

# Citxw Nlaka'pamux Assembly

Ashcroft Indian Band, Boston Bar First Nation, Coldwater Indian Band, Cook's Ferry Indian Band, Nicomen Indian Band, Nooaitch Indian Band, Shackan Indian Band and Siska Indian Band

## **Review of the Canadian Environmental Assessment Act (2012) Processes**

### **Introduction**

The Citxw Nlaka'pamux Assembly (CNA) is an organization that was formed by eight Nlaka'pamux Bands, in 2013, to manage and administer a Participation Agreement with a major mining project and an Economic and Community Development Agreement with the Province of British Columbia. The CNA with facilitation help from Esh-kn-am Cultural Resource Management Service (ECRMS), an Nlaka'pamux resource management and referrals service agency, conducted a series of roundtable community discussions to for the purposes of the Expert Panel's review of the Canadian Environmental Assessment Act (CEAA 2012). The roundtable sessions were held in order to develop recommendations that were reflective of the communities, their decision makers, and knowledge holders.

Due to the short timeline between the CNA receiving funding to participate in the review and the deadline for submissions only four sessions were held over a period of three days. The four sessions took place in various community hubs within the territory to maximize potential participation. Three general community sessions were held in the communities of Lower Nicola, Merritt, and Cook's Ferry. In addition, one Elders' session was held in Merritt. All the sessions were open to all Nlaka'pamux communities.

For the sessions, an emphasis was placed on roundtable dialogue with a brief introduction from the CNA and ECRMS to CEAA 2012 and the Expert Panel review process. Many commonalities were heard throughout the four sessions, including a strong emphasis on the need for CEAA to recognize and respect the rights of Indigenous Peoples to make decisions on the land in an informed way. A key component of the decision-making process that was highlighted in the sessions is the ensured sustainability of the affected First Nation to carry out cultural practices on the land. The prominence of the need for recognition and respect in decision making reflects questions posed by the Expert Panel for this review, such as;

- 1) How can the practices and procedures associated with federal environmental assessments, as well as the process itself, support the Government of Canada's goal of renewing the nation-to-nation relationship with Indigenous Peoples and moving towards reconciliation;
- 2) What is the best way to reflect the principles of United Nations Declaration on the Rights of Indigenous Peoples, including the principles of Free, Prior and Informed Consent and the right to participate in decision-making in matters that would affect Indigenous rights, in federal environmental assessment processes;
- 3) How can Indigenous Peoples' inherent jurisdiction best be reflected and respected in the federal environmental assessment process; and,
- 4) How can federal environmental assessments support investor certainty, community and environmental wellbeing, the use of best available technology, certainty with respect to protection of Aboriginal and treaty rights and timely decision making (Expert Panel, web, 2016).

This paper will provide insight to these questions that reflects discussions had in the community roundtables by describing points throughout the CEAA process where informed and recognized indigenous decision making should be realized in CEAA (Appendix I).

### **Early Engagement**

Throughout the sessions, it was made clear that current engagement through the process does not allow for the full recognition of Indigenous decision making authority, or allow for a process that ensures the affected First Nation is fully informed. Engagement should occur before the development of a project description, which could be supported by a working group that includes the affected First Nation, proponent and the federal government to ensure that a project description is developed that accurately reflects the potential impacts as well as, the design of the project itself reflects the concerns of the First Nation. By helping to, “set the stage,” for the project as a collective this would aid in the recognition of indigenous decision making on the land while also improving proponent certainty.

In addition to improved early engagement it is paramount that the affected First Nation is aware for the need of a project as well as any alternatives, something that was considered pre-CEAA 2012, to ensure that an informed decision can be made. The decision for whether a federal environmental assessment is needed for a proposed development should also include the affected First Nation, an assessment should not be determined by the Minister or the “Regulations Designating Physical Activities,” alone (RDPA, 2012). This is reflective of the objective to renew the “Nation to Nation,” relationship.

Finally, engagement at all levels should be carried out in an appropriate manner that respects how a First Nation may go about making a decision about what happens on the land. This is reflected in Article 8(1) of the United Nation’s Declaration on the Right of Indigenous Peoples (UNDRIP), which the Expert Panel has asked how to implement, “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture,” (United Nations [UN], 2008). For Nlaka’pamux this means that CEAA engagement should reflect the values of reciprocity, relationship building, and intergenerational learning by being engaged as soon as possible and having more dialogue between the First Nation and the federal government (i.e. a letter and a stack of binders will certainly not suffice). An early dialogue between the proponent, federal government and the First Nation (the aforementioned working group) could help develop an engagement strategy that reflects the values and culture of the First Nation while giving the proponent certainty around timelines.

### **Environmental Assessment**

Overall, the scope of factors to be considered in a federal environmental assessment, as provided by section 19 of CEAA is not enough to provide information to fully assess impacts to Aboriginal Rights or for the First Nation to make a decision regarding the impacts to their territory (Canadian Environmental Assessment Act [CEAA], 2012). It is paramount that the First Nation and the federal government work together to determine what factors are considered in an assessment. In addition, a joint decision making framework should be in place for determining if substitutions are sufficient or if a project assessment will be referred to a panel. These key decisions and scoping for an assessment need to be collaborative in nature to fully recognize Indigenous jurisdiction over their territory and to actualize the, “Nation to Nation,” relationship.

Engagement through the assessment should be carried out in a manner determined by the previously mentioned engagement strategy.

Determination of impacts should be developed collaboratively. The proximity to a project does not always correlate to the magnitude of the impact for First Nations communities. Many community members spoke of the movement of animals or the connectedness of the river systems and how the potential impacts should properly reflect the dynamic nature of the environment in which the potential project may occur. In addition, impacts to the environment through a western science worldview may not be the same thing to a First Nation who is looking to sustainably carry out cultural activities on the land.

The impacts determined with the First Nation should then be mobilized in decision making around design and mitigation. In all of the sessions it was made clear that the information shared and the decision making of the First Nation has to hold weight and there needs to be a willingness of the proponent for changes to the project, and the recognition of the First Nation's jurisdiction by the federal government.

### **Decision Making**

Currently, there is little to no transparency around how decisions are made around what a justifiable impact is. In order for there to be a, "Nation to Nation," relationship their needs to be recognition of decision making authority of the First Nation. This means that a framework needs to exist for the determination of justifiable impacts between the Canadian federal government and the First Nation. It cannot be up to the cabinet alone to determine what is justified; therefore section 52(4) of CEAA needs to provide for a more transparent and collaborative process (CEAA, 2012). In addition, the Canadian federal government does not currently possess the expertise to evaluate impacts to Aboriginal Rights or determine what a justifiable impact to a First Nation is, so it is critical that process be collaborative in nature. This collaborative approach should carry on into the development of conditions should a certificate be awarded.

## **The “No,” Factor**

For there to be true recognition of indigenous jurisdiction, realization of UNDRIP and a “Nation to Nation,” relationship, there needs to be an ability for the impacted First Nation to say, “No,” to a project when the project impacts outweigh the benefits and the project results in a net negative impact to the social and cultural well-being of the First Nation. This was something that was echoed multiple times in all the community engagement sessions. “Free, Prior and Informed Consent,” cannot be based on consensus based decision making alone, there needs to be a willingness of the federal government to accept that some impacts may not be justifiable (UN, 2008). If this is not achieved, then there will be no, “Nation to Nation,” relationship.

There should be opportunities throughout the environmental process from project description to decision making that allow, through meaningful engagement and informed decision making, for a First Nation to identify significant adverse impacts to their social and cultural well-being that do not support a project, or aspects of a project proceeding. First Nations must have the right to informed decision making when it comes to project developments on First Nations lands which may result in a “no” decision with respect to design, location, or all together.

Through things such as culturally appropriate, early engagement, non-starters for a project can be identified earlier and reduce cost to the proponent. Proponent certainty could also be increased by increased federal funding support for First Nations to develop territory-wide land plans which could identify areas which the First Nation does not want and will not let development happen.

## **Conclusion**

In conclusion, there is a need for CEAA to better reflect indigenous authority in decision making in order to ensure that the future generations will be able to sustainably carry out cultural practices and the current generation will not suffer adverse impacts to their social or cultural wellbeing. Changes and improved collaborative engagement at various stages throughout and before an environmental assessment process could allow for this realization of indigenous decision making. Through this, a true “Nation to Nation,” relationship could be achieved.

## **Works Cited**

Canada. Canadian Environmental Assessment Act, 2012, S.C. 2012, c. 19, s. 52.

Canada. Regulations Designating Physical Activities, 2012, SOR/2012-147.

“Submissions Guide.” *Expert Panel, Review of Environmental Assessment Processes*, eareview-examenee.ca/submissions-guide/. Accessed 22 December 2016.

“UN Declaration on the Rights of Indigenous Peoples (UNDRIP).” *United Nations Educational, Scientific and Cultural Organization*. United Nations, Mar. 2008. Web. 22 Dec. 2016.  
[www.unesco.org/new/en/indigenous-peoples/related-info/undrip/](http://www.unesco.org/new/en/indigenous-peoples/related-info/undrip/)

## **Appendix I: Select community engagement participant comments**

“[When government, consultants or proponents are seeking to engage with us they should] have First Nations people with them and speak at the level of the people.”-Nlaka’pamux Elder

“Our words have to carry weight, the same as the feds. We are always being dictated to.”-Nlaka’pamux Elder

“Respect is key, you should know who we are before you even start your work.”-Nlaka’pamux Elder

“It means when we say no, you damn well better take it as mo.”-Nlaka’pamux Elder when asked about what meaningful consultation means.

“Decision makers aren't on the land they are not considering that when deciding, we are living our lives and they have no clue what that is about.”-Nlaka’pamux Elder

“You have to deposit before you withdraw, and you can't keep withdrawing. You'll go into the negative.”-Nlaka’pamux Community member on the importance of relationship building.

“Our history, our preservation is also important. No more two different sets of standards.”-Nlaka’pamux Community Member

“Always goes back to the sustainability, we need to be able to carry out who we are without a risk of depleting our resources.” -Nlaka’pamux Elder

“The setting of the terms of reference of the assessment, limits the scope, and then they engage us later and we table things and they say sorry that is outside of the scope.”-Nlaka’pamux Chief on the importance of designing the assessment together.

“The value of all Nation members, we are a reiteration of past generations, we are important.”-Nlaka’pamux community member on the importance of engaging all community members not just point of contact at a band office.

**Appendix II:** Links to related websites.

Esh-kn-am Cultural Resource Management Services

[www.eshknam.com/](http://www.eshknam.com/)

Citxw Nlaka'pamux Assembly

[cna-trust.ca/](http://cna-trust.ca/)