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Reasons for Decision

Issued pursuant to paragraphs 22(2)(a) and 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR).

Land Use Permit Application	
File Number	W2022D0003
Company	Arctic Canadian Diamond Company Ltd.
Project	Ekati Lynx WRSA
Location	Ekati Mine, Lac de Gras, NT
Activity	Mining Exploration - Mine Shaft
Date of Decision	April 27, 2022

On April 27, 2022, the Wek'èezhì Land and Water Board (WLWB or Board) met and considered the Application made by Arctic Canadian Diamond Company Ltd. (Arctic) (Applicant) to the Board on March 22, 2022 for Land Use Permit (Permit) W2022D0003 for the Ekati Lynx WRSA (the Project) in Lac de Gras area, NT. After reviewing the Application and the evidence gathered during the regulatory proceeding, the Board determined that the Application was exempt from preliminary screening in accordance with the Exemption List Regulations and the Board has decided to issue Type A Land Use Permit W2022D0003 for a term of five years for the Ekati Lynx WRSA. The Board's reasons are described below.

1.0 List of Defined Terms and Acronyms

Applicant	Arctic Canadian Diamond Company Ltd.
Application	The complete application package submitted by the Applicant for Land Use Permit W2022D0003.
CRP	Closure and Reclamation Plan
DFO	Department of Fisheries and Oceans

Distribution List	The list of individuals and organizations to whom materials from this regulatory proceeding were circulated. ¹
EA	Environmental Assessment
ECCC	Environment and Climate Change Canada
GNWT	Government of the Northwest Territories
GNWT-ENR	Government of the Northwest Territories – Environment and Natural Resources
Inspector	An Inspector designated under subsection 84(1) of the Mackenzie Valley Resource Management Act
LWBs	Land and Water Boards of the Mackenzie Valley
MVLUR	Mackenzie Valley Land Use Regulations
MVLWB or Board	Mackenzie Valley Land and Water Board
MVRMA	Mackenzie Valley Resource Management Act
Minister	Minister of the Government of the Northwest Territories (GNWT) – Lands
ORS	Online Review System (https://new.onlinereviewssystem.ca/reviews)
Party	As per the MVLWB Rules of Procedures , an applicant, a person, or an organization participating in this regulatory process.
Permit	Land Use Permit W2022D0003
Project	Ekati Lynx WRSA, the undertaking as described in Part A of the Permit.
Review Board	Mackenzie Valley Environmental Impact Review Board
SCP	Spill Contingency Plan
Standard Permit Conditions	MVLWB Standard Land Use Permit Conditions Template
TG	Tłı̄chq̄ Government
WLWB or Board	Wek'èezhìi Land and Water Board
WMP	Waste Management Plan

2.0 Summary of Application

On March 22, 2022, the Applicant submitted an application for a new Permit W2022D0003 (the Application).² The Application is to construct waste rock pile at the Lynx Waste Rock Storage Area on the Ekati Claim Block. The activities include: construction of a waste rock pile; construction of a temporary kimberlite ore storage pad; construction of a crusher pad; construction of a road connecting Misery Haul Road to the Winter access road; storage of granite waste rock and temporary storage of kimberlite ore; storage of fuel; and, storage of equipment to support operations. These activities are located within the Wek'èezhìi Resource Management Area. The WLWB had issued Land Use Permit W2015D0005 on June 5, 2015, for a period of five years for the Lynx Waste Rock Storage Area (WRSA). On April 16, 2020, the Board approved an extension to the Permit (W2015D0005) for a period of two years. The purpose of this Application (W2022D0003) is to continue to construct waste rock pile at the Lynx WRSA on the Ekati Claim Block. This Permit (W2015D0005) is set to expiry on June 4, 2022. Prior to the expiration of the Permit,

¹ To access the Distribution List, see the LWBs' Online Review System for [Arctic Canadian Diamond Company Ltd. – Ekati Lynx WRSA Land Use Permit Renewal Application – Mar 22 22](#).

² See WLWB Online Registry for [Ekati Lynx WRSA – LUP Renewal Application – Mar 22 22](#).

the WLWB received a Land Use Permit Application from Arctic on March 22, 2022 to continue the Lynx WRSA Project.

In making its decision and preparing these Reasons for Decision, the Board has reviewed and considered:

- 1) The Permit Application as submitted by the Applicant for the Project;
- 2) The evidence and submissions received by the Board from the Applicant in relation to the Permit; and
- 3) The comments and recommendations, evidence, and submissions received by the Board from Parties during this regulatory proceeding.

3.0 Regulatory Process

On March 22, 2022, the Applicant submitted the Application for a new Permit W2022D0003. The Application was subsequently deemed complete and circulated to the Distribution List for public review on the Online Review System (ORS).^{3,4} In the cover letter of the Application, Arctic requested an exemption from preliminary screening pursuant to the Exemption List Regulations. In the Item for Review, Board staff indicated they agreed the Application may be exempt from preliminary screening in accordance with the Preliminary Screening Exemption List Regulations and Exemption List Regulations of the *Mackenzie Valley Resource Management Act* (MVRMA). Reviewers were encouraged to provide comments and recommendations on the possible exemption along with associated rationale (e.g., on impacts and mitigation measures) to assist with the Board's preliminary screening determination. Reviewer comments were due April 12, 2022.

To assist the Board in making its decision on the Permit, Board staff also circulated a draft Permit for review with the Application to allow all Parties the opportunity to comment on the specific wording of the draft conditions.⁵

The Tłı̄chq̄ Government (TG) commented that it had no concerns as no changes were being proposed and the project has not been modified and recommended that Arctic continue to engage with TG on activities within the Permit. Wek'èezhii Renewable Resources Board (WRRB), Independent Environmental Monitoring Agency (IEMA), and Government of the Northwest Territories Environment and Natural Resources Environmental Assessment and Monitoring (GNWT-ENR EAM) all indicated they had no recommendations at this time. The Government of the Northwest Territories Department of Lands noted there were no comments from the Territorial Lands Administration and comments from the Mining Recorder's Office indicated no concerns. Reviewer recommendations and proponent responses are available on the WLWB Online Review System.⁶

On April 27, 2022, the Board met to make decisions regarding the Application. These decisions and related reasons are described in sections [5.0](#) and [6.0](#) below.

³ See WLWB Online Registry for [Ekati Lynx WRSA Land Use Permit Renewal Application – Mar 22 22](#).

⁴ See WLWB Online Review System for [Ekati Lynx WRSA - LUP Renewal Application - Engagement Record - Mar 22 22](#).

⁵ See WLWB Online Registry for [Ekati Lynx WRSA - Draft Land Use Permit - Mar 22 22](#)

⁶ See WLWB Online Review System for [Ekati Lynx WRSA - Land Use Permit Renewal Application](#)

4.0 Legislative Requirements Related to Permit Issuance

The Project is subject to the [MVRMA](#) and the [MVLUR](#). As per the [MVLUR](#), the proposed use of land for the Project requires a permit. Accordingly, the Board has jurisdiction to issue the Permit as per subsection 59(1) and section 102 of the [MVRMA](#).

In conducting its regulatory process for the Application (as described in sections [3.0](#) and [4.0](#) above), the Board has ensured that section 62 of the [MVRMA](#) and all applicable legislative requirements have been satisfied as outlined in the subsections below. The Board has considered the people and users of the land and water in the Mackenzie Valley, and any Traditional Knowledge and scientific information that was made available to the Board during the regulatory proceeding, as per section 60.1 of the [MVRMA](#). The consideration of information provided to the Board is discussed in detail below and in section [6.0](#).

4.1 Consultation, Engagement, and Public Notice

As per paragraph 60.1(a) of the [MVRMA](#), in exercising its authority, the Board must consider the importance of conservation to the well-being and way of life of Indigenous peoples of Canada, specifically those to whom section 35 of the *Constitution Act*, 1982, applies and who use an area of the Mackenzie Valley. Accordingly, the Board works with applicants, affected parties (including Indigenous governments and organizations), and other parties (such as other boards and regulators) to ensure that potential impacts of proposed projects, including impacts on rights under section 35, are understood and carefully considered before decisions are made with respect to the issuance of permits and licences.

The Board's requirements for engagement are set out in the MVLWB [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#). The Policy and Guidelines were developed to ensure that the Board's obligations for achieving meaningful consultation (as set out by land claims and applicable legislation) with all affected parties, including Indigenous groups in the Mackenzie Valley, are met and engagement and consultation results clearly articulated. In accordance with the Policy and Guidelines, the Applicant's engagement efforts with respect to the Application are detailed in the Engagement Record submitted with the Application.⁷ The Applicant also has an approved Engagement Plan, Version 4.1,⁸ in place under the Licence and did not propose changes to the Plan. The Applicant must continue engagement efforts as outlined in the approved Plan and as required in the Permit.

The Application was posted to the Board's Public Registry and distributed through the ORS. As the Project is located in the Wek'èezhii Resource Management Area, the appropriate organizations, governments, First Nations, and Indigenous organizations were included in the Distribution List.⁹ The Distribution List

⁷ See WLWB Online Registry for [Ekati Lynx WRSA - LUP Renewal Application - Engagement Record - Mar 22 22](#)

⁸ See WLWB Online Registry for [W2012L2-0001 - Ekati - Engagement Plan - Version 4.1 - Jul 27 18](#).

⁹ To access the Distribution List, see the LWBs' Online Review System for [Arctic Canadian Diamond Company Ltd. – Ekati Lynx WRSA Land Use Permit Renewal Application – Mar 22 22](#).

was used throughout this proceeding to circulate submissions, information, and updates relevant to the proceeding; the List was periodically updated, and (when requested) individuals with specific interests in the Project were added. More information about the proceeding for the Application is provided above in [section 4.0](#).

In accordance with sections 63 and 64 of the [MVRMA](#), the Board is satisfied that notice of and access to copies of the Application were provided, and that a reasonable amount of time was given to communities, First Nations, and the public to participate in this proceeding and make submissions to the Board.

4.2 Eligibility for Land Use Permit

As per section 18 of the MVLUR, eligibility must be determined before the Board can issue a permit. In section 6 of the Application, the Applicant provided a list to support eligibility (i.e., 281 Crown Mineral Leases all in good standing and various surface leases for the Ekati Diamond Mine)¹⁰ to demonstrate eligibility under 18(a)(i) of the [MVLUR](#). No issues were raised regarding eligibility during this proceeding. Based on the supporting information provided, the Board believes that eligibility requirements under section 18 of the MVLUR have been satisfied.

4.3 Land Use Plan Conformity

As per section 61 of the [MVRMA](#), where an approved Land Use Plan applies, the Board must confirm conformity with the Land Use Plan before issuing a permit or licence.

No approved Land Use Plans apply in the Project area.

4.4 Land Use Fees

The Project is located wholly outside of federal areas, so no land-use fees apply.

4.5 Environmental Review (Part 5 of the MVRMA)

4.5.1 Exemption from Preliminary Screening

In accordance with section 124(1) of the MVRMA, the Board must conduct a preliminary screening of the Application. A preliminary screening of Land Use Permit W2015D0005 was completed June 4, 2015.¹¹ It was determined that there was no likelihood that the proposed development might have a significant adverse impact on the environment or might be a cause of public concern.

Schedule 1 (Section 2), Part 1, paragraph 2(b) of the MVRMA Exemption List Regulations states that an application can be exempt from preliminary screening if:

A development, or a part thereof, for which renewal of a permit, licence or authorizations is requested that (a) has not been modified; and (b) has fulfilled the requirements of the

¹⁰ See WLWB Online Registry for [Ekati Lynx WRSA - LUP Renewal Application - Mar 22 22](#) (i.e., See PDF pg. 4)

¹¹ See WLWB Online Registry for [Ekati Lynx WRSA - Preliminary Screening - Jun 4 15](#)

environmental assessment process established by the *Mackenzie Valley Resource Management Act*, the *Canadian Environmental Assessment Act* or the *Environmental Assessment Review Process Guidelines Order*.

Arctic identified in its cover letter that the Application was to renew an existing Land Use Permit (W2015D0005) and requested that the Application be exempt from preliminary screening because the project has not been modified and no changes are being proposed for the Land Use Permit. The preliminary screening for Land Use Permit W2015D0005 was reviewed and it was confirmed that the activities and the area previously screened remain the same and thus agree that this Application should be exempt from preliminary screening. No parties provided comments with respect to the preliminary screening as part of the public review.

- ***Decision #1: The Board has determined that the Application submitted by Arctic Canadian Diamond Company Ltd. is exempt from preliminary screening in accordance with the Exemption List Regulations.***

The Board is satisfied that the requirements of Part 5 of the [MVRMA](#) have been met for the Project.

5.0 Decision – Land Use Permit W2022D0003

Having due regard to the facts, circumstances, and the merits of the submissions made to it, and to the purpose, scope, and intent of the [MVRMA](#), the Board has determined that Permit W2022D0003 should be issued, subject to the scope, definitions, conditions, and term contained therein. The Board's determinations and reasons for this decision are set out below.

The Permit has been developed to address the Board's statutory responsibilities, to protect the receiving environment, and to address issues within the Board's jurisdiction that were identified and investigated during this regulatory proceeding.

In developing the Permit, the Board considered the existing Land Use Permit W2015D0005, as well as MVLWB [Standard Land Use Permit Conditions Template](#) (Standard Permit Conditions) and included a number of these standard conditions that are relevant to the Project. The Standard Permit Conditions have been established by the LWBs based on information from LWB policies and guidelines, other applicable guidelines and best practices, meetings with Inspectors, input from LWB staff, and feedback from a public review. Each standard condition has been evaluated against the following characteristics of an ideal condition:

- Clearly part of LWBs' authority;
- Has a clear purpose and rationale;
- Is practical and enforceable;
- Matches the scale of the project; and
- Does not conflict with existing legislation (i.e., is not less stringent).

The draft Permit included three non-standard conditions (highlighted in green for reviewers) carried over from Land Use Permit W2015D0005. No concerns were raised regarding the inclusion of the non-standard conditions.

As noted in [section 4.0](#), Board staff circulated a draft Permit for review to allow Parties to provide specific input to the Board on possible conditions, and the Board considered these review comments and recommendations in making its determination on the Permit conditions. The Standard Permit Conditions include general rationale for each standard condition, and as such, the language of any standard condition included in the Permit is only discussed in detail in the following sections of these Reasons for Decision when it specifically relates to concerns or recommendations raised during the regulatory proceeding. The Board's reasons for developing and including project-specific conditions, including discussion of any concerns and recommendations raised regarding these conditions, are detailed in the relevant sections below.

5.1 Term of Permit

The Applicant has applied for a term of five years for the Permit. Subsection 26(5) of the [MVLUR](#) allows for a Permit term of not more than five years. There were no concerns raised by Parties during the public review regarding the term of the Permit. After reviewing the submissions made during this regulatory proceeding, the Board has determined an appropriate term for the Permit is five years.

5.2 Part A: Scope of Permit

The scope of the Permit ensures the Permittee is entitled to conduct activities which have been applied for and which have been subject to Part 5 of the [MVRMA](#). In setting out the scope of the Permit, the Board endeavoured to provide enough detail to identify and describe the authorized activities, without being unduly restrictive or prescriptive, and to allow for project flexibility, as contemplated in the Application, throughout the life of the Permit.

Based on the activities described in the Permit Application and on the scope outlined in the Standard Permit Conditions, Board staff included a draft scope in the draft Permit that was circulated for public review. The Board did not receive any comments or recommendations regarding the draft scope during the proceeding, so the Board accepted it as the scope of the Permit.

5.3 Part B: Definitions

The Board defined certain terms in the Permit to ensure a common understanding of the conditions, to avoid future differences in interpretation of the Permit, to reflect Project-specific evidence, and to support consistency across licences and permits issued by the LWBs. For the most part, the Board selected applicable definitions relevant to the Project from the Standard Permit Conditions. No comments or recommendations were received from reviewers on the Definitions of the draft Permit during the public review, therefore, no changes were made to the Permit Definitions.

5.4 Part C: Conditions Applying to All Activities

The subheadings below correspond to the headings in the conditions section of the Permit, as outlined in subsection 26(1) of the [MVLUR](#).

26(1)(b) Time and 26(1)(j) Protection of Historical, Archaeological, and Burial Sites

The 'Initial Notification - Contact Inspector' and 'Site Discovery and Notification' conditions were included for consideration in the draft Permit. The conditions also included green highlights requesting input with regards to Inspectors contact number. No comments and/or recommendations were received from Reviewers with regards to these conditions during the public review. Land Use Permit W2015D0005 included the contact number for the GNWT Lands Inspectors and since there were no comments/recommendations on these two conditions, the Board included the current applicable GNWT-Lands Inspector contact number in the Permit.

26(1)(l) Security Deposit

The Board is authorized to require the Permittee to provide security to the Minister by subsections 71(1) of the [MVRMA](#) and 32(1) of the [MVLUR](#). Subsection 71(3) of the [MVRMA](#) specifies how the security may be applied.

No security estimate was included as part of the Application. Arctic stated in section 18 of the Application that "there is a Board approved closure plan and closure cost estimate in place for the Ekati mine. No changes are being requested to the approved existing closure plan or closure cost estimate with this application". The 'Determination of Project Liability' and 'Security Deposit' conditions were included for consideration in the draft Permit. These two conditions are non-standard conditions that were carried over from W2015D0005 Permit and were included to ensure the proponent outlines its reclamation strategy and calculates its liability for the Lynx WRSA. The Board also recognizes that an approved RECLAIM estimate for the entire Ekati site, including the Lynx WRSA, is already held under Ekati's main Water Licence W2020L2-0004. The security amount for the Lynx WRSA has not been parcelled out from the overall amount, and so an explicit security amount is not included in the Permit. No comments or recommendations were received from Reviewers with regards to these two non-standard conditions and the Applicant did not object to the inclusions of these conditions; thus, the Board has retained these two non-standard conditions in the Permit.

The Board is satisfied that the security requirements included in the Permit ensure that sufficient financial resources will be in place in advance of any liabilities that will be incurred.

26(1)(m) Fuel Storage

The 'Maximum Fuel On Site' condition was included for consideration in the draft Permit. The condition included green highlights with regards to the total maximum litres of fuel that will be stored on site. No comments and/or recommendations on the condition was received from Reviewers. Section 13 of the Application indicates that 10,000 Litres of diesel will be stored adjacent to the crusher. Therefore, the

Board has updated this condition to include '10,000 litres of diesel' as the maximum amount of fuel that can be stored under this Permit.

5.5 Overall Permit Decision

After reviewing the Application, as well as all reviewer comments and proponent responses submitted during the public review, the Board has decided to issue this Type A Land Use Permit for a period of five years.

- ***Decision #2: The Board has decided to issue Type A Land Use Permit W2022D0003 for a period of five years.***

5.6 Management Plans

Arctic stated in its Application that it will follow Ekati's approved Management Plans (i.e., Waste Management Plan, Spill Contingency Plan, and Closure and Reclamation Plan) under Arctic's main Water Licence W2020L2-0004. There were no comments from reviewers with regards to Arctic using the Management Plans from Ekati's main Water Licence. The Board notes this is consistent with the existing W2015D0005 Lynx WRSA Permit.

6.0 Conclusion

Subject to the scope, definitions, conditions, and term set out in the Permit, and for the reasons expressed herein, the WLWB is of the opinion that the activities and land use associated with the Project can be completed by Arctic while providing for the conservation, development, and utilization of waters in a manner that will provide the optimum benefit for all Canadians and in particular for the residents of the Mackenzie Valley.

Land Use Permit W2022D0003 contains provisions that the Board deems necessary to ensure and monitor compliance with the MVRMA and the Regulations made thereunder, and to provide appropriate safeguards in respect of Arctic's use of the land as authorized by the Permit.

SIGNATURE



April 27, 2022

Mason Mantla, Chair
Wek'èezhii Land and Water Board

Date