

November 4th, 2019

Mushkegowuk Council Comments on Webequie Supply Road Environmental Assessment Draft Terms of Reference

On September 11th, 2019, Webequie First Nation released for comment Draft Terms of Reference for an Environmental Assessment (EA) study under the Ontario Environmental Assessment Act for the proposed Webequie Supply Road Project, a proposed all-season corridor that will facilitate the movement of materials, supplies and people from the Webequie Airport to the proposed mine development and mineral exploration activities in Northern Ontario.

The table below summarize Mushkegowuk Council's comments on this proposed Draft Terms of Reference.

Section	Mushkegowuk - 01
Subject	Project Background and Context
Reference	1.3
Requirement	<p>The Proponent relies on past and incomplete Environmental Impact Statement or and Environmental Assessment Report (EIS/EAR) from Noront Resources which initially included an all-season road connection to the provincial highway system. Mushkegowuk is concerned Noront may be intentionally breaking key components of its Eagle's Nest project by allowing this proposed all-season road component to be transferred to the Proponent in order to avoid detailed assessment about the potential impacts as a whole. Therefore, Mushkegowuk recommends that this EA be amended to include as co-Proponent, the actual user of the road, Noront Resources or alternatively, the proposed project to be amended delete all references to the previous studies in Section 1.3 that are intended to <i>"provide the foundation for the development of the proposed Webequie Supply Road"</i>. By excluding the actual user of the proposed all-season road, Mushkegowuk is unable to understand the volume of mining related hauling, trucking of materials and supplies, transportation of dangerous goods, transportation of workers and the negative effects on wildlife, air quality, water management and spill contingencies. In addition, Mushkegowuk Council was not consulted on any of the referenced studies in Section 1.3 and has no actual knowledge of the ecosystemic effects of all proposed corridors and is unable to carry out a proper assessment of the downstream and down muskeg impacts of its member communities on the James Bay coast.</p>

Section	Mushkegowuk - 02
Subject	Purpose and Rationale For the Undertaking and Study
Reference	1.4
Requirement	<p>Section 1.4.1 refers to the goals and objectives of the Webequie Supply Road which includes <i>“To facilitate the movement of materials, supplies and people from the Webequie Airport to the area of existing mineral exploration activities and proposed mine developments in the McFaulds Lake area.”</i> Given that there is no information as to the nature of the mining activities, which would normally include anticipated impacts of the proposed mining operations such as the size of pits, type of mining operations, the amount of tonnage to be hauled on a daily basis, Mushkegowuk requests that the first objective in Section 1.4.1 (as italicized in 02) be entirely deleted. In addition, please delete <i>“The EA Study for the Project will assess corridor alternatives and complete and effects assessment and evaluation of the selected preferred corridor for the all-season road and supporting infrastructure elements, which include aggregate extraction and processing areas, access roads, laydown / storage yards and construction camps.”</i> Finally, subsection 1.4.2 which provides the Rationale for the Undertaking must be entirely deleted for reasons stated above. No environmental assessment process should allow for the carving out of mining related infrastructure to third party having limited knowledge of planned mining activities.</p>

Section	Mushkegowuk - 03
Subject	Approach for Preparation of the Environmental Assessment
Reference	3.2
Requirement	<p>The Proponent proposes the project alternatives have been considered, given the studies referred to in Section 1.3. As indicated, the Noront EIS/EAR is incomplete and is currently outdated. Moreover, Noront has never formally consulted with Mushkegowuk Council but has occasionally engaged on a few presentations with no opportunity for input. All studies referred to in Section 1.3 have not been shared with Mushkegowuk Council and its potentially impacted First Nation communities. All engagement with Noront has been limited to information sharing with no opportunity for meaningful input. Thus, project alternatives must be identified as part of this EA process and the Proponent should not be permitted to proceed as a focused EA under subsections 6(2) and 6.1(3) because the First Nations communities represented here by Mushkegowuk Council have no knowledge of the Project details.</p>

Section	Mushkegowuk - 04
Subject	Preliminary Design Criteria
Reference	4.1.1
Requirement	<p>Proponent assumes a low Annual Average Daily Traffic volume less than 500 vehicles. Mushkegowuk requests that the Proponent provides more information on how it is obtaining this volume and furthermore, defines the type of vehicles. The Proponent is required to know the volume of vehicles as opposed to making assumptions. The onus is on the Proponent to demonstrate any predicted adverse ecosystemic or socio-economic effects will be prevented, mitigated, or managed. We cannot proceed with an arbitrary assumption of vehicle volume. Instead we will require a detailed breakdown of how volume and weight of vehicles are obtained. In addition, this subsection gives no consideration to the road design as a potential barrier to caribou or other large mammal movements. Therefore, Mushkegowuk Council recommends the completion of analysis of caribou crossing data to determine appropriate mitigation measures such as sloping, grain size and top-dressing.</p>

Section	Mushkegowuk - 05
Subject	Components and Activities of the Project
Reference	4.2
Requirement	<p>Mushkegowuk Council recommends adding the review and analysis of caribou crossing data with western science and traditional knowledge experts to determine appropriate mitigation measures such as sloping, grain size and top-dressing. The completed study is to be reviewed by all directly and indirectly impacted First Nations communities so that concerns be addressed and taken into considerations for the road design. Moreover, the road impacts must be monitored during all phases of the said project, including maintenance, closure or decommissioning phases by a terrestrial advisory group comprised of impacted First Nations community harvesters, land users, regulatory officials and Proponent.</p> <p>Mushkegowuk Council has aquatic environment concerns and to this end, Mushkegowuk recommends that the Proponent includes the following component: <i>“To provide baseline monthly methylmercury concentrations for an entire year prior to commencing any work related to the said project.”</i> Also, include the following activity: <i>“Monitor and report to the terrestrial advisory group, methylmercury and impacts to fish on a monthly basis for all phases of the project, including the decommissioning or closure phase.”</i></p>

Section	Mushkegowuk - 06
Subject	Construction Phase
Reference	4.3.1
Requirement	The Proponent proposes discussions between Indigenous communities during the construction phase. Mushkegowuk proposes that a terrestrial advisory group comprised of local, downstream and down muskeg First Nations, harvesters, land users, regulatory officials and Proponent be established to review detailed design and construction phases so to avoid or mitigate potential effects to Treaty lands and Aboriginal rights.

Section	Mushkegowuk - 07
Subject	Operation and Maintenance Phase
Reference	4.3.2
Requirement	The Proponent proposes this EA to commence without any information related to the Webequie Supply Road (Project) about the Project operator, governance, funding sources and operator's experience. The stated objective is to carry out routine inspections to " <i>ensure the road meets <u>the minimum standards for roadside safety and is a reliable connection to allow for the movement of materials, supplies and people from WFN in support of mineral exploration and mine developments...</u></i> " (emphasis ours). This EA will require detailed information to ensure sufficient funding sources and operator experience are at hand to avoid / minimize potential accidents or malfunction from occurring. For example, knowing the name of the operator provides insight into their spill contingency plans, oil pollution emergency plans and emergency response plans. By omitting the name of the operator, the funding sources and timeframe, operator's experience, jurisdictional aspects of the Project, Mushkegowuk is unable to properly assess the risks, and the mitigation plans. As a result, Mushkegowuk recommends that this EA do not proceed until such time as the Proponent is able to accurately provide detailed information to these information gaps.

Section	Mushkegowuk - 08
Subject	Decommissioning Phase
Reference	4.3.3
Requirement	Mushkegowuk is concerned that no information about WSR's operational funding is forthcoming. Sufficient funding is required to ensure the safe operations of this Project in the ecological sensitive region of the James Bay Lowlands. Accordingly, if sufficient and long term funding is unavailable for the life of the Project, Mushkegowuk recommends that the said road be immediately decommissioned and closed.

Section	Mushkegowuk - 09
Subject	Range of Alternatives Considered
Reference	5.1
Requirement	<p>As stated in Mushkegowuk – 02, there is no information as to the nature of the mining activities, such as the size of pits, type of mining operations, tonnage to be hauled daily. Hence, Mushkegowuk requests the first stated primary objective in Section 5.1.1 be entirely deleted. Mushkegowuk recommends adding the Do nothing alternative to be considered in the Terms of Reference. In addition, please add the Do nothing alternatives in subsection 5.1.1.6. and delete the last paragraph of this subsection in its entirety, beginning with “<i>Therefore, in keeping....</i>”.</p> <p>In the Community Based Land Use Plan, Webequie First Nation (WFN) is said to engage in a consultative approach with adjacent First Nations. However, WFN has not consulted nor engaged the coastal James and Hudson Bay First Nations impacted by the bulk of the stated primary objective, namely mining and aggregate excavation in the James Bay Lowlands (see Segment 3 and Segment 4 in Subsection 5.5). Moreover, WFN has <u>not</u> consulted with down-muskeg and downstream coastal First Nations communities. Accordingly, all questions offered to adjacent First Nations for their consideration were for most part, upstream First Nations thereby excluding downstream and down muskeg responses. Although the coastal First Nations are not immediately adjacent to WFN, they will be impacted by mining and mining related activities.</p>

Section	Mushkegowuk - 10
Subject	Initial Screening of Webequie Supply Road Corridor Alternative Concepts
Reference	5.2
Requirement	<p>We suggest additional consideration be brought forward regarding the possible impacts arising from variability of water table levels leading to increased levels of methylmercury. Water table levels do change in mining dewatering activities and other types of excavation associated with linear infrastructure such as roads. Specifically, what would happen to the complex aquatic environment in the ecological pristine region of the James Bay and Hudson Bay lowlands if water table variability would occur as a direct effect of development. Moreover, what is the cumulative effects of opening the Ring of Fire region to multiple mining companies on the integrity of the lowlands and critical ecosystem services as a carbon sink in fighting GHG.</p>

Section	Mushkegowuk - 11
Subject	Supply Road Alternatives Carried Forward for Environmental Assessment
Reference	5.5
Requirement	<p>Segment 3 as shown on Figure 5.11 is described as the east-west section across the James Bay Lowlands area. This area is within the Treaty lands of the First Nations communities of Mushkegowuk. Segment 4, again is within the Treaty lands of Mushkegowuk First Nations. Segment 4 crosses the major historical Muketei River which leads directly downstream to the Mushkegowuk First Nation community of Attawapiskat. Yet, no Mushkegowuk community based considerations as outlined in Table 5-2 has been collected or solicited. Mushkegowuk underscores this WSR project <u>should not proceed</u> as a separate project from the Noront EA because information gaps of the intended mining activities at Eagle’s Nest are and will be significant.</p>

Section	Mushkegowuk - 12
Subject	Existing Environmental Conditions in the Study Area – Study Area
Reference	6.1
Requirement	<p>The Proponent indicates that it is not possible to” ... <i>illustrate the location or bounds of a number of features and sensitivities, including First Nations’ traditional territories...</i>”. In so doing, the Proponent is not referencing Mushkegowuk traditional and Treaty territory in this draft Terms of Reference. Please amend to include “<i>Mushkegowuk traditional and Treaty territories</i>” to the opening paragraph.</p> <p>Project footprint: Please amend to read: “<i>established to identify areas of direct <u>and downstream and down muskeq</u> disturbance</i>” and delete “<i>i.e., the physical area required for construction and operation of the Project</i>”.</p> <p>Local Study Area (LSA): Please amend to read: “<i>established to assess the potential direct, <u>downstream and down-muskeqs</u> effects of the Project on the local environment <u>and James Bay Lowlands.</u></i>” Finally, please delete the last sentence of subsection prior to the Caribou Study Area beginning with : “<i>For example, the study area for assessing terrestrial biological effects (e.g., caribou migration) will likely be more extensive than the hydrological study areas.</i>” This is required because of the complex and largely understudied hydrology of the James Bay Lowlands region. Please refer to our recommendation in Mushkegowuk – 24 for the preliminary identification of evaluation criteria.</p>

Section	Mushkegowuk - 13
Subject	Existing Environmental Conditions in the Study Area – Data Collection Methodology
Reference	6.2
Requirement	<p>The draft Terms of Reference is silent on the complexity of the hydrology of the James Bay Lowlands, one of the world’s largest wetlands and carbon sink. According to western science, very little is known about the interconnectivity of the James Bay Lowlands hydrology yet Mushkegowuk Cree Elders have cautioned that the Lowlands are deeply interconnected with underground rivers and streams not yet visible in aerial photos. Moreover, researchers with University of Waterloo have found that variations to water tables in the James Bay Lowlands either due to climate change and / or dewatering activities such as mining, road construction have a direct link to increased methylmercury levels. Therefore, Mushkegowuk requires subsection 6.2.1 be amended to include an in-depth fulsome field Wetland Regional Study carried out by independent by either McGill or Waterloo universities as one of critical baseline studies.</p> <p>Summer Caribou Calving Survey: Additional survey should be carried out by drones as opposed to helicopters due to the invasive impacts of the motor noise which creates undue hardship and stressors of the caribou population.</p> <p>Aquatic Habitat Surveys: Survey to include downstream and down-muskeg points and not limited to at or near proposed crossings because of possible effects.</p> <p>Additional wetland related surveys would include Vascular Plants and Aquatic Invertebrates using both field surveys and bathymetric maps with additional study requirement informed by university wetland researchers having existing studies of the James Bay Lowlands.</p>

Section	Mushkegowuk - 14
Subject	Socio-Economic Environment
Reference	6.2.3
Requirement	Information must include the socio-economic environment of the Mushkegowuk coastal First Nations communities by direct consultation.

Section	Mushkegowuk - 15
Subject	Cultural Environment
Reference	6.2.4
Requirement	Amend by including the following: <i>“A key data source will be WFN and other Indigenous communities, <u>including the coastal indigenous communities of Attawapiskat, Peawanuck, Fort Albany and Kashechewan</u>, for information on traditional land use areas, sacred sites and other cultural aspects.”</i>

Section	Mushkegowuk - 16
Subject	Published Sources of Information
Reference	6.2.5
Requirement	Add to the preliminary published sources of information the following: <ol style="list-style-type: none"> 1. Carbon Storage and Potential Methane Projection in Hudson Bay Lowlands by Ontario Forest Research Institute; 2. Effects of a changing climate on Peatlands in Permafrost: A Literature Review and Application to Ontario’s Far North – by Climate Change Research Report CCRR-34; 3. Hydrological functions of mine-impacted and natural peatland-dominated watershed, James Bay Lowlands – Journal of Hydrology September 2015; 4. Mercury Studies among Cree of Eeyou Istchee – March 2005;

Section	Mushkegowuk - 17
Subject	Natural Environment
Reference	6.3
Requirement	Amend the second sentence of the subsection General Environmental Setting as such: <i>“This ecozone is known for the Precambrian bedrock, as well as many wetlands and large rivers and streams, which flow to Hudson Bay <u>and James Bay (Charron et al, 2014)</u>. Also see Figure 6.2.”</i> Because no regional wetland study is available to inform this proposed EA process, the reference indicating the <i>“streams are connected to the overburden aquifer and are not typically connected to deeper bedrock aquifers”</i> should be deleted. There is at present, no supporting evidence for this assertion in the LSA. In addition, please amend the first sentence to subsection 6.3.4 to read as following: <i>“The Study Area is located within the Big Trout Lake Ecoregion (Ecoregion 2W), a large ecoregion stretching from the Manitoba border to the Hudson <u>and James Bay Lowlands.</u>”</i>

Section	Mushkegowuk - 18
Subject	Air Quality
Reference	6.3.8
Requirement	The Proponent proposes to evaluate potential emission sources against regulatory standards. Yet, if approved, WSR will generate significant sources of human induced air emission, like dust and diesel / gas emissions in an ecological sensitive and sparsely populated region. There are no nearby air monitoring stations and the proposed Thunder Bay station is located upwind from the project location. Mushkegowuk recommends the Proponent prepare an Air Quality and Dustfall Monitoring Plan with dustfall sampling methods and reporting for review by all impacted indigenous communities through the suggested terrestrial advisory group. Also, provide sampling methodology of air pollutants and compare with existing Nunavut air quality standards (as opposed to Ontario Ambient Air Quality Criteria which is not adapted for this subarctic region) along with ECCC recommended federal targets. Also, please amend to include an ecological risk assessment to consider ingestion of contaminants of dust and other air pollutants as a pathway for all wildlife, including the caribou and other species at risk.

Section	Mushkegowuk - 19
Subject	Land and Resource Use
Reference	6.4.6
Requirement	The Proponent acknowledges shared territory with other First Nations such as Peawanuck and Attawapiskat. Mushkegowuk reiterates this assertion and as the Proponent indicated, no maps of the shared territory will be provided for confidentiality reasons.

Section	Mushkegowuk - 20
Subject	Potential Environmental Effects
Reference	7
Requirement	Please add to Table 7-1 to the third bullet (Construction of supportive infrastructure) as Potential Effects: <i>“Barriers to caribou migration routes and disruption to calving grounds”</i> and <i>“water table variability and increased methylmercury in fish”</i> . Please add <i>“water table variability and increased methylmercury in fish”</i> in fourth and fifth bullets of Project Activity as an additional Potential Effects.

Section	Mushkegowuk - 21
Subject	Cultural Environment
Reference	7.3
Requirement	Please amend at page 118 the following paragraph to read: <i>“To assess potential effects on the above noted cultural environment aspects, the EA will draw upon Indigenous Knowledge information gathered through consultation with Webequie community members, Elders and other <u>potentially impacted First Nations</u>.”</i> This amendment is necessary as Mushkegowuk’s First Nations communities Treaty rights may be potentially affected by this Project. Also, please delete the following (<i>“(assumed to be WFN)”</i>) in the first bullet of the last paragraph at the bottom of page 118.

Section	Mushkegowuk - 22
Subject	Approach to Assessment and Evaluation
Reference	8
Requirement	Segments 3 and 4 are located on the James Bay Lowlands, the Treaty territory of the Mushkegowuk’s First Nations communities. The second paragraph of Section 8 indicates a consultation process for <i>“neighbouring First Nations”</i> as opposed to potentially impacted First Nations. Accordingly, it is recommended to the Proponent to commit to consultation with potentially impacted First Nations and not limited to <i>“neighbouring First Nations”</i> .

Section	Mushkegowuk - 23
Subject	Identification and Evaluation of Alternatives
Reference	8.1
Requirement	As stated in Mushkegowuk – 09, there is no information as to the nature of the mining activities, normally included as part of the anticipated impacts of any proposed mining operations such as the size of pits, type of mining operations, the amount of tonnage to be hauled on a daily basis. Mushkegowuk requests that the Proponent not proceed under a focused EA in accordance with subsections 6(2) (c)and 6.1(3). Moreover, Mushkegowuk recommends adding the Do nothing alternative to be added to this subsection.

Section	Mushkegowuk - 24
Subject	Evaluation Criteria and Indicators
Reference	8.1.1
Requirement	The potential of impacts to the integrity of the wetlands located in the James Bay Lowlands are significant. The cumulative effects of the Project, additional exploration and mining activities and changes to the climate will accelerate

	<p>the variability of the wetland water tables, leading to possible increased methylmercury levels and premature degradation of the wetlands. Accordingly, Table 8-1 will require a separate Criterion for Wetlands and major indicators to assess potential impacts to the wetlands, including but not limited to water chemistry, water table levels, stream sinuosity, wetland, soil saturation, water marks, drift lines, sediment deposit, drainage patterns and any other hydrologic data necessary to assess the amount of carbon stored in the wetlands. Mushkegowuk reserves the right to suggest additional indicators should this EA progress.</p> <p>Socio-Economic Environment: Add the following indicator to the Community Health and Well-being: <i>“Changes to the volume and type of waste in the community landfill including hazardous waste materials, such as fuel cans, batteries, tires, vehicles”</i>. Also, please add the following indicator to the Community Health and Well-being: <i>“level of methylmercury in fish in the downstream rivers”</i>.</p> <p>Technical Considerations: Add the following criterion: <i>Funding Sources</i></p>
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Section	Mushkegowuk - 25
Subject	Commitments and Monitoring
Reference	9.2
Requirement	<p>The Proponent is anticipating to operate the WSR for an indeterminate time period. However, if the Project was part of an EA review process for a mining proponent, the decommissioning of the mining related road would include a monitoring plan in the mine closure plan. Given the primary stated objective of this draft Terms of Reference is to build a mine related road to Noront’s project, Mushkegowuk recommends a post closure monitoring plan for the decommissioning phase.</p> <p>In addition, Mushkegowuk recommends that the Proponent consults with potentially impacted First Nations for its monitoring framework and monitoring plans. Mushkegowuk also requests that the purpose of the monitoring plan be stated as follows: <i>“a) to measure the relevant effects of the WSR on the ecosystemic and socio economic environment of the LSA; b) to determine whether and to what extent the project is carried out within the predetermined terms and conditions; c) to provide information necessary for agencies to enforce terms and conditions; and d) to assess the accuracy of the predictions contained in the EA / EIS.”</i></p>

Section	Mushkegowuk - 26
Subject	Engagement and Consultation – Identification of Indigenous Communities
Reference	10.2.1
Requirement	Please add to Indigenous communities (and we suggest organizations) requiring deepest and most frequent engagement / consultation: <i>“Mushkegowuk Council”</i>

Section	Mushkegowuk - 27
Subject	Government Agencies – Government Review Team
Reference	10.2.2.1
Requirement	The water table variations may cause increased levels of methylmercury in fish. Accordingly, Mushkegowuk recommends adding to the Government of Canada review team: <i>“Health Canada”</i>

Section	Mushkegowuk - 28
Subject	Engagement and Consultation with Indigenous Communities
Reference	10.4.1
Requirement	Please amend the Method of Engagement for Community Visits to <i>“include 8 communities and 1 (Mushkegowuk) Council”</i> . Also, include additional specific activities during the Community Visits such as: <i>“Obtain input of additional baseline studies to be conducted”</i>

Section	Mushkegowuk - 29
Subject	Flexibility to Accommodate New Circumstances
Reference	11
Requirement	Include in this Section the following: <i>“Regulator, Proponent or impacted Indigenous communities may reconsider the terms and conditions if the approved Terms and Conditions are not achieving their purpose, or the project effects are significantly different from what was intended or new information is now available.”</i>