



Pauquachin First Nation

March 30, 2023

Via Email: deltaport@iaac-aeic.gc.ca

Assessment of the GCT Deltaport Expansion - Berth Four Project
c/o Impact Assessment Agency of Canada / Government of Canada (the "Agency")
160 Elgin Street 22nd Floor
Ottawa, Ontario K1A 0H3

Dear Agency representatives:

**Re: Deltaport Berth 4 Project (the "Project")
Review Panel Terms of Reference
Federal-Provincial Coordination Agreement**

Thank you for the opportunity to comment on the proposed Review Panel Terms of Reference and Federal-Provincial Coordination Agreement for the Project (the "Process Documents").

Below are our comments on the Process Documents:

- **Timelines** – The Process Documents contemplate a time limit of 600 days for the impact assessment phase and 90 days for the decision-making phase. They also contemplate a maximum of 21 days for participating Indigenous groups to review and comment on a draft of the Review Panel's report. Pauquachin First Nation ("Pauquachin") is concerned with these timelines.
 - The Crown's duties to Pauquachin require that we be provided an opportunity to review and respond to elements of the impact assessment relevant to our rights and interests, and that the Crown seek our consent at key points in the impact assessment.
 - While 600 days seems long on its face, when the impact assessment phase is broken into its various components, including a review panel hearing, a review panel report and co-development of conditions, 600 days may not be sufficient. Past experience from projects such as the Trans Mountain Expansion Project, the Roberts Bank Terminal 2 Project and the Tilbury Marine Jetty Project has shown that longer than 600 days is likely needed for a fulsome assessment of potential impacts to our rights and interests.
 - The proposed timeline of up to 21 days to review and comment on a draft of the Review Panel's report is grossly inadequate and contrary to the principles of UNDRIP.



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- A decision-making phase of 90 days is also inadequate. 90 days would not allow sufficient time for government-to-government meetings to resolve outstanding matters following the impact assessment phase.
- In response to concerns raised regarding timelines during an information session on March 16, 2023, Agency representatives noted that there are legislated timelines under the new federal Impact Assessment Act that limit what the Agency can do. Pauquachin acknowledges the Act establishes timelines but notes that there are tools available under the Act to extend those timelines. These provisions should be relied on to establish realistic timelines, in further consultation with Pauquachin.
- **Review Panel Report** – The Review Panel Terms of Reference do not require the Review Panel to make relevant sections of their draft report available for review and comment before they are finalized. In addition to extending the timeframe for reviewing them, it should be mandatory that the Review Panel make relevant sections of their draft report available to Pauquachin for review and comment prior to finalization.
- **Consensus and Consent-Seeking Points** – The Process Documents should be updated to more clearly articulate consensus and consent-seeking points with Indigenous groups throughout the process. Outside the Process Documents, further work is needed on a dispute resolution process, in the event consent cannot be achieved.
- **Preferred Means of Participation** – Pauquachin is pleased to see language in the Review Panel Terms of Reference requiring the Review Panel to “make meaningful attempts to accommodate requests of an Indigenous nation regarding their preferred means of participation.”

Pauquachin looks forward to further consultation on the Process Documents, as well as on our preferred means of participation in the Review Panel process, when that phase of the impact assessment commences.

Respectfully,

<Original signed by>

Rebecca David, Chief of
Pauquachin First Nation