would be an affront. Any reference to the spur road for the development and the imaginary road that would join Highway 3 should be removed from consideration in the Environmental Assessment.

There is also a Land Use Planning process that is being undertaken by the Tłıchq Government, and this process needs to be given due respect. This process has been internal to date, and the moratorium on development will only be lifted once this process is complete. Recognizing that there is a Land Use Planning process in place, any proposed development must be consistent with the Land Use Plan that comes into place. We therefore request that an addition be made to the Draft Terms of Reference, suggesting that any proposed development be consistent with the Land Use Plan. As well, the Terms of Reference should include a consultation process with the Tłıchq Government when the Land Use Plan is complete. The Land Use Plan, once in place, will have bearing on the consideration of cumulative impacts, as well as cultural heritage sites to be considered.

There can be no assumption made that there will be a road. Thus the Review Board needs to assess this development in light of this possibility

**New Key Line of Inquiry:** We would like to see impact on wildlife and particularly caribou become a key line of inquiry. The area for the proposed development is in the staging area for bulls in the winter, and the potential impact on caribou is thus high.

**Water as a Tłıchq Right:** In the *Tłıchq Agreement*, please make reference particularly to Chapter 21.2 which refers to Tłıchq rights to water. The specific right that is mentioned in the *Tłıchq Agreement* is:

Subject to any use of water, deposit of waste or activity referred to in 21.3.2 or 21.3.3 that is authorized by law, including by an authorization issued by the Wek'èezhii Land and Water Board or by another competent water authority, the Tłıchq First Nation has the right to have waters which are on or flow through or are adjacent to Tłıchq lands remain substantially unaltered as to quality, quantity and rate of flow when such waters are on or flow through or are adjacent to Tłıchq lands.

**On issues of Cultural Heritage**—The Tłıchq Government requires that any work in cultural heritage resources be done in collaboration with the Tłıchq Government, and only with the express agreement of the Tłıchq Government.

**Organization of the Draft Terms of Reference:** One concern we have with the new organization of the Terms of Reference is with the adoption of an overview and an Appendix. We are unclear why the Appendices have been designed; it causes double the amount of work

and makes it very confusing to follow. The layout is a concern to the Tłı̨chǫ Government because there is room for the developer to misinterpret the Review Board's expectations.

**Consultation**— where there may be an impact on Tłı̨chǫ rights, there is a need for the Crown and the company to provide for a process of consultation. The first requirement should be for the process itself to be agreed upon with the Tłı̨chǫ. This needs to be reflected in the Terms of Reference.

**Road south of Highway 3**—There is no inclusion of discussion of any potential impacts south of the Highway 3 junction all the way to the NWT border, some of which runs through Tłı̨chǫ territory.

**Specific Comments include:**

2.1 Geographic scope

Please include a map showing the minimum geographic scope of assessment, given that it is unclear to parties what the minimum scope around the road works for assessment might be.

There is no mention in the geographic scope of assessment of the transportation corridor being used to get initial concentrate from the end of *the potential GNWT road along Highway 3 until it leaves the NWT*. This absolutely needs to be part of the scope of assessment.

Long-term mine water outflow monitoring and [ADD WATER] management around the mine site.

The Review Board may amend the scope of development during the environmental assessment [ADD AT ANY TIME] if the proposed development changes or as further processing details become available.

2.2.1 Scope of assessment

- see section 2.2.3 for details [ADD ON CUMULATIVE EFFECTS ASSESSMENT]

Geographic scope

- The use of the term "related to the NICO Project" may be too loose for an environmental assessment in which there will be activities related to the NICO project that are not in the scope of development (i.e., GNWT road). Therefore, we suggest use of term "...by activities within the NICO Project scope of development".
- The geographic scope considered for each valued component must be appropriate for the characteristics of that component or impact [ADD and the nature of the impact source]
- For example, consideration of impacts on air should reflect the airshed, wind patterns [ADD and the mobility of airborne contaminants emanating from the development].

- On topic while the ranges of wildlife using the area may be relevant from a cumulative effects perspective...Ranges of area wildlife are not only important from a cumulative effects assessment, but from a direct effects assessment perspective as well. Suggest instead "Impact assessment of wildlife species needs to take the ranges of the animals into consideration, especially when considering cumulative effects."
- Additional geographic scope needs further guidance. Is the developer to figure out what that reasonable impact footprint radius is (using 3.2.3?) or will the Review Board set some minimum boundaries? Or can you provide the criteria the developer should consider when determining what is a "reasonable radius" or "reasonable corridor"?
- On the NICO access road, there is no mention in here of transport of initial concentrate from the end of the potential GNWT road along Highway 3 until it leaves the NWT. There needs to be mention made of this
- The geographic scope for assessing impacts to the human environment should also include "and residents" or preferably "residents and communities". The problem with just saying communities is that individual residents (and not all of them use the land) may be impacted but the technical political entity that is the community may not as a whole feel or report this.

### 2.2.2 Temporal scope

- The developer should give special attention to "key periods of intensified use" when people are more likely to be on the land, including "key harvesting periods and annual cultural gatherings".
- The developer will use temporal boundaries for this environmental assessment according to potential long-term impacts on valued components, rather than on a single generic timeline. In all cases, the temporal boundary does not end with the duration of the operating phase of the NICO Project. Should say, rather, "The temporal boundary may not end with the operating phase of the NICO Project".
- On contaminated sites, suggest adding the impact "of past activities and continuing effects of those activities..." here to make it clear cumulative effects assessment is not just about the effects of Mine X from 1960-1970, but also its continuing impacts to this day and into the future.

### 2.1 Scope of Development

Under Construction one of the bullet points is "Construction of NICO access road to mine site by Fortune." Please amend this to state: "Construction of NICO access road to mine site".

### 3.1.2 Incorporation of Traditional Knowledge

The traditional knowledge studies should be controlled by and run, where feasible, by Tłıchǫ consultants and teams. Elders and other knowledge holders should be involved in any studies, and in any study of heritage and significant cultural sites.

Also, it suggests that “Fortune will use traditional knowledge”; rather it should say, “Fortune will make all reasonable efforts to incorporate traditional knowledge from aboriginal culture holders as a tool...”

### 3.1.3 Assessing the impact of the environment on the development

ADD "seasonal flooding and melt patterns" after “climate change impacts”

### 3.1.4 Use of appropriate media

The landscape model is not the only effective way to communicate, and should not be seen as the only tool.

Add to the last sentence...”Where the developer references external sources of information, it should provide a succinct summary of the relevant information from the source report ... [and the external source placed on the public registry for this environmental assessment via submission by the developer.]

### 3.2.2 Developer

2. Whether and how" the developer will ensure...". The developer needs to make the specific pledge that it will make its contractors accountable.

3. Regulatory compliance should be at least NWT wide for any developer, not just project specific.

4. The company should reveal any guidelines that are adhered to, or any professional associations, such as the Mining Association of Canada, that they are a part of and codes of practice that members are expected to adhere to.

5. ADD "... financial capacity to carry through with development of, proposed mitigation and management of" the NICO project.”

### 3.2.3 Developer’s assessment boundaries

Reference made to (see Section 3.5) should say 3.6

### 3.2.4 Description of the existing environment

Should say "any" industrial activity, including exploration programs.

Describe the “geographic” location (add geographic)

Under human environment, heritage resources should include (known and potential for unfound)

Since its use of the proposed GNWT road is being assessed by the developer, they will need to provide baseline description of the existing environment along the entire GNWT road corridor, including nearby watercourses. This is a key gap in the current document.

### 3.2.6 Public Engagement

The implications of possible agreements that are made between the developer and other parties on more than just environmental monitoring and management should be discussed. For example, any mitigation agreed upon for social change should be discussed or other relevant items.

Please add: "Public engagement should be done with and through the appropriate public authorities, and an agreed upon process for consultation should be set out."

The Review Board has recently put out a template for reporting back to them the results of such meetings on the Internet – please include weblink to that document

[http://reviewboard.ca/upload/project\\_document/1254777032\\_Template\\_for\\_meeting\\_report\\_PD](http://reviewboard.ca/upload/project_document/1254777032_Template_for_meeting_report_PD)

How Fortune has engaged, or intends to engage, traditional knowledge holders in order to collect relevant information for the impact assessment, as well as a summary table indicating where and how in which of the subsequent sections (3.3-3.6) traditional knowledge was [INCORPORATED rather than analyzed and used.]

### 3.3 Impacts on the Biophysical environment

The footnote 7 will need to be included in the text of the document, not as a footnote.

#### **3.3.2 Key Line of Inquiry: Water Quality**

#### 3.3.3 Key Line of Inquiry: Closure and reclamation

The Terms of Reference have to be as clear as possible, but with the current Appendix structure, this is not the case. There is far too much room for interpretation.

#### Water quality

- changes to the safety of water for drinking in Bechoko and for people should add "and other quality considerations", not just safety. If people don't trust the water even if it is legally safe to drink, it is not a safety issue, it is a willingness to drink issue
- Describe how Tłı̨ch̓o citizens will be involved and consulted, particularly the families who are traditional users of the Hislop Lake area.
- Predict potential impacts on any ephemeral streams and groundwater flows from the project area. Review Board to clarify how this line item differs from the one above? There is a confusing overlap here.
- It is unclear to the reader whether these bulleted items below are all the things that need to be considered for water quality, and material in appendices is to support answering

these high level questions, or in fact they are something different. The bullets ask for a variety of predictions, many of which overlap, and sandwiched in between those requests for predictions is a bullet asking the developer to consider natural baseline conditions, which is usually the first step in the impact assessment, long before change predictions.

#### 3.3.4 Water quantity

Availability of drinking water in Behchoko: there will be lots of water in Behchoko, its quality may be of concern, but not quantity.

#### 3.3.5 Fish and aquatic habitat

Please use consistent text throughout (use of this header throughout “Fish and aquatic habitat”)

A consistent problem is emerging in that each 3.3 subheading has a different flow of questions. Some just ask for impact predictions, others for comments on baseline conditions, others for mitigation. Suggest a consistent flow to avoid confusion.

#### 3.3.7. Terrain

There is nothing on road stability, effects of stability issues on public safety or plans for road maintenance.

#### 3.3.8 Air quality

There section may need to state the different receptors that might be impacted, such as water or workers, or other landusers or vegetation.

#### 3.3.9 Vegetation

This is the first discussion of the fire in the general requirements, if the fire is important, its importance should be discussed in a preamble where the Review Board identifies the role of examining the fire in the impact assessment.

### 3.4 Impacts on the Human Environment

Describe the employment and training plan for construction, specifically how Tłıchǫ citizens will be trained on the appropriate machinery to prepare for operation.

Please add an additional bullet:

- Describe any effects on public safety from increased traffic associated with Fortune's direct use of the GNWT road, as well as induced activity along that same route partially attributable to increased economic activity from the NICO project.

- Describe the social impacts of the NICO Project, focusing on community wellness and population health [for the Tłı̨chǫ region and at a community by community level] rather than issues at community, family and individual levels.
- The social dynamic is likely to change given the road and the mine. Even if the road is scoped out, the changing social dynamic of the cumulative effect of the mine and the road need to be central in the cumulative effects.

### 3.5 Accidents and malfunctions

The realm of risk assessment is so large that there are virtually no boundaries to what is being asked here. The developer can do as much or as little as they like on risk assessment. This is inadequate guidance. Is the Review Board asking for every single aspect of the development to undergo risk assessment, or should it focus on those things most likely to be prone to significant incidents as identified during scoping.

Bullet three should say "during all phases of the proposed development from construction through post-closure". Accidents and unexpected results happen during reclamation programs too.

### Appendix A: Existing Environment

Bullet 1 under A4

Should not say, around the mine itself, but "around, into and out of the mineworks."

Bullet 3. The NICO project mine site has not been defined. This needs to be reconsidered. Does the Review Board mean surface, ground? What are the boundaries of the NICO Project mine site? Why is it important, and is it even possible, to determine this relative contribution of water? This should be eliminated or revised for clarity. For example, later in the text it says immediate mine site area. What is the difference?

Third bullet should refer to item number 7 above.

Bullet 10

The Review Board previously asked for ground composition of the underground works area, so to avoid overlap, suggest "describe the ground conditions underlying all mine site infrastructure and the NICO access road..."

### Appendix B: Development Description

Has to include information about storage and transportation requirements south of where the GNWT road hits the GNWT Highway until it hits the NWT Border. The project description should not end at the end of the proposed GNWT road.



Please include the possibility of traditional environmental monitors.

Item 21 There is not enough information asked for on the construction and physical attributes or the corridors around the road. Need additional information on width of road, road type, vegetation removal, road geometry, drainage plan, and bed formation.

Item 23. Description of any locations in NWT where storage is envisioned. If it will be trucked down highway 3, then need to know where transfer or storage is envisioned.

#### Appendix C: Water Quality

Item 3, should describe parameters such as physical and chemical characteristics of the naturally occurring arsenic, its mobility and prevalence in the ground and surface waters. Also should describe the differences in arsenic levels in all of the relevant water bodies, including aquifers.

Item 4. Should say, “discharge of ammonia and other nutrients”

Item 9. A. Should say “receiving environment for final effluent discharge” and should include specific locations.

b. the term effluent levels requires clarification. It can be read as either amount of total effluent or as quality parameters for individual constituents.

10a. Only metals are noted as requiring effluent treatment. What about TSS and nutrients?

13 f. There was nothing on water management in underground vs. open pit. These would be different: should there be requirements for this?

#### Appendix D: Closure and Reclamation

3c. Please add: the physical integrity of permanent features, “especially the open pit”

#### Appendix J: Human Environment

##### *Employment*

1. Under employment, there is no discussion of gender gaps. An analysis of each employment indicator by gender should be done, such as some of the following.
  - Employment policies for indigenous women, especially in non-traditional jobs;
  - Specific training initiatives designed for women;
  - Measures to ensure the security and safety of women in work camps;
  - Gender sensitivity training and anti-harassment policies;

- Reporting requirements on employment and training by gender particularly for indigenous women;
  - Provisions for childcare and flexibility in hours to accommodate family needs (e.g., medical and dentist appointments, sick children);
  - Specific training and scholarships to facilitate entry of women into areas dominated by men, and
  - Gender based analysis during environmental and social impact assessments.
2. There should be a real emphasis on how to mobilize Tłıchǫ citizens and businesses given that there are two operating diamond mines in the region which will compete for the labour force. In the case that northern and aboriginal workforces are not available, what emphasis will there be on increasing benefits to the local communities?

Please add to 4:

4d. Discussion of policies for site, such as anti-discrimination policies and cross cultural training.; Indigenous training and employment policy; policies on consumption and use of alcohol and drugs; cultural policies to meet specific needs, such as bereavement leave, and bereavement policies are based on extended family models of kinship.

4e. Workplace environment measures, such as drug and alcohol free measures, country food provision, and negotiation of the best and most adaptive rotation schedule for harvesters

4. On plans and strategies:  
Please add “advancement” to employment and retention

### J3 Social impacts

Item 3 Should include a requirement for NICO project to assess camp vs. the daily commute for residents of Whati, including associated benefits and risks.

After 5, please add an additional line item on how Fortune will minimize its contribution to potential adverse social change, especially in the two smaller communities that will be on the all-season road grid for the first time. Describe what types of effects expected on these populations from all-season road, how NICO may contribute to the impacts, and associated mitigation.

### J4 Cultural Impacts—Addition of many aspects to cultural heritage and cultural impacts

- As discussed in the preamble, there must be collaboration with the Tłıchǫ Government and consultation on any issues involving cultural heritage.

- Measures and protocol to avoid damage to cultural sites, including protocols for site or object management and site clearances, timeframes and, if sites are to be identified in reports, who will have access to this information.
- How the developer will ensure the participation of Tł̓ch̓q people in heritage assessments, including provision of adequate funding.
- Identify any impacts on aboriginal access to areas of importance for social, religious or cultural purposes. Many of these areas will be identified in the Tł̓ch̓q Land Use Plan.
- The developers plans for using Tł̓ch̓q people to monitor impacts on culture

J5 Human Environment Monitoring and Management.

We would like an additional line item for monitoring focusing on identifying, reporting and finding appropriate minimization strategies for social and economic impacts associated with Gamèti and Whatì being on the all-season road grid.

We would like to thank the Board for granting the Tł̓ch̓q Government an extension in providing comments to the Terms of Reference. We are open to meet with Board to discuss these issues further.

Sincerely,

In Tł̓ch̓q Unity,



Eddie Erasmus,  
Director of Lands Protection Department