

ATTACHMENT:

Federal Authority Advice Record

Please submit the form to: *KsiLisimsLNG@iaac-aeic.gc.ca*

Ksi Lisims LNG - Natural Gas Liquefaction and Marine Terminal Project – Nisga'a Nation, Rockies LNG Limited Partnership and Western LNG LLC

Agency File: 005806

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| Department/Agency | Crown Indigenous Relations and Northern Affairs Canada |
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1. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Project to enable it to proceed?

If yes, specify the Act of Parliament and that power, duty or function.

Not probable.

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2. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to the conduct of an impact assessment of the Project?

Specify as appropriate.

Crown-Indigenous Relations and Northern Affairs Canada is in possession of specialist or expert information or knowledge that may benefit impact assessment or regulatory processes and may hold information relevant to the Application and/or to Crown consultation related to the proposed Ksi Lisims LNG - Natural Gas Liquefaction and Marine Terminal Project in the three (3) distinct areas listed below.

a) Existing Modern Treaties, self-government agreements and other constructive arrangements between Canada and Indigenous partners: interpretation of treaty provisions, implementation of consultation obligations specified in each treaty, and giving effect to Nation-to-Nation relationship and Cabinet Directive on Modern Treaty Implementation, including Assessment of Modern Treaty Implications (AMTI) and Statement of Principles on Modern Treaty Implementation.

b) Treaties, self-government agreements, and other constructive agreements that are under negotiation between Canada and Indigenous partners, and where applicable, the relevant provincial or territorial government: Negotiation of modern treaties and self-government agreements,

Recognition of Indigenous Rights and Self-Determination (RIRSD) discussion tables, and agreements negotiated through the British Columbia Treaty process.

c) Advice, guidance tools, and information around fulfilling the legal Duty to Consult and engagement with Indigenous groups across Canada, including those that are not in a treaty relationship or in any sort of negotiations with Canada.

NOTE: CIRNAC will not participate in the technical review of the proposed project but can provide subject matter expertise on an as-needed basis.

3. Has your department or agency considered the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action that would allow the Project to proceed in whole or in part?

Specify as appropriate.

No.

4. Has your department or agency had previous contact or involvement with the proponent or other party in relation to the Project? (for example, enquiry about methodology, guidance, or data; introduction to the project)

Provide an overview of the information or advice exchanged.

CIRNAC has had no previous contact or involvement with the proponent or other party in relation to the proposed Ksi Lisims LNG - Natural Gas Liquefaction and Marine Terminal Project.

5. Does your department or agency have additional information or knowledge not specified, above?

Specify as appropriate.

There may be Indigenous groups impacted by the proposed project that are unlikely to be, or to represent, section 35 (Constitution Act, 1982 – s. 35) rights bearing communities. However, Canada is committed to reconciliation with all Indigenous peoples irrespective of whether or not they have s. 35 protected aboriginal or treaty rights.

Where no duty to consult exists, Canada may engage with Indigenous groups for statutory, contractual, policy, and good governance reasons, as well as to build effective relationships with Indigenous Peoples and to work together towards reconciliation.

When engaging an Indigenous group for policy or good governance reasons, Canada should be clear in all correspondence why the Crown is engaging, and that this is not Crown recognition that the Indigenous group is representing a s. 35 rights-bearing community in British Columbia, nor recognition that the group is owed a legal duty to consult.

Further, if providing a benefit or form of accommodation to a non s.35 rights-bearing community, Canada should be clear that we are doing so for policy reasons to meet their interests, as reconciliation with all Indigenous groups is important to Canada, however, Canada is not recognizing that providing any such benefit or accommodation is legally required. It is important to take into account that by providing certain benefits or accommodation, Canada may create tension with s. 35 rights-bearing communities that have a historical presence in the area and have a credible claim to rights in the area. The Crown should carefully consider why and how it approaches this issue in relation to self-identifying collectives, which Canada does not recognize as a s.35 rights-bearing community, so as not to alienate nor adversely impact other Indigenous groups with credible claims to s.35 rights in the area.

CIRNAC uses a number of reconciliation fora and processes to build relationships and further reconciliation. Recognition of Indigenous Rights and Self-Determination (RIRSD) tables or British Columbia Treaty Process Tables (BCTP) have been established with:

- Gitanyow First Nation
- Kitselas First Nation
- Kitsumkalum First Nation
- Metlkatla First Nation
- Lax Kw'alaams Band

The Nisga'a have a relationship with Canada that is enshrined in the *Nisga'a Final Agreement (2000)*. The Nisga'a Lisims Government are also one of three groups that comprise the Project proponents.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, what are the issues that should be addressed in the impact assessment of the Project, should the Agency determine that an impact assessment is required?

For each issue discussed, provide a concise, plain-language summary that is appropriate for inclusion in the Summary of Issues and Engagement.

When contemplating a conduct that might adversely impact potential or established Aboriginal or Treaty rights, the Crown must fulfil its duty to consult section 35 rights holders and implement consultation provisions contained in individual modern treaties. A number of court decisions clarified that two-way dialogue is crucial to a meaningful consultation process between the Crown and Indigenous groups, most recently in *Tsleil-Waututh v Canada*.

During this process, it is important to consider and assess the cumulative effects of the potential impact of Ksi Lisims LNG on the exercise of section 35 rights.

**Paula Collier, Senior Director,
Consultation and Accommodation Unit,
Implementation Sector, CIRNAC**

Name of Departmental / Agency Responder

Senior Director

Title of Responder

September 23, 2021

Date