

BOAT HARBOUR REMEDIATION PROJECT

PROPONENT RESPONSE

TO

**IAAC DRAFT ENVIRONMENTAL ASSESSMENT
REPORT**

NOVEMBER 2024



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1.0 INTRODUCTION

This document is Build Nova Scotia's (the Proponent) response to the Draft Environmental Assessment Report issued by the Impact Assessment Agency of Canada (IAAC) for public comment on October 15, 2024.

The Proponent's response focuses on a number of issues which are relevant, and which should be considered by IAAC in rendering an approval decision on the proposed Boat Harbour Remediation Project (the Project). The Draft Environmental Assessment Report (the Report) is silent on whether IAAC is approving or rejecting the Project. The Report neither considers nor balances the outcomes associated with either an approval or a rejection. The Proponent is of the opinion that this aspect requires consideration, which is not in the Report, and provides important context on this matter.

The Proponent also provides comments on the scope of the assessment and the Report. In particular, the Proponent has comments on an aspect laid out in the Report relative to the concept of "cultural continuity", which is a significant element of the Report's assessment. This element was not disclosed to the Proponent in the Environmental Impact Statement Guidelines issued in May 2019 and was not disclosed to the Proponent at any time prior to the issuance of the Report in October 2024. Further, cultural continuity is neither defined in nor is an element of the Canadian Environmental Assessment Act (CEAA 2012). The Proponent has had no prior opportunity to provide information on its efforts towards contributing to the concept of "cultural continuity" and notes that laying out this matter in the Report for the first time is administratively unfair within the environmental assessment process. Despite this administratively unfair aspect of the Report, this response outlines some of the work the Proponent has done that is, nonetheless, consistent with the spirit of "cultural continuity", recognizing again that IAAC has not defined it in their Report. The outlining of this work in no way represents the Proponent accepting this administratively unfair aspect of the Report or waiving its ability to take any future steps in response to it that the Proponent deems necessary and appropriate.

This response also provides comments on the draft potential conditions associated with an approval decision.

2.0 BALANCING THE OUTCOMES OF THE IAAC APPROVAL DECISION

The Project is being assessed under CEAA 2012. The Proponent is of the opinion that the CEAA 2012 requirements and the associated guidance issued by IAAC in 2019 are fully addressed in the Proponent's Environmental Impact Statement. However, the scope of the Report goes beyond CEAA 2012. This is clear both in the guidance provided by IAAC and in their assessment in areas where guidance was not provided, as in the issue of cultural continuity.

In the Report, "**Section 8 Conclusions and Recommendations of IAAC** - IAAC concludes that the Project is likely to cause direct significant adverse environmental effects, as defined in section 5 of CEAA 2012, on PLFN and the Mi'kmaq of Nova Scotia's health (mental health and well-being), current use of lands and resources for traditional purposes and physical and cultural heritage despite the implementation of mitigation measures, monitoring, and follow-up programs. Furthermore, IAAC concludes that the Project is not likely to cause significant adverse effects to other components of the environment under federal jurisdiction, taking into account the implementation of mitigation measures.

IAAC is of the view that the Project is likely to cause impacts to the exercise of Aboriginal and treaty rights, including the moderate to high magnitude of residual effects to hunting, trapping, gathering, and fishing rights, and the cultural continuity of PLFN. IAAC acknowledges that despite the Project's intended purpose of remediating a contaminated site, PLFN feel that the permanent physical presence of the vertically expanded containment cell would prevent PLFN from resuming use of the area."

The position of IAAC that the Project is likely to cause direct significant adverse environmental effects is due to the now existing approved containment cell that will be vertically expanded. The existence of the containment cell is not in issue, rather, the Project proposes the vertical expansion of an already existing and approved containment cell. Any consideration of adverse environmental effects must be based on

adverse environmental effects created by the vertical expansion of the containment cell, not as it relates to its overall existence.

To be clear, the containment cell was approved by the provincial regulator to store Boat Harbour waste in 1995, with such waste being deposited in the containment cell starting in 1996.

- It currently contains 188,000 cubic meters of Boat Harbour waste.
- The existing approved containment cell comprises an area with a footprint of 6.7 hectares within the Site Study Area of 546 hectares, or about 1% of the Site Study Area.
- The containment cell is on provincially owned lands and will be regulated, operated and maintained forever by the Province of Nova Scotia.
- The containment cell is about 2 kilometers distant from the Pictou Landing First Nation (PLFN) community in a straight line. It is an approximate 7-kilometer drive, by provincial and private roads, in commuting distance from the PLFN community.
- The containment cell is not visible from the PLFN community and the PLFN community is not visible from the containment cell.
- Engineering assessments and monitoring concludes that the containment cell effectively contains all the waste materials within it. There are no significant physical environmental impacts external to the containment cell, neither on the environment, nor on adjacent Indian Reserve lands.
- IAAC retained an independent expert to assess the Proponent's evaluation of alternatives for waste management, which led to the selection of the existing containment cell as the preferred alternative for long term storage of waste. IAAC states: "*Overall, the independent experts concluded the Proponent's analysis of alternative waste management options was reasonable.*"

IAAC arrives at its conclusion that the Project, if approved, is likely to cause direct significant adverse environmental effects. IAAC not only overstepped the scope of its authority in reviewing the Project before them, but IAAC failed to address that if the Project is not approved there is no clear path forward towards the remediation of the Boat Harbour Site Study Area. With no approval for the proposed remediation, the containment cell will continue to exist. The path forward in that scenario will be that the Boat Harbour Site Study Area will remain a managed site in accordance with the Industrial Approval issued by Nova Scotia Environment and Climate Change, which includes the approved containment cell.

The Project, if approved, will lead to addressing the current environmentally degraded site by effectively removing all of the hazardous waste from 99% of the Site Study Area and consolidating it safely within a newly engineered, vertically expanded containment cell which occupies about 1% of the Site Study Area. This approach respects the precautionary principle as required by IAAC guidance, mitigates project risks and will ensure significant adverse effects related to greenhouse gas emissions are not realized from trucking the waste somewhere else. This would then enable the return of A'se'k to its natural state as a tidal estuary, which is the remedial objective sought by the PLFN community.

Benefits associated with a Project approval and its implementation have been communicated to PLFN leadership and include elements under the broad categories of funding, participation and lands and legacy.

2.1 Funding

- Over \$420 million has been set aside for the Project, including \$100 million in federal funding which has been secured dependent upon an IAAC approval.

- Within the \$100 million federal funding is a commitment to allocate \$15 million to PLFN legacy projects, which is only available if there is an approval for the Project.
- An approval will allow PLFN legacy projects to continue. This will help PLFN implement their land use plan and vision associated with the Project outcome, as well as other community defined and led initiatives. The Proponent supported and funded PLFN's engagement of a third-party consultant (Membertou Geomatics Solutions) to develop a future land use and vision plan.
- PLFN presented the Proponent with a proposal for over \$2 million in funding to support a traditional language initiative, which would help achieve cultural continuity objectives. As a good faith gesture, the Province had agreed to fund the first year (\$400,000) to get the program up and running, even though the federal funds are not yet available. An approval of the Project will ensure the availability of additional funds to continue the program.
- Provincial funding is available to continue to support community liaison, engagement, training, and positions in the community for PLFN project support. Funding to date has also supported a PLFN Legacy Coordinator, whose role is to capture any past, present and future stories and memories of A'se'k and aiding in the reclamation of A'se'k, enabling cultural continuity as is reasonably achievable.

2.2 Participation

- The Proponent will continue to engage PLFN as the Project rolls out. This includes continued support of the community liaison, training, and positions in the community for PLFN project support and legacy planning.
- The strategy to have PLFN be a non-exclusive partner to all bidders will ensure that PLFN has input into the procurement process relative to Indigenous involvement in the Project and is guaranteed to directly participate as a partner with the winning bidder.
- The Proponent will continue to offer help for PLFN to develop a unit and train community members in environmental science disciplines to do some of the long-term maintenance and monitoring on the site. This capacity could lead to opportunities during the Project and outside the Project and the community, in the long term.

2.3 Lands and Legacy

- A cleaned up Boat Harbour that is returned to its natural state as a tidal estuary will be the most significant legacy of the Project. A'se'k water and the surrounding lands will be rejuvenated and safe for use by PLFN, should they so choose, for activities their community enjoyed prior to the industrialization of the site. This is supporting cultural continuity, as the Proponent understands it, in the absence of a definition.
- With the federal funding allocation of \$15 million, subject to Project approval, investment can begin in future site use and legacy initiatives and in the community land use vision.
- With a project approval, the Proponent has committed to accommodations including the transfer of lands, owned by Nova Scotia, to PLFN after the remediation is complete. Nova Scotia has previously committed to transferring a 128-hectare parcel, which is the Boat Harbour Effluent Treatment Facility, and is dependent upon performing Project activities culminating in the successful remediation of Boat Harbour. The Governor in Council by Order in Council #96-621 dated August 14, 1996 authorized, *"the Minister of Transportation and Public Works to transfer such portion of the BHETF lands as the Minister deems appropriate at no charge to the Pictou Landing Mi'kmaq Band, or to the Federal Department of Indian Affairs and Northern Development for the benefit of the Band, when the lands are no longer required for the operation of the effluent"*

treatment facility, or at such sooner time as the Minister deems appropriate so long as any earlier transfer is on such terms and conditions as do not interfere with the continued operation of the effluent treatment facility for the duration of the operating agreement with Kimberly-Clark Canada Limited, and such additional time is required to perform clean up operations."

- An additional 11 parcels of about 50 hectares in total, mostly around the estuary, have also been assembled by the Proponent for transfer to PLFN after remediation is complete.
- The transfer of these tracts of land, once remediated, constitutes a form of accommodation for potential adverse effects on the Section 35 asserted or established Aboriginal and/or Treaty rights of the PLFN and/or the Mi'kmaq of Nova Scotia, including in relation to the asserted Aboriginal title of PLFN in the Boat Harbour area and/or the asserted Aboriginal title of the Mi'kmaq of Nova Scotia in Nova Scotia. The Proponent is proposing this accommodation measure even though the Project itself will not result in long-term adverse effects on Section 35 rights because the Project, in its entirety, is inherently a form of accommodation in relation to Section 35 rights due to its remedial nature, as acknowledged by IAAC in the Report (see "Aboriginal and Treaty Rights" section below for further details).
- Funding is also available for legacy projects, including language initiatives, where they are connected to project success and associated healing.

2.4 Approval or Non-Approval

The approval/non-approval outcomes are clear.

If the Project is approved and proceeds to and through successful implementation, then aside from the ultimate benefit of a cleaned up Boat Harbour, there are benefits which will flow to PLFN, as noted above. While closure of Boat Harbour to mill effluent is permanent, as has been honored through the Boat Harbour Act, the other benefits of the cleanup and of lands and legacy are entirely dependent on receiving a Project approval.

If the Project is not approved, then the benefits associated with Funding and Participation are no longer available. The Benefits of Land and its transfer to PLFN will be off the table as the entire Boat Harbour site will have to be managed and access to, and through the lands, will be needed. As well, the Benefits of Legacy will be unavailable because the \$15 million in federal funding is contingent on a Project approval.

Conclusively, without a Project approval there is no guarantee that Boat Harbour will ever be cleaned up. Its current environmentally degraded condition will require it to continue to be a managed site in perpetuity.

While the Project is scientifically and environmentally sound with respect to the predicted physical environmental impacts, the Proponent recognizes that while the precautionary approach has been taken, there is a fundamental impossibility to correct decisions which were made in the 1960s. Furthermore, it is not possible to turn the clock back before September 1967 when the kraft pulp mill started operations. It is those decisions which led to the industrialization of A'se'k, and Boat Harbour becoming an effluent treatment facility. The Proponent has proposed a project which remediates 99% of the physical environment of the associated Site Study Area. This presents the possibility of restoration of Aboriginal and Treaty rights with respect to PLFN's use and enjoyment of A'se'k, should they choose to do so. If so, this may also contribute to cultural continuity and could improve physical and mental health outcomes.

Ultimately, the Report fails to balance the outcomes of the approval decision. Understanding the outcomes, as noted above, is fundamental to the assessment of environmental impacts.

3.0 ABORIGINAL AND TREATY RIGHTS

The Report concludes, “the Project is likely to cause impacts to the exercise of Aboriginal and treaty rights, including the moderate to high magnitude of residual effects to hunting, trapping, gathering and fishing rights, and the cultural continuity of PLFN” because “despite the Project’s intended purpose of remediating a contaminated site, PLFN feel that the permanent physical presence of the vertically expanded containment cell would prevent PLFN from resuming use of the area.”

In Section 5.3.2, IAAC concluded “after the remediation is complete, existing risks to human health will be reduced”. Section 7.2.1 further noted that “in the long-term, after remediation is complete, the Project would result in an overall improvement to fish and fish habitat and would likely result in the reestablishment of access to the SSA (excluding the containment cell area) by PLFN and the Mi’kmaq of Nova Scotia” in relation to fishing rights. Similarly, Section 7.2.2 affirmed that “IAAC is of the view that the Project will likely result in a long-term improvement to the SSA, including traditional resources, allowing PLFN to resume traditional activities” in relation to “hunting, trapping and gathering rights”.

These conclusions and acknowledgments are consistent with the fact the Project, if approved, will be remediating 99% of the Site Study Area, save for the small area where the containment cell currently exists, accounting for 1% of the area. Following remediation, PLFN will be able to exercise their Aboriginal and Treaty rights in all areas, save for the small area where the containment cell is located. Stated otherwise, the Project itself will not result in long-term adverse effects on Section 35 rights because the Project, in its entirety, is inherently a form of accommodation in relation to Section 35 rights due to its remedial nature, as acknowledged by IAAC in the Report. As such, the Project constitutes a form of accommodation for potential adverse effects on the Section 35 asserted or established Aboriginal and/or Treaty rights of the PLFN and/or the Mi’kmaq of Nova Scotia, including in relation to the PLFN and/or the Mi’kmaq of Nova Scotia’s asserted or established rights to fish, hunt, trap and/or gather.

While we respect PLFN may decide not to exercise their Aboriginal and Treaty rights in the broader area which will be remediated by the Project, that would be primarily a result of a decision of PLFN and not the result of the Project. Accordingly, the permanent presence of the containment cell will not, in and of itself, result in a “moderate to high” residual adverse impact on PLFN’s Aboriginal and Treaty rights, but rather the residual impact would be primarily created through PLFN’s conscious decision to voluntarily not exercise their rights in the remediated area due to the presence of the containment cell.

4.0 CULTURAL CONTINUITY

Section 7.2.3 of the Report deals with subject matter of Cultural Continuity.

While “cultural continuity” is referenced in our response above, it is imperative to note that the IAAC Final Environmental Impact Statement Guidelines issued to the Proponent, neither referenced nor defined “cultural continuity” as an element of the environmental assessment. **It is administratively unfair** to base a fundamental premise upon which the Project may be approved or rejected without having given the Proponent a definition of the same and the opportunity to address such a matter in the context of the Project and management of any potential environmental effects in the Project Environmental Impact Statement. In other words, a significant element of IAAC’s decision is based upon a criterion which was not disclosed to the Proponent before the 30-day public comment period, which started on October 15, 2024. The Environmental Impact Statement Guidelines were issued on May 31, 2019; however, IAAC failed, over the intervening five-and-a-half-year period, to either define or identify the importance of the concept of “cultural continuity”, which now is a fundamental factor in its decision making.

The Proponent does note that IAAC held numerous meetings with PLFN to discuss the “environmental assessment process” without the Proponent being present at these discussions and without the Proponent ever being provided a record of the discussions.

Though cultural continuity was not identified by IAAC as a specified element in their guidance for the Project, the Proponent has undertaken many activities and initiatives which the Proponent believes support in addressing cultural continuity, which have not been factored into IAAC's decision. These include:

- In 2014, a 26.7-acre tract of land known as the Baker Estate was funded by the Proponent for purchase by PLFN to help protect and preserve Mi'kmaw burial grounds.
- The Proponent recognizes the on-going need to identify, preserve and protect historic Mi'kmaw burial grounds. Through discussion with PLFN, in 2019, the Proponent hired Boreas Heritage Consulting to conduct ground penetrating radar surveys at Indian Cross Point to determine archaeological characteristics of the area.
- In June and July 2015, the Proponent supported and funded five focus groups that were facilitated by PLFN to talk about the community vision for Boat Harbour. The resulting report established the remedial objective as determined by the PLFN community: "Return Boat Harbour to a Tidal Estuary".
- The Proponent supported and funded the development of a land use plan for PLFN. PLFN engaged Membertou Geomatic Solutions to engage with PLFN community members to develop a Boat Harbour Land Use Plan, which was completed in 2018. This plan lays out the vision for the future of Boat Harbour after the remediation Project is completed. It outlines plans for commercial, institutional, recreational, agricultural, and residential development and provides a roadmap over a long-term planning and implementation horizon. The Vision Statement for the Plan is as follows: *"PLFN is reclaiming the lands around A'se'k by creating economic, social, cultural and environmental opportunities while also developing a sense of safety and sustainability"*.
- The Proponent successfully secured a source of funding for implementation of aspects of the Plan and associated investment in future site use for activities such as light commercial development and recreational and potential tourism uses. The federal contribution under the Investing in Canada Infrastructure Program includes \$15 million for this investment, which funding is dependent upon IAAC's approval of the Project.
- The Proponent has supported and funded PLFN workshops to discuss legacy planning and has funded a Legacy Planning Coordinator, whose role is capturing past, present, and future stories and memories of A'se'k and aiding in the reclamation of A'se'k. This position has been staffed since June of 2021 by a PLFN community member.
- PLFN identified that a film project documenting the story of the BHRP would be useful in helping with their healing process and communicating with other First Nations, potential partners and stakeholders, and the broader public. With support and funding from the Proponent, PLFN invited proposals and engaged a film company, the firm Journeyman, to begin this work. Journeyman has completed Phase 1 of their proposed approach to building the story "Reclaiming A'se'k: Documenting the Remediation of Boat Harbour". The Proponent is supportive of future phases as remediation proceeds.
- In April 2018, the Pikukewaq Native Women's Association requested funding support from the Project for the establishment of an education project. The activity included learning how to plant gardens in raised beds. The intent was to build gardening capacity around traditional foods and plants and to use this knowledge in the future to maintain their own greenhouses/garden boxes. This proposal was discussed and approved for support at the Boat Harbour Cleanup Committee in April 2018. The proposal indicated that if community members chose to create and maintain their own greenhouses/garden boxes, they would consider plants which can be transferred into or near A'se'k when it is timely to do so.

- Since 2016, the Proponent and PLFN have had general discussions in focus groups and other forums on legacy opportunities for the Project. One characterization of the discussions was laid out in a document prepared by PLFN on Social Investment. Social Investment refers to the component of the community which is not readily identified in discussions pertaining to the closure and cleanup of Boat Harbour. It could reconnect the connection the community had to land and traditional culture, or it could refer to providing a role for community members who would otherwise be ignored by the cleanup process. The idea of social investment allows all community members to benefit from this community altering opportunity. The following activities and outcomes were developed by PLFN community members. The Proponent has remained supportive of these activities as a positive cultural legacy of the Project:
 - Creation of pictures of community activities that were done at A'se'k, which could be used in the development of an interpretative trail along the A'se'k shoreline with panels describing the history of A'se'k.
 - A canoe building project using traditional skills, with the canoe(s) being part of closure and project completion ceremonies.
 - A leather work/regalia making project, with regalia being worn during ceremonies throughout the process of the Project.
 - Workshops involving storytelling, a spot in the woods for benches and a teapot. Instead of stories being told in a structured setting (around a table with technology), sharing of stories would happen outdoors, around a fire. Story telling would be a part of the entire cleanup process. An individual will be the lead in informing persons working in the actual cleanup or it would serve as an information process for other individuals (i.e., government people, media, anyone interested in the story, anyone needing to hear the story).
 - Cooking, entrepreneurship skills workshops. A person could create a business where they serve meals to the workers.
 - Mi'kmaq language classes. Prayers and ceremony would be done in Mi'kmaq. PLFN indicated this would be “really great at the final ceremony” because they could do a “transfer” of the harbor back to the community. It would also be a strong connection of past activities, current activity and looking forward.

These activities and initiatives also constitute accommodation measures for potential adverse effects on the Section 35 asserted or established Aboriginal and/or Treaty rights of the PLFN and/or the Mi'kmaq of Nova Scotia to the extent the culture continuity constitutes a Section 35 right. The Proponent is proposing these accommodation measures even though “cultural continuity” is an excessively general term upon which to frame a standalone potential Section 35 right, regardless of the extent to which IAAC appears to have potentially accepted such a generally framed concept to be a Section 35 right pursuant to its administratively unfair process. At the same time, the Proponent is proposing these accommodation measures in addition to the above accommodation measures to the extent that the above identified Section 35 rights constitute matters that are integral to the distinctive culture of the PLFN and/or Mi'kmaq of Nova Scotia. Lastly, the Proponent again emphasizes that the Project itself will not result in long-term adverse effects on Section 35 rights because the Project, in its entirety, is inherently a form of accommodation in relation to Section 35 rights due to its remedial nature, as acknowledged by IAAC in the Report, and, as such, also accommodates any potential standalone Section 35 right to “cultural continuity”.

Furthermore, it is important to note that during 2019 and 2020, PLFN leadership made public comments as reported in the media which supported the Project. These publicly reported comments are included in the table below:

Media Outlet and link	Date	Details
CBC https://www.cbc.ca/news/canada/nova-scotia/federal-review-boat-harbour-cleanup-1.5835193	December 10, 2020	"The long-term storage of impacted sediment and material in the existing containment cell may not completely undo this loss, but a clean Boat Harbour will be a positive improvement," the band said. "The use of the containment cell for the storage of waste dredged from Boat Harbour has been happening since the mid-1990s. The containment cell will be upgraded and improved before its ongoing use during the project. It will be capped and closed at the end of the project."
CBC https://www.cbc.ca/news/canada/nova-scotia/northern-pulp-boat-harbour-wastewater-andrea-paul-1.5547654	April 28, 2020	"You know, I'm just really happy for the whole community and especially for the young people that this won't be a part of their legacy anymore. They'll have a new legacy and they'll have A'se'k back." – Chief Andrea Paul
CBC https://www.cbc.ca/news/canada/nova-scotia/boat-harbour-remediation-cleanup-project-1.5146340	May 23, 2019	"I remember saying, 'I know this isn't going to be done in my lifetime, but I hope it's going to be done in my grandchildren's lifetime,' and look where we are," said Paul, flanked by children, elders and other members of the community. "Having Boat Harbour restored to its natural state is all we've ever wanted."
Saltwire https://www.saltwire.com/prince-edward-island/news/provincial/ottawa-commits-100-million-to-boat-harbour-remediation-project-314923/	May 24, 2019	The federal government announced Thursday it will contribute \$100 million to the remediation of the tidal estuary. "If I could sum it up in one word, it would be reconciliation," said Chief Andrea Paul. "It validates the work that we have been doing as a community, and I think it really just puts that reassurance that both levels of government have listened and taken our concerns seriously."

Conclusively, even though not directly required by the Environmental Impact Statement Guidelines, the Proponent has been helping to facilitate forms of cultural continuity with respect to the Project, while also committing to continue to do so during and after the period of its implementation. IAAC is basing its finding of significant environmental impact on an undefined and undisclosed criterion. IAAC seems to have only considered cultural continuity impacts in relation to a state of A'se'k which existed before the establishment of the effluent treatment facility in the 1960s, and not the existing baseline condition, which includes the existence of the containment cell. This is a fundamentally incorrect approach to determining significant adverse effects of a proposed project.

5.0 CONSULTATION

Throughout the Report and the proposed conditions, the terms "consultation" and "consult" are used, as defined in 2.3 and 2.4 of the proposed draft conditions, as follows:

2.3 *The Proponent shall, where consultation is a requirement of a condition set out in this document: provide a written notice of the opportunity for the parties being consulted to present their views and information on the subject matter of the consultation; provide all information available and relevant to the scope and the subject matter of the consultation and a reasonable period of time agreed upon with the*

parties being consulted, not to be less than 30 days, to prepare their views and information; undertake an impartial consideration of all views and information presented by the parties being consulted on the subject matter of the consultation; and advise as soon as feasible the parties being consulted on how the views and information received have, or have not, been integrated into the subject matter of the consultation by the Proponent, and provide a justification.

2.4 *The Proponent shall provide opportunities for collaboration, and seek mutual agreement with the Mi'kmaq of Nova Scotia with respect to the manner to satisfy the consultation requirements referred to in condition 2.3, including: methods of notification; the type of information and the period of time to be provided when seeking input; the process to be used by the Proponent to undertake impartial consideration of all views and information presented on the subject of the consultation; and the period of time and the means to advise the Mi'kmaq of Nova Scotia of how their views and information were considered by the Proponent.*

6 *The Proponent shall, where consultation with the Mi'kmaq of Nova Scotia is a requirement of a condition set out in this document, consult with Pictou Landing First Nation as the representative of the Mi'kmaq of Nova Scotia unless otherwise requested by any of the Mi'kmaq of Nova Scotia.*

The Report also states:

The federal government has a duty to consult Indigenous groups and, where appropriate, to accommodate when there is knowledge that the federal government's proposed conduct might adversely impact Indigenous rights. Indigenous consultation is also undertaken more broadly as an important part of good governance, meaningful policy development, and informed decision-making.

The Proponent notes that IAAC's above definition of consultation differs from the definition of the Crown's duty to consult, and this approach is extended to 2.3 and 2.4 of the proposed draft conditions.

In accordance with constitutional Aboriginal law, the legal and constitutional duty to consult is triggered whenever the Crown contemplates an executive branch Crown action/decision that has the potential to adversely affect asserted or established Aboriginal and/or Treaty rights. Pursuant to this "trigger statement", the duty to consult is triggered in the presence of (1) a contemplated executive branch Crown action/decision, (2) a potential adverse effect, and (3) asserted or established Aboriginal and/or Treaty rights, and the absence of any of these elements will not legally trigger the duty to consult (with some exception not applicable to the Project or IAAC's environmental assessment process). At the same time, the scope and depth of this legal duty will vary with the strength of the PLFN and/or Mi'kmaq of Nova Scotia's asserted or established section rights and the seriousness of a potential adverse effect(s) on such rights. This approach results in different consultation processes based on the unique facts of a given situation, which enables the Proponent to advance Reconciliation via the balancing of Crown sovereignty with the pre-contact presence of Aboriginal peoples, and, by extension, Aboriginal and non-Aboriginal rights, interests and benefits.

While IAAC appears to acknowledge the legal duty to consult in the first part of the above quote, it appears to insinuate that the duty to consult is also triggered in relation to "good governance", including in relation to "meaningful policy development" and "informed decision-making". Stated otherwise, IAAC appears to have "blended" the constitutional duty to consult with good governance engagement, which appears to be a result of a policy document (*Principles respecting the Government of Canada's Relationship with Indigenous peoples*) and legislation (*United Nations Declaration on the Rights of Indigenous Peoples Act*).

While the Proponent acknowledges that it can owe potential consultation and engagement obligations to an Aboriginal group, the Proponent is of the view that these are two separate processes and that there is no legal duty to consult in relation to good governance in the absence of the three above mandatory elements of Section 35 consultation. This distinction enables the Proponent to properly meet its constitutional duty to consult obligations, when triggered, and to potentially engage in good governance engagement even in cases when the legal duty to consult is not triggered, which is an approach that also enables the Proponent to advance Reconciliation, including via the balancing of Aboriginal and non-Aboriginal rights, interests and benefits. Accordingly, the Report's above "blending" of Section 35 consultation and good governance engagement, as also reflected in 2.3 and 2.4 of the proposed draft

conditions, is inconsistent with constitutional Aboriginal law and results in unnecessary confusion for future “consultation” pursuant to these proposed conditions in relation to the Project.

At the same time, the Proponent notes that the PLFN may be a non-exclusive partner to a bidding proponent in Project procurement processes, which may lead to PLFN being a part of a successful contracted proponent for the Project. If so, then there are instances where engaging them, or having to consult them on some of the issues brought forward in the proposed condition(s), or having to consider their input to that issue or issues, may be either a perceived or a real conflict of interest with respect to their prior knowledge and opportunity to provide input on an issue and their role as a contracted proponent.

In light of the above distinction between Section 35 consultation and good governance engagement, the Proponent intends to articulate the manner with which PLFN and the Mi’kmaq of Nova Scotia will be engaged on Project matters in Project governance documents, including seeking their input on the relevant conditions.

6.0 TABLE – CLARIFICATION OF ASPECTS OF THE REPORT AND PROPOSED CONDITIONS

In addition to the foregoing comments of the Proponent, the table below provides a number of other clarifications and corrections relative to specific aspects of the draft Decision Report and proposed conditions.

Relevant Document & Section	Draft EA Decision Document Text/Draft Conditions Text	Comment/Observation
Draft Decision, Executive Summary	.. And report on the implementation of the mitigation measures and follow-up programs required of the Proponent; conduct a HHRA to assess post-remediation risk to the health of the Mi’kmaq of Nova Scotia;	The Proponent has committed to a comprehensive follow-up monitoring program that includes, among other things, sampling and analysis of country foods. It is expected that any future requirement for a future HHRA would be dependent on the results of those studies.
Draft Decision Section 2	"The parcels to be transferred to PLFN total approximately 173 hectares, and future land use of this land has not yet been determined."	This statement is incorrect. In 2019, the Proponent supported and funded a land use plan which was prepared by a third- party for PLFN which defined the community vision for A’se’k after the remediation is complete. Further, the Proponent set aside \$15 million for funding projects and activities which would substantially support the realization of the community vision for A’se’k and the surrounding lands. This is addressed in Section 6.3.3 of the EIS, in which the Vision Statement for the Plan is as follows: "PLFN is reclaiming the lands around A’se’k by creating economic, social, cultural and environmental opportunities while also developing a sense of safety and sustainability."

Relevant Document & Section	Draft EA Decision Document Text/Draft Conditions Text	Comment/Observation
Draft Conditions, Section 2.3.2	<p>The Proponent shall, where consultation is a requirement of a condition set out in this document:</p> <p>2.3.2 provide all information available and relevant to the scope and the subject matter of the consultation and a reasonable period of time agreed upon with the parties being consulted, not to be less than 30 days, to prepare their views and information;</p>	<p>Recommend removing all and replace with "relevant".</p>
Draft Conditions Section 2.6.7	<p>The Proponent shall, where a follow-up program is a requirement of a condition set out in this document, develop the follow-up program taking into account any guidance documents provided by the Agency and determine, as part of the development of each follow-up program and in consultation with the parties being consulted during the development, the following information, unless otherwise specified in the condition:</p> <p>2.6.7 the specific and measurable end points that must be achieved before the follow-up program can end. Those end points should indicate that the accuracy of the environmental assessment has been verified or that the mitigation measures are effective or both.</p>	<p>The Draft Environmental Management Plan supplied in the EIS clearly indicates all mitigative measures, including all monitoring pre and post construction. Specific measurable end points may be difficult to quantify in natural habitats, however, the Proponent will comply once guidance documents are provided by IAAC.</p>
Draft Conditions Section 3.1	<p>The proponent shall develop, prior to site preparation and to the satisfaction of Fisheries and Oceans Canada and in consultation with the Mi'kmaq of Nova Scotia, and implement any offsetting plan(s) to offset effects from the harmful alteration, disruption, or destruction of fish and fish habitat, and the death of fish associated with the carrying out of the Designated Project. The Proponent shall provide the approved offsetting plan(s) to the Agency before implementing them</p>	<p>For consideration, completing Fisheries Act Authorization and Offsetting Plan is typically a long process (1-2 years).</p> <p>Site preparation and construction activities are not anticipated to have impacts to fish and fish habitat, and therefore, we would suggest the following edit: "The proponent shall develop, prior to "operation" (only complete activities not related to Fisheries Act Authorization) to allow site preparation and construction activities to proceed prior to the implementation of Fisheries Act Authorization.</p>
Draft Decision Section 3.3	<p>IAAC acknowledges that the Proponent would be required to adhere to CCME National Guidelines for Hazardous Waste Landfills. The containment cell design concerns raised by independent experts and Nova Scotia Environment and Climate Change reviewers would be addressed through the provincial approval process.</p>	<p>It is expected that as the Regulator, NSECC will determine the appropriate design guidelines and standards, and the Proponent will comply.</p>

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Draft Conditions Section 3.4	<p>The Proponent shall conduct, prior to dam removal and in consultation with Fisheries and Oceans Canada and Environment and Climate Change Canada, modelling of sediment transport and deposition in the Northumberland Strait as a result of dam removal. In doing so, the Proponent shall:</p> <p>3.4.1 identify, in consultation with Fisheries and Oceans Canada and Environment and Climate Change Canada, modelling parameters, scenarios, including dismantling the dam gradually over different time scales and other dam removal approaches, and any other measures that mitigate sediment transport and deposition to be included in modelling;</p> <p>3.4.2 conduct modelling by incorporating the parameters, scenarios and measures identified pursuant to condition 3.4.1; and</p> <p>3.4.3 develop and implement modified or additional mitigation measures based on the results of modeling conducted pursuant to condition 3.4.2, to mitigate effects from dam removal on fish and fish habitat in the Northumberland Strait. The Proponent shall provide the measures to the Agency before implementing them.</p>	<p>Modelling of sediment transport and deposition has previously been completed and provided as part of the EIS. The Proponent is committed to additional modelling prior to dam removal. Removal of the dam and bridge construction will be sequenced in a manner that is fully protective of the environment.</p>
Draft Conditions Section 3.5.2	<p>3.5 The Proponent shall develop, prior to dam removal and in consultation with the Mi'kmaq of Nova Scotia, Fisheries and Oceans Canada, Environment and Climate Change Canada, and any other relevant authorities, and implement during dam removal, measures to control erosion and sedimentation, as a result of dam removal in fish-bearing waterbodies within the Site Study Area and the introduction of tidal influence in Boat Harbour, in a manner that complies with the Fisheries Act and its regulations, and taking into account Fisheries and Oceans Canada's Measures to Protect Fish and Fish Habitat. The Proponent shall provide the measures to the Agency before implementing them. As part of these measures, the Proponent shall:</p> <p>3.5.2 install, prior to dam removal, and</p>	<p>The Proponent is of the opinion that requiring the installation of rock armour throughout the estuary is premature, at this time. Draft Condition 3.4 requires additional modeling to be completed prior to dam removal. This additional modeling would inform what mitigations measures would be required to limit sediment mobilization. It is premature to specify the mitigative measures if IAAC is requesting the modelling to be re-done. Suggest re-wording the condition to "Based on the findings of the sediment modeling to be completed as part of Condition 3.4, mitigation measures to minimize scouring will be developed and implemented prior to and during dam removal. Any proposed mitigation should also take into consideration future development for long-term depth of channel and the potential for impact on vessel access.</p>

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	maintain, during dam removal, rock armour throughout the estuary to minimize scouring; and	
Draft Conditions Section 3.7.1	<p>3.7 The Proponent shall develop, prior to site preparation and in consultation with the Mi'kmaq of Nova Scotia, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of mitigation measures as they pertain to the effects from removal of the dam on water quality and sediment deposition as predicted in modeling conducted pursuant to condition 3.4. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:</p> <p>3.7.1 monitor, prior to dam removal and continuing through post-closure, benthic habitat, including substrate types, macrofaunal and macrofloral species, and eelgrass (<i>Zostera marina</i>) in the estuary and the Northumberland Strait embayment area north of the estuary, and in other areas identified in consultation with Fisheries and Oceans Canada, including sensitive benthic habitat; and</p>	<p>The scope of work completed to support information Requirement IAAC-14 included field verification and delineation of eelgrass beds that were identified in topo-bathymetric lidar mapping in 2016. Field verification/delineation was limited to the Northumberland Strait. The Condition is requesting monitoring of eelgrass within the estuary and Northumberland Strait. Previous field work completed outside of the estuary identified limited eelgrass species. This was presented in the EIS documents. It is suggested that the scope of further monitoring for eelgrass would be dependent on additional modelling results.</p>
Draft Conditions Section 3.7.2	<p>3.7 The Proponent shall develop, prior to site preparation and in consultation with the Mi'kmaq of Nova Scotia, Fisheries and Oceans Canada, Environment and Climate Change Canada and any other relevant authorities, a <u>follow-up program</u> to verify the accuracy of the environmental assessment and the effectiveness of mitigation measures as they pertain to the effects from removal of the dam on water quality and sediment deposition as predicted in modeling conducted pursuant to condition 3.4. The Proponent shall implement the follow-up program during all phases of the Designated Project. As part of the follow-up program, the Proponent shall:</p> <p>3.7.2 monitor, prior to dam removal and continuing through post-closure, surface water quality, including total suspended solids and the extent and thickness of sediment deposition in the estuary and the</p>	<p>The Proponent has clearly stated in the EIS, through its Draft Environmental Management Plan, a commitment to environmental effectual effects monitoring both during remediation and post remediation. Supplemental Coastal Hydraulic Modelling Application of Mitigation Measures to Reduce TSS Concentrations in Water Entering the Northumberland Strait, as referenced in response to IAAC-14 (originally submitted as MEM-90, October 2021), indicated that "Seasonal background TSS concentrations, specifically late fall, and early winter, in the Northumberland Strait adjacent to the Estuary are to be verified with field measured TSS concentrations prior to dam removal". IAAC-14 also indicated that the Proponent "...intends to regularly confirm model assumptions and outputs along with effects predictions by completing marine habitat surveys and monitoring of water quality</p>

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	<p>Northumberland Strait embayment area north of the estuary, and in other areas identified in consultation with Fisheries and Oceans Canada, including sensitive benthic habitat.</p>	<p>(specifically TSS) and sediment deposition/flux to confirm current conditions in the Northumberland Strait embayment area directly north of the Estuary (pre and post dam removal). The monitoring program will be specifically completed prior to dam removal activities to document water quality and marine habitat conditions in the Northumberland Strait pre-dam removal".</p>
<p>Draft Decision Section 5.1.1</p>	<p>Fisheries and Oceans Canada stated that the Proponent's use of sediment quality data from <u>2003 may not be appropriate to determine the current sediment quality, as sediment quality and appropriate guidelines may have changed in the past 20 years and recommended that sediment samples from the embayment area north of the estuary and into Northumberland Strait should be collected prior to dam removal.</u></p>	<p>This has already been completed.</p>
<p>Draft Decision Section 5.1.1</p>	<p>Fisheries and Oceans Canada noted that the benthic habitat within the estuary was not investigated, therefore there are uncertainties about the species present in these areas and how they may be impacted by the Project</p>	<p>This has been completed. Information Requirement IAAC-14 and IAAC-22 provide information on the benthic work completed in the estuary.</p> <p>As part of GHD's HHERA (Appendix A of the EIS), five sediment samples were collected from the Estuary in 2018 for benthic invertebrate community characterization. The benthic invertebrate community characterization work completed during the 2018 supplemental site investigation focused on collection of samples in the open water areas of the Estuary using bulk sediment sampling methods (petite Ponar grab sampler). This sample collection methodology produced very few benthic organisms (similar results were encountered in the BHETF Freshwater Wetlands and reference wetland). Therefore, the 2019 supplemental site investigation work focused on benthic invertebrate sampling in the vegetated areas of the Estuary using the Canadian Aquatic Biomonitoring Network (CABIN) protocol termed the "sweep method" (CABIN Wetland Macroinvertebrate Protocol, ECCC [ECCC], 2019) to allow for comparison with the reference data. Seven samples for benthic invertebrate community characterization were collected from the Estuary in 2019. Samples collected using</p>

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		<p>the petite Ponar grab sampler in 2018 contained very few benthic organisms. The results of the 2019 sampling using the sweep method resulted in invertebrate abundance that ranged from seven to 195 individuals per sample.</p>
<p>Draft Decision Section 5.1.1</p>	<p><u>Fisheries and Oceans Canada disagreed with the Proponent's selection of the applicable CCME guideline thresholds.</u> The Proponent stated it would regularly confirm model assumptions and outputs along with effects predictions by completing marine habitat surveys and monitoring of TSS and sediment deposition/flux in the Northumberland Strait embayment area north of the estuary (pre- and post-dam removal).</p> <p>Fisheries and Oceans Canada noted that comprehensive field-based benthic habitat data for the estuary, including the Northumberland Strait embayment area north of the estuary, would be required to accurately assess the impacts of dredging and increases in TSS. <u>This information would be required for a Fisheries Act authorization and would inform appropriate measures to offset any destroyed fish habitat from dredging as well as any altered or disrupted habitat from sediment deposition. Fisheries and Oceans Canada noted the estuary is a brackish/marine environment where eelgrass could potentially be found and in the absence of data, the Proponent should assume these areas contain sensitive benthic habitat (e.g., eelgrass). The Proponent committed to completing a detailed monitoring program prior to removing the dam. As part of this program, underwater benthic habitat surveys would be conducted with an emphasis on mapping and delineating seagrass (including eelgrass) beds.</u></p>	<p>The CCME guidelines state that TSS can not be more than 25 mg/L above background levels which was applied in the context of evaluating TSS in Northumberland Strait. If there is another guideline to be applied, the Proponent should have been informed.</p> <p>The scope of work carried out to support Information Requirement IAAC-14 included field verification and delineation of eelgrass beds through underwater benthic habitat surveys in the summer and fall of 2022. It is suggested that the scope of further monitoring for eelgrass would be dependent on the additional modelling results.</p>
<p>Draft Decision Section 5.1.1</p>	<p>Fisheries and Oceans Canada is of the view that the duration of the effects would be medium-term and may be irreversible if eelgrass habitats are adversely impacted.</p>	<p>The previously completed Underwater Benthic Habitat Survey (UBHS) work completed in the summer and fall of 2022 (transects located in the Northumberland Strait) confirmed that minimal eelgrass was present. UBHS work completed in summer 2022 identified individual eelgrass plants</p>

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		were rarely observed along select transects (Transect 1 and Transect 4) in low abundances (<5 percent). Individual eelgrass plants were rarely observed along select transects (Transect 1, 5, and 6) in low abundances (<5 percent). No eelgrass beds were observed during the summer or fall 2022 UBHS. Transects 1 and 4 are located directly north of the Estuary.
Draft Decision Section 5.1.1	Habitat loss and fragmentation would potentially occur due to the construction of upgrade of the access roads, which would result in the permanent loss of portions of the wetlands.	Refer to Figure 7.3-26 of the EIS - Prediction of Future Conditions in the Site Study Area which shows that the wetlands would be less fragmented compared to current conditions.
Draft Decision Section 5.1.2, and Draft Condition 3.4	"To address these uncertainties, prior to removal of the dam, the Proponent is required to conduct sediment transport modeling to verify predictions for sediment deposition in the Northumberland Strait due to the removal of the dam."	To be exact, the Proponent is committed to conducting an additional sediment transport model following dredge activities in Boat Harbour and prior to dam removal.
Draft Condition 5.1.5	<p>5.1 The Proponent shall implement, from site preparation and continuing through closure, measures to mitigate fugitive dust and particulate emissions within the Site Study Area. In doing so, the Proponent shall:</p> <p>5.1.5 ensure all equipment and vehicles used, including equipment and vehicles operated by third-party contractors, are serviced and maintained in accordance with the manufacturer's maintenance guidelines to meet or exceed applicable emission standards, including <u>Tier 4 emission standards</u> for off-road equipment with off-road diesel engines, pursuant to the Off-Road Compression-Ignition (Mobile and Stationary) and Large Spark-Ignition Engine Emission Regulations and Off-Road Compression-Ignition Engine Emission Regulations.</p>	The Proponent is of the opinion IAAC has inappropriately referenced Tier 4 Standards. The Tier 4 Standards referenced by IAAC are manufacturing standards, not operational standards and are not appropriate for this type of project. The standard applies to diesel engines manufactured after January 2012. It is not applicable to engines manufactured before that date and there is no existing mechanism to monitor or verify compliance, regardless of the year of manufacture of the equipment. Modifications or repairs to the machinery could have been made after purchase that could cause the equipment to no longer meet the manufacturer's standards. It is unreasonable to expect the Proponent to be responsible for tracking this. The Proponent has committed to ensuring on-site equipment is maintained and in good working order.
Draft Decision Document 5.3.1	Health Canada indicated there are several uncertainties with the Proponent's HHERA that could lead to an underestimation of the human health risk from project activities. Health Canada disagreed with some of the methodology and/or assumptions used in the HHERA, including the Proponent's rationale for considering certain exposure	The Proponent does not agree. The HHERA was completed by the <u>American Board of Toxicology Certified Toxicologists and in accordance with accepted National Standards.</u>

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	pathways inoperable, which is further discussed in the sections below.	
Draft Decision Section 5.3.1	<p>Remedial objectives calculated by the Proponent are preliminary, and would be finalized during the provincial approval process pursuant to the Nova Scotia Environment Act.</p> <p>In Section 5.3.2 below: The Nova Scotia Contaminated Sites Regulations and Ministerial Protocol Framework, which prescribes the minimum requirements to assess and remediate contaminated sites in Nova Scotia, are applicable to the Project and will be incorporated into the provincial regulatory approval process. As part of this provincial process, Nova Scotia Environment and Climate Change may invite relevant federal authorities, such as Health Canada, to provide expert input, and this process will be used to finalize the remedial objectives.</p>	It is the Proponent's understanding that..."the Protocol Framework and the Contaminated Sites Regulations will not be utilized directly with this Project. It is the Proponent's understanding the requirements for assessment and remedial objectives found in the Nova Scotia Ministerial Protocols for Contaminated Sites will be used to inform the Industrial Approval that will be issued by NSECC.
Draft Decision Section 5.3.1	<p>The Proponent used a risk management approach to evaluate hazards and exposure potential in the SSA. The Proponent estimated which areas of the freshwater wetlands and estuary would require ex-situ sediment remediation using exposure point concentrations to achieve the remedial objectives (i.e., the SSTLs) for dioxins and furans. <u>Health Canada noted that there is uncertainty associated with using exposure point concentrations to delineate the extent requiring ex-situ sediment remediation because SSTLs are statistical estimates</u>, and removing impacted sediments to the target level is not precise.</p>	The Proponent does not agree. The HHERA was completed by the <u>American Board of Toxicology Certified Toxicologists and in accordance with accepted National Standards.</u>
5.3.1 Prediction of Effects - Effects to Physical Health - Country Foods	<p>The Proponent's HHERA considered the consumption of country foods as an operable pathway for plants, game organs, and waterfowl, but consumption of terrestrial plants, fish from the wetlands, shellfish, terrestrial game meat and organs, and aquatic game meat was considered inoperable.</p> <p>Exposure point concentrations are estimates of the average chemical concentrations in an environmental medium in a defined area.</p>	The HHERA was completed by the American Board of Toxicology Certified Toxicologists and in accordance with accepted National Standards. To be clear, the pathway was considered inoperable because the tissues tested to support the HHERA were statistically similar to background.

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Draft Decision Section 5.3.1	<p>The Proponent acknowledged there are uncertainties about COPC concentrations in aquatic biota as a function of the type and life cycle of species that may re-colonize the area post-closure and committed to post-closure monitoring of country foods. Health Canada recommended that the country food monitoring program reconsider any contaminants or pathways, including the consumption of shellfish, <u>that were screened out using inadequate methods.</u> Health Canada recommended that the monitoring be informed by PLFN and the Mi'kmaq of Nova Scotia and include provisions to adapt monitoring to include new species that may colonize in the area post-closure.</p>	<p>This statement is inaccurate. Shellfish consumption was not screened out. Shellfish were included and compared to background.</p>
Draft Decision Section 5.3.2	<p>IAAC is of the view that if the SSTLs proposed by the Proponent are used as remedial objectives for the Project, <u>there is a greater potential for post-remediation contamination levels to exceed levels fully protective of human health, in comparison to using remedial objectives that consider all operable exposure pathways, COPCs, and accurate site exposure assumptions.</u></p>	<p>To be exact, all operable exposure pathways were considered in the development of the SSTLs as part of the HHERA, based on anticipated future usage of the Site.</p> <p>SSTLs would be finalized during the NSECC Industrial Approval Process, as per Section 2.3.2 of the Draft EIS.</p>
Draft Decision Document Section 5.4.2	<p>"Given the proposed mitigation measures and the definitions of the environmental effects rating criteria in Appendix A, the magnitude of residual effects assessed above on the cultural heritage of the Mi'kmaq of Nova Scotia and PLFN is considered to be high, with a long-term duration, and continuous frequency. Due to the permanent presence of the containment cell, effects would be irreversible. IAAC acknowledges that the negative effect that the permanent physical presence of the vertically expanded containment cell will have on the ability of PLFN and the Mi'kmaq of Nova Scotia to heal and resume cultural practice in A'se'k, would be of such a high magnitude, duration, and frequency that they are unlikely to resume traditional use in the area."</p>	<p>The Proponent does not agree with this finding. Refer to the section on Aboriginal and Treaty Rights in the foregoing response.</p>
Draft Decision Section 5.5.1	<p>This section of the document has emphasized a number of quotes from the PLFN Well-Being Study that was commissioned by the Proponent and lead by PLFN, although no reference is provided by IAAC, they are quotes from community</p>	<p>There are several negatively biased statements quoted from the wellness report that do not reflect the conclusion of the report. It should be pointed out that a quote from the Conclusion of the Wellness Study was clearly not identified as its ultimate</p>

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	members interviewed during the baseline study.	conclusion: "So, I really do want remediation to happen and I believe...that's when we are going to start healing and trying to become closer and just having a better life all together".
Draft Decision Section 5.5.2	"Prior to site preparation and in consultation with PLFN and the Mi'kmaq of Nova Scotia, retain the services of Indigenous monitors to observe, record, and report on the implementation of the mitigation measures and follow-up programs required of the Proponent."	The role of an indigenous monitor will be addressed in the proponent's project governance documents.
Draft Decision Section 6.1.2	IAAC shares Fisheries and Ocean's concern with the Proponent's assessment that if a spill occurred near or in a water body, resident fish populations would re-establish within one to two years because contaminants will be flushed downstream and become diluted during heavy rain or high flow events.	The Proponent is fully aware of environmental consequences of accidental spills of any deleterious substances and, as such, has prepared mitigative measures for this unlikely event. Section 7.4.1.3.8.2 Fish and Aquatic Habitat, of the EIS indicates, "It is anticipated that in the highly unlikely event of a large diesel spill into a watercourse, resident fish populations would re-establish within the affected area within 1 to 2 years.". Further, IAAC-73 indicates "In addition, site-specific mitigation measures would be evaluated and implemented including involvement of Provincial and Federal (i.e., DFO/ECCC) agencies during the spill response and remedial activities to ensure any required re-establishment of terrestrial or aquatic habitat occurs in a timely fashion."
Draft Decision Section 7.2	"However, the Proponent acknowledged that the permanent use of the on-site containment cell for the long-term storage of hazardous waste would continue to negatively impact PLFN's section 35 rights at this site and surrounding reserve lands."	<p>This statement is incorrect. The Proponent has, in fact, not acknowledged this and presents evidence to the contrary. This issue was addressed in the EIS Submission and in a subsequent information Requirement Submission.</p> <p>In the Final Position of Pictou Landing First Nation on Proposed Boat Harbour Remediation Project Document (April 23, 2024), PLFN incorrectly asserted something the Proponent did not state: in Section 54, "Given the Province's acknowledgement that the existing Boat Harbour Landfill has had, and will continue to have, an adverse impact on IR 37 and IR 24G (see EIS s. 6.4.2.2, at p. 6-14), PLFN will have no trouble establishing a prima facie infringement"; and in Section 66, "The Province acknowledges in the EIS that the existing Boat Harbour Landfill interferes with</p>

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		<p>the use and enjoyment of IR 37 and IR 24G. From the EIS s. 6.4.2.2, at p. 6-14: The existing containment cell is situated between IR 37 and IR 24G as shown on Figure 1.2-1. It does result in some limitation on land use in the areas around the existing containment cell and future modern containment cell."</p> <p>In fact, the EIS s. 6.4.2.2, at p. 6-14 and 6.15 states "The existing containment cell is situated between IR 37 and IR 24G as shown on Figure 1.2-1. It does result in some limitation on land use in the areas around the existing containment cell and future modern containment cell. It is anticipated that such limitations on land use will not be further impacted by the BHRP as the use of the containment cell is a long-term component of the Project with its planned maintenance and management during and post-remediation."</p> <p>This is further clarified by the Proponent in the Response to IR 82, where the Proponent clearly points out that "The Project was designed through public engagement and consultation with the PLFN since 2015. The Project will ultimately lessen the geographic extent of the current underlying adverse effects on PLFN's Section 35 rights by limiting them to the footprint of the existing containment cell, which will be vertically, but not horizontally, expanded as part of the broader remediation of Boat Harbour and the lands associated with the Boat Harbour Effluent Treatment Facility (BHETF). The Project, when completed, will enable the PLFN to exercise their asserted or established Aboriginal and/or Treaty rights in a broader geographic portion of PLFN's traditional territory (A'se'k) than they have been able to do since the Mill was constructed in the 1960s. Accordingly, the Project advances reconciliation by balancing the rights and interests of the PLFN with the rights and interests of all Nova Scotians, in accordance with the Honour of the Crown." (BHRP response to Information Requirement 82, February 6, 2024.)</p>

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Draft Decision Section 7.2.2	"Although the Proponent acknowledged that the area containing the containment cell would continue to restrict PLFN's ability to exercise their section 35 rights within the SSA....."	This statement is incorrect. See comment above. The Proponent recognized a restriction within the confines of the containment cell property itself, not the SSA, which comprises 1% of the SSA. <u>That is a significant misstatement.</u>
Draft Condition 4.5	"The Proponent shall develop, prior to site preparation and in consultation with the Mi'kmaq of Nova Scotia, Environment and Climate Change Canada and any other relevant authorities, measures to prevent migratory birds from using dredged wetlands, the settling basins, the aeration stabilization basin, the containment cell, and areas of the Site Study Area where contact water is stored or conveyed. Measures shall include installing and maintaining deterrents and shall be implemented prior to site preparation and continuing until the dredged wetland or Project infrastructure where contact water is stored or conveyed has been reclaimed."	It is unclear what "contact water" means. The Proponent is committed to safely using deterrents to keep birds away from active dredge areas but does not see the value in using deterrents in areas of the site that are not under active remediation. After all, birds do use the site in its present condition.
Draft Condition 8.2	"The Proponent shall require the independent environmental monitor to report to the Mi'kmaq of Nova Scotia and the Agency in writing, prior to or concurrent with reporting to the Proponent, if, in their view, any Designated Project activity does not comply with any condition set out in this document from the start of site preparation and continuing through closure."	Any and all monitors report to the Proponent first and foremost, as the directing mind. The adaptive management framework within the environmental management plan requires immediate notification to the Proponent to ensure timely and proactive corrective action, thereby avoiding environmental impacts. Any reporting to PLFN and other stakeholders and regulators will be addressed in the Project's Environmental Management Plan and communication plan.