

Federal Authority Advice Record (FAAR)

FAAR Response must be submitted by October 11, 2024

Rocky Creek Metallurgical Coal Project – CTI Plus Resources Ltd.

Registry File: [88867]

Department/Agency	Crown Indigenous Relations and Northern Affairs Canada
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1. a) 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.

It is not probable that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) will exercise a power or perform a duty or function related to the Project to enable it to proceed as CIRNAC is not a regulatory department with respect to the proposed project.

CIRNAC does not have a regulatory function relative to the proposed project but can offer subject matter expertise as required of Federal Authorities under the *Impact Assessment Act*. CIRNAC's Major Projects Management Office facilitates communication and coordination of subject matter expertise from within the department and provides this expertise to partner departments and agencies involved in the Impact Assessment Process – Horizontal Initiative.

- b) Please describe any Indigenous or public consultation that will be undertaken in relation to the exercise of that power, duty or function, including when it would take place.

CIRNAC will not undertake any Indigenous or public consultation.

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

Specify the specialist or expert information or knowledge.

CIRNAC has expert information, knowledge, and tools that may benefit impact assessment or regulatory processes related to the proposed project. Specifically, CIRNAC can provide guidance and advice

related to the federal government's legal obligation to consult and, where appropriate, accommodate when contemplating conduct that may adversely impact asserted or established Aboriginal and/or treaty rights, that are recognised and affirmed by section 35 of the *Constitution Act, 1982*. This duty is supported through related jurisprudence, legislation, policy, and treaties. Additionally, CIRNAC may provide advice and guidance related to specific Indigenous groups' special relationship with the Government of Canada (The Crown), including information related to recognition of Indigenous rights and self-determination (RIRSD) tables, modern treaties or self-government agreements, and other related negotiations and processes.

Expert Information and Knowledge

- a) **Section 35 Aboriginal and Treaty Rights** are recognised and affirmed by Section 35 of the *Constitution Act, 1982*. These are reflected in court decisions, historic treaties, modern treaties, and some self-government agreements. There are elements involving s.35 rights outlined in agreements stemming from recognition of Indigenous rights and self-determination processes and other related agreements:
- CIRNAC provides guidance and advice to federal officials for fulfilling the legal duty to consult and, where appropriate, accommodate, when contemplating activities that may adversely impact upon established and asserted Section 35 rights. CIRNAC continues to work on updating the [2011 Guidelines for Federal Officials to Fulfill the Duty to Consult. Engagement with Indigenous groups to renew the guidelines](#) began in February 2024 and is ongoing;
 - CIRNAC supports the whole-of-government approach to implementing obligations pursuant to modern treaty, self-government and related agreements, including specific consultation-related provisions and protocols. Where project impacts on Modern Treaties have been identified, federal departments and agencies must engage Indigenous Modern Treaty partners on a bilateral basis as early as possible. CIRNAC provides guidance on engagements and tailored contacts for reach out to Modern Treaty partners. [Canada's Collaborative Modern Treaty Implementation Policy](#) (2023) and the [Cabinet Directive on the Federal Approach to Modern Treaty Implementation](#) (2015) provides further guidance to departments and agencies in implementing Modern Treaties; and
 - CIRNAC leads negotiations of modern treaty, self-government, and related agreements (including consultation protocols) on behalf of the Government of Canada.

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 and/or asserted Section 35 rights. ATRIS provides access to profiles, documents and maps that can be used to assist governments in determining their consultation obligations and other interested parties in carrying out consultation and engagement research. CIRNAC can offer assistance in navigating, and engaging with the ATRIS system.
- c) **The Reporting Centre on Specific Claims** is a publicly available tool that can be utilized to search for information about specific claims that are still in process as well as claims that have already been resolved. Specific Claims made by First Nations against the Government of Canada relate to the administration of land and other First Nation assets and to the fulfillment of historic treaties and other agreements. Settling specific claims is one of the many steps on the journey to reconciliation with First Nations.

Additional Considerations

- d) **United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA)**:
- The Government of Canada is 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. Justice Canada is the federal lead on UNDA, and CIRNAC has an important role due to its relationships with Indigenous partners. CIRNAC's advice and actions in relation to the initiative under consideration will be consistent with the rights-based approach endorsed by UNDA.
 - Canada has worked in cooperation and consultation with Indigenous partners to develop the UNDA Action Plan. This Action Plan includes a number of measures which relate directly to

Indigenous decision-making and participation and must be taken into account where Indigenous rights may be affected.

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

No, CIRNAC will not exercise a power or performed a duty or function under any Act of Parliament in relation to the Project, or take any course of action that will allow the Project to proceed in whole or in part.

4. Has your department or agency had previous contact or involvement with the proponent or other party in relation to the Project? (for example: an 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 project.

5. Does your department or agency have additional information or knowledge on the project not specified above, including information on the geographic, environmental, economic or social context of the project? (e.g. location of protected or sensitive areas, previous history between local communities and proponent or similar projects, local or regional social or economic concerns)?

Specify as appropriate.

CIRNAC is developing guidance for federal officials on the following matters arising in consultation and engagement processes, and departments or agencies may contact CIRNAC for more detailed information:

Self-Identifying Indigenous Collectives: There has been a rise in self-identifying Indigenous collectives, from within Canada and abroad, who assert Section 35 rights in specific regions within Canada.

- **A variety of colonial factors have contributed to these scenarios such as the imposition of *Indian Act* electoral systems, and the definition of interprovincial and international boundaries. In some instances these Indigenous collectives may be owed a duty to consult depending on factors such as the strength of their claim and evidence that the leadership actually represents an Indigenous group that potentially holds Section 35 rights. In situations where Canada is of the view that there is no legal duty to consult, Canada may nevertheless engage with Indigenous groups to support relationship building and foster learning about the group and who they represent. In such case, it is important to convey that consultation is not a rights recognition process.**

Accommodation: Accommodations measures seek to reduce, avoid or eliminate the potential impacts of a project on Indigenous people's rights. The principle of accommodation does not apply to engagement. Nevertheless, when engaging, there may be cases in which Canada assesses the circumstances and decides to provide benefits to the relevant groups to support reconciliation.

Assessing Impacts on Rights: During this process, it is important to consider and assess the cumulative impacts of the potential Project on the exercise of Section 35 rights. Recent court decisions have shown the cumulative effects of major projects can impact Indigenous people and their treaty rights.

Information relative to Canada's relationships with Indigenous people: This may include historic treaties and Recognition of Indigenous Rights and Self-Determination (RIRSD) tables in the project area.

The Initial Project Description identified that the project could potentially impact Blueberry River First Nations, Doig River First Nation, Halfway River First Nation, Horse Lake First Nation, McLeod Lake Indian Band, Sauteau First Nations, West Moberly First Nations, the Métis Nation of British Columbia, and Kelly Lake Métis Settlement Society.

CIRNAC has RIRSD tables with the Treaty 8 First Nations of Alberta (of which Horse Lake First Nation is a member), West Moberly First Nations, and with the Métis Nation of British Columbia.

CIRNAC would also like to highlight that any increased rail traffic resulting from delivering coal to the port in Prince Rupert will run through the traditional territories of the Kitselas and Kitsumkalum First Nations, who are both at the initialling stage of their Treaties. Kitselas and Kitsumkalum First Nations' Treaties may be in effect by the time the project is completed and may trigger the consultation provisions under their Treaties, depending on how the project progresses.

In the Initial Project Description, it is unclear what information was used to inform the proponents decision to not engage with other potentially impacted Indigenous groups listed in Table 3.2-2. To support the proponent's initial research on identifying Indigenous groups that could be potentially impacted by the project, CIRNAC would encourage utilizing the Aboriginal and Treaty Rights Information System (ATRIS). 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 and/or asserted Section 35 rights. However, ATRIS does not contain all the necessary information to inform any decisions on which Indigenous groups must be consulted or engaged with for a project.

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6. Based on the mandate and area(s) of expertise of your department or agency, what are the key issues related to the project?

For each key issue:

- Describe the potential effect or the nature of the issue, including any relevant context ;
- Provide the rationale and/or evidence for why it is a key issue;
- Provide advice on how to address the issue, including any information or studies that should be required in the Tailored Impact Statement Guidelines, potential mitigation measures, and/or regulatory requirements relevant to the issue;
- Provide a concise, plain-language summary of the issue for inclusion in the Summary of Issues.

The information provided will be considered by IAAC and may be used to inform its decision on whether an impact assessment is required and, where appropriate, for next steps in the impact assessment process including to develop project-specific draft Tailored Impact Statement Guidelines.

Please use Table 1 to respond to this question.

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*.

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7. Where possible, identify any additional information the proponent could include in their response to the Summary of Issues, and, if IAAC requires it, in their Detailed Project Description, that would:

- Give confidence that minor issues or effects could be addressed and managed by clear measures, existing guidelines, other regulatory processes or other existing tools;
- Inform the decision as to whether an impact assessment is required; or
- Aid in tailoring the Tailored Impact Statement Guidelines, if IAAC decides an impact assessment is required.

These clarifications and additional information will be included as specific questions in the Summary of Issues provided to the proponent.

Please use Table 2 to respond to this question.

N/A

Bruno Steinke

Name of Departmental / Agency
Responder

**Senior Director, Consultation and
Accommodation Unit, Modern Treaties,
Consultation and Intergovernmental
Relations Sector, CIRNAC**

Title of Responder

October 3, 2024

Date

Table 1: Key Issues to inform the impact assessment process

IAAC asks that federal authorities align expert advice with IAAC’s approach to tailoring by project, which focuses on key project issues, clearly focused on the prevention of adverse effects within federal jurisdiction. In identifying key issues, federal authorities should be mindful of the project’s context (size, scope, location), Indigenous Knowledge and perspectives, and public concerns. Key issues that may be relevant to the decision include:

- adverse effects within federal jurisdiction and direct or incidental adverse effects that may be to some extent significant, based on federal experts’ knowledge and experience with past projects;
- potential impacts on Indigenous Peoples and their rights, based on Indigenous Knowledge and perspectives or experience with past projects;
- effects on key species or habitats (e.g. at risk, important to Indigenous communities, commercial importance, provide important ecosystem function);
- issues or effects that may result from novel project activities, components or technology;
- effects with large uncertainties, including in the effectiveness of mitigation measures;
- adverse effects within federal jurisdiction or direct or incidental adverse effects where mitigation measures are limited;
- positive effects, including where project may support other governmental priorities, including reconciliation with Indigenous Peoples; and
- key concerns raised by Indigenous groups or local communities.

Effects that are anticipated to be minor or which can be managed using well understood mitigation, existing guidance, and/or other regulatory processes may have simplified information requirements or may be removed entirely. Measured advice from federal authorities on key issues and solutions —and on the scope and detail of any required information and studies — will enable IAAC to focus assessments on issues that are important to participants and to decision-makers.

Comment ID	Relevant section of the Initial Project Description	Valued Component or Factor to Consider	Description of Key Issue (Context and Rationale)	Advice	Plain language summary for inclusion in Summary of Issues
<p><i>Please identify comments by organization and comment number.</i></p> <p><i>e.g.: IAAC-01</i></p>	<p><i>If the comment is related to a specific section of the Initial Project Description, please include that reference.</i></p>	<p><i>Identify valued component(s) or factor to consider—within the mandate of your department or agency—to which the potential effect or issue applies.</i></p>	<p><i>Provide a brief description of the issue and rationale for being a key issue.</i></p> <p><i>Include, where relevant,:</i></p> <ul style="list-style-type: none"> • <i>the pathway of effects;</i> • <i>relevant context on why it is a key issue;</i> • <i>key uncertainties that should be addressed in the impact assessment;</i> • <i>Indigenous or public concerns or perspective;</i> • <i>potential for differential effects among diverse subgroups;</i> • <i>scientific evidence or Indigenous Knowledge, including from past project experience, which supports inclusion as a key issue.</i> 	<p><i>Where applicable, briefly provide solutions on how to address the potential issue or effects including:</i></p> <ul style="list-style-type: none"> • <i>Information or studies required to describe and characterize the potential effect; including any guidance for data collection and/or analysis or existing data sources to inform the assessment;</i> • <i>Any means, including any powers, duties or functions, that your department or agency has that may mitigate, manage, or set conditions related to the issue or effect;</i> • <i>Guidance or policies for mitigating effects or any standard and well-understood mitigation measures that would address the effect, including follow-up monitoring activities; and/or</i> • <i>Commitments the proponent could make to respond to the issue.</i> <p><i>Where available, please refer to existing text in the Tailored Impact Statement Guidelines template.</i></p>	<p><i>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the key issue and any questions or directions for the proponent.</i></p>

Please insert additional rows as necessary.

Table 2. Clarifications or additional information the Proponent could include in the response to Summary of Issues

Comment ID	Relevant section of the Initial Project Description	Description of Issue, Concern or Uncertainty	Clarification or additional information	Plain language summary for inclusion in Summary of Issues
<p>Please identify comments by organization and comment number.</p> <p>e.g.: IAAC-01</p>	<p>If the comment is related to a specific section of the Initial Project Description, please provide a reference.</p> <p>You may also choose to copy the relevant text here.</p>	<p>Provide a description of the issue, concern or uncertainty the proponent could address in their response to Summary of Issues and, if IAAC requires it, in their Detailed Project Description that would give confidence that the issue will be addressed and managed, by clear measures, existing guidelines, regulatory processes or other existing tools, and thus be the subject of simplified information requests in the guidelines, or simply be removed.</p>	<p>Provide recommended clarification or additional information to be included in their response to the Summary of Issues and, if IAAC requires it, in their Detailed Project Description to address the issue, concern or uncertainty, for example:</p> <ul style="list-style-type: none"> • Clarifications to elements of the project description (e.g. components, activities, locations or alternatives); • Proposed project design changes that could avoid effects; • Evidence that could be presented to demonstrate there is no effect pathway of effect or that effects would be negligible; • Evidence that standard mitigations will address potential effects • Commitments the proponent could make to respond to the issue, including the implementation of federal operational policies or guidance documents. 	<p>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the issue and of the question or direction for the proponent.</p>

Please insert additional rows as necessary.