

Federal Ministers Back Nunavut Impact Review Board in Refusing Baffinland Expansion

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On November 16, 2022, by ministerial letter, the Honourable Dan Vandal, in his role as Minister of Northern Affairs, and on behalf of the Ministers of Environment and Climate Change, Fisheries, Oceans and the Canadian Coast Guard, Natural Resources, and Transport, accepted the recommendation of the Nunavut Impact Review Board, denying Baffinland Iron Mines Corporation its approval for the Phase 2 expansion of the Mary River Mine.



Baffinland operates the Mary River Project under its 2012 approval which set a nominal production rate of 18 Million tons of iron ore per year. The Project includes a mine site and two ports, Milne Port and Steensby Port, a haul road, and a railroad. A 2014 modification was approved to allow extraction of up to an additional 4.2 Mtpa of iron ore for truck transport to Milne Port while additional infrastructure was being constructed.

In 2018 Baffinland submitted a proposal to increase production, construct a 15 million L diesel fuel tank, and install a 380-person work camp. The Review Board had concerns regarding the potential adverse effects of increased truck traffic and recommended against approval. The Minister, however, approved the full scope of activities on a temporary basis, until December 31, 2019, under updated terms and conditions.

In 2019 Baffinland applied for approval of its Phase 2 development proposal which included, changing marine shipping from year-round to seasonal; changes at Milne Port to maximize shipping during open water; increasing shipment of iron ore to 12 Mtpa, and installation of an enclosed or crushing facility. The proposal was then amended to include a rail component to Milne Port. The proposal also called for work camp expansion.

After conducting its most extensive assessment, and hearing from two dozen registered intervenors, the Review Board submitted its report on May 13, 2022. Evidence before the Review Board included the project's anticipated economic impact in the case of both approval and non-approval. The project was recognized as being both the largest project and largest private employer in Nunavut.

The Review Board recommended to the responsible Ministers that the Phase 2 development

not be allowed to proceed. It concluded that the proposal, as presented:

- had the potential to result in significant adverse ecosystem effects on marine mammals and fish, caribou and other terrestrial wildlife, along with vegetation and fresh water, and that those effects could lead to significant adverse socioeconomic effects on Inuit harvesting, culture, land-use and food security in Nunavut;
- posed the potential for transboundary effects on marine mammals and fish in the marine environment; and
- the potential adverse effects could not be adequately prevented, mitigated, or adaptively managed under the proposed mitigation, adaptive management and monitoring programs contained in the proposal.

In a statement released with the ministerial letter, Minister Vandal stated:

The federal government is not in a position to unilaterally impose new or varied terms and conditions that have not been considered by the Board or impacted parties — that goes against the spirit and intent of the Nunavut Land Claims Agreement, which sets out specific Inuit rights related to lands and resources. As noted, this process is best left to a new project assessment in which all potentially affected parties can participate. Such an assessment can avail itself of the significant work already done through the Phase 2 Project Certificate reconsideration.

Minister Vandal did not completely shut the door on future development and project expansion. The statement and the ministerial letter recognized the important economic benefit of mining in Nunavut. The statement encouraged further work on the part Baffinland to address these identified issues:

We encourage Baffinland to continue to work with partners in establishing a positive path forward following today's decision. This can be done by Baffinland applying for a new project to adequately consider any new proposed commitments in a public setting, providing certainty for all partners.

Nunavut's Minister of Economic Development and Transportation and Minister of Environment, David Akeeagok, released the following statement in response to the decision:

While the GN recognizes that Baffinland's proposed expansion project would provide socio-economic benefits to Nunavummiut, Minister Vandal's decision reflects the concerns brought forward in the Reconsideration Report and Recommendations provided by NIRB in May 2022. We recognize the benefits of existing operations at Mary River, as well as the need to protect our lands and waters. I commend Minister Vandal for balancing this difficult decision.

The Minister's commitment to the regulatory regime is acknowledged. Nunavummiut, regulators, intervenors, and proponents all benefit from an efficient and transparent

regulatory system.

What lessons can be drawn from this multi-year, complex environmental assessment and review process for this project? First, economic benefit, no matter how significant, and no matter how much the need, will not always carry the day. Second, every effort should be made to identify and mitigate environmental concerns, so far as is reasonably possible. The concerns that remain unaddressed or inadequately addressed will be the ones that threaten the prospect of project approval. Third, there is a clear message that federal cabinet will be unlikely to ignore the unambiguous recommendations of an environmental assessment and review process, especially one that considers local and Indigenous perspectives, nor will cabinet invent new mitigation measures or conditions in an attempt to address the issues that have been raised. Instead, it will direct the proponent to give it another go, perhaps even with some words of encouragement. Those words may be cold comfort for a proponent who has been denied the request and approvals and who may have to look at starting over.

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