

EA1819-01

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

Pre-hearing Conference: Meeting Notes

Mackenzie Valley Environmental Impact Review Board Boardroom
200 Scotia Centre, Yellowknife
July 9, 2019: 10am-12pm

The following meeting notes reflect the discussions had by participants of the EA1819-01 Pre-hearing Conference meeting. Items are presented according to the agenda topic.

1. Introduction and Round Table

GNWT Lands: Katie Rozestraten, Lorraine Seale, Melissa Pink, Marie-Christine Belair

GNWT Environment and Natural Resources (ENR): Loretta Ransom

GNWT Justice: Simone Tielesh (on the phone) and Mark Ishack (on the phone)

Environmental Monitoring Advisory Board (EMAB): John McCullum, Janyne Matthiessen

Tłı̄chǫ Government (TG): Violet Camsell-Blondin, Ginger Gibson (on the phone)

Environment and Climate Change Canada (ECCC): Russel Wykes

Department of Fisheries and Oceans (DFO): Alexandra Sorckoff, Dan Coombs

Yellowknives Dene First Nation (YKDFN): Machel A. Thomas

Diavik Diamond Mines Inc. (Diavik): Kofi Boa-Antwi, Gord MacDonald (on the phone), Sean Sinclair (on the phone), and Louis Beland (on the phone)

Dominion Diamond Mines Inc.: Lynn Boettger

North Slave Metis Alliance (NSMA): Jessica Hurtuboise (on the phone)

Deninu Kue First Nation: Marc D'Entremont (on the phone)

Fort Resolution Metis Council (FRMC): Katy Dimmer (on the phone)

CANNOR-NPMO: Adrian Paradis

Review Board: Brett Wheler, Alan Ehrlich, Catherine Fairbairn, Amanda Annand, John Donihee (legal counsel, on the phone)

NWT Metis Nation: Tim Heron (on the phone)



2. Review Board Mandate and Decision-Making considerations

a) Scope of Development

EMAB asked if there would there be another environmental assessment (EA) if Diavik decided to remine processed kimberlite (PK).

Review Board staff confirmed that Diavik would need to apply specifically to do that. There would be a preliminary screening and the proposal could be referred to EA. The current EA will only assess what is in the scope of development, which does not include re-mining the PK containment facility. The current EA does not give Diavik permission to mine the PK containment facility.

b) Scope of Assessment

No discussion.

3. Overview of Hearing Phase (See PR#68 for more detail)

- i. Written interventions
- ii. Public hearings
- iii. Closing arguments (final position post-hearing)

Diavik asked if closing arguments would be heard during the hearing. Review Board staff confirmed that written closing arguments will be submitted after the hearing (with a set deadline after the undertakings from the hearings).

NPMO asked what the date of the Review Board's Report of EA would be, flagging the upcoming federal and territorial elections. The Review Board does not have a set date but anticipates it will be around 2 months after the submission of closing arguments.

a) Party vs. Interveners

The Review Board has requested that parties identify if they will be interveners in the hearing phase (deadline July 19, 2019). Being an intervener allows full participation in the hearing phase:

- i. Interveners submit written interventions, in which they can introduce evidence and communicate their views to the Board
- ii. Interveners must present a summary of their intervention in person at the hearing and be available for questioning
- iii. Interveners can question the developer and each other
- iv. Interveners can submit written closing arguments after the hearing
- v. Interveners can request rulings from the Board during the hearing phase

There was discussion around the role of the developer in comparison to interveners. Review Board staff confirmed that the developer has responsibilities similar to interveners and can question the interveners.



There was discussion on the difference between parties and interveners. Review Board staff explained:

- The only formal status in this EA is intervener status. Anyone can participate in the early part of the EA; parties who wish to participate fully in the hearing phase (see i.-vi. above) need to register as interveners.
- Anyone who is not an intervener can participate as a member of the public: they can speak to the Board during designated times at public hearings and can send written comments to the Board.
- The Review Board occasionally receives written comments from the public. The developer can respond to all comments, including comments from intervenors and parties/public.

Interveners can submit evidence in their interventions. During closing arguments, no new evidence can be brought in.

There was a question as to whether new evidence can be provided in hearings. Review Board staff responded that it is possible for new evidence to come up in answering a question or doing an undertaking. But to the extent that interveners want to provide evidence, that should be included in the intervention. If an intervener came forward and said they wanted to submit something new during the hearing, they would have to ask permission; the Review Board would have to canvas the developer and other interveners and make a ruling. The intention is that evidence is filed before the hearing.

The public record is closed between the submission of the developer's response to interventions and the public hearings. The only exceptions to the public hearing closure is the submission of hearing presentations. Those are not supposed to have new evidence and are meant to be a summary of the interventions.

4. Tips for preparing interventions (see PR#79 for more detail)

- i. Intervention Format
 - Include plain language summary
 - Structure main report by issue
- ii. Content
 - Identify your key issues
 - Clearly state your views using supporting evidence
 - Tell the review board if you think there will be significant adverse impacts. Provide recommendations and suggest mitigations

There was a question about significant adverse impacts and public concern as considerations for a project being referred to EA. Review Board staff noted that the Board decided to order an EA of Diavik's proposal and provided reasons for its decision. The scope of the EA has been set and now we are entering the hearing phase. If the Review Board hears public concern (for example at the hearings or in written submissions) the Board will have to consider that in its EA decision.



TG asked if there were cases where the concerns are so significant they cannot be mitigated. Review Board staff pointed to the examples of EA's in the upper Thelon and Drybones Bay where the Board determined that cultural impacts could not be mitigated. The Review Board does not reject projects lightly. The EA process can help explore and understand public concern, improve project design, and look at possible mitigations.

TG highlighted that the traditional camps at the mine sites work with science and traditional knowledge, and that's how it's possible to work out difficult issues.

5. Rules of procedure for the public hearings

Review Board staff confirmed that the deadline to respond to hearing undertakings is after the hearing, but some things can also be worked out quickly and then presented onto the record during the hearing.

Each intervener must have at least one person physically present in the hearing.

Review Board staff noted that the Chairperson runs the hearings and has the flexibility to manage hearing details and adjust to ensure fairness, efficiency, and effectiveness.

a) Community vs. Technical hearings

Community hearings are about hearing the views of community members and the public. Technical hearings are about hearing the views of interveners and the developer, and for questioning.

FRMC asked whether communities can request a community hearing. The Review Board staff stated that that while the Board considers requests or recommendations on the workplan, as we progress in the EA closer to the hearing phase it becomes harder to adjust the work plan. The Review Board sets out the number of days and the dates and locations of the hearings based on parties' involvement in the EA to date. Ideally if there were specific requests for hearing locations, that would happen earlier on in the work plan development. There are also practical constraints to whether the Review Board can satisfy all the requests at a given time.

Diavik asked whether the developer can continue to talk with interveners between the submission of interventions and making the presentation, and if that changes things how does that work. Review Board staff identified that:

- For general use, there is a form that can be used to show how a specific issue has been discussed or resolved and then that will go on the record. It is difficult to submit meeting records immediately prior to the hearing because the record is closed.
- The best place for Diavik to include adjustments or commitments in response to issues raised by interveners is in Diavik's response to interventions.
- If a specific issue evolves and intervenors want to update the Review Board during the hearing, they can do that.



Question about commitments. Review Board staff explained that the Board tracks developer's commitments and considers them in its EA decision making. Diavik provided lists of commitments in each section of the Summary Impact Statement. Diavik may add to or refine commitments as a result of what they hear from interveners during the hearing phase.

6. Hearing details

- i. Each group will make a single presentation each day based on the topics on the agenda for that day
- ii. Important to prioritize questions
- iii. Suggestions for hearing presentations

Present on what you think will happen, how it will happen, why it is important, and what you would do about it. Focus on your most important conclusions and recommendations. Practicing your presentation is helpful. The chairperson will manage time at the hearings and will need to allow time for interpreters to keep up.

- iv. Dates and locations

Hearings are scheduled for Sept 3-6 starting with a community hearing in Behchokò, then a community hearing Dettah, then two days of technical hearings in Yellowknife.

These dates and locations are now final barring any major conflicts that are brought to staff's attention today. They will be updated in the workplan on July 10th (PR#89).

Community hearings are typically in the afternoon and evening and supper will be provided.

- v. Additional hearing details that will be worked out later:
 - Review draft agenda for each day
 - Finalize topics
 - Discuss representatives and numbers
 - Discus time allotments for presenting and questioning

7. Other topics:

TG asked about a workshop on terminology/translation prior to the community hearings. Review Board staff confirmed that they usually meet with the interpreters briefly before each hearing. Board staff normally work with the host community to set the agenda and details for community hearings. Intervenors can also contact Board staff to discuss the need for interpreters at the hearings. A larger interpreters and terminology workshop is being planned for later this year, outside of this EA process.

Diavik confirmed that they are available if anyone wants to discuss anything.



Upcoming dates and deadlines:

Deadline for applying to be intervenors – July 19

Site visit - July 24

- Paperwork must be submitted by July 12
- Steel-toed boots required, Diavik will provide other PPE on site

Interventions - August 1

Developer response - August 22

Intervener's hearing presentations - August 27

Developer's hearing presentation - August 30

END