

Reasons for Decision of the Chief Executive Assessment Officer

IN THE MATTER OF THE APPLICATIONS TO DESIGNATE THE COPPER MOUNTAIN NEW INGERBELLE EXTENSION AS REVIEWABLE UNDER THE *ENVIRONMENTAL ASSESSMENT ACT* BY LOWER SIMILKAMEEEN INDIAN BAND AND THE WILDERNESS COMMITTEE

DECEMBER 7, 2023



EAO

Environmental
Assessment Office

1.0 CONTEXT

The Lower Similkameen Indian Band and the Wilderness Committee (on behalf of themselves and 22 organizations) submitted requests that the Minister of Environment and Climate Change Strategy designate the proposed expansion of the Copper Mountain Mine – called the New Ingerbelle Open Pit Push-Back and Mine Life Extension Project (the Extension) - as a reviewable project under the *Environmental Assessment Act* (the Act).

The Minister of Environment and Climate Change Strategy has delegated the powers and duties of Section 11 of the Act for making the decision whether or not to designate the Extension as requiring an environmental assessment to me, the Chief Executive Assessment Officer of the Environmental Assessment Office (EAO).

In making my decision, I have considered the report prepared by the EAO, titled 'Evaluation of Applications to Designate the Copper Mountain New Ingerbelle Extension as Reviewable under the *Environmental Assessment Act*' (Designation Report), as well as submissions from the applicants. This document outlines the reasons for my decision.

Copper Mountain Mining Limited (CMML; the Proponent) is proposing an extension of the New Ingerbelle Pit within Copper Mountain Mine near Princeton, British Columbia (B.C.). The Extension would include a total new disturbance of 375 hectares (ha), principally within the existing mine permitted area and including 327 ha of new disturbance that is outside of the current permitted mine area, which is a 13.8 percent increase in area relative to the current operations. The Extension includes a proposal to increase the tailings dam height by approximately 87 metres. If authorized, the Extension would prolong the operational life of Copper Mountain until 2047. This Extension is currently the subject of multiple permitting regulatory processes coordinated by the Major Mines Office within the Ministry of Energy, Mines and Low Carbon Innovation (EMLI) in collaboration with the Ministry of Environment and Climate Change Strategy (ENV).

To facilitate engagement with review participants, I extended the timelines for a decision beyond the 30-day application review period time limit under Section 38 of the Act, recognizing that it would take more time to review the materials and respond to the designation request.

2.0 NATURE AND SCOPE OF THE DECISION

In deciding on designating an eligible project as reviewable, the Act sets out that the following must be considered:

- a) Whether the applicant is an Indigenous nation;
- b) Whether the eligible project could have effects on Indigenous nations and the rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
- c) Whether the potential effects of the eligible project would be equivalent to or greater than the potential effects of a reviewable project in the same prescribed category of the *Reviewable Projects Regulation*; and
- d) Whether an assessment of the eligible project is consistent with the purposes of the EAO, as set out in Section 2 of the Act.

My options as the decision maker are to designate the eligible project as reviewable, which means it would require an environmental assessment certificate before any other permits or authorizations could be granted, or to decline to designate a project as reviewable, which would mean that the project would only be subject to permitting or authorizations processes necessary for the type of project or activity.

In the sections that follow, I discuss both the matters that I am required to consider under Section 11(4), as well as the specific concerns raised in the designation applications.

3.0 THE EAO'S REVIEW PROCESS

Following receipt of the designation applications, and after confirming that the Extension is 'eligible' for designation as defined in the Act, the EAO engaged and consulted with First Nations, local governments, CMML, and provincial agencies. A number of other organizations and members of the public also provided submissions regarding this process, which were also incorporated into the analysis. The EAO provided a summary of the participants' input in the Designation Report.

4.0 KEY CONSIDERATIONS

4.1. Section 11(4) Factors

With respect to the matters relevant to my decision, I have considered the EAO's analysis of the factors set out in Section 11(4) of the Act.

4.1.1. Section 11(4)(a) – Whether the Applicant is an Indigenous Nation

Of the three applications to designate the Extension as a reviewable project, one was from an Indigenous nation, the Lower Similkameen Indian Band.

4.1.2. Section 11(4)(b) – Whether the eligible project could have effects on Indigenous Nations and Section 35 Rights

In its submission, Lower Similkameen Indian Band indicated that the Extension could have potential effects on Lower Similkameen Indian Band and its rights. The EAO has also concluded that the Extension could have potential effects on Lower Similkameen Indian Band's rights recognized and affirmed by Section 35 of the *Constitution Act*, and I agree with the EAO's rationale in the Designation Report. As part of the Designation application review process, the EAO reached out to additional Indigenous nations, and received replies from Upper Similkameen Indian Band, Nooaitch Indian Band, and Penticton Indian Band that the Extension could have effects on their rights.

In considering Section 11(4)(b) of the Act, I am mindful that if a project could have effects on Indigenous nations and their Section 35 Rights, it does not mean that the decision maker must designate the project as reviewable. The Designation Report describes how EMLI's Major Mines Office's review process presents comparable procedural opportunities to those set out in the Act for Indigenous nations, implements seeking consensus at key milestones, and identifies potential mitigation measures and performance conditions that would address potential impacts to Indigenous nations and their rights. It is my view that EMLI's Major Mines Office's coordinated authorizations process carried out with ENV can adequately assess and mitigate potential effects from the Extension on Lower Similkameen Indian Band and other Indigenous nations and their Section 35 Rights.

4.1.3. Section 11(4)(c) – Whether potential effects of the eligible project will be equivalent to or greater than those of a reviewable project

To automatically require an environmental assessment (EA) under the RPR, a modification to an existing mineral mine must have a production capacity equal to or greater than 75 000 tonnes/year of mineral ore, and result in the disturbance of an area of land that was not previously permitted for disturbance and that is at least 50 percent of the area of land that was previously permitted for disturbance at the existing project. The Designation Report describes that the Extension would have a production capacity of over 75,000 tonnes/year of mineral ore, but the increase in area of disturbance (over that which is already permitted) represents an increase of 13.8 percent. This increase in area of disturbance is quite a bit lower than the threshold of 50 percent.

The intent of the *Reviewable Projects Regulation* is to set thresholds that serve as proxy for significant adverse effects and sub-threshold projects are assumed to likely not result in significant adverse effects. I agree with the conclusion in the

EAO's report that the effects of the Extension would not have effects that are equivalent to or greater than the effects of a project that is a modification of an existing mineral mine.

4.1.4. Section 11(4)(d) - Whether an assessment of the eligible project is consistent with the purposes of the EAO

I have considered the conclusion in the EAO's report on whether an assessment of the eligible project is consistent with the purposes of the EAO, as set out in Section 2 of the Act. These purposes include promoting sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities and supporting reconciliation with Indigenous peoples in B.C.

My key considerations in relation to consistency with the purposes of the EAO under Section 2 of the Act are as follows:

4.1.4.1. Is an assessment under the Act consistent with supporting reconciliation with Indigenous peoples in B.C.?

Lower Similkameen Indian Band has expressed that it seeks the advancement of reconciliation with Indigenous peoples, in particular around the right to make land use decisions in their territory and make decisions based on free, prior, and informed consent, an objective which the Environmental Assessment process would support.

It is my understanding that the permitting process undertaken by EMLI's Major Mines Office would also meet this objective. EMLI and ENV have committed to working with Lower Similkameen Indian Band to understand their information requirements and work towards consensus on key issues, including identification of potential mitigation measures to address potential impacts of the Extension to Lower Similkameen Indian Band. EMLI's Major Mines Office has also offered to establish a collaboration agreement with Lower Similkameen Indian Band. The Designation Report and Lower Similkameen Indian Band's submission outline the concerns raised by Lower Similkameen Indian Band in its review of the Extension. Engagement with Lower Similkameen Indian Band undertaken by the Major Mines Office would be subject to meeting the constitutional obligations flowing from Section 35 of the *Constitution Act, 1982* as well as meeting the Province's objectives to align with the *United Nations Declaration on the Rights of Indigenous Peoples*.

I agree with the EAO's understanding that the Major Mines Office process can support meeting the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* and includes a robust consensus-seeking approach to engagement with Lower Similkameen Indian Band and other potentially affected Indigenous nations.

4.1.4.2. Is requiring an assessment under the Act consistent with promoting sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians?

In considering this question, I have reflected on the role of the Act in the overall regulatory context for major mining projects in B.C., the framework of which can be found at the [Mines Information website](#) and in the [Natural Resource Compliance and Enforcement Framework](#). The primary mechanism for an assessment of the Extension is a regulatory process through permitting undertaken by EMLI's Major Mines Office and ENV. The Major Mines Office provides coordination for all major permitting decisions and authorizations, which includes authorizations under the *Mines Act* and the *Environmental Management Act*. The Major Mines Authorizations Guide¹ affirms EMLI's and ENV's commitment to working together with First Nations to support the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, including consensus-seeking and issue resolution. It is my view that, if I were to designate the Extension, the environmental assessment would be both narrowly focused (because it would assess impacts associated with the Extension) and be duplicative of the Major Mines Office's coordinated authorizations process that is already underway, and which has requirements for a comprehensive assessment of effects, potential accidents, and mitigations. EMLI and ENV are therefore the best placed regulators for this project.

¹ For more information, please see the [Major Mines Authorizations Guide](#).

The Major Mines Office permitting process will also include engagement with, and input from, key review participants including other Indigenous nations and from the public. Like the EAO, the Major Mines Office establishes a Mine Review Committee of subject matter experts from local and provincial governments and from Indigenous nations. Thus, I agree with the conclusion in the EAO's report that designating the Extension as reviewable would not be consistent with the purposes of the EAO. I also note the extensive work that ENV has done in the Similkameen Valley to conduct additional monitoring and improve water quality generally, as well as setting requirements for CMML to improve their discharge water quality through a series of *Environmental Management Act* permit amendments.

5.0 CONCLUSION

I am satisfied with the level of engagement and consultation that the EAO conducted with Lower Similkameen Indian Band, other Indigenous nations, local governments, and government agencies during the designation application review process, including how the EAO addressed the concerns in the sections above, and as described in the Designation Report.

Having considered the EAO's Designation Report, the submissions provided by review parties, and the factors set out in Section 11(4) of the Act, I have decided to not designate the Extension as reviewable under the Act. I believe that the permitting process through EMLI's Major Mines Office with ENV can fairly, effectively, and appropriately address the concerns raised by Lower Similkameen Indian Band and the Wilderness Committee in their applications and that an assessment of the Extension under the Act is not needed.



Elenore Arend
Chief Executive Assessment Officer
Environmental Assessment Office

Signed December 7, 2023