

**EMAB Response to Diavik Request for Minister to  
Wind Down EMAB, and**

**EMAB Rationale and Proposal to Minister for  
Considerations in Setting a Schedule to Wind  
EMAB Down**

**April 8, 2026**

## Executive Summary

The Environmental Monitoring Advisory Board (EMAB) strongly disagrees with Diavik's request to shut it down by 2027 and proposes alternative approaches, including initiation of dialogue between Diavik and EMAB. Our review shows that the proposal is inconsistent with the legally binding Environmental Agreement's (EA) requirement for EMAB; the EA is signed by eight Parties, including five Indigenous Parties. Diavik's rationale is poorly justified and inaccurate.

Diavik has not addressed the fundamental issue, that the EA was a mandatory measure of Diavik's environmental assessment, and a requirement for the project to be allowed to proceed. It was created to ensure long-term environmental monitoring of the Diavik mine—from construction through **closure and post-closure**—and that the EA, and EMAB's mandate, continues until **full and final reclamation and abandonment** of the site and completion of any and all post-closure monitoring and maintenance.

Shutting down EMAB early would effectively undermine or amend the agreement without consent from all Parties. EMAB is not optional, it is a core part of the EA and the watchdog on its implementation; and it is intended to continue until full and final reclamation and abandonment of the mine.

We find that:

- **Diavik has ignored the fact that the EA was a requirement for the mine to proceed as part of the social licence for the project. Diavik has misinterpreted the EA**, particularly regarding EMAB's role, the meaning of section 18.3 including the definition of "wind down," the meaning of section 13.2 on non-duplication, and other important aspects.
- **EMAB provides unique value** through independent oversight, incorporation of Indigenous perspectives, and monitoring of both the company and regulators.
- **The Closure phase includes risks of closure work not functioning as designed, or unforeseen problems or failures**, requiring continued oversight rather than reduced scrutiny.
- **Diavik's evidence and rationale are weak or unsupported**, including claims about inefficiency, duplication, and EMAB's role in closure.
- **Diavik's request is essentially an attempt to change the EA without approval of all the Parties.**

Diavik's proposed options for shutting EMAB down leave no scope for dialogue or cooperation, and are not based on any meaningful or substantive discussions with EMAB. EMAB has invited Diavik to discuss the closure and post-closure phase but Diavik has not engaged with us. We find Diavik's proposal to redirect EMAB funding to Indigenous groups lacks important detail on budget, the mechanism to manage the funds, governance and decision-making, independence from Diavik, and allocation of funds.

Instead of shutting down, EMAB proposes a **gradual wind-down approach** aligned with actual mine closure progress, and in keeping with the accepted definition of the term "wind down". This includes:

- Continuing operations through closure and post-closure.
- Periodic reassessment points (around 2030 and 2035).
- Adjusting workload based on monitoring needs.

Overall, EMAB maintains that we remain **essential for accountability, environmental protection, and community involvement**, and should only conclude our work once all Diavik's closure and monitoring obligations are fully complete:

- EMAB operates independently of Diavik and the regulators. Our decisions cannot be influenced by Diavik.
- EMAB includes a majority of Indigenous members, and reflects community concerns and local and Traditional Knowledge.
- EMAB ensures Diavik and the regulators follow through on commitments made during the approval phase of the project.

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Attachment 2: Preliminary draft budget for 2027-2029

Attachment 3: Correspondence requesting dialogue with Diavik on EMAB transition to closure (3 emails)

Attachment 4: DIAND summary of Diavik Commitments during CSR

Attachment 5: Letters of support from Parties for EMAB to continue through full and final closure

Attachment 6: Indigenous Party responses to online regulatory reviews

Attachment 7: EA Working Group minutes for Jan 20, 2023

## 1. Introduction

After reviewing Diavik's request to the Minister to wind down the Environmental Monitoring Advisory Board (EMAB), the Board's view is that Diavik has erred in its understanding and interpretation of the Environmental Agreement for the Diavik Diamonds Project (EA) in general, and with respect to winding EMAB down. We find Diavik has misunderstood or mis-characterized the requirement for the EA, the terms of the EA, and the role and activities of EMAB.

We also find that much of the evidence Diavik provides to support its request and rationale does not stand up to scrutiny, or is not a reason to consider shutting EMAB down. We provide support for our findings below and in our attachments.

The EA is an agreement among eight Parties, including five Indigenous Parties, to fulfill a requirement of the environmental assessment to allow the Diavik project to proceed (Comprehensive Study Report, 1999, p. 228-229). It is a key component of the social license for the project to proceed, along with EMAB, which is created by the EA as a watchdog on the implementation of the Agreement. Indigenous organizations and the general public expressed significant concerns about the potential environmental impacts of the project, and one of the key measures to mitigate these concerns was the establishment of the EA, and EMAB. Diavik's request to shut EMAB down undermines the commitments made by Diavik and regulators during the environmental assessment, and in the measures developed to mitigate impacts. In the long run, a decision to shut EMAB down could undermine confidence in commitments made during assessments of future projects.

**The term of the EA continues from the time it was signed until full and final reclamation and abandonment of the project site and completion of any and all post-closure monitoring and maintenance required in connection with the project (EA section 18.2).** The EA establishes an independent Board (EMAB) to:

- monitor fulfillment of Diavik's Commitments,
- monitor environmental effects of the mine,
- monitor both Diavik and the Regulators,
- fulfill our mandate defined in the EA within the resources available, and
- involve Aboriginal Peoples (as defined in the EA) in the monitoring.

EMAB is an integral part of the EA, and its mandate and monitoring role continue until full and final reclamation and abandonment of the project site. Diavik may prefer not to pay for EMAB's operations, or to have the Board review its activities, but Diavik made a commitment to the Agreement in order to allow the company to proceed with the project. **Its request to shut down EMAB is effectively an attempt to amend the terms of the EA and terminate these critical purposes.**

Any wind-down schedule should be based on facts and evidence related to EMAB's role and activities during closure, as addressed throughout the EA. Diavik has provided useful information about the monitoring reports it expects to submit during the closure and post-closure period which will allow EMAB to assess our expected monitoring responsibilities.

## 2. Diavik's request to shut down EMAB: key components

Diavik's request to shut EMAB down includes several components that need to be examined in some detail.

### 2.1 Shut EMAB down by March 31, 2027

Diavik would like EMAB to shut down soon – it proposed by March 31, 2026, and not later than March 31, 2027. While it uses the term “fully wind down” Diavik is intending to shut EMAB down. **EMAB will discuss the term wind down in the context of the Environmental Agreement for the Diavik Diamond Project (EA).**

Diavik asserts the situation has changed since the EA was signed. **We find that Diavik has failed to consider the intent, purpose and reasons for the EA, and the commitments it made regarding the EA before the project was approved and the EA was signed.**

**Diavik did not engage with EMAB on the company's views on the future role of EMAB prior to submitting its request to shut EMAB down.**

### 2.2 Diavik Requests to Minister to amend EMAB's role misunderstand the EA

In its proposed Option 2 sections a) & b) (rationale, p. 7), Diavik requests that the Minister specify in writing the aspects of EMAB's role that are not covered by existing regulatory oversight and what role EMAB would play in closure to ensure that the EA and EMAB do not cause any duplication with the requirements of any Regulatory Instrument, as per EA section 13.2.

We disagree with Diavik's interpretation of section 13.2, and with Diavik's comments about duplication (see section 5.1).

We observe that in its letter and page 4 of its rationale Diavik misinterprets section 13.2 of the EA and used this incorrect interpretation as part of its argument about reducing “duplication.” Section 13.2 is about the application of the EA in relation to existing Regulatory Instruments; this section is about laws, regulations, water licences, permits etc. taking precedence over requirements in the EA. For example it anticipates the recent GNWT Wildlife Act and regulations, which take over from many of the wildlife management and monitoring provisions in the EA. **Section 13.2 does not relate to the scope of EMAB's mandate to review and make recommendations regarding the regulatory process and a broad range of environmental plans and reports (see EA 4.2 c), d), e) etc.).** EMAB's role in monitoring the WMMP and reports continues, even though the authority for the WMMP has changed from the EA to the Wildlife Act and Regulations. The same applies to our monitoring of water licence reports, air quality monitoring plans and reports, and participation in WLWB proceedings and review of management plans, notably the final closure plan.

In our view Diavik has overstepped in Request a) to the Minister by effectively asking him to amend the EA by changing the terms and conditions to change or limit EMAB's mandate. The EA sets out the requirement for EMAB and its mandate. It sets the term of the EA in section 18.2. Any amendments to the EA require written agreement among all the Parties (section 17.2(b)). Section 18.3 (b) gives the Minister the authority to set a schedule for winding EMAB down, not to amend the EA, or EMAB's mandate. In its request Diavik is asking the Minister to go beyond the scope of the EA, and to effectively amend the EA on his own.

Diavik is also asking the Minister to require EMAB to provide a detailed workplan and cost breakdown “commensurate to any regulatory oversight gaps.” While it may be reasonable to ask EMAB to provide a workplan and budget for the 2027-29 closure period as set out in section 4.8 of the EA, **it is not reasonable to try to amend the terms of the EA by limiting the scope of the workplan and budget. The EA can only be amended with written agreement of all the Parties.**

We also note Diavik’s statement that “Funds provided to EMAB are intended to support its active mandate in relation to Diavik.” Section 4.8(a) of the EA states “During the term of this Agreement, DDMI shall provide funding, in accordance with the Advisory Board’s budget, **to the Advisory Board to carry out its mandate.**” **EMAB’s mandate relates to all the Parties and the terms and conditions of the EA, and is not limited to its relation to Diavik.**

On page 7 of the proposal Diavik requests that if neither of its proposed options is accepted by the Minister, he propose an alternate wind-down schedule for consideration by Parties. Diavik further proposes that it would be appropriate for the Minister to clearly define EMAB’s role during closure including identifying in writing the aspects of EMAB’s mandate that are not addressed by existing regulatory oversight. Diavik is again requesting that the Minister unilaterally amend the EA; as noted earlier, any such amendment requires written agreement from all the Parties.

### 2.3 Diavik proposal to set aside EMAB funds for Indigenous Parties

Diavik proposes to set aside funds for 2026-27 that they recover from EMAB after shut down to be used at the direction of the Indigenous Parties for reasonable and closure-related purposes, in a manner that is proportionate and fiscally prudent, through:

- Funding independent technical reviews as part of the WLWB or GNWT review processes, or
- Augmenting the Traditional Knowledge Monitoring Program (TKMP) fund, or
- Direct capacity funding to Indigenous Parties.

Diavik also indicates it would be open to provide additional funding beyond March 31, 2027 for independent technical reviews.

Diavik’s proposals are interesting but far too general. Without specific information on how these ideas could be implemented they should not be considered as part of Diavik’s wind-down proposal. Some critical considerations include:

- How will the funds provided be kept independent of Diavik influence on decision-making?
- What is the amount of funds Diavik is proposing to provide as additional funding after March 31’27?
- How would funds be allocated for independent technical reviews.
  - Who would decide what is reasonable?
  - what is closure-related?
  - what is proportionate and fiscally prudent?
  - Who would decide which reviews should be undertaken, the scope of the review, whether the review has been adequately completed etc.?
- The TKMP has not been approved beyond a pilot phase and Diavik has not proposed a budget for the TKMP, so it is not clear how it could be used as a funding mechanism, or to manage technical reviews.

- How would capacity funding be allocated? Equally to each Indigenous Party? To each Affected Community? What restrictions would Diavik apply on spending? Would capacity funding extend beyond March 31, 2027?

#### 2.4 Support by Parties for EMAB to continue until full and final closure

Diavik is one of eight Parties to the EA. EMAB is not aware of any support for Diavik's request among the other seven Parties. The Minister will make his decision following consultation with all the Parties.

**EMAB attaches letters from three of the Parties stating support for EMAB to continue until full and final closure of the Diavik mine.**

We also draw the Minister's attention to minutes from January 20, 2023 of a meeting of the Environmental Agreement Working Group (EAWG) made up of members appointed by the Parties, to discuss Traditional Knowledge (TK) Monitoring and the Future of the Environmental Agreement (see Attachment 7). The minutes included a clear statement of the Parties' support for EMAB to continue: "While **there was general support for EMAB to continue its "watchdog" role** it was agreed that the first step in considering the future role of EMAB would be for EMAB to hold its own one-day session to review its current role and recommend any change to role going forward." We also refer to this meeting in greater detail in section 5.3.4.

In Attachment D of its rationale Diavik provides about a quarter page of summarized information on engagement it did with the five Indigenous Parties regarding a possible wind-down of EMAB. The information is presented at the bottom of page 26 of the attachment.

As described in Attachment D, the result of Diavik's engagement gives no indication of the Indigenous Parties' views on the Future Role of EMAB beyond some comments on the value of technical reviews and whether these assist Parties' capacity. There is no indication of which Parties, or how many Parties hold the various views presented in the initial feedback, or how many Parties may wait until the Minister's consultation process to provide their views.

We will discuss this further in section 5.3.2 below.

#### 2.5 Diavik description of EMAB's role

Diavik mistakenly describes EMAB's role as limited to funding technical reviews of Diavik plans and reports. We provide information on the actual range of EMAB's activities in section 5.2.2.

#### 2.6 Unsubstantiated and erroneous statements

In its Request and Rationale, Diavik makes many unsubstantiated and/or erroneous statements about EMAB that do not stand up under scrutiny. In some cases they have provided information selectively.

**EMAB will address these in our response, particularly in section 5.**

#### 2.7 Diavik refusal to engage with EMAB on the Board's role during closure & post-closure

Diavik's proposed options for shutting EMAB down leave no scope for dialogue or cooperation, or a way forward, other than the proposed shut down of EMAB. They are not based on any meaningful or substantive discussions with EMAB. Diavik first raised the issue of the transition to closure for EMAB on page 2 of its letter of November 14, 2024 regarding EMAB's recommended budget for 2025-2027 (see

Attachment 3) under the heading “Diavik’s Transition into Closure” and raised a number of questions. EMAB responded to Diavik’s questions on December 12, 2024 (see Attachment 3 – Dec 12’24 letter and Attachment 1 to the letter). We provided a revised recommended workplan for 2025-27 that included the statement ““Diavik expects to complete mining at the Diavik mine by March 2026. While EMAB has communicated with Diavik regarding the 2025 – 2027 budget period as part of the preparation process for this budget (emails of May 8’24, May 21’24 (4), June 4’24, June 6’24 (2), June 9’24 and June 10’24) the Board has not had an opportunity to meet with Diavik to discuss broader changes to the activities at the Diavik mine and how these may affect EMAB’s activities. We believe such discussions would be useful and acknowledge they might affect EMAB’s workplanning for 2026-2027. **We plan to engage in such discussions with Diavik during 2025, and will take these discussions into account when we finalize the workplan for 2026-2027 closer to the end of the 2025-2026 fiscal year.**”

Diavik responded to our revised recommended workplan on December 19, 2024 (in Attachment 3). They did not address engagement on EMAB’s role on the transition to closure.

As we committed, EMAB invited Diavik to present its views on EMAB’s role in the transition to closure at our July 2025 meeting (see email of June 24’25 in Attachment 3). Diavik did not speak to this topic at the meeting.

EMAB then invited Diavik to present its views on EMAB’s role in the transition to closure at our October 2025 meeting (see email of Oct 9’25 in Attachment 3). At the meeting Diavik stated that things have changed since the EA was signed and said they have asked the Minister about EA section 18 (regarding winding down EMAB). They said they planned to discuss the transition with the Parties. They did not offer any views on how EMAB’s role could evolve during the transition to closure. On November 25, 2025 Diavik informed EMAB that it was engaging with the Parties on winding down EMAB (see Diavik letter of Nov 25’25 in Attachment 3).

EMAB again invited Diavik to present its views on EMAB’s role in the transition to closure at our December 2025 meeting (see email of Nov 20’25 in Attachment 3). Matt Breen, Diavik’s COO, attended the meeting and informed the Board that Diavik intended to request the Minister wind EMAB down as soon as possible.

On January 28, 2026 Diavik sent a request and rationale to the Minister to wind-down EMAB at the end of commercial production. EMAB and the Parties to the EA did not receive copies of the letter.

To summarize, EMAB has agreed to discuss the closure and post-closure phase with Diavik and invited them to do so on multiple occasions, but Diavik has not engaged with us on the topic.

### 3. Rationale for EMAB to continue through closure

#### 3.1 What EMAB does

- EMAB is an independent Board with a majority of Indigenous members appointed by Indigenous Organizations. EMAB challenges Diavik to do its best on as many issues as possible to address Indigenous views on how the mine should be closed successfully.

- EMAB addresses community priorities: water and fish, wildlife, air quality, closure and Traditional Knowledge.
- EMAB monitors environmental changes caused by Diavik, and implementation of Diavik’s commitments, including for closure, as well as monitoring the regulators and implementation of the regulatory process.
- EMAB engages with the Parties to receive feedback on its activities and plans.

### 3.2 Why EMAB is important

- Independence – None of the Parties, including Diavik, can use financial or other leverage to tell EMAB what to do, or not to do.
- Connection with communities; reflect community concerns. Majority of board members live in Affected Communities and convey Indigenous communities’ views to the Board.
- Hold Diavik to account honouring the commitments it made during the Environmental Assessment.

### 3.3 Reasons why the Environmental Agreement was required, and EMAB was established:

Before considering whether and how EMAB could wind down, the reasons the EA was required by the environmental assessment need to be considered, including the requirement for EMAB.

Diamond mining in NWT was new and unprecedented at the time Diavik’s EA took place. There was significant concern from Indigenous communities and the general public about the residual effects of other mines in the NWT, in particular the Giant mine, Colomac, Rayrock etc., and whether mining companies could be trusted to protect the environment and the lands and water communities used for their cultural practices, and whether regulators could be relied on to hold the companies accountable for preventing environmental damage. The EA, and EMAB, are key components of the social license for the project to proceed. One of the key measures to mitigate concerns about the project was the establishment of the EA, and the independent oversight body, EMAB. Diavik’s request to shut EMAB down undermines the commitments made by Diavik and regulators during the environmental assessment, and the measures developed to mitigate impacts. In the long run, a decision to shut EMAB down could undermine confidence in commitments made during assessments of current and future projects.

The EA was **required as a measure under the Comprehensive Study Report (environmental assessment) in order to allow the Diavik project to proceed. The Responsible Authorities concluded that an Environmental Agreement had to be developed as part of the mitigation measures to ensure the project did not result in significant environmental effects.** On page 228 and 229 of the CSR the Responsible Authorities describe the EA including Guiding Principles and scope. They stated “The environmental agreement required for the proposed Diavik project is one of the formal mechanisms which will be utilized to ensure that the mitigative measures outlined in Diavik’s submissions, and in the RAs conclusions documented in the CSR are appropriately implemented as required in respect of associated biophysical environmental effects.” In a November 3, 1999 News Release, then federal Minister of Environment David Anderson stated “While a referral to a review panel is not warranted, I have concluded that in order to address concerns raised through public consultation and views expressed by the Mackenzie Valley Environmental Impact Review Board, specific commitments are warranted.” One of these commitments was **the establishment of a monitoring mechanism to ensure**

**that monitoring of the Diavik project occurred, and that this mechanism involved Aboriginal peoples.** While Diavik may not like the terms of the EA that it was required to sign, they signed it in order that the project be allowed to proceed. **Diavik signed legally binding agreements, and made promises and commitments to the other Parties to the EA.** Some applicable parts of the EA related to closure and post-closure include:

- **Recitals**
  - Minister to develop an EA to **ensure that the mitigation measures in Diavik’s Commitments**, and the follow-up requirements specified in terms and conditions by Regulatory Instruments **are appropriately implemented and monitored.**
  - **Commitments (see Attachment 4 - summary of Diavik Key Commitments from DIAND ) related to closure include: goal of restoration of site to, as near as possible, original conditions;** not burying buildings and equipment on site, address long-term closure and identification of indigenous plant species; appropriate closure and contingency plans; mitigation of release of porewater after closure; assessment of closure options for the North Inlet; monitor metal concentrations in fish flesh in some East Island lakes, and plan to warn people fishing if they exceed consumption guidelines; effect of climate warming on containment dams, spillway and rock cap.
- **Statement of Purpose and Guiding Principles** – selected (see Article 1 of EA)
  - ensure mitigation measures in DDML’s Commitments and in Responsible Authorities conclusions are appropriately implemented.
  - additional monitoring to verify accuracy of EA and effectiveness of mitigation measures and whether Commitments are being fulfilled.
  - Design and implementation of Environmental Protection Measures (EPM) to minimize adverse effects on Environmental Quality.
  - Full consideration of TK and scientific information where appropriate.
- **Transitional (Article 2.2)**
  - Anticipates devolution and states that any negotiation of an amendment to the EA shall be done in good faith, “while maintaining the purposes and principles of the Agreement.”
- **Mandate of EMAB (Article 4.2)**
  - Serve as a public watchdog of the regulatory process and implementation of the EA.
  - Review Environmental Plans and Programs, EPM, compliance or monitoring reports (note definition of EPM includes closure) and other reports and data bearing on Environmental Quality produced by any of the Parties or regulatory authorities.
  - Make recommendations for achievement of the EA Principles to Diavik, the Minister or any other Party or body having regulatory or management responsibility.
  - Includes a role in recommending participation of Affected Communities and Indigenous people in monitoring.
  - Includes a role in recommendations regarding Traditional Knowledge studies.
  - Article 4.9 gives EMAB a role in establishing a Traditional Knowledge Panel.
  - These mandate items **all relate directly to closure and closure planning.**
- **Security (Article 15.1(g)(ii); (h); (i))**
  - Review reports on progressive reclamation and requests to reduce security.
- **General Provisions – Review & Amendment of Agreement (Article 17.2(b))**
  - Agreement may be amended at any time by written agreement among the Parties.

- **Term (Article 18)**
  - **Agreement terminates on full and final reclamation and abandonment of the site...**in accordance with the terms of the EA and completion of any and all post-closure monitoring and maintenance required in connection with the Project.
  - Minister can **relieve Diavik of responsibilities under the EA to the extent he deems reasonable.**
  - Minister can set a schedule for winding down and concluding operation of EMAB
    - Winding down means a gradual reduction in activity over time, not termination or shut down.
    - EA envisions a change in activity by EMAB, and under the EA, as closure progresses, not a shut down.
    - Agreement also envisions concluding EMAB. Conclusion would involve final reporting as well as orderly wind-up: final payments, closing office etc.
- **Specific references to Closure in EA (including Reclamation and Abandonment)**
  - Definitions: EPP, EPM, Reclamation & Abandonment Plan.
  - Section 6: Requirement for Reclamation & Abandonment Plan, and to provide EMAB with its closure plans
  - Section 10: Reclamation & Abandonment section:
    - Plan will evolve and incorporate new and emerging technologies. Plan and implementation consistent with sustainable development.
  - Section 15: Security & Enforcement:
    - Security for performance of reclamation & abandonment obligations.
    - EMAB to be informed about progressive reclamation and changes to security.

We note that Section 18.3 of the EA allows for the Minister to set a schedule for winding down and concluding EMAB. The accepted meaning of “winding down” is clear; the term is defined as “gradually reduce the amount of work that is done.” This concept of a gradual reduction of work makes sense in the context of the EA as the amount of monitoring EMAB will need to do after operations cease would be expected to change, and could not be accurately predicted by the Parties to the EA at the time it was prepared and signed in 2000. In its request, Diavik refers to fully winding EMAB down, by which it means shutting EMAB down by March 31, 2027.

**EMAB’s review of the EA shows that it was focused on monitoring Diavik’s implementation of its commitments, monitoring effects on the environment, monitoring the regulatory process and the regulators, and involving Aboriginal People in that monitoring from construction through to full and final reclamation. The EA includes a strong emphasis on closure and post-closure planning and monitoring. Our review shows that the Parties wanted there to be thorough review of closure plans and monitoring results during the closure and post-closure phases of the mine, and for EMAB to do that monitoring with the involvement of the Indigenous Parties to the EA. The Parties understood that EMAB’s role might change as Diavik entered closure, and that those changes to EMAB’s role should be addressed when the time came.**

On page 4 of its rationale Diavik states “DDMI understands that under the NWT’s current regulatory framework, proponents of new mines are likely not required to establish independent environmental oversight bodies.” Diavik does not provide any evidence to support this statement. An alternative view is

that the role of cooperative arrangements between proponents and Indigenous Governments is supported by agreements such as the EA, and independent monitoring organizations such as EMAB, and that the EA can serve as a model for building trust between proponents and Indigenous people in approval and implementation of future development projects.

### 3.4 EMAB role in effective consultation

The effectiveness of the current regulatory system depends on Indigenous Governments being adequately resourced and able to meaningfully participate in regulatory processes. When Indigenous parties lack the capacity to engage fully, there is a risk that the Crown may not meet its obligations for Section 35 consultation.

The Environmental Monitoring Advisory Board (EMAB) includes representation from Indigenous Governments that are not always able to participate directly in Land and Water Board processes. This highlights an important gap that can undermine effective consultation.

Industry also has a role to play in addressing this gap. The Truth and Reconciliation Commission's Calls to Action, particularly Call to Action #92, calls on the corporate sector to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a framework for reconciliation and to apply its principles in all activities involving Indigenous lands and resources. Supporting Indigenous participation in regulatory processes is consistent with this responsibility. This approach aligns with the principle of "shared responsibility" outlined in the Mackenzie Valley Land and Water Board's Engagement and Consultation Policy, which recognizes that meaningful consultation is not solely the responsibility of government.

By continuing to support and strengthen EMAB's role, the Government of the Northwest Territories can increase the likelihood that its consultation obligations are fulfilled and that Indigenous perspectives are effectively incorporated into regulatory decision-making.

## 4. EMAB proposals for a wind-down schedule

Section 18 of the EA addresses the option for the Parties and the Minister to consider the Agreement after Diavik stops mining, and adaptively respond to the changes in activities, reporting and monitoring of the mine. Section 18 does not intend for EMAB to be shut down, or for the EA to terminate when Diavik stops mining; instead it recognizes that the EA will continue until the full and final reclamation and abandonment of the mine. It provides an opportunity to assess the amount of work that will be required to achieve the EA mandate, recognizing it will likely change, and a way to address the reality that EMAB's role will eventually wind down and conclude as the mine approaches full and final reclamation and abandonment.

### 4.1 Definition of "wind down"

EMAB observes that the definition of wind-down is:

- to gradually reduce the amount of work that is done (Collins dictionary<sup>1</sup>),

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<sup>1</sup> <https://www.collinsdictionary.com/dictionary/english/wind-down>

- to end gradually or in stages (Cambridge dictionary<sup>2</sup>), or
- to draw gradually toward an end (Merriam-Webster dictionary<sup>3</sup>).

The common theme in these definitions is the gradual nature of the process, not an immediate shut down as Diavik is proposing.

EMAB's view is that it is premature to finalize a wind-down schedule for EMAB, and that the Board should continue operating until closure and post-closure are complete, while gradually winding down as the amount of activity, including monitoring, decreases. We believe this is in keeping with the intention and wording of the EA.

EMAB believes a reasonable approach to wind down would be to plan for ongoing work based on activity at Diavik, including monitoring: anticipated reporting and reviews, including scientific and Traditional Knowledge monitoring results; communication requirements with Affected Communities and all other obligations set out in the EA. EMAB recognizes that there is a level of uncertainty in predicting the amount of scientific and TK monitoring and reporting, the amount of data, and the rate at which closure objectives and criteria will be met. To address this, EMAB proposes that the wind-down schedule include specific timeframes for re-assessing the schedule and considering changes. Specifically we propose:

- a re-assessment at the end of the active closure period, when Diavik has completed the various approved closure designs, including breaching collection ponds, monitoring and breaching of the North Inlet and completion of the cover and drainage channel on the PKC. Diavik has indicated that it expects these will all be complete by 2029 or 2030.
- A second re-assessment in the final year of the current water licence. Assuming active closure is complete by 2030, the 2035 licence expiry would be five years into the post-closure period. Diavik proposes to submit Performance Assessment Reports for all the mine components by this time. Diavik and EMAB expect the scientific and TK monitoring data will be starting to show how the various closure designs are performing, and the amount of maintenance that has been required. Diavik will also be applying to renew its water licence for the next post-closure period.
- Additional re-assessment points could be set during this second re-assessment of the wind-down schedule, based on data and experience to that time.

EMAB expects there will be significant activity at the mine during the period of active closure. This includes breaching collection ponds and monitoring discharge; monitoring the North Inlet (NI) and eventually breaching the NI dam and monitoring discharge; completing the cover and drainage channel on the PKC, and monitoring discharges and effects; demolition and clean-up of spill sites and monitoring disposal of contaminated materials; revegetation and monitoring success; and Reclamation Completion Reporting as each of the mine components is reclaimed, as designed in the Final Closure Plan. Monitoring frequency for the various programs may decrease depending on results. There may also be a number of additional reports such as SWALF Response Reports.

In the post-closure period the amount of reporting will decrease to some degree, although the actual level of reduction is not certain at this time. Diavik has indicated plans to submit Performance

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<sup>2</sup> <https://dictionary.cambridge.org/dictionary/english/wind-down>

<sup>3</sup> <https://www.merriam-webster.com/dictionary/wind%20down>

Assessment Reports for some or all of the mine components, to evaluate whether closure objectives and criteria have been met.

It is also important to acknowledge that EMAB requires stability to carry out its ongoing work. Uncertainty associated with EMAB's continuity, workplan and budget, undermine that stability. A schedule broken into phases as we have proposed will promote such stability.

Finally, the wind down and conclusion should be planned and orderly to ensure all EMAB's obligations and activities are dealt with appropriately including staff, leasing, invoices, contracts, other liabilities and commitments. A final report should be prepared, all documents, including the Public Registry, should be appropriately housed, and equipment and furnishings should be disposed appropriately.

#### 4.2 EMAB anticipated activity during closure and post-closure

This section provides EMAB's understanding of the anticipated reporting and reviewing that will take place following completion of mining at Diavik. We have focused on reporting that is directly related to EMAB's long-identified priorities: water (including fish and other aquatic life), wildlife, air, closure and Traditional Knowledge. We have divided this into four phases:

- Transition year from operational reporting to closure reporting (2026-27). This year will include final reporting on operational monitoring as well as reporting on Diavik's transitional closure AEMP and SNP and Specific Effects Study reporting on discharges from Ponds 2 & 7. EMAB also expects to review revisions required from the WLWB decision on FCRP version 1.1, including the revised TK Monitoring Plan, and proposed Cultural Use Criteria for the entire minesite required by the renewed water licence. We also expect to review Specific Effects Study designs for Ponds 1 & 13 (plume studies).
- Active closure reporting period from 2027 to 2030 (Diavik expects active closure to be completed by end of 2029; if this estimate is incorrect the active closure period could extend to 2030 or beyond).
- Initial post-closure reporting period from 2030 to end of current water licence in 2035.
- Late post-closure reporting period from 2035 until a yet-to-be-determined date.

EMAB largely agrees with Diavik's listing of reporting requirements and planned activities in Attachment B of its request to the Minister, although we note that it does not include federal requirements such as reporting under the Metal and Diamond Mining Effluent Regulations. We do not agree with all of Diavik's assessments of review significance and complexity. For example we view wildlife monitoring as being of high significance, rather than low as Diavik assesses.

Attachment 1 is a list of expected documents for review during the closure, early post-closure, and longer term post-closure, and Attachment 2 is a preliminary draft budget for the 2027-29 budget period following the requirements of EA section 4.8. The budget's Oversight and Monitoring section is based on our list of expected reviews while the rest of the budget is based on the same components of previous approved two-year budgets: Involving & Supporting Communities, Communications, Governance, Administration and Management. We do not expect these costs will change significantly during the 2027-29 period. We hope Diavik will be able to provide input on the transition to closure that may allow us to fine-tune these budget estimates.

## 5. Response to Diavik rationale for shutting EMAB down

### 5.1 Duplication

Diavik provides several comments and complaints about various aspects of EMAB's role and technical reviews that it considers duplicative: on page 2 of its covering letter, pages 3-4 of its rationale, as well as parts of its Attachment A.

#### 5.1.1 Duplication of oversight

EMAB notes that Diavik refers to shutting EMAB down as regulatory simplification. This is an incorrect use of the term; regulatory simplification refers to reducing the complexity of regulations, not to terminating independent oversight bodies.

Diavik says EMAB's oversight function is duplicative of the mandate of regulators such as ECC, DFO, ECCC and WLWB, particularly during closure. As discussed earlier, the EA, and EMAB, were established as an independent mechanism to monitor Diavik and the Regulatory Process, including the regulators. EMAB's mandate does not duplicate the regulators, it provides additional independent oversight that the Responsible Authorities and the Parties, especially Indigenous Parties, considered necessary. ECC, DFO and ECCC all existed at the time the EA was signed, and all provided input to the regulatory process for development projects throughout the NWT. Parties intended for EMAB to do its reviews and make comments in addition to those of ECC, DFO and ECCC. These comments were not considered duplicative when the EA was agreed, and are not duplicative now.

While the WLWB did not exist when the EA was signed, the Mackenzie Valley Resource Management Act came into force in 1998, creating the Mackenzie Valley Land and Water Board. The Parties to the EA were aware MVLWB was the regulatory authority for the Diavik mine. The legislation envisioned the Wek'èezhìi Land and Water Board coming into existence once the Tlicho claim was settled. So the signatories were aware that the MVLWB, a co-management board, would regulate Diavik's water licence, and that the WLWB would come into existence during the period the Diavik mine was active, and take over regulation of the mine. EMAB was seen as a necessary mechanism to monitor the environmental effects of Diavik, to monitor the regulatory process, and to involve "Aboriginal Peoples" (as defined in the EA) in this monitoring. This has not changed since the EA came into being.

The EA Recitals are clear about the role of the EA and EMAB, in particular:

**Recital D:** "AND WHEREAS the CSR includes a requirement for the Minister, as the lead Responsible Authority, to develop an **environmental agreement to provide a formal mechanism to ensure that the mitigation measures outlined in DDMI's Commitments, in addition to the mitigation measures and follow-up requirements which will be specified as terms and conditions by Regulatory Instruments, are appropriately implemented and monitored;**"

**Recital E:** AND WHEREAS the air, land, water, aquatic resources, and wildlife are essential to the lives and well-being of the Aboriginal Peoples;

The Statement of Purpose and Guiding Principles (sections 1.1. and 1.2) lay out a broad vision for the EA, and for EMAB, as does the Mandate for EMAB (section 4.2).

EMAB argues that the EA envisioned ECC, DFO, ECCC and a Land and Water Board would make recommendations about Diavik's water licence. The Parties created EMAB as an independent oversight body on Diavik and the regulators with a strong connection to the Affected Communities. The Parties envisioned the need for EMAB to make recommendations in addition to ECC, DFO, ECCC and the MVLWB/WLWB. The Parties intended from the outset for EMAB to fulfill this role.

### 5.1.2 Oversight of closure

Diavik also argues that closure oversight is less risky than operational oversight. EMAB's view is that oversight of closure is one of the highest priorities of the Indigenous Parties, and perhaps the biggest concern raised by Affected Communities. Further, closure results in additional risks, since the company will no longer have a site presence and will be unable to respond in a timely way to potential environmental contamination, or unforeseen events. As an example, we note that the recent SWALF exceedances were not predicted by Diavik, and that there are nine more pond breaches planned, as well as the North Inlet, any of which might also result in unplanned water quality exceedances.

### 5.1.3 Diavik analysis of EMAB mandate

In its Attachment A, Part 1 Diavik includes a table setting out EMAB's mandate and Diavik's views on how well EMAB is achieving each of our mandate items, as well as areas it believes are covered other ways.

We will review some important flaws in Diavik's analysis for each mandate item. We also draw attention to EMAB's relatively limited resources, including our budget. It is not possible for EMAB to fully achieve each of the mandate items to the degree the Board would like given our 1.5 staff and budget. EMAB has set priorities and undertakes strategic planning, as well as inviting Party input at our AGM to ensure that we address our higher priority items first.

**Mandate:** Diavik notes that Indigenous Parties have more capacity and resources to participate in regulatory processes now than when the EA was signed. We will address this in more detail under 5.1.4 but note that most Indigenous Parties do not participate in many of the technical reviews. We also note that the Northern Participant Funding Program does not generally apply to regulatory processes; the only time NPPF funding was provided for a Diavik review was for the 2025 Water Licence Renewal, and this was an exception.

- a) EMAB's role is to provide an integrated approach to achieving the Purposes of the EA, not to focus on achieving them ourselves. EMAB provides a forum where the members appointed by each Party can discuss the Purposes. Diavik says it is only aware of two of the eight (not 16 as Diavik states) Purposes that EMAB has addressed. In our view Diavik's awareness is limited and EMAB has addressed all eight Purposes to a greater or lesser degree.
- b) EMAB's role is to assist the Parties to implement a cooperative approach. EMAB has convened many workshops and meetings with this intent (see section 5.3.3 for some examples related to TK). We also invite and support the Parties to attend our AGM to comment on EMAB's activities and plans.
- c) We agree that EMAB consistently fulfills our watchdog role. We have discussed the evolution of the regulatory system in the NWT in section 5.1 above. Contrary to Diavik's statements, the MVRMA pre-dates the EA, and the MVLWB existed prior to the EA and was the co-management regulator for Diavik before the WLWB was formed.

- d) & e) We also agree that EMAB consistently reviews reports and makes recommendations. We have commented on Diavik's proposals to provide funding in section 2.3 above.
- f) & g) Diavik says it is not aware of EMAB's work in meeting these parts of our mandate. We refer Diavik to the many discussions and exchanges of correspondence on involving Indigenous people and Affected Communities on training for monitoring, the meetings we convened with Diavik, Aurora College, GNWT ECE and others to improve Indigenous participation in monitoring.
- h) see section 5.3.3.
- i) See section 5.2.3 about EMAB's work in undertaking community updates. We also note our website, emab.ca, and our Facebook page.
- j) Annual Report, website and Facebook page.
- k) EMAB fulfills this item.
- l) EMAB fulfills this item.
- m) EMAB provides our technical reviews to the Indigenous Parties as soon as they are approved by the Board, to use as a resource. EMAB has also organized workshops with community representatives on a range of topics related to monitoring at Diavik.

#### 5.1.4 Diavik complaints about EMAB's reviews

On page 4 of its rationale Diavik states "In DDMI's experience, EMAB's extensive and often repetitive comments in regulatory processes, and regularly granted requests for extensions, result in prolonged regulatory timelines." As with many of its complaints, Diavik refers to its "experience" but does not provide evidence to support its statements.

Diavik seems to have many complaints about the way EMAB reviews documents and submits comments. In general these comments are not related to setting a schedule for winding down EMAB and do not seem to relate directly to Diavik's argument about duplication.

Many of Diavik's complaints are also not supported by evidence. We respond to a few of these comments below.

#### **Thorough Reviews**

Submission of comments from more than one organization may result in some similar comments but this is not necessarily duplication. Further Diavik provides no evidence that any of EMAB's comments and recommendations duplicate those of any other organization.

EMAB makes no apologies for providing thorough reviews of Diavik's plans and reports. We do not agree that our comments are repetitive and are willing to respond to any evidence Diavik submits showing repetition of comments.

In Part 2 of Attachment A Diavik complains that EMAB made too many comments on version 1 of its FCRP, noting that EMAB made 321 comments on the plan. EMAB notes that FCRP version 1 was over 7,000 pages long, with 62 appendices. EMAB did a thorough review, and we do not agree that 321 comments on such a large document is unreasonable. Further, we note that Diavik's Board member and Party Representative participated in the meetings where the draft recommendations were reviewed and approved.

Further in Part 2 Diavik states “DDMI estimated as many as 50% of EMAB’s recommendations on the FCRP V1 were identical re-submissions of previous comments and recommendations from separate review processes.” And that “these resubmissions demonstrate no consideration of the previously provided DDMI responses.” Diavik provides no explanation of how it arrived at this estimate. EMAB tested Diavik’s statement and we found 19 recommendations (about 5% of the total, not 50%) were re-submissions and in all cases these were included because Diavik’s proposed approach and response did not address EMAB’s concerns.

### **Requests for Extensions**

Diavik also refers to EMAB’s regularly granted requests for extensions resulting in prolonged regulatory timelines, again without providing evidence. We accept that EMAB sometimes struggles to meet review deadlines, and requests short extensions to allow us to complete our reviews, generally in the range of 1-2 weeks.

We note however that Diavik also regularly requests extensions for its submission dates and response deadlines. Some recent examples are: delay submission of 2025 Annual AEMP report to April 6, 2025; delay submission of 2025 Annual Water licence report to April 14, 2026; and delay submission of 2025 Annual Seepage Survey Report to April 21, 2026. Diavik also delayed its response to comments on version 1.1 of the FCRP from November 28, 2025 to December 16, 2025, and delayed submission of version 1.1 of the FCRP from April 15, 2025 to May 16, 2025. Circulation of version 1.1 was further delayed to July 18, 2025 due to Diavik’s first version not conforming to WLWB requirements.

### **EMAB willingness to constructively engage with Diavik**

Again in Part 2 of Attachment A, Diavik says “In DDMI’s experience, EMAB chooses not to engage constructively with DDMI in the same way that the Parties do.” Diavik also states that its offers to engage are rarely accepted. Again Diavik refers to its “experience” without providing any supporting evidence. In fact EMAB invites Diavik to present on its various plans and reports at Board meetings, which is the most appropriate forum for Diavik to engage with the Board.

### **WLWB comment about DDMI and EMAB’s working relationship**

In Part 2 of its Attachment A, on page 15, Diavik says “In its Reasons for Decision on Version 1 of the FCRP, the WLWB expressed disappointment in DDMI and EMAB’s working relationship, stating “[t]he lack of an effective working relationship between DDMI and EMAB and the inability to provide focused recommendations is contributing to unnecessary effort from the Board’s staff and often adds more time to the public review process” (p.12). The WLWB went on to direct DDMI to “report on efforts to improve ongoing communication and engagement challenges with EMAB as part of the 2025 Annual Report required by Part B, Condition 5 of the Water Licence.”

Diavik goes on to explain how it took this decision very seriously and implemented a plan to improve its working relationship with EMAB. However it neglects to acknowledge that EMAB took the WLWB’s comment equally seriously, that EMAB had joint discussions with Diavik at EMAB Board meetings about this issue, and that EMAB proposed a number of the approaches that were included in the plan that was submitted to WLWB.

Diavik then notes that the WLWB directed EMAB to provide an outline of which recommendations from its Interventions have not, in EMAB's view, been addressed, and to include an explanation for why. Diavik fails to mention that WLWB gave this undertaking to EMAB at Diavik's request, and that EMAB provided a detailed 14-page response describing the inadequacies in each of Diavik's responses, as directed.

Diavik then says on page 16 that "These views on the adequacy of DDMI's responses appear to be unique to EMAB." It is not clear to EMAB how this is relevant to Diavik's request and rationale to shut down EMAB.

The many complaints Diavik makes about EMAB's comments and recommendations may display the issues with Diavik's working relationship with EMAB, but are not a basis for shutting EMAB down.

#### 5.1.5 Participation of Indigenous Parties in reviews

On p. 5 of its rationale, and on p. 10, 14 & 17 of Attachment A Diavik says that of the five Indigenous Parties to the EA, four of the five (with the exception of the Kitikmeot Inuit Association) also participated in the ORS with comments. Indigenous Parties have more capacity and more resources than they did when EMAB was established to participate directly in regulatory processes. This is a result of settled land claims and land claim negotiations, the Northern Participant Funding Program, signed benefit agreements with industry and government, and increased access to technology in remote communities.

EMAB reviewed Indigenous Party responses to 30 documents on the WLWB Online Review System between present day and 2023. We found (see Attachment 6):

- TG had responded to 21 = 70% (3 funded by NFPF).
- YKDFN had responded to 12 = 40% (3 funded by NFPF).
- LKDFN had responded to 4 = 13% (3 funded by NFPF).
- NSMA had responded to 3 = 10%.
- KIA had not responded to any.

We did not find that Indigenous Parties' capacity had improved sufficiently that they were able to respond to all major technical reviews related to Diavik, and in most cases they were able to respond to a very limited number of technical reviews. These comments are not so much a comment on the capacity of the Indigenous organizations, but do show the value of EMAB's technical reviews in supporting their capacity and ensuring Indigenous perspectives are reflected in comments to the WLWB and ECC.

#### 5.2 Use of funds

In section 2 on page 4 of its rationale Diavik states that it has provided over \$16 million in funds to EMAB and that EMAB has chosen to focus almost exclusively on its role of a public watchdog. On p. 5 it states that EMAB's technical reviews come with unacceptably high overhead costs and limited direct benefits to Indigenous Parties. Diavik goes on to say that in 2023 and 2024, approximately 70% of EMAB's budget was allocated on fixed overhead costs including administrations, staffing, office space and Board member honoraria and travel.

EMAB disagrees with this characterization. While part of the Governance, Administration and Management budgets are used to administer technical reviews (including reviewing and summarizing documents to be reviewed, developing Terms of Reference, reviewing and summarizing draft technical

reviews, communication with technical consultants, and finalizing EMAB's recommendations based on the technical reviews), these budgets include other important work required by the EA, and for prudently managing and governing EMAB:

- Governance – the Board meets regularly to oversee EMAB: workplanning and budgeting, review activities, direct staff, develop and amend policy, review financial information, discuss ongoing issues etc. Board minutes show the broad range of issues that the Board discusses and considers beyond administering technical reviews. In addition to Board meetings, Board members must prepare themselves and provide input on decisions between meetings.
- Administration – EMAB maintains an office where staff work, the Public Registry is maintained, the public can contact staff etc. This includes a shared boardroom for Board meetings. The items required for the office and administration are detailed in the budget.
- Management - staff undertake many tasks such as: internal staff reviews of documents; participation in regulatory proceedings including preparation and drafting of documents for Board review; maintaining the EMAB website; preparing materials for Board meetings and preparing minutes and summaries of the meetings, preparing presentations and travelling to communities to support Board members to do updates on EMAB and Diavik activities; and writing, reviewing and working with designers on EMAB's annual report and other communications materials.

We also note that these types of costs are required to operate any registered Society such as EMAB and are incurred as part of EMAB's responsibilities under the Environmental Agreement.

Governance, administration and management costs have remained relatively consistent throughout EMAB's lifetime, subject to inflation. We note again that Diavik has always accepted these components of EMAB's budget in the past and has not raised such questions. The proportion of the budget dedicated to these budget items increases as the overall budget decreases and vice-versa. When EMAB's budget was cut in 2015-16 the proportion spent on these areas increased.

#### 5.2.1 EMAB reviews, comments and recommendations

EMAB's comments on Diavik's plans and reports bring together technical reviews and community perspectives. For example our comments on closure planning are informed by concerns raised by communities at meetings and workshops, including EMAB's own closure workshop with community participants, in addition to expert technical reviews.

EMAB's experience is that most Indigenous Parties do not provide comments on most documents circulated by WLWB (see section 5.1.5 above). Our understanding is that this is largely due to capacity limitations. The composition of EMAB's Board ensures we are able to prepare recommendations that reflect community perspectives. Further, EMAB provides copies of our recommendations in plain language to the Indigenous Parties as soon as they have been approved by the Board; this approach allows Parties to make use of EMAB's analysis and resources to prepare their own recommendations.

Diavik noted that Indigenous Parties have requested funds from it to do their own technical reviews. EMAB understands that communities would like to do their own reviews. However as noted above, communities often face capacity limitations and EMAB helps to ensure that community perspectives are heard by regulators.

ECC, DFO, ECCC and WLWB also make comments, typically from a technical perspective and within the specific mandate of the department and section. These are not intended to reflect the perspective of the Affected Communities.

### 5.2.2 EMAB's activities

On page 2 of its letter and pages 4, 5 and 21 of its rationale Diavik stated that the only activities EMAB undertakes are technical reviews of plans and reports under the water licence, and that these reviews are largely undertaken by technical consultants, so that EMAB's only purpose is to coordinate and manage reviews by technical experts. This is a disingenuous claim, since Diavik should be aware of the breadth of EMAB activities through its Board member, and regular correspondence with EMAB, including:

- EMAB members bring many issues to the Board's attention for review, discussion and consideration of recommendations to Parties. Recent issues include: effect of the winter road to Diavik on wildlife, particularly caribou; long-term monitoring, liability and security for Diavik; use of audiloggers to monitor caribou behavior; long-term water quality and quantity of the Coppermine River.
- EMAB staff review technical documents and provide background, advice and draft recommendations for Board consideration beyond those developed by technical consultants.
- EMAB convenes workshops on a variety of topics related to monitoring at Diavik, bringing together community participants, technical experts and the Board to review information and develop recommendations.
- Traditional Knowledge: EMAB has been very active in promoting and developing Traditional Knowledge monitoring at Diavik.
  - EMAB has made many recommendations to Diavik regarding TK.
  - Staff attend TK Panel meetings and TK Monitoring Plan workshops and report back to the Board.
  - Board members and staff have attended Diavik TK Fish Camps and reported back to the Board.
  - EMAB has developed principles and considerations for TK Monitoring
  - EMAB reviewed Diavik's proposed TK Monitoring Framework.
  - EMAB staff review and comment on incorporation of TK into Diavik's Monitoring and Closure Plans.
  - EMAB has also strongly advocated for the inclusion of Cultural Use Criteria in Diavik's water licence.
- EMAB's Chair and staff attend WLWB workshops, Technical Sessions, and public hearings and present the Board's views on a range of issues based on Board direction and informed by community input.
- EMAB's Board members (and staff) do site inspections at the mine and report back to their communities. EMAB also receives and reviews reports from ECC's Inspector.
- Review of monthly Surveillance Network Program (SNP) reports and Inspection reports.
- Preparation and approval on an annual report to inform Affected Communities, leaders and the public about EMAB activities as required by section 12 of the EA.
- Maintenance of a public website describing EMAB and its activities and access to reports, reviews, meeting notes, annual reports etc.
- Maintaining a Facebook page to provide another vehicle for community input

- Maintaining a public registry of documents dating back to the environmental assessment of the Diavik project, as required by section 14.3 of the EA.
- Board governance including meetings to provide direction to staff, approve budgets, oversee financial management and the annual audit, information requirements for the Societies Registrar, and performance evaluations.

### 5.2.3 Communication with communities, including meetings

Diavik stated that EMAB is not keeping communities informed and had not visited any communities since 2018. This statement does not align with the facts and the structure of the Board. Diavik fails to acknowledge that five EMAB Board members are appointed by the Indigenous Parties to the EA, and live in Affected Communities where they keep community members informed and receive feedback on a daily basis. This ongoing link with the communities is arguably as, or more important than community update meetings. Diavik also fails to acknowledge that since our formation we have held public community updates, with Board members, in all Affected Communities; and have held Board meetings in several of them.

Diavik's statements regarding EMAB updates are incorrect. EMAB did a community update with the NSMA in 2020, and the KIA member updated the KIA Board in 2020. As a result of COVID EMAB took the decision to not do any community updates from 2020 to 2022. EMAB agrees that we would like to do more community update meetings than we have in the last three years.

We wish to correct Diavik's statement that EMAB regularly diverts funds from community updates to other projects (Attachment C, part 2). EMAB considers community updates to be a vital part of our annual workplan and we deliberately avoid diverting funds from this budget. Any unspent funds at the end of the fiscal year are either rolled over to the following year with Diavik's agreement, or returned to Diavik. After reviewing Diavik's comment we found that once in the last ten years EMAB re-allocated unspent funds from community updates to a review of Diavik's water licence amendment. This re-allocation took place in the last week of the 2024-25 fiscal year.

## 5.3 EMAB role during closure and post-closure

Diavik states that "EMAB has not meaningfully demonstrated what role they will play during closure" (letter, p. 2 and Diavik rationale p. 5-6). Diavik goes on to note its engagement with Indigenous Parties on the role EMAB could have during closure. Diavik refers to EMAB's possible role in implementing the TK Monitoring Program, EMAB's report on the *Future Role of EMAB*, and EMAB's 2025-27 budget and workplan. We will address each of these below.

### 5.3.1 Meaningful demonstration of EMAB's role during closure

Diavik appears to have forgotten that the Environmental Agreement sets out EMAB's role during the life of the Diavik mine, from construction through to full and final reclamation and abandonment and completion of all post-closure monitoring and maintenance.

EMAB would continue to function as set out in the EA, notably section 4.2 mandate:

- reviewing reports.
- acting as a watchdog on Diavik and the regulatory process, and on the implementation of the EA.

- continuing involvement in the TKMP.
- keeping communities informed and bringing community concerns and issues to the Board for discussion and possible recommendations.
- continuing to publish our annual report.
- continuing to maintain our website and Facebook page.
- continuing to provide a Public Registry.

EMAB will also work to implement the recommendations in the *Future Role of EMAB* report, and plans to develop an updated strategic plan. We hope to engage in dialogue with Diavik about the company's views on the transition to closure and how the EA will continue to be implemented.

### 5.3.2 Diavik Engagement with Indigenous Parties regarding EMAB's role during closure

Diavik cites its engagement with Indigenous Parties under the heading *EMAB has not meaningfully demonstrated what role they will play during closure*, and describes the engagement in Attachment D of its rationale. This engagement, and Diavik's reporting, are flawed and do not speak to the Indigenous Parties views on this topic.

While we commend Diavik for undertaking this engagement, Diavik's reporting is inadequate and the Parties' views it reports do not appear to support its request for EMAB to be shut down.

Diavik's reporting on the engagement leaves out many important details:

- Which Diavik staff were involved, who did they engage with and how many people participated
  - In all cases Diavik says it met with staff members. Did the staff members indicate they represent the views of the Party?
- Were the engagements in the community or virtual?
- What was the agenda and what were the topics discussed?
  - What was said by participants at each Party meeting, about the agenda topics, and the summarized statement of initial feedback?
- What were the outcomes? Did the participants agree that the outcomes Diavik presented reflected the discussions?
- Which Parties expressed each of the various views Diavik has presented (statements such as "General sentiment that.." or "Some Parties expressed.." or "Other Parties acknowledged.." don't provide enough detail to understand the results of the engagement)?

As a result of Diavik's reporting on its engagement, it is difficult to understand what to make of the results with respect to the future role of EMAB.

EMAB finds that the engagement Diavik has reported does not provide enough information to support their rationale to shut EMAB down.

### 5.3.3 EMAB's role in TK monitoring and TK Monitoring Plan implementation

On page 5 of its rationale and in Attachment A, Part 1, pages 12 &13, and Attachment D on page 25 of its rationale Diavik describes EMAB's role in TK Monitoring, and Diavik's decision to take over development of the TK Monitoring Plan for closure.

## EMAB role in TK Monitoring

Diavik makes a number of statements about EMAB's role in TK Monitoring that should not go unchallenged. Since our formation, EMAB has been a strong advocate for the use of Traditional Knowledge in Diavik's monitoring programs and in its management plans, especially Diavik's Final Closure Plan. In its comments about EMAB's carrying out our mandate in its Attachment A Part 1, under 4.2(h) Diavik says "While EMAB consistently makes recommendations regarding TK Monitoring, it has had very limited success in facilitating, managing, or implementing TK studies or monitoring work throughout DDMI's lifespan." Further in that section Diavik says "EMAB's lack of success in implementing these programs", referring to the TK Panel and TK Camps. These statements are untrue and unjustifiable and Diavik provides no basis or evidence to support them.

EMAB's numerous TK monitoring activities since inception include:

- EMAB Workshop on involving Indigenous people and TK in monitoring caribou and wildlife in 2001.
- Assistance and participation in the first fish palatability study in 2002 that led to a recommendation to establish a permanent fish palatability camp that could be used for community-based monitoring.
- EMAB Traditional Knowledge workshop in cooperation with IEMA in 2003 regarding formation of a TK Panel coordination of TK and scientific monitoring.
- EMAB TK Panel on No Net Loss at Diavik in January 2004.
- TK Panel on Fencing and protection of caribou at Diavik in March 2004.
- Community-based monitoring of water quality camp in 2004, 2005, 2006 & 2007. Diavik took over managing the camp in 2008.
- EMAB Workshop on community-based monitoring knowledge regarding effects of dust on vegetation and effects on wildlife especially caribou.
- EMAB Workshop in 2007 on Indigenous Involvement in Monitoring.
- EMAB Workshop on community participation in Adaptive Management for community representatives.
- EMAB Follow up workshop on Traditional Knowledge in Monitoring in 2009.
- EMAB community Workshop on closure at Diavik in 2009.
- EMAB Traditional Knowledge Monitoring workshop in 2011 which led to the formation of the TK Panel.
- Organized and managed five TK Panel meeting between March 2012 and February 2013. Diavik took over organization of TK Panels in October 2013 and requested to cut EMAB's TK Panel funding for the 2015-17 budget period, which the Minister agreed to.
- EMAB observed TK Panel meetings organized by Diavik.
- EMAB organized a community-based workshop on closure planning in 2017 providing many TK-based recommendations.
- EMAB provided Capacity funding for Indigenous Parties from 2001 to 2011 help fulfill EA purposes 1.1 (e) & (h), 1.2(e), and mandate item 4.2(a), (g), (h) and (m). This part of EMAB's funds were cut in 2011 following a request by Diavik and decision by the Minister.
- EMAB managed the fish palatability studies under DFO's Fisheries Authorization from 2003 to 2008. Diavik took over the management of the camp in 2008. It eventually became part of Diavik's AEMP.

## Development of TKMP

On page 4 of its rationale Diavik states: **"In January 2024, the TKWG [TK Working Group comprised of members appointed by the Parties] recommended that EMAB be approached to lead development of the TK Monitoring Program, given its governance structure and mandate under the EA.** EMAB submitted an initial proposal to DDMI in August 2024, followed by a revised Terms of Reference (ToR) in

January 2025. Despite multiple rounds of revisions and lengthy discussions at the Board level over the outstanding issues of ratios, budget, and timeframe, the ToR submitted by EMAB did not include a budget estimate or cost management plan, and did not fundamentally resolve the ratio dispute between the Indigenous Parties.”

Diavik makes various other statements about development of the TKMP: On p. 5 of its rationale Diavik says “..DDMI and EMAB were not able to come to an agreement on a Terms of Reference for this work as EMAB would not accept the budget or scope constraints from DDMI.” Then on p. 6 it says “..nor was it [EMAB] successful in taking over the development of the TK Monitoring Program.” On p. 13 it says “EMAB and DDMI were unable to come to an agreement on a Terms of Reference for this work ultimately because EMAB would not accept any limits on budget or scope as part of the development process.”; on p. 25 Diavik states “After multiple rounds of revisions between DDMI and EMAB, and discussions at the Board level, EMAB submitted a Terms of Reference that DDMI was unable to accept due to lack of constraints around scope and budget.”

These various statements do not present a consistent description of Diavik’s views on the outcome of the ToR discussions. In addition, Diavik has left out a few important considerations:

- Diavik was unable to reach agreement with the TK Working Group on the budget or duration of the TKMP. Diavik proposed a total budget for TK monitoring of \$2-\$3 million over 10 years; the TKWG said \$5million over 10 years would be more reasonable. The TKWG also wanted the program to continue for 25 years; by EMAB’s calculations this would have resulted in a 25 year budget of about \$12.5 million.
- EMAB’s initial proposal in August 2024 included a draft workplan and budget for developing a TK Monitoring Plan (TKMP).
- Diavik provided a draft ToR for the development of the TKMP to EMAB at our October 2024 meeting. They stated it was based on EMAB’s August 2024 letter. The Board wanted communities to provide input. The Board stated that EMAB’s proposed budget from August could be revised based on discussions with Parties, and the finalized version of the Terms of Reference (ToR).
- EMAB discussed the ToR at its December 2024 meeting and had four conference calls in January 2025 to develop a response to Diavik’s draft ToR. EMAB did not want to set a budget for TK Monitoring until the TK Monitoring Plan had been developed and costs could be attached to the monitoring activities. We noted the very large difference between the TKWG estimate and Diavik’s.

EMAB had hoped that Diavik would discuss its concerns and attempt to reach an agreement on the ToR, and that Diavik decided instead that it would “not be furthering the discussions for the development of the TKMP under EMAB...” (Diavik letter of January 23’25). We believe this was a missed opportunity and would like to say how unfortunate it was that Diavik chose not to respond to our draft ToR or try to reach a compromise. Ultimately the version of the TK Monitoring Framework (TKMF) that Diavik submitted to the WLWB was unsuccessful. The WLWB noted that Diavik’s Framework lacked sufficient detail to allow an estimate of the required budget and did not approve the TKMF.

#### 5.3.4 EMAB’s report on the Future Role of EMAB

On page 2 of its covering letter Diavik states that “In 2023, DDMI funded EMAB to complete a *Future Role of EMAB workshop* to further define this. DDMI has not seen any evidence of EMAB making meaningful progress on the recommendations from this report.” On page 6 of the rationale it adds “In DDMI’s view, EMAB has not made meaningful progress on the recommendations from this report. Specifically, EMAB has not demonstrated improving two-way communication with communities or

fostering cooperative approaches among the Parties, nor was it successful in taking over the development of the TK Monitoring Program.”

As noted under section 2.4 above, the Environmental Agreement Working Group (EAWG) made up of members appointed by the Parties, met on January 20, 2023 to discuss TK Monitoring and the Future of the Environmental Agreement. The minutes included a statement that “..**the first step in considering the future role of EMAB would be for EMAB to hold its own one-day session to review its current role and recommend any change to role going forward.**” EMAB accepted this direction and contracted a facilitator to organize this workshop for the Board. We used our existing planning budget to pay for the workshop and submitted the report to the EAWG on March 5, 2024. We have not received any feedback from Diavik or any other members of the EAWG.

In summary, the four main recommendations in the report are:

- 1) EMAB should continue on a mutually-agreed schedule (as decided by the Parties to the EA)
  - This recommendation is the subject of Diavik’s request to shut down EMAB, and is ongoing.
- 2) EMAB should focus on improving engagement and two-way communication with Affected Communities
  - EMAB’s intention is to undertake more community updates and other forms of two-way communication, and for our Indigenous Board members to continue to interact with community members.
- 3) EMAB should seek out more opportunities to be proactive in convening or assisting the Parties to find cooperative approaches
  - EMAB will continue to seek out opportunities described in the recommendation.
- 4) EMAB should support work by the Parties to jointly establish a TK Monitoring Plan for closure, and if this process does not produce a viable Plan, consider re-establishing its own TK/IQ Panel
  - We have addressed our actions to support the Parties to jointly establish a TKMP (see section 5.3.3 above) and will continue to do our best to support development of a Plan that all Indigenous Parties support.

In our view there is evidence of EMAB working toward implementing the recommendations of the report, even in the absence of feedback from Diavik and the rest of the EAWG.

### 5.3.5 EMAB’s 2025-27 Budget and Workplan and Strategic Planning beyond 2019-24

On page 6 of its rationale, Diavik states “Further, EMAB’s 2025-2027 budget and workplans have not evolved to consider closure and that the Strategic Plan expired in 2024 without replacement. These omissions confirm that EMAB has not considered or adjusted its approach going into closure. From DDMI’s perspective, EMAB has not taken the necessary steps to adapt its mandate, priorities, or activities to reflect the closure of Diavik.”

EMAB explained to Diavik how the 2025-27 budget addressed its questions about the transition to closure and has offered a number of opportunities for Diavik to meet with EMAB and discuss our points of view (see section 2.7 above and Attachment 3). As noted in our response, we engaged with Diavik on their anticipated level of activity during the 2025-27 period multiple times prior to preparing the recommended budget.

Diavik’s comment on EMAB’s Strategic Plan expiring is disingenuous. The EMAB Board has been engaged in discussions with Diavik and the other Parties about the future role of EMAB, the transition to closure and how these changes can be addressed. As noted above, the Parties requested that EMAB provide

them with our views on EMAB's future role. EMAB held a workshop on the *Future Role of EMAB* in 2023, and provided a report to the Parties that included four main recommendations. We have not received any feedback from Diavik.

In the meantime EMAB has continued to implement our 2019-24 Action Plan.

Conversely, as discussed under section 2.7, Diavik has never meaningfully engaged with EMAB on the transition to closure in spite of multiple requests from EMAB to include company input on the topic. In December 2025 Diavik informed EMAB that it planned to request that the Minister wind down EMAB as soon as possible. In this environment EMAB's view is that it is unreasonable for Diavik to criticize EMAB's difficulty in engaging in strategic planning while not providing any input.

EMAB discussed addressing strategic planning going forward during its February 2026 meeting and has let a contract for a strategic planning workshop to take place in April 2026. We hope Diavik will provide input to this workshop.

## 6. Conclusion

The legally-binding Environmental Agreement was a commitment by Diavik to the Indigenous and other Parties to provide for independent monitoring and oversight of the mine and the regulators, and included the establishment of EMAB as an independent oversight body to ensure all commitments were kept. The EA was a requirement of the Environmental Assessment to allow the project to proceed, and continues until full and final reclamation and abandonment of the Diavik mine, and EMAB is also intended to continue for the full term of the EA.

Diavik's request to shut down EMAB by March 2027 is based on a faulty understanding of the EA, particularly sections 13, 17 and 18. Accepting Diavik's request would effectively amend the EA without the approval of all the Parties. Instead, Diavik should meet with EMAB and have a fulsome discussion of the transition to closure and the role of the EA, and EMAB, in that transition.

EMAB proposes that any wind-down should be done gradually over the period until full and final reclamation and abandonment, with periodic reviews of the wind-down schedule as more data is collected and analyzed.

Diavik makes many statements as a rationale for its request to shut EMAB down, but provides little evidence to support them, and in some cases has misunderstood or misrepresented the real situation.

In summary, there are compelling reasons for EMAB to continue through to full and final reclamation and abandonment of the mine, and these are supported by the wording and intent of the EA.