



Indian and Northern
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July 11, 2007

Your file *Votre référence*

Our file *Notre référence*

Martin Haefele
Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board/
Gahcho Kué Environmental Impact Review Panel
Box 938, 5102-50th Avenue
YELLOWKNIFE, NT X1A 2N7

**Re: Comments on draft Work Plan and draft Environmental Impact Statement
Terms of Reference for the Gahcho Kué Environmental Impact Review
(MVEIRB EIR #0607-001)**

Dear Mr. Haefele:

Thank you for the June 1, 2007 correspondence requesting comments on the Draft Work Plan and the Draft Environmental Impact Statement (EIS) Terms of Reference (ToR) and for the Gahcho Kué Diamond Mine Environmental Impact Review.

Indian and Northern Affairs Canada (INAC) has reviewed the Draft Work Plan and ToR and discussed these documents with other government parties. INAC's substantive and editorial comments are attached. Other government parties are submitting comments directly to you.

INAC looks forward to participating in the process. If you have any questions or concerns about these comments, please do not hesitate to contact Lorraine Seale at (867) 669-2590, sealel@inac.gc.ca or Charlotte Henry at (867) 669-2616, henrych@inac.gc.ca.

Sincerely,

David Livingstone
Director
Renewable Resources and Environment

Encl.

cc: INAC internal EIR Working Group

Canada

**INAC Comments on Draft Work Plan and
Draft Environmental Impact Statement Terms of Reference
DeBeers Gahcho Kué Environmental Impact Review
MVEIRB EIR 0607-001**

Comments applicable to Draft Work Plan and Draft EIS TOR

INAC has reviewed the Panel Terms of Reference and the following sections of the Draft Work Plan and Draft EIS TOR:

- Draft Work Plan , section 3.2, p. 1 - The MVIERB is responsible for approving any changes to the scope of the development or the scope of the review outside the Panel's mandate.
- Draft TOR section 2.1, p. 6. The review Panel may alter the scope of the development...
- Draft 2.2.3 p. 8 The review Panel may alter the scope of the review...

The above references make the MVEIRB's/Panel's respective roles unclear. Is it possible to clarify what is meant by the Panel's "mandate" and the extent to which the MVEIRB may be involved in the EIR?

Please clarify how the conformity analysis mentioned in Section 9, p. 46 of the draft EIS TOR relates to the gap analysis discussed in the draft Work Plan (Section 4.2, p. 3).

Comments applicable to the Draft Work Plan

INAC supports the gap analysis and technical sessions as useful opportunities for all parties to have open discussions with the developer.

Comments applicable to the Draft ToR

General

INAC acknowledges the Review Board/Panel's interest in eliciting holistic analyses of potential environmental impacts and ensuring that Aboriginal communities and traditional knowledge holders are able to analyze the EIS. We do have some concern that the requirements for key line of inquiry and subject of note analyses along with a 'conventional' valued component analysis on the other, may result in some duplication and lack of clarity. We note that the developer has some flexibility in organizing the EIS and we will be interested to see how the approach is implemented.

To facilitate the gap analysis, INAC suggests adding line numbers to the ToR.

Sections 4, 5, and 8 – In several places, the draft ToR seem to quote directly from the scoping sessions held during the environmental assessment. INAC suggests that the ToR use neutral language. For example, the reference to 'physical infrastructure crumbl[ing]' in Section 5.10, p. 31, could be restated in terms of 'negative impacts on physical infrastructure.'

Specific Comments

Section 1.4: Cumulative Impacts definition

INAC notes that the MVEIRB Cumulative Effects Guidelines imply that the definition of “reasonably foreseeable” includes both “proposed developments” and “development that have not been formally proposed but can be reasonably foreseen.” (MVEIRB EIA Guidelines 2004, Appendix H, p. 78, column 2, second paragraph). Therefore INAC suggests replacing the wording “in the review Panel’s opinion...” with “consistent with the MVEIRB Cumulative Effects Guidelines...”

Section 2.2.2: How do the geographic areas relate to the regional study areas for the cumulative effects assessments for the key lines of inquiry/Valued Components?

Section 2.2.3: In Table 2-1, for ‘geographic extent,’ the key line of inquiry/Valued Component (VC) should be listed for each of these areas, as is done in Section 2.2.2. INAC notes that the geographic extent was discussed at the June 11 meeting hosted by MVEIRB.

Section 3: INAC suggests that the EIS require a description of the anticipated regulatory permits, licences and authorizations required for the development.

Section 3.2.7: INAC agrees that the developer must demonstrate confidence in any mitigation measures it proposes. However, INAC also notes that government has primary responsibility for regional environmental management. The ToR should clarify the relationship between these two sets of responsibilities with respect to the Gahcho Kué development.

The following three paragraphs relate to **Section 3.2.7:**

The draft ToR states (p. 14) that “the proposed development would be the fifth diamond mine in the Slave Geological Province and the fourth within the Mackenzie Valley. This fact provides the opportunity to evaluate impact predictions and mitigation measures from previous developments.” The project application report (PAR) suggests that De Beers intends to incorporate lessons learned at Snap Lake fully into the planning of the Gahcho Kué project. However, the Snap Lake project has only recently been developed, and long-term environmental effects will not yet be apparent. Therefore, it is important that the evaluation of impacts include investigations at the Ekati (particularly) and Diavik projects.

Concerning permafrost conditions, the most significant long-term environmental impact of this project focuses on the behaviour of the PKC during development of permafrost in this structure. The PK to be deposited in this structure is of sand and silt size and this has the potential both for ice segregation (ice lens development) and/or for pore-water expulsion, with contained and concentrated dissolved solutes, during permafrost aggradation. This topic was raised with De Beers during the review of the Snap Lake project. Expulsion of contaminated pore water is an environmental effect associated with all PK tailings deposits in the Slave Province. At this stage, Cell B of the Ekati tailings impoundment has been subjected to freezing for nearly a decade, and permafrost should be advanced in this deposit. For the Gahcho Kué EIS, a review of the current status of expelled pore water from Cell B, and the status of pore water in the Cell B tailings below the depth of permafrost should be undertaken. This will provide data from existing mine practice to assess the potential environmental impact of this aspect of the proposed Gahcho Kué project.

Similarly, the Ekati tailings are deposited from a slurry, as proposed at Gahcho Kué. An assessment should be undertaken at Ekati, and potentially also at Diavik, of the predicted and actual volume of tailings due to incorporation of water (ice) into permafrost during freezing of the tailings. This is because the freezing may inhibit settlement (consolidation) of fines out of the slurry.

Section 4.2: INAC suggests that this section require water balance calculations.

Section 4.3:

INAC suggests that this section require water balance calculations and a discussion of potential mitigation measures that will be undertaken to reduce the magnitude and likelihood of impacts.

The evaluation of downstream water effects should include an analysis of the spatial extent of these effects and how these effects may change through time (seasonally, annually). This requirement is mentioned under 'geographical extent' on page 12; however, it should be mentioned explicitly in this section as well.

Section 4.4: INAC recommends that this section request the developer to review and follow the *Mine Site Reclamation Guidelines for the NWT*, January 2007 version. INAC can provide a copy of this document for the public registry if required.

Section 4.5: First bullet, 'see also alternatives' - provide section or page reference.

Sections 4.5, 4.6 and 4.7 INAC agrees that the developer has responsibility for mitigating negative impacts caused by or contributed to by the development, and that such mitigation efforts may be part of larger initiatives with other parties. The ToR should clarify the relationship between the developer's responsibilities and government's social and economic mandates with respect to the Gahcho Kué development.

Section 4.7:

While some requirements are discussed in the text, others are given in the list of bullets. A consolidated list in a consistent format would be useful for the gap analysis.

INAC suggests adjusting the second paragraph for flow and clarity. For example, does 'this' in the fifth sentence refer to the 'comprehensive analysis' in the first sentence?

A scenario analysis should be added as part of the long-term effects.

Section 5: Please clarify if the MVEIRB's/review Panel's intention is that cumulative effects assessments be provided in this section (i.e. for each subject of note) or in Section 8 (i.e. for each VC) or in both.

Section 5: INAC suggests that each subsection explicitly require a discussion of measures to mitigate any predicted adverse. For example, sections 5.2 and 5.4, as currently drafted, do not mention mitigation measures.

Section 5.5: This section should require that the EIS investigate potential issues associated with permafrost aggradation into on-site infrastructure, including water retaining dykes, processed kimberlite containment facilities, and waste rock piles.

Section 5.10: INAC agrees that the developer has responsibility for mitigating negative impacts caused by or contributed to by the development, and that such mitigation efforts may be part of larger initiatives with other parties. The ToR should clarify the relationship between the developer's responsibilities and government's social and economic mandates with respect to the Gahcho Kué development.

Section 5.11: INAC recommends that 'Cultural Cohesion' and 'Cultural Landscape Impacts' be added to the list of potential impacts.

Section 5.13: INAC and the other government parties to the EIR have identified a number of concerns with this section. INAC is providing a general discussion of these concerns followed by specific wording suggestions. INAC has shared these comments with other federal parties to the EIR and with the GNWT.

5.13 - General Comments:

The Government of Canada is currently developing a national, comprehensive policy to guide its approach to section 35 Crown consultation. INAC-NWT is developing an "interim approach to S. 35 Crown consultation," which is based on the following premises:

- Generally speaking, settled claims areas in the NWT have mechanisms to address consultation and possible adverse impacts.
- Consultation processes undertaken by the Mackenzie Valley Environmental Impact Review Board (MVEIRB) will be taken into account by the Crown for the purposes of determining the adequacy of consultation (and accommodation, where warranted) relating to any specific project proposal, as these processes elicit information from the proponent and other parties about the potential adverse impacts that a proposed resource development project may have on the environment, wildlife harvesting, or socio-cultural and economic well-being. Such impacts can correlate directly with potential adverse impacts on established or potential Aboriginal and treaty rights. Furthermore, Part V of the MVRMA (s.115 (c)) requires that the environmental impact assessment process consider "the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom S.35 of the *Constitution Act, 1982* applies, and who use an area of the Mackenzie Valley."
- Consultation by industry, and resultant commitments to address Aboriginal concerns, are taken into account, but the legal duty still rests with the Crown.

INAC and the other government parties are encouraged to see that the wording in the draft section 5.13 recognizes the role of the MVRMA EIR process in carrying out procedural aspects of Crown consultation. The final paragraph, however, poses a concern. By requesting the developer to "provide an analysis of how rights may be affected", the Panel may be moving beyond the procedural aspects of consultation. Such "analysis" is more properly the responsibility of the Crown. The Responsible Ministers conduct this assessment prior to making a final decision on the EIR.

In INAC's view, the developer, at the earliest stages of a proposed development, is in the best position to inform Aboriginal peoples about the proposed development and the potential adverse impacts of the development on such matters as fish, wildlife, etc., to listen to the concerns of Aboriginal peoples and to accommodate Aboriginal peoples by way of commitments, changes in project design, etc.

Accordingly, the Terms of Reference should require the developer to provide a detailed record of its discussions with Aboriginal peoples. This record should include such information as dates of all forms of contact, dates and locations of meetings, numbers and/or names of participants, concerns raised, the developer's efforts to address those concerns, and such other information as the Panel considers appropriate.

Further, in the third paragraph, INAC is concerned that the wording of the first sentence may give the impression that only INAC bears responsibility for Crown consultation. While INAC often takes a lead role with respect to section 35 Crown consultation, the duty to consult with Aboriginal peoples rests with the Crown, not with a specific department.

Finally, INAC would like to ensure that all parties to the EIR are aware that INAC-NWT is engaged in continuing discussions with Aboriginal peoples, other federal departments, the Government of the Northwest Territories, the Mackenzie Valley Environmental Impact Review Board, the Mackenzie Valley Land and Water Board, industry and other stakeholders to further clarify roles and responsibilities with respect to Crown consultation. INAC staff members are available to discuss these matters in more detail. Please direct any such requests pertaining to the Gahcho Kué EIR process to INAC-NWT Environment and Conservation staff, who will direct the inquiry within INAC as appropriate.

Section 5.13 - Specific Wording Suggestions:

The title should be changed to read "Aboriginal and Treaty Rights and the Interconnectedness of Issues"

Paragraph 1, first sentence: The reference to "aboriginal rights" should be changed to "established or potential Aboriginal and treaty rights."

Paragraph 2, 4th bullet: The phrase "notified of impending flow fluctuations" should be changed to "notified prior to any flow fluctuations."

Paragraph 3:

INAC provides the following wording for the Panel's consideration:

The Panel is aware that the duty to consult with, and where appropriate, accommodate, Aboriginal peoples arises when the Crown contemplates conduct (in this instance, the decision of the Responsible Ministers with respect to the Panel's recommendation concerning the proposed development) that might adversely affect established or potential Aboriginal and treaty rights (as per *Haida*, *Taku*, *Mikisew Cree*). This duty rests with the Crown which, in this instance, includes the Responsible Ministers as final decision-makers. However procedural aspects of consultation may be delegated to third parties such as the Panel. Therefore, the Panel requires that the developer provide a detailed record of its discussions with Aboriginal peoples, including such information as:

- dates of all forms of contact,
- dates and locations of meetings,
- numbers and/or names of participants,
- concerns raised, and
- the developer's efforts to address those concerns.

Also, as noted under 5.13 - General Comments, the Panel may require the developer to include additional information in its record of discussions with Aboriginal peoples. Incorporating the references to the *Haida*, *Taku*, and *Mikisew Cree* cases will require additions to Section 10, References.

Finally, please note that, as discussed above under General Comments, the duty to consult does not rest with a specific department, such as INAC, but with the Crown. Therefore the wording, "as represented by the Department of Indian Affairs and Northern Development" should be removed.

Section 6:

Bulleted list – Given that the Gahcho Kué development would be the second mine in the Lockhart river watershed and the fifth diamond mine in the Slave Geological Province, "water quality" should be added to the list of major cumulative effects components.

Paragraph 3, first sentence: INAC suggests that "...significant impacts on the development" should be changed to "significant impacts on valued components/key lines of inquiry/subjects of note."

The ToR should either set out what specific activities or types of activities, over what area and over what timeframe, are to be included in the cumulative effects assessment (CEA), or the ToR should require the developer to provide a clear rationale for the project inclusion list, the geographic scope of the CEA, and the timeframe of the CEA.

The developer should conduct the CEA on a valued component by valued component basis, or, on a key line of inquiry by key line of inquiry basis.

The developer should include comprehensive impact pathway diagrams in its CEA.

The MVEIRB/Panel may wish to append the MVEIRB Cumulative Effects Guidelines to the ToR for ease of reference by parties.

Section 7: first bulleted list, final bullet – INAC suggests adding "reclamation and closure planning, including management of long-term effects."

Section 8.1: Traffic and Road Concerns – INAC suggests adding "airstrips and the use of glycols on the airstrip during winter periods and any potential impacts associated with their use."

Section 8.2, Operations and Construction: Would this be part of the Effects on Kennady Lake key line of inquiry?

Section 8.3, Permafrost: This section should require that the EIS investigate potential issues associated with permafrost aggradation into on-site infrastructure, including water retaining dykes, processed kimberlite containment facilities, and waste rock piles.

Section 8.6, Heritage Resources: Would this be part of the Cultural Sites and Reduced Cultural Activities subject of note?

Section 9:

INAC suggests that the ToR require a list of significant impacts and listing of impact predictions as part of the EIS submission.

The review Panel may wish to require the developer to provide more than 10 paper copies of the EIS; otherwise there may be a delay in the review of the EIS while parties print their own copies.

INAC agrees with the developer being able to request clarification from the review Panel during production of the EIS. Such exchanges should be placed on the public registry.

**INAC Editorial Comments
on Draft Work Plan and
Draft Environmental Impact Statement Terms of Reference
DeBeers Gahcho Kué Environmental Impact Review
MVEIRB EIR 0607-001**

Draft Work Plan

- 3.6, p.2, second sentence – ‘submission’ should be ‘submissions’
- 3.6, p.2, third sentence – ‘circumstance’ is misspelled
- 4.2, #2 – either ‘possible’ should be ‘possibly,’ or ‘if’ should be added before ‘possible’

Draft EIS TOR

General - ‘Tibbit’ should be ‘Tibbitt.’

- Section 1.2, p. 1, 3rd par., 2nd sentence ‘it’s’ should be ‘its’
- 1.6, p. 4 reference to Section 6 should be to Section 8, reference to Section 7 should be to Section 9
- 2.2.2, last par - Tlich/T'lich should be spelled consistently.
- 3.1.1 p. 9, second bullet – word ‘of’ missing
- 3.1.2 p 9 first bullet ‘rationale’ is misspelled
- 3.1.2, p.10, 2nd bullet, last sub-bullet – ‘considered’ should be ‘consider’
- 3.1.2, last sentence should be in separate paragraph.
- 3.2.4, p. 13, 2nd par., 2nd sentence – delete comma after ‘both’
- 3.2.7, p 14 3rd par., last sentence – ‘were’ should be ‘where’
- 4.1, p 18, 3rd bullet – ‘by’ is missing after ‘posed’
- 4.3 p. 20, 2nd bullet – ‘up’ is missing after ‘break’
- 4.4. p. 21, 6th bullet, ‘of’ is missing after second ‘description’
- 4.5, p. 22, 2nd par. after bullets, 1st sentence ‘such a substance abuse’ should be ‘such as substance abuse’
- 4.7, p. 23, first par, last sentence – ‘address’ should be ‘addressed’
- 5, p. 25, 1st par, 2nd sentence – ‘deas’ should be ‘deals’
- 5, p. 25, 1st par, 3rd sentence – ‘deals’ should be ‘deal’
- 5.4, p. 27, 2nd par – ‘includes’ should be ‘include’
- 5.5, p. 27 – title – delete backslash
- 5.5, p. 27, 1st par – period missing at end of last sentence
- 5.8, p. 29, 1st line – ‘disappointed’ should be ‘disappointment’
- 5.10, p. 31, 1st bullet – ‘increases’ should be ‘increase’
- 5.11, p. 31, 2nd last bullet – ‘Lockhardt’ should be ‘Lockhart’
- 6, p. 34, 1st par, 1st sentence - ‘rational’ should be ‘rationale’
- 6, p. 34, 1st par, 3rd sentence – ‘choose’ should be ‘chose’
- 6, p. 34, sentence after bulleted list – ‘were’ should be ‘where’
- 7, p. 36. last sentence – ‘developers’ should be ‘developer’s’
- 8, p. 37, 1st line after second bulleted list – delete either ‘by’ or ‘through’
- 8, p. 37, 1st line after second bulleted list - ‘revie’ should be ‘review’
- 8.1, p. 37, table 8-1 – ‘cariou’ should be ‘caribou’ in ‘impacts on caribou behaviour’
- 8.1, p. 40, 1st par. after bulleted list – ‘mine’ should be ‘mines’
- 8.2, p. 40, Table 8-2 watershed impacts – ‘interruption’ should be ‘interruption’
- 10 References, p. 47. – Include references to *MVEIRB Traditional Knowledge in Environmental Impact Assessment Guidelines* and *MVEIRB Rules of Procedure*.