



# Tsleil-Waututh Nation

## səlilwətəl



November 27, 2020

Brett Maracle  
Crown Consultation Coordinator  
Impact Assessment Agency of Canada  
160 Elgin Street  
22<sup>nd</sup> floor  
Ottawa, ON K1A 0W9

### **Re: TWN Feedback on Initial Project Description for the GCT Deltaport Expansion, Berth Four Project**

Dear Brett Maracle,

We acknowledge receipt of correspondence from the Impact Assessment Agency of Canada (IAAC) to Tsleil-Waututh Nation (TWN), dated October 13, 2020, requesting feedback on the Initial Project Description (IPD) accepted by IAAC from GTC Canada Limited Partnership (GTC) for the Deltaport Expansion, Berth Four Project (DP4).

In its correspondence to TWN, IAAC specified that the objectives of the feedback are to:

- Identify key issues or initial concerns the TWN community has regarding DP4 including potential impacts on the environment, human health, social and economic conditions;
- Our views on whether an assessment should be required and if so, what type of assessment process should apply; and
- TWN interests including cultural considerations and exercise of our Aboriginal rights.

Please find our submission in respect of each item below.

## **Key Issues and Initial Concerns**

### Impacts to Fish and Fish Habitat and TWN Rights

The proposed DP4 is adjacent to the Fraser River where TWN has harvested salmon and other marine resources for millennia and continues to practice their fishing and harvesting rights in the mouth of the Fraser. Indeed, because of the impacts of urban and industrial development to the ecosystems within TWN territory, there are almost no remaining sources of healthy traditional foods available to TWN within their territory besides salmon from the Fraser River. This situation makes access to Fraser River salmon all the more critical to TWN; fisheries are already under pressure from various stressors, including climate change, and may be further impacted by the ongoing development of the area and associated marine shipping.

In addition, the proposed terminal is within the location where TWN harvests crab. TWN is unable to fulfill a traditional diet due to the low numbers of salmon and crab that can currently be harvested in

our ancestral territory. TWN continues efforts to access other fish species such as sturgeon, eulachon and herring once population numbers reach sustainable limits to harvest. TWN's food sovereignty is to ensure that every member and household can eventually live off the land and waters as their ancestors once did.

Not only will TWN's rights to fish be impacted; DP4 may adversely impact fish and fish habitat including alteration and loss of fish habitat, as well as disruption of migratory routes and fish mortality. Thus, potential upstream and downstream effects of the project could negatively affect TWN's access to these fisheries, and the project itself could potentially affect almost all migratory salmon within the Fraser River system. Further impacts to Chinook salmon need to be considered as they are a staple of Southern Resident Killer Whale (SRKW) diet and both are already facing population decline.

### Impacts to SRKW and their Critical Habitat

Tsleil-Waututh's connection to SRKW cannot be stated enough. Our community's culture and teachings are tied to their well-being and survival. This project has the potential to negatively impact this already struggling population of orca since the proposed terminal is located within SRKW critical habitat and marine shipping routes will traverse through SRKW critical habitat. Existing threats to the SRKW population include environmental contaminants, reduced prey availability, disturbance, noise pollution, and vessel strikes. Increased marine traffic would increase the risk to SRKW from these threats and contribute to cumulative adverse impacts to SRKW habitat and their life functions.

Furthermore, the proponent is proposing to accommodate larger vessels with the addition of DP4, asserting that "Global marine shipping industry consolidation is resulting in fewer, but larger vessels..." In order to understand the implications of this industry movement the proponent will need to address the potential impacts of larger vessels, particularly their potential impacts on marine mammals, compared to more frequent, smaller vessels.

### Potential Approval of Roberts Bank Terminal 2 Project

According to the IPD, DP4 is being proposed to expand west coast container terminal capacity to meet container volume growth forecasted for the Port of Vancouver, and to allow western Provinces to meet their future trade and economic objectives. Meanwhile, the Vancouver Fraser Port Authority (VFPA) is proposing to construct the Roberts Bank Terminal 2 Project (RBT2), which could meet the predicted demand in container capacity should it receive approvals.

Since 2011, TWN has spent considerable time and resources actively participating in the review of the VFPA's RBT2 Project; DP4 is presented in the IPD as a viable alternative to the RBT2 project. With DP4 now entering the IA process TWN is concerned about the prospect of now two major projects being approved and constructed to increase container capacity. With only one project required to meet projected container capacity demand what assurances can the Canadian Government provide that both RBT2 and DP4 will not be approved?

### Short Sea Shipping Operations

A short sea shipping berth is being considered as part of DP4 to support local distribution of goods currently being moved by trucks between GCT Deltaport and destinations in Metro Vancouver, including along the Fraser River. The IPD does not provide any information on the operation phase of the short sea shipping berth, including short sea shipping routes, other proposed short sea shipping terminals or anticipated volumes of short sea shipping traffic. Instead the IPD defaults to "additional information, if available, will be provided during the environmental assessment process." The IPD also implies that if

the short sea shipping berth cannot be used for its intended purpose, the area of the terminal will be used for container operations and thus makes little difference to the design of DP4.

While the short sea shipping berth may make little difference to the design of the project, an increase in local marine shipping traffic particularly along the Fraser River has huge implications for the local ecosystem and TWNs rights, as previously discussed. Operational details such as planned short sea shipping routes, expected volume of short sea shipping traffic and proposed terminals must be provided for the short sea shipping component of DP4 to be fully understood and evaluated in the IA. Short sea shipping operations as part of DP4 cannot be approved without this information. This includes any future operation of the berth as a short sea shipping terminal if the project is constructed, but short sea shipping has not been assessed. The viability of short sea shipping in the Port of Vancouver needs to be determined and if deemed feasible operational details need to be provided in the Detailed Project Description. Otherwise, the short sea shipping component of DP4 should be removed.

### Cumulative Impacts

TWN recognizes that the location of the proposed project is in a productive ecosystem that includes mudflats, eelgrass, biofilm, marine mammals, fish, crab and other wildlife. Roberts Bank has already been impacted due to the placement of the existing Roberts Bank terminal and surrounding infrastructure including BC Ferries. TWN requires the proponent to address cumulative impacts from DP4 including use of marine shipping routes.

Furthermore, cumulative impacts on valued components must be assessed applying a pre-contact baseline, and not from the “present condition.” Cumulative impacts must also be assessed beyond the life of the project, since if DP4 is built, it is unlikely to be decommissioned.

In addition, cumulative impacts to air quality and the compounding impacts of Climate Change (attached TWN’s Climate Change Vulnerability Report), and cultural heritage, including intangible cultural heritage will need to be assessed.

### Scope of the Impact Assessment

The IPD states “for marine shipping of containers via international waters, the assessment will extend from GCT Deltaport through the international shipping lanes to Buoy J, which marks the western entrance to Juan de Fuca Strait from the Pacific Ocean.” TWN requires that the spatial scope of the assessment of impacts from marine activities associated with marine shipping extends to the 200 nautical mile limit from the coast to encompass all of Canada’s exclusive economic zone (EEZ) as well as all SRKW critical habitat.

According to the United Nations Convention on the Law of the Sea (UNCLOS), Canada has “sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living” within its EEZ. Scoping out project-related marine shipping within the EEZ for the designated Project that must be assessed under Impact Assessment Act (IAA) is not only negligent, considering Canada’s responsibility to conserve and manage natural resources in the EEZ, but doing so ignores the purpose of IAA, which is to protect the environment from significant adverse environmental effects caused by the designed Project.

### Assessment Requirements

TWN expects that an Impact Assessment (IA) be required for DP4 under Canada’s Impact Assessment Act given:

- the possible adverse effects of DP4 are within federal jurisdiction (fisheries, navigation, and shipping);
- the potential for adverse cumulative impacts to SRKW, a Schedule 1 (Endangered) species under Canada's Species at Risk Act, and their critical habitat; and,
- the potential for adverse impacts on the rights of TWN.

Furthermore, TWN believes the IA should be referred to a Review Panel. A Joint Review Panel with BC would facilitate a coordinated environmental assessment. Also, RBT2 was conducted under a Review Panel (albeit under CEAA 2012) and sets a precedent for this type of project. There is also a potential for the project to cause significant environmental effects in a multitude of ways. Lastly, there will be significant Indigenous and public interest in deep participation, requiring public hearings.

The federal IA should be conducted in cooperation with BC's Environmental Assessment Office in accordance with an Impact Assessment Cooperation Plan developed for DP4. This plan should aim to reduce duplication of efforts required by Indigenous Groups participating in both the federal and provincial impact assessment processes.

### Consultation with TWN

As an Indigenous government, TWN holds governance rights, including jurisdiction and decision-making authority based in Tsleil-Waututh laws and legal principles.

DP4 falls within TWN's consultation area (attached Consultation Area) and is thus subject to the conditions of TWN's Stewardship Policy, which outlines TWN's stewardship laws and requirements for meaningful consultation with TWN, on projects taking place in the Nation's territory. The Stewardship Policy embodies and mandates TWN rights, jurisdiction, and authorities.

Given the size and location of DP4, and the potential for irreversible serious and intergenerational negative effects to Tsleil-Waututh (described further below), we require and expect to be fully and meaningfully consulted on all aspects of the project, from engagement on the IPD, through the Impact Assessment process to decision making, including any project activities after a Decision Statement is issued, such as design, construction, operation, monitoring, and decommissioning.

It is well-known that the Government of Canada has a legal obligation to consult with First Nations to avoid the unjustified infringement of Aboriginal rights and title, to achieve free, prior and informed Indigenous consent in advance of projects proceeding, to mitigate impacts, and to accommodate First Nation interests. TWN is committed to engaging in the impact assessment process under the *Impact Assessment Act* as an Indigenous participating Nation, provided that all parties engage in good faith, and with the expectation that TWN's Stewardship Policy serves to guide meaningful Consultation, including the option of a TWN Led Assessment.

## Cultural Considerations and Exercise of TWN Rights

As articulated under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Aboriginal title as developed by the Canadian courts, TWN holds Aboriginal rights, title and interests in their unceded territory, including the land, air, water, and resources therein. TWN holds the Aboriginal rights to practice and preserve their traditional culture, the right to gain economic benefit from the lands and resources of their territory, and the rights to self-governance and self-determination (UNDRIP Articles 3, 4, 5, 8, 11, 12, 13, 20, 21, 24, 25, 26). With relevance to DP4, this includes but is not limited to cultural relationships with Southern Resident Killer Whales (SRKWs), preservation of archaeological

materials, food sovereignty, access to cultural sites and cultural practices as well as gaining economic benefit from the project location.

Tsleil-Waututh Nation is a First Nation community and government that has governed, occupied and stewarded the lands and waters surrounding Burrard Inlet and the TWN territory since time out of mind. TWN law and governance includes our stewardship obligation: the responsibility to maintain and restore conditions in our territory that provide the environmental, cultural, spiritual, and economic foundation our nation requires to thrive, for past, present and future generations.

Continued industrialization of the Roberts Bank and the Fraser River impacts our ability to fulfill our stewardship obligation and in doing so impacts our rights to practice and preserve our traditional culture. TWN has and always will advocate for our cultural traditions and practices.

Based on the information provided at this time in the IPD, it is not possible to pre-empt all the potential impacts of the Proposed Project on TWN's rights, title and interests. However, in addition to those key issues and initial concerns expressed above, TWN has the following concerns with respect to potential impacts to TWN culture and exercise of our rights:

- **Reduced accessibility to the Fraser River:** TWN is concerned about increased levels of marine shipping activity including short sea shipping, which could change accessibility to the mouth of the Fraser.
- **Impacts to travel in small vessels:** Increased levels of marine shipping could negatively impact travel in small vessels used by TWN for subsistence travel and fishing. This could have physical infringement on the harvesting of traditional foods, especially salmon and crab.
- **Impacts to Sockeye salmon and fishing rights:** Sockeye salmon from the Fraser River is the primary traditional food still harvested by TWN and fishing is integral to TWN culture because historically fishing was the basis of TWN entire economy and way of life. Current TWN fishing practices have been heavily curtailed, including the near-complete or complete absence of herring, eulachon and other small fish and sturgeon from TWN diets. Almost all TWN's fish now comes from the Fraser River. TWN is concerned about negative impacts to fish populations (especially salmon), further precluding TWN's ability to harvest these resources and negating TWN's environmental remediation programs aimed at restoring these resources and other now scarce fish (especially herring, eulachon and sturgeon).
- **Impacts to other traditional local foods, harvesting rights, and cultural activities:** TWN is concerned about compounded negative impacts to shellfish populations (especially crab and clams) and marine bird populations (especially duck species). Impacts to fish, shellfish, and birds would in turn impact TWN cultural and ceremonial activities through the reduction of traditional foods (salmon, clams, crab, herring and birds) that are central to such activities. Current FSC crab allocations are low (~800 pieces), resulting in only slightly more than one crab per person per year in the TWN community. Expansion of TWN FSC crab harvest is a priority for the TWN community. Even though shellfish closures are in place, TWN has been working to ensure such harvesting practices can be realized again.
- **Impacts to cultural transmission:** Negative impacts to the availability of traditional local foods would also in turn effect TWN cultural transmission, because the harvesting and preparing of traditional foods is the primary context for knowledge and skills being transmitted from one generation to the next.

- Potential impacts to cultural sites and intangible cultural heritage: Tsleil-Waututh identity encompasses the relationship we have to our cultural practices, traditions and language. Cultural sites exist within the project area, the location of which can not be disclosed to the public. Impacts to these sites/areas could cause irreparable harm to the historical, current and desired future uses of the sites and/or intangible cultural heritage and practices of TWN, including our ability to sustain cultural and spiritual practices.

Tsleil-Waututh has been advocating that all projects, whether TWN-led or Proponent-led, aim for net environmental gain. Since industrial development began, TWN's resources and ability to sustain themselves off the land has been impacted. The work TWN does today is to ensure the limited resources remaining are available today for future generations.

The purpose of this letter is to provide preliminary feedback on GTC's DP4 Project and specifically on the IPD. We have also attached a tracking table with comments referencing specific sections of the IPD. The information provided in this letter and in the table is procedural in nature and not substantive in terms of content not consultation. Should you require anything further on this matter please do not hesitate to contact Brittany John, Referrals Analyst ([bjohn@twnation.ca](mailto:bjohn@twnation.ca)). TWN looks forward to working with you on this Project.

Sincerely,

<Original signed by>

Melanie Walker  
Consultation and Accommodation Manager – Environmental Assessments  
Tsleil-Waututh Nation

CC: Stefan Crampton, Impact Assessment Agency of Canada  
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Attachments: Tsleil-Waututh Nation Stewardship Policy  
[Tsleil-Waututh Nation Climate Change Vulnerabilities Report](#)