### Review Comment Table

<table>
<thead>
<tr>
<th>Board:</th>
<th>WLWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>File(s):</td>
<td></td>
</tr>
<tr>
<td>Document(s):</td>
<td>Terms of Reference for the Independent Review Panel - Mar 26_20 (1679 KB)</td>
</tr>
<tr>
<td>Item For Review Distributed On:</td>
<td>Mar 30 at 16:29 Distribution List</td>
</tr>
<tr>
<td>Reviewer Comments Due By:</td>
<td>Apr 24, 2020</td>
</tr>
<tr>
<td>Proponent Responses Due By:</td>
<td>May 1, 2020</td>
</tr>
</tbody>
</table>

**Item Description:**

Diavik Diamond Mines (2012) Inc. (DDMI) submitted a Terms of Reference (TOR) for an Independent Review Panel (the Panel) for the Water Quality Modelling and a list of six candidates for consideration as Panel members. The TOR was submitted to address the Mackenzie Valley Review Board's (Review Board's) Report of Environmental Assessment (EA) on DDMI's application for depositing Processed Kimberlite into the mine workings. In the Report of EA, 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 independent review. To address this, the Review Board included Measure 4 in the Report of EA: "Diavik will establish an independant review panel for water quality modelling". Please note that the Minister of Lands has 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".

Using the Online Review System (ORS), reviewers are invited to submit comments and recommendations on the document linked below by the review comment deadline specified. Reviewers may also wish to consider providing an overarching recommendation regarding whether the Board should approve the submission, to provide context for the comments and recommendations and assist the Board with its decision. If reviewers
seek clarification on the submission, they are encouraged to correspond directly with the Applicant prior to submitting comments and recommendations.

All documents that have been uploaded to this review are also available on our public Registry. If you have any questions or comments about the ORS or this review, please contact Board staff identified below.

**Reviewer Comment and Proponent Response Deadline Extension**

A request to extend the reviewer comment deadline for the Terms of Reference by one week was received prior to the deadline. This request has been granted and the Reviewer Comment Deadline has been extended to April 24, 2020. The Proponent Response Deadline was extended to May 1, 2020.

| Contact Information: | Anneli Jokela 867-765-4588  
| | Kassandra DeFrancis 867-765-4581 |

## Comment Summary

### Diavik Diamond Mines (2012) Inc. (Proponent)

<table>
<thead>
<tr>
<th>ID</th>
<th>Topic</th>
<th>Reviewer Comment/Recommendation</th>
<th>Proponent Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>General File</td>
<td>Comment (doc) Cover Letter and Appendix Response to Reviewer Comments on TOR_PKMW Recommendation</td>
<td>May 1: If the Minister's Decision results in changes to the proposed Measure 4 it would be up to the WLWB to determine the process forward.</td>
</tr>
</tbody>
</table>

### Environmental Monitoring Advisory Board: EMAB EMAB

<table>
<thead>
<tr>
<th>ID</th>
<th>Topic</th>
<th>Reviewer Comment/Recommendation</th>
<th>Proponent Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Terms of Reference for Water Quality Modelling Independent Review Panel and Selection of Panel Membership</td>
<td>Comment EMAB observes that these Terms of Reference (TOR) are intended to address Measure 4 in MVEIRB’s Environmental Assessment Report on the PK to Pits project. EMAB is concerned that these TOR have been circulated before the Minister has</td>
<td></td>
</tr>
</tbody>
</table>
made a decision on the EA Report. EMAB notes the April 9, 2020 letter from GNWT expressing procedural concerns with respect to this issue. EMAB does not accept that approval of these TOR is an urgent matter and agrees with GNWT that this review should not have been initiated until the Minister's decision was made. Given the uncertainty caused by circulation of this document for review as part of the proposed Water Licence Amendment, prior to the Minister's Decision EMAB will provide preliminary comments on the TOR while reserving the right to change or add comments following the Minister's Decision, particularly if there are any changes related to the proposed Measure.

**Recommendation** WLWB should provide for additional review of these TOR after the Minister's Decision is finalized, particularly if the decision includes any changes to the proposed Measure.

| 2 | Panel Principles | **Comment** The ToR would benefit from a section that describes broad principles for the Independent Review Panel (IRP). This should include principles about how the panel will operate, for example:  
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.  
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.  
Consensus: The IRP will work to achieve consensus | **May 1:** 1. DDMI has suggested the following updated text within the 'Panel Duties' section of the ToR to address independence: "The final Members of the Panel will carry out their responsibilities as independent experts and provide technical review and advice without influence from DDMI, the WLWB or any other Parties." 2. DDMI believes the requirement for transparency is adequately presented in the 'Communications' section of the ToR, or specifically that "To maintain independence from DDMI, communication between the Panel and interested Parties will be coordinated through WLWB Staff. WLWB Staff will be responsible for retaining minutes of any external communications/meetings of the Panel and may post these minutes on the WLWB's public registry." It is not reasonable or |
among IRP members about review comments and recommendations. **Collaboration:** The IRP will collaborate with interested parties to understand issues and define solutions related to the scope of the IRP’s role. **Continuity:** The IRP members should remain the same throughout the life of the Panel

**Recommendation**
The ToR should include a set of principles including:  
- Independence  
- Transparency  
- Consensus  
- Collaboration  
- Continuity  

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.  

3. DDMI believes the requirement for consensus is adequately presented in the 'Dispute Resolution' section of the ToR, or specifically that "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."  

4. DDMI believes the requirement for collaboration is adequately presented in the "Communication" section as "The Panel is encouraged to communicate/meet directly with DDMI and other interested Parties to obtain information necessary to perform their duties." In order to maintain Independence the Panel must have the freedom to decide what information is necessary to perform their duties and also decide how that information is gathered.  

5. DDMI notes that it is important to recognize that although continuity of membership in the Panel is preferred it cannot be mandatory given it is outside of the control of the WLWB. Panel membership will need to be reviewed prior to future reviews expected in approximately 2025 and 2027. Proposed updates to the ToR text has been provided as 'track changes' to the initial submission within Attachment 1.

| 3 | Panel Governance | **Comment** The ToR would benefit from a section that describes accountability, governance and relationships, with the intent of demonstrating how | **May 1:** The current ToR highlights how the Panel will function Independent from Diavik, the WLWB and other Parties. After the WLWB appoints the |
the IRP operates independently of Diavik. It is EMAB’s understanding that the WLWB will recruit and appoint members to the IRP taking into account comments and recommendations from Diavik and other parties to the proceeding. This still leaves a number of questions to be answered or clarified. Who is the IRP accountable to? How will it maintain transparency? Would the IRP submit a workplan and budget for each stage, or how would that be managed? Who would the IRP submit the workplan and budget to?

**Recommendation** The ToR should include a section on Panel Governance and who the Panel reports to.

| 4 | Panel Composition - number of Panel members | **Comment** The water quality modelling for the PK disposal project includes several inter-related components, for example geochemical source terms (e.g., PK porewater, pit walls), hydrogeology, PK settling and consolidation, potential resuspension of PK, chemocline development and stability, and hydrodynamic mixing in the lake. The IRP needs to include people with expertise in each of these areas. Also, a panel of this type will benefit from discussion and collaboration among experts as they review the modelling work and make recommendations. **Recommendation** An effective IRP with a range of appropriate expertise should likely include a minimum of three members. | **May 1:** DDMI notes that individuals may have multidisciplinary expertise. Diavik recommends 1-3 members is appropriate, as long as the membership covers all components of the necessary expertise defined in MVEIRB Measure 4. |
| 5 | Panel Composition - scope of Panel member expertise | **Comment** Measure 4 requires a panel that includes expertise in two areas: 1. Hydrodynamic water quality modelling 2. Extra-fine processed kimberlite or clay hydrodynamics. The scope of expertise required to support and review modelling likely | **May 1:** MVEIRB Measure 4 requires a panel that includes expertise in two areas: 1. Hydrodynamic water quality modelling 2. Extra-fine processed kimberlite or clay hydrodynamics. Additional expertise specifically in geochemistry and |
includes some additional areas of expertise. Slater Environmental Consulting comments on the PK to Mine Workings Project (memorandum dated July 28, 2019) identified several uncertainties related to the water quality modelling, including concerns about the following: . Groundwater inflow rates and quantities, . Water quality and loading from pit walls, . Predictions of porewater quality, . PK consolidation, and . Model calibration. These concerns highlight the need for expertise related specifically to geochemistry and source-term development for the modelling. In addition, expertise related to hydrogeology would also be beneficial. It would also be valuable to consider inclusion of Traditional Knowledge expertise with respect to water quality.

**Recommendation** In addition to expertise on hydrodynamic water quality modelling and extra-fine processed kimberlite or clay hydrodynamics the Panel should include expertise on geochemistry and hydrogeology.

Hydrogeology is not required. DDMI notes that the four fields of expertise listed include overlapping skillsets.

### Panel Duties

**Comment** Diavik states that although continuity of membership of the Panel is preferred, these Terms of Reference, and Panel membership, will need to be updated prior to the reviews of the modelling before the pits are filled with water and before reconnecting the pit lakes with Lac de Gras. EMAB's view is that the Panel membership and Terms of Reference should be as stable as possible, so should not be changed or reviewed unless a need is identified. The Panel Duties section and the Communications section should be reviewed and reconciled. In particular the references to the IRP engaging with Diavik during the reviews, and the process for a preliminary and final review might better be included.

**May 1:** 1. See EMAB 2(5) for a response related to continuity of Panel membership. 2. As defined in the draft ToR: "The Panel will provide its preliminary report, including recommendations, to DDMI for review and comment; DDMI may propose changes based on additional evidence or revised plans to address deficiencies. The Panel will then consider comments, suggestions and changes, before submitting a final report to the WLWB" and "The Panel is encouraged to communicate/meet directly with other interested Parties to obtain information necessary to perform their duties." DDMI believes this adequately describes the communication process. 3. The draft ToR states that the Panel is encouraged
as part of the Panel Duties. **Recommendation** In last sentence of Panel Duties section remove the last part of the sentence, beginning "although continuity of membership..." Consider including parts of Communications section regarding the review process and interactions between the IRP and Diavik in the related part of the Panel Duties section to ensure the process is clear. Consider providing an opportunity for all parties to receive a briefing on preliminary IRP findings and providing an opportunity for input on possible solutions and/or recommendations.

| 7 | Panel Schedule | **Comment** It is EMAB's understanding that the IRP will continue until the review of modelling of water quality in the pit lakes prior to reconnection has been completed. EMAB also notes that the Schedule does not include IRP review of the modelling prior to placing PK into the Pits, although this is discussed in the first part of the Panel Duties section. **Recommendation** Clarify wording of Schedule section that the IRP is expected to be available until the review of the modelling to support reconnection of the pit lake(s) with Lac de Gras. The Schedule should include all three IRP reviews. | **May 1:** DDMI suggests the following text be included in the Schedule section: "Although continuity of membership in the Panel is preferred, these Terms of Reference and Panel membership will need to be updated prior to those reviews expected in 2025 and 2027." Proposed updates to the ToR text has been provided as 'track changes' to the initial submission within Attachment 1. |

| 8 | Panel Communications | **Comment** The Communications section should reflect the principle of transparency noted under Panel Principles above. Where there are references to bilateral communication between Diavik and the IRP, there is potential for transparency to be compromised. Any discussions between the Panel and Diavik, or any other party, should be observed and reported; this would likely best be done by WLWB staff, and should be posted to the Registry. | **May 1:** 1. DDMI believes that transparency is already adequately addressed within the ToR. Please see EMAB 2(2). 2. The ToR states that the Panel is encouraged to communicate/meet directly with DDMI to obtain information necessary to perform their duties. The Panel has discretion to decide what information is necessary to perform their duties. 3. The TK Panel is not a Party that DDMI must engage with or communicate the Panel's Report to. When |
Where the ToR refer to Diavik providing the model to the Panel for final review the ToR should clarify that Diavik will also provide all data used for the analysis, and 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. It will be important to include the TK Panel in the list of organizations Diavik will report to in the final paragraph of the Communications section to ensure there is an opportunity for Aboriginal Elders to raise any remaining concerns about the water quality and results of the modelling. As noted, some parts of the Communications section might provide more clarity if moved to the Panel Duties section.

**Recommendation**

The ToR should ensure that any communications between Diavik (or other parties) are observed and reported on, and that these reports are posted to the Public Registry. 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. Add TK Panel to list of organizations Diavik will report to regarding the IRP’s recommendations and Diavik’s responses. Reconcile Communications Section with Panel Duties section to improve clarity of the process.

| 9 | Potential Panel Members | **Comment** As noted under Panel Composition above, EMAB considers that the Panel should include five areas of expertise. We have categorized the | **May 1:** See EMAB 5 regarding Panel expertise requirements. If EMAB has identified experts in these fields that DDMI has not already put forward, DDMI |
expertise of each of Diavik's proposed members and made some suggestions of additional possibilities: hydrodynamic water quality modelling - Daniel Potts, Scott Wells, Craig Swanson (noted that none of these have specific expertise with meromictic conditions associated with salinity barriers in mine pits) extra-fine processed kimberlite or clay hydrodynamics - Randy Mikula, Heather Kaminsky geochemistry - Brenda Bailey, EMAB suggestions: Bill Price (Natural Resources Canada), Mark Logsdon (Geochemica) hydrogeology - EMAB suggestion: Christoph Wels (Robertson Geoconsultants)

**Recommendation** EMAB recommends that appropriate Panel members be chosen to ensure the IRP includes expertise in each of the areas identified.

---

<table>
<thead>
<tr>
<th>GNWT - Lands: Katie Rozestraten</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ID</strong></td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tlicho Government: Tlicho Lands Regulatory</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ID</strong></td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>Page</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
</tbody>
</table>
reviews." The timing and nature of this review and potential update is not explicitly stated. **Recommendation** Recommend an additional final sentence be appended to this paragraph dictating what will components of the ToR and Panel membership will be reviewed and along what timeline, such as "The Terms of Reference will be reviewed by WLWB and Diavik and Panel Membership will be reconsidered by WLWB, pending the continued availability of previous members and according to WLWB determinations of expertise gaps."

---

<table>
<thead>
<tr>
<th>7</th>
<th>Page 7/56 - Communications - third paragraph, first sentence</th>
<th><strong>Comment</strong> The length of time that DDMI will be required to provide for the Panel to complete their review is not stipulated. <strong>Recommendation</strong> Recommend that a specific timeline is stipulated, e.g. &quot;DDMI shall provide the model for the Panel's final review three months before any planned Public Hearing or submission to the Board&quot;</th>
</tr>
</thead>
</table>

**May 1:** Once DDMI provides the Panel with the necessary information to complete their duties, DDMI expects that the timeline for the Panel to complete its duties may be constrained by the Board timelines within the WLWB Amendment Work Plan. DDMI does not expect that the Panel duties will be considered Proponent time.

<table>
<thead>
<tr>
<th>8</th>
<th>Page 7/56 - Communications - third paragraph, first sentence</th>
<th><strong>Comment</strong> The length of time that DDMI will be required to provide for the Panel to complete their review is not stipulated - and furthermore no obligation or enforcement is included should DDMI provide insufficient time for the review to occur. <strong>Recommendation</strong> Recommend the insertion of appropriate text to the effect of, &quot;should the Panel find that they have received the model at such a time as to make a complete review impossible, DDMI will be held responsible and will be required to meet any costs or obligations related to the rescheduling of Public Hearings, submissions of water quality modelling results or other related regulatory or legal obligations.&quot;</th>
</tr>
</thead>
</table>

**May 1:** See TG 7 regarding timelines. The ToR already states that "DDMI will pay for all reasonable direct and indirect costs associated with completing the duties of the Panel" but also that "Costs do not include payments to any parties other than the Panel." DDMI cannot be held responsible for direct or indirect costs to Parties as a result of potential delays caused by the Independent Panel.
<table>
<thead>
<tr>
<th>Page</th>
<th>Text</th>
<th>Comment</th>
<th>Recommendation</th>
<th>May 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Page 7/56 - Communications - fourth paragraph, second sentence</td>
<td>&quot;.explain why and provide reasons.&quot; is vague and does not specify what is included within potential justifications for this choice by DDMI.</td>
<td><strong>Recommendation</strong> Recommend text or an additional sentence be inserted along these lines to clarify, e.g. &quot;These reasons will be provided to WLWB and the Panel in a written report and will include any and all of the data and expert opinion relied upon by DDMI in arriving at their decision.&quot;</td>
<td><strong>May 1:</strong> The phrase &quot;If Diavik does not accept, or modifies, panel recommendations, it will explain why and provide reasons&quot; was taken directly from MVEIRB Measure 4 and is therefore considered appropriate.</td>
</tr>
<tr>
<td>10</td>
<td>EMAB Review</td>
<td>TG strongly supports the comments made by EMAB, in particular the suggestion to have a set of principles and accountability requirements in the TOR.</td>
<td><strong>Recommendation</strong> Integrate principle and mechanisms for accountability into the TOR.</td>
<td><strong>May 1:</strong> See EMAB 2.</td>
</tr>
<tr>
<td>11</td>
<td>Expertise</td>
<td>The qualifications of the panel have been set out, and there are many recommendations from other parties. There are no requirements for someone that has Indigenous knowledge in the Panel, such as Joe Rabesaca or Joseph Judas.</td>
<td><strong>Recommendation</strong> The panel terms should include and be accountable to Indigenous peoples. In addition the Panel needs people with specific technical expertise but also true independence and enhanced knowledge around cumulative effects.</td>
<td><strong>May 1:</strong> MVEIRB Measure 4 requires a panel that includes expertise in two areas: 1. Hydrodynamic water quality modelling 2. Extra-fine processed kimberlite or clay hydrodynamics. Specific expertise in cumulative effects is not required.</td>
</tr>
<tr>
<td>12</td>
<td>Process after the Ministerial Decision</td>
<td>TG would like an opportunity to make further comments on the TORs after the Minister issues a decision on the MVEIRB report and that TG will, at that time, also propose any individuals it considers appropriate for consideration as panel members.</td>
<td><strong>Recommendation</strong> TG requests another opportunity after the REA Decision by the Minister, in order to</td>
<td><strong>May 1:</strong> If the Minister's Decision results in changes to the proposed Measure 4 it would be up to the WLWB to determine the process forward.</td>
</tr>
</tbody>
</table>
comment in particular on the nature of the expertise to be retained.

**Wek' eezhii Renewable Resources Board: Randi Jennings**

<table>
<thead>
<tr>
<th>ID</th>
<th>Topic</th>
<th>Reviewer Comment/Recommendation</th>
<th>Proponent Response</th>
</tr>
</thead>
</table>
| 1  | Diavik - PK to Mine Workings Amendment - Terms of Reference for the Independent Review Panel (W2015L2-0001) | **Comment** The WRRB have no comments at this time.  
**Recommendation** The WRRB have no recommendations at this time. | May 1: N/A        |

**WLWB: Kassandra DeFrancis**

<table>
<thead>
<tr>
<th>ID</th>
<th>Topic</th>
<th>Reviewer Comment/Recommendation</th>
<th>Proponent Response</th>
</tr>
</thead>
</table>
| 1  | Panel Duties| **Comment** In the section of the Draft Terms of Reference (ToR) on Panel Duties, it states: "In addition to reviewing and making recommendations on DDMI's water quality modelling, the Panel may be required to participate in Technical Sessions as part of the Water Licence Amendment Process."  
In addition to the Technical Session, as per the MVLWB's Rules of Procedure, it may be necessary for the Panel to be available to answer questions at the Public Hearing. For example, section 46 of the Rules of Procedure states: "The Board has the powers, rights and privileges of a Superior Court with respect to the attendance and examination of witnesses and the production and inspection of documents."  
As well, section 49 of the Rules of Procedure assert that "any Party relying on the evidence of a witness shall make them available for questioning in the Proceeding."  
**Recommendation** As the Panel's final report could be a key piece of evidence in the Board's decision on the amended water licence, it may be necessary for the Panel to be available to explain their Final Report at the Public Hearing; however DDMI is 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. Proposed updates to the ToR text has been provided as 'track changes' to the initial submission within Attachment 1. | May 1: DDMI appreciates that the Panel may need to be available to explain their Final Report at the Public Hearing; however DDMI is 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. Proposed updates to the ToR text has been provided as 'track changes' to the initial submission within Attachment 1. |
|   | available for questioning at the Public Hearing. Does DDMI have any objections or concerns with changing the wording in the ToR to reflect this possibility? If so, please detail your specific concerns. Note that, to account for the possible attendance of the Panel at the Public Hearing, changes to the text of the ToR should be considered on page 3 (under Panel Duties) but also on page 4 (under Communications). |   |
Chairperson Joseph Mackenzie  
Wek’ëezhi Land and Water Board  
1-4905 48th STREET  
YELLOWKNIFE NT X1A 3S3

Dear Mr. Mackenzie:

Notice of Procedural Concerns –  
Public Review of Material for WL2015L2-0001 Associated with the  
Environmental Assessment EA1819-01 for Diavik Diamond Mines Incorporated

The Mackenzie Valley Environmental Impact Review Board (MVEIRB) issued its recommendation on Diavik Diamond Mines Incorporated’s (Diavik) proposal to deposit processed kimberlite into mine workings and underground (the Project) on January 6, 2020. At that time the responsible ministers entered a decision period. Responsible ministers have not yet made a decision on the Project (EA1819-01). The Government of the Northwest Territories (GNWT) has identified procedural concerns with the Wek’ëezhi Land and Water Board’s (WLWB) formal public review of material pertaining to the Diavik’s proposed project prior to the issuance of a final Mackenzie Valley Resource Management Act (the Act) s.130(1) decision from the responsible ministers for EA1819-01. The GNWT would like to respectfully inform you of the following GNWT positions:

1. The GNWT will not participate in the review of any material associated with the Project until a final s.130(1) decision is issued.

The GNWT does not comment on project related material when a MVEIRB recommendation on said project is before responsible ministers for decision. Therefore, the GNWT will not be commenting on the Diavik Engagement Plan

Version 3 or the Diavik Terms of Reference for the Independent Review Panel, which have been posted for public comment on the WLWB Online Review System (ORS). Should any other material related to the Project be posted prior to a final s.130(1) decision, the GNWT will continue to refrain from commenting.
2. It is unclear that the material posted for public comment is not being formally reviewed or approved by the WLWB prior to a final s.130(1) decision.

From conversations with WLWB staff, the GNWT understands that WLWB Board members will not be formally reviewing or approving the Diavik Terms of Reference for the Independent Review Panel, that is posted to the ORS, prior to when responsible ministers have made a final s.130(1) decision on EA1819-01 (decision on the environmental assessment). It is unclear if the WLWB will be reviewing and approving the Diavik Engagement Plan Version 3 prior to a final s.130(1) decision on EA1819-01. We request that the WLWB provide clarification on its public registry when the WLWB will be reviewing and making decisions on these two documents. It is important that reviewers have sufficient future opportunity to review and comment on the documents after a final s.130(1) decision. Such clarification would also assure reviewers that regulatory activities are not preceding the responsible ministers’ decision for EA1819-01.

The GNWT is of the view that the WLWB does not have the authority to commence a formal review or make any decision on project related material when a MVEIRB recommendation (other than a recommendation under s.128(1)(a) of the Act on said project) is before responsible ministers for decision. Under s.130(5) of the Act, the only way that the WLWB, a regulatory authority, can ensure that it acts in conformity with the final s.130(1) decision is by waiting for that decision. Following that, the WLWB can commence a formal review or make any decision. S.129(a) of the Act sets out the only circumstance in which a regulatory authority may commence a formal review or make any decision on project related material when a MVEIRB recommendation on said project is before responsible ministers for decision.

3. Indigenous governments and organizations (IGOs) must be given a formal and reasonable opportunity to provide input on measures-related material after a s.130(1) decision.

The duty to consult and, where appropriate, accommodate, must be satisfied prior to the Minister of Environment and Natural Resources (ENR) approving a water license or water license amendment. If Diavik’s Project proceeds to regulatory (i.e., if the responsible ministers decide to adopt the recommendation of the MVEIRB), in order to fulfill the consultative duty, IGOs must be given enough formal opportunity to offer input on items related to the water license amendment once a final s.130(1) decision is made. Any informal opportunity provided for input prior to a final s.130(1) decision may not be taken into consideration by the Minister of ENR in determining what constitutes sufficient and formal consultation.
To avoid any delays in potential regulatory processes, it is recommended that after a final s.130(1) decision is made, the WLWB provide sufficient formal opportunity for IGOs to offer input on material related to the Project. If enough formal opportunity is not provided, the duty to consult may not be fulfilled. This would therefore impact the Minister of ENR’s decision on the water license amendment.

Thank you for your consideration on this matter.

Sincerely,

Kate Hearn  
Assistant Deputy Minister  
Planning and Coordination  
Lands

Nathen Richea  
A/Assistant Deputy Minister  
Environment and Climate Change  
Environment and Natural Resources

c. Chief Louis Balsillie and Band Council  
   Denínu Kúqé First Nation

President Lloyd Cardinal  
Fort Resolution Métis Government

President Allan Heron  
Fort Smith Métis Council

President Trevor Beck  
Hay River Métis Government Council

President Stanley Anablak  
Kitikmeot Inuit Association

Chief Darryl Marlowe and Band Council  
Łutselk’e Dene First Nation

President Clem Paul  
Mountain Island Métis

President William Enge  
North Slave Métis Alliance
President Garry Bailey  
Northwest Territory Métis Nation

Grand Chief George Mackenzie  
Tłı̨chǫ Government

Chief Edward Sangris and Band Council  
Yellowknives Dene First Nation (Detah)

Chief Ernest Betsina and Band Council  
Yellowknives Dene First Nation (Ndilo)

Ms. Lisa Dyer  
Director General  
Northern Projects Management Office

Ms. Kim Pawley  
Manager, Environmental Assessment, Land Use Planning and Conservation  
Crown Indigenous Relations and Northern Affairs Canada

Ms. JoAnne Deneron  
Chairperson  
Mackenzie Valley Environmental Impact Review Board

Mr. Sean Sinclair  
Principal Advisor  
Environment and Closure Readiness  
Diavik Diamond Mines Inc.

Mr. Charlie Catholique  
Chairperson  
Environmental Monitoring Advisory Board

Ms. Annie Boucher  
Executive Director  
Deninu Kúé First Nation

Ms. Bev Heron  
Secretary  
Fort Smith Métis Council

Ms. Linda Piwowar  
Finance Manager  
Hay River Métis Government Council
Ms. Iris Catholique  
Executive Assistant  
Łutselk'e Dene First Nation

Mr. Mark Whitford  
Vice President  
North Slave Métis Alliance

Ms. Ursula Vogt  
Executive Director  
Northwest Territory Métis Nation

Ms. Laura Duncan  
Tłı̨chǫ Executive Officer  
Tłı̨chǫ Government

Mr. Jason Snaggs  
Yellowknives Dene First Nation (Ndilo/Dëtah)
P.O. Box 2498
Suite 300, 5201-50th Avenue
Yellowknife, NT X1A 2P8 Canada
T (867) 669 6500 F 1-866-313-2754

Joseph Mackenzie, Chair
Wek’èezhii Land and Water Board
PO Box 32
Wekweëtì, NT X1A 3S3
Canada

1 May 2020

Dear Mr. Mackenzie:

Subject: DDMI Response to Reviewer Comments on Terms of Reference for Water Quality Modelling Independent Review Panel and Selection of Panel Membership for the WLWB Review of the PKMW Project

Diavik Diamond Mines (2012) Inc. (DDMI) is pleased to provide the Wek’èezhii Land and Water Board (WLWB or ‘the Board’) with its response to Reviewer comments on DDMI’s proposed Terms of Reference (ToR) for the establishment of a Water Quality Modelling Independent Review Panel and on DDMI’s list of panel membership candidates for the Water Licence (W2015L2-0001) Amendment Process for the Processed Kimberlite to Mine Workings (PKMW) Project.

DDMI appreciates Reviewer participation in the aspects of this review related to the PKMW Project as any preliminary steps that can be taken to prepare for the potential regulatory process related to the Diavik Water Licence amendment could contribute to the potential for a go-ahead decision on the Project. We understand that any steps taken by DDMI to prepare to respond to recommended measures advanced by the Mackenzie Valley Review Board on the Project may have to be adjusted after a Ministerial decision on EA 1819-01.

As part of its response, DDMI has attached a ‘track changes’ version of the ToR that incorporates relevant DDMI responses to recommendations identified during the review. DDMI hopes these proposed changes supported by the detailed responses to recommendations satisfy reviewers. Please do not hesitate to contact the undersigned or Kofi Boa-Antwi (867 447 3001 or kofi.boa-antwi@riotinto.com) if you have any questions related to this submission.
Sincerely,

Sean Sinclair
Principal Advisor, Environment and Closure Readiness

cc: Kassandra DeFrancis, WLWB
    Anneli Jokela, WLWB

ATTACHMENT: DDMI’s ‘track changes’ version of the ToR to address Reviewer’s Comments
APPENDIX

DDMI’s ‘track changes’ version of the Terms of Reference for the Independent Review Panel to address Reviewer’s Comments
Introduction

In 2018, Diavik Diamond Mine applied to the Wek’èezhii Land and Water Board (WLWB) for an amendment of its existing water licence (the Water Licence Amendment) to allow for the deposition of processed kimberlite into pit(s) and the underground. Part way through the Water Licence Amendment process, the application was referred for an Environmental Assessment by the Mackenzie Valley Review Board (MVEIRB). The MVEIRB released its Report of Environmental Assessment and Reasons for Decision EA1819-01 – Diavik – Depositing Processed Kimberlite into Pit(s) and Underground (the Report of EA1819-01) in January 2020; the Water Licence Amendment process will reinitiate once GNWT’s Minister of Environment and Natural Resources approves the report.

Measure 4 of the MVEIRB Report of EA1819-01 specifies that Diavik is to establish an independent review panel for water quality modelling related to its proposed project amendment.

Measure 4: Diavik will establish an independent review panel for water quality modelling
To prevent significant adverse impacts on cultural use of Lac de Gras, Diavik will establish and fund an independent review panel for the updated modelling described in Measure 3.

Diavik will develop the terms of reference for this panel for approval by the Wek’èezhii Land and Water Board. The Wek’èezhii Land and Water Board will engage Diavik and intervenors to identify and select panel members with appropriate expertise in:
• hydrodynamic water quality modelling, and
• extra-fine processed kimberlite or clay hydrodynamics.

The terms of reference and panel member selection will be approved in a timeframe that leaves adequate time for it to carry out the tasks below.
For each modelling update defined in Measure 3, the panel will review and make recommendations on:
• model selection and design,
b) model input data, assumptions, and processes,
c) monitoring requirements for informing the modelling process, and
d) model results.

The panel will provide reports to the Wek’èezhìı Land and Water Board for inclusion on its public registry. Diavik will report to the Wek’èezhìı Land and Water Board and communities about how it responded to panel recommendations. If Diavik does not accept, or modifies, panel recommendations, it will explain why and provide reasons. The Wek’èezhìı Land and Water Board will consider panel reports and Diavik’s responses when reviewing and approving any plans for updated modelling.

The following quote from page 84 of the MVEIRB’s Reasons for Decision gives context to Measure 4 and to the requirement for the Panel:

“The Review Board also agrees that the panel should be involved in all stages of updating the modelling, both to reduce uncertainty and to increase Indigenous people’s confidence in the predictions, thus reducing concern. The panel will provide the Wek’èezhìı Land and Water Board with information to assist in making decisions on putting PK in the pits and reconnection.”

These Terms of Reference define the scope of work for the Panel.

**Composition**

The Panel will be composed of one to three individuals who are technically qualified and, to the extent possible, complementary in skill to review and make recommendations on Diavik Diamond Mines (2012) Inc.’s (DDMI) water quality modelling of processed kimberlite deposition in completed open pits(s) and underground workings. The WLWB will engage DDMI and other interested Parties\(^1\) to identify and select panel members. The WLWB will determine the final composition of the Panel.

**Chair**

The Panel will select a Chair within 10 days after the Panel is formed and will identify the Chair to the WLWB and DDMI. The Panel members report to the Chair and the Chair will be responsible for compiling and submitting reports to the WLWB and will serve as the point of contact.

\(^1\) “other interested Parties” include both intervenors to the Mackenzie Valley Impact Review Board Environmental Assessment - EA1819 and the Kitikmeot Inuit Association.
The Panel may rotate the role of Chair amongst its members and will notify the WLWB and DDMI whenever the Chair changes. The Panel Chair does not report to any external Party. The WLWB will post all notices on the Public Registry.

**Panel Duties**

The Members of the Panel will carry out their responsibilities as independent experts and provide technical review and advice without influence from DDMI, the WLWB or any other Parties. The first task for the Panel is to review the water quality modelling that is being completed by DDMI as part of the Water License Amendment process. The modelling is intended to show whether water will meet water quality objectives defined in MVEIRB Measure 1. The water quality modelling and related Independent Panel review will be considered by interested Parties and the WLWB part of the License Amendment Process, prior to issuance of an amended water licence.

As part of the Amendment Process, the WLWB will review and consider approval of the water quality modelling. This independent model review will address the first independent modelling review required by MVEIRB Measure 3:

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

  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.

In addition to reviewing and making recommendations on DDMI’s water quality modelling, the Panel may be required to participate in Technical Sessions as part of the Water Licence Amendment Process. In addition, the Panel may need to be available to explain their Final Report at the Public Hearing. The Public Hearing will not be an opportunity for Parties and DDMI to critique or question the acceptability of the Panels Final Report, or commit the Panel to further Undertakings.

It is recognized that independent model reviews will also be required at two future dates as specified in MVEIRB Measure 3:

- **a) Before filling the pit(s) with water from Lac de Gras:** This update will include the detailed conditions of the processed kimberlite in the pit(s) and the planned pore water layer depth.
b) **Before reconnecting (partially or fully) the pit lake(s) containing processed kimberlite to Lac de Gras:** This update to the model will include real data from monitoring of the pit lake(s) to calibrate the model predictions.

It is anticipated that these two future water quality modelling exercises will be done during the term of the amended water licence; 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.

**Schedule**

The Panel is expected to be available for the duration of the Diavik Mine Water License Amendment, which is expected to reinitiate in 2020. The future reviews of updated water quality modelling (before filling the pit(s) with water from Lac de Gras and before reconnecting the pit lake(s) containing processed kimberlite to Lac de Gras) are not anticipated until around 2025 and 2027, respectively. **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.**

**Communications**

The Panel shall communicate/meet as necessary to complete their duties. The Panel is encouraged to communicate/meet directly with DDMI and other interested Parties to obtain information necessary to perform their duties. If required to attend the Technical Session as part of the WLWB’s process, the WLWB will record the Panel’s communications and post them to the WLWB’s public registry. To maintain independence from DDMI, communication between the Panel and interested Parties will be coordinated through WLWB Staff. WLWB Staff will be responsible for retaining minutes of any external communications/meetings of the Panel and may post these minutes on the WLWB’s public registry.

During the review of the water quality model, the Panel may engage Diavik on topics including, but not limited to: model selection and design; model input data; assumptions, and processes; and monitoring requirements for informing the modelling process. Diavik will respond directly to any Panel engagement on the model to support their review.

In advance of any Public Hearing and prior to submission of the final water quality modelling results by DDMI to the Board, DDMI will provide the model to the Panel for final review. The
Panel will then provide its preliminary report, including recommendations, to DDMI for review and comment; DDMI may propose changes based on additional evidence or revised plans to address deficiencies. The Panel will then consider comments, suggestions and changes, before submitting a final report to the WLWB. The Panel may need to be available to explain their final report at the Public Hearing. The Public Hearing will not be an opportunity for Parties and DDMI to critique or question the acceptability of the Panels Final Report, or commit the Panel to further Undertakings. This final report and potential explanation of the report at a Public Hearing represents completion of Panel duties related to the first of three independent modelling reviews required by MVEIRB Measure 3.

Diavik will report to the Wek’èezhìı Land and Water Board and communities about how it responded to panel recommendations. If Diavik does not accept, or modifies, panel recommendations, it will explain why and provide reasons. The Wek’èezhii Land and Water Board will consider panel reports and Diavik’s responses when reviewing and considering approval of the updated modelling.

Dispute Resolution

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.

Funding

DDMI will pay for all reasonable direct and indirect costs associated with completing the duties of the Panel. Costs do not include payments to any parties other than the Panel.

Continuance

At its discretion, and after consultation with DDMI and other interested Parties, the WLWB may revise the Terms of Reference. DDMI and/or other interested Parties may submit to the WLWB recommendations for revisions to the Terms of Reference at any time. Approved revisions to the Terms of Reference supersede the previous version and take effect either immediately or as directed by the WLWB.