

Thursday, January 24, 2008

Mr. Ed Huebert
Manager Environmental Affairs
NWT Projects
De Beers Canada
Gahcho Kue Project

Delivered by Hand

Dear Mr. Huebert:

RE: Gahcho Kue Diamond Project (your file: L025) Clarification on Environmental Impact Statement Terms of Reference

Thank you for your letter dated December 11th received in our office on December 19th, 2007. The Gahcho Kue Environmental Impact Review Panel (the "Panel") is pleased to respond to the request made in your letter for clarification of the final Terms of Reference (ToR) for the environmental impact statement (EIS) for the Gahcho Kue project (the "Project"). Below we respond to each of the areas where clarification was requested in your letter.

Before providing specific responses, however, we wish to note that the ToR were developed by the Mackenzie Valley Environmental Impact Review Board (MVEIRB or the "Review Board") to set out a comprehensive outline of the information required by the Panel to address not only the requirements of subsections 117(1) (2) and (3) of the *Mackenzie Valley Resource Management Act* (MVRMA) which are mandatory, but also to take advantage of the foundation developed through the Review Board's Report of Environmental Assessment which concentrated on scoping for the Environmental Impact review (EIR) process.

We recognize that the development of the EIS is a significant undertaking and that during that process questions about both the content and organization of that document may be inevitable. It is not the purpose of the Panel's EIS ToR to unduly limit De Beers' organization of its EIS. The Panel understands that some flexibility is required during the development of the EIS and that is why section 8 of the ToR calls for a concordance table. The purpose of the ToR is primarily to identify the minimum acceptable contents of the final EIS which, as you are aware, will be subject to review and testing by a number of parties.

Section 3.1.2 Development Description:

We confirm that the “rationale for the need for the development” should address the requirements of paragraph 117(2)(e) of the MVRMA and that both need for and alternatives to the development should be addressed in the EIS.

Likewise, we confirm that the instruction to include an analysis of “alternative means for carrying out the development” as referred to in section 3.1.2 of the ToR was included in response to the requirements of paragraph 117(3)(b) of the MVRMA and that all elements of that paragraph must be reflected in the EIS.

The organization of the EIS is a matter for De Beers to address. We trust that the approach you take will assist the readers to understand your plans for the Project and their environmental effects. The concordance table should clearly link all requirements of the ToR to the appropriate components of the EIS.

Section 3.2.2 Significance Determination:

The discussion in this section under the heading “Direction” is intended to ensure that both positive and negative effects of the proposed Project are reported in the EIS and considered in the course of the EIR. The Panel must consider mitigative or remedial measures and ultimately must make an overall recommendation to the Federal Minister which addresses all of the effects of the project. The Minister in turn makes a decision in the public interest which we anticipate will be facilitated if both positive and negative effects of the Project are reported.

The plain wording of section 114 of the MVRMA indicates that it applies to an EIR and paragraph 114(c) requires that the concerns of aboriginal people and the general public (public concern) be taken into account in an EIR. Paragraph 117(2)(c) and subsection 134(2) require both the consideration of and a reporting on any comments received from the public.

Section 114 outlines the purpose of Part 5 of the MVRMA and paragraph (c) directs the Panel to ensure that public concern is taken into account in the EIR process. The MVRMA is not as specific about the use of public concern in the context of an EIR as it is in an Environmental Assessment (see subsection 128(1) for example) but there would appear to be little reason for the requirements listed above to address public concern and comments in the context of an EIR if this information were not to have some bearing on the conclusions drawn by the Panel.

Environmental impact assessment is intended to be a public process. The concerns expressed by public participants in an environmental impact assessment process are important evidence which is always considered by decision-makers. In this case it is mandatory that the Panel consider this information. It seems possible that some public concern could be expressed in

relation to the predicted impacts of the Gahcho Kue Project. The public may or may not agree with the conclusions drawn in the EIS. That information will inevitably be considered in relation to the Panel's assessment of the significance of those impacts alongside the Panel's assessment of the effectiveness of the proposed mitigative and remedial measures. In this way, consideration of public concern is relevant in the context of a significance determination and may feature in the Panel's report to the Minister. The MVRMA does not prescribe the manner in which the Minister may apply information about public concern to his ultimate decision on the EIR.

De Beers may report in the EIS on public concerns raised during the course of its public consultation process. You should nevertheless understand that the MVRMA makes the consideration of public concern a fundamental part of an EIR and be prepared to address such concerns whenever they arise. You should be advised that this response is provided as a courtesy and that it should not be interpreted to indicate that the Panel otherwise accepts the jurisdictional or fairness arguments set out in your letter. If De Beers would like to seek a formal ruling on this issue we encourage you to use the process set out in the MVEIRB "Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings".

Section 3.2.7 Follow Up Programs:

The Panel is aware that regulatory authorities will require a variety of sampling and monitoring plans and programs specific to their areas of jurisdiction if the Minister approves the proposed development. It is also clear that De Beers cannot predict these requirements with certainty until specific Project details included in the EIS are available to the regulators. The provisions in section 3.2.7 are not aimed at detailing regulatory or legal compliance monitoring programs. Such activities are the responsibilities of others.

The intention of this section in the ToR was 1) to ensure that impact prediction and mitigation is undertaken in an adaptive management context and 2) that a comprehensive description of the monitoring process be provided with emphasis on follow up programs. These programs will assist in future critical evaluation of both specific and cumulative impact predictions made for Gahcho Kue Project.

Once the EIS has been reviewed by the parties, and De Beers has the benefit of comments from regulators, DeBeers may submit updated information which refines EIS contents in respect of monitoring and follow up programs.

Section 4.1.7 Long Term Social Cultural and Economic Effect:

The approach taken should satisfy standards applicable to the kinds of social science and cultural research being conducted for the EIS. The Panel understands the need to ensure the confidentiality of any information collected in small communities. However, De Beers should consider the following:

- Most of the issues in section 4.1.7 are not likely to be considered sensitive or require confidentiality. Examples include access to training, business development, education, or in- and out-migration. Limiting analysis to a regional level is less likely to capture such community-specific issues.
- You cite a concern about small statistical sample size. Sample size is relevant primarily for quantitative analysis. For some issues, an in-depth qualitative analysis, on a community-specific basis, may be more useful.
- If there is a concern regarding confidentiality of an issue, a practical approach would be to engage the communities on appropriate questions and methods regarding wellness in general, and that issue in particular, is a reasonable start.
- The Review Board's *Socio-Economic Impact Assessment Guidelines* (p31) partially addresses concerns regarding confidentiality. It encourages thorough analysis of existing secondary sources of information. The same document points out that communities often have their own protocols, and some may be more willing than others to specifically address sensitive social issues.

Specific impacts and concerns likely vary from community to community. Mitigation measures proposed for the project may need to be tailored to address these specifics.

We trust that De Beers can ensure that the social science methodology underlying its impact predictions and mitigation proposals is sound without eliminating the specific consideration of effects at the community level required by the ToR.

Submission of EIS:

The Panel encourages De Beers to file the EIS as soon as it can. We note your new target for filing and will adjust the Panel's work plan and timelines accordingly.

Conclusion:

We trust that this letter has provided sufficient direction in relation to the matters raised to the Panel's attention. If further questions arise or clarification is needed, please do not hesitate to contact me.

Yours truly,

Alan Ehrlich
Senior Environmental Assessment Officer
Gahcho Kue Environmental Impact Review