

MV2005C0032 - DeBeers Gahcho Kue

YKDFN has previously reviewed many of the elements of this plan in the past and the same comments remain. Though this edition has improvements in structure and somewhat improved linkages, the principal, and ultimately crippling limitation, is that the commitments listed in Table 1-1 remain largely unfulfilled. Past experience has shown YKDFN to expect this with unenforceable commitments from industry, but we expected better with regards to the Measures and follow up programs required by the MVEIRB Review Panel.

YKDFN has had limited time and resources to review the document, but the deficiencies are readily apparent and it is frustrating to restate the same issues as were noted in previous iterations. All things considered, YKDFN recommend that the Board reject this submission, providing clear statements that the project must achieve the minimum requirements set forth by the MVEIRB Review Panel. Further to that direction, we believe the Board should make it plain that the project is not able to change or modify the measures as they choose – the Panel carefully considered its decision and had its reasoning to direct the project to implement the Measures that they set out. It is not for us to apply modifiers or contingencies to that direction.

YKDFN believe that the Land and Water Board should require the project to fully adhere to its commitments as well. The Ministers provided First Nations with clarity that their decision was based on the implementation of these commitments. Thus, the failure to do so introduces uncertainty and potential unforeseen effects that the Responsible Ministers did not contemplate.

Measure 1:

- *Minimize impacts to caribou and the extent of the zone of influence around the mine site to the extent that is technically feasible.*

The project states that this is completed by the material in section 4 (Mitigations). It is clear that this section contains some mitigations, but it fails to live up to the spirit of the Measure's wording. For example, natural re-vegetation (section 4.1) is not equivalent to actively re-vegetation – which has been shown to be *technically feasible* at other sites. Secondly, the nature of 'minimizing' impacts requires that the project seek to demonstrate that it is acting to do so. It is insufficient to simply state that they will allow plants to re-grow, water the roads and not run over wildlife and call that the 'extent that is technically feasible'.

Lastly, section 4 provides little to no demonstration that the project is minimizing the zone of influence relative to other operational methods that could potentially be employed. Just because the project says that this is the best way doesn't necessarily make it so – they must look at the causal impacts and see to address the matter.

- *Prior to Construction develop a caribou protection plan that ensures protection of caribou and caribou habitat. The caribou protection plan should include an adaptive management framework demonstrating how the WEMP and the WWHPP are linked.*

The project has summarily decided that they do not need to produce a caribou protection plan as the Review Panel stated. Unfortunately for De Beers, as we saw during the Snap Lake

Environmental Assessment(s), the wording that the Review Board provided is quite specific and the company does not possess the ability to unilaterally alter it regardless of their rationale. Thus, the company must produce a *Caribou Protection Plan* that, at a minimum, meets the requirements set forth by the Review Panel. Were this not so, Snap Lake could have sought an amendment for its TDS from just the LWB. De Beers should understand this given recent history.

In terms of the Review Panel's requirements, the plan submitted still fails to achieve the Panel's desire. The WWHPP finally has an adaptive management approach where management is linked to action levels, presumably achieved through monitoring. However, there are no clear linkages between the WWHPP and the WEMP and how this interchange will function.

While YKDFN compliment and support the projects approach to adaptive management, it remains narrowly defined and insufficient. For example, in section 6.1.3.1 the project asserts that because the public has access to the winter road, it cannot set action levels. We recall the projects position in the Environmental Assessment that public traffic in the area would be minimal. In addition, there seems to be no limitation for the project to set action levels on its own contractors, haul trucks servicing the project and De Beers owned vehicles. With these two facts it seems that there is nothing that prevents De Beers from acting on the monitoring data it gathers and adaptively responding. YKDFN believes that this is the purpose of the monitoring effort required by the Review Panel – we do not think that they had any intention of the project monitoring for monitoring sake.

Measure 2:

- *Construct and operate the winter access road in a way that minimizes its adverse effects as a partial barrier to movement and migration.*

The project notes that this is achieved through the actions discussed in section 5.3.1, a winter reconnaissance survey. To review, this will consist of a single flight prior to the commissioning of the winter road.

It is ludicrous to suggest that the project can meet the Review Panel's measure with a single day of flying. YKDFN believes that the Board should demand a Gahcho Kue representative attend their next meeting and explain how they will achieve this result with this effort. If De Beers staff or their Golder consultants can convince the Board that a single flight can achieve this requirement in a scientifically defensible manner, YKDFN will have faith in the board decision.

Our simple, non-technical review has lead us to wonder how they can possibly determine if they are operating the road in a way that minimizes adverse and barrier effects if they only fly the road *prior to its operation*. Once we collectively move past that fallacy then perhaps the project can begin to treat the Review Panel's recommendations with the esteem that they deserve. They represent years of collective effort and the decision of a panel of venerated and experienced northerners and to see their decision responded to with such a trite and obviously ineffective implementation plan is not helpful – the Measure is designed to help mitigate potentially significant impacts. The project clearly doesn't believe that this is an issue – this was

their position at the EA. However, the Panel disagreed. As with Snap Lake where the Board put monitoring and adaptive mitigations in place, they do so for a reason.

- *Monitor to determine the presence and behaviour of caribou along the winter access road using means in addition to satellite collar data such as track counts and visual observations*

The project notes that this is achieved through the actions discussed in section 5.3.1, it seems clear that section 5.3.3 should have been included.

As the YKDFN have previously raised with the Board and the project, the approach fails to provide an understanding of the caribou behaviour relative to the road. First and foremost, the project has instituted a trigger for implementing the Board required actions. As presently envisioned, it cannot be triggered by the flight discussed in section 5.3.1.

The project has unilaterally declared that they will enact the Review Panel Measure only when 20 groups of caribou are observed along the road. A group of caribou remains undefined – and with the present population levels it's unlikely that the project definition of 20 'groups' will ever be triggered by road observation.

Lastly, given the limitations of road based observations (limited range, winter weather and darkness topography, drivers that should be focused on the road) YKDFN believe that there is a significant bias introduced into the detection of caribou. Thus, not only do we have the project applying an artificial trigger to the required behavioural work, but the trigger has a very strong bias towards non-detection. Finally, should the project collect information on the behaviour of animals in close proximity to the winter road, we have nothing to compare to – the animals are already in the impacted zone. During the EA, the project asserted a 1.5km zone of influence associated with the Winter Road – thus, they must collect information outside of that range as well so that the behaviours may be evaluated. This is one avenue towards demonstrating that the winter road is being constructed and operated in a manner that minimizes impact.

All YKDFN is recommending is for the project to apply the same best practices used at other operations in the territory. The project should be required to enact the same research protocols used at Ekati and Diavik. Not coincidentally, by doing so they would meet the requirements issued by the Review Panel.

- *Ensure that the caribou protection plan, the WEMP and the WWHPP address the effects on caribou movement and behaviour along the winter road.*

The project states that Section 5 will achieve this. Section 5 is 'monitoring' and YKDFN are not clear how monitoring addresses effects. As already stated: the monitoring effort is deficient and will not be able to detect any potential effects on caribou movement or behaviour and; the project has unilaterally decided that the Review Panel requirement for the Caribou Protection Plan isn't one that they're going to follow. Given this, YKDFN don't see how the project is complying with this portion of the Measure.

Measure 3:

- *Monitor project specific effects (eg size of the ZOI, changes in habitat, effects of the winter road on caribou movement and behaviour) and report to the GNWT and make the results public on how the project specific effects contribute to cumulative effects.*

The project notes that this is achieved through the monitoring actions discussed in section 5. We have already discussed the failures of this section towards meeting the stated Measures. In addition to those short coming already discussed, the failure to attempt to understand and address winter road ZOI represents another deficiency in this project's approach. Without knowing the distribution of caribou in and around the winter road – both within the predicted ZOI and beyond, we cannot know how the animals are responding to the disturbance. Though we will potentially have some data collected on those animals that approach the road, we will not know anything in terms of animals that avoided, refused or were deflected. The research design will not provide this information.

MVEIRB Panel Decision, Follow Up Program:

YKDFN has noted a number of deficiencies in the project response to the require follow up program:

- The action levels and management responses that exist within table 6-1 need to be re-considered:
 - o On page 42 the project identifies the management response of the project footprint exceeding the approved area is to ask for an amendment. YKDFN accepts that the industry perspective is to always move goalposts, but it would have been nice to see the project optimize its operations and live within its means rather than simply destroying more land.
 - o Similarly, if the progressive reclamation has failed to show progress the project will adjust the prescription (it is unclear what this means) or review the ICRP, likely with the intention of changing the endgoal.
- In table 6-2:
 - o The project commits to additional noise monitoring without providing a timeline. Additional clarity on how this will occur is required to ensure that environmental conditions and operations are similar.
 - o The action level for dust is not connected to the metric – the volume of water applied over the course of the year is not measured by a driver, nor is it an evaluation if the roads are 'dusty'. In any event, this subjective description is not a particularly useful action level – if possible it should be calibrated to a metric for pre-emptive controls (wind, recent precipitation and traffic loads could be contributors) with a second qualitative trigger.
 - o YKDFN are not clear how dust deposition will be utilized as an action level if it is collected ever 30 days and represents a rearward looking evaluation. This could be utilized to better calibrate prediction and the need for suppression, but its not clear how it will meet the objective/"management strategy". It would be ideal to see dust monitoring activities linked to actual management rather than simply verification of EIS predictions (which is an important goal for monitoring, but shouldn't represent the only quantitative end point).

- In table 6-3:
 - o As already mentioned, the Review Panel directed the project to address more matters than simply preventing wildlife-vehicle collisions on mine roads, which in this case are measured by only those incidents of staff 'en route' to work. It is not clear what this means. YKDFN expect better of the company, at a minimum, living up to the Board requirements.
 - o In terms of wildlife attractants, there is no discussion of waste management audits (as discussed in section 1.5, but not incorporated as a best practice in the response framework). In the text (6.1.3.2) the project only indicates that a management response will be initiated and a reference to table 6-3. This circular logic will not result in actual action, simply reviewing the practices and monitoring the area. At some point more must be done – inspection of the waste stream and monitoring the sources.
 - o If dens are on site, what does 'additional mitigation' constitute? This is the adaptive response document, these actions must be considered and addressed within this plan not at some future point.

The project has indicated that this plan addresses all recommendations made by GNWT and EC in their technical reports (in the entire document). As this is part of the MVEIRB Panel Decision, YKDFN believe that the project should provide a concordance table that addresses each recommendation from the respective technical reports (ideally along with any subsequent recommendations provided) and a link to where the project responded. This should be provided in an appendix.

As the principal contribution from the WWHPP relates to the winter road monitoring (direct effects associated with behaviour and movement) the failures to adequately address the Panel's requirements mean that the project cannot meet the follow up program goal of the WWHPP providing a meaningful contribution to cumulative effects. Nor does it have a mechanism for the return of information should the GNWT Cumulative Effects Monitoring (?Range Management) program come to fruition.

De Beers Commitments:

Many of the mitigations listed are simply statements without qualifiers. As an example, clarity in terms of what constitutes low-profile roads is not provided in section 4.3, nor what differences will be observed with those roads found at other mine sites. With this example, of particular interest is the nature of the shoulder construction.

The project should provide clarity on the permissible size of the berms along the winter road, indicating what they believe represents a 'barrier' to movement. Ideally, this work would be back-linked to an adequate monitoring effort to ensure that it is working as the company believes (that it is an effective mitigation).

On page 6 the project commits to employing a collaborative approach in developing the WEMP. It's not clear if that is true of the WWHPP as well, which would explain why we are once again forced to restate many of the same issues that YKDFN raised at the engagements, technical sessions, and hearings. If this is a WEMP only commitment, it should be removed from the list of commitments here.

P7, item 1,2 and 3 refer to WEMP matters and should be removed.

It is not clear how a flight prior to winter road operation (section 5.3.1) or site surveillance monitoring (section 5.3.5) will address the commitment to work with GNWT, communities and aboriginal governments regarding wildlife mortalities. It is quite surprising that De Beers has not developed a response within their WWHPP for when large game are killed by their vehicles as they destroyed animals equating to 2% of the total aboriginal harvest from the Bathurst Herd. During conference calls following those incidents, the company stated that they would seek to ensure that the meat wasn't wasted given the crisis facing the caribou herd.

Item 7 indicates that the project will learn from other minesites. Section 2.1 has many lessons from other minesites, but YKDFN are not clear how (or if) these have been addressed within this plan. Section 2.1 should be redone to illustrate not just the lesson, but how De Beers adapted its initial WWHPP to incorporate what was learned.

General Table 1-1 Concerns:

Many of the matters found in table 1-1 are assigned a 'responsible regulatory agency'. YKDFN believe that section 1 should be expanded to explain how these departments have the responsibility to ensure that the requirement is completed. As the first example, the project states that the GNWT is responsible for ensuring that the necessary actions to achieve Measure 1 from the Review Panel are implemented. To date, YKDFN is unaware of the GNWT assuming this responsibility. Please provide clarity (Note that this uncertainty applies not just to this example, but to many of the items listed in this section).

General Section 1 Concerns:

Suggest that section 1.4 use the terminology 'goals' rather than objectives to better conform with other hierarchical systems used in other MVLWB guidelines (namely the ICRP structure). In that outline, objectives are subject to the goals and represent a 'slice of the pie' approach to achieve the goals. YKDFN accept that the standard outline for management plans provided by the LWB uses objectives in a similar sense, but it also suggests a different organization.

Section 1.1 also discusses the changes that are found in this version of the WEMP. YKDFN would like to see a more meaningful discussion of the alterations found in version history. The project states that this document is subject to a MOU with the GNWT. This is not currently in the public domain and should be provided as an appendix if it forms part of the administrative structures that guide this document.

Lastly, YKDFN were not aware that the Ni Hadi Yati forum was operational or had reviewed these documents. As YKDFN are not a participant, any reviews would be useful for parties to understand what modifications and suggestions had been received and if they had been incorporated.

Figure 1-1 could be improved to show where the WWHPP was applicable – including maximum viewsheds from the winter road.

Section 1.5 can be streamlined and improved. YKDFN would be particularly interested to see how our community input has been incorporated, as we have made strong recommendations that the company has failed to act on - both before the caribou destruction and afterwards. Similarly, some bullets do not represent actual engagement – who de beers employs is not relevant (though the results may be, but they are not discussed within this plan) nor is the hiring of staff from the impacted communities. We

believe that these represent best practices, not community engagement. YKDFN have been explicit that meaningful engagement with YKDFN can only occur with leadership or their designees.

Section 1.5.1 erroneously indicates that the Yellowknives are ratifying the Ni Hadi Yati agreement. At present, there is no intention to do so. This information should be updated to reflect the current status.

General Section 2 Concerns:

As stated elsewhere, YKDFN would prefer to see added clarity within this section. Beyond the disconnect between identification of teachable lessons from other sites but a failure to clearly incorporate them, there is a issue with the structural boundary of the WEMP/WWHPP in section 2. The project identifies noise and dust to be identified in the WEMP, but they are discussed later in this document. YKDFN agree with the text and suggest that the latter should be addressed elsewhere because of its relatively large distribution.

Closing:

YKDFN acknowledge that this represents a minor step forward, as described in the revision history found in section 1. The addition of the management framework provides a structure that YKDFN have long been hoping for – applying the lessons learned in the Aquatics world to wildlife. However, this step forward is limited in scope and fails to address the requirements issued by the MVEIRB Review panel or the projects own commitments.

Though this version is positive, it does not approach what should be considered as adequate and it should be returned to the project with direction to correct the identified deficiencies. This version should be submitted an updated version prior to December 1st, 2014 to allow for meaningful review prior to the Winter Road opening.

On a more negative note, it is extremely frustrating to see the same limitations and errors repeated through iterations and numerous engagements. The limitations and inability of the project effort to meet the demands of the Review Panel are clear. It is the general failure to apply the same best practices from other sites that have monitoring efforts aimed at caribou that is more surprising. YKDFN simply wish to see best practices, as should have been identified within section 2, applied at this site.