

# Meeting Notes

## Indigenous Nations Virtual Information Session Assessment for the Deltaport Expansion - Berth Four Project

March 15, 2023

### Information Session Description:

The Impact Assessment Agency of Canada (IAAC) and the British Columbia Environmental Assessment Office (EAO) held a virtual information session on the assessment for the Deltaport Expansion – Berth Four project (DP4) proposed by Global Container Terminals, specifically for Indigenous nations on **Wednesday March 15, 2023: 10:30 AM – 12PM PST.**

The information session focused on two draft documents currently open for public comment:

1. the [Draft Review Panel Terms of Reference](#) and
2. the [Draft Canada-British Columbia Cooperation Agreement](#).

### Presenters:

Impact Assessment Agency of Canada (IAAC)	Stacy Muise (facilitator), Samantha Sabo, Kate Witherly, Kimberley-Anne (Kim) Noble
British Columbia Environmental Assessment Office (EAO)	Jessie Hannigan

## Indigenous Participants:

Representation present from:	<ul style="list-style-type: none"><li>• Esquimalt Nation</li><li>• Leq'á:mel First Nation</li><li>• Lyackson First Nation</li><li>• Maa-nulth First Nations</li><li>• Malahat Nation</li><li>• Métis Nation British Columbia</li><li>• Musqueam Indian Band</li><li>• Pauquachin First Nation</li><li>• Popkum First Nation</li><li>• Sc'ianew First Nation</li><li>• S'ólh Téméxw Stewardship Alliance</li><li>• Seabird Island First Nation</li><li>• Snuneymuxw First Nation</li><li>• Tsawwassen First Nation</li><li>• Tseil-Waututh Nation</li><li>• T'sou-ke Nation</li><li>• Ts'uubaa-asatx Nation</li></ul>
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The Information session began with an opening prayer from Tsawwassen First Nation

## Information sessions Q&As

### 1. Are there any notable procedural differences for the DP4 Review Panel terms of reference compared to the process taken, under previous legislation, for other proposed projects in the Roberts Bank?

- Under the DP4 *Impact Assessment Act* (2019) process the Review Panel is mandated to assess impacts on Indigenous rights where it didn't need to explicitly do that under the previous legislation. IAAC and EAO have included language in the Review Panel terms of reference to reflect this new requirement of the legislation.
- Language has also been added to reflect the spirit of the United Nations Declaration on the Rights of Indigenous Peoples. For example, the Review Panel is required to afford nations the opportunity to determine how they want to participate. In previous assessments, written submissions were generally the only way that nations could have their say. This broader language allows for nations' specific ways of sharing information and perspectives.

- The DP4 Review Panel terms of reference also introduces language for the Review Panel to potentially offer nations an opportunity to comment on their draft section within the Review Panel's assessment report, prior to it being submitted to the Minister. This has never been done before, and we have currently set the time limit for review at 21 days. IAAC and EAO recognize that this is a tight timeline and are open to hearing the concerns of nations to inform the establishment of the overall time limit for the Review Panel assessment.
- From the provincial side, the Review Panel terms of reference is explicit on how matters of provincial interest will be integrated into the Review Panel's assessment, which has not necessarily been done in previous assessment processes.

## 2. Does the 21-day review period refer to business days or calendar days?

- 21 calendar days (three weeks).

### **Comments from nations:**

Several nations (Lyackson First Nation, Maa-nulth First Nations, Pauquachin First Nation, Seabird Island First Nation, Snuneymuxw First Nation, Ts'uubaa-asatx Nation) noted that the 21-day review time is insufficient. In addition, those timelines would need to take into account the time of year when the draft would be provided to communities.

IAAC and EAO acknowledge the concerns that have been shared. This initial draft has been provided for participating nations to react to, with the intent of working towards a final version that reflects the comments received. Our intent with the proposed 21-day review period is not to limit a nation's ability to review. IAAC and EAO want to ensure that each nation has the opportunity to provide the depth of feedback that they think appropriate for consideration in the assessment process.

The [Joint Indigenous Engagement and Partnership plan](#) is the key document (developed in the Planning Phase) that guides how IAAC and EAO will work with nations throughout the assessment process. It ensures flexibility going forward within the parameters of the new legislation. Consultation going forward can include one on one meetings, the development of consultation work plans, detailing how we will work together, and what is best for each nation.

3. It was mentioned in the presentation that the Review Panel has the option to provide draft sections of their report to Indigenous nations. Does this mean that this step will potentially not happen should the Review Panel opt not to provide a draft version? Can you please clarify?

- Yes, as currently proposed in the draft terms of reference, the Review Panel has the option to provide draft sections of their report to Indigenous nations. This is in recognition of the 450-day timeline allocated to the Review Panel for the entirety of the Impact Assessment phase. IAAC and EAO will consider all comments regarding this timeframe for the review of nation's draft sections to finalize the wording in the terms of reference (i.e. 'may' or 'must').

4. Where are the consensus seeking points throughout the process?

- There are two terms to be aware of: 'consent points' and 'consensus seeking points'
- As per the provincial requirements, consensus seeking activities occur to support any major milestone of the environmental assessment process and a consent point would be when a major decision is required. For example, during process planning, the EAO reviewed the draft documents and worked with Indigenous nations through issues that might have existed at that point in time to understand what the key concerns were. The goal was then to identify a path towards a common understanding and how could consensus be achieved between EAO and Indigenous nations on what those problems might be. This includes the steps that needed to be taken to resolve them, either at that time or throughout the planning process as we moved forward.
- With regard to consent, this pertains to decision points. For example, the Provincial Minister will receive the EAO's assessment report that will be based on the findings of the Review Panel report, plus any other matters that were of provincial interest. When the time comes to make a decision on the project, that is when Indigenous nations may choose to offer their consent for the decision that could be made. That decision would be yes, the project should proceed to receive an environmental assessment certificate, or no, the project should not proceed.
- The EAO will be very explicit about upcoming opportunities for consensus seeking and consent throughout the remainder of the process. Seeking consensus with Indigenous nations is generally described in section 7 of the [Joint Indigenous Engagement and Partnership plan](#).

## 5. Who is responsible when consensus/consent is not achieved? Does it go to a dispute resolution process, which may or may not involve the proponent?

- Details around EAO's consensus seeking and consent seeking are explicit in the BC *Environmental Assessment Act*. Where disagreements occur, the EAO's goal is to understand those issues and take steps towards resolving them at that point in time, and not delay until reaching a decision point within the process.
- Where the consent of the nation is not aligned with EAO's recommendation to Ministers on a project, there are opportunities for dispute resolution to understand where those divergences might exist, and to work in good faith to try to resolve those.
- Dispute resolution is generally the last effort to address concerns and disagreements. The EAO, alongside IAAC will make every effort in advance to try to understand what the concerns of nations are as related to the project, and communicate them with the proponent, where appropriate for consideration. The [Joint Indigenous Engagement and Partnership plan](#) outlines opportunities and methods for meaningful engagement and consultation early and often throughout the process.
- Addressing issues in an ongoing way throughout the process ensures that when we get to where a decision is being made, we've tried to close as many of those gaps as possible, or ideally have closed those gaps.
- The opportunity for dispute resolution is not something that the Provincial Act contemplates for disagreements explicitly between Indigenous nations and the proponent. EAO's expectation is that those issues be discussed directly with the proponent.

### **Comments from nations:**

Tsleil-Waututh Nation raised the need to provide greater clarity on who is responsible for resolving outstanding concerns, particularly around who gets accommodation and how those conversations should proceed with the proponent. Having a process to resolve outstanding issues that does not include the proponent, means that those issues under the responsibility of the proponent may not be resolved.

Ts'uubaa-asatx Nation highlighted their concerns about the feasibility of achieving consensus on the draft impact assessment report, and the draft sections shared with each nation, given the time constraints. Ts'uubaa-asatx is happy to work with the IGs to achieve best outcomes.

## 6. Is the review panel required to make all information public? What is the process if there is sensitive information that a nation does not want shared publicly?

- The draft terms of reference for the Review Panel details how Panel members can accept information from Indigenous nations in confidence, recognizing that some information may be sensitive.
- The *Impact Assessment Act* has new and strengthened provisions regarding the protection and non-disclosure of any information that is provided in confidence.
- In the draft Review Panel terms of reference, the Review Panel is required to follow IAAC's guidance on [Protecting Confidential Indigenous Knowledge under the \*Impact Assessment Act\*](#). Under the terms of reference, the Panel may also develop specific procedures for the protection of confidential information. This can be informed by the protocols of Indigenous nations.
- Sensitive information should not be made public on [IAAC's registry](#) and can be accepted in confidence on a case-by-case basis in discussions with Indigenous nations. In some cases, it may be determined that a high-level summary can appropriately be posted on the public registry.

### **Closing:**

#### **Submitting comments:**

Please submit your comments by **March 30, 2023** by using the “submit a comment” button on the [Canadian Impact Assessment Registry](#) or via email at [deltaport@iaac-aeic.gc.ca](mailto:deltaport@iaac-aeic.gc.ca). Please let us know if your nation may require more time to provide feedback, and together we can determine an extension date.

#### **Requests for follow-up meetings:**

IAAC and EAO would be happy to provide follow-up meetings in the near future with nations, should you wish to discuss the draft documents or the DP4 assessment process in general. Please send requests to:

[Jessie.Hannigan@gov.bc.ca](mailto:Jessie.Hannigan@gov.bc.ca) and [Finn.Macdonald@iaac-aeic.gc.ca](mailto:Finn.Macdonald@iaac-aeic.gc.ca)

#### **Funding**

If your nation missed the deadline to apply for IAAC's Participant Funding, or if you have any questions regarding funding please contact our Funding Officer, Natalie Boivin at [Nathalie.Boivin@iaac-aeic.gc.ca](mailto:Nathalie.Boivin@iaac-aeic.gc.ca).