

ATTACHMENT: July 14, 2023

**Federal Authority Advice Record: Designation Request under the IAA
Response due by August 3, 2023**

Port au Port-Stephenville Wind Power and Hydrogen Generation Project (also known as Project Nujio'qonik)

Department/Agency	Crown Indigenous Relations and Northern Affairs Canada
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1. Has your department or agency considered whether it has an interest in 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 (including provision of financial assistance) that would allow the Project to proceed in whole or in part?

It is unlikely that CIRNAC will exercise a power or perform a duty or function related to the proposed Project that will enable it to proceed.

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2. 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?

Not probable.

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3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the Project, will it involve public and Indigenous consultation?

CIRNAC will not exercise a power or perform a duty or function under any Act of Parliament in relation to the proposed Project that will involve public and Indigenous consultation. However, CIRNAC will provide advice and guidance relative to the Crown's section 35 (*Constitution Act, 1982*) legal duty to consult in the context of proposed projects undergoing assessment under the *Impact Assessment Act*, if requested by the Agency or partner departments.

4. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the Project or adverse direct or incidental effects stemming from the Project?

CIRNAC has expert information, knowledge, publicly available tools, and would like to highlight additional considerations that may benefit the impact assessment or regulatory processes relative to the proposed project. Subject matter expertise that can be provided by CIRNAC includes the following:

Expert Information and Knowledge

a) **Section 35 Aboriginal and Treaty Rights:** When contemplating conduct that might adversely impact potential or established Aboriginal or Treaty rights, the Crown must fulfil its duty to consult and, where appropriate, accommodate impacts on rights as recognised and affirmed by section 35 of the *Constitution Act, 1982* (s. 35 rights). Aboriginal and treaty rights are captured in court decisions, historic treaties, modern treaties, and some self-government agreements. There are also inclusions in agreements stemming from Recognition of Indigenous Rights and Self-Determination (RIRSD) processes that involve or make reference to s. 35 rights. CIRNAC has expertise relative to the Crown's legal obligations relative to Aboriginal and treaty rights and can support federal departments and agencies in the following ways:

- CIRNAC provides guidance and advice to federal officials relative to the fulfillment of the legal duty to consult and, where appropriate, accommodate, when contemplating activities that may adversely impact s. 35 rights. CIRNAC continues to work on updating the [2011 Guidelines for Federal Officials to Fulfill the Duty to Consult](#).
- CIRNAC supports the whole-of-government approach to implementing obligations pursuant to modern treaties, self-government and related agreements, including specific consultation-related provisions and protocols in these agreements. It is beneficial to engage with CIRNAC early on during assessment processes in instances when projects may impact modern treaties.
- CIRNAC leads negotiations of modern treaty, self-government, and related agreements (including consultation protocols) on behalf of the Government of Canada, and has knowledge of the relationship between Modern Treaty partners and the Crown. Assessment and regulatory assessment process should be conducted in a manner that respects [Canada's Collaborative Modern Treaty Implementation Policy](#). Modern treaties are constitutionally entrenched commitment between the Crown and Indigenous partners to build true nation-to-nation, Inuit-Crown, and government-to-government relationships.
- CIRNAC provides advice on self-identifying Indigenous collectives which, for various reasons, are not officially recognized by Canada as s. 35 rights-bearing groups. There are some situation that may require Canada to consult with groups that are not recognized, or engaged absent the legal duty to consult.

Publicly Available Tools

b) **The Aboriginal Treaty Rights Information System (ATRIS)** is a web-based, geographic information system intended to help users identify the location of Indigenous groups, and to provide users with information pertaining to each Indigenous group's established or asserted s. 35 rights. ATRIS provides access to profiles, documents and maps that can be used to assist governments, industry, and other interested parties in determining their consultation obligations and in carrying out their consultation research. CIRNAC can offer assistance in navigating, and engaging with the ATRIS system.

Additional Considerations:

c) **United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA):**

- CIRNAC supports the Government in Canada in implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA)*, which affirms the Declaration as a universal international human rights instrument with application in Canadian law.
- The Crown must take into account the *UNDA* when contemplating conduct that might adversely impact the rights of Indigenous peoples in Canada.

d) **Reconciliation:** All departments continue to work on implementing all 94 Calls to Action from the [Truth and Reconciliation Commission Final Report](#).

5. Has your department or agency had previous contact or involvement with the Proponent or other parties in relation to the Project?

CIRNAC has had no previous contact or involvement with the proponent or other party in relation to the proposed project.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of the IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

CIRNAC can provide the Impact Assessment Agency of Canada and partner departments and agencies with guidance related to their legal duty to consult and with respect to Canada's relationships with Indigenous groups. CIRNAC does not facilitate the technical review of proposed projects or administer the legislative or regulatory mechanisms required to manage effects related to projects approved under the *Impact Assessment Act*.

7. Does your department or agency have a program or additional authority that may be relevant and could be considered as a potential solution to concerns expressed about the Project? In particular, the following issues have been raised by the requestor:

- effects to fish and fish habitat;
- effects to wildlife, including migratory birds and species at risk;
- effects to the marine environment (e.g., disruption of historic contamination);
- accidents or malfunctions (e.g., ammonia or hydrogen leaks);
- alternative means of carrying out the project were not adequately considered;
- cumulative effects from past drilling, mining, milling, and accidents and malfunctions in the area,
- mistrust in the proponent and the provincial process (e.g., perceived project-splitting);
- effects to Indigenous peoples (e.g., country foods, current use);
- effects to climate change from upstream and downstream impacts of hydrogen and ammonia production; and
- inadequate public and Indigenous engagement on the Project.

Existing CIRNAC Programs

- **[First Nation Adapt Program](#)** - This program provides funding to First Nation communities and First Nation organizations located below the 60th parallel to support community-led adaptation initiatives. The program provides support for communities to address one or more of the following types of projects:
 - Risk assessments of climate change impacts
 - Development and/or assessment and/or cost-benefit analysis and/or small-scale implementation of adaptation options
 - Tool development

Status: Ongoing intake - funding available

Contact: Elizabeth Laval
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Sector/Branch: Northern Affairs / Natural Resources and Environment Branch / Climate Change and Clean Energy Directorate

- **Cultural Spaces in Indigenous Communities** - The program offered opportunities for Indigenous women, girls and 2SLGBTQI+ individuals to access their cultures, languages and strengthen their identities through the construction or revitalization of spaces that support cultural activities within their communities. These spaces aimed to support self-determination, increase safety and promote Indigenous ways of knowing, doing and being.

Status: Call for proposals closed on December 1, 2021, and budget funds for this program have now been delivered. The program funding mandate ended on March 31st 2023.

Contact: Laurent Viot, Program Policy Manager
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 Sector/Branch: TAG / Fiscal Branch / Fiscal Policy and Coordination Branch

- **Indigenous Community-Based Climate Monitoring Program** - The program supports Indigenous community-led projects to monitor climate and the environmental effects of climate change on communities and traditional territories. The program builds capacity to support the design, implementation, or expansion of long-term, community-based Indigenous-led climate monitoring projects.

Status: The Program accepts proposals from First Nations in the North, Inuit and Métis on an on-going basis. The Program is currently fully subscribed (2023-24) for First Nations South of 60° latitude but will on-board new proposals later this year for projects beginning in the 2024-25 fiscal year.

Contact: Marlene Doyle
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 Sector/Branch: Northern Affairs / Natural Resources and Environment Branch / Climate Change and Clean Energy Directorate

- **Nation Rebuilding Program** – The program will support nation rebuilding efforts that will contribute to increase capacity at the larger nation level. The provision of this capacity funding will promote:
 - the re-establishment of Indigenous nations;
 - an increase in the ability of Indigenous nations to take on greater sectoral responsibilities, thereby facilitating a phased-in approach to self-determination and ultimately self-governance;
 - an increase in the sense of unity within Indigenous nations;
 - identification and agreement among member communities on priorities for action and approaches to issues; and,
 - a reduction in the duplication of the resolution of issues at the individual First Nation or Indigenous community level by working as a collective at the nation-level.

Status: this program is sunsetting on March 31, 2024

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 Sector/Branch: TAG / Fiscal Branch / Negotiation Support Directorate

- **Federal Interlocutor's Contribution Program**: The objective of the Federal Interlocutor's Contribution Program is to help to build capacity, and to maintain a relationship based on trust and respect between Métis and non-status Indian people and the Government of Canada.

Status: Formal call out closed for this fiscal (re-opens Feb/Mar 2024). Late applications may be considered pending availability of funds.

Contact: Erik Anderson
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Sector/Branch: Policy and Strategic Direction / Indigenous and External Relations Branch / Indigenous Relations and Policy Directorate / Métis and Non Status Indian Relations

- [Supporting Indigenous Women's and 2SLGBTQI+ Organizations Program](#)

- Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is working with Indigenous women's and 2SLGBTQI+ organizations to:
 - develop and support relationships based on trust and respect
 - create opportunities to empower and engage Indigenous women's and 2SLGBTQI + organizations in decision-making processes that impact their lives

This program will provide contribution funding for projects that:

- increase the ability of Indigenous women's and 2SLGBTQI + organizations to engage at the grassroots level
- advance grassroots voices and the priorities of Indigenous women and 2SLGBTQI + people within all levels of government
- support real and meaningful systemic change in Canada

The goals of this program are to:

- actively engage grassroots in the development of the governments' legislative and policy agendas
- ensure that government policies, programs, legislation, and services are reflective of grassroots priorities and perspectives
- increase awareness of government policies and programs among grassroots through outreach with Indigenous women's and 2SLGBTQI + communities and organizations
- improve access to funding opportunities through relationship building across all level of government

Status: The first call for proposals closed on February 11, 2022. A new call for proposals is proposed for Winter 2024.

Contact: Cherill Baynham

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Sector/Branch: Policy and Strategic Direction / Indigenous and External Relations Branch / Indigenous Relations and Policy Directorate / Indigenous Women's and 2SLGBTQI+ Relations Unit

Generic Email: femmesautochtones-indigenousewomen@rcaanc-cirnac.gc.ca

- **Federal Initiative on Consultation:** To ensure Indigenous peoples have consultation and engagement capacity and are meaningfully participating in consultation and engagement activities.

Status: Fully subscribed for now

Contact: Kirsten Miller

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Sector/Branch: Implementation Sector / Consultation and Accommodation Unit Directorate

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8. Does your department or agency have information about the interests of Indigenous groups in the vicinity of the Project; the exercise of their rights protected by section 35 of the *Constitution Act, 1982*; and/or any consultation and accommodation undertaken, underway, or anticipated to address adverse impacts to the section 35 rights of the Indigenous groups?

As of present, concerns from Indigenous peoples, in proximity or within the vicinity of the proposed Project, have not been raised.

No RIRSD tables in Newfoundland and Labrador.

9. If your department has guidance material that would be helpful to the Proponent or the Agency, please include these as attachments or hyperlinks in your response.

Crown-Indigenous Relations and Northern Affairs Canada

Name of departmental / agency responder

James Neary,
Manager,
Major Projects Management Office

Title of responder

August 9, 2023

Date