



Court File No. **NAN-S-S-100329**
No
Nanaimo Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

TORR METALS INC.

PETITIONER

AND

SENIOR PERMITTING INSPECTOR OF MINES, NADIA BRUEMMER

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

Chief Inspector of Mines, Nadia Bruemmer
Ministry of Energy, Mine and Low Carbon Innovation
c/o Ministry of Attorney General
1001 Douglas Street
Victoria, BC V8W 9M9

Attorney General of British Columbia
1001 Douglas Street
Victoria BC V8W 9M9

Tahltan Nation
c/o Tahltan Central Government
Box 69, Tatl'ah
Dease Lake, BC V0C 1L0

Iskut First Nation
c/o Tahltan Central Government
Box 69, Tatl'ah
Dease Lake, BC V0C 1L0

The address of the registry is:

The Law Courts
35 Front Street, Nanaimo, BC V9R 5J1

The petitioner estimates that the hearing of the petition will take three (3) days.

This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The ADDRESS FOR SERVICE of the petitioner is:

McMillan LLP
Barristers and Solicitors
Suite 1500, 1055 West Georgia Street
P.O. Box 11117
Vancouver, BC V6E 4N7
(Attention: Joan M. Young)

E-mail address for service (if any) of the petitioner: joan.young@mcmillan.ca

- (2) The name and office address of the petitioner's lawyer is:
Same as address for service.

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. Declarations that:
 - (a) The Respondent impermissibly delegated her decision-making authority to the TCG, or alternatively, impermissibly fettered her discretion, on the basis that the decision maker was not prepared to approve the Notice of Work application ("NoW Application) on any terms if the TCG did not support the issuance of the permit regardless of the merits of the NoW Application;
 - (b) The Respondent erred in law by failing to undertake the required balancing of aboriginal and non-aboriginal interests, as mandated by the Supreme Court of Canada in *Haida Nation v. British Columbia (Minister of Forests)*, by solely considering aboriginal interests;
 - (c) The Respondent erred in law by improperly concluding that an area to which a First Nation asserts a cultural connection constitutes a "cultural heritage resource" as that term is defined in the *Mines Act*; and
 - (d) The Respondent violated the administrative law rights of the Petitioner by taking actions and making decisions that affect the Petitioner's rights and interests (including refusing to issue the *Mines Act* permit) without providing

the Petitioner a sufficient prior opportunity to make submissions in respect of those actions and decisions.

2. An order in the nature of *certiorari* quashing the decision of the Respondent Senior Permitting Inspector for refusing to issue the *Mines Act* permit submitted by the Petitioner in the NoW Application;
3. Costs; and
4. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

1. The Petitioner, Torr Metals Inc. (“TORR”) submitted a NoW Application on February 9, 2022 to the Ministry of Energy Mines and Low Carbon Innovation for a *Mines Act* permit to allow it to undertake a modest program of exploratory drilling with respect to copper-gold porphyry deposits (Latham Project) near the “Golden Triangle” region of northern British Columbia. After a lengthy Indigenous consultation process and regulatory delay, the *Mines Act* permit was improperly denied seventeen months later in August 2023.
2. TORR believes that the statutory decision maker improperly denied TORR a mineral exploration permit under the *Mines Act* because government has taken direction from the Tahltan Nation (“**Tahltan**”) and the Tahltan Central Government (“**TCG**”) that permits only be granted with their consent instead of assessing the aboriginal rights and interests in issue and weighing and balancing those interests with those of TORR.

Background

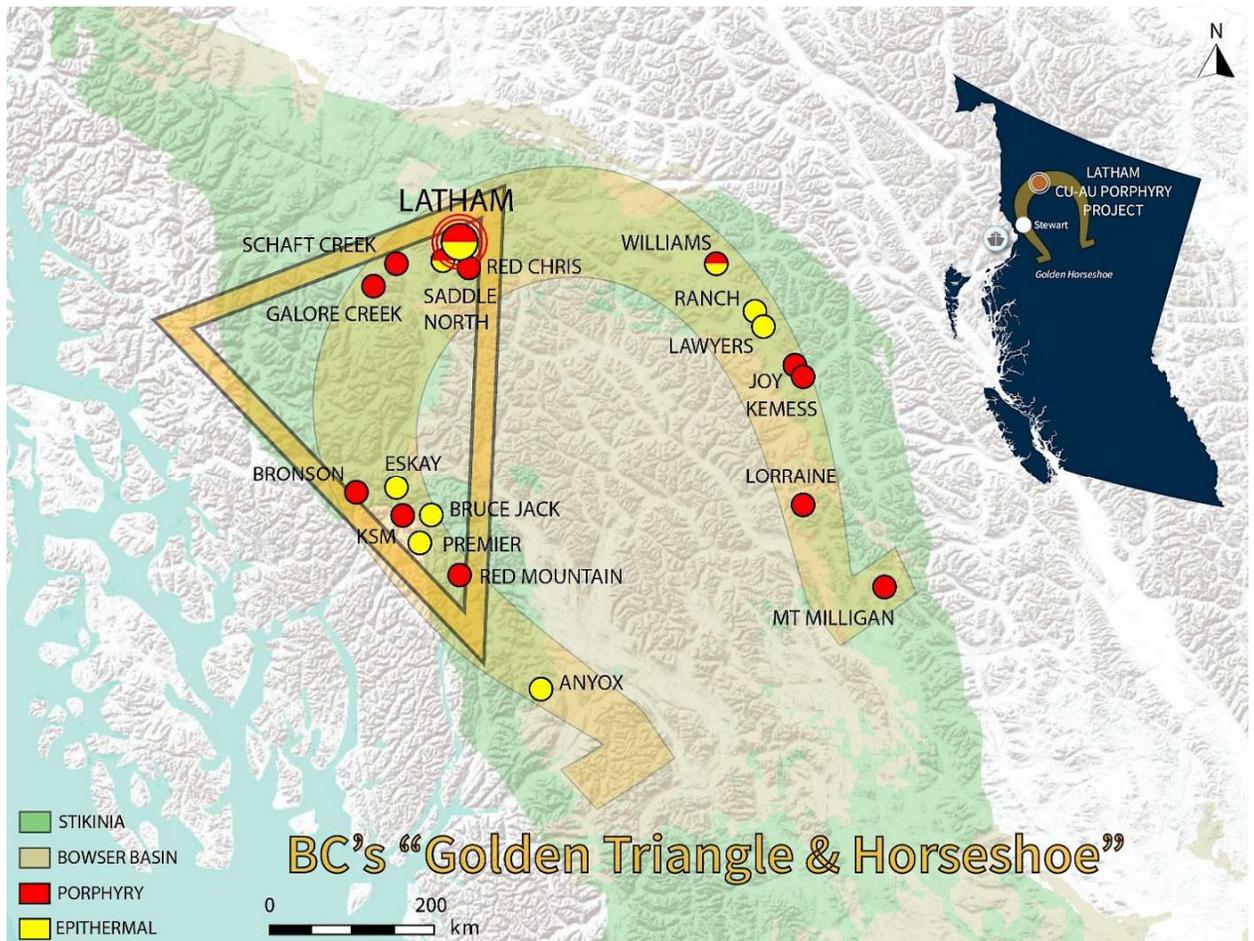
3. TORR is a junior mineral exploration company pursuing mineral exploration within the Golden Triangle region of northern British Columbia, specifically with respect to copper-gold porphyry deposits. Junior mineral exploration companies are smaller, earlier-stage entities primarily focused on exploration activities and discovering new deposits.
4. TORR was founded in July 2018. TORR is a public company and effective November 2021 it started trading on the TSX Venture exchange under the symbol: TMET.

BACKGROUND OF LATHAM PROJECT

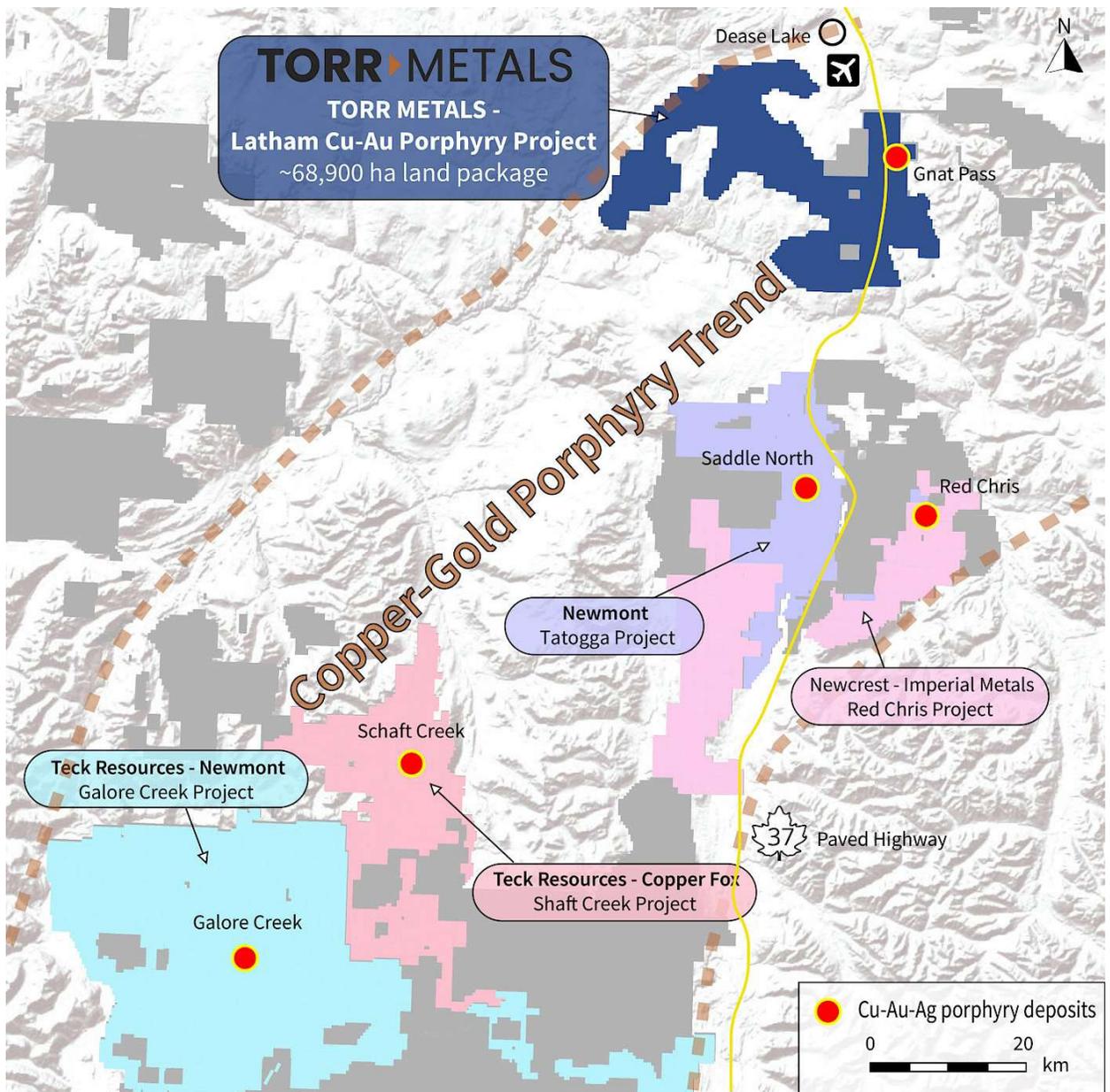
5. The Latham Project is one of the main projects that TORR is currently focused on and is a 689 km² parcel of land which is situated along major provincial infrastructure including the Dease Lake airport to the north, and Highway 37 transecting the eastern portion of the Latham Project.
6. The Latham Project covers a section of the Golden Triangle region referred to as the “Golden Horseshoe” arc of gold and polymetallic mineralization within the highly prospective Stikine terrane rocks of northern British Columbia. The region is also host to several proximal major copper-gold porphyry deposits along-trend to the south and southwest.
7. There has been intermittent exploration of the mineral claim area since the 1960s, resulting in the presence of pre-existing historical disturbances present on site to this day, including trenches, 4x4 roads and historical core stacks in a storage yard.
8. TORR holds various mineral tenures covering the area of the Latham Project. These tenures issued by the Province of British Columbia relevant to the Latham Project are comprised of the following tenure numbers: 1073770, 1076505, 1076506, 1079745, 1079747, 1079748, 1080215, 1080324, 1080604, 1080788, 1080789, 1080790, 1080791, 1081336, 1081506, 1081507, 1081508, 1081807,

1081808, 1081809, 1081817, 1081928, 1081930, 1081959, 1081961, 1082844, 1082845, 1082846, 1082847, 1082848, 1082849, 1082850, 1082851, 1082852, 1082853, 1082854, 1082855, 1082856, 1082857, 1082862, 1082863, 1082864, 1086504, 1086505, 1086506, 1086507, 1093194, 1093195, 1093197, 1093199, 1093201, 1093202, 1093213, 1093460, 1093462, 1093463, 1093466, 1093468 (“Tenures”).

9. TORR had planned to conduct an exploratory surface drilling program over five (5) years to investigate subsurface copper and gold mineralization, consisting of up to 100 diamond drill sites. The planned drilling program which was scheduled to start in 2022 (Year 1 of 5) was intended to include prospecting, diamond drilling of up to 8,000 meters of core, geophysical (induced polarization) surveys of approximately 38.8 line-kilometres, geological mapping, and geochemical soil sampling. A map of the location of the Latham Project is below for illustration:



10. The nature of TORR's proposed work is exploratory. It is not starting or operating a producing mine. Drilling locations are designed to be discrete and use pre-disturbed areas as much as possible to reduce/minimize impact. Planned drilling for year 1 of 5 would have required up to 90 days of field operations that could be conducted at any time of the year. A project map (2022) including the location of the Gnat Pass copper-gold porphyry deposit on the Latham Project (described in more detail below), local infrastructure and surrounding major projects is provided below:



PURPOSE AND PROCESS OF DIAMOND DRILLING EXPLORATORY WORK

11. The purpose of TORR'S exploratory work is to find out what kinds of minerals are present underground and how much there might be. Drilling is only done following extensive geological surface studies that indicate potential for high concentrations of mineralization in the subsurface. Typically early-stage exploration projects such as the Latham Project requires less than 10,000 meters of drilling to fully assess whether further exploration is warranted. If no further exploration is warranted, then no additional drilling is conducted.
12. Next step after drilling is to conduct an assessment to determine if an exploration project is worth further development by providing accurate scientific data on the type of rock as well as quantity and dimensions of mineralization. If there is not enough mineralization concentrated in one location to constitute an economically viable mineral deposit, then the project is not likely worth further development.
13. The process of exploration and assessment generally follow the steps out-lined below:
 - (a) **Site Selection:** Geologists select locations for drilling based on surface studies, including rock samples, mapping of the bedrock units, and geochemical surveys.
 - (b) **Drilling Setup:** TORR planned to use a portable diamond drill rig transported to specific locations by helicopter to minimize ground disturbance. The rig includes a drill bit encrusted with small, industrial-grade diamonds (hence the name "diamond drilling").
 - (c) **Core Drilling:** The rig uses the diamond-tipped drill bit to cut through rock forming a "drill hole", extracting cylindrical rock samples called "cores." These cores are pulled up to the surface in segments. TORR planned to extract NQ-sized core up to 200 metres depth, the size of the drill hole created measures approximately 7.6 cm (76 mm) in diameter. The proposed Year 1 of the original NoW application included 40 drill sites

(approximately 8,000 metres of core), while the proposed reduction to 10 drill sites would have resulted in 2,000 metres of core. Typically drilling can achieve 100 meters of core per day, however drill rigs require significant preparation and mechanical work; as such a 2,000 meter core program can take a minimum 20 days but more commonly 30 days due to moving and mechanically maintaining drill rigs.

- (d) **Reclamation:** After drilling the ground is reclaimed and the drill hole filled in, returning the drill site to its pre-drill state with minimal change to site.
- (e) **Core Analysis:** The extracted cores are carefully examined and analyzed. Geologists look at the composition, structure, and mineral content of the rock to assess the presence and concentration of economic minerals such as copper.
- (f) **Data Collection:** Information from the cores is used to create a detailed map of the subsurface mineralization. This includes the depth, thickness, and quality of the mineralized zones.
- (g) **Decision Making:** Based on the collected data, exploration companies such as TORR decide whether there is enough concentrated mineralization in a single location to constitute an economically viable deposit. If the findings are promising further detailed drilling and studies may be conducted but if not no further work will be recommended.

20 MONTH ENGAGEMENT WITH THE TAHLTAN, TCG, AND MINISTRY OF ENERGY, MINES AND LOW CARBON INNOVATION (“EMLI”)

14. TORR had previously undertaken non-invasive exploration activities (Induced Polarization surveys (IP Surveys), rock and soil sampling, and mapping), but mechanized work such as drilling requires a permit. To continue assessment of the Latham Project through test drilling, TORR was required to apply for and obtain a *Mines Act* permit from the EMLI (submitted via a Notice of Work application).

These are routine exploration permits that are required before any exploratory drilling can occur.

15. The Province of British Columbia has entered into various agreements with the Tahltan including a “Shared Decision-Making Agreement” dated March 14, 2013, and a “Shared Prosperity” agreement with the TCG on March 30, 2020. TORR was never made aware or notified by government whether these agreements would impact the Latham Project or future permit decisions.
16. TORR understood that it was important, in support of the Crown’s duty to consult, to engage with the local indigenous groups who assert aboriginal rights around the Latham Project. TORR conducted significant engagement with the Tahltan Nation and Iskut First Nation (through their representative, the TCG) leading up to and after the submission of the NoW Application through to the ultimate rejection by EMLI of our NoW Application. The engagements with the Tahltan and/or the TCG for the Latham Project began in December 2021 and continued through March 2023.
17. Between December 2021 (in advance of submitting its *Mines Act* permit) and March 2023, TORR communicated numerous times with the local Indigenous groups. After initial agreement about a reduced scope of work for the drilling program, the TCG suddenly changed course and eventually came to oppose the drilling work.

December 2021

18. TORR reached out to the TCG to make an introduction, commence engagement, discuss the Latham Project and establish a Communications and Engagement Agreement. The TCG sent the signed Communication and Engagement Agreement to TORR.

January 2022

19. TORR asked the TCG if it had any questions or comments regarding Torr's press release concerning the signed Communications and Engagement Agreement. TCG provided input that TORR incorporated into its press release.
20. The Communications and Engagement Agreement was intended to facilitate a framework for continued discussions and cooperation regarding the Latham Project.

February 2022

21. TORR notified the TCG of TORR's intention to submit the NoW Application for the Latham Project. TORR also provided details regarding the proposed plans in the NoW Application. The TCG did not provide any feedback, objections, or concerns in response.
22. TORR provided a map to the TCG, which showed TORR's mineral claim extensions. The TCG did not provide any feedback, objections, or concerns in response.

March 2022

23. TORR provided a map to the TCG, which showed TORR's mineral claim extensions. The TCG did not provide any feedback, objections, or concerns in response.

April 2022

24. TORR spoke with the TCG about potential employment and contracting opportunities for the TCG on the Latham Project, and discussed an Opportunity Sharing Agreement. An agreement was entered into in April 2022.
25. TORR and the TCG held a meeting to discuss employment and contracting opportunities for the TCG on the Latham Project, and discussed the Opportunity Sharing Agreement. The TCG provided TORR with a list of contacts for the TCG

contractors. TORR proposed hiring the TCG-recommended contractors and employees.

26. TORR met with the TCG to discuss the Latham Project and the proposed 2022 work program.
27. TORR and the TCG had further discussions on employment and contracting opportunities for the TCG companies on the Latham Project.
28. TORR communicated with the TCG about TORR's NoW Application for the Latham Project.
29. On April 28, 2022 TORR sent its Notice of Work Application, information on its proposed plans and a draft Exploration Agreement to the TCG via email, and expressed its interest in signing an Exploration Agreement and collaborating with the TCG.

May 2022

30. TORR followed up with the TCG to inquire whether the TCG received TORR's April 28, 2022 email and whether the TCG had any questions or required further information.
31. On May 9, 2022, TORR resent the documents it sent to the the TCG on April 28, 2022.
32. TORR and the Iskut Band Office entered into a contract for the Iskut Band Office to provide TORR with bear-proof garbage cans for the duration of TORR's intended drilling program.
33. TORR emailed the Northern Labour Service, a Tahltan business, to request a proposal for core cutters, pad builders and geotechnical engineers. The Northern Labour Service replied, asking TORR to inquire closer to its program start date to check for availability.

June 2022

34. TORR and the TCG entered into an Exploration Agreement.
35. The TCG asked TORR questions about its proposed exploration activities and requested further information and shapefiles regarding whether there will be a staging area near the Hu area, and whether any archaeological assessments have been conducted.
36. TORR provided the TCG with shapefiles for water sources, drill sites, helipads, roads, IP lines, historic trenches and laydown areas. TORR also indicated that it would not require a staging area for the Hu area, as it was accessible via road. TORR noted that there were no registered heritage sites in the provincial database near the tenure area, and that further archaeological work was not planned due to the very early stages of the Latham Project. However, TORR noted that it would engage the TCG in the future regarding any archaeological plans as the Latham Project advanced.
37. On June 21, 2022 and June 28, 2022, TORR followed up with the TCG, inquiring whether the TCG received TORR's answers to the TCG's June 17, 2022 requests and asked if the TCG had any further questions.

July 2022

38. On July 5, 2022, TORR followed up with the TCG, inquiring whether the TCG received TORR's answers to The TCG's June 17, 2022 requests and asked if the TCG had any further questions.
39. The TCG shared its Archaeological Standards Document with TORR and provided a list of recommendations and measures to be implemented, along with questions and concerns regarding IP surveys, health and safety, archaeology, TAS data points, permitting status, land status, laydowns and the wildlife management plan.

40. In response to the TCG's questions, TORR provided the following information:
- (a) TORR's wildlife management plan, along with a list of answers to The TCG's questions and concerns;
 - (b) No mechanized work would be involved in the IP surveys;
 - (c) TORR was committed to following the Health, Safety and Reclamation Code of British Columbia;
 - (d) Operations would only occur in delineated areas only;
 - (e) TORR would only use its Chance Find Procedure;
 - (f) No stream crossings would occur at Gnat Pass;
 - (g) Historic and pre-disturbance areas would be used; and
 - (h) Information from a geochemical surveys program, which TORR used seven The TCG businesses for, and approximately 60% of the workforce were The TCG members.
41. TORR followed up with the TCG, inquiring whether the TCG received TORR's answers to the TCG's July 11, 2022 questions and asked if the TCG had any further questions. On July 25, 2022, the TCG requested a meeting.
42. Four days later, TORR and the TCG met to discuss the Latham Project and the TCG's concerns, which included proximity to the communities, culturally sensitive and breadbasket areas, caribou and moose corridors, archaeology, camp, water, drill cuttings and the need to communicate with guide outfitters in the region.
43. TORR noted that it entered into an Exploration Agreement to have these discussions with the TCG, to address the TCG's comments and concerns, for the TCG to be in a position to indicate which areas are of concern and to propose recommendations to the government.

44. TORR also noted that proximity to communities could be beneficial in terms of employment and contracting, that TORR has a wildlife management plan that included mitigation measures to avoid and minimize wildlife disturbance and that TORR welcomed feedback on the management plan.
45. TORR noted that it was dedicated to minimizing its environmental footprint, was not requesting a camp and would perform water monitoring and water recycling. Lastly, TORR committed to conducting an archaeological assessment in 2023.

August 2022

46. TORR emailed the TCG to inquire about the TCG's comments on TORR's permit application for the Latham Project for TORR to address the comments in order to proceed with its application.
47. The TCG provided a summary of its July 29, 2022 meeting with TORR, and requested that TORR consider a list of comments regarding safety, permit requirements for camp, an archeological assessment, proximity to communities, caribou and moose, local breadbasket areas, access, Level 3 engagement, helicopter use, guide outfitters, Hu site location to Tanzilla River and using a centrifuge for drill cuttings.
48. The TCG also indicated that it would follow up to determine how it could work with TORR regarding the Latham Project's permitting requirements.
49. TORR responded to the TCG's list of comments, including by providing the following:
 - (a) TORR did not plan to need a camp;
 - (b) TORR was required to follow the Health, Safety and Reclamation Code for Mines in British Columbia, which outlines responsibilities regarding safety;

(c) TORR would use its Chance Find Procedure and augment with the TCG's;

(d) The proximity to the communities had benefits for local employment and contracting;

(e) TORR would implement its wildlife management plan and at all times monitor wildlife interactions, as well as implement best practices to minimize its environmental footprint;

(f) TORR was happy to connect with local guide outfitters;

(g) The Tanzilla River was 650m away from the Hu sites, and that the program was small and TORR would employ all best practices to minimize its environmental footprint;

(h) Information concerning drill cuttings;

(i) TORR's wildlife management plan and welcoming input;

(j) TORR was committed to follow all environmental legislation;

(k) TORR's early-stage exploration activities had only minor, temporary and reversible environmental effects, and the benefit from proximity is that the TCG monitors could be more readily involved;

(l) TORR had no fishing or hunting policy;

(m) TORR would utilize existing roads and trails whenever possible; and

(n) TORR had entered into an Exploration Agreement with the TCG to facilitate collaborative and efficient engagement.

50. TORR also proposed to incorporate the TCG's proposed flight path into TORR's plans, and committed to investigate using a centrifuge for drill cuttings.

51. On August 9, 2022, TORR followed up with the TCG to inquire whether the TCG was planning to submit its response to TORR's permit application for the Latham Project to the province.
52. The next day, the TCG provided a letter to TORR that indicated that additional work was required with the communities and local guide outfitters before determining whether the TCG could support a multi-year permit for the Latham Project. The TCG provided a compromise of a one-year permit with a 90% reduction from 100 drill sites to 10 drill sites that carried conditions identified in discussions between TORR and the TCG. TORR responded to the TCG's August 10, 2022 letter, asking for clarification and requesting to have a one-year permit with 40 drill holes, along with a commitment to leave 10 drill holes un-reclaimed each year.
53. TORR emailed the TCG with information regarding the historical exploration and disturbance in the area, along with where TORR would plan its activities to align with pre-disturbed areas that are proximal and parallel to existing historical roads to minimize disturbance. Based on TCG feedback, TORR proposed to only undertake activities in the Gnat Pass and Dalvanie areas.
54. On August 12, 2022, TORR and the TCG discussed the proposed approaches. The TCG noted that its main concern revolved around surrounding communities and other potentially impacted stakeholders. TORR noted that it would accept the TCG's proposal, and the TCG stated that it would provide a response to the province regarding the agreed-upon compromise. TORR accepted the TCG's proposal, which reduced its five year term to a one-year term, and reduced its program's size by 90% from 100 drill sites to 10 drill sites.
55. On August 23, 2022, TORR requested an update from the TCG regarding their response to the province. The TCG informed TORR that Nalaine Morin, Lands Director, and a point-of-contact person for TORR, no longer worked at the TCG, and that TORR would work with Shawn Ducharme, SEC Coordinator, on determining the status of the file.

56. TORR emailed the TCG to note TORR's acceptance of the reduced drilling program and to provide notice that the TCG's response regarding the agreed-upon compromise for a reduced drilling program had not been submitted to the province.
57. On August 26, 2022, TORR suggested a meeting with the TCG in early September to discuss the revised permit and submitting the TCG's response to TORR's permit application for the Latham Project to the permitting office. The TCG responded that TORR should discuss the permit with the new Director of The TCG's Lands Department.
58. On August 31, 2022, TORR requested an update from the TCG regarding its response to the province. The TCG noted that Ms. Morin did not submit a response to the province before her departure and, after checking with Iskut leadership, the direction moving forward was to proceed with the existing reduced scope application. TORR discussed its exploration program with the TCG, and asked what other measures it could do to get a response from the TCG.

September 2022

59. On September 7, 2022 TORR emailed the TCG, noting that TORR had been engaging in good faith with the TCG, entered into a Communications and Engagement Agreement and an Exploration Agreement, had constructive conversations with the TCG's Lands department, but had been made aware that, since the departure of Ms. Morin, the previously agreed upon solution between TORR and the TCG regarding its application had been disregarded. TORR expressed concern and hope that the TCG would provide a response so that its concerns and conditions could be addressed.
60. On September 15, 2022 TORR requested an update from the TCG regarding its response to the province.
61. TORR connected with the TCG's new Lands Director and held a meeting with them, along with representatives from the TCG and EMLI. In the meeting, The TCG asked questions and provided concerns regarding community engagement,

wildlife, archaeological assessments and high community use and Gnat Pass. The TCG also requested an updated wildlife management plan from TORR. TORR expressed that it was open and willing to engage with guide outfitters, trapline holders and community members.

62. In September 2022, TORR proposed the numerous accommodations:
- (a) A one-year permit with 10 drill holes and a permit condition that community engagement would need to occur before field activities;
 - (b) A delayed start to the program;
 - (c) Removing all proposed roads, trails, building and modification activities;
 - (d) a commitment to perform an Archaeological Overview Assessment in 2023 and share findings from such Archaeological Overview Assessment with the TCG;
 - (e) site visits;
 - (f) hiring environmental and archaeological monitors; and
 - (g) Only leaving three un-reclaimed drill sites at any one time.

October 2022

63. TORR emailed the TCG, thanking them for the September 29, 2022 meeting and provided an updated wildlife management plan for the TCG's input and comment and a revised map and proposed program description for their consideration. TORR noted that EMLI could not provide contact details for trapline holders or guide outfitters, and asked the TCG to provide this information, if available. TORR attempted to find contact information for trapline holders and guide outfitters in the Latham Project area from both the TCG and EMLI, and attempted to contact Michael Danielson, a registered guide outfitter within TORR's tenure area.
64. TORR proposed the following accommodations:

- (a) A one-year helicopter-based program;
- (b) Only 10 drill sites;
- (c) Removal of the Hu site from the work program;
- (d) No use of any historical trenches or the storage yard, but use of existing 4x4 roads and pre-disturbed surfaces for drill sites and staging zones, to the extent possible;
- (e) No building of any trails, roads or stream crossings;
- (f) Undertaking an Archaeological Assessment Overview over the entire mineral tenure block in 2023, and to share the filings with The TCG for its review and feedback;
- (g) Initiating community engagement with trapline holders and registered guide outfitters, and to provide evidence to the Mines Inspector that this dialogue is underway before providing mobilization commencement notice; and
- (h) Revising the wildlife management and monitoring plan, and to share the revised plan with The TCG and the Mines Inspector, and to involve The TCG monitors in any related wildlife monitoring activities.

65. Based on the TCG identifying guide outfitters as an issue of concern, TORR contacted a potential guide outfitter to introduce itself, provide information on the proposed exploration program and to offer to connect to discuss in further detail. TORR did not receive a response. TORR contacted a second potential guide outfitter to introduce itself, provide information on the proposed exploration program and to offer to connect to discuss in further detail. TORR did not receive a response.
66. TORR donated food to the Dease Lake School breakfast and lunch program.

67. On October 24, 2022 EMLI shared a draft permit with TORR.
68. On October 31, 2022 TORR contacted Chief Marie Quock of the Iskut Band Council to introduce itself and provide information on its proposed mineral exploration intentions and proposed accommodations discussed with The TCG. TORR proposed the following accommodations:
- (a) A one-year helicopter-based program;
 - (b) Only 10 drill sites;
 - (c) No use of any historical trenches or the storage yard, but use of existing 4x4 roads and pre-disturbed surfaces for drill sites and staging zones, to the extent possible;
 - (d) No building of any trails, roads or stream crossings;
 - (e) Undertaking an Archaeological Assessment Overview over the entire mineral tenure block in 2023, and to share the filings with The TCG for its review and feedback;
 - (f) Initiating community engagement with trapline holders and registered guide outfitters, and to provide evidence to the Mines Inspector that this dialogue is underway before providing mobilization commencement notice; and
 - (g) Revising the wildlife management and monitoring plan, and to share the revised plan with The TCG and the Mines Inspector, and to involve The TCG monitors in any related wildlife monitoring activities.

November 2022

69. TORR received a letter of appreciation from James Bjornson, Principal of Dease Lake School, thanking TORR for its food donation to the Dease Lake School breakfast and lunch program.

70. The TCG indicated that it does not support TORR's NoW Application for the Latham Project and stated that it still had concerns related to community engagement with local communities.
71. TORR discussed the Latham Project with the TCG's new Lands Director to determine the next steps for the permit application, including presentations to the TCG's leadership and community meetings.

December 2022

72. TORR summarized the next steps in the Latham Project's permit application. TORR advised it would provide fact sheets and asked for the best contacts to distribute them, and indicated that it would like to present to the TCG leadership at the AMEBC RoundUp. TORR then sent an invite to present to the TCG leadership at the AMEBC RoundUp.
73. TORR contacted the TCG to begin preparations and develop materials for community engagement with Telegraph Creek, Iskut and Dease Lake. TORR requested contact information for the trapline holders in the Latham Project area, but the TCG could not provide this information. The TCG asked TORR to consider a three-year permit instead of a five-year permit for its Notice of Work Application, as well as a helicopter-based program rather than a ground-based program to minimize land disturbance. The TCG also indicated that community meetings were likely to be scheduled for February 2023. TORR proposed the following accommodations:
 - (a) Reducing the permit's term from five years to three years; and
 - (b) Conducting the program as a helicopter-based program rather than a ground-based program.

January 2023

74. TORR presented the TCG with an update regarding its activities and the proposed work program for the Latham Project. The TCG inquired about contracting

opportunities, community engagement, caribou and helicopter disturbance. TORR provided that:

- (a) it would use the Super A grocery store as its food supplier;
- (b) it was preparing for community consultations;
- (c) it had attempted to find contacts for the guide outfitters and trapline holders in the Latham Project area;
- (d) it was looking for further data and input regarding caribou to address concerns related to this topic and had implemented mitigation measures, such as halting work in sensitive areas during hunting periods; and
- (e) it had hired a Qualified Professional to redevelop the wildlife management plan. TORR also noted that it was open to discussion and further conditions and mitigation measures to address potential concerns.

- 75. TORR spoke with the TCG to inquire about trapline holder and guide outfitter contacts. The TCG referred TORR to Chief Quock and Chief Carmen.
- 76. TORR donated \$2,000 to The TCG's youth hockey team for an upcoming hockey tournament in March 2023 in Whitehorse, Yukon.

February 2023

- 77. TORR sent its draft fact sheet to the TCG for its input, and inquired about community meeting dates and potential giveaways. The TCG provided input on the fact sheet that was incorporated into the final document, and noted that February 21-24, 2023 worked for potential community meeting dates.
- 78. TORR sent its draft presentation to the TCG for input and requested details about the location and number of attendees for community meetings. The TCG indicated

that it would distribute the fact sheet and provided logistical details for the community meetings. It also noted that it would review TORR's presentation and provide comments as necessary. Lastly, Connor Pritty stated that he would ask Chief Marie whether a virtual meeting with the Iskut Band Council ahead of the community meetings would be possible and, if not, whether an in-person meeting on February 24, 2023 would work.

79. On February 22, 2023, TORR attended and presented at community meetings at Telegraph Creek, Iskut and Dease Lake. TORR also met with the Iskut Band Council to discuss the Latham Project and address concerns regarding operations in proposed reduced work areas. The Iskut Band Council and Iskut community members expressed concerns surrounding road and trail use, community consultation, impacts to caribou, moose and fish, helicopter disturbance, Gnat Pass, core processing and location, impacts to water, additional service strains if Latham Project employees stay in the Iskut community, the impact to local guide outfitting businesses, cumulative impacts, and access.
80. TORR indicated that it is an early-stage exploration company that was years away from mine development (if ever) and would require multiple consultation meetings, permitting processes and community consent before proceeding to development. TORR also noted that it was only presenting proposed plans, and wanted to work with the Iskut Band Council, the Tahltan Nation and communities to advise on environmental impacts, find opportunities to work together and implement additional mitigation measures.
81. TORR noted that it was committed to:
 - (a) operating in an environmentally responsible way while taking into consideration cultural values and minimizing any potential disturbance to the land and wildlife;
 - (b) hiring monitors;
 - (c) providing site visits;

- (d) performing water quality monitoring during their activities (such as adhering to riparian setback distances, using fish screens and reusing water);
- (e) collaborating with the community and the TCG regarding flight paths and timing of helicopter use;
- (f) adhering to setback distances from animals; and
- (g) being open to other suggestions in terms of potential mitigation measures and accommodations.

82. TORR also provided proposed mitigation measures and accommodations, including:

- (a) removing Gnat Pass from the Latham Project work program;
- (b) restricting work to reduced areas at Hu and Dalvanie;
- (c) working with the TCG and communities to find the best flight paths and timing to minimize impacts to wildlife;
- (d) communicating such flight paths to the communities during the work program;
- (e) operating in low-risk timing windows for key wildlife;
- (f) halting work in sensitive areas during hunting periods;
- (g) halting work upon animal sightings within 500m of such work;
- (h) performing water quality monitoring;
- (i) no creation of roads or trails;
- (j) hiring environmental and archaeological monitors and/or guardians; and

(k) site visits.

83. On February 23, 2023, TORR presented to the Iskut Band Council, who raised concerns around impacts to the guide outfitting business, contracting and business opportunities, environmental impacts, wildlife impacts, archaeology, Tanzilla River and helicopter disturbance. TORR indicated that it is an early-stage exploration company that wants to work with the Iskut Band Council, the Tahltan Nation and communities to advise on environmental impacts and look for opportunities to work together. TORR provided proposed mitigation measures and accommodations, including: removing Gnat Pass from the Latham Project work program;

(a) restricting work to reduced areas at Hu and Dalvanie;

(b) working with Tahltan and communities to find the best flight paths and timing to minimize impacts to wildlife;

(c) communicating such flight paths to the communities during the work program;

(d) operating in low-risk timing windows for key wildlife;

(e) halting work in sensitive areas during hunting periods;

(f) halting work upon animal sightings within 500m of such work;

(g) performing water quality monitoring;

(h) no creation of roads or trails;

(i) hiring environmental and archaeological monitors and/or guardians; and

(j) site visits.

March 2023

84. TORR discussed community meetings and the TCG's response to TORR's permit application for the Latham Project with the TCG. The TCG noted that its response

to TORR's permit application for the Latham Project would require an additional one to two weeks before submission. The TCG also told TORR that the TCG's issues were principally with TORR's mineral claims and British Columbia's free entry system. The TCG stated that its letter to the ministry about the Latham Project would focus on this.

85. The statutory decision maker, Ms. Bruemmer, contacted TORR and the TCG on March 29, 2023 regarding the community consultation. The TCG advised it would be sending a response and TORR advised it would respond to it. The TCG insisted on confidentiality but eventually TORR was provided with the response several weeks later on April 20, 2023.
86. The Response Package (dated March 30, 2023) had a cover letter which stated, in part, that the TCG "does not authorize, support, nor consent to the issuance of an authorization for a Mineral Exploration Permit to TORR Metals Latham Property under Notice of Work #1650723." Throughout the document there are references to a lack of consent on the part of the TCG to the Notice of Work. The letter also expresses the TCG's position that the TCG "sees this as an illustration of the failures of the Provinces (sic) current legislative framework for the *Mineral Tenure Act* clam-staking (sic) free entry process."
87. Mr. Pritty, from the TCG, also told TORR that the TCG's issues were principally with TORR's mineral claims and British Columbia's free entry system under the *Mineral Tenure Act*. He indicated that if a permit was issued to TORR that there will be "big repercussions that impact the greater industry in the region". He advised TORR that the TCG's letter to the ministry about the Latham project would focus on this.

April – May 2023

88. TORR's legal counsel wrote a letter to Ms. Bruemmer expressing concern about the way the NoW Application was being handled including consideration of issues that were unrelated to the NOW permit such as the *Mineral Tenure Act*.

June 2023

89. On June 12, 2023, EMLI responded to TORR's counsel's letter.
90. Thirteen months ago, on June 15, 2023 TORR made a *Freedom of Information and Access to Information Act* request to get access to communications about the Latham Project. To this date EMLI has not produced any responsive records despite over 17,000 pages of records being identified.

July 2023

91. On July 10, 2023, Ms. Bruemmer sent TORR a draft *Mines Act* permit and the attachments for the Latham NoW Application for review and consideration. Ms. Bruemmer said she would "discuss any questions we had regarding the draft approved program, permit conditions, compliance, etc" and that the next step is the decision which could be "to reject the application, issue this draft permit, or issue this draft permit with some alterations based on your feedback and that of TCG."
92. TORR expressed significant concerns to Ms. Bruemmer regarding the terms of the draft permit.

August 2023

93. On August 18, 2023, Ms. Bruemmer issued a Decision and Reasons for Decision letter refusing the *Mines Act* permit for the Latham Project. The background and reasons for the rejection included a statement that the TCG "confirmed they do not support or consent, and that any further community engagement would not resolve outstanding issues through additional management planning or mitigation measures. Gnat Pass has always been and always will be a sacred place for the Tahltan Nation."

September 2023

94. On September 21, 2023, TCG issued a news release after the denial of the NoW Application. Among other statements, it said:

Nearly 24,000 coal, mineral, and placer claims have been issued historically in Tahltan Territory by the Province without Tahltan consent. This raises serious concerns about the outdated approach to mineral tenure staking under the Province's deeply colonial Mineral Tenure Act. As Canadian law moves towards the standard of free, prior, and informed consent, as recognized by British Columbia's enactment of DRIPA, Tahltan Nation expects that the Province will take steps to ensure that mining companies are not granted any further permits or interests within Tahltan Territory without Tahltan consent.

The Province must prioritize the protection of Tahltan cultural, spiritual, and wildlife sensitivities, respecting and upholding Tahltan title and rights to Tahltan lands through shared decision-making processes, and the requirement that Tahltan consent be the foundation of any decision within Tahltan lands. Tahltan Nation has implemented many measures to support Tahltan involvement in decision-making processes and land stewardship initiatives in line with the Tahltan worldview and has been clear that mining in Tahltan Territory will either happen the Tahltan way or not at all.

April 2024

95. On April 10, 2023, TORR requested that the government reconsider its decision of August 18, 2023.
96. On April 29, 2024, Ms. Bruemmer advised that she would not be reconsidering her Decision regarding the Latham Project at that time, outlined why she would not do so and stated that TORR could submit another application for the Latham Project at any time.

Part 3: LEGAL BASIS

1. The decision to refuse the Petitioner's NoW must be quashed on five bases:
 - (a) The Respondent impermissibly delegated her decision-making authority to the TCG, or alternatively, impermissibly fettered her discretion, on the basis that the decision maker was not prepared to approve the Notice of Work application ("NoW Application") on any terms if the TCG did not support the issuance of the permit regardless of the merits of the NoW Application thereby giving the TCG a *de facto* veto;
 - (b) The Respondent erred in law by failing to balance aboriginal interests with non-aboriginal interests;
 - (c) The Respondent erred in law in her interpretation of the *Mines Act* requirements;
 - (d) The Respondent violated the administrative law rights of the Petitioner by taking actions and making decisions that affect the Petitioner's rights and interests (including refusing to issue the *Mines Act* permit) without providing the Petitioner a sufficient prior opportunity to make submissions in respect of those actions and decisions; and
 - (e) The Respondent's decision to refuse the NoW permit was unreasonable in all the circumstances.

(1) No veto over government decisions and/or improper delegation/fettering

2. Indigenous groups do not have a veto over governmental decisions that could impact the exercise of asserted but unproven Aboriginal rights—including Aboriginal title—recognized under section 35 of the *Constitution Act, 1982*.

Haida Nation v British Columbia (Minister of Forests), 2004 SCC 73;
Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54

3. The Respondent repeatedly cited the lack of consent by the TCG in her decision to refuse the permit. The decision to deny the permit should be quashed because it constituted an impermissible *de facto* sub-delegation to the TCG, or alternatively an impermissible fettering of discretion, on the basis that the decision maker was not prepared to approve the NoW Application *Mines Act* permit on any terms if the TCG did not consent to the issuance of the permit regardless of the merits of the NoW Application, when consent is not required.

(2) Reviewable error of law: failure to weigh indigenous and non-indigenous interests

4. The decision to deny the permit should be quashed as it was based on reviewable errors of law within the meaning of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, as the decision-maker failed to weigh and balance aboriginal and non-aboriginal interests as mandated by the Supreme Court of Canada in *Haida*.
5. Asserted but unproven aboriginal rights are subject to the Supreme Court of Canada's "duty to consult" doctrine as established in *Haida*, which requires the government to discuss potential impacts of a permitting decision on the exercise of an Indigenous group's asserted but unproven rights, explore potential accommodation measures to mitigate such impacts, and ultimately make decisions that reasonably balance between Indigenous and non-Indigenous interests.

Haida, supra at para 50

(3) Reviewable Error of law: Incorrect legal analysis of Mines Act

6. The Respondent improperly made a reviewable error of law and was unreasonable when she concluded that an area to which a First Nation asserts a cultural connection constitutes a “cultural heritage resource” as that term is defined in the *Mines Act* (which referentially incorporates the definition from the *Mineral Tenure Act*).
7. The *Mineral Tenure Act* says that a ““cultural heritage resource” means an object, a site or the location of a traditional societal practice that is of historical, cultural or archaeological significance to British Columbia, a community or an aboriginal people.” A cultural connection to an area, even a connection where traditional activities are carried out, is insufficient to meet the definition of a “a traditional societal practice that is of ... cultural ... significance to ... an aboriginal people.”

(4) Breach of Procedural Fairness

8. Public authorities have a duty to act fairly in making administrative decisions. The duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure allowing those involved to have an opportunity to put forward their views and evidence fully.
9. By engaging with the TCG but then refusing to disclose the nature of the engagements and issues with the Petitioner, the Respondent breached the procedural fairness owed to the Petitioner and denied the Petitioner an opportunity to respond and/or propose further accommodation and mitigation measures.

*Nicholson v. Haldimand-Norfolk
Regional Police Commissioners*, [1979] 1 S.C.R. 311

Baker v. Canada (Minister of Citizenship and Immigration),
[1999] 2 S.C.R. 817,

Decision was Unreasonable

10. The decision to deny the permit should be quashed as it was unreasonable in all the circumstances, and having regard to:
 - (a) the extensive consultations undertaken including agreements entered into with the TCG, the significant accommodation measures proposed including significant reduction in permit term number of drill holes and exclusion of the Gnat Pass area, no creation of roads or trails (instead using helicopter pads), and the sudden and unexplained change in the TCG's position from agreement to opposition; and
 - (b) The absence of any reasons as to how and why the decision maker concluded that the "Application did not contain an acceptable program for the conservation of CHR [cultural heritage resource] and for the protection and reclamation of the CHR heritage resources affected by the mine".
11. The Respondent improperly concluded that an area to which a First Nation asserts a cultural connection constitutes a "cultural heritage resource" as that term is defined in the *Mines Act*.
12. The Respondent said that "[o]ther than consultation and the results of the community meeting, I had no other way of knowing if the proposed activities will affect the CHR of the community of Dease Lake and the Tahltan people" while at the same time finding that "the location of the project with respect to Gnat Pass and surrounding Dease Lake was too important to the Tahltan people and their use of it year-round." The Respondent adopted an overly broad interpretation of "cultural heritage resource" when she accepted bald assertions from the TCG that the limited and temporary works proposed would cause irreparable damage to the environment and significantly threaten Tahltan culture and way of life without any basis or supporting information as to how the limited work contemplated could cause such impacts. In accepting this assertion, she erred in holding that the

Petitioner did not have an adequate plan for the conservation of cultural heritage resources or for the protection and reclamation of the cultural heritage resources.

13. The Respondent's reasoning was incoherent and did not have a rational chain of analysis as required by *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

Statutes/Rules

14. The Petitioner relies on the following:
 - (a) Rules 14-1, 16-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009
 - (b) *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241;
 - (c) *Mineral Tenure Act*, R.S.B.C. 1996, c.292;
 - (d) *Mines Act*, R.S.B.C. 1996, c. 293;
 - (e) The inherent jurisdiction of this Honourable Court; and
 - (f) Such other material as counsel may advise and this Honourable Court may permit.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Malcolm Dorsey sworn June 28, 2024;
2. Affidavit #1 of Susan Holm sworn July 11, 2024
3. Such other materials as the Petitioner may advise.

Date: 11/JUL/2024



Signature of lawyer for petitioner
Joan M. Young

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this petition
- with the following variations and additional terms:
.....
.....
.....

Dated:

Signature of Judge Master

No
NANAIMO REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TORR METALS INC.

PETITIONER

AND

SENIOR PERMITTING INSPECTOR OF MINES, NADIA
BRUEMMER

RESPONDENT

PETITION

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File No. 306845
