



Yellowknives Dene First Nation

P.O. Box 2514, Yellowknife, NT X1A 2P8

April 10th, 2015

Simon Toogood
Mackenzie Valley Environmental Impact Review Board
Yellowknife, Northwest Territories
X1A 2R3
stoogood@reviewboard.ca

Dear Mr. Toogood:

Re: Whitebeach Point Scoping (Terms of Reference) & Information Requests

The Yellowknives Dene First Nation (YKDFN) are submitting the attached comments on the scope, the proposed workplan and our initial information requests. We believe that it would be ideal for the Scoping to be finalized and allow the company to fully respond. At that point, the Information Request period should be commenced.

However, we are aware that the Board has submitted a compressed workplan that folds these stages into one – if we don't submit information requests during this point there would be no opportunity to do so in the future. If the Board provides an opportunity to review the final scope and the developers response prior to IRs, our desire would be to resubmit our requests.

Should there be any uncertainty, we encourage the board or the recipients to contact us directly – past Information Request efforts have seen companies and governments failing to meaningfully addressing the request. Given the timelines available, there is little flexibility to pursue formal avenues for additional clarity.

If you have any questions or concerns, please contact YKDFN Lands and Environment at 766-3496.

Sincerely,

Rachel Crapeau
Director, Lands and Environment

Copy: Whitebeach Point EA Parties

Part 1 – Comments on the Workplan and Terms of Reference

INTRODUCTION

YKDFN is not against development. However, we are extremely concerned and reluctant to see development in the areas that we consider most important to our people and our culture. This is particularly so given the experience at Drybones Bay, where no government sought to ensure that YKDFN values were protected – indeed, they overtly acted to facilitate those developments and bear responsibility for all the harms that have come. The hundreds of thousands of dollars that they have incurred are nothing compared to the desecration of our cultural and burial sites.

We ask the Review Board to recall that YKDFN have seen what happens when exploration occurs in our most important culturally significant areas – we have a truck on the bottom of Drybones Bay, a cemetery that was burnt, and a new contaminated site for the taxpayer to look after as a result – including a large hole from that bulk sample – that no one seems to be intent on successfully closing.

Despite this, YKDFN openly engaged with this project – we listened to the promises and reviewed their actions – and were prepared to work with the project, even in this extremely culturally important. We have approached this proposal in a deliberate, methodical and stepwise approach – Fully informed and planned development would ensure that the resources are protected and the rights of the Yellowknives can be successfully exercised.

This applies to the company's decision making as well – YKDFN does not want them to spend a great deal of money under false pretenses either. YKDFN have been consistent – there is no blanket approval for this project and there is a great deal of concern with industry operating in the area. This is not news to the company – our only regret is that they didn't consult with YKDFN during the staking phase (according to principles of the *Ross River Dena Case*), where they would have learned of the importance and level of concern associate with this area.

The first, limited approval of the initial half of the drill program was based on informed consent, which is the only possible way that any operation can be done in an area such as this. Precaution is paramount, as YKDFN do not trust industry to look out for our interests – we've learned that promises are easy to make, hard to live up to.

Our stepwise approach is the only way that the company can receive potential support – which they have previously said is a pre-requisite for proceeding. At present there is no support, none whatsoever, for any type of mining project. There is no support for any kind of bulk sampling. There is no support for the second half of the drill program. And frankly, YKDFN are greatly disappointed with the 'bait and switch' manner of the engagement, where we were informed that one set of actions were to be applied for, but the permit application contained a much more.

YKDFN were prepared to approach this in a stepwise and limited manner – to allow all parties to make informed decisions. A slower and more deliberate pace is the only potential road forward – if the project

wants a development approach that provides them additional freedom to act then they are free to move their exploration program to an area that doesn't have the cultural importance that Whitebeach Point does. As that seems unlikely, we need to consider how to approach the future in a collaborative manner. And the reality is that this area is special and has great importance to the membership of the Yellowknives Dene – it is not the same as any other exploration program.

The relationship between the company and the YKDFN is frayed and damaged. It can potentially be rebuilt, but this requires time and effort – a convenient side effect of the type of approach we are prepared to consider.

SECTION 1 – WORKPLAN RECOMMENDATION

YKDFN believe that the workplan, as currently envisioned, is too compressed to allow for an effective assessment. In particular, we suggest that the Scoping is finalized before the Information Request stage commences. This allows all parties, including the proponent, to be working from a single common document that provides direction. Certainly YKDFN are arguing for changes in the scope – it seems likely that other parties will as well and may open up lines of inquiry that have not been addressed with the information submitted to date.

Stage	Current Date	Requested Date
Comments from parties on the Proposed Scoping Document and initial information requests to the developer	April 10, 2015	April 10, 2015
Review Board issues the final Scoping Document	May 8, 2015	May 8, 2015 (Or earlier)*
Updated Project Description		May 21, 2015
Information Requests	April 10, 2015	June 5, 2015
Responses from the developer on the Proposed Scoping Document, reviewer comments, and initial information requests	April 10–24, 2015	June 19, 2015
Interventions from parties	May 8 – 21, 2015	July 3, 2015
Developer's response to interventions	May 21 – 28, 2015	July 10, 2015
Pre-hearing conference	June 3, 2015	July 15, 2015
Community hearing	June 16 - 17, 2015	July 22 - 23, 2015

* These dates are based on this date – YKDFN used the May 8th date based on the original workplan, presuming that it was linked to existing Board meetings. If this can be completed earlier, it moves all other following dates forward.

In Environmental Assessments, according to the MVEIRB guidance, the onus is on the developer to show that it will not have significant effects. To date, with the unfinished scope, it is not possible for the developer to fully respond. Furthermore, the WLWB provided an explanation as to why this file was referred and YKDFN sees little that addresses the root concerns – we think that were this a more traditional EA approach, the information available at present would not meet the burden of adequacy.

SECTION 2 – YKDFN COMMENTS ON THE TERMS OF REFERENCE

Section 1.4: Referral to Environmental Assessment

- Regarding Bullet 4: Having reviewed the Wek’eezhii Land and Water Board’s Reasons for Decision, YKDFN can find no reference that the WLWB concluded “Engagement on Phase I of the project was adequate”. Nor does YKDFN agree with the draft scope as we expressly declared that only a part of the engagement was adequate and it did not extend to cover all of phase I.

Section 2.1: Proposed Scope of the Development

YKDFN believe that the proposed scope of the development is overly narrow, disagreeing with the Board’s initial draft. While YKDFN accepts that the actions to be undertaken are associated with exploration, we cannot pretend that these activities are undertaken in a vacuum. Ultimately, this is a project that is aimed at developing a mining project. If this project is to be considered against the public concerns that prompted it’s referral to EA, then a limited discussion on the nature of any future exploitation must be had. The WLWB states (bold added):

The engagement and consultation activities provided by a focused EA should enable these impacts and concerns to be better understood and addressed. It is up to the Review Board to determine whether there are mitigation and/or accommodation measures that can eliminate the impacts and address the basis for public concern.

...

In response to reviewers’ comments about the importance of the area and their desire to keep the area pristine, Husky reiterates that the current application is for exploration only and is intended to evaluate the resource so that informed decisions can be made regarding the potential for any future commercial development on the Chedabucto mineral claims. While this response may be accurate in relation to Husky’s plans, it fails to adequately address public concern about the current proposal.

This was also one of the principal messages that the company received during its engagement, “Concerns over what impact the commercial development will be and how the resource extraction will be [sic] conducted”. It was again emphasized during the most recent engagement with the YKDFN, where, upon being informed that the YKDFN was not prepared to support bulk sampling at this time, the project immediately linked it to the mine.

It does no service to ignore one of the principal causes of concern by failing to provide even the broad outlines of what a mining operation will look like. This 'exploration' project cannot be divorced from that outcome – whether it be considered as an induced development, or through the Dependence, Linkage and Proximity tests described in the draft scoping document. We've learned repeatedly that all predictions are wrong, but in this case, the risk of errors of commission (guessing and being wrong) serve the conversation that errors of omission. Moreover, throwing up our hands and saying 'we don't know' is a direct refusal to even consider addressing the concerns of reviewers or one of the purposes of the referral.

In the time since the decision to this submission date Husky has failed to present anything new to address these concerns, adamantly refusing to make any changes to the project or their proposal.

Section 2.3: Proposed Scope of the Assessment

- To link the level of effort associated with the assessment *only to* the scale of the project is not the appropriate lens to consider Cumulative Effects. The appropriate lens must be the level of cumulative effects that the Valued Components (VC) are being exposed to. In this case, the people are one of the critical VC's, thus the scope of assessment must require assessments that consider the level of effects that they are experiencing – both environmentally and socio-economically.

Environmentally, the Yellowknives Dene are under considerable pressure from the developments and government actions. As the GNWT has continued to infringe upon our rights, they have done nothing to limit the level of development (even encouraging it with cash subsidies). Our elders and landusers have been warning that industry was impacting the Bathurst Herd for many years – while Canada GNWT did, and continue to do, little to nothing in order to address these concerns.

Socio-Economically, this area is one of the primary use areas for more than half of the family groups of the Yellowknives Dene. Those families that practice their rights to the west of the Weledeh Cheh (Yellowknife Bay) all travel to this area. While the Chief Drygeese Territory is large, there are areas of particular value. Beyond this, the Yellowknives are already being constrained by development, the Tliche Region, Yellowknife and the Ingraham Trail residents – Drybones Bay and Whitebeach point are the two remaining cultural areas reasonably accessible from Ndilo and Dettah, with the latter seeing significant development that burned the area and left an environmental legacy to be cleaned up. This has hardly preserved the integrity and value of the area in the short term.

Were we talking about Moose or Caribou, the answer is so straightforward – the range is based on the Valued Component. It is essential that the scope of the assessment be broadened to understand the full range impacts to the people – it doesn't make sense to only consider the impacts from a small area of their experience.

- Temporal scope: It is important that the history of development in this area (and others with similar significance) be considered and reviewed to understand the lessons learned from the processes – to allow us all to better understand the context and necessity for some necessary mitigations.

Part 2 – Information Requests

YKDFN IR# 1 Archaeology Mitigations

To: GNWT

Reference

Husky Submission Package, Aurora Geoscience Archeology Policy

Terms of Reference

N/A

Preamble

The project's developer has an archaeology policy. YKDFN wants to know how this policy has been implemented and how the Prince of Wales (or other Government divisions) have acted in response to the information generated by that policy.

Request

- 1) Please provide all examples of instances when Aurora Geoscience has reported an archaeological site, with a generalized location and description.
- 2) Please indicate what the PWNHC did to verify or inspect these reports, including what guidance was

YKDFN IR# 2 Archaeology Mitigations

To: Proponent

Reference

Husky Submission Package, Aurora Geoscience Archeology Policy

Terms of Reference

N/A

Preamble

The project's contractor (Aurora Geoscience) has an archaeology policy. YKDFN wishes to know how this policy has been implemented.

Request

- 1) Please provide a list of all projects that Aurora Geoscience has worked on in the NWT over the last 10 years.

- 2) For each archaeological site that was discovery, please indicate what management or operational modifications were made.

YKDFN IR# 4 Failed Mitigation Consequences

To: GNWT

Reference: Drybones Bay EA and subsequent operation

Terms of Reference

N/A

Preamble

Drybones Bay is a critical cultural area that, despite 7 Environmental Assessment hearings, has seen exploration activities have disastrous consequences. History has shown that exploration companies can operate with virtual impunity – that responsible development is a mirage and GNWT has done little to ensure responsible development.

Request

- 1) In the early 2000's, an exploration company had a truck sink through the ice. Please indicate what the consequences were to company?
- 2) In the latter half of the decade, an exploration company was found guilty of starting a forest fire that burned one of the cemeteries in Drybones Bay. What were the consequences of this action?
- 3) Please indicate what actions the GNWT undertook to recover the costs of that forest fire and what the consequences of any failure to pay were?
- 4) In the mid 2010's, an exploration company in Drybones Bay went bankrupt. Please indicate the consequences of this action?
- 5) In 2014 a mining company killed 4 Bathurst Caribou on the winter road. Meanwhile, YKDFN are prohibited from harvesting Bathurst Caribou, the species that they have had a special relationship with for thousands of years – being charged for doing what they have always done, putting meat on the table for their families. Please explain what actions the GNWT undertook to follow up and what the consequences to the company were?
- 6) Please explain what steps the GNWT has implemented to ensure that none of these incidents will occur again, or if they do what punishments will be imposed.

YKDFN IR# 5 Failed Mitigation Consequences

To: GNWT

Reference: Archeology Effort in the area

Terms of Reference

N/A

Preamble

Companies often check with the Prince of Wales to determine what known archaeological sites are in their area. IN the past this information has been presented as though it meant that there were no archaeological sites in the area – when the reality is that few areas had actually been the focus of work.

YKDFN are aware of two quick shoreline surveys that we did in the early 2000's, discovering a large number of sites relative to the effort.

Request

- 1) Please provide a map that indicates where researchers have been on the ground and undertaken systematic surveys to evaluate the area for archaeological resources.
- 2) Please provide a discussion that helps non-archaeologists understand the past nature of the use in the area, based on the existing research.
- 3) Given the number of artefacts already found (relative to the effort) and the traditional knowledge informing us of the importance of this area, does the PWNHC believes that it constitutes an archeologic landscape.

YKDFN IR# 6 Known Exercise of Aboriginal and Treaty Rights

To: Canada (CANNOR, AANDC)

Reference: April 2nd, 2015 Letter from Matt Spence

Terms of Reference

N/A

Preamble

CANNOR, the department now responsible for coordinating action involving Aboriginal Affairs has asked First Nations to provide information at the hearing related to the exercise of Treaty rights. However, it's not clear what level of understanding that Canada has currently. We are being forced to use the EA process to discharge numerous requirements, without clarity on what needs to be done.

AANDC and its former incarnation INAC, have been in existence for decades. YKDFN cannot believe that they have no information on how First Nations have used this area – if not, they should have to address this failure in front of the Board.

Furthermore, YKDFN wish to see the entirety of the onus on demonstrating impacts moved from the First Nation with extremely limited resources, to a more collaborative relationship with Canada (with much broader resources and a long history of responsibility) that recognizes the fiduciary duty that the latter owes to the YKDFN. Canada continuously pretends that it knows nothing about any First Nation matter, consequently placing all the responsibility on the shoulders of the First Nation. In doing so, it ignores its duty.

Request

- 1) Please provide a discussion on how Canada understands that the Yellowknives Dene use the Whitebeach Point, based on their experiences over the 110 years since Treaty was signed.
- 2) Please provide any documentation that advances this effort, particularly related to the development efforts of Gary Jaeb in the early 2000's, the Anglo American development proposal in 2008 (when the Consultation Support Unit existed), and any other information that AANDC or other Federal departments may hold.
- 3) Please provide examples of past developments where First Nations have asserted that their Treaty Rights and indicate:
 - a. What actions Canada undertook to review the matter
 - b. What accommodations Canada sought to ensure that the concerns of the First Nation were addressed

YKDFN IR# 7 Known Exercise of Aboriginal and Treaty Rights

To: GNWT

Reference: April 7th, 2015 Letter from Terry Hall

Terms of Reference

N/A

Preamble

Lands, the department now responsible for coordinating action involving Aboriginal Affairs has asked First Nations to provide information at the hearing related to the exercise of Treaty rights. However, it's not clear what level of understanding that GNWT has currently. We are being forced to use the EA process to discharge numerous requirements, without clarity on what needs to be done.

The GNWT has been in existence for decades and must have some understanding and evidence on how the First Nation has used exercised their rights in this area in the past. YKDFN cannot believe that they have no information on how First Nations have used this area – if not, they should have to address this failure in front of the Board.

Furthermore, YKDFN wish to see the entirety of the onus on demonstrating impacts moved from the First Nation with extremely limited resources, to a more collaborative relationship with GNWT (with much broader resources and a long history of responsibility) that recognizes the fiduciary duty that the latter owes to the YKDFN. We do not need more ineffective form letters before and after the Environmental Assessment that simply attempt to create the perception that GNWT is listening – even in the Snap Lake case where Lutsel K'e sought to have it's concerns addressed, the GNWT stated that they were unable to act to ensure the measures were implemented. The government, despite its fiduciary duty, did nothing during the subsequent water licensing to ensure that the concerns of the First Nation was addressed.

GNWT cannot pretend that it knows nothing about any First Nation matter, consequently placing all the responsibility on the shoulders of the First Nation. In doing so, it ignores its duty.

Request

- 1) Please provide a discussion on how GNWT understands that the Yellowknives Dene use the Whitebeach Point, based on their inactions with the First Nation since the GNWT being established.
- 2) Please provide any documentation that advances our understanding of this. We suggest that GNWT review it's records particularly related to the development efforts of Gary Jaeb in the early 2000's, the Anglo American development proposal in 2008, and any other information that Lands, ECE, ITI or any other Territorial departments may hold.
- 3) Please provide examples of past developments where First Nations have asserted that their Treaty Rights and indicate:
 - a. What actions Canada undertook to review the matter
 - b. What accommodations Canada sought to ensure that the concerns of the First Nation were addressed

YKDFN IR# 8 Moose Density

To: GNWT

Reference:

Terms of Reference

N/A

Preamble

YKDFN have previously expressed concern with the level of harvesting on Moose, particularly as residents of the NWT have been forced to seek alternative species. In recent years, our harvesters have noted a much higher number of people on the land, in areas that non-Dene are traditionally not observed.

Request

- 1) Please explain what new actions GNWT has undertaken to monitor the harvesting pressure and the population abundance of Moose, particularly with reference to the area in and around Yellowknife.

YKDFN IR# 9 Additional Information

To: Proponent

Reference: MVEIRB Submission

Terms of Reference

N/A

Preamble

An Environmental Assessment has a much broader range of considerations than that of the Water Board. YKDFN are seeking to clarify what additional information is available to help meet the burden that the developer carries – to show that it has met the public concern.

Request

- 1) Other than the response to the Board IRs, has the project submitted any additional information to attempt to address or mitigate public concerns?

YKDFN IR# 10 Closure Plan Enforceability

To: Proponent

Reference: MVEIRB Submission, Closure Plan

Terms of Reference

N/A

Preamble

Trenching is specifically exempted from closure requirements under the Mackenzie Valley Land Use Regulations. The closure plan provides no details other than noting they will use industry best practice. Industry best practice is to do nothing, in accordance to the regulations.

Request

- 1) Should the Board allow test pits, over the objections of YKDFN, please provide clarity on what industry best practice consists of?
- 2) Given that closure is specifically excluded under the MVLUR, how does the project intend to make this any enforceable commitment?
- 3) How will the project ensure that they have been successful

YKDFN IR# 11 Improved Access

To: GNWT

Reference: MVEIRB Submission

Terms of Reference

N/A

Preamble

YKDFN are concerned that skidding with heavy loads will create better access and allow for increased squatters and recreational developments.

Request

- 1) What controls currently exist to prevent the creation of authorized recreational users in this critical cultural area?
- 2) How often does GNWT inspect this area for unauthorized users? Please provide details on when the last inspections were done in this area since Devolution

YKDFN IR# 12 Improved Access

To: AANDC

Reference: MVEIRB Submission

Terms of Reference

N/A

Preamble

YKDFN are concerned that skidding with heavy loads will create better access and allow for increased squatters and recreational developments.

Request

- 1) For the period prior to Devolution, can AANDC provide details on the number of inspections done in the Whitebeach Point area over the last 5 years?
- 2) Please provide a list of the any evictions or 'postings'

YKDFN IR# 13 Wildlife Monitoring and Management

To: Proponent

Reference: MVEIRB IR Response, Wildlife Management Plan

Terms of Reference

N/A

Preamble

YKDFN have reviewed the Wildlife Management Plan submitted and are unsure on many details relating to the efficacy of the measures contained.

Request

- 1) Section 8 of this plan notes a series of buffers for the operations. Please identify how the project will undertake monitoring to ensure that their operations are not occurring in or around *each* of the identified den or nesting locations.
- 2) This plan has been used in a number of operations across the NWT. Please provide a full list of operations where it is applicable, indicating for what years.
- 3) Please provide a discussion on the reports that have been provided to GNWT for the list mentioned in question 2.
- 4) The IR response to the Board notes that a wildlife monitor will be used. However, this is not detailed in the Wildlife Management Plan. Please provide clarity in the roles and responsibilities of this monitor, indicating their chain of reporting and authority to effect operational decisions.
- 5) The first bullet on p4 of the project response to the Board IR notes that the wildlife monitor is responsible for ensuring that environmental protection measures are implemented to minimize impacts based on their observations. Please indicate the what the environmental protection mitigations are and what the criteria are for triggering them.

- 6) The company consultant has used wildlife monitors on other projects. Please provide a comprehensive list where the monitor has utilized their authority to alter the operational plan to respond to observations undertaken during the wildlife monitoring.

YKDFN IR# 14 Wildlife Monitoring and Management

To: GNWT

Reference: MVEIRB IR Response, Wildlife Management Plan

Terms of Reference

N/A

Preamble

YKDFN have reviewed the Wildlife Management Plan submitted and are unsure on many details relating to the efficacy of the measures contained.

Request

The project notes that a wildlife monitor will be present and that reporting will be provided to GNWT. Other than the existing mines, please provide past a comprehensive list of when this has occurred in the past and how GNWT has used this information, with a focus on what GNWT has done to mitigate the impacts associated with the project.