

WORKING WITH THE PEOPLE FOR THE ENVIRONMENT



DRAFT Minutes – August 23-24, 2022
Yellowknife Boardroom and by teleconference / Zoom

Present:

Charlie Catholique, <i>Chair</i>	Lutselk'e Dene First Nation
Jack Kaniak, <i>Vice-Chair</i>	Kitikmeot Inuit Association
Marc Whitford, <i>Director</i>	North Slave Metis Alliance
Ngeta Kabiri, <i>Director</i> (by phone)	GNWT
Gord Macdonald, <i>Director</i> (by phone)	Diavik Diamond Mines
Ryan Miller, <i>Director</i>	Yellowknives Dene First Nation

Absent:

Violet Camsell-Blondin, <i>Secretary-Treasurer</i>	Tlicho Government
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Staff:

John McCullum, <i>Executive Director</i> (minutes)	Environmental Monitoring Advisory Board
Mohannad Elsalhy, <i>Environmental Specialist</i> (minutes)	Environmental Monitoring Advisory Board

Guests:

Kathy Unger, *ENR Wildlife* (Day 1)
Lara Mountain, *ENR Wildlife* (Day 1)
Brian Kopach, *MSES* (Day 1 – by phone)
Ed Gullberg, *McLennan Ross* (Day 1)
Ryan Fequet, *WLWB* (Day 2 – by phone)
Imran Maqsood, *ENR Air Quality* (Day 2 – by phone)

Tuesday August 23, 2022	
Meeting started at 9:10 am at EMAB Boardroom and by teleconference	
Item 1: Call to Order	
Chair begins meeting with moment of silence	
Mohannad Elsalhy, the new Environmental Specialist, introduces himself: where he's from, education and work experience.	
Item 2: Approval of Agenda	
Chair reviews agenda	
Motion: <i>to approve agenda for Aug 23-24, 2022 meeting</i>	

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Moved: Ryan Miller
Seconded: Marc Whitford
Motion carried

Item 3: Conflict of Interest

No conflicts declared.

Item 4: Minutes of Previous Meeting

Board reviewed minutes of previous meeting.

Motion: to approve June 14-16, 2022 meeting minutes as presented:

Moved: Marc Whitford
Seconded: Ryan Miller
Motion carried.

Ryan introduces himself: where he's from, education, working with YKDFN since 2020.

ED reviews action items.

Q: did Diavik receive a letter requesting support for EMAB staying open after mine operations end?
ED to check on this.

Action Item: ED to check on whether letter requesting support for EMAB staying open after mine operation end was sent to Diavik?

Discussion on Diavik Frame Lake Aeration Project

Q: Status of consultation with communities?

A: Diavik rep doesn't have consultation record, but can send it. Best to request a presentation from Sean Sinclair, along with DFO, to get up to speed on current status

- Diavik plans to install an aerator in Frame Lake in Yellowknife this fall and monitor effect on oxygen levels. If oxygen levels are adequate, Diavik will introduce fish into Frame Lake and monitor survival. Note Sean won't be available for September meeting dates.
- EMAB letter of support was approved but has not been signed by the Chair.
- LKDFN leadership didn't support the project; they don't understand it and feel it's outside their jurisdiction

Q: Can Participation Agreement partners apply to Diavik for funds to do similar projects?

A: Diavik has already done projects with KIA and LKDFN. This is the last one. Work with KIA was a study on Arctic Char. Heidi Swanson was the researcher.

Q: what is lifespan of aerator? Who owns and operates it over the long term?

A: low maintenance, just requires power. Diavik is hoping to transfer the aerator to the city or an Indigenous group in the long-term, supported by Diavik funds.

Q: is this for offsetting loss of fish habitat at Lac de Gras?

A: Partly. There are many offsetting projects including work on East Island and LdG mainland

Action Item: Diavik rep to send consultation record for Frame Lake Aerator Project.



Action Item: Invite Sean Sinclair to update Board on Frame Lake Aerator project and status of consultations and responses.

ED reviews outstanding recommendations; none outstanding; expecting responses on 2021 WMMP recommendations to Diavik and on Yellow Haze recommendations to Diavik in the next week or so.

- Noted that the FCRP will include wildlife monitoring, addressing GNWT direction.

Q: there was an email about considering changing EMAB direction to focus more on TK. What is the status?

A: ED notes that the Strategic Plan was reviewed at the June meeting and decision was to continue with existing approach, balancing technical review and TK.

Item 5: Finance

ED reviews variance report to Aug'22.

- Noted that EMAB needs to arrange community updates.

ED provides summary of audit

Q: If Diavik provides documentation of the deduction from the 2022-23 payment now, can the audit be revised to address that?

A: ED will check with auditor.

Action Item: ED to check with auditor on whether audit can be revised if Diavik provides documentation of deduction from 2022-23 payment.

Contribution Repayable – analysis by Ngeta Kabiri

NK presents his analysis of whether EMAB request to roll over some funds from 2020-21 to 2021-22 was legitimate under EMAB's Business Rules.

Conclusion is that request was legitimate unless Diavik can demonstrate that EMAB had budgeted for the specific reviews named in the request in the following year. If Diavik can't do that, the funds should have just rolled over.

NK also concluded that the Business Rules cover these situations and there is no need for changes.

BREAK

Item 5: Finance (cont.)

EMAB should send a letter to Diavik requesting specific reasons why funds EMAB requested be rolled over were not eligible.

Action Item: send letter to Diavik requesting justification for denial of EMAB roll-over request.

Note: Diavik rep sent email saying he will remove himself from the discussion on the contribution repayable.

ED presents options for responding to Diavik deduction of contribution repayable from 2022-23 payment.

- Noted that EA states that full amount of funding should be paid. Send a letter to Diavik President and copy Diavik representative stating that Diavik is out of compliance with the EA.
- Better to meet with Diavik President instead of sending a letter.

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- What is Diavik's response to analysis of Business Rules? EMAB should try to work this out with the Diavik representative.

- Also need to decide if it's OK for Diavik to deduct contribution repayable from payment.

Q: If Diavik can't deduct contribution repayable from payment, how do they get the funds back?

A: In the past EMAB has written a cheque to Diavik.

- Suggest including rollover amount as a separate account that can be tracked for possible repayment as appropriate.
- Diavik should not be acting unilaterally

Note: Diavik rep rejoins by telephone

- It would be good to meet with the Diavik President on this, but wait until we've had a response from Diavik with reasons
- Invite President to AGM
- Diavik rep will check on her availability at time of AGM

Action Item: send letter inviting Diavik President to AGM

Q: is there a time limit on when the rolled-over funds must be spent by?

A: Business Rules say when the program is completed, so deadline is general.

Agreed to table Personnel Committee item until all members can meet.

- Noted that it's important that EMAB can hire and retain staff. We are losing institutional memory.

Item 6: Draft Two-year Budget

Diavik rep asks if he should remove himself from the discussion due to potential conflict of interest.

- Diavik viewpoint is useful
- Diavik rep should remove himself
- Noted that COI policy is not in place yet
- Diavik rep notes he is trying to respect Board concerns
- Diavik rep should stay but just answer questions
- Agreed that it would be good if Diavik can provide information

ED presents draft two-year budget for 2023-25.

Q: Does budget for involving and supporting communities include logistics such as hall rental?

A: Yes – also translation, catering etc.

Q: what about honoraria for participants?

A: No

- Noted that it's difficult to budget when decisions outside EMAB's control affect the timing of review of reports. Suggest treating Oversight and Monitoring fund as a single amount. Any funds not spent would be returned and roll-overs would be discontinued. If funds are insufficient, use EA 4.8(f) to request additional funds from Diavik.

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- Disagree – that doesn't comply with EA. If there is a general amount it is hard to argue for a roll-over of funds. Not comfortable with suggested approach.
- Professional development line has no funds?
- Noted that there are funds for staff professional development

Q: how flexible is Diavik to increase budget

A: fairly easy to approve within guidelines ie. increase should not be greater than rate of inflation. Beyond that will be challenging. Better to request additional funds through EA 4.8(f)

Q: what needs to be done to make the budget ready to submit to Diavik?

A: it could go as is, but would be good for Board to review and provide additional input, if any.

Action Item: Board members to provide comments on draft recommended two-year budget by mid-September.

LUNCH 12:20-13:30

Item 7: Discussion on Governance of TK Panel

ED presents item

TK Fish Camp Video

- Consultants offered to drop off raw footage to YKDFN; not sure if this happened
- YKDFN elders wanted to have some negative comments they made at the camp added back in to the video.
- TK Panel members want to see the full footage of the video
- Jack (who attended the camp) hasn't heard anything from Diavik about editing the video
- TK Panel members shouldn't be approached directly without a staff person present
- Cherish Winsor from Diavik committed to add some footage back into the video but this hasn't happened yet. Diavik has worked out a contract with Artless Collective to do the work.
 - Diavik has not received any requests for the raw footage.
 - TK Panel participants at the June'22 meeting all told Diavik what they wanted back in the video.
 - TG had some concerns, but best to wait for TG Rep to explain them.

Q: why is this taking so long

A: Commitment was made in June; not that long.

Q: why was film edited like that?

A: many hours of footage; need to edit it to a reasonable length. Panel didn't feel first edit was accurate. They didn't feel the concerns and negative sentiment were shown.

Q: have elders seen the whole raw footage?

A: they have each told Diavik the sections of the footage they were in that they want added back in to the edited video.

- Noted that TG made some comments about the video that might pause this action.

Item tabled to Wednesday, when TG rep will be present.

Jack noted for the record that Diavik's comment on the 2021 AEMP report said some people tasted the water at the TK Fish Camp. He was at the camp ~~and no one~~ and was not aware of anyone tasting the water.



Item 8: WMMP Approval

Kathy Unger and Lara Mountain from ENR-Wildlife joined the meeting.

ED introduced item

Kathy made a short presentation on the WMMP approval.

- Noted that approval was conditional. Diavik needs to incorporate conditions 2 & 5.
- ENR will meet with Diavik to review their proposed approaches to the conditions
- Diavik has also submitted an addendum to the 2021 WMMP report; also reviewing that.

Discussion:

Q: how detailed will description of ZOI analysis be eg. will they have to identify sample size?

A: ENR has asked for the analysis methods so would need to address sample size

- There is not a lot of literature on this. Boulanger has suggested an approach, but ENR is not requiring his method be followed.
- Would be good to require Boulanger method unless justification can be provided not to. Better if everyone follows the same method rather than re-invent the wheel. The more direction from ENR the better.

Q: ENR had said it was doing Resource Selection Function (RSF) work for caribou habitat. What is the status?

A: Done for boreal caribou; not for barren-ground.

Q; how did Diavik develop the methodology?

A: there are many different approaches to defining what a ZOI is, as well as how to measure it. Need to clearly define the types of disturbance that lead to ZOI eg pits vs. roads. Need more detail on approach to analysis.

Q: how can you relate caribou behaviour to ZOI?

A: This is hard because there are different scales of data. Could combine Ekati and Diavik data to increase sample size. Possibly focus data collection on a few times with intense collection.

- If Boulanger has a method, it would be good to build off it.

Q: How does the monitoring data inform mitigation, adaptive management. Methods should link to management.

A: no right or wrong way. Need to know if/how the mine is affecting wildlife behaviour. Noted that development of a database also helps with adaptive management of future developments.

- Diavik has noted behaviour data is collected at a different scale than ZOI/collar data
- Noted 90 day deadline for Diavik to incorporate GNWT conditions in WMMP.
- Wildlife is hard to deal with. Caribou come around mines at different times. Elders have said there should be a fence around the mines.
 - ENR staff should do patrols at mines – they are the experts.
 - EMAB should continue after mine closes, to monitor
 - Employees don't report wildlife encounters; concern for losing job
- Want WMMP's to have clear, specific actions. Annual monitoring reports will show if mitigation is working. Community input is important

Q: how will monitoring have to change once the mine closes?

A: it would be good to have that discussion

- Good to discuss wildlife monitoring with TK Panel as well.



Item 9: Conflict of Interest

Ed Gullberg joins meeting.

ED introduces item.

Ed provides background and overview of discussion to date:

- EA states no conflict for representing general interest of a Party
- Discussion has largely been about Diavik and what discussions the Board member should not participate in
- Diavik can participate in discussions on general issues that might have a financial impact

Discussion:

- Example – Diavik could participate in a budget planning meeting but not when actual numbers are discussed?
- Note that the policy allows the Board to decide that someone in conflict can participate.

Q: Who decides there is a conflict

A: this is always an issue with COI, especially since decisions need to be made quickly. Note that this policy covers all Board members but mostly relates to Diavik

Q: do we need a motion to allow Diavik participation in an issue? How does the Board consent?

A: you can note in minutes that Board agreed. Any departure from policy should be noted.

Q: is the onus on Diavik to identify a conflict?

A: it's up to all members. Any member who identifies a perception of COI should state that – see Section 3 and 6

- Section a) and c) are effectively the same
- Similar but not the same. Noted that the budget is a policy document, not just a spreadsheet. Diavik rep should be allowed to participate in such a discussion. Suggests a) and c) not be combined as a) is more general.
- Add “regulatory proceeding” to C(e); may not be needed but add in if it clarifies.

Motion: to approve the Conflict of Interest policy with amendment to add “regulatory proceeding” to C(e).

Moved: Ryan Miller

Seconded: Jack Kaniak

Against: Gord

Abstention: Kabiri

Carried

Discussion on agenda for August 24

Q: Why is GNWT crossed out as a presenter on the Progressive Reclamation amendment?

A: GNWT declined invitation

Note that TK Governance is tabled to 1 pm tomorrow; also Fish Camp video. Also, Personnel Committee, to ensure TG rep can participate.



Wednesday August 24, 2022

Chair opens meeting at 9:05 am (EMAB Boardroom and by teleconference)

Chair reviews the agenda.

Item 11: Status of Diavik Progressive Reclamation Water Licence Amendment

Ryan Fequet joins the meeting by phone.

ED introduces item

Ryan presents verbal update:

- WLWB recommended amended water license but the Minister rejected it.
- Minister has rejected the amended water licence due to three reasons: missing information required by the *Waters Act* requirements, water quality conditions should be in the body of the licence where they can't be changed without an amendment, and there are no EQC's for discharges from collection ponds.
- TG sent letter saying Minister is not allowed to interpret the law; that is up to the courts.
- WLWB disagreed with the reasons and recommended developing an agreement on interpretation of *Waters Act*
- GNWT has requested a ruling on re-opening the proceeding to allow evidence to be submitted on water quality of discharge.
- WLWB has circulated the Request for Ruling for comment by September 19th 2022.
- WLWB will decide by end of October: accept or reject request to re-open proceeding
 - Not clear what will happen if WLWB rejects the request.
 - There was a similar situation with MVLWB and Nighthawk Gold; in that case the record was re-opened.
 - If the record is re-opened it will take quite a while to finalize the process and recommend an amendment to the licence to the Minister
- Diavik intends to submit the Final Closure Reclamation Plan by the end of October. It will include much of the information the GNWT said was missing from the amendment application.

Discussion:

Q: what was the situation with Nighthawk?

A: new evidence about security adjustments was submitted by Nighthawk and GNWT during closing arguments and both requested the record be re-opened.

Q: how long will it take if record is re-opened?

A: probably take 9 to 12 months to issue a new license.

Q: how is the information Diavik will submit in the FCRP related to the information the Minister said was missing when he rejected the licence?

A: Diavik isn't planning to propose EQC in the FCRP, so no real linkage. WLWB doesn't feel EQC are needed in the licence. GNWT seems to agree that the WLWB has the discretion to decide if EQC's are needed in the licence, although they didn't in the letter where they rejected the licence.

- WLWB will host a workshop in March to discuss Diavik and Ekati's closure plans.

Q: how is the governance set up to deal with disputes?

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A: WLWB gets authority from legislation, and land claims agreement, which is protected by the Constitution. The letter from TG provides views on the role of the Minister from their perspective.

- TG seems to feel Minister doesn't have authority to reject the licence, but Minister clearly has that power. Either WLWB disagrees, or they make the change to the licence. No need for Request for Ruling
- Clarification: TG believes Minister doesn't have authority to direct the Board. WLWB disagrees with the Reasons the Minister gave for rejection. Minister doesn't have authority to reject on the basis of a different interpretation of legislation.

Q: what Reasons can Minister give to reject recommended licence?

A: Usually Issues of Procedural Fairness or Error of Law. WLWB disagrees with the Reasons the Minister gave for rejection.

Q: who can trigger a judicial review?

A: any Party could ask the Court to interpret the legislation. That would pause the amendment process. This could be done by judicial review or by an Originating Notice, which requests an interpretation of the law from the Court.

Ryan leaves the call

ED reviews the process for review of the GNWT Request for Ruling. Comments due by Sept 19.

- Minister says not enough information supplied at proceeding
- Diavik legal believes the Minister has changed his position from the letter rejecting the licence to the letter requesting the ruling. They think the WLWB has the authority to decide if EQC are required. Diavik provided water quality evidence in section 12 of the application.
- EMAB has not been in the position of having to comment on a legal matter before. This is an important legal matter regarding regulation of Diavik
- Board represents communities. EMAB is a watchdog to make sure things are done right. Some parts of the original application were not addressed adequately.
- EMAB should weigh in but would need legal expertise; a lawyer or regulatory specialist.
- Could COI lawyer do this?
- ED will try to find a lawyer or regulatory specialist with the required expertise and try to cost out a response. Can also check with EMAB consultants, they may have suggestions. Concern about effect on budget.
- EMAB could apply for funds from Diavik under 4.8(f). Diavik rep notes there is no guarantee a request would be approved: identify work and cost and check whether current budget can cover cost, then apply to Diavik.
- The last letter from the GNWT is closer to the WLWB position. Will provide comments by tomorrow on Diavik's position.
- If EMAB has to reallocate funds would Diavik be in a conflict so not be able to participate?
- Board could always agree to allow Diavik to participate.

Action Item: ED to identify expertise and cost out development of comments on GNWT request for ruling.

Action Item: Diavik to provide comments on Diavik's position on the GNWT request for ruling by Aug 25.

BREAK



Item 12: TK Monitoring for Closure

ED introduces item – update Board on TK Monitoring

- Diavik submitted an Annual Closure Plan Progress Report in July.
- It included Appendix 1 with an engagement record from June 2021 to December 2021.
 - Appendix includes paper dated April 6, 2022: Diavik Closure Traditional Knowledge Monitoring Approach.
 - Diavik intends to submit a TK Monitoring Program as part of the FCRP
 - They provided a list of closure objectives, including those which could include a TK Monitoring component
 - They also included a table of proposed Cultural Water Use Criteria.
 - It will take a long time to develop the program in terms of the details and logistics.
 - Diavik said it planned to do a trial of cultural water monitoring with TG in summer 2022.

Discussion:

- Diavik trial run is delayed to 2023.

Q: what consultation has happened since December 2021?

A: Diavik sent out a request for Expression of Interest last week to 8 communities to design and implement a post-closure TK Watching Program. Includes some Parties outside EA, from PKMW proceeding. Diavik will follow-up with a Request for Proposal depending on the response.

- Expression of Interest is to determine level of interest and if they have the capacity in both developing and implementing the program.
- Expression of Interest closes by end of December.
- Diavik would be the funding agency; communities would develop and implement the program.

Q: Why is Diavik making such a big change in approach.

A: Feedback from Parties was that Diavik is not the appropriate Party to develop the TK Monitoring Program.

Q: how will this fit into the Final Closure Plan?

A: FCRP will state that Diavik is going through this process.

Q: How will this involve Elders?

A: It will be up to communities to propose what they want to do and how they plan to do it.

- Diavik hopes EMAB supports this approach. If not, please let Diavik know.
- NSMA President and LKDFN acting chief request copies of letters be sent to them directly.

Q: what is the status of the TK Panel, and how does it fit into this?

A: TK Panel will go on a pause. Communities would have to propose a Panel as part of their Expression of Interest for it to start up again.

- It would be good to hear from TG rep on this. Not comfortable moving forward without reps from all Aboriginal Parties
- Noted that Diavik has provided all the TK Panel reports to the communities as part of the Expression of Interest.
- New Diavik approach may be OK; communities can request consultation

Q: what is Diavik's expected outcome? Could be 8 separate proposals from each community to do TK Monitoring

A: Diavik will ask WLWB to approve the TK Monitoring component of the FCRP at a later date. Ideally there will be one proposal involving all 8 communities, but don't know what's coming.



Further discussion required when all Aboriginal Party representatives are present.

BREAK

Item 13: Air Quality Guidelines and Yellow Haze Monitoring

Imran Maqsood joins the meeting by phone.

ED introduces item.

Imran Maqsood from GNWT provided an update on the status of the GNWT Air Quality Guideline and the "What we Heard" document.

- Delay due to consultation with senior management about the Guideline
- The "What we Heard" document will be finalized by the end of October 2022.
- Air Quality Guideline will be ready by end of November 2022.
- The GNWT will issue Review Notice for Diavik's Air Quality Monitoring program in December 2022.
- The review will take place in January 2023.
- Diavik will have 60 days to respond.

Q: will the Guideline just be for diamond mines, or broader?

A: right now it will just be for diamond mines with an Environmental Agreement. Later it will broaden to cover all developments.

Imran will send an email with timelines.

Q: When will the "What we Heard" document be ready?

A: October 2022

Discussion on Agenda

- Personnel Committee item deferred until all members are present

Item 15: Annual Report Update

ED presented item

- about 85% drafted.
- two-week review period for Board members to comment on the draft annual report once ready.
- Staff will revise the report based on comments and send out a final draft for approval by email motion
- In order to print the annual report, EMAB needs the final design complete and the annual audit approved and signed.

Tentative Schedule:

- Mid-September – first draft of annual report text to Board for review
- September 28 – comments and revisions received from Board
- October 7 – revised text of annual report to Board, with email motion
- October 14 – annual report text approved by Board and sent to designer

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- November 4 – initial design complete
- November 18 – final design complete and approved. Authorize printing of annual report

Item 16: Board Member Update and Community Concerns (Roundtable)

Ryan Miller

Q: What is the tracking method followed by Diavik regarding the TK Panel recommendations? How does Diavik show how the recommendations have been implemented, such as part of a specific plan, or section of water licence.

A: There is a tracking table since the beginning and it includes all the recommendations and whether Diavik accepted each. Table doesn't go to level of specific plan. Diavik will include this information in the FCRP; they are working on it now - ready by the end of September.

- Likes WLWB review table format: topic, comment, recommendation, response
- Helpful to see how each TK Recommendation was used operationally.
 - Diavik's TK Panel document doesn't show this
 - EMAB could recommend that this information be included in tracking

Q: WLWB proceedings can impact rights of YKDFN or other Indigenous governments. What aspect of duty to consult is delegated to Diavik by WLWB

A: duty to consult is on Crown. If Crown fails, impact is on Diavik. So Diavik tries to include this in their consultations.

Q: how could EMAB help in making sure this consultation takes place?

A: more a question for WLWB.

Jack Kaniak

- KIA ED has left; hoping to talk to KIA about EMAB activities

Marc Whitford

- NSMA is very busy; Diavik is just one aspect.
- Their focus is on Diavik closure.

Ngeta Kabiri

- Nothing to update

Gord Macdonald

- Notes that Snap Lake is in closure right now. Demolition is being done by a joint venture including KIA and NSMA. It would be good to hear from representatives from those organizations on how that's going.
 - EMAB could consider doing a tour of Snap Lake to see what closure activities look like.
 - Marc notes that 2M or Nuna would be best to prepare a presentation.
 - Include pictures and information on activities, and any issues.
 - Marc requests Gord provide a brief information request to him
 - Jack was not aware KIA was involved; will check
 - Charlie noted Nuna Logistics has the contract. He noted a lot of jobs are supposed to be available which can be very helpful to the Aboriginal Communities.

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Action Item: Gord to provide a brief list of information on closure to Marc to make a request for a presentation on closure at Snap Lake.

Action Item: ED to look into arranging an update on Snap Lake closure from contractor.[not sure if this should stay in given action item between Gord and Marc.]

Charlie Catholique

- New SAO in Lutselk'e
- Charlie is Acting Chief – election September 29
- Attended Dene National Assembly.
- Akaitcho meeting
- Council of Leaders Meeting will be conducted from 27 to 29 September.

Next meeting proposed for Sept 26-28

- Diavik Closure Information session on 26 September.
- Noted Council of Leaders meets on Sept 27-28. Some Board members must attend
- Proposed to move AGM/Board meeting to October 5 & 6. Agreed.

Next meeting, including AGM – October 5-6, 2022

Motion: to adjourn

Moved: Marc Whitford

carried

Meeting Adjourned at 12:15 pm