June 5, 2020

Sean Sinclair
Principal Advisor, Environment and Closure Readiness
Rio Tinto
P.O. Box 2598
Yellowknife, NT X1A 2L9

Sent via e-mail

Dear Sean Sinclair,

Re: Request for Information: Water Licence W2015L2-0001 Amendment Application for the Deposition of Processed Kimberlite to Mine Workings

In January 2020, the Mackenzie Valley Environmental Impact Review Board (MVEIRB or the Review Board) released its Report of Environmental Assessment (REA) for Diavik Diamond Mines (2012) Inc.’s (DDMI’s) Water Licence Amendment Application (the Application) to deposit processed kimberlite into the Mine Workings (the PKMW Project) at the Diavik Mine (EA1819-01). The Government of the Northwest Territories (GNWT) Minister of Lands provided its approval of the REA including the final wording of the recommended measures on June 5, 2020.

While the REA makes it clear that the deposition of processed kimberlite into mine workings cannot proceed without the satisfactory implementation of REA measures 1-5, we note that the Review Board did not require these measures to be implemented prior to the issuance of an amended water licence. At a minimum then, the water licence amendment process could focus only on what licence conditions are necessary to ensure each measure is met before DDMI is approved to deposit processed kimberlite into mine workings.

1 See MVEIRB’s Online Registry at www.reviewboard.ca for EA1819-01 Report of Environmental Assessment
The Board notes, however, that DDMI has expressed a preference for, where possible, implementing the REA measures prior to issuance of an amended licence. In its February 27, 2020 response to the post-environmental assessment engagement submissions from several Indigenous Government Organizations (IGOs) to the GNWT, DDMI states:

We agree with IGO recommendations that some water quality modelling updates be completed during the Water Licence Amendment process for the PKMW Project to reduce project uncertainties and to inform subsequent stages of project development and implementation. Hence, DDMI recommends the completion of water quality update requirements for the first stage (Before processed kimberlite deposition in mined-out pits) during the Water Licence Amendment process; including the independent water quality modelling review. DDMI also recommends that culturally acceptable criteria for reconnection of mined-out pits to Lac de Gras be established during the Water Licence Amendment process as these criteria are necessary to determine the acceptability of the water quality modelling results.

While the options of implementing the REA measures either pre- or post-issuance of an amended water licence are consistent with the Review Board’s recommendations, the workplan for the amendment process will differ in terms of the types and amount of evidence that will need to be considered. Either way, it is important to note that the nine-month timeline for the Board to process the Water Licence Application (subsection 72.18(1) of the Mackenzie Valley Resource Management Act [MVRMA], and subsection 47.(1) of the Waters Act) was initiated after the Application was submitted by DDMI in June 2018. Since the Application was not referred to environmental assessment until after the WLWB process had commenced, there are only 4.5 months left in the legislated timeline.

In order to re-commence the water licence amendment process, the WLWB requires DDMI to submit a Post-Environmental Assessment (EA) Information Package to the Board. The WLWB requests this information in accordance with subsection 34(2) of the Waters Act. Attachment #1 describes the minimum information DDMI must submit in its Post-EA Information Package for re-commencement of the amendment process; along with the Application, this information will aide the Board and reviewers in deciding what conditions are necessary in an amended licence to meet the EA measures.

The Board understands that DDMI may prefer to implement the relevant REA measures as soon as possible and have the results of those efforts (e.g., updated water modelling, cultural use water quality objectives, input from the independent panel) considered by the Board as part of the amendment process. In this case, DDMI will need to submit additional information as part of their Post-EA Information Package. Attachment #2 describes the kinds of additional information that DDMI may submit related to implementation of the REA measures.

3 See the Justice Laws website for the Mackenzie Valley Resource Management Act
4 See www.justice.gov.nt.ca for the Waters Act
6 See www.justice.gov.nt.ca for the Waters Act
For planning purposes, the Board requests that DDMI respond to this letter as soon as possible to indicate when it believes it will be submitting the Post-EA Information Package and whether the submission will include 1) the information described in Attachment #1, or 2) the information described in both Attachment #1 and Attachment #2. Note that the water licence amendment process will not recommence until the Post-EA Information Package is received by the Board, and the response is deemed to satisfy the information request (subsection 72.22(1) of the MVRMA and section 50 of the Waters Act).

Please contact Anneli Jokela, Regulatory Manager at (867) 765-4588 or by email at ajokela@wlwb.ca, should you have any questions in review of this information package.

Sincerely,

Chris Hotson
Acting Executive Director, Wek’eezhii Land and Water Board

Attachment #1: Processed Kimberlite into Mine Workings Post-Environmental Assessment (EA) Information Package - Required Information
Attachment #2: Processed Kimberlite into Mine Workings Post-Environmental Assessment (EA) Information Package - Additional Information

Copied to: Diavik Distribution List
Attachment #1 – Processed Kimberlite into Mine Workings Post-Environmental Assessment (EA) Information Package - Required Information

In June 2018, DDMI submitted, to the WLWB, an Application to amend its Water Licence (W2015L2-0001) to allow for the deposition of processed kimberlite into mine workings (the PKMW Project). To ensure that the Board and reviewers have the information needed to re-commence the water licence amendment process, DDMI must provide a summary of any updates to that amendment request. The minimum information required is outlined below. Where details have been provided elsewhere within the Post-EA Information Package or in documents submitted previously to the Review Board or the WLWB, DDMI should summarize the information and then provide the reference to the more detailed information.

In addition, please note:
- A conformity table must be included to indicate how the requirements listed below have been satisfied.
- Should DDMI be unable to include any of the information requested, please provide rationale.
- DDMI may submit additional information as deemed necessary.

1. Summary of the PKMW Project
Summarize the proposed activities, infrastructure, and proposed timelines for the Project. Please include at minimum:
   i. a summary of the Project history including an outline of the regulatory and environmental assessment process to date;
   ii. the proposed PKMW Project schedule, identifying potential activities that could influence the anticipated schedule;
   iii. a list of REA measures and suggestions plus a description of how they will be incorporated into the PKMW Project; and,
   iv. a summary of any changes to the Project since the initial Application to the WLWB in June 2018 as a result of the environmental assessment or other considerations.

2. Status update for all commitments made throughout the EA process.
List all commitments relevant to the Board’s water licence amendment process, which have been made by DDMI throughout the environmental assessment process as described in Appendix B of the REA. Please identify the status of each commitment (i.e., outstanding or complete). If the status is ‘outstanding’ indicate how DDMI proposes to meet the commitment. The WLWB encourages DDMI to present its commitments in a table similar to that shown below.

   e.g., Table

<table>
<thead>
<tr>
<th>Commitment Number</th>
<th>From REA Appendix B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject</td>
<td>From REA Appendix B</td>
</tr>
<tr>
<td>Source</td>
<td>From REA Appendix B</td>
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<tr>
<td>Commitment</td>
<td>From REA Appendix B</td>
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</tr>
<tr>
<td>Link to REA Measure or Suggestion</td>
<td>If the commitment is associated with an REA measure or suggestion, identify it here</td>
</tr>
<tr>
<td>Link to water licence W2015L2-0001</td>
<td>If the commitment will be contained with a Management or Monitoring Plan or in a water licence condition, identify it here</td>
</tr>
<tr>
<td>Action and timeline</td>
<td>Describe how and when DDMI proposes fulfilling the commitment, or identify if the action has been completed</td>
</tr>
</tbody>
</table>

**3. Updated Draft Water Licence W2015L2-0001**

Provide a description of proposed changes, with rationale, to conditions in Water Licence W2015L2-0001 for consideration in the amendment process. It would be helpful if these proposed changes are incorporated in the existing licence document as “track changes”. Include those changes necessary to accommodate:

i. the proposed PKMW Project including the measures and suggestions from the REA; and

ii. any additional changes DDMI would like to be considered including, for example, administrative changes or changes requested in the DDMI’s initial Application in June 2018.
Attachment #2 – Processed Kimberlite into Mine Workings Post-Environmental Assessment (EA) Information Package - Additional Information

The information required in Attachment #1 is necessary for the Board and reviewers to evaluate what conditions are necessary in an amended licence to meet the REA measures. In order to consider evidence related to the implementation of the REA measures (e.g., updated water modelling, cultural use water quality objectives, input from the independent panel) during the water licence amendment process, DDMI must submit the following additional information in its Post-EA Information Package.

In addition, please note:
- A conformity table must be included to indicate how the requirements listed below have been satisfied.
- Should DDMI be unable to include any of the information requested, please provide rationale.
- DDMI may submit additional information as deemed necessary.

1. **Updated Engagement Plan**
   Provide an updated Engagement Plan that meets the requirements for “additional and more effective engagement with potentially affected Indigenous communities” as outlined in REA measure 5. The updated Engagement Plan should include specific information about how DDMI will engage potentially affected Indigenous communities on the activities required to fulfill REA measures 2, 3 and 4 before or during the water licence amendment process and after issuance should the amendment be granted. The updated Engagement Plan should include indication and/or confirmation from Parties that they are accepting of the protocols that are proposed by DDMI.

2. **Draft criteria for determining if water in the pit lake(s) is acceptable for cultural use**
   Provide draft cultural-use criteria developed as per the requirements of Measure 2 of the REA. In addition to draft criteria, also provide a summary of engagement that was done as part of the criteria development to demonstrate how the requirements of Measure 2 have been met.

3. **Updated water quality modelling results**
   Provide the following:
   i. Updated water quality modelling results to predict whether water quality in the pit(s) at closure and post-closure will meet the requirements of REA measure 1. The updated modelling results should include a description of how all the requirements of REA measure 3 have been addressed with respect to stage ‘a’ of the Project (i.e., before depositing processed kimberlite into the pit(s) and underground).
   ii. a list of updates to existing management plans or monitoring programs, necessary to fulfill the requirements of REA measure 3 for Project stages ‘b’ (i.e., before filling the pit(s) with water from Lac de Gras) and ‘c’ (i.e., before reconnecting (partially or fully) the pit lake(s) containing processed kimberlite to Lac de Gras); and,
iii. a report or other relevant analysis from the Independent Panel established as per the requirements of REA measure 4.

4. **Proposed changes to conditions in W2015L2-0001**

Provide a description of proposed changes, with rationale, to conditions in water licence W2015L2-0001 for consideration in the amendment process. It would be helpful if these proposed changes are incorporated in the existing licence document as “track changes”. Include those changes necessary to accommodate:

i. the results of the completed REA measures and suggestions (e.g., cultural use criteria etc); and,

ii. the REA measures or suggestions that will need to be met during the term of the water licence.