

HEILTSUK TRIBAL COUNCIL



July 28, 2016

Kitimat Clean Refinery Project
Canadian Environmental Assessment Agency
410 – 701 West Georgia Street
Vancouver, British Columbia V7Y 1C6

Re: Kitimat Clean Refinery Project – Invitation to Comment on EIS Guidelines

Dear CEAA Personnel,

Thank you for the opportunity to provide input on the Draft Guidelines for the Preparation of an Environmental Impact Statement (EIS) for the Kitimat Clean Refinery Project. Though we are providing this letter upon having learned that public comments were being invited on aspects of the environment that may be affected by the project and what should be examined during the environmental assessment, our position is that Heiltsuk Nation should have been engaged at a government to government level to discuss the project and the scope of the environmental assessment at the outset.

Purposes of the *Canadian Environmental Assessment Act* (CEAA) include as per section 4 (1) (d) to promote communication and cooperation with aboriginal peoples with respect to environmental assessments;...and (i) to encourage the study of the cumulative effects of physical activities in a region and the consideration of those study results in environmental assessments.

We maintain that assessment of shipping-related impacts needs to be included as part of the CEAA project assessment, and not deferred to a Transport Canada led TERMPOL process that follows CEAA permitting. So in sections 5 and 6 - Engagement with Indigenous Groups and Project Scope: If the refined oil will ultimately be transported on coastal waters to reach markets, the scope of the EIS must include potential impacts to waterways and resources along them. Effects of potential loss of cargo should an accident occur and cumulative effects of this project in the context of other oil and gas and other proposed and existing projects in the Central and North Coast areas need to be considered.

So in the draft EIS, though 6.1.6 references the need for baseline information including bathymetric information for the site and along the shipping route if applicable, we submit that the shipping route is applicable for all types of baseline information. Further, section 6.3.2 should be expanded to include effects to valued components within a specified (suggest 100km) radius of the shipping route. The shipping route for the Kitimat Clean project transects Squally Reach and Nepean Sound and enters Hecate Strait – it is in close proximity to Heiltsuk territory. In the event of a shipping accident products that are spilled may be carried south via wind, waves, tides and currents. Our resident and transient whales may be exposed to and suffer impacts from noise, vessel strikes, and

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pollution events. In addition, salmon that are bound for streams in Heiltsuk territory may be negatively impacted by water pollution among other project related impacts while enroute.

Factors to be considered as per CEEA section 19 (1) The environmental assessment of a designated project must take into account the following factors: (a) the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out; (b) the significance of the effects referred to in paragraph (a);... and (3) Community knowledge and Aboriginal traditional knowledge - The environmental assessment of a designated project *may* take into account community knowledge and Aboriginal traditional knowledge. We maintain that only Heiltsuk can determine whether or not a project that would see increased tanker traffic through or adjacent to our territorial waters is acceptable; likewise, it is not for others to determine the significance of environmental effects of an accident and cumulative environmental effects of this project in combination with existing and proposed projects on our Aboriginal rights and title.

Though David Black, the project proponent, is quoted in an April 20, 2016 Victoria Times Colonist article as stating “And tankers carrying refined fuels is not a problem. If there is a spill [of refined fuel] it floats and evaporates,” The intent is to process 400,000 barrels/day of bitumen into fuel products, including gasoline, diesel and jet fuel, and also produce byproducts such as butane, propane and sulfur pellets. Heiltsuk are stewards of our lands and waters and have responsibilities to engage internally with membership and with the proponent and other levels of government, to review supporting documents, and to exercise our inherent rights to self governance and either support or reject the project.

On quick review of the draft guidelines for preparation of the EIS, we note some gaps in the section: Effects Assessment and baseline information: potential impacts to areas where aquaculture investments have been made, for example, or to values and specific areas where we exercise proven Aboriginal rights, such as the Heiltsuk right to harvest and trade herring spawn on kelp.

We also observe that with respect to Cumulative Effects Assessment, the proposed marine terminal site is just 10 km north of Bish Cove where the Kitimat LNG project is located. There are also several other large scale projects proposed for the area, including Enbridge Northern Gateway, which we are on record as objecting to.

Over the past few months we have been engaging with the Transport Minister and expressed support for the Moratorium on crude oil tanker traffic in the coastal waters of the Great Bear Rainforest (subject to further engagement on specifics such as geographic extent and products covered). Over the past several years we have been engaged in marine use planning with federal and provincial governments, and we have identified areas that require protection through those and our internal planning processes. We have also actively participated at a government to government level in LNG and Marine Shipping Tripartite Dialogues with the federal government (Canadian Coast Guard, Transport Canada, Department of Fisheries and Oceans, Environment Canada, and the Major Projects Management Office) and provincial government on: waterway

management; emergency preparedness and response; and cumulative effects – this entailed participating in technical working groups and meetings of the leadership reference group. All of these initiatives are regional in scale, and applicable to a review of the Kitimat Clean Refinery Project.

In closing, we look forward to hearing from your office to discuss the EIS, the project review process and provisions for our participation in the CEAA project review.

Sincerely,

Marilyn Slett, Chief Councillor

cc Kelly Russ, Chair of the Board, Coastal First Nations
cc Heiltsuk Marine Shipping and LNG Committee