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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 | W2024D0006 |
| Company | Arctic Canadian Diamond Company (Arctic) |
| Project | Sable Underground Mine |
| Location | Ekati, NT |
| Activity | Mining and Milling |
| Date of Decision | June 28, 2024 |

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On June 28, 2024, the Wek'èezhì Land and Water Board (WLWB or Board) met and considered the Application made by Arctic Canadian Diamond Company Ltd. (Arctic or Applicant) to the Board on April 16, 2024 for Land Use Permit (Permit) W2024D0006 for early works activities associated with the Sable Underground Project (the Project) at the Ekati Diamond Mine. Arctic also applied to amend its Water Licence (W2022L2-0001) and for a new Permit (W2024D0005) to allow for underground mining of Sable; these applications will be considered at a separate meeting at the end of the Water Licence Amendment proceeding.

After reviewing the Application and the evidence gathered during the regulatory proceeding, the Board has decided to issue Land Use Permit W2024D0006 for a term of two years.

These Reasons for Decision set out the Board's regulatory process for the Application and rationale for decisions regarding the Permit. A summary of the Application and the main issues identified during the proceeding is provided in sections [2.0](#) and [3.0](#) below, followed by an outline of the regulatory process for the Application in [section 4.0](#). [Section 5.0](#) describes how the applicable legislative requirements have been met. The Board's decisions and supporting rationale regarding the Permit are set out in [section 6.0](#).

1.0 List of Defined Terms and Acronyms

| | |
|---------------------|--|
| Applicant/Permittee | Arctic Canadian Diamond Company (Arctic) |
| Application | The complete application package submitted by the Applicant for Land Use Permit W2024D0006. |
| CRP | Closure and Reclamation Plan |
| DFO | Fisheries and Oceans Canada |
| 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-ECC | Government of the Northwest Territories – Environment and Climate Change |
| IR | Information request |
| Inspector | An Inspector designated under subsection 84(1) of the Mackenzie Valley Resource Management Act |
| LWBs | Land and Water Boards of the Mackenzie Valley |
| MVEIRB | Mackenzie Valley Environmental Impact Review Board |
| MVLUR | Mackenzie Valley Land Use Regulations |
| MVRMA | Mackenzie Valley Resource Management Act |
| Minister | Minister of the Government of the Northwest Territories – Environment and Climate Change |
| ORS | Online Review System (https://new.onlinereviewsystem.ca/reviews) |

¹ To access the Distribution List, see the LWBs' Online Review System for [Sable Underground Project - Type A Water Licence Amendment and Type A Land Use Permit Applications - Apr 24 24](#).

| | |
|----------------------------|--|
| Party | As per the LWB Rules of Procedure , an applicant, a person, or an organization participating in this regulatory process. |
| Permit | Land Use Permit W2024D0006 |
| Project | Early Works activities for the Sable Underground Project, 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 | LWB Standard Land Use Permit Conditions Template |
| SUG | Sable Underground Project |
| TG | Tłıchǫ Government |
| WLWB or Board | Wek'èezhìi Land and Water Board |
| WMP | Waste Management Plan |

2.0 Summary of Application

On April 16, 2024, the Applicant submitted a complete application for a new Type A Land Use Permit W2024D0006 (the Application).² The Application is to conduct Early Works activities related to the Sable Underground project (the Project) including construction of the portal, decline to the first production level, and fresh air raise. These activities are located within the Wek'èezhìi Management Area. Arctic also submitted applications to amend its Water Licence (W2022L2-0001) and for a new Land Use Permit (W2024D0005) for the mining component to incorporate the Sable underground mining activities. The proceeding for the Amendment Application and Mining Permit Application are anticipated to be completed in January 2025, pending the Board's decision and after receipt of the Minister's decision on the Water Licence.

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.

As part of the overall Application package, Arctic included proposed updates to the Wastewater and Processed Kimberlite Management Plan and the Waste Rock and Ore Storage Management Plan; however, those updates will be considered as part of the ongoing Water Licence Amendment proceeding because updates to those plans are linked to the activities proposed in the other two applications.

² See WLWB Online Registry for [Ekati - Sable UG - Cover letter, attachments, and Application - Early Works - Apr 24 24](#).

3.0 Main Issues Raised During the Regulatory Proceeding

These Reasons for Decision focus primarily on the following key issues raised during this regulatory proceeding:

- 1) **Security**: In the application, Arctic proposed that estimated security (i.e., \$107,367) associated with the Early Works activities not be included as a condition of the Early Works Land Use Permit, but rather incorporated into the estimated security for the Project, which will be determined through the Proceeding. The GNWT-ECC agreed with this approach while IEMA recommended that all the security for the Early Works be posted prior to work beginning. Details regarding the Board’s consideration for this decision are outlined in section 6.4 below.
- 2) **Removal of Drip Trays**: Arctic proposed that the condition requiring drip trays under vehicles parked for two hours or more not be included because Arctic has found it to be “operationally unachievable and unnecessary for protection of the environment”. The GNWT-ECC Inspector indicated that in their opinion the condition did not need to be included given there are cleanup and maintenance requirements in conditions 6 (CLEAN WORK AREA) and 35 (CLEAN UP SPILLS). IEMA recommended that the requirement for drip trays remain in the Land Use Permits given this is a standard land use permit condition and that in the absence of drip trays any leaks would fall to the ground and get covered by snow. The Tłıchq Government commented that the drip tray should serve as a first line of protection from spills to the environment. Details regarding the Board’s consideration for this decision are outlined in section 6.4 below.

4.0 Regulatory Process

On April 16, 2024, the Applicant submitted the Application, which was deemed complete on April 24, 2024 and circulated to the Distribution List for public review on the Online Review System (ORS).³

As part of the public review, Board staff requested comments and recommendations to assist with the Board’s preliminary screening determination. To assist the Board in making its decision on the Permit, Board staff also circulated a draft Permit prepared by Arctic for review with the Application to allow all Parties the opportunity to comment on the specific wording of the draft conditions.

On April 24, 2024, the Board decided to apply paragraph 22(2)(b) of the [MVLUR](#).⁴

By May 29, 2024, the Board received comments and recommendations regarding the Application and the draft Permit from the following Parties: Tłıchq Government (TG), Government of the Northwest Territories Environment and Climate Change (GNWT-ECC), Independent Environmental Monitoring Agency (IEMA), Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), and Transport Canada.⁵ Board staff also submitted comments and questions for the purposes of clarification. The

³ See WLWB Online Review System for [Sable Underground Project - Type A Water Licence Amendment and Type A Land Use Permit Applications - Apr 24 24](#).

⁴ See WLWB Online Registry for [Ekati - Sable UG - Notification of Timeline Pause - Apr 24 24](#).

⁵ See WLWB Online Registry for [Sable Underground Project – Review Summary Table – Apr 24 24](#).

Wek'èezhì Renewable Resources Board indicated it had no comments. On June 5, 2024, the Applicant responded to the Parties' comments and recommendations.⁶

On June 28, 2024, the Board met and made its preliminary screening determination for the Project.⁷ On the same day, the Board met to make decisions regarding the Application. These decisions and related reasons are described in sections [5.0](#) and [6.0](#) below.

5.0 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. The required permit for this Project is within the Board's jurisdiction as per subsections 59(1) and 102(2) 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](#).

5.1 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 the LWB [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#).⁸ 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 are detailed

⁶ See WLWB Online Registry for [Sable Underground Project - Type A Water Licence Amendment and Type A Land Use Permit Applications - Apr 24 24](#)

⁷ See WLWB Online Registry for [Sable Underground Project – Preliminary Screening Determination and RFD – Jun 28 24](#).

⁸ See WLWB Policies and Guidelines webpage to access the LWB [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#).

in the engagement record submitted with the Application.⁹ As included in the record, Arctic indicated that pre-submission engagement took place from November 2023 until April 2024. The engagement record describes that at a minimum, an email was sent to all Affected Parties notifying them of the Project and that either engagement meetings were scheduled, or follow-up emails were sent. Following issuance, the Applicant must continue engagement efforts as outlined in the approved Engagement Plan, Version 5.1,¹⁰ 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'èezhìi Management Area, the appropriate organizations, governments, First Nations, and Indigenous organizations were included in the Distribution List.¹¹ The Distribution List was used throughout this proceeding to circulate submissions, information, and updates relevant to the proceeding; the List was updated if needed, and (if 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](#).

Public notice of the Application was published in News North during the week of May 6, 2024. 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.

5.2 Eligibility for Land Use Permit

As per section 18 of the MVLUR, eligibility must be determined before the Board can issue a permit. The Applicant provided confirmation of 121 Crown Mineral Leases, all in good standing, to demonstrate eligibility under subparagraph 18(a)(i) of the [MVLUR](#). In the associated Water Licence Amendment Application, Arctic indicated that the "Project may require administrative amendment of the Surface Lease issued by GNWT for the Sable Site (76 D/15-4- 4)" but it "is actively engaged with GNWT on this topic". Arctic was asked for any updates on the status of the surface Lease, to which it said it continued to engage with GNWT regarding the Sable surface lease (76 D/15-4-4) (WLWB comment 1). GNWT-ECC did not raise any concerns during the public review. Based on the supporting information provided and the Public Review, the Board concludes that the eligibility requirements under section 18 of the MVLUR have been satisfied.

5.3 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.

⁹ See WLWB Online Registry for [Ekati - Sable UG - Cover letter, attachments, and Application - WL Amendment - Apr 24 24](#), Appendix E.

¹⁰ See WLWB Online Registry for [Ekati - Engagement Plan - Version 5.1 - Oct 5 23](#)

¹¹ To access the Distribution List, see the LWBs' Online Review System for [Arctic – Sable Underground Project – Type A Water Licence Amendment and Type A Land Use Permit Applications Apr 24 24](#).

No approved Land Use Plans apply in the Project area.

5.4 Land Use Fees

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

5.5 Time Limit

As per section 22 of the [MVLUR](#), the Board is required to make its decision on a permit within 42 days of receiving a complete application. On April 24, 2024, the Board met and decided to apply paragraph 22(2)(b) of the [MVLUR](#) in order to coordinate the proceedings for the Permit and Licence Applications.¹²

5.6 Environmental Review (Part 5 of the MVRMA)

5.6.1 Preliminary Screening

On June 28, 2024, the Board met and decided not to refer the proposed changes to the Project to the Mackenzie Valley Environmental Impact Review Board (the Review Board) for Environmental Assessment because, based on the evidence, it is the Board's opinion that the proposed changes to the Project will not have a significant adverse impact on the environment or be a cause of public concern.¹³

In accordance with section 125 of the [MVRMA](#), the Board notified the Review Board of its preliminary screening determination,¹⁴ and in the ten days following the Board's preliminary screening determination notification to the Review Board, the Board did not receive notice of referral to environmental assessment (EA). Subsequently, the Board continued with the regulatory proceeding for the Water Licence and Mining Land Use Permit and proceeded with issuing the Permit for the Early Works activities.

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

6.0 Decision – Land Use Permit W2024D0006

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 W2024D0006 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.

¹² See WLWB Online Registry for [Ekati - Sable UG - Notification of Timeline Pause - Apr 24 24](#).

¹³ See WLWB Online Registry for [Ekati - Sable UG - Preliminary Screening - Determination and Reasons for Decision - Jun 28 24](#).

¹⁴ Ibid.

In developing the Permit, the Board considered the LWB [Standard Land Use Permit Conditions Template](#) (Standard Permit Conditions) and included a number of these standard conditions that are relevant to the Project. 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 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 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.

6.1 Term of Permit

The Applicant has applied for a term of two years for the Permit. Subsection 26(5) of the [MVLUR](#) allows for a Permit term of not more than five years. In the Application, Arctic indicated that the Project activities are scheduled to start on August 1, 2024 and end July 31, 2026. No comments or concerns were received from Parties during the Public Review regarding the term of the Permit. In follow-up communication, Arctic requested that the Permit be issued as soon as possible to allow project activities to commence.¹⁵ After reviewing the submissions made during this regulatory proceeding, the Board has determined that two years is an appropriate term for the Permit and that the Permit be issued as soon as possible.

6.2 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.

¹⁵ See WLWB Online Registry for [Ekati - SUG – Permit Application - Email re. Term – Jul 9, 24](#).

Based on the activities described in the Permit Application and on the scope outlined in the [Standard Permit Conditions](#), Arctic 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.

6.3 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](#). Where appropriate, the Board created new definitions, modified standard wording, or used Project-specific definitions to reflect the evidence as described below:

- Sable Development was included to ensure a clear description of what is included as part of the Project.

6.4 Part C: Conditions Applying to All Activities

The LWB [Waste and Wastewater Management Policy](#) applies to the Permit, and the objectives of the Policy are protection of water quality in the receiving environment, waste prevention/minimization, and minimization of the amount of waste disposed to the receiving environment.¹⁶ The Permit does not authorize any deposit of waste to water; however, in accordance with the Policy and these objectives, the Permit includes many conditions that are, directly or indirectly, intended to meet the objectives of the Policy. The Board is satisfied that the conditions set out in the Permit are consistent with the Policy and compliance with these conditions will ensure that waste will be minimized, managed, and disposed of in a manner that will be protective of the receiving environment. These conditions and detailed rationale are described in the sections below.

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)(a) Location and Area

The conditions included in this section are all consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding conditions in this section were received.

26(1)(b) Time

The condition included in this section is consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding this condition in this section were received.

¹⁶ See WLWB Policies and Guidelines webpage to access the LWB [Waste and Wastewater Management Policy](#).

26(1)(c) Type and Size of Equipment

The condition included in this section is consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding this condition in this section were received.

26(1)(d) Methods and Techniques

This section was intentionally left blank, because the Board did not require conditions in this section to satisfy its mandate and did not receive any recommendations related to this section during the review of the draft Permit.

26(1)(e) Type, Location, Operation of All Facilities

The condition included in this section is consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding this condition in this section were received.

26(1)(f) Control or Prevention of Ponding of Water, Flooding, Erosion, Slides, and Subsidence of Land

The conditions included in this section are consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding conditions in this section were received.

26(1)(g) Use, Storage, Handling, and Ultimate Disposal of Any Chemical or Toxic Material

The conditions included in this section are all consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding conditions in this section were received.

26(1)(h) Wildlife and Fish Habitat

The [MVLUR](#) includes provisions related to the protection of wildlife habitat; however, requirements for Wildlife Management and Monitoring Plans (WMMPs) are under the jurisdiction of the GNWT through the *Wildlife Act*. For the Ekati site, GNWT-ECC requires a WMMP. The Applicant did not include a WMMP in the Application; however, the WMMP is periodically updated by Arctic and reviewed by Parties through the GNWT-ECC's processes. No comments related to the WMMP were received from Parties during the public review of the Application.

The Board included Condition 16 (HABITAT DAMAGE) in the Permit as proposed in the draft permit distributed for review. This is a condition from the Board's Standard Permit Conditions and is intended to ensure the Permittee conducts their land-use operation in such a way as to minimize disturbance to wildlife habitat.

26(1)(i) Storage, Handling, and Disposal of Refuse or Sewage

The condition included in this section is consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding this condition in this section were received.

WASTE MANAGEMENT PLAN

All applicants must submit detailed waste management information, identifying all types of waste that will be produced by the project (including quantity and quality) and describing the disposal methods that are proposed for each type of waste. For most applicants, this will be in the form of a Waste Management Plan, developed in accordance with the LWB [Guidelines for Developing a Waste Management Plan](#),¹⁷ and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Guidelines can be applied to a wide range of projects and are intended to ensure that all waste management activities are carried out in a way that is consistent with best practices and applicable guidelines to minimize waste released from a project.

In the Application, Arctic referenced the Waste Management Plan, Version 8.1 that has been approved under the previous Water Licence (W2020L2-0004), which covers all activities associated with the Ekati Diamond Mine.¹⁸ Arctic proposed no updates to the Waste Management Plan, and no comments were received from Parties during the Public Review regarding updates to the Waste Management Plan. Therefore, the Board is satisfied that the currently approved version of the Waste Management Plan is still appropriate for the Project Activities.

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

The conditions included in this section are all consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding conditions in this section were received.

26(1)(k) Objects and Places of Recreational, Scenic, and Ecological Value

This section was intentionally left blank, because the Board did not require conditions in this section to satisfy its mandate and did not receive any recommendations related to this section during the review of the draft Permit.

26(1)(l) Security Deposit

This section sets out the Permittee's responsibility for all costs associated with remediation of the Project area.

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.

In the Application, Arctic requested that the security for the early works activities not be required under the early works permit, but instead be included under the full security for the Project which will be determined through the Water Licence Amendment proceeding. Arctic estimated that the security related

¹⁷ See WLWB Policies and Guidelines webpage to access the LWB [Guidelines for Developing a Waste Management Plan](#).

¹⁸ See WLWB Online Registry for [Ekati - Waste Management Plan - Version 8.1 - Jul 8 '22](#)

to the Early Works activities was \$107,367 and indicated that the substantive administrative work that would be required to post this minor amount compared to the site security (i.e., greater than \$300,000,000) is not warranted.

Parties commented on Arctic's request related to security during the Public Review. GNWT-ECC indicated that it discussed the request internally and is agreeable to Arctic's request to post security for the entire project in one payment (comments 10). IEMA commented that "if security is not provided before the work proceeds, then the project will result in unsecured liability for public government" and "therefore the security needs to be in place before work starts" (comment 2). No other Parties provided comment on the security.

Although the Board typically requires security being submitted prior to work being initiated, the Board has decided to grant Arctic's request to include the security for the Early Works Project within the main security for the overall project for the following reasons:

- the GNWT-ECC, who is the landowner, is agreeable to including the security for the Early Works in the overall security for the Site;
- the amount of security estimated for the Early Works project is a small percentage of the overall security for the site (i.e., less than 0.04%);
- There were no comments from Parties on the amount of security during the Public Review, however further discussion, if warranted, can continue during the Water Licence Amendment proceeding; and
- the administrative burden on Arctic and GNWT-ECC will be reduced by including this portion of the security within the overall security.

The Board will consider the security for the entire Sable Underground Project at the end of the Water Licence Amendment Proceeding.

26(1)(m) Fuel Storage

The conditions included in this section are mainly consistent with the LWB Standard Permit Conditions. The one exception is for the condition for DRIP TRAYS (Condition 34). In the Application and draft permit included as part of the Public Review, Arctic proposed to remove the requirement that all equipment parked for two hours either have a drip tray under the equipment or be sufficiently diapered. This condition is included in the LWB Standard Permit Conditions. In the Application, Arctic indicated that this condition is operationally unachievable and unnecessary as an environmental protection measure. Arctic also indicated that all equipment is regularly maintained and routinely inspected for leaks. Arctic indicated that spill trays are often covered in snow from strong winds which reduces the effectiveness of the trays capturing spills. Arctic indicated that when a spill is identified, prompt reporting procedures are followed ensuring swift cleanup and proper disposal of any impacted material.

Parties provided comments and/or recommendations on this proposed change to the standard condition. Tłıchǫ Government commented that it understands the inconveniences that may result from this

condition during operation, but “the rationale for this requirement is that the dip tray should serve as a first line of protection from the spills entering the environment” (comment 11). IEMA recommended that drip trays should still be used given, without the trays, leaks would fall to the ground and could get covered by snow and go undetected until snow melt (comment 5). In response to comments, Arctic reiterated that drip trays are not practical at a large industrial site.

Board staff asked Arctic to provide more information on why this condition was not operationally achievable (Board staff comment 4). In response, Arctic stated that:

The current condition requires the drip tray to be placed under the vehicle that will be parked for more than two hours. From a practical sense, it is difficult for the drivers to decide to place the drip tray without knowing/confirming the duration of the vehicle being parked. It appears the drip tray placement requirement is indifferent for the type of the vehicles.

The GNWT-ECC Inspector commented that it supported removing the requirement for drip trays because it is very difficult to manage and enforce this condition (comment 1). The Inspector noted that “during an inspection it is impossible for an Inspector to determine if a piece of equipment has been parked for longer than 2 hours”. The Inspector also indicated that Arctic has implemented a blanket approach by placing drip trays under all vehicles no matter how long they are parked but have created new problems with spill pads and trays getting blown away and covered in snow. The inspector indicated that the requirements of conditions 6 (CLEAN WORK AREA) and 35 (CLEAN UP SPILLS) mitigate the risk that leaky equipment might pose.

The Board understands that the two-hour time constraint could be difficult for the Inspector to enforce, given the Inspector may not know when the equipment was first parked. During the public review, the Inspector noted that site conditions (i.e., strong winds) may also make it burdensome for drivers to place the trays given the trays could fly away within a short time. Reviewers did voice concerns about removing this condition and it is unclear to the Board how this additional step is burdensome given that parked equipment is expected to be secured with blocks and given that drip trays/spill pads could likely be secured with a weight in windy conditions.

To address the feedback from reviewers, as well as the complications outlined by Arctic and the Inspector, the Board has decided to retain the condition but remove the time requirement associated with the condition. The condition now requires “*When not in use*, all equipment shall have a hazmat/drip tray under it or be sufficiently diapered. Leaky equipment shall be repaired immediately” (emphasis added). The intention of this wording is to provide the Inspector with flexibility and discretion to evaluate whether the equipment is in use or not. Arctic is to continue its blanket approach to use drip trays at all reasonable times. Despite the operational challenges that Arctic identified with spill trays (e.g., blowing trays creating waste around the site), the Board has confidence that Arctic can implement innovative solutions to ensure spill trays remain in place while being protective of the environment.

SPILL CONTINGENCY PLAN

All applicants must describe spill contingency planning. For most applicants, this will be in the form of a Spill Contingency Plan, developed in accordance with the INAC [Guidelines for Spill Contingency Planning](#),¹⁹ and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Plan is intended to ensure that an action plan for responses to spills and unauthorized discharges has been established to effectively control and clean up spills and unauthorized discharges, with the goal of preventing or limiting damage to the receiving environment.

In the Application, Arctic referenced the Spill Contingency Plan, Version 15.1 that has been approved under the previous Water Licence (W2020L2-0004), which covers all activities associated with the Ekati Diamond Mine.²⁰ Arctic proposed no updates to the Spill Contingency Plan, and in response to a comment during the Public Review asking whether the Spill Contingency Plan needed to be updated in regards to the use of drip trays, Arctic indicated that drip trays were not included in the Spill Contingency Plan (response to WLWB staff comment 4). Therefore, the Board is satisfied that the currently approved version of the Spill Contingency Plan is still appropriate for the Project Activities.

26(1)(n) Methods and Techniques for Debris and Brush Disposal

The condition included in this section is consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding this condition were received.

26(1)(o) Restoration of the Lands

The conditions included in this section are all consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding conditions in this section were received.

CLOSURE AND RECLAMATION PLAN

All applicants must describe closure and reclamation planning. For most applicants, this will be in the form of a Closure and Reclamation Plan (CRP), developed in accordance with the LWB/AANDC [Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories](#) (Closure Guidelines),²¹ and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board.

In the Application, Arctic referenced the Interim Closure and Reclamation Plan (ICRP), Version 3.0 that has been approved under a previous Water Licence (W2012L2-0001).²² In the cover letter with the Application, Arctic indicated that the closure activities associated with the SUG project will be included in

¹⁹ See WLWB External Policies and Guidelines webpage to access the INAC [Guidelines for Spill Contingency Planning](#).

²⁰ See WLWB Online Registry for [Ekati - Spill Contingency Plan - Version 15.1 - Jul 8 22](#).

²¹ See WLWB Policies and Guidelines webpage to access the LWB/AANDC [Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories](#).

²² See WLWB Online Registry for [W2012L2-0001 - Ekati - ICRP - Version 3.0 - Part 1 - Aug 15 18](#) and [W2012L2-0001 - Ekati - ICRP - Version 3.0 - Part 2 - Aug 15 18](#)

the next planned update of the ICRP. The Board recently decided to not approve Version 3.1 of the ICRP and required the next version of the Plan to be submitted by April 1, 2026.²³ The Project Description Report included with the Application package provides details on the proposed closure activities.²⁴ Given the Water Licence Amendment proceeding is still on-going, further discussion on the closure activities for the SUG Project may occur during the proceeding, and therefore, the Board will defer any decisions on closure activities until the Water Licence Amendment proceeding has concluded.

26(1)(p) Display of Permits and Permit Numbers

The condition included in this section is consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding this condition were received.

26(1)(q) Biological and Physical Protection of the Land

The conditions included in this section are all consistent with the LWB Standard Permit Conditions. No comments or recommendations regarding conditions in this section were received.

ENGAGEMENT PLAN

The Board assesses engagement adequacy through the LWB [Engagement and Consultation Policy](#) and [Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits](#), and an Engagement Plan is a standard requirement for land use permits issued by the Board. This Plan is intended to ensure adequate and effective engagement with potentially affected parties has occurred prior to the submission of the Application (in the form of the Engagement Record) and is planned for throughout the life of the Project.

In accordance with the Policy and Guidelines, the Applicant included an Engagement Record²⁵ and referenced the approved Engagement Plan (i.e., Version 5.1) in the Application.²⁶ Arctic proposed no updates to the Engagement Plan, and no recommendations/comments for updates to the Engagement Plan were made in the Public Review. Therefore, the Board is satisfied that the currently approved version of the Engagement Plan is still appropriate for the Project Activities.

6.5 Attachment A: Revision History Table

Attachment A to the Permit contains a table which identifies updates and tracks changes made to the Permit. This table is currently blank because this is a new permit, but it will be updated throughout the life of the Permit.

²³ See WLWB Online Registry for [Ekati - CRP Version 3.1 - Reasons for Decision - Apr 12 24](#).

²⁴ See WLWB Online Registry for [Ekati - Sable UG - Project Description Report and Appendices - Apr 16 24](#)

²⁵ See WLWB Online Registry for [Ekati - Sable UG - Project Description Report and Appendices - Apr 16 24](#), Appendix E.

²⁶ See WLWB Online Registry for [Ekati - Engagement Plan - Version 5.1 - Oct 5 23](#).

7.0 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 W2024D0006 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.



Mason Mantla, Chair
Wek’èezhìi Land and Water Board

June 28, 2024

Date