



July 16, 2007

Sent By [Hand Delivery/Facsimile/Courier/Electronic Mail]

Mackenzie Valley Environmental Impact Review Board
Suite 200, Scotia Centre, 5102-50 Avenue
Box 938, Yellowknife, NT
X1A 2N7

**Attention: Mr. Martin Haefele
Environmental Assessment Officer**

Dear Mr. Haefele:

**Re: Gahcho Kué Diamond Mine Project – EIR0607-001
De Beers Canada Mining Inc.
Comments on Draft Environmental Impact Statement Terms of Reference**

On June 1, 2007, the Mackenzie Valley Environmental Impact Review Board released the *Draft Terms of Reference for the Gahcho Kué Diamond Mine Environmental Impact Review EIR0607-001* (“Draft TOR”) for review and comment. This letter provides De Beers Canada Inc.’s (“DBC”) comments on three primary areas of concern, as well as specific sections of the Draft TOR. It is our understanding that these comments, along with those of other parties to the Environmental Impact Review (“EIR”) process, will be considered by the Environmental Impact Review Panel (the “Panel”) for the proposed Gahcho Kué Diamond Mine Project (the “Development”) in the finalization of the TOR.

DBC would like to note that these comments are provided with the intent of suggesting improvements to the Draft TOR that it believes will bring greater certainty, clarity and efficiency to the EIR process. DBC believes this will be of benefit to the Panel and all parties to the EIR process.

A. Primary Areas of Clarification and Comment

Section 1.3 Approach

(i) Comment

The Draft TOR directs that the Environmental Impact Statement (“EIS”) be organized to directly address the key lines of inquiry and subjects of note issues (Category 1 and 2 issues) that were

previously identified in public engagement sessions. This discussion is described as “holistic” and is intended to promote ease of use and understanding of EIS information related to specific identified issues of public concern. At present, the expected level of information to be reported in the EIS will be over 1,000 pages of text.

DBC supports an efficient and effective review process for the proposed Development and believes the TOR represent an important step in providing certainty in the EIR process. It would be impractical to require all of this data to be duplicated or reformatted so that it appears in two stand-alone or mutually exclusive documents. DBC believes that the presence of two separate documents that addresses the same information would create a delay in the preparation and review of the EIS, as well as create confusion among reviewers and the public as to which document represents the Development to be reviewed in the EIR process. There is also concern that two separate EIS documents would double the time and effort spent reviewing the EIS. Further, two separate EIS document has the very real potential of not only increasing the number of information requests in the EIR process, but also of adding substantial additional time requirements to important activities in the EIR process such as the GAP Analysis Sessions and Technical Sessions.

(ii) Recommendation

DBC recommends an approach to the EIS format that combines the conventional presentation of information with an issues-based presentation of information. The conventional presentation of information would include, among other things:

- introduction;
- project description;
- engagement;
- effects analysis, mitigation and monitoring by valued component; and
- conclusion.

With respect to the issues-based approach, DBC recommends a separate document of approximately 200 pages that responds to the key lines of inquiry and subjects of note and tells a holistic story of the effects of the proposed Development. However, this separate issues-based document would refer to information in the more comprehensive conventional document. DBC believes that this approach would minimize the delays and confusion associated with extensive duplication, and would provide a holistic story that would be open to analysis by Aboriginal communities and traditional knowledge holders.

Section 3.1.2 Development Description

(i) Comment

The use of the terms “alternatives to” and “alternative means of” in the Draft TOR is at times unclear, as well as what the Panel is proposing as requirements for discussion of these issues in the EIS.

(ii) Recommendation

DBC recommends that the Final TOR confirm that the information requirements and level of analysis concerning alternatives *to* the Development and alternative *means of* carrying out the Development are not intended to depart from the requirements set out in subparagraphs 117(2)(e) and 117(3)(b) of the *Mackenzie Valley Resource Management Act* S.C. 1998, c. 25 (“MVRMA”).

The Draft TOR should also state that the analysis of alternatives *to* the Development is meant to be a discussion of the need for the Development and any functionally different ways to meet the Development need and achieve the Development purpose, as opposed to a discussion of alternatives to the Development by which the Northwest Territories (“NWT”) and its residents could achieve comparable benefits.

Further, while DBC can provide a discussion of why certain potential alternative means of carrying out the Development were ultimately determined to be either not economically or technically feasible within the Development description, DBC recommends that the Final TOR confirm that only the alternative means chosen for carrying out the Development are to be assessed in the EIS.

Section 5.13 Aboriginal Rights and the Interconnectedness of Issues

(i) Comment

At the bottom of this section, there is a statement that “[w]hile the responsibility for consultation on aboriginal rights rests with the [C]rown, as represented by the Department of Indian Affairs and Northern Development, procedural aspects of this consultation may be delegated to organizations such as the Panel or the developer (Supreme Court, 2004).”

DBC is concerned about the potential implications of this statement. In DBC’s view, DBC is not the proper party to fulfill Crown consultation obligations. DBC does, however, want to assure the Panel that as part of its community engagement program for the Development, DBC is and will continue to fully engage with Aboriginal communities in the Development area to both ensure such communities have a full understanding of the proposed Development, and to fully understand and respond to their concerns with mitigation measures. DBC also believes that the EIR process would benefit from improved certainty as to the type of information DBC will be expected to provide in the EIS with respect to its community engagement program.

(ii) Recommendation

DBC recommends the removal of Section 5.13 as currently worded. Instead, DBC believes it would be helpful if the Final TOR contained the following list of information that will be required from it regarding its community engagement activities:

- Identification of the Aboriginal communities that may be affected by the proposed Development and how they were identified;
- When and how Aboriginal communities were contacted, including the names of community members contacted;
- Evidence that a development overview was provided that clearly explains the nature of the proposed Development, possible environmental and socio-economic impacts, and information regarding proposed measures to minimize such impacts;
- Documentation and summaries of any meetings with potentially affected Aboriginal communities, including any Crown consultation activities of which DBC is aware of or has been invited to attend;
- Information as to the concerns raised by Aboriginal people, and whether or not those concerns are still outstanding or have been addressed; and
- An analysis of the potential impacts of the proposed Development on the exercise of traditional practices such as hunting, fishing, trapping and gathering.

B. Specific Comments on Individual Sections of the Draft TOR

DBC provides the following comments on individual sections of the Draft TOR:

Section 1.4 Definitions

(a) “Community”

(i) *Comment*

The definition of “community” as it is used in the Draft TOR appears to be used inconsistently throughout the document and could potentially be interpreted to be excessively broad in scope.

For example, the term “community” is defined in the Draft TOR to be inclusive of not only a geographic settlement (such as a town or village), but also appears to include people that form part of a “community” who do not necessarily reside in the specific geographic location. Moreover, the description of “community” found on page 7 of the Draft TOR is somewhat different and seems to only include people residing in a specific location. In terms of cultural and social impacts, the area to be studied includes (but is not limited to) all communities in the T’licho and Akaitcho regions. Communities in the T’licho and Akaitcho regions include First Nations and Métis residing in any of the cities, town or settlements in the respective regions. Further, at page 22 of the Draft TOR “community” is qualified by the words “for each potentially affected” community.

DBC agrees that the term “community” gives rise to both biophysical and human/socio-economic attributes that must properly be considered in the EIS. However, DBC is concerned with the breadth of the proposed definition and its apparent inconsistent use in the Draft TOR.

For example, it is not clear whether human/socio-economic attributes of “community” members residing in other geographic centres in Canada that are not proximate to the proposed Development location are included in this definition, and thus applied to the context in which the term “community” is used in the EIS. DBC is also concerned that the Draft TOR will require DBC to make qualitative judgment decisions as to who is and who is not a member of a community when there are differing views on this issue.

(ii) Recommendation

For the sake of greater certainty in the EIR process, DBC recommends that instead of the term “community,” the term “regional study area” be used and be defined as being comprised of “those communities geographically proximate to the proposed Development that may be potentially affected,” and that the defined term be used consistently throughout the Draft TOR.

(b) “Cumulative Impacts”

(i) Comment

DBC is concerned with the breadth of the “cumulative impacts” definition found in the Draft TOR and requests further clarification of this term. While DBC will be able to discuss past, present and reasonably foreseeable future activities that may relate to the proposed Development, DBC cannot be expected to take into account uncertain or hypothetical projects.¹ DBC is prepared to include those reasonably foreseeable future developments for which there is the requisite degree of certainty available for inclusion in a cumulative effects assessment. This may include those reasonably foreseeable projects for which an application “for a permit, license or other authorization has already been made”; however, DBC cannot be held to an unreasonable standard of being required to discuss proprietary and/or commercially sensitive information regarding projects that are not in its possession or in the public domain.

(ii) Recommendation

DBC recommends that the definition of “cumulative impacts” confirm that, while reasonably foreseeable future developments are not limited to those for which an application for a permit, licence or other authorizations has already been made, a cumulative effects assessment does not include speculative or hypothetical projects and cannot be expected to consider proprietary and/or commercially sensitive information or projects that have not been publicly announced.

(c) “Sustainability/Sustainable Development”

(i) Comment

DBC understands this discussion outlines the approach that the Panel intends to adopt when considering the sustainability and sustainable development concepts during the EIS process.

(ii) Recommendation

¹ *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, [2001] 2 F.C. 461 (C.A.).

Given the subject matter of this definition, DBC believes it may be more appropriate if this discussion was located under the heading “1.3 Approach” given that the intent is to not define the terms “sustainability/sustainable development,” but rather to explain how these concepts will be considered in the EIS process.

(d) Traditional Environmental Knowledge

(i) Comment

Similar to the views expressed above under item “1.4(c)”, DBC is concerned that the discussion provided for “Traditional Environmental Knowledge” is not intended to define the term, but rather is meant to describe the approach that the Panel intends to take to incorporate Traditional Environmental Knowledge into the EIS.

(ii) Recommendation

For the reasons outlined above under item “1.4(c)”, DBC believes that the discussion of Traditional Environmental Knowledge should be located under the heading “1.3 Approach.”

Section 2.1 Development Scope

(i) Comment

DBC understands that the scope of the Development is to take into account DBC’s *Application Report* filed with the Mackenzie Valley Land and Water Board in 2005 (the “2005 *application Report*”). However, the description of Development Scope in Section 2.1 of the Draft TOR states that the scope of the Development is not limited to that described in the 2005 *Application Report*, and that the Panel may alter the scope of the Development to include any alternatives to the Development or of individual components of the Development proposed during the EIR that are intended to achieve the same ends.

While DBC acknowledges the appropriateness of considering alternatives to and alternative means of carrying out the Development, DBC is concerned that Section 2.1 of the Draft TOR could be interpreted to mean that the Development scope can be altered at any time during the EIR process. If alterations are permitted throughout the EIR process, it is not clear what the implications of such changes would be on the assessment analysis undertaken and presented in the EIS.

(ii) Recommendation

DBC recommends that the Final TOR confirm that consideration of alternatives to and alternative means of carrying out the Development will not be used to alter or vary the scope of the Development or its environmental assessment midstream during the EIR process. The Final TOR should be clear in its expectations of information to be provided by DBC, and should not leave the impression that such requirements may be altered.

Section 2.2.3 Summary

(a) Scope

(i) Comment

Table 2-1 provides a summary of the key attributes comprising the scope of the assessment proposed for the Development. The description found in this section states that the scope of the assessment may be altered as more information is made available to the Panel.

For similar reasons discussed above in DBC's comments on Section 2.1, DBC is concerned that the contemplation of interim or midstream modifications to the scope of assessment would create uncertainty in the overall task of preparing the EIS documentation. While DBC understands changes in circumstances and new facts may arise as the EIR process proceeds, and that this may have bearing upon the Panel's ultimate determinations, only in the rarest of circumstances is it reasonable for such new information to cause material changes to the scope of assessment upon which the EIS is based. Lack of certainty over the scope of the assessment for the Development causes DBC concern over being able to determine whether the level of data collection and subsequent analytical tasks undertaken to prepare the EIS will be sufficient to address the informational requirements necessary for the Review Panel to fulfil its mandate

(ii) Recommendation

DBC believes that the EIR process and preparation of the EIS would benefit from clarifying this potential uncertainty by confirming the scope of the assessment expected of DBC in respect of the entire Development EIR process. DBC believes this would have the benefit of both reducing the risk for requiring substantive variations to the work required of DBC in preparing the EIS, and ensuring the EIS provides the information required by the Panel.

(b) Geographic Extent

(i) Comment

Regarding the reference to "Caribou ranges" found at Table 2-1, DBC is concerned that this references a requirement to assess the impacts of caribou throughout their entire range. The Beverly-Qamanittuaq herd ranges as far to the east as Baker Lake, and south to communities in northern Manitoba and Saskatchewan.

(ii) Recommendation

Accordingly, DBC recommends that the geographic extent meant to be covered by the EIS be clarified in the Final TOR to mean only the zone of influence to be ultimately explained in the EIS concerning the geographic area where there is the potential for impacts on the Beverly-Qamanittuaq herd due to the proposed Development, including the cumulative impact contribution of the proposed Development. To that end, DBC suggests using language similar to that used at section 4.4.2 of the MVEIRB *Reasons for Decision and Report of Environmental Assessment for the DeBeers Gahcho Kué Diamond Mine, Kennedy Lake, NT* (June 28, 2006),

i.e., “For impacts on caribou, the geographic area affected includes (but is not necessarily limited to) the vicinity of the mine site, the access road from Mackay Lake, and the Tibbit to Contwoyto Road up to the start of the access road at Mackay lake.”

Section 3 General Information Requirements

DBC is pleased that the Panel and its staff are amenable to establishing an ongoing dialogue to address questions or clarifications regarding EIS content requirements and the level of detail required. DBC expects that such an approach will foster a more productive and efficient EIR process for all parties involved. While a written process is proposed to address questions of clarification, DBC also encourages the Panel and its staff to use technical meetings and conferences so that an effective dialogue process can be established. This approach appears to be consistent with what the provisions of section 4.2 of the Work Plan.

Section 3.2.3 Significance Determination (“Nature of the effect”)

(i) Comment

While DBC recognizes that significance determination is a subjective exercise, DBC is concerned that the passage in this section concerning “*Nature of the effect*” and examples provided represents a potential departure from well-established significance determination methodology. In particular, DBC is concerned that the methodology suggested in this passage ignores the consideration of mitigation measures in significance determination, and suggests something different from the usual significance determination test (i.e., that to meet the test for impact significance, after considering mitigation measures, the impact must still be likely, adverse *and* significant). In other words, it appears that the examples provided in this discussion do not recognize that potential significant impacts can cease to be significant through the employment of appropriate mitigation measures, or that an impact that is unlikely to occur cannot be significant.

(ii) Recommendation

1. Remove the example of catastrophic failure of a dyke because DBC will only be designing dykes to meet or exceed dam safety requirements; therefore, this example is not relevant.
2. Clarify the definition of “Nature of the effect” as a criterion that not only considers the importance of the valued component, but also considers mitigation measures, the likelihood of the impact occurring, whether the impact on the valued component would be adverse, and the significance of the impact.

Section 3.2.3 Uncertainty Analysis

(i) Comment

At page 13, the Draft TOR requires the EIS to “address and verify the success of any previously employed mitigation measure it proposes.” DBC is concerned about the level of detail that may be required to address this requirement.

(ii) Recommendation

DBC recommends that this requirement be amended to reflect a requirement that DBC only provide information it has collected on previously employed mitigation measures, and that DBC provide information on how DBC’s proposed mitigation measures will integrate and improve upon past learnings. The responsibility for assessing the effectiveness of mitigation measures used at other mines is the mandate of others.

Section 3.2.4 Valued Components

(i) Comment

At page 13 there is a requirement specifying that “where key lines of inquiry or subjects of note are not used as valued components in their entirety, the EIS must provide a rationale for doing so.” DBC understands this requirement to simply be asking for a rationale as to why certain valued components are chosen over others. However, DBC is unclear about the qualification of “in their entirety.” It is also not apparent why the Panel would consider the following key lines of inquiry and subjects of note to be valued components, in whole or in part:

- Long-term biophysical effects and closure issues;
- Increasing social disparity;
- Waste rock and processed kimberlite;
- Climate change impacts;
- Closure and Reclamation;
- Infrastructure demands; and
- Alternative Energy Sources.

(ii) Recommendation

DBC recommends that the qualification “in their entirety” be removed from this sentence to confirm that all DBC is being asked to do is provide a rationale for the valued components selection to be used in the EIS.

Section 3.2.6 Alternatives

(i) Comment

The second sentence in this section states that “the environmental impact statement should use the development as described in the *Application Report* as the baseline case for predicting impacts and determining significance of alternatives.” DBC is concerned that this statement as currently drafted may cause confusion in the EIR process because discussions between the Development’s environmental team and project engineers have progressed since the Development design outlined in the 2005 *Application Report*. In particular, this has resulted in design improvements that have been made to reduce environmental impacts and are now an integral part of the design.

(ii) Recommendation

DBC recommends that this statement be clarified to instead focus the assessment on the most current Development description. DBC is prepared to clearly identify the main changes to the Development description that have occurred since the 2005 *Application Report* was prepared.

Section 3.2.7 Follow-Up Programs

(i) Comment

At the bottom of page 14, the Draft TOR requires a review of relevant research and monitoring activities since the first diamond mine was permitted in the Slave Geological Province. This review requires the verification of impact predictions and the effectiveness of mitigation measures proposed in previous diamond mine environmental impact assessments. However, DBC is concerned about being required to report on information that may not be available.

(ii) Recommendations

DBC recommends that this requirement be clarified so that it is only required to undertake reasonable efforts to determine what information is available, to integrate that information into the EIS, and to report back on its findings. The responsibility for assessing the effectiveness of follow-up programs used at other mines is the mandate of others.

Section 4.1 Caribou

(i) Comment

This section provides at the last sentence of the last bullet on page 18 that, “Management strategies that may be employed in situations where observed effects cannot be linked to the proposed development should be considered as well.” DBC is concerned that this statement is unclear and could be interpreted to require it to include management strategies for impacts that are not related to the Development.

(ii) Recommendation

DBC recommends that this passage either be deleted, or clarified to limit its scope to impacts that can be demonstrated to be related to the Development. DBC believes this would be more in accordance with the requirement of subparagraph 117(2)(a) of the MVRMA that the EIR of a proposal consider “the impact of the development on the environment.”

Section 4.5 Substance Abuse and Decrease in Family and Community Cohesion

(i) Comment

The last paragraph of this section on page 22 states that, “To the extent possible the EIS should outline how the developer might facilitate a cooperative approach to social problems, which may or may not be related to the proposed development.” Notwithstanding the disclaimers that precede this statement, i.e., “The Panel realizes that the developer cannot be expected to solve pre-existing social problems, such as substance abuse or domestic violence, through the proposed development,” DBC is of the opinion that it would be inappropriate for it to “facilitate the solution of social problems.” While DBC will address in its EIS those social impacts that are attributable to the Development, it is beyond its responsibility and capacity as a mining exploration and development company to do work that DBC believes is the responsibility of government health and social services agencies, among others.

(ii) Recommendation

DBC suggests that the above-mentioned sentence be replaced with the following: “To the extent possible the EIS should outline how DBC might cooperate with government health and social services agencies or other parties to address social problems that may be related to the proposed Development.”

Section 5.10 Infrastructure Demands

(i) Comment

In this Section DBC is being encouraged to identify innovative solutions to infrastructure and capacity issues that may be outside DBC’s purview. DBC also notes that while it is being encouraged to provide innovative solutions to infrastructure and capacity issues, it is not required to do so.

While DBC is prepared to propose mitigation measures as they relates to the proposed Development, it is beyond its responsibility and capacity as a mining exploration and development company to do work that DBC believes is the responsibility of government agencies such as addressing regional infrastructure and capacity issues.

(ii) Recommendation

DBC suggests that this section only require that, to the extent possible, the EIS outline how DBC might cooperate with government agencies to address infrastructure and capacity issues that may be related to the proposed Development.

Section 6 Cumulative Effects Assessment

(i) Comment

The last paragraph in this section states that, “It (a stand alone section on cumulative effects) must provide sufficient information to allow the Panel to evaluate the significance of the proposed development’s overall cumulative impact on the environment, without having to refer to other sections extensively.”

DBC requests clarification on two aspects of his statement:

1. First, a project does not have a cumulative effect on the environment. A project may contribute to a cumulative effect and usually a developer is required to identify areas where a proposed project can contribute to cumulative effects and to evaluate the project’s contribution, as well as the overall cumulative effect.
2. An overall “cumulative impact on the environment” is not something that can be determined. The cumulative impact on specific valued components (e.g., caribou) can be combined into an analysis or statement of overall cumulative impact. DBC submits that any attempt to do so would be highly subjective and of limited value.

(ii) Recommendation

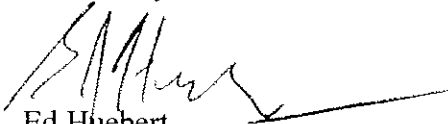
Accordingly, DBC recommends that the requirements included in this section be clarified to reflect well-established use of the above terminology.

Conclusion

The Draft TOR represent an important step in providing certainty and clarity as to the information requirements and expectations associated with the preparation of the EIS. DBC’s comments are intended to promote greater certainty and clarity for the benefit of all parties involved, and contribute to a timely and expeditious process. We trust the Panel will carefully consider the above suggestions and requests for clarification in its deliberations over the issuance of Final TOR.

Should you require further information on any of the comments above or have any questions, please contact the undersigned at (867) 766-7322.

Yours truly,



Ed Huebert
Manager, Environmental Affairs
NWT Projects