June 8, 2020

Sean Sinclair
P.O Box 2498
Suite 300, 5201-50th Avenue
Yellowknife, NT X1A 2P8

Dear Sean Sinclair,

RE: Terms of Reference for the Water Quality Modeling Independent Review Panel

The Wek’eezhii Land and Water Board (WLWB) met on June 4, 2020 and considered Diavik Diamond Mines (2012) Inc.’s (DDMI’s) Terms of Reference (ToR) for the Independent Review Panel (IRP) submitted to the Board on March 26, 2020. The ToR was submitted to address a measure from the Report of Environmental Assessment (EA) from the Mackenzie Valley Review Board (the Review Board) on DDMI’s application to allow for the deposit of Processed Kimberlite (PK) into the Mine Workings.

As detailed in the attached Reasons for Decision, the Board has decided to approve the ToR and has provided direction for the next version of the ToR. The Board has also decided to provide Parties with another opportunity to recommend additional Panel member candidates, as well as an opportunity to provide their preferred Panel member candidates from a finalized list of candidates for the Board to consider.

Sincerely,

Joseph Mackenzie
Chair, Wek’eezhii Land and Water Board

Copied to: Diavik Distribution List

Attached: Reasons for Decision
Reasons for Decision

<table>
<thead>
<tr>
<th>Reference/File Number:</th>
<th>W2015L2-0001 (Type “A” Water Licence)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensee:</td>
<td>Diavik Diamond Mines (2012) Inc. (DDMI)</td>
</tr>
<tr>
<td>Subject:</td>
<td>Terms of Reference (ToR) for the Independent Review Panel (IRP)</td>
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</tbody>
</table>

Decision from the Wek’èezhìi Land and Water Board
Meeting of June 4, 2020

1.0 Decision

On June 4, 2020, the Wek’èezhìi Land and Water Board (WLWB or the Board) considered Diavik Diamond Mines (2012) Inc.’s (DDMI’s) submission of the Terms of Reference (ToR) for the Independent Review Panel (IRP). In consideration of the submission, previously Board-approved ToRs, reviewer comments, and proponent responses, the Board decided to approve the ToR if at the time of the Minister’s decision, the Mackenzie Valley Environmental Impact Review Board’s (Review Board) Report of Environmental Assessment (REA) was adopted by the Minister with no changes recommended to the REA measure related to the Panel (Decision #1). 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, 2020.3

The Board also provided direction for an updated version of the ToR. DDMI is to work with Board staff on a submission deadline for an updated version of the TOR, which is to include the following revisions (Decision #2):

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2 See the Review Board’s Online Registry [www.reviewboard.ca](http://www.reviewboard.ca) for EA1819-01 Report of Environmental Assessment
3 See WLWB [www.wlwb.ca](http://www.wlwb.ca) Online Registry for the Diavik - WL Amendment - PK to Mine Workings – Minister Decision Letter - Jun 5_20
1. Include a section on Guiding Principles that includes the following guiding principles:

   a. The Panel will be independent of DDMI, the WLWB, or any other Parties, and will provide their recommendations impartially based solely on their expertise and experience;

   b. The Panel will be transparent, providing adequate evidence to support review comments and recommendations;

   c. The Panel will work to achieve consensus among IRP members about review comments and recommendations; and

   d. The Panel will work collaboratively and in a respectful manner, with a willingness to listen and understand all perspectives/opinions and relevant issues.

2. Indicate, where appropriate, that the Panel will consist of a minimum of three Panel members;

3. Include DDMI’s response to the Environmental Monitoring Advisory Board’s (EMAB) comment 3 in the ‘Panel Chair’ section to further clarify the Panel’s reporting relationships;

4. Include DDMI’s response to TG comment 6 in the ‘Panel Duties’ section;

5. Include the following in the ‘Panel Duties’ section: The Panel may be required to participate in Technical Sessions and a Public Hearing as part of the Water Licence Amendment Process. The Board will decide the Panel’s roles and responsibilities at the Technical Session and Public Hearing;

6. Include DDMI’s response to EMAB comment 7 in the ‘Schedule’ section;

7. Include the following in the ‘Communications’ section: The Panel must be supplied with all information they deem necessary to complete their mandate and scope;

8. Include the following in the ‘Dispute Resolution’ section: The Panel will operate by consensus but if an issue arises where a consensus cannot be achieved, each Panel member shall set out his or her views in any report submitted to the WLWB. If the nature of a dispute between Panel members is such that it hinders the completion of the Panel report, any member of the Panel may notify the WLWB in writing. In the latter case, the WLWB will determine the process for resolution; and


The Board has also decided to provide Parties with another opportunity to recommend additional Panel member candidates, as well as an opportunity to provide their preferred Panel member candidates from a finalized list of candidates for the Board to consider (Decision #3). Information Requests regarding Panel member candidates will be distributed to all Parties.
2.0 Background

DDMI applied to amend its Water Licence (W2015L2-0001) in 2018 to allow for the deposit of Processed Kimberlite (PK) into the Mine Workings. Currently, PK is approved for storage in the PK Containment (PKC) Facility; however, the PKC Facility is reaching its capacity and DDMI would prefer the option to deposit the PK in the Mine Workings rather than requiring additional raises to the PKC Facility dam.

The application was referred to Environmental Assessment (EA) in February 2019 by the Mackenzie Valley Review Board (the Review Board). In the Report of EA (REA), the Review Board stated that DDMI’s preliminary water quality modelling presented during the EA "does not provide the level of confidence the Review Board requires to conclude that significant impacts to water quality are not likely". Intervenors recommended that the model be updated and subject to an independent review. To address this, the Review Board included measure 4 in the REA: "Diavik will establish an independent review panel for water quality modelling". As part of this measure, the Review Board requires DDMI to develop the terms of reference (ToR) for the panel for approval by the WLWB.

At the time of DDMI’s submission of the ToR, the Minister of Lands had not yet released its Decision on DDMI’s application to deposit Processed Kimberlite into the Mine Workings. As DDMI states in the cover letter with the submission, "advancing the TOR and Panel membership selection as soon as possible will allow the independent review process to advance within a timeframe that leaves adequate time for the Panel to carry out the required water quality modelling review tasks without potentially impacting operational project timelines". To help expedite this step, DDMI submitted the ToR in advance of the Minister’s decision. The submission included a list of six candidates for consideration as potential Panel members. The Minister of Lands released its decision on the EA on June 5, 2020 and adopted the Review Board’s recommendation “that the Project be approved subject to the implementation of six measures and Diavik’s commitments as recorded in the REA”.

The ToR was distributed for review on March 30, 2020, with reviewer comments due by April 24, 2020. Comments were received by the Environmental Monitoring Advisory Board (EMAB), the North Slave Metis Alliance (NSMA), Tłı̨chǫ Government (TG) and the Wek’èezhii Renewable Resources Board (WRRB). Proponent responses were received before the deadline of April 22, 2020. Reviewer comments, proponent responses, and attachments are available on the WLWB Online Registry.

During the public review period, the Government of the Northwest Territories (GNWT) Department of Lands provided a letter noting that the GNWT would not comment on the ToR since the EA was still under

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4 See WLWB (www.wlwb.ca) Online Registry for Diavik - WL Amendment Application - PK to Mine Workings - Jun 4_18
5 See the Review Board’s website for EA1819-01 - Notice of Referral to EA - PK to Pits and Underground - Diavik - Feb 26_2019.pdf
6 See the Review Board’s website for EA1819-01 Diavik Report of Environmental Assessment FINAL.pdf
7 Ibid
8 See WLWB Online Registry for Diavik - WL Amendment - PK to Mine Workings – Minister Decision Letter - Jun 5_20
9 See WLWB Online Registry for Diavik - WL Amendment Application -PK to Mine Workings - ToR Panel - Review Summary and Attachments - May 28_20
review by the Minister at the time. In its letter to the Board, the GNWT-ENR stated that “it is important that reviewers have sufficient future opportunity to review and comment on the documents” after a decision from the Minister on the EA. The Board responded to GNWT’s letter that it understood that “any steps taken to prepare to respond to recommended measures advanced by the Mackenzie Valley Review Board may have to be adjusted in light of a Ministerial decision”.

3.0 Reasons for Decision

The Board reviewed all reviewer comments and proponent responses submitted during the public review period on the ToR. To aide in resolving differences of opinion between reviewers and DDMI, the Board looked at other approved terms of references for independent expert panels formed for the NICO Project (approved by the WLWB in 2015) and for Canadian Zinc’s Prairie Creek All-season Road Project (approved by the MVLWB in 2019). Based on this review and that the ToR aligns with other Board approved terms of references, the Board has decided to approve the ToR.

- **Decision #1:** If at the time of the Minister’s decision, the Review Board’s REA was adopted by the Minister with no changes recommended to the REA measure related to the Panel, the Board will approve the ToR.
- **Decision #2:** DDMI is to work with Board staff on a submission deadline for an updated version of the TOR, which includes Revisions #1 through 9.

As discussed above, the GNWT submitted a letter during the public review stating that it would not comment on the ToR since the EA was still under review by the Minister. EMAB and TG also recommended that the ToR be re-distributed for review after the Minister’s decision on the EA (EMAB comment 1; TG comment 12). The Board is of the opinion that another round of review of the ToR is not necessary because Parties were already given the opportunity to comment and because the ToR aligns with terms of references previously approved by the Board. As discussed below, Parties will be given an opportunity to provide recommendations with respect to the Panel members.

3.1 Guiding principles for the Panel

EMAB recommended that the ToR “include principles about how the panel will operate” (EMAB comment 2) and provided specific wording for five guiding principles on the themes of independence, transparency, collaboration, consensus, and continuity. The TG supported the inclusion of guiding principles (TG comment 10) but did not suggest anything specific. DDMI responded that they did not see the need for

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10 See WLWB Online Registry for the Board’s response and GNWT’s letter: Diavik - WL Amendment - PK to Mine Workings - Procedural Concerns - GNWT Letter and WLWB Response - Apr 17_20
12 The terms of reference for the Co-Disposal Facility Expert Panel and the Constructed Wetland Treatment Facility Expert Panel were approved by the WLWB on November 23, 2015.
13 The terms of reference for the Independent Technical Review Panel for Canadian Zinc’s Prairie Creek All Season Road Project was approved by the MVLWB on August 8, 2019.
principles in the ToR and pointed out how each of EMAB’s recommended principles was already covered within the text of the ToR.

Neither of the Expert Panel terms of references approved for the NICO Project had a section on guiding principles, but the Canadian Zinc Panel terms of reference did. A set of principles in the ToR for DDMI would be useful for ensuring the Panel members understand what kind of values are important to guide the Panel’s work. An analysis of the EMAB’s recommendations is provided in Table 1 below.

**Table 1: Recommendations for Guiding Principles for the Panel**

<table>
<thead>
<tr>
<th>EMAB’s recommended principles (EMAB comment 2)</th>
<th>Board’s analysis and decision</th>
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<tbody>
<tr>
<td>1  “Independence: Members of the IRP will carry out their responsibilities as independent experts and provide technical review and advice without influence from any parties who have an interest in the Diavik Diamond Mine project.”</td>
<td>While the principle of independence is important, the suggestion that the Panel provide their advice “without influence” from any Parties could be misinterpreted to mean that the Panel isn’t supposed to communicate with anyone – which is not the case. To avoid that potential confusion, the Board has decided to include the following based on a similar principle found in the ToR for Canadian Zinc’s Independent Panel: The Panel will be independent of DDMI, the WLWB, or any other Parties, and will provide their recommendations impartially based solely on their expertise and experience.</td>
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<tr>
<td>2  “Transparency: The IRP will maintain transparency for all communications with any party. All communications (emails, letters, meetings, etc.) will include all interested parties, or alternatively include a WLWB staff member who will share correspondence with all parties or provide records of meetings to all parties.”</td>
<td>In their response to EMAB’s recommendation, DDMI noted: “It is not reasonable or valuable to provide all communications between DDMI and the Panel to all Parties. The Panel must maintain independence whilst they carry out their duties and their final report recommendations will be based on the outcome of all communications.” The Communications section of the ToR already describes how the Panel is meant to communicate with DDMI, the WLWB and other Parties. Therefore, EMAB’s proposed wording is overly prescriptive with respect to including it as a guiding principle. Also, instead of focusing on making sure every communication is recorded, the principle of transparency should focus on the outcome of the Panel’s work. The Board has decided to include the following based on a guiding principle found in the ToR for Canadian Zinc’s Independent Panel: The Panel will be transparent, providing adequate evidence to support review comments and recommendations.</td>
</tr>
<tr>
<td>3  Consensus: The IRP will work to achieve consensus among IRP</td>
<td>DDMI responded to EMAB’s recommendation by noting that it will not always be possible for the Panel to reach a consensus.</td>
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</table>
The Board agree but feels it is still reasonable to have consensus as a guiding principle. The ToR contains a Dispute Resolution section with details on what will happen in the event that consensus is not possible. The Board is of the opinion that EMAB’s recommendation is reasonable and has decided to include the following: *The Panel will work to achieve consensus among Panel members about review comments and recommendations.*

| 4 | “Collaboration: The IRP will collaborate with interested parties to understand issues and define solutions related to the scope of the IRP’s role.” | EMAB proposes a guiding principle where the Panel “will collaborate with interested parties to understand issues and define solutions...”. As noted by DDMI in its response to EMAB, the Panel must have the independence to “decide what information is necessary to perform their duties and also decide how that information is gathered.” The Board agrees that the specific wording proposed by EMAB may undermine the earlier principle of independence. The Board has decided to include the following based on a guiding principle found in the ToR for Canadian Zinc’s Independent Panel: *The Panel will work collaboratively and in a respectful manner, with a willingness to listen and understand all perspectives/opinions and relevant issues.* |
| 5 | “Continuity: The IRP members should remain the same throughout the life of the Panel.” | Having the same Panel members for all the reviews over time would be ideal as it would ensure consistency throughout the Board’s process. However, the Board does not believe that this proposed principle would be useful in guiding the work of the Panel – that is, this principle would not affect how the Panel makes each of its decisions. The preference for maintaining the same Panel members over time is noted in the Schedule section of the ToR. Therefore, the Board believes no principle is required. |

The Board’s analysis for the guiding principles recognize that:

- Because REA measure 4 emphasizes the need for Panel independence, the principles should not be too prescriptive; and
- The principles do not need to contain details about how the Panel will operate as these details can be found in other sections of the ToR.

➢ *Revision #1: The Board requires the addition of a section in the next version of the ToR that includes the following guiding principles:*
• The Panel will be independent of DDMI, the WLWB, or any other Parties, and will provide their recommendations impartially based solely on their expertise and experience;
• The Panel will be transparent, providing adequate evidence to support review comments and recommendations;
• The Panel will work to achieve consensus among IRP members about review comments and recommendations; and
• The Panel will work collaboratively and in a respectful manner, with a willingness to listen and understand all perspectives/opinions and relevant issues.

3.2 Panel Composition

REA measure 4 requires the WLWB to “engage Diavik and intervenors to select panel members with appropriate expertise in hydrodynamic water quality modeling and extra-fine processed kimberlite or clay hydrodynamics.” The measure does not specify how many members should be on the Panel. Comments were received with suggestions for the number of Panel members, types of Panel expertise, and candidates for the Panel. These are discussed below.

3.2.1 Number of Panel members

DDMI has suggested that the Panel be composed of one to three individuals. The TG has recommended that there be more than one member on the Panel while EMAB has recommended a minimum of three members (TG comment 2; EMAB comment 4). The Board agrees that there should be more than one member on the Panel for diversity of expertise. The Board requires a minimum of three individuals on the Panel in case one of those members becomes unavailable due to illness or other commitments.

Revision #2: The Board requires DDMI to update the next version of the ToR to Indicate, where appropriate, that the Panel will consist of a minimum of three Panel members.

3.2.2 Areas of Expertise

As noted above, the REA measure 4 only specifies the need for two types of expertise: hydrodynamic water quality modeling and extra-fine processed kimberlite or clay hydrodynamics. EMAB recommended that the Panel should also include expertise in geochemistry and hydrogeology (EMAB comment 5). The TG recommended that expertise in cumulative effects might also be necessary (TG comment 11). Both EMAB and the TG suggested that having a Panel member with experience in traditional or Indigenous knowledge could also be valuable (EMAB comment 5; TG comment 11).

In its response to comments, DDMI noted that some of the additional fields of expertise requested by EMAB include overlapping skillsets with those required by the measure; for example, some of the Panel members suggested by DDMI have experience in both hydrodynamic water quality modeling, geochemistry, and hydrogeology (DDMI response to EMAB comment 5). The Board agrees that the expertise specifically required by REA measure 4 would require experience and/or education in several scientific fields including, for example, geochemistry and hydrogeology.
With respect to the need for an expert in traditional or Indigenous knowledge, it is important to note that REA measure 4 does not require traditional knowledge expertise, suggesting that the Review Board’s intention was for the Panel to provide a purely scientific review of DDMI’s water and processed kimberlite modelling.

Given that the Review Board did not see the need to require additional expertise in its measure, the Board is of the opinion that adding a list of additional fields of expertise to the Panel ToR is not required. Parties will have an opportunity to state who their preferred candidates are, so they will be able to choose those with the kind of cross-disciplinary expertise they prefer.

### 3.2.3 Candidates for the Panel

DDMI submitted the names of six potential Panel members with resumes describing their experience. Four of the candidates have experience in hydrodynamic water quality modelling and two have experience in clay hydrodynamics (see Table 3). DDMI has already contacted these individuals to confirm that they do not have a conflict of interest and that they are willing and available to be on the Panel.

In their comments, EMAB acknowledged DDMI’s candidates as having the experience required by REA measure 4 and added the names of three additional potential candidates with experience in the areas of geochemistry (Bill Price from Natural Resources Canada and Mark Logsdon from Geochemica) and hydrogeology (Christoph Wels from Robertson Geoconsultants) (EMAB comment 9). Unfortunately, EMAB did not include the resumes of these three people or any information about whether they had any conflicts of interest or were even interested in being on the Panel. Neither EMAB nor the TG stated their preferred candidates.

While the Board does not believe that a review of an updated version of the ToR would be necessary (see Section 2.0 above), it does believe that Parties should be given another opportunity to recommend additional Panel member candidates, as well as an opportunity to provide their preferred Panel member candidates from a finalized list of candidates for the Board to consider. Information Requests regarding Panel member candidates will be distributed to all Parties.

> **Decision #3:** The Board has decided to provide Parties with another opportunity to recommend additional Panel member candidates, as well as an opportunity to provide their preferred Panel member candidates from a finalized list of candidates for the Board’s consideration.

### 3.3 Panel Chair

EMAB commented that the “ToR would benefit from a section that describes accountability, governance and relationships, with the intent of demonstrating how the IRP operates independently of Diavik” (EMAB comment 3). For example, EMAB wants more clarity on who the Panel reports to. Since the Panel is independent, it is not clear what additional information EMAB is looking for in this regard.
DDMI did propose some clarifications to the section on the duties of the Chair (response to EMAB comment 3). This included clarifying statements that Panel members only report to the Chair, that the Chair is the only point of contact for the Panel, and that “the Panel Chair does not report to any external Party”. The Board requires that these clarifying statements be added to the ‘Panel Chair’ section of the ToR.

- **Revision #3:** The Board requires DDMI to include DDMI’s response to EMAB comment 3 in the ‘Panel Chair’ section in the next version of the ToR to further clarify the Panel’s reporting relationships.

### 3.4 Panel Duties

#### 3.4.1 Scope of Work for the Panel

In the Panel Duties section of the ToR, it states that “with respect to the modelling performed by DDMI, the Panel will review and make recommendations on:

- model selection and design,
- model input data, assumptions, and processes,
- monitoring requirements for informing the modelling process, and
- model results.”

The items in the list above are directly from REA measure 4. The TG, however, recommended that the potential interpretations of the model results should also be considered by the Panel (TG comment 1). DDMI disagreed with the recommendation since it was not required by the EA Measure. The Board is of the opinion interpretations of whether the modelling results predict an acceptable level of water quality can be done by Parties after the Panel has finished its work. Therefore, the Board has no requirements at the time related to this comment.

#### 3.4.2 Future changes to Panel membership or ToR

The TG recommended further clarity on the process for both updating the ToR in the future and for appointing new Panel members if necessary (TG comment 6). In response, DDMI has proposed to update the language at the end of the ‘Panel Duties’ section as follows: “…although continuity of membership in the Panel is preferred, these Terms of Reference and Panel membership will need to be updated and approved by the WLWB prior to those reviews” (the proposed update is underlined). The Board agrees with DDMI’s proposed addition in the ‘Panel Duties’ section.

- **Revision #4:** The Board requires DDMI to include DDMI’s response to TG comment 6 in the ‘Panel Duties’ section in the next version of the ToR.

#### 3.4.3 Attendance of the Panel at the Public Hearing

The ToR includes a statement about how the Panel “may be required to participate in Technical Sessions as part of the Water Licence Amendment Process.” In comments to DDMI, Board staff noted that section 49 of the Board’s Rules of Procedure assert that "any Party relying on the evidence of a witness shall make
them available for questioning in the Proceeding." Section 46 of the Rules of Procedure also makes it clear that the Board may require the “attendance and examination of witnesses...”. For these reasons, Board staff asked if DDMI had any objections or concerns that the Panel may need to attend the Public Hearing and not just the Technical Session (WLWB staff comment 1).

DDMI responded that while they understood that the Panel might need to be available to explain their report at the Public Hearing, DDMI was “concerned that the Public Hearing will become an opportunity for Parties and DDMI to critique or question the acceptability of the Panels Final Report, or commit the Panel to further Undertakings” (DDMI’s response to WLWB staff comment 1). Based on this concern, DDMI proposed edits to the ToR to allow the Panel to come to the Hearing but to restrict how the Panel is questioned and not allow for undertakings of the Panel.

The ToR cannot contain statements that limit the Board’s process or that contradict the Board’s Rules of Procedure. Therefore, the Board requires DDMI to add additional information to indicate that the Panel may need to attend the Public Hearing.

- Revision #5: The Board requires DDMI to Include the following in the ‘Panel Duties’ section in the next version of the ToR: The Panel may be required to participate in Technical Sessions and a Public Hearing as part of the Water Licence Amendment Process. The Board will decide the Panel’s roles and responsibilities at the Technical Session and Public Hearing.

3.5 Schedule of Panel reviews

REA measure 3 requires the Panel to review DDMI’s water quality models at three different points in the Project:

a) Before depositing processed kimberlite into the pit(s) and underground.

b) Before filling the pit(s) with water from Lac de Gras.

c) Before reconnecting (partially or fully) the pit lake(s) containing processed kimberlite to Lac de Gras.

The first review of the water quality model (i.e., before depositing PK) would happen several years before the pits would be filled with water (i.e., when the second review would occur). Although there could be several years between reviews, EMAB commented that they want the Panel members to remain “as stable as possible” (EMAB comment 6) and also asked for more details on the timing of reviews for items (b) and (c) above (EMAB comment 7). DDMI agreed that it would be preferable to have consistent Panel members across time but noted that it is outside of the control of the WLWB to make Panel members stay. DDMI has proposed some new language to address both concerns: “Although continuity of membership in the Panel is preferred, these Terms of Reference and Panel membership will need to be updated and approved by the WLWB prior to those reviews expected in 2025 and 2027” (response to EMAB comment 7). The Board requires DDMI to update the “Schedule” section with the proposed wording.

- Revision #6: The Board requires DDMI to include DDMI’s response to EMAB comment 7 in the ‘Schedule’ section in the next version of the ToR.
3.6 Communications

The ‘Communications’ section of the ToR outlines how the Panel will communicate with DDMI, the WLWB, and the Parties to both gather information for their work and to report back on their conclusions/recommendations.

3.6.1 Comments on how the Panel gathers information for its report

In keeping with the principle of independence, the ToR states that the “Panel shall communicate/meet as necessary to complete their duties”. The Panel is encouraged to meet directly with Parties to obtain the information they need. Any meeting minutes that are taken may be posted to the registry.

EMAB recommended that this section of the ToR include the requirement that “all communications (emails, letters, meetings, etc.) will include all interested parties, or alternatively include a WLWB staff member who will share correspondence with all parties or provide records of meetings to all parties” (EMAB comments 2 and 8). DDMI responded by saying: “It is not reasonable or valuable to provide all communications between DDMI and the Panel to all Parties” (response to EMAB comment 2). The Panel must maintain independence whilst they carry out their duties and their final report recommendations will be based on the outcome of all communications.” The Board agrees with DDMI in this case, noting that:

- Depending on the number of communications that the Panel feels it needs, having a requirement that all parties and/or a WLWB staff member be involved each time could cause several delays in the Panel process and create extra work for everyone;
- It is not clear what the advantage would be of observing/recording every communication. In the end, all Parties will be able to review the final report and request whatever additional evidence they believe they need to evaluate it;
- DDMI is now required to add a principle regarding transparency: The Panel will be transparent, providing adequate evidence to support review comments and recommendations (Decision 1); and
- The Panel is being established as an independent body of experts and they should be trusted to interact with both DDMI and other Parties in a professional way.

EMAB also recommended that the ToR “should clarify that Diavik will provide the model to the IRP along with detailed reports on how the model was developed, underlying assumptions, verification, calibration and other key aspects of the models, and these reports should also be available for the parties to consider” (EMAB comment 8). DDMI disagreed about the necessity of including this information given they believe the Panel is already allowed to request whatever information it needs to do its job (response to EMAB comment 8). While the Board does not believe it necessary or desirable to include a detailed list of what DDMI should give to the Panel, additional language in the ToR about how the Panel has the discretion to decide what information they need could be helpful. The Board requires that a statement to this effect be included in the ‘Communications’ section of the ToR.
3.6.2 Comments on review of the Panel’s preliminary report

Prior to submitting its final report to the WLWB, the Panel is meant to provide a preliminary report of its findings to DDMI for review and comment. This step is here to make sure that the Panel has not made any factual errors or missed any key pieces of evidence during its analyses. The Panel is required to consider DDMI’s comments on the preliminary report, make any changes that the Panel deems necessary, and then to finalize the report for submission to the WLWB.

EMAB recommended that all Parties be given an opportunity to review the Panel’s preliminary report and to provide “an opportunity for input on possible solutions and/or recommendations” (EMAB comment 6). DDMI disagreed with this recommendation since “The Panels Report is [a] separate line of evidence to assist with WLWB decision” (response to EMAB comment 6). As the report is based on DDMI’s modelling evidence, the Board believes it is fair that DDMI have an opportunity to make sure the Panel has considered all evidence in its review. It is not clear, however, what the purpose would be of allowing Parties to make recommendations to the Panel on its preliminary report and it may be seen as interfering in the Panel’s independence. Therefore, the Board does not have any requirements related to this comment.

3.6.3 Comments on review of the Panel’s final report

The ToR states that: “Diavik will report to the Wek’éezhìı Land and Water Board and communities about how it responded to Panel recommendations.” EMAB has recommended that a TK Panel be added to the “list of organizations Diavik will report to regarding the IRPs recommendation and Diavik’s responses” (EMAB comment 8). DDMI considers this as unnecessary since the TK Panel is not a Party that it is obliged to engage; communities that receive the report are free to share it with the TK Panel directly.

It is the Board’s opinion that it is not necessary to list all the organizations that will receive the Panel report and DDMI’s responses. Once this information is sent to the WLWB, it will be placed on the registry and distributed to all Parties for review. Therefore, the Board has no requirements related to this comment.

3.6.4 Comments on timing of the Review

The TG recommended that the ToR specify a timeline for when DDMI will provide their water quality model to the Panel (TG comment 7). Specifically, the TG recommended adding the following statement: “DDMI shall provide the model for the Panel’s final review three months before any planned Public Hearing or submission to the Board.” The TG further recommended that if the Panel is not given enough time to complete their review, then DDMI should be required to cover the costs of process delays (e.g., if the hearings need to be rescheduled) (TG comment 8).
Since the workplan for the amendment proceeding has not been finalized, the Board is of the opinion that timelines should not be specified in the ToR. The Board will work with DDMI and the Panel to make sure there is sufficient time for the review and reporting process.

### 3.6.5 Comments on DDMI’s response to the Panel Report

The ToR states that “if Diavik does not accept, or modifies, panel recommendations, it will explain why and provide reasons.” The TG commented that that sentence is too vague and that more details should be added to the ToR about what specific evidence DDMI needs to submit to the Board in response to the Panel’s final report (TG comment 9). DDMI noted that the current language in the ToR is taken word-for-word from REA measure 4 and “is therefore appropriate”; the Board agrees with DDMI because this is the language used in the REA measure. If the WLWB or any other Party believe they need additional evidence to verify DDMI’s work, the normal Board process allows Parties to ask for it.

### 3.7 Dispute Resolution

The ‘Dispute Resolution’ section of the ToR states:

> In the event of any dispute amongst the members of the Panel, the Panel members will attempt to reach an agreement amicably. Failing that, any member may notify the WLWB, in writing, of the dispute. The WLWB will determine the process for resolution and make the ultimate decision.

The TG stated that the word “amicable” in the first sentence of this section of the ToR is “vague, ambiguous and not relevant to dispute resolution”; they recommended replacing it with “consensus” (TG comment 4). DDMI disagreed on the basis that, in their opinion, “consensus cannot be a requirement” (response to TG comment 4).

The TG also recommended replacing the last two sentences of this section of the ToR with: “If consensus cannot be reached the Panel will advise the WLWB in writing, through a report detailing points of contention” (TG comment 5). DDMI disagreed based on the belief that if a “dispute is in process, reaching consensus and writing a report detailing the dispute is likely not possible” (response to TG comment 5).

The Board notes that both of the TG’s recommendations are consistent with the wording of the Dispute Resolution section of the NICO Project’s Expert Panel ToR. The Board agrees with changing the Dispute Resolution section to be consistent with the wording from the NICO Project’s Expert Panel ToR but adding an additional statement to address DDMI’s concerns.

> **Revision #8: The Board requires DDMI to Include the following in the ‘Dispute Resolution’ section in the next version of the ToR: The Panel will operate by consensus but if an issue arises where a consensus cannot be achieved, each Panel member shall set out his or her views in any report submitted to the WLWB. If the nature of a dispute between Panel members is such that it hinders the completion of the Panel report, any member of the Panel may notify the WLWB in writing. In the latter case, the WLWB will determine the process for resolution.**
3.8 Other edits

There were some typos that should be fixed in the next submission to the Board.

- Revision #9: The Board requires DDMI to correct any typos in the next version of the ToR.

Signed the 8th day of June 2020, on behalf of the Wek’éezhii Land and Water Board

Witness

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Joe Mackenzie
Chair, Wek’éezhii Land and Water Board