

June 28, 2019

## Notice of Proceeding: Hearing Phase of the Environmental Assessment

Depositing Processed Kimberlite into Pits and Underground, Diavik Diamond Mines Inc.

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### 1. Introduction

The environmental assessment (EA) of Diavik Diamond Mines Inc.'s Depositing Processed Kimberlite into Pits and Underground project is entering the hearing phase. This notice of proceeding is intended to help parties prepare for the hearing phase by providing an overview of the next steps.<sup>1</sup> Important components of each of these steps include:

- Written interventions (Section 2)
  - Submission of *Intervener Status Form*
  - Submission of interventions
  - Developer response to interventions
- Public hearings (Section 3)
  - Pre-hearing conference
  - Submission of public hearing presentations
  - Public hearings (community and formal)
  - Undertakings
- Closing arguments (Section 4)
  - Closing arguments from parties
  - Closing arguments from the developer

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<sup>1</sup> This notice is considered a “direction on procedure” for the purposes of the Review Board’s [Rules of Procedure](#). Rule 66 states “The Review Board may issue directions on procedure consistent with these Rules to ensure the efficient conduct of a hearing.”



## 1.1. Intervener status

Parties to this EA who wish to participate fully in the hearing phase must apply to do so. In this EA, parties who apply and are granted standing at the hearing will be referred to as “interveners”.<sup>2</sup> Any party who does not wish to apply for intervener status may participate in the hearing phase as a member of the public, as described below.<sup>3</sup>

Your organization should carefully consider how it wants to participate in the hearing phase, because the roles and responsibilities of interveners and parties differ. For example:

Role or Responsibility	Parties (members of the public)	Interveners
Submitting a written intervention		X
Presenting the intervention at the hearing		X
Questioning other parties and be questioned at the hearing		X
Opportunity to speak directly to the Review Board at the hearing	X	X
Submitting written closing arguments	X	X
Request rulings from the Board during the hearing phase		X

Any person or organization can **apply for intervener status** by submitting the [request form](#) by **July 19, 2019**. The Board reserves the right to deny intervener status to any party.

## 1.2. Public participation

The Review Board welcomes contributions from the public during the hearing phase. Parties and members of the public may submit written comments to the Review Board for inclusion on the public registry.

Community hearings are intended for the public to speak directly to the Review Board. At the Chair’s discretion, the public may also question the developer and representatives from interveners at the community hearings, provided questions are relevant to the scope of the environmental assessment.

Time in each formal hearing will be set aside for members of the public to present their views directly to the Review Board. Please note that members of the public will not be permitted to ask questions to the developer or interveners during formal hearings. At the formal hearings,

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<sup>2</sup> Parties registered for a hearing (Rule 75) or with status as a party in a hearing (Rule 76) will be referred to in this EA as “interveners”. All the roles and responsibilities of parties under parts 2, 3, 4, and 5 of the Rules will apply only to those registered as interveners and to the developer.

<sup>3</sup> As described in Rule 76.



members of the public are asked to sign-in with Review Board staff on each hearing day if they wish to speak.

## 2. Interventions

Written interventions are the last submission by interveners prior to the public hearing. Interventions should discuss all the issues that your organization views as potentially significant. A Notice of Proceeding with guidance for preparing interventions will be provided on the public registry. In addition, the pre-hearing conference (Section 3.1 below) will include a discussion on preparing interventions.

The developer will respond to written interventions. The public record will be temporarily closed after the developer submits its responses to interventions.<sup>4</sup> The public record will re-open at the start of the public hearings. The purpose of the closure of the public record is to ensure that no new information is submitted prior to the hearings that other parties have not had the opportunity to review.

## 3. Public hearings

Public hearings allow Review Board members to hear directly from parties, the developer, and members of the public about what issues they are most concerned about in this EA and what mitigations, if any, might help to reduce impacts of the project on the environment. This helps the Review Board determine whether a project is likely to have significant adverse impacts on people or the environment.<sup>5</sup> The Review Board typically holds two types of public hearings: community hearings and formal (technical) hearings. More detail on each of these types of hearings is provided below.

### 3.1. Pre-hearing conference

A pre-hearing conference with parties, the developer, Review Board staff, and legal counsel will be held on **July 9<sup>th</sup>, 2019**. The purpose of this meeting is to provide guidance on preparing interventions and to ensure that all parties and the developer have a shared understanding of roles, responsibilities, expectations, and logistical arrangements for the hearings. Review Board members will not attend the pre-hearing conference.

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<sup>4</sup> The exception to this is submission of hearing presentations, which should not contain new evidence but summarize the evidence contained in the intervention.

<sup>5</sup> A plain language handout explaining the final public hearing phase of an environmental assessment can be found on the Review Board's website [here](#).



Discussion topics will include:

- preparing written interventions and presentation
- preliminary legal or procedural issues
- the hearing format
- the Review Board's expectations of parties, interveners, and the developer

The pre-hearing conference will be held at the Review Board office in Yellowknife, with teleconferencing available. A pre-hearing conference agenda will be provided separately and posted on the public registry.

There will be an additional meeting closer to the hearing date to discuss the following:<sup>6</sup>

- the hearing agenda
- timing and sequencing for hearing presentations and questioning
- approximate number of representatives from each party and intervener

### 3.2. Community hearings

#### Overview

The Review Board holds informal community hearings to directly hear the public's views of the project. The final locations, dates, and agenda for the community hearings will be provided separately and posted on the public registry.

An overview of the process during a typical community hearing is:

- Opening remarks by the Review Board Chair;
- The Chief or community representative(s) may present an opening welcome;
- The developer briefly describes the project;
- Community members have an opportunity to share their views with the Review Board; and,
- At the Chair's discretion, community members may ask questions to the developer and any party representatives in attendance.

Statements to the Review Board and questioning must be relevant to the scope of the EA. Please see the Review Board's *Scope of Environmental Assessment and Reasons for Decision* ([PR#40](#)) and *Clarification on Scope of Assessment* ([PR#54](#)).

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<sup>6</sup> This meeting will also be held at the Review Board office in Yellowknife and will have teleconference services available. The date and time of this meeting will be provided at a later date.



The community hearing will have simultaneous interpretation and will be transcribed. Transcripts will be posted to the public registry as soon as possible, with the intent that they are available the day after the hearing.

The start and end times for the community hearing are generally early afternoon to early evening to maximize participation for people with varying work schedules. The times will be confirmed at the pre-hearing conference after consultation with the communities.

### **Developer representation at community hearings**

The developer will make a brief presentation describing its project and outlining its views on potential impacts and any mitigations it is proposing to minimize impacts. The developer will be available to answer questions from community members about predicted effects and mitigations.

### **Government representation at community hearings**

Government agency attendance at community hearings is encouraged so that agency representatives can share relevant knowledge and answer questions from the community. For example, the presence of a small number of representatives from departments with regulatory authority over fish, wildlife, and water is encouraged at the community hearings. The Review Board may require attendance from government departments for those purposes.

### **Other intervener representation at community hearings**

Since community hearings are intended to focus on community members, the attendance of other interveners at community hearings may not be required. If in doubt about whether your organization should attend a community hearing or not, please contact Review Board staff.

### **Teleconference**

Teleconference is not provided at community hearings.

## **3.3. Formal (technical) hearings**

### **Overview**

The Review Board holds formal, or technical, hearings to hear the views of interveners and the developer and for questioning. Intervenors should be prepared to summarize the key points of their written interventions, specifically:

- what parts or activities of the development they expect to cause adverse impacts
- what parts of the environment they expect to be affected
- how the effects would occur (the pathways)
- how important the identified impacts are to them
- how they believe impacts should be reduced or avoided



The agenda for these hearings will be finalized after the pre-hearing conference. Each day of the formal hearing will focus on issues that were identified in the *Scope of Assessment and Reasons for Decision* ([PR#40](#)), the *Reasons for Decision on Clarification on Scope of Assessment* ([PR#54](#)), and other issues identified during the EA. An overview of the process for each day of the formal hearing is:

- The developer will describe its project and present its position on potential impacts of the project on the environment, including on water, fish and fish habitat, wildlife, and cultural use.
- Interveners will provide a presentation that summarizes their interventions (see bullets above).
- The opportunity for questioning after each presentation is granted to all interveners, the developer, Review Board staff and counsel, and Board members. Questioning will occur within the timelines described on the agenda and must be within the scope of the EA. Details are at the discretion of the Chair.

Formal hearings will be transcribed and will have simultaneous interpretation available on an as-needed basis. **If you or your organization requires interpretation services for the formal hearings, please contact Review Board staff as soon as possible.** Transcripts will be posted to the public registry as soon as possible, with the intent that they are available the next day.

Members of the public are welcome to attend formal hearings. Time permitting, and at the discretion of the Chair, there will be time set aside for public comments on each day of the formal hearings.

### **Presentation of interventions**

At formal hearings, interveners present a summary of the information contained in their interventions.<sup>7</sup> This presentation may only include evidence that was already submitted as part of the intervention. **Presentations should focus on the points and recommendations that will assist the Review Board in making its decision on the proposed project.** The Review Board strongly encourages presentations to be brief and focused to allow enough time for questioning.

### **Questioning**

Following each presentation, interveners, the developer, Review Board staff and legal counsel, and Review Board members will have the opportunity to ask questions. Questions should be succinct. If your line of questioning requires the examination of graphs, figures or supporting

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<sup>7</sup> More information about [hearing presentations](#) can be found on the Review Board's website.



documents, please provide copies of these items in advance for distribution to the developer, other participants, and the Review Board. Please also submit electronic versions of these items to Review Board staff in advance of the hearing so that they can be shown on screen.

### **Undertakings and commitments**

Undertakings refer to questions or issues that the developer or other parties are unable to answer immediately during the hearing. Any undertakings will be clarified during the hearing, numbered for consistency, and recorded in the transcripts. While some undertakings may be completed within a day or two, others may require more time. The due date for completed undertakings will be confirmed at the hearings (usually about two weeks after the last day of the hearing).

Any commitments made by the developer during the hearing will be recorded and added to the list of existing commitments.

### **Teleconference**

Teleconference will be available for the formal hearings. If you wish to ask questions during the hearing but are unable to attend in person, you must have a representative in the hearing room who can ask questions on your behalf.

## **4. Closing arguments**

After completed undertakings are posted to the public record, interveners will have the opportunity to submit written closing arguments to the Review Board.<sup>8</sup> Closing arguments are an opportunity for interveners to:

- update their positions and recommendations based on the discussions at the hearings or the contents of the undertakings; and
- summarize their final views on potential impacts and recommendations to the Review Board.

**Written closing arguments must not contain any new evidence** and must be based entirely on evidence already on the public record. The developer will also be given the opportunity to make a closing argument to the Review Board after interveners' closing arguments. Instructions for submitting closing arguments will be provided separately and posted to the public registry.

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<sup>8</sup> Parties or individuals that are not interveners are able to write to the Review Board with their final views on the project at this time as well. These submissions may be weighed differently than closing arguments, which have been developed following full participation of interveners in the hearing phase, including written interventions, hearing presentations, and questioning.



## 5. Next steps

After the hearing phase, the Review Board will begin its deliberations and issue a recommendation for this EA. A separate notice of proceeding describing the steps involved in this decision-making phase will be provided separately.

If you have any questions, contact Catherine Fairbairn at 867-766-7054 or [cfairbairn@reviewboard.ca](mailto:cfairbairn@reviewboard.ca) and Kate Mansfield at 867-766-7062 or [kmansfield@reviewboard.ca](mailto:kmansfield@reviewboard.ca).