



Tseil-Waututh Nation səlilwətał



April 20, 2023

Tseil-Waututh comments on the Canada -BC Cooperation Agreement on the Coordination of DP4-EA process

Section-page #	Comments from TWN	Response from IAAC-EAO
<p>Consensus Seeking Pg.2</p>	<p>As written in the agreement, only the EAO undertakes a consensus seeking approach.</p> <ul style="list-style-type: none"> • Is there an equivalent for the Agency? • how will the Agency and the EAO combine the different approaches to consensus and consent? 	
<p>Technical Advisory Committee (TAC) Pg.4</p>	<p>If a Technical Advisory Committee (TAC) is established, TWN requests a document that explains the objectives, scope of work, activities, as well as roles and responsibilities of those involved in the TAC. TWN requests to be consulted in a potential Terms of Reference (ToR) for the TAC, similar to the document developed to provide guidance and direction to the Review Panel.</p>	
<p>Section 6. Engagement and Consultation pg.6</p>	<ul style="list-style-type: none"> • While the Cooperation Agreement establishes the terms and conditions for cooperation between the Agency and the EAO, it is still unclear who will bear the primary responsibility for leading Crown consultations in all cases. • It is stated that <i>nothing in this Agreement supersedes the Crown’s duty to consult, or the CEAO’s or provincial Ministers’ obligations related to Consensus-seeking under the B.C. Act.</i> What will be the mechanisms to resolve any issues if consent/consensus is not reached? While issues such as mitigation measures and potential accommodation may fall under the responsibility of the proponent, some issues may not be resolved and <i>it is the Government of Canada duty to consult and accommodate Indigenous interests, where appropriate.</i> 	
<p>Section 7. Coordination of the Assessment Process - Impact Assessment Phase</p>	<p>This section frequently uses the term <i>‘to the extent possible’</i>, which could be subject to different interpretations. TWN requests that all information obtained through the assessment process is shared with TWN prior to assessing the impact of the project on TWN’s interests. This is critical to ensure transparency and accountability for the respective decision-making processes.</p>	

<p>Section 7.2 Coordination of the Assessment Process Pg.6</p>	<p>TWN is concerned about the differing standards and policies used for the protection and confidentiality of Indigenous knowledge. For example:</p> <ul style="list-style-type: none"> • Subsection 119 of the IAA • the 'Protecting Confidential Indigenous Knowledge under the Impact Assessment Act' chapter of the Practitioner's Guide • Interim Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples chapter, and • Policy Context: Indigenous Participation in Impact Assessment <p>TWN requests that clear and consistent standards are created in collaboration with TWN to ensure the respectful use of Indigenous knowledge in all Impact Assessment processes.</p>	
<p>Section 8. Assessment Timelines Pg.11</p>	<p>The agreement outlines the timelines set out to maintain the coordination process. However, there is no flexibility in the timelines in the event that additional information and studies are requested from the Proponent or other Party. Please acknowledge that TWN requires a minimum of 45 days to review all documents, with best efforts to avoid overlap of multiple documents, followed by time for dialogue and solution-seeking. A consensus-seeking approach may not reflect meaningful consultation unless TWN's concerns are adequately addressed and Indigenous Knowledge is appropriately characterized and validated.</p>	
<p>Section 10. Dispute Settlement pg.12</p>	<p>Are there any mechanisms for dispute resolution if divergences arise between the Review Panel Report, the EAO's recommendation to the Minister and the assessment provided by Indigenous groups through the Consultation and Accommodation report or an Indigenous led Assessment?</p>	