

Comment Template for the Review Panel Terms of Reference and the Canada-British Columbia Cooperation Agreement for the GCT Deltaport Expansion – Berth Four Project

This comment template has been prepared to guide your review of the following documents:

- Draft [Canada-British Columbia Cooperation Agreement on the Coordination of the Environmental and Impact Assessment Processes for the GCT Deltaport Expansion – Berth Four Project \(Cooperation Agreement\)](#): describes how the Impact Assessment Agency of Canada (the Agency) and the British Columbia Environmental Assessment Office (EAO) will coordinate during the assessment of the Project.
- Draft [Review Panel Terms of Reference \(Terms of Reference\)](#): identifies the mandate of the Review Panel and sets out the framework for the assessment led by the Review Panel.

The Terms of Reference and the Cooperation Agreement are intended to be complementary and to provide clarity for participants on the process and on the roles and responsibilities of the Review Panel, the Agency, and the EAO for the remainder of the assessment of the proposed GCT Deltaport Expansion – Berth Four Project (the Project).

Please feel free to record your comments using the comment template provided on page 3 of this document. Comments should be submitted via the Canadian Impact Assessment Registry for the Project (reference number 81010) using the “submit a comment” button, or via email to deltaport@iaac-aeic.gc.ca.

Guiding Questions:

The following questions have been prepared to help guide your review:

Terms of Reference

- Does the Terms of Reference clearly describe the process for the parts of the impact assessment led by the Review Panel? If no, which clauses are unclear and why?
- Does the Terms of Reference clearly describe the mandate of the Review Panel? If no, which clauses are unclear and why?
- Is the Review Panel’s mandate, as described in the Terms of Reference, inclusive of areas of concern to you / your organization? If no, what areas of concern what you like to see added?
- Does the process described in the Terms of Reference promote the participation of Indigenous nations, federal and provincial authorities, non-government organizations, and the public in the assessment of the Project? Identify any challenges that you or your community are facing that would prevent you from taking part in the public participation opportunities outlined in the Terms of Reference. Examples of challenges could include, for example, those of a linguistic, social, economic, or technical nature.

Cooperation Agreement

- Does the Cooperation Agreement provide clarity on the roles and responsibilities of the Agency and the EAO during the assessment? If no, which clauses are unclear and why?
- Are there any additional opportunities for cooperation between the Agency and EAO during the assessment of the Project that should be included in the Cooperation Agreement?

Time Limits for Public Participation Opportunities

- Are the following proposed time limits for public participation opportunities sufficient to facilitate the participation of Indigenous nations, federal and provincial authorities, non-governmental organizations, and the public?
 - 60 day public comment period for the review of the Impact Statement;
 - 30 days notice prior to the start of a public hearing;
 - 60 days for the public hearing;
 - 21 day comment period for Indigenous nations to review draft sections of the impact assessment report; and
 - 30 day public comment period to comment on potential conditions for the Project, the draft referral package and summary assessment report.

Participant: Chief Jim Hornbrook

Organization (if applicable): Hwlitsum First Nation

General Comments: The Hwlitsum First Nation has concerns about both the Terms of Reference and the Cooperation Agreement. The context of these documents seems to silo Indigenous peoples into categories of Indigenousness. Accordingly, in the Cooperation Agreement, the term “Indigenous Interests: refers to all the requirements relating to Indigenous peoples required by both the Impact Assessment Act and the Environmental Assessment Act”. An assessment of impacts is required when a project may impact ANY Indigenous group and any adverse impact that the designated project may have on the rights of Indigenous peoples of Canada. Section 2 of the Impact Assessment Act provides a definition of effects within federal jurisdiction.” The definition includes the following with respect to the Indigenous peoples of Canada, including an Impact- occurring in Canada and resulting from any change to the environment-on (i) physical and cultural heritage, (ii) the current use of lands and resources for traditional purposes, or (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; and any change occurring in Canada to the health, social or economic condition of the Indigenous peoples of Canada”. The EAO’s Effect Assessment Policy defines Indigenous Interests as” those interests related to an Indigenous Nation and their rights recognized and affirmed by section 35 of the Constitution Act, 1982, including Treaty rights and Aboriginal rights and title, that may be impacted by a proposed project”. The Cooperation Agreement defines Indigenous Nations as such “First Nations and Metis peoples of British Columbia”.

The people of the Hwlitsum First Nation are a group of Indigenous people affirmed by Section 35 of the Constitution Act, 1982, who have sustained life, since time immemorial, a mere three (3) nautical miles from the proposed project. Yet Canada’s Joint Indigenous and Engagement Partnership Plan silos the Hwlitsum First Nation as an Indigenous Community alongside our American relatives. As such, Canada acknowledges that the Hwlitsum First Nation “will be engaged by the Crown for this project to understand how the project may impact them”. Engaged not consulted as our neighboring Canadian Indigenous Nations are.

The guiding principles of UNDRIP and DRIPA, which both the IAAC and the BCEAO state they are committed to implementing don’t discriminate. Indigenous people are Indigenous people with rights. As this is not a rights bearing exercise would it not be prudent to treat all Canadian Indigenous Interests equally?

Comment Template

Information Source <i>(Clause of Cooperation Agreement or Terms of Reference)</i>	Comment or Requested Change	Rationale
Terms of Reference p.3 Terms of Reference, s.3.1.1 Cooperation Agreement p.3	It is our continued concern that despite the draft Joint Guidelines and draft Joint Assessment Plan for the GCT Deltaport Project defining Indigenous nations as "First Nations and Metis peoples of British Columbia", the Hwlitsum First Nation have erroneously been treated as individuals who have a public interest and not as Indigenous People. We are Status Indians recognized as such by the Canadian Judicial system who's ancestral fishing village would be 3 nautical miles from the existing Deltaport terminal. We have been here and the surrounding area since time immemorial.	
Terms of Reference, s.3.13 (a) i and (a) iii	As this is not the first foray into disruption of the environment in this area, in addition to the cumulative effects of the project, we would also like to look into ongoing, compounded cumulative effects from the preceding project and projects in the area that are possibly exacerbated by this project. Today's baseline for the environment is dramatically different from one our ancestors talked about before any industrialization in the area.	
Terms of Reference, s.3.13 (g)	This section states that – “In conducting the assessment, the Review Panel must take into account the factors listed in subsection 22(1) of the IAA: ... (g) Indigenous Knowledge provided with respect to the Project;” Is there a difference in knowledge shared by Indigenous Nations or an Indigenous community? Both are made up of Indigenous peoples who could share Indigenous Knowledge. We at Hwlitsum First Nation, an Indigenous Community as per the Joint Indigenous and Engagement Partnership Plan (JEIPP), would hope our Indigenous Knowledge is treated the same as our blood relatives from neighboring Indigenous Nations.	

Information Source <i>(Clause of Cooperation Agreement or Terms of Reference)</i>	Comment or Requested Change	Rationale
	Our Ancestral fishing village and traditional lands are 3 nautical miles from the project, yet the JEIPP groups us with some of our relatives from Washington State, not our relatives from neighboring Indigenous Nations in Canada.	
Terms of Reference, s.3.14 (b)(c)	Important issues the Panel must take into account are; (1) the surrounding ecosystem is still reeling from the cumulative effects of Industrialization, and (2) any impacts on biophysical factors could be detrimental to a compromised ecosystem and its ability to function. Fairness to all parties both British Columbia and Indigenous Nations with relevant land-use and marine use plans.	
Terms of Reference, s.3.17 Terms of Reference, s.3.25	Prior to this point – the Indigenous groups ‘of value’ division was not referenced, and here it points out that it is not First Nations and Metis of BC, but just the ones specified in the list. The document has effectively listed who is Indigenous enough - declared Indigenous by the Government of Canada. Again, it states in 3.25 that this is a consultation of indigenous peoples – not just specific indigenous peoples.	We are concerned about the ranking of one group over another – How is this to be determined -one groups opinion/concerns takes priority over all the others?
Terms of Reference s.3.20 Terms of Reference s.3.21 Terms of Reference s.3.22 Terms of Reference s.3.23 Terms of Reference s.3.24	Canada and British Columbia profess that both governments recognize that Indigenous nations have unique interests and values in water, land and resources and hold special knowledge of the water, land and resources within their traditional territories. Canada and British Columbia say that the Crown is committed to the full implementation of the UNDRIP and that this is the path forward for reconciliation between Indigenous people and the Crown. By excluding the Hwlitsum First Nation from the consultation as an Indigenous nation, both Canada and British Columbia have not only failed to comply with the law as it currently exists, but Canada and British Columbia have also failed to live up to their actions or their legal commitments as outlined in DRIPA or UNDRIP. Canada and British Columbia have a golden opportunity to display what true reconciliation could look like.	

Information Source <i>(Clause of Cooperation Agreement or Terms of Reference)</i>	Comment or Requested Change	Rationale
Terms of Reference s.4.3, S.6.3 Federal Review Panel	How is membership in the panel determined? Do members apply or are they appointed, or chosen from a pool? Is there a list of possible members that can be reviewed? Also, how/who determines bias? If “Specialist Advisors” to the review panel members are able to provide advice in relation to indigenous knowledge and/or community knowledge, are they members of an indigenous community possibly effected by the project, potentially creating a conflict of interest?	We are concerned about the ranking of one group over another or favouring Indigenous Knowledge of an Indigenous Nation vs an Indigenous Communities Indigenous Knowledge – How is this to be determined - one groups opinion/concerns takes priority over all the others?
Cooperation Agreement s.6.3	There is a continued concern over the transfer of gained Indigenous knowledge from one project to another without consultation as the knowledge requested is both project and location specific. Consultation on one project does not translate into consultation on another simply because the knowledge attained is seemingly relevant. Nor can one pick or choose which Indigenous Knowledge is relevant.	
Cooperation Agreement s.7.24	Under what criteria would a joint submission be considered. This creates some concern of prioritizing one group over another, or others, and potentially creating a conflict of interest.	
Cooperation Agreement s.7.9	There is some confusion through out the documents regarding the determination of indigenesness, the wording on occasion implies that a first nation person or group may provide indigenous knowledge, but later the groups are divided into those determined by the Government of Canada to be members of a first nation and those not valued in the same manner.	
Cooperation Agreement s.7.28	Will the whole-of-government response to any recommendations from the Review Panel that are directed at government include all Indigenous First Nations?	
<i>Please use as many pages as necessary.</i>		