

## Enclosure 2: Federal Authority Advice Record – Summary of Issues, and Potential Tailored Impact Statement Guidelines and Permitting Plan

**Project:** Northern Road Link Project

**Proponent:** Marten Falls First Nation and Webequie First Nation

**CIAR No.:** 84331

**Response due by:** **March 17, 2023**

All comments should be submitted via the **Submit a Comment** feature available on the Project's Canadian Impact Assessment Registry page (Reference 84331)<sup>1</sup>. Letters and forms can be uploaded using this feature. If you have any difficulties submitting this way, please contact the Agency at [NorthernRoad-RouteDuNord@iaac-aeic.gc.ca](mailto:NorthernRoad-RouteDuNord@iaac-aeic.gc.ca) for assistance.

<b>Department/Agency:</b> Transport Canada	
<b>Date of Advice:</b> March 15, 2023	
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### 1. Expertise

Please identify and describe the specialist or expert information or knowledge within your department or agency that is relevant to an assessment of the Project.

Transport Canada's Navigation Protection Program (NPP) can provide expert knowledge in relation to potential effects related to impacts to navigation and navigation safety.

Please see **Table 1** below for an explanation and information needs that are related to the department's expertise and regulatory mandate, particularly in regards to the *Canadian Navigable Waters Act* (CNWA) as it relates to the proposed project.

### 2. Key issues and solutions

Respond to the following **using Table 1 on page 3**

(a) From the perspective of the mandate and area(s) of expertise of your department or agency, what are the key issues that are material and relevant to decision-making and should be addressed? In identifying

<sup>1</sup> <http://iaac-aeic.gc.ca/050/evaluations/proj/84331?culture=en-CA>

key issues, be mindful of the Project's context (size, scope, geography, policy) and the definitions of *effects*,<sup>2</sup> *sustainability*<sup>3</sup> and *public interest*.<sup>4</sup>

(b) For each **key** issue:

- i. Identify the relevant valued component(s) within your mandate and describe the key pathway of effect, or describe the nature of the issue. This may consider<sup>5</sup> positive and negative effects on components of the environment or on health, social and economic conditions.
- ii. Identify any clarifications or commitments the Proponent could make in its Detailed Project Description and Response to the Summary of Issues that would build confidence that issues can be addressed and managed without further impact assessment<sup>6</sup>, or that can help focus the Tailored Impact Statement Guidelines<sup>7</sup>, if an impact assessment is required.
- iii. Identify, at a very high-level, any information or studies that should be required of the Proponent in the Tailored Impact Statement Guidelines, if an impact assessment is required.<sup>8</sup>

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

### 3. Operational guidance and powers, duties and functions

(a) Within the mandate and area(s) of expertise of your department or agency, list specific operational policies or guidance documents that could help address issues and manage effects relevant to the project context.

Canadian Navigable Waters Act (CNWA) – [Canadian Navigable Waters Act \(justice.gc.ca\)](https://www.justice.gc.ca)  
Minor Works Order under the CNWA - [Minor Works Order \(justice.gc.ca\)](https://www.justice.gc.ca)  
Major Works Order under the CNWA - [Major Works Order \(justice.gc.ca\)](https://www.justice.gc.ca)

(b) List the potential powers, duties, or functions, including federal funding, that your department or agency may be required to exercise or perform to enable the Project to proceed, in whole or in part. Validate whether the information in the Initial Project Description is accurate.

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<sup>2</sup> Note: *effects*, *direct and incidental effects*, and *effects within federal jurisdiction* are defined in section 2 of the *Impact Assessment Act*, which can be found at <https://www.canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations.html>

<sup>3</sup> Guidance: Considering the Extent to which a Project Contributes to Sustainability <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-considering.html>

<sup>4</sup> Policy Context: Public Interest Determination under the *Impact Assessment Act* <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/public-interest-determination-under-impact-assessment-act.html>

<sup>5</sup> Other considerations may include sources of high uncertainty that complicate predictions; the purpose and need for the Project and selected alternatives.

<sup>6</sup> This could mean that mitigation measures that the proponent has committed to implement, in the Detailed Project Description, are referenced in the Tailored Impact Statement Guidelines.

<sup>7</sup> For example, regulatory instruments, operational guidance or well-understood mitigation and monitoring measures of proven effectiveness

<sup>8</sup> Federal authorities are asked what should be included in the Tailored Impact Statement Guidelines with specific rationale that is commensurate to the project context. Please also identify studies that are not necessarily based on the information provided by the proponent and based on project context.

The Navigation Protection Program of Transport Canada is responsible for the administration of the *Canadian Navigable Waters Act* (CNWA), which prohibits the construction or placement of any “works” in a navigable waterway that may interfere with the public right to navigation without complying with the requirements of the Act.

The Act also requires Governor in Council (GIC) approval for prohibited activities of dewatering and throwing or depositing of materials. Should this project involve a prohibited activity on a navigable waterway, the GIC approval can potentially take **1-2 years** and it is therefore critical that information regarding navigability of the proposed waterways be provided to Transport Canada as soon as possible.

**The IPD does not include sufficient information to determine what approvals will be required under the CNWA.**

(c) For each power, duty or function:

- i. Explain any associated framework to address effects on valued components within your mandate.
- ii. Describe any Indigenous consultation activities that would occur, potential timelines for Indigenous participation, and how potential impacts to Indigenous communities are addressed by your department or agency.
- iii. Describe any public participation opportunities that would occur, and potential timelines for public participation.

Should Transport Canada (TC) have a role in this project under the *Canadian Navigable Waters Act* (CNWA) or other regulatory process, the department will conduct a pre-consultation assessment to determine if there will be the potential for adverse impacts to Section 35 Aboriginal and/or Treaty rights and/or Title as a result of the project and TC’s Crown Conduct. In TC’s pre-consultation assessment, TC may use existing information from consultation and/or regulatory processes to assist in its duty to consult assessment. Should TC determine that consultation is required, the department prefers to coordinate with other departments and/or ministries where possible to streamline the consultation process. If coordination is not feasible, TC will consult independently with Indigenous communities regarding TC’s role in the project.

The CNWA approval process includes a public registry posting and advertising requirements that allow Transport Canada to notify the public and obtain any navigation related concerns regarding the proposed project. The Navigation Protection Program Officer will consider public comments received through the CNWA process.

(d) Has your department or agency already 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. Is your department or agency aware of any additional information related to the geographic context of the Project (e.g. potential effects to Indigenous protected and conserved areas, migratory bird sanctuaries, federal species at risk, sensitive/vulnerable health, social or economic conditions)?

No.

Table 1: Key Issues and Solutions Material and Relevant to Decision-making

Comment ID	Document Reference	Valued Component	Description of Key Issue (Context and Rationale)	Solutions for the Proponent	Summary of Issues
<p>Please identify comments by organization and comment number. e.g.: IAAC-01</p>	<p>If the comment is related to a specific section of the Initial Project Description, please provide a reference.  You may also choose to copy the relevant text here.</p>	<p>Identify the valued component(s)—within the mandate of your department or agency—to which the effect or issue applies.  This may include components of the environment, health, social or economic conditions.</p>	<p>Provide context for the effect or issue. Describe, to the extent possible:</p> <ul style="list-style-type: none"> <li>The positive or negative pathway of effect or nature of the issue</li> <li>Any <b>powers, duties or functions</b> that your department or agency has that may <b>mitigate, manage, or set conditions</b> related to the effect</li> <li><b>Operational guidance</b> or standard and well-understood <b>mitigation or monitoring measures</b> that would address the effect</li> <li>Any <b>established or emerging policies or directives</b> that are relevant</li> <li>The potential for <b>residual effects</b> after mitigation has been applied</li> </ul>	<p>Where applicable and necessary,</p> <ul style="list-style-type: none"> <li>provide instructions for how the Proponent would build confidence about the management of the potential effect, in the Detailed Project Description and Response to the Summary of Issues, and/or</li> <li>identify, at a high-level, required information or studies to assess the effects, should an impact assessment be required (or templated requirements that are relevant to the Project).</li> </ul>	<p>For issues and effects to be included in the Summary of Issues, provide a concise, plain language synopsis.</p>
TC-01	IPD-S10.1 Infrastructure & Temp/Permanent Structures-Water Crossings	Navigation	<p>The Navigation Protection Program of Transport Canada is responsible for the administration of the <i>Canadian Navigable Waters Act</i> (CNWA), which prohibits the construction or placement of any “works” in, on, over, under, through or across a navigable waterway that may interfere with the public right to navigation without complying with the requirements of the Act.</p> <p>Navigable Water is defined as the following: <i>navigable water</i> means a body of water, including a canal or any other body of water created or altered as a result of the construction of any work, that is used or where there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes, or as a means of transport or travel for Indigenous peoples of Canada exercising rights recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>, and</p> <ul style="list-style-type: none"> <li>(a) there is public access, by land or by water;</li> <li>(b) there is no such public access but there are two or more riparian owners; or</li> <li>(c) Her Majesty in right of Canada or a province is the only riparian owner.</li> </ul> <p>Works are defined as the following:</p> <ul style="list-style-type: none"> <li>(a) any structure, device or other thing, whether temporary or permanent, that is made by humans, including a structure, device or other thing used for the repair or maintenance of another work; and</li> <li>(b) any dumping of fill in any navigable water, or any excavation or dredging of materials from the bed of any navigable water.</li> </ul>	<p>The CNWA only applies to navigable waters, as defined under the Act. The proponent is required to gather information to determine if any of the waterways impacted by the project meet the definition of navigable water, as defined under the CNWA (see previous column for definition).</p> <p>To determine if a waterway meets the definition of ‘navigable water’ as defined under the Act, Transport Canada requires the following information for each impacted body of water:</p> <ol style="list-style-type: none"> <li>What are the physical characteristics (e.g size and depth)?</li> <li>Is it used for transport or travel for commercial or recreational purposes?</li> <li>Is it used for transport or travel by Indigenous peoples?</li> <li>Is it likely to be used in the future (if this project was not proposed)?</li> <li>Was it used in the past?</li> <li>Public access:             <ol style="list-style-type: none"> <li>Is there access by land or water?</li> <li>Are there two or more waterfront owners?</li> <li>Is the Crown the only waterfront owner?</li> </ol> </li> </ol> <p><b>Transport Canada recommends that navigation be included as a valued component, and a navigation study within the project footprint would contribute to the ability to assess potential impacts on navigation. The current IPD does not contain sufficient information on navigation to determine the applicability of the CNWA.</b></p>	<p>To determine the applicability of the CNWA, the proponent must identify all the bodies of water that may be impacted by the project and, per the previous column, a navigation study by the proponent is recommended. Transport Canada will make determinations of navigability once the necessary information as mentioned above has been received. Once determinations of navigability have been made, <del>then</del> the proponent will be required to self-assess and determine if the project includes Minor works, works or Major works. If the project proposes a prohibited activity on a navigable waterway, the proponent is required to submit an Application for a GiC Exemption.</p>

			<p>Works may include bridges, culverts, aerial cables, etc.</p> <p>The Minor Works Order classifies works that are likely to slightly interfere with navigation. If all of the Minor Works criteria can be met for a class of work, then Transport Canada approval is not required. Minor Works include some aerial cables, some outfalls and water intakes, some watercourse crossings, etc.</p> <p>The Major Works Order classifies works that are likely to have a significant interference to navigation. All Major Works require approval by Transport Canada. Major Works include some water control structures, some bridges (movable span, floating span and fixed span with 1 or more piers in the water), causeways, etc.</p> <p><b>More information is required to determine whether the watercrossings are Minor Works, Works or Major Works.</b></p>		
TC-02	IPD-S10.2.5	Navigation	<p>Construction of multi-span bridges, single-span bridges and culverts is referenced.</p> <p><b>More information is required to determine if any waterways affected the proposed project are navigable.</b> To determine the applicability of the CNWA, those impacted waterbodies will require navigability assessments by Transport Canada and which will be based primarily on information gathered and submitted by the proponent (see above row for these information requirements).</p>	Provide necessary information to Transport Canada regarding navigability of each impacted body of water (see row above).	
TC-3	IPD- 25.2, Table 25-1-Dewatering	Navigation	<p>Throwing or depositing of materials in a navigable waterway, and dewatering or lowering water levels of a navigable waterway is prohibited under the CNWA and requires a Governor in Council (GIC) exemption.</p> <p>The Initial Project Description does not provide sufficient information to determine whether a GIC exemption may be required under the Canadian Navigable Waters Act, s. 24.</p> <p>TC understands that the level of detail provided in the draft IPD is reflective of the relatively early stage in the planning process. However, given the extremely limited description, <b>it is difficult to provide any specific comments on the assessment of potential effects or the adequacy of mitigation.</b></p>	<p>Provide necessary information to Transport Canada regarding navigability of each impacted body of water (see row above).</p> <p>If deposit or dewatering activities (CNWA s.22-23) are proposed, approval is required by way of a s.24 Governor in Council (GIC) exemption by order. Consultation is required as part of this process. More details can be provided once TC has enough information to determine that a GIC exemption by order is required.</p>	