



Reasons for Decision on Clarification on Scope of Assessment

Depositing Processed Kimberlite in Pits and Underground

Environmental Assessment 1819-01
Diavik Diamond Mines Inc.

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Mackenzie Valley Environmental Impact Review Board

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1 INTRODUCTION

1.1 Overview

The Mackenzie Valley Environmental Impact Review Board (the Review Board) released its [Scope of the Environmental Assessment and Reasons for Decision](#) for this environmental assessment (EA1819-01), on April 18, 2019. On May 2, 2019, Diavik Diamond Mines Inc. (Diavik) [wrote](#) to the Review Board to request clarification on the scope (the Diavik Request).

The Review Board has decided that:

- 1) Diavik’s Request does not require a change to the scope of development, and**
- 2) The scope of assessment for this environmental assessment (EA) will include reasonably foreseeable future activities, including depositing and storing processed kimberlite from the processed kimberlite containment facility in the pits and underground¹.**

The Review Board set out this decision in its initial [response](#) to Diavik’s letter, which it issued on May 15, 2019, immediately after it considered Diavik’s Request. The Review Board did so to avoid any confusion about the assessment in Diavik’s *Summary Impact Statement*, released on May 16, 2019. The Board’s reasons for its decision on this matter are described below.

2 CLARIFICATION ON SCOPE AND REVIEW BOARD CONSIDERATIONS

2.1 Diavik’s Request

Diavik’s May 2, 2019 letter asked the Review Board to confirm its understanding about the scope of development and scope of assessment for this EA. Specifically, Diavik wished to confirm that:

1. the scope of development would include transporting, depositing, and storing processed kimberlite (PK) into A418, A154, and/or A21 pits and underground mine workings;
2. the scope of development would not include re-mining material from the processed kimberlite containment facility (PKCF); and,

¹ This includes all underground mine workings.

3. the scope of assessment would include assessment of the effects and impacts of transporting, depositing, and storing PK from all sources (including the PKCF) into the A418, A54 and/or A21 mine workings.

2.2 Determining the scope of an EA

Scoping an EA requires careful thought about

- 1) what development is being proposed (the scope of development), and
- 2) which effects of the development will be considered (the scope of assessment).

The factors which may be considered for each of these decisions are described in full in the Review Board's *Environmental Assessment Guidelines* and are summarized below.² The Review Board must examine the cumulative effects of proposed developments in combination with past, present, and reasonably foreseeable activities.³ The scope of assessment will also describe the geographic and temporal scope.

2.2.1 Determining the scope of the development

Scoping a development requires careful consideration of what is, and what is not, part of the development. Typically, the scope of development should include the principal development, as well as all physical works or activities that are accessories to the principal development. The Guidelines set out three criteria for determining whether a physical work or activity is an accessory to the principal development (to avoid project splitting). These are dependence, linkage, and proximity.

- The dependence test asks whether principal development could proceed without undertaking another physical work or activity – if not, then that accessory work or activity is also part of the development.
- The linkage test asks whether the principal development inevitably leads to another physical work or activity – if it does, then that other work or activity is part of the scope of development.
- The proximity test asks whether two physical works or activities proposed by the same developer occur in the same area – if they do those works or activities may be considered part of the same development.

² The Review Board's [2004 Environmental Assessment Guidelines](#) describe this in more detail on pg. 27 and 28.

³ See paragraph 117(2)(a) of the MVRMA.

2.2.2 Scoping the assessment

Determining the scope of assessment requires the identification of the potential effects of the physical work or activities, to focus the EA on the most important topics. This allows the developer, parties, and the Review Board to concentrate their resources and attention on what matters most.

The scope of assessment also describes which cumulative effects meet the legal test set out in the MVRMA and will be considered in the EA.

The details about determining scope of development and scope of assessment are outlined in Appendix H of the Review Board's EIA Guidelines.⁴

3 FEEDBACK FROM PARTIES

The Review Board sought feedback from parties about the Diavik Request. Comments were submitted by the Environmental Monitoring Advisory Board (EMAB), the Government of the Northwest Territories -Lands (GNWT) and the Northern Project Management Office on behalf of Fisheries and Oceans Canada. Fisheries and Oceans Canada had no further comments on scope of assessment.

EMAB noted its strong support for re-mining the PKCF, as it could lead to more positive closure options for the PKCF. For this reason, EMAB supported including re-mining in the scope of development. The GNWT expanded on this position and indicated that if re-mining the PKCF is not included in the scope of development, it would be difficult to assess:

- a) potential adverse impacts of depositing re-mined PK and
- b) potential positive impacts of removing "slimes" from the PKCF.

The GNWT suggested that the scope of development be amended to include the re-mining, transporting, depositing and storing of PK from all sources including PK from the PKCF. The GNWT requested that Diavik clarify and provide information about the types of PK it proposes to deposit in the pits and underground in all future documents and the precise nature of activities that re-mining could include.

⁴ See the Review Board's [2004 Environmental Assessment Guidelines](#)

4 REASONS FOR DECISION

This section sets out the Review Board's reasons for its clarifications on scope of development and scope of assessment for this EA.

4.1 Diavik is not proposing to re-mine the PKCF

At present, Diavik is not proposing and has not sought regulatory authority to "re-mine" the PKCF. Diavik does not know if re-mining is feasible or practical. The Review Board cannot meaningfully assess unknown activities that have been neither designed nor described. **In addition, the licence amendment application made to the Wek'eezhii Land and Water Board does not include re-mining the PKCF.**

Therefore, re-mining the PKCF is not part of the scope of development.

4.2 Adding PK from the PKCF is reasonably foreseeable

This EA is about Diavik's proposal to put PK into the pits and underground mine workings. Taking a broad view of past, present, and reasonably foreseeable developments in the cumulative effects assessment supports thorough impact assessment. Past or present activities at the Diavik mine that may interact with the currently proposed activities will be considered. Diavik has not proposed the activity of re-mining the PKCF at this time but has indicated that it may do so in the future. Therefore, that Review Board considers it a reasonably foreseeable activity. Assessing the potential additive impacts of re-mining the PKCF is good cumulative impact assessment, even though re-mining the PKCF is not part of the proposed development.

Understanding the impacts of the proposed activities, in combination with impacts associated with depositing PK from other sources, will result in a better overall understanding of potential impacts to water quality and cultural use.

The Review Board will therefore include the deposition of PK from any reasonably foreseeable source in the scope of assessment, as part of its cumulative effects assessment.

4.3 This is not project splitting

The GNWT expressed concern that the dependency criterion applies to the activity of re-mining and therefore suggested that re-mining should be included in the scope of development. The aim of the dependency criteria is to avoid project splitting. The Review Board considered the GNWT's perspective and disagrees because **the activities proposed by the developer (that is,**

putting PK in the pits and underground mine workings) do not depend on re-mining the PKCF.

The act of putting PK into pits and underground may proceed even if Diavik chooses not to re-mine the PKCF at a later date.

The Review Board notes that in general, there are risks associated with project splitting. For example, assessing small parts of a larger project separately can result in underestimating the overall impacts and can complicate the regulatory process. In this case:

- by including the impacts of depositing PK from the PKCF in the pits and underground (though cumulative effects assessment), the Review Board and parties will have a better understanding of the potential overall impacts of PK deposition, in particular at mine closure.
- considering the deposition of PK from the PKCF in the pits as part of the cumulative effects assessment does not authorize Diavik to re-mine them or deposit them, and does not preclude any future regulatory processes.

If the project is modified in the future, the regulatory authority will consider whether there are differences between the scope of the development that was assessed and the development which is proposed. If there are changes that would involve activities that were not previously assessed or that would have impacts that were not considered, then a preliminary screening must be undertaken.

4.4 Scope of Development

In the *Scope of Environmental Assessment and Reasons for Decision* for this EA, the Review Board defined the scope of development as:

- transporting, depositing, and storing PK into pits and underground mine workings, and
- closing and reclaiming any mine infrastructure related to the transport, deposition and storage of PK in pits and underground mine workings.

Deposition of PK was intended to be from the processing plant only and not from the PKCF. In response to Diavik's Request for clarification of this scope, the Review Board has determined that **no change to the scope of development is required.**

Diavik also clarified that it understood the scope to include any or all of the three pits and underground mine workings. The Review Board determined that any or all of the three pits was included in the original scope of development outlined above and therefore requires no change.

4.5 Scope of Assessment

In the *Scope of Environmental Assessment and Reasons for Decision* the Review Board decided that the scope of assessment must consider potential impacts of Diavik's proposed activities on:

- water quality and quantity;
- cultural use of the area;
- fish and fish habitat; and
- other wildlife (specifically caribou, aquatic and migratory birds, and species at risk).

One of the additional requirements related to scope was cumulative effects assessment. In response to Diavik's Request the Review Board is clarifying that the scope of assessment will include reasonably foreseeable future activities as part of the cumulative effects assessment. In the context of examining the effects of depositing PK in pits and underground (the focus of this environmental assessment), this will include any potential future depositions of PK from other sources, including the PKCF.

5 CONCLUSION

The Review Board considered the views of parties and the developer when determining the scope of assessment and development. Excluding the activity of re-mining from the scope of development, while considering the cumulative impacts of depositing PK from PKCF in the mine workings as part of the scope of assessment, will lead to a better environmental assessment.

On behalf of the Mackenzie Valley Environmental Impact Review Board,



JoAnne Deneron

Chairperson