

Scoping and Terms of Reference Reasons for Decision

Pine Point Mine Project – Pine Point Mining Limited

1. Introduction

The Mackenzie Valley Environmental Impact Review Board released its *Terms of Reference* for the environmental assessment (EA) of the Pine Point Mine Project on November 26, 2021. This document describes the Review Board's reasons for the impact assessment scope, approach, methodology, and other requirements set out in the Terms of Reference. The Terms of Reference describes much of the reasoning about the assessment approach and the valued components that were selected, and this Reasons for Decision document should be read in concert with the Terms of Reference.¹

2. Developing the Terms of Reference and Scope of Assessment

The Terms of Reference was developed through a combination of in-person and online meetings with parties and the developer, as well as review of documents using the Online Review System. When scoping the assessment and issues to include, the Review Board considered:

- the EA Initiation Package submitted by the developer (February 2021)
- *Developer's Assessment Proposal* – recommendations and responses from the developer using the Online Review System (June 2021)²
- technical scoping meeting (May 4-5, 2021)
- information from community scoping sessions in Fort Resolution, Kát'odeeche First Nation, and West Point First Nation (June and July 2021)
- the public review of draft Terms of Reference including recommendations from parties and responses from the developer (August-October)

¹ [Terms of Reference - Pine Point Mine Project November 26, 2021](#)

² [Online Review System table - recommendations and responses on Developer's Assessment Proposal](#)

- the public review of the draft Terms of Reference used the Online Review System to document recommendations from parties and responses from the developer.

This exchange of views, which includes the positions of different parties on different Terms of Reference items, is presented in the Online Review System table.³ The Review Board considered the exchanges of information and differing views on the contents of the draft Terms of Reference. After careful consideration of these views and recommendations, the Board prepared a final Terms of Reference.

Due to COVID-19 the Review Board experienced challenges meeting with communities and other parties in person. After several attempts to meet in person the Review Board shifted to virtual meetings. The Review Board appreciates the efforts of all the communities, the developer, and the other parties to adapt to this new approach.

2.1 Scope of Assessment - key lines of inquiry

The Review Board identified key lines of inquiry based on information submitted by parties and the developer during scoping. Key lines of inquiry are the subjects that are the focus of this EA and require the developer's highest level of effort. The key lines of inquiry are:

- keeping water safe and clean
- lasting well-being
- sustainable boreal caribou: protection and harvest

The reasons why the Review Board decided to focus this environmental assessment on these key lines of inquiry are described in detail in sections 4.4.1, 4.4.2 and 4.4.3 of the Terms of Reference. In summary:

- The Board heard about the inherent value of water and its importance to ecosystem function throughout scoping activities. The Board also heard about the high degree of connectivity between ground and surface water systems, and some of the serious uncertainties surrounding minewater management and contingency options. The Board has determined that keeping water clean and safe is a key line of inquiry for this assessment due to the combined importance of water and the uncertainties surrounding its management.
- The focus of much of the in-person and online meeting discussion during scoping was on the potential impacts of the project on people. These included impacts on social, cultural, health, economic, and community conditions. The Review Board found that the

³ [Online Review System table - recommendations and responses to draft Terms of Reference](#)

best way to consider all of these in a holistic way is to assess impacts on those components and on the way they interconnect, as part of lasting well-being.

- During scoping activities, the Board heard that boreal caribou are essential to the Dene way of life. Parties noted boreal caribou have recently returned to the area following a long absence after the previous Pine Point Mine. Boreal caribou were identified by Indigenous groups, government agencies and the developer as a particularly important and essential valued component. Potential impacts of the project on boreal caribou were raised multiple times at technical and community meetings as well as in written submissions during the scoping phase.

In this EA, the key lines of inquiry are systemic-- they are made up of multiple interconnected valued components, including biophysical and human elements together. The reasons for this approach are described in section 3.2 below.

During scoping and the review of the draft Terms of Reference, parties suggested that impacts to culture should be a key line of inquiry. The Review Board considered this request and decided to include impacts to culture as an important part of the “lasting well-being” key line of inquiry (in section 4.4.2), in addition to assessing impacts on culture as an independent valued component (in section 4.3.4).

Parties also recommended that whooping crane should be a key line of inquiry. The Review Board decided otherwise because the project is only at the periphery of a possible expansion of the range of the species. The Review Board notes that the developer is required to assess impacts on whooping crane in a rigorous manner as part of the Review Board meeting its obligations under section 79 of the *Species at Risk Act* (SARA). Additionally, because of the vulnerability of whooping crane, which is listed as endangered both nationally under SARA and internationally by the International Union for Conservation of Nature, the Review Board decided to place a particular emphasis on this species.⁴ A subsection of the Terms of Reference (4.2.9) focusses exclusively on whooping crane. The Review Board expects this approach to ensure a thorough and careful assessment of impacts on whooping crane even though it is not a key line of inquiry.

⁴ Whooping Crane is listed as an endangered species by the International Union for Conservation of Nature and is considered to be at high risk of extinction in the wild. <https://www.iucnredlist.org/species/22692156/181242855>

2.2 Spatial boundaries of the assessment to include the Little Buffalo River

The Review Board heard parties' concerns about potential impacts to the Little Buffalo River from the project. These concerns were raised by parties during scoping meetings with the community of Fort Resolution and by parties during review of the draft Terms of Reference. These concerns specifically related to impacts on wildlife, water quality, fish and traditional users of the land along the Little Buffalo River. The Review Board and parties need to understand how the project could affect these components of the environment due to people's use of the Buffalo River area and its proximity to the project. Accordingly, the final Terms of Reference requires the developer to expand its spatial boundaries to the east to include the Buffalo River in assessing the impacts of the project on those valued components.

3. Approach to assessing impacts

3.1 Baseline and existing environment

The baseline conditions for considering project specific impacts includes legacy disturbance from previous mining at the Pine Point Mine site. Baseline conditions describe what would happen without the project (in contrast to what would happen with the project's impacts). Section 3.1 clarifies that baseline conditions may reflect the existing conditions in the current state, but in some cases, they will also reflect existing trends and naturally fluctuating conditions.⁵

Cumulative effects assessment for this EA includes evaluating the effects of the project in combination with past development in the area. Accordingly, the relevant baseline condition for cumulative effects (described in section 3.5) includes conditions prior to past industrial activities in the area.

3.2 Assessing impacts holistically using systems thinking

This Terms of Reference document requires the developer to use systems thinking to examine how individual impacts on parts of environment and people fit together. The valued components in sections 4.1, 4.2 and 4.3 are interrelated. The developer will look at the impacts

⁵ Sources of useful information when distinguishing naturally fluctuating conditions from anthropogenic effects of human activities may include Indigenous Traditional Ecological Knowledge, conditions in similar sites without development, or applicable long-term scientific studies.

on the valued components as parts of the environment and on the interconnections between the parts.

This will help the Review Board better understand how the Project could affect the combination of the environment and people, particularly for the key lines of inquiry (see above). For each of these, section 4.4 of the Terms of Reference includes important plain language questions to help the developer recognize the relationships between multiple impacts on different valued components and evaluate their collective impact.

This approach reflects reasoning described under the one of the priority themes from the Review Board's [2020 Perspectives Paper \(p. 13\)](#), feedback the Review Board has heard from communities in recent EAs, and the Board's determinations in those EAs. The Review Board has taken this holistic approach here because it best reflects what matters to the people who are potentially affected by the project.

3.3 Cumulative effects

Cumulative effects are impacts from a development that result from that proposed project in combination with impacts from other past, present, or reasonably foreseeable future human activities or developments. The Review Board heard from some parties that cumulative effects should be expanded beyond the effects of human activities to include the effects of *natural* processes.

The Review Board uses the definition of cumulative effects that is in its *Environmental Impact Assessment Guidelines*, which is similar to that used by most impact assessment agencies. It focuses on cumulative impacts of the project and other human activities, not natural phenomena. Nature is not an impact; it is what is being affected. Human activities should be managed to avoid impacts on the natural world.

The definition proposed by some parties risks confusing natural baseline variation with the results of human activities such as industrial development. This does not support best practice in cumulative impact assessment. The Review Board has therefore decided to continue to follow the approach the *Environmental Impact Assessment Guidelines* specify for cumulative effects assessment. This is consistent with the requirements of the MVRMA [ss. 117(2)(a)] and best practice.

3.4 Assessment methodology – opinion on significance of impacts

Unlike previous Terms of Reference, this one does not require the developer to give its opinion on whether impacts are significant in the Developer’s Assessment Report. Instead, it focuses on predicting and describing the impacts and the developer’s mitigations to avoid significant impacts. Later in the EA, during the analytical phase, parties will be asked their opinions on significance of impacts to the environment and people. The developer will have the opportunity to respond prior to the public hearing phase of the EA. The Review Board remains ultimately responsible for determining the significance of predicted impacts, pursuant to MVRMA ss. 117 (2)(b).

The Review Board has used this approach because it expects it to result in better technical evaluation of predicted impacts, and project and mitigation design. The developer will design the project and develop mitigations to prevent predicted impacts. The parties will have opportunities to evaluate the developer’s predictions, consider how appropriate and adequate the proposed mitigations are, and provide the Review Board with their views on impacts that matter and may have been missed or need further mitigation. The developer will have the opportunity to provide its responses to parties’ views.

3.5 Information to be requested from parties

The Terms of Reference identifies certain questions that are better directed to other parties, such as potentially affected Indigenous groups, instead of to the developer. It notifies the developer of these subjects, rather than require the developer to attempt to provide these answers. For example, Indigenous groups are better positioned to inform the Board about potential impacts on the resilience of communities, cultural continuity or matters of spirituality and Indigenous law. The Review Board plans to issue information requests to the appropriate parties while the developer is preparing its Developer’s Assessment Report. The developer will then consider the responses in its impact predictions.

3.6 Climate change and greenhouse gas emissions

This Terms of Reference requires more information on climate change related issues than previous Terms of Reference have. The Review Board’s decision to prioritize the topic is partly for the same reasons as described on page 17 of its [2020 Perspectives Paper](#). It is also partly due to parties’ comments provided during scoping for this EA, including comments from Environment and Climate Change Canada, an expert federal department for this subject. This Terms of Reference focuses on two primary topics related to climate change:

- the project’s emissions of greenhouse gases

- the potential vulnerability and resilience of the project to climate change related effects

The information requested in this Terms of Reference is intended to align the Board's EA processes with current best assessment practices for considering climate change in EA. This includes consideration of Environment and Climate Change Canada's *Strategic Assessment of Climate Change*. The Board observes that the GNWT does not have equivalent guidance for a developer in environmental assessment, so the Terms of Reference relies on federal guidance for this.

3.7 Engagement with communities and use of Traditional Knowledge

During scoping and review of the draft Terms of Reference, the Review Board heard that Indigenous groups and organizations want to participate early in the approach to the environmental assessment and have a say in how the Developer's Assessment Report is prepared. The Review Board also heard that specific community-based protocols and standards need to be followed in collecting and using Traditional Knowledge and information from the communities. The developer has committed to support group specific Indigenous Knowledge studies with Indigenous communities potentially affected by the project. The Terms of Reference reflects these requirements. In addition, the Terms of Reference requires the developer to describe how Traditional Knowledge and Traditional Knowledge holders have influenced the project design, impact assessment, monitoring and mitigation measures, as well as reclamation and closure planning.

4. Decisions based on input from Draft Terms of Reference review

4.1 Impacts to water

The Draft *Terms of Reference* included impacts to surface and groundwater quality and quantity as a single valued ecosystem component. The Final *Terms of Reference* requires the developer to assess impacts on 1) surface water quality and quantity and 2) impacts on groundwater quality and quantity as individual valued ecosystem components (ToR sections 4.2.1 and 4.2.2). It then requires the developer to assess these two valued ecosystem components together in a holistic consideration of the key line of inquiry "Keeping water safe and clean" (ToR section 4.4.1).

The Review Board required individual assessments of ground and surface waters because there are likely to be material differences in measurement techniques, assessment indicators, receptors and mitigation methods. Bringing these two individual assessments together in a holistic approach (through the key line of inquiry) ensures that the real-life interactions

between ground and surface waters, and the importance of water as a system from an Indigenous perspective, are given due consideration in the *Developer's Assessment Report*.

The Review Board has required the developer to show how it will ensure that water in and around the Project area will remain safe for people, aquatic life and wildlife, and suitable for ongoing cultural use. The Review Board has determined that these objectives are required to demonstrate that water will remain both safe *and* clean in the project area. "Safe" water is typically described through existing guidelines for human health or aquatic effects. "Clean" water includes these requirements but also includes community specific criteria based on factors such as appearance, smell, taste, and ability to be used culturally, with users trusting in its inherent qualities. The developer must identify specific thresholds for assessing if and how water will meet these criteria, including community-specific objectives, in its DAR.

When evaluating parties' and the developer's different suggestions for specific analytic techniques or tools related to water, the Review Board often found the developer's arguments more compelling. This is reflected in the requirements of the Terms of Reference. The Review Board requires the developer to describe the rationale, limitations and assumptions for each method, model, or assessment technique that it will use. If, after assessing the information in the Developer's Assessment Report, parties still disagree over the methods the developer chose to assess impacts, those parties may request additional information or analysis through Information Requests or a Request for Ruling. The Review Board encourages parties and the developer to meet to discuss and resolve issues at any time in the environmental assessment process, using the [Template for Meeting Reports](#) to report the results of these meetings.

4.2 Impacts on people

During engagement activities and the review of the Draft Terms of Reference, the Review Board heard about the importance of culture and other aspects of the human environment such as health, economics, and community. Some parties had recommendations about which parts of the human environment should be key lines of inquiry and require more careful assessment. The Review Board concluded that the Final Terms of Reference must require appropriately thorough assessment of the impacts of the project on the human environment.

The requirements of the Terms of Reference for each valued component are proportionate to what the Review Board heard about the importance of the value component to communities. Lasting well-being is a key line of inquiry that requires the developer to carefully consider all pathways of impacts to well-being, with particular emphasis on the most important ones identified by communities, such as impacts on culture.

When assessing impacts on the human environment and well-being, the Review Board heard from Indigenous parties that the developer's analysis needs to be community-specific (to reflect community-specific conditions, values and practices), and therefore the developer should not compile or amalgamate data and assess impacts on multiple communities or Indigenous groups together. The developer agreed to do an overarching socio-economic assessment with community-specific considerations. For these reasons, the Review Board is requiring the developer to engage communities to identify the appropriate scale for understanding and assessing impacts on the human environment. Some impacts may be more appropriately assessed at a community or Indigenous group scale, while a regional scale may be acceptable for others. When looking at lasting well-being, the Review Board expects the developer to carefully work with Indigenous groups, to identify and prioritize the most important factors to their well-being. Some of this information may be best obtained through direct information requests from the Review Board to parties, as described in section 3.5 above.

4.2.1 Assessing Impacts to Treaty and Indigenous Rights

The Review Board heard differing views from Indigenous parties about the need to assess impacts on Indigenous and Treaty rights as a part of the environmental assessment. The Review Board is required to consider the protection of the biophysical environment, as well as the social, cultural, and economic well-being of residents, and the importance of the conservation to the well-being and way of life of Indigenous peoples. The Review Board suggests that when an Indigenous organization or government provides any evidence that describes adverse impacts from the project that may also impact on a right, that it please describe:

- I. what right(s) might be impacted,
- II. which adverse impact(s) of the project affect those right(s), and
- III. any proposed mitigation to address or avoid those impacts(s).

The key lines of inquiry for this environmental assessment will enable parties to understand and voice concerns about impacts to rights using the approach set out. This includes an assessment of how the project will impact on the ability of Indigenous groups and people to use and rely on culturally important resources and habitat, such as for boreal caribou. The environmental assessment will also consider the impacts to the ability to access culturally relevant places and resources, while also considering the impact to how people experience their access to and the use of the land and culturally relevant resources. In addition, the environmental assessment will look at how the project may affect the ability of Indigenous groups to share and transfer Indigenous Knowledge, language, laws, customs, and values through the practice of culture on the land.

4.3 Impacts on wildlife

In terms of harvested wildlife, the Review Board has focussed boreal caribou and moose, based on 1) their importance for harvesting (past, present or into the future) and 2) on concerns raised by parties during scoping about the project's potential to cause impacts on Indigenous peoples' ability to sustainably harvest these species. The Review Board is applying a more holistic lens throughout the EA and has included a specific requirement to incorporate information from sustainable harvest models for both species into the Developer's Assessment Report.

Given the relatively recent return of boreal caribou to the Pine Point area as it recovers from past disturbance and the status of suitable habitat under the GNWT *Framework for Boreal Caribou Range Planning* in the Southern NWT Region, the Review Board has required the developer to work with GNWT-ENR and ECCC to identify priority areas for potential habitat restoration. The Review Board included this because it may provide a basis for mitigating potential impacts of the Project on caribou habitat.

5. Information in the EA Initiation Package

The Terms of Reference instructs the developer to use its existing information (where it is relevant and available) as part of fulfilling the requirements of this Terms of Reference. In February 2021, the developer submitted its EA Initiation Package, which described:

- the project
- existing baseline information
- frameworks for monitoring and management plans
- potential project interactions with the environment and people
- a proposed structure for assessment methodology in a Developer's Assessment Proposal

The EA Initiation Package provided much more information at the start of this EA than has been available at the beginning of any previous EAs.

The Review Board expects the developer to use this information as a valuable head start in completing its Developer's Assessment Report. The opening paragraph in section 4 and for each valued component in sections 4.1, 4.2 and 4.3 acknowledge specific sections from the EA Initiation Package where information can be used to complement items required in the Terms of Reference. There has been no equivalent in previous Terms of Reference documents.

6. Terms of Reference Workshops

In releasing the Terms of Reference, the Review Board is prepared to facilitate workshops between the developer and parties on topic specific items before the developer prepares the Developer's Assessment Report, if the developer requests them. These workshops will clarify approaches to meeting the Terms of Reference requirements and allow the developer to present updates on the project. The Review Board expects this to lead to a more effective Developer's Assessment Report and to better inform the remainder of the EA process. This approach is also consistent with a move by the Review Board towards more collaborative EA processes, which the Review Board expects to lead to a better informed assessment.

7. Conclusion

The Review Board believes that the Terms of Reference is a balanced reflection of what was proposed by the developer, what was heard from parties during the public scoping and review, and the consideration of the Board's past experiences. The Terms of Reference will provide guidance to the developer on how to develop its assessment report and allow for more focussed on-going engagement between the developer and parties. The Review Board is also committed to further engagement and dialogue in the near future.



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