

Marten Falls Community Access Road Project
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Webequie Supply Road Project / Ontario Region
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VIA EMAIL

Re: Webequie Supply Road Project and Marten Falls Access Road
Comments on the draft Tailored Impact Statement Guidelines and draft Indigenous Engagement and Partnership Plan

I write as an advisor to the Neskantaga First Nation.
The Nation has a number of questions and concerns regarding the draft Tailored Impact Statement Guidelines for the Webequie Supply Road Project, the Marten Falls Community Access Road Project and the companion indigenous engagement and partnership plans.

Our questions and concerns apply to the draft impact statement guidelines for both projects.

Context

“For over a century, the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as “cultural genocide.” Final Report of the Truth and Reconciliation Commission, Executive Summary pp. v, 1.

MMIWG Final Report
Calls for Justice

“As the evidence demonstrates, human rights and Indigenous rights abuses and violations committed and condoned by the Canadian state represent genocide against Indigenous women, girls, and 2SLGBTQIA people. These abuses and violations have resulted in the denial of safety, security, and human dignity. They are the root causes of the violence against Indigenous women, girls, and 2SLGBTQIA people that generate and maintain a world within which Indigenous women, girls, and 2SLGBTQIA people are forced to confront violence on a daily basis, and where perpetrators act with impunity.”

The steps to end and redress this genocide must be no less monumental than the combination of systems and actions that has worked to maintain colonial violence for generations. A permanent commitment to ending the genocide requires addressing the four pathways explored within this report, namely:

- historical, multigenerational, and intergenerational trauma;
 - social and economic marginalization;
- maintaining the status quo and institutional lack of will; and
- ignoring the agency and expertise of Indigenous women, girls, and 2SLGBTQQIA people. “

The environmental assessment of the two proposed roads is occurring in the context of continuing cultural genocide and an ongoing social emergency in Neskantaga, and other Matawa Nations. The social emergency, and the bureaucratic process through which Neskantaga is compelled to navigate, profoundly compromises Neskantaga’s chance to meaningfully participate in the assessment process.

The legislated timeline restricts participation by Neskantaga.

Neskantaga needs to be engaged on a government to government basis at the outset of the assessment process to ensure that the process is designed in a manner that is able to address their unique context, social emergency, interests and rights.

Culturally Safe Environmental Assessment

Culturally safe environmental assessment involves understanding and acknowledging the continuing impact and historical legacies of the cultural genocide and the current social emergency. The assessment must be a process where Neskantaga feel safe to participate.

The new legislation require gender-based socio-economic impact assessments. How will the Agency ensure that these impacts are predicted in a culturally-safe way taking into account each community’s own sensitive and recent experiences with violence and loss?

How will the cumulative effects assessment manage the compounding risks of opening up a previously remote area, taking into account the local perspectives and knowledge? How will the impacts on Indigenous women and girls be specifically considered in cultural context?

The final report of the National Inquiry into MMIWG detailed how “resource extraction projects can drive violence against Indigenous women in several ways, including issues related to transient workers, harassment and assault in the workplace, rotational shift work, substance abuse and addictions, and economic insecurity. How will the Agency ensure that these impacts are studied

with respect to the distinct culture and geographic vulnerability of each of the remote communities?

Project Overview

The road projects were not developed in partnership with Neskantaga. As a result, the Projects do not reflect Neskantaga's approach to responsible and sustainable development, and pose a threat to the well-being of Neskantaga's territory and people.

The process has been proponent driven. The proponents unilaterally determined the commencement, alternatives and location of the proposed roads without consultation with Neskantaga or consideration of Neskantaga jurisdiction, regional development goals and management objectives, or areas of unique cultural value that the Projects may put at risk.

Neskantaga is concerned that Ontario, as both the funder and regulator of the projects, is 'project splitting' — intentionally breaking a project up into its component parts in order to avoid a federal environmental assessment at the appropriate scale, thereby compromising the discussion of the potential impacts of the development of the region as a whole. Ontario has cut the project into pieces in order to more easily win federal approvals, obtaining authorization for the less politically contentious parts of the project by artificially creating First Nation project proponents and making the development of the rest of the project a foregone conclusion.

The full scale and impact of Ontario's project has not been presented to either the the Agency, Neskantaga and the public. Ontario's failure to disclose the full scale of its project plans has resulted in an improper scoping of the assessment

Neskantaga has broad strategic level concerns about the two proposed roads.

The roads are intended to promote and facilitate future roads, mines and mining exploration, airstrips, winter road widening, a trans-load facility at the rail line, transmission lines and possibly a railway line and refinery in the region.

Neskantaga is concerned that an incremental and piecemeal 'road by road' assessment approach will unreasonably minimize the impacts of 'opening up of the North' and the development of the region until it is too late and decisions are irreversible.

Neskantaga, and other Matawa First Nations, had previously agreed that no roads would be initiated until an agreement with Ontario had been reached on joint decision making in the region.

Is there a mechanism for higher-level assessment and planning that could address Neskantaga's big-picture regional and strategic issues up front? If not, how will the Agency effectively manage cumulative impacts in the region that the roads will inevitably open up?

Alternatively, what is the mechanism for consultation and accommodation with Neskantaga prior to the real strategic decision on whether the development of the entire region should proceed?

Several communities have direct, indirect and historical interests in areas of proposed road construction, and certainly will be affected by any resource development in the region if the roads are developed. What strategies are proposed for collecting, synthesizing and analyzing Land Use and Occupancy information to aid assessment of impact(s)?

If there is a coordinated strategy, how will the proponents utilize this information while simultaneously protecting confidential or sensitive information held by specific knowledge holders from diverse First Nations communities?

Will Indigenous land use and occupancy information contribute to cultural heritage impact assessment regulated by Provincial authorities? If so, who will be responsible for managing such information, ensuring appropriate use by heritage consultants commissioned by the proponents, and undertaking long-term information curation?

How will information about sacred places and burial places be managed? Will the Registrar of Cemeteries within the Ontario Ministry of Government and Consumer Services be part of a process of documenting and protecting reported burial places?

Beyond the opportunity to provide comments and make recommendations with respect to the Guidelines, would the Agency consider the option of negotiating amendments to the Guidelines with Neskantaga and/or a government to government process agreement?

UNDRIP, including the principle of free, prior, informed consent.

The Minister of Justice and Minister of Indigenous and Northern Affairs provided Canada's full support to the UN Declaration "without qualification" at the United Nations Permanent Forum on Indigenous Issues in New York in May 2016.

This commitment requires Canada to engage with Neskantaga, in good faith, at a government to government level, to obtain Neskantaga's free, prior and informed consent before Crown decisions are made that affect Neskantaga's inherent, aboriginal and Treaty rights and other interests.

A full understanding of Neskantaga's rights would require consideration of how they are defined under Neskantaga law as well as Canadian and International laws and declarations.

The principle of free, prior and informed consent, a core principle for Neskantaga and all Matawata Nations, and a principle agreed to and promoted by the Proponents, should be explicitly set out in the TISGs.

How does the Agency plan to implement FPIC in this process?

Will Neskantaga First Nations be treated as partners in the assessment process with their own decision-making authority?

Will the EA process require assessment of project impacts on rights protected by UNDRIP?

How will the Agency ensure adequate funding for Neskantaga to fully and meaningfully participate at all stages throughout the process?

In what circumstances should funding be provided by proponents?

Reconciliation and TRC Calls to Action

Will the Agency seek consensus with Neskantaga, and possibly other Matawa Nations, on key decisions[for example VCs, information requirements, potential effects, mitigation, terms and conditions] throughout the assessment process?

Will there be an agreed dispute resolution process when consensus on issues in dispute is not reached?

In the past, Neskantaga has experienced Crown consultation and engagement as adversarial. How will the Agency create a culturally safe process that supports reconciliation between the Crown and Neskantaga?

Cumulative Effects

Ontario has already authorized the staking of extensive mining claims and permitted early exploration on Neskantaga's ancestral lands without regard to the cumulative effects and adverse cumulative impacts of the mining exploration on Neskantaga's meaningful exercise of its inherent, Aboriginal and Treaty rights.

How will the cumulative effects framework developed during the assessments of the proposed roads inform the potential impacts of existing mining claims and mining exploration and future projects? How will Neskantaga, and other Matawa Nations, participate in the governance, oversight and delivery of a cumulative effects management framework ?

How will the cumulative effects approach assess alternative future development scenarios for the region?

How can Neskantaga's visions for alternative future development scenarios be considered in this process?

How will the cumulative effects assessment ensure that decisions and activities in the so-called Ring of Fire region align with the community vision of Neskantaga?

Sustainability

In order to meet the positive contribution to sustainability test, proponents must be required to demonstrate that their projects will mitigate the ongoing social emergency in Neskantaga and other Matawa communities and enhance Neskantaga's social, cultural and ecological sustainability goals.

The fundamental goal of Neskantaga is to ensure that future generations can access healthy lands, waters and river systems and resources in sufficient abundance on our ancestral lands to sustain the ongoing exercise of our inherent, Treaty and aboriginal rights to sustain our community, indigenous legal orders, language, culture and economy.

The ability to continue to steward these lands into the future is a crucial interest of Neskantaga's that needs to be protected through this process. How will the Agency ensure that our stewardship obligations are considered and accommodated?

To achieve our sustainability goals, Neskantaga must be in a position to manage the pace, scale, location and number of activities on their territory. How will the EA decisions consider and be consistent with achieving Neskantaga's fundamental sustainability goals? Will there be a sustainability test based on our goals and criteria?

Will the Agency/and or Proponents provide reasons – including addressing specific criteria for how the decision meets Neskantaga's sustainability objectives, identifying the evidence relied upon, and addressing how Neskantaga input was considered and how it influenced the decision?

Quarry Management

Will the Proponents be required develop site-specific quarry operation and management plans in advance of the development of any potential quarry site or borrow pit? If not, why not?

What role will Neskantaga [and other Matawa Nations] have in oversight on quarry design and management? Neskantaga is particularly concerned that quarries are often located in areas[eskers] of high harvesting and archaeological potential. These eskers are also notable zones of ecological diversity in a landscape dominated by muskeg wetlands

Economic Viability

In order to understand the economic impacts of the proposed projects on our community, we need to know how the roads will achieve sufficient revenue to pay back the capital invested and pay the ongoing operating expenses?

Will the construction of the roads have minimum Matawa First Nation member employment and procurement goals? If so what will these goals be and how will they be arrived at?

Baseline Studies

Will the baseline studies consider mental health and well-being in the communities?

Will the proponents be required to demonstrate that the projects will improve mental health and well-being in the context of mitigating the ongoing crises? What kinds of evidence will be required for them to demonstrate this?

Will the temporal and spatial boundaries for baseline data collection include past, present, and planned future Neskantaga rights and interests?

Will the Proponents be required to determine baseline metal levels of soils used by berry-producing plants? If not, why not?

Will the proponents be required to determine baseline metal levels in moose, caribou and fish ? If not, why not?

Road Transport Volume

Will the total volume of traffic and goods transported on the roads be regulated or capped as a term and condition of the EAs?

Indigenous Engagement and Partnership Plan

There is currently no shared or joint decision-making for the Projects.

The first step in a shared decision making process is to discuss the process itself. When and where will this discussion on shared decision making take place?

Will the Agency seek to create a consensus based engagement and partnership process with Neskantaga, and possibly other Matawa Nations, on key decisions [for example VCs, information requirements, potential effects, mitigation, terms and conditions] throughout the assessment process?

If the Proponents refuse to provide Neskantaga with complete responses to information requests made throughout the assessment process will the Agency demand that Proponents clarify their responses to Neskantaga?

Will there be an agreed dispute resolution process where consensus on issues in dispute with the Agency and/or Proponents is not reached?

Will there be formal stages in the assessment process for Neskantaga to grant or deny consent? Alternatively, how will Neskantaga's consent (or not) be registered?

If the Agency's recommendation to the Minister[s] about whether to approve the road project[s] contradicts the decision of Neskantaga to withhold or grant consent, will the Minister[s] offer to meet Neskantaga , and follow through on the offer if Neskantaga responds, before making a final decision?

Transparency and Accountability

How will the proponents demonstrate any change in the projects as currently proposed that result from a response to Neskantaga concerns?

Will Neskantaga have access to the material that the Crown used to preliminarily ascertain the scope of their aboriginal and Treaty rights?

Will Neskantaga's comments during the assessments be summarized or otherwise provided to Minister[s] making a final decision regarding EA approval?

Will the advice of any technical advisory committee to the Agency be made available on a timely basis to Neskantaga?

Will the Agency's final recommendations to the Minister[s] be publicly released?

Right of Appeal

Which aspects of the procedural and final assessment decisions are subject to a Neskantaga right of appeal? When do these rights come into effect?

Regards,
David Peerla