

EA1819-01

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

April 29, 2019

To: All parties to EA1819-01

Re: Review Board Information Requests to Parties

The Mackenzie Valley Environmental Impact Review Board (Review Board) is conducting an environmental assessment on a proposal by Diavik Diamond Mine Inc. (Diavik) to put and store processed kimberlite in pits and underground mine workings. At closure, these pits and underground mine workings would be flooded with freshwater and reconnected to Lac de Gras.

Several Indigenous governments and organizations use the Lac de Gras area for cultural and traditional purposes, and are involved in this environmental assessment. Diavik's proposed activities are also relevant to the mandates of several different regulatory bodies and resource managers and the Environmental Monitoring Advisory Board.

The Review Board has already issued information requests to the developer.¹ In this letter to parties, the Review Board is issuing information requests to several parties to this environmental assessment, including:

- Deninu K'ue First Nation
- Fort Resolution Métis Council
- Kitikmeot Inuit Association
- Lutsel K'e Dene First Nation
- North Slave Métis Alliance
- North West Territories Métis Nation
- NWT Treaty 8 Tribal Corporation – Akaitcho IMA Implementation Office
- Tłı̨chǫ Government
- Yellowknives Dene First Nation
- Environment and Climate Change Canada
- Environmental Monitoring Advisory Board
- Government of the Northwest Territories
- Fisheries and Oceans Canada
- Transport Canada

¹ Please see: http://lwbors.yk.com/LWB_IMS/ReviewComment.aspx?appid=12715.



The Review Board requires information from parties to help describe and evaluate the potential adverse impacts of this project on the environment and people. Specifically, the Review Board seeks information from Indigenous governments and organizations on how this project might affect Aboriginal well-being and way of life through impacts on cultural use of the area, as it is required under section 115 (1) (c) of the *Mackenzie Valley Resource Management Act*. The Review Board is also asking all parties about their views on closure options. Finally, the Review Board is issuing information requests to regulatory bodies and resource managers to understand the regulatory mechanisms that are relevant to the proposed activities.

The Review Board hopes that responses to these information requests will help it understand the potential impacts of the project. This improved understanding will also help Diavik identify mitigations or closure options to reduce impacts to cultural use of the area and enable the Review Board to reach the best environmental assessment decisions possible. The Review Board wishes to emphasize its commitment to fully consider any and all relevant Traditional Knowledge that it receives through the course of this environmental assessment.

The Review Board requires responses to these information requests by **June 13, 2019**.² The Online Review System will not be used for information requests to parties, since it cannot receive responses from multiple sources. Instead, the Review Board would appreciate responses as letters in PDF format, so they may be posted to the [Public Registry](#).

Contact Information

Please direct your information request responses and any questions about this environmental assessment to Kate Mansfield (867-766-7062, kmansfield@reviewboard.ca) or Catherine Fairbairn (867-766-7054, cfairbairn@reviewboard.ca).

² If your group is unable to respond by this date, please contact Review Board staff as soon as possible. Please also see the Review Board's late submission policy online here: http://reviewboard.ca/file/918/download?token=1paN_QNP.



Information Request 1: Potential impacts to cultural use of Lac de Gras Area

Directed to all Indigenous governments and organizations

Deninu K'ue First Nation, Fort Resolution Métis Council, Kitikmeot Inuit Association, Lutsel K'e Dene First Nation, North Slave Métis Alliance, North West Territories Métis Nation, NWT Treaty 8 Tribal Corporation – Akaitcho IMA Implementation Office, Tłı̄chǫ Government, Yellowknives Dene First Nation

Preamble:

As described in the 1999 *Comprehensive Study Report* for the Diavik Mine, "(t)here is wide-spread concern that traditions and customs are not practiced as they once were, contributing to a lack of common understanding and connection, of shared beliefs and values" (PR#29)³. The *Comprehensive Study Report* also states "[t]he land gives a sense of place and identity, provides the context for expression, shapes values and beliefs, and influences customs and practices". The Review Board understands the importance of land and the continuation of cultural use to Indigenous wellbeing. The Review Board also heard during scoping that potential impacts of the project on cultural use should be carefully considered.

The current closure plan for the Diavik Mine is to fill the empty pits and underground mine workings with freshwater and reconnect them to Lac de Gras once water quality is safe for aquatic life, fish, and fish habitat. The Review Board is assessing the impact of adding processed kimberlite to the pits and underground mine workings before they are filled with freshwater and reconnected to Lac de Gras.

Questions:

1. Please describe how your group used the Lac de Gras area culturally (including the hunting, fishing, trapping, gathering, and travel) before mining started there.
2. Please describe how your group would use and feel about the Lac de Gras area under the following scenarios:
 - a. reconnecting empty pits and underground mine workings with Lac de Gras at closure (that is, Diavik's *current* closure plan for the mine),
 - b. putting processed kimberlite into the pits and underground mine workings before reconnecting them to Lac de Gras (that is, the proposed activities for this environmental assessment),
 - c. putting processed kimberlite into the pits and underground mine workings and not reconnecting them with Lac de Gras.

³ "PR#" refers to public registry number. Each document on the public registry for this environmental assessment is given a unique public registry number. The public registry can be viewed online at <http://reviewboard.ca/registry/ea1819-01>.



Information Request 2: Closure options

Directed to all parties:

Deninu K'ue First Nation, Fort Resolution Métis Council, Kitikmeot Inuit Association, Lutsel K'e Dene First Nation, North Slave Métis Alliance, North West Territories Métis Nation, NWT Treaty 8 Tribal Corporation – Akaitcho IMA Implementation Office, Tłı̨chǫ Government, Tłı̨chǫ Government, Yellowknives Dene First Nation, Environment and Climate Change Canada, Environmental Monitoring Advisory Board, Government of the Northwest Territories, Fisheries and Oceans Canada, Transport Canada

Preamble:

The current closure plan requires Diavik to reconnect the flooded pits and underground mine workings to Lac de Gras once water quality is deemed to be acceptable. Once reconnected, the pits can function as fish habitat. Under the current proposal, some of the pits that would be reconnected with Lac de Gras to serve as fish habitat would contain processed kimberlite.

Questions:

1. When determining if the pits should be reconnected to Lac de Gras at closure, is water quality in the pit lake the only criteria that should be considered?
2. If not, please describe what additional criteria for re-connection should be considered.



Information Request 3: Conformity with Fisheries Act Authorization

Directed to:

Fisheries and Oceans Canada (DFO)

Preamble:

In the first round of information requests in the concurrent water licence amendment process for Diavik's proposed activities (PR#22), DFO indicated that "the proposed water licence amendment changes the intended use of the A418 pit from the original approved plan and Fisheries Act Authorization SC980001 under section 35(2) of the Fisheries Act." According to a letter written by Diavik, DFO again raised this concern in the Wek' èzhii Land and Water Board pre-hearing conference (PR#20). In this letter, Diavik outlined its reasons for believing that putting processed kimberlite into pits and underground mine workings and then reconnecting these pits to Lac de Gras at closure does not conflict with the conditions of its Fisheries Act Authorization.

DFO's IR-2 from the first round of review of Diavik's water licence amendment application (PR#22) states that "any changes to the level of serious harm (referred to as HADD under the previous Fisheries Act) resulting from the proposed water licence amendment or from modifications to the accounting in the existing No Net Loss Plans, will require separate offsetting and consideration by DFO." In its response, Diavik committed to "working directly with DFO to review and document the accounting of habitat gains or losses and associated offsetting as required under SC980001" (Diavik's Fisheries Act Authorization).

Additionally, section 2.5.2.3 of version 3.2 of Diavik's *Interim Closure and Reclamation Plan* (PR#8) indicates that, for the A21 pit lake, "if water quality within the dike area is unacceptable, Diavik shall submit a revised Compensation Plan (within six months of the unacceptable water quality results) for habitat compensation within the A21 area of Lac de Gras before implementing compensation efforts within the dike".

Based on this information, it appears that the potential for not reconnecting the pits to Lac de Gras has already been contemplated and can be allowed for by updating the accounting and compensation required by the *No Net Loss Compensation Plan*.

Although DFO raised the issue that depositing and storing processed kimberlite in the pits and mine workings "changes the intended use of the A418 pit from the original approved plan" in the concurrent water licence amendment process and not in this environmental assessment process, the Review Board seeks to understand more about DFO's position on this matter.



Question:

1. Please elaborate on and explain DFO's position that the deposition of processed kimberlite into the pits change the "intended use" of the A418 pit from the original approved plan and Fisheries Act Authorization.
2. Please describe if and how changing the "intended use of the A418" pit (that is, by storing processed kimberlite in it) relates to the potential for significant adverse impacts to water, or fish and fish habitat.



Information Request 4: Considerations related to Environment and Climate Change Canada's mandate to authorize the deposition of deleterious substances

Directed to:

Environment and Climate Change Canada

Preamble:

Under subsection 36(4) of the *Fisheries Act*, Environment and Climate Change Canada has the mandate to authorize the deposition of deleterious substances.

Questions:

1. Would putting processed kimberlite into mine workings require authorization by Environment and Climate Change Canada under section 36 of the Fisheries Act?
2. If processed kimberlite is deposited into the mine workings, would re-connection to Lac de Gras at closure be affected by any authorization made under section 36 of the Fisheries Act?



Information Request 5: Applicability of Metal and Diamond Mining Effluent Regulations

Directed to:

Environment and Climate Change Canada

Preamble

Environment and Climate Change Canada is mandated to enforce the *Metal and Diamond Mine Effluent Regulations*, under the *Fisheries Act*.

Questions:

1. Please confirm if the deposition of processed kimberlite into mine workings, or the reconnection of the mine workings to Lac de Gras, would be subject to the *Metal and Diamond Mine Effluent Regulations*.
2. If yes, please describe the authorizations that would be required and any conditions that would apply based on those authorizations.



Information Request 6: Navigable Waters Permit requirements

Directed to:

Transport Canada

Preamble:

Diavik has a Navigable Waters Permit (DFO Canadian Coast Guard 2000). According to section 2.5.2.5 of version 3.2 of Diavik's *Interim Closure and Reclamation Plan (PR#8)*, the following requirements must be met before final closure and reclamation of the enclosure dikes and open pits: (1) all internal fish habitat reefs shall be placed a minimum of 2m depth from lower water, and (2) dike breaches shall be 30m wide and minimum 2m depth from low water.

Question:

1. If re-connection of the pits with Lac de Gras is not desirable or achievable based on observed water quality in the pits, please describe what impact this will have on Diavik's Navigable waters permit.