

Reasons for Decision of the Chief Executive Assessment Officer

EXTENSION TO THE WOODFIBRE LNG PROJECT ENVIRONMENTAL ASSESSMENT CERTIFICATE

CONTEXT

Woodfibre LNG Limited (Woodfibre) received Environmental Assessment Certificate (EAC) #E15-02 under the *Environmental Assessment Act* (2002) (former Act) for the Woodfibre LNG Project (the Project) on October 26, 2015. Section (s.) 31(2) of the *Environmental Assessment Act* (2018) (Act) allows for the holder of an EAC to apply for an extension of the deadline specified in the EAC for substantially starting the Project. This decision is being made pursuant to s.31(4) of the Act, under which the EAO's Chief Executive Assessment Officer (CEAO) may provide a one-time, maximum five-year, extension to an EAC. Woodfibre applied for an extension to extend the EAC expiration date from October 26, 2020 to October 26, 2025 (Extension Application).

The Environmental Assessment Office (EAO) received the Extension Application on March 24, 2020 and commenced the review on March 30. EAO staff undertook a review process that engaged Indigenous nations, provincial and federal government agencies, and local governments in the review, as well as Woodfibre. At the completion of this process, the EAO prepared a report summarizing the application, the review and engagement process undertaken, the key issues and effects identified, and staff's conclusions regarding matters that may be pertinent to my decision, including any potential additional conditions to attach to Woodfibre's EAC. I have considered this report in making my decision, which as been posted to the EAO's electronic project information centre (EPIC) website, including submissions referenced in the report.

On October 19, 2020, I also received a separate submission from Tsleil-Waututh Nation to inform my decision. I met with representatives of Tsleil-Waututh Nation to discuss this submission on October 22, 2020 and have turned my mind to the information the Nation provided. This submission, and the fact that the meeting was occurring, was shared with Woodfibre.

On October 25, 2020 I ordered that the deadline in the EAC by which the Holder must substantially start the Project be extended to October 26, 2025. These are the reasons for my order.

THE NATURE OF THE DECISION

I would like to express my views and understanding regarding several factors I have considered in making a decision under s.31 of the Act. It is important that the extension decision, and the review process undertaken by the EAO to inform this decision, be considered in the context of the Act in its entirety, relevant common law, past EAO practice, the submissions of participants in the process, the information on which my decision was based, and the potential impacts of the decision on individuals' rights or interests. I would also note that, before making a decision under s.31(4), the CEAO must seek to achieve consensus with Indigenous nations.

It is important to note that Ministers, in issuing an EAC for a project and applying specific conditions to the EAC, have considered whether a project is in the public interest. Subsequent decisions respecting a project, including a decision to extend an EAC, are made in context of that determination.

One of the implications of this relates to the scope of the review of an extension application. When an EAC holder applies for an extension, the EAO undertakes a review to understand if the facts concerning the project (e.g. to technology, facts on the ground) have substantively changed from the time that the EAC was issued for the project. If there have been changes would suggest that new conditions could be added to an EAC, then this is allowed for under s.31(4)(a) of the Act.

If changes have been of such magnitude that a new EA would be merited, rather than extending the existing EAC, then this is contemplated under s.31(4)(b) of the Act. The EAC may also be extended without additional conditions.

In this regard, in *Glacier Resorts Ltd. v. British Columbia (Minister of Environment)*, 2019 BCCA 289, Groberman J.A. commented on the purpose of the deadline provision in the *Environmental Assessment Act* (paragraphs 51 and 52). While that case concerned the question of whether or not a project had been substantially started, Groberman J.A.'s reasons are, in my view, also relevant in considering whether or not an EAC should be extended.

The legislation itself balances proponents' desires to build infrastructure and developments with the broader interests of the public in protecting the environment. It provides for intensive study of projects before a certificate is issued allowing them to go ahead. It protects proponents by allowing them to proceed with projects that have been "substantially started" within the deadline set by the certificate.

The legislation, however, is also mindful of the fact that environmental science progresses. The perceived impact of a proposed project may change over time, not only due to changes in public attitudes, but also due to increasing knowledge of the harm caused by certain types of development. Further, the character of a development site may change substantially over time. Finally, advances in technology may result in more effective mitigation measures becoming available. It would be unwise to allow long-delayed projects to proceed based on reports and conditions that have become outdated.

While this decision was in relation to the former *Environmental Assessment Act*, it is consistent with one of the stated purposes of the EAO in the new Act, specifically s.2(2)(b)(i), which states that a purpose of the office is to "promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities".

In addition, *Glacier Resorts* is consistent with longstanding caselaw concerning the nature of environmental assessments. In *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, La Forest J. held:

The basic concepts behind environmental assessment are simply stated: (1) early identification and evaluation of all potential environmental consequences of a proposed undertaking; (2) decision making that both guarantees the adequacy of this process and reconciles, to the greatest extent possible, the proponent's development desires with environmental protection and preservation.

With respect to past practice, I note that, to the best of my knowledge, the EAO has not previously declined an application for an EAC extension. In saying this, I am of course mindful of the need to consider each application on its own merits, and to have regard for the ability to refuse an extension in the appropriate circumstances. As I explain further below, in my view this is not one of those circumstances.

With respect to the impact of my decision on individuals, I would note that refusing to extend the EAC would have a significant impact on the EAC holder. Given Woodfibre's intent to pursue the project, it would require a lengthy and costly process to seek a new EAC. Similarly, the imposition of significant new conditions must be considered with care, as new conditions could themselves make completion of the project difficult and could be contrary to the public interest decision previously made by Ministers.

I acknowledge that the interests of other parties also have the potential to be impacted by the EAC extension decision. My views and conclusions regarding the issues raised during the course of the extension review are discussed below.

KEY ISSUES

With respect to the matters relevant to my decision, I agree with the conclusions reached by EAO staff in the bullets in section 7.0 of its report, for the reasons detailed in that report, in particular that:

- Clarifications requested by technical reviewers were adequately and reasonably addressed by Woodfibre;

- The extension is unlikely to cause incremental or additional negative effects to Indigenous nations and their rights;
- The Crown has fulfilled its constitutional and statutory obligations to Indigenous nations regarding this extension decision; and
- The conclusions of the original EA are still valid and there are no changes required to the EAC.

I would like to express my views regarding several of the key issues where there was not consensus was not reached between the EAO, technical reviewers and/or Indigenous nations.

Consultation and Engagement

The EAO invited Squamish Nation and Tsleil-Waututh Nation to participate in the extension review process, and also notified other nations of the process and shared the application with them (Musqueam Indian Band, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation, Penelakut Tribe and Stz'uminus First Nation).

While the EAO kept Squamish Nation informed as the process advanced, Squamish Nation chose not to provide any feedback, as they have their own separate assessment process and agreement with Woodfibre.

Tsleil-Waututh Nation actively participated in the extension process and raised concerns with the EAO about the extension itself, as well as with the process the EAO undertook for engagement and seeking consensus.

The EAO undertook efforts to seek consensus with Indigenous nations during the course of the review. In consideration of the fact that the EAO was unable to achieve consensus with Tsleil-Waututh Nation, the EAO offered the nation the opportunity to provide me with a separate submission to inform my decision. As discussed above, I met with Tsleil-Waututh Nation to discuss the issues raised in their submission and have fully considered them in making my decision. My views regarding their outstanding concerns are also discussed below. While I also appreciate the concerns Tsleil-Waututh Nation expressed, based on EAO's report and the meeting with Tsleil-Waututh Nation, I am of the view that the process was adequate.

Requests to hold a public comment period on the Extension Application were made by My Sea to Sky, including by Ecojustice on behalf of My Sea to Sky on May 25, 2020. In his letter dated June 17, 2020, the former Acting CEAO indicated that a public comment period would not be held since it was not required by the Act, not contemplated by the EAO's Certificate Extension Policy, and, in his preliminary view, there was a low likelihood of issues arising in the extension review that were not previously considered in the EA of the Woodfibre LNG Project.

Marine Shipping

A key issue of concern for the Tsleil-Waututh Nation was the scope of the marine shipping assessment. The Nation asserted that the scope of this assessment needed to be expanded beyond Howe Sound in light of *Tsleil-Waututh v Canada (Attorney General)*, 2018 FCA 153.

In his letter dated July 24, 2020, the former Acting CEAO decided that the *Tsleil-Waututh* decision does not have direct application to the review of the Project's Extension Application. He noted that the scope of a project that is assessed through an environmental assessment is determined by the application of the relevant legislation to the specific facts of a project. As a result, a conclusion with respect to the scope of a given project is not necessarily applicable to the assessment of other projects, even where the different projects all have a component in common, such as a marine component. Therefore, he expressed the view that the *Tsleil-Waututh* decision did not have direct application to the review of the Woodfibre LNG Project Extension Application. He concluded that, based on a consideration of the relevant provisions in the Act, that the marine shipping component associated with the project, as scoped in the EA to the mouth of Howe Sound and as authorized in the EAC, would not change for the purpose of the Application.

Tsleil-Waututh Nation noted their disagreement with the former Acting CEO's view. The EAO and Tsleil-Waututh Nation had a phone call to discuss this issue on July 29, 2020. At the meeting, the Acting CEO committed to reconsider his views in light of the concerns Tsleil-Waututh Nation raised in the meeting, which were then outlined in its subsequent letter of August 14, 2020. The EAO verbally expressed the view that the information provided did not change the EAO's perspective in meetings on September 16, 2020 and October 14, 2020. At the request of Tsleil-Waututh Nation, the former Acting CEO provided a formal written response on October 14, 2020.

Greenhouse Gas Emissions

Tsleil-Waututh Nation and several local governments expressed concern regarding the project's greenhouse gas (GHG) emissions. Some requested additional assessment, while many, including members of the public and My Sea to Sky, asked for an additional condition that included requiring the Woodfibre LNG Project to have net zero emissions by 2050.

In my view, the existing conditions relating to GHGs, including British Columbia's regulatory regime, have not changed in a way that would suggest the need for any additional EAC conditions to address the impacts of the project.

I acknowledge that, in the years since the EAC was granted, concerns respecting the impact of GHGs have increased, both in BC and around the world. In that regard, the concerns expressed by participants in the Extension Application are entirely understandable, and I have taken those concerns into account.

However, the projected GHG emissions from the project were considered in the EA for the project, and those projected emissions have not changed since Ministers granted the project its EAC. Further, the regulatory mechanisms outside of the *Environmental Assessment Act*, to address GHGs remain in place, and in some respects have been supplemented. As discussed in the EAO's extension review report, B.C. has legislated GHG reduction targets under the *Climate Change Accountability Act* and has a legislated GHG intensity ratio for LNG facilities under the *Greenhouse Gas Industrial Reporting and Control Act*. I am of the view that the increased concern and understanding regarding GHG emissions, both in BC and globally, would not change the conclusions of the EAO's 2015 assessment. Considering the other regulatory mechanisms in place, a further condition concerning GHGs would not, in my view, be warranted to address the effects of the project.

Conclusions of the Original EA and the Existing EAC Conditions

I agree with the EAO report's conclusions that there was no information provided that suggested that the environmental circumstances have changed to an extent that would materially impact the conclusions of the original EA. The existing EAC includes conditions that require Woodfibre to develop various management plans to ensure the project's potential adverse effects are appropriately mitigated. All of these plans still need to be developed and submitted to the EAO.

Some parties raised questions about the adequacy of baseline data and raised questions about specific ways that Woodfibre would mitigate some effects. Tsleil-Waututh Nation expressed concerns that Woodfibre's commitments may not be adequately tracked and followed up. The existing EAC specifies Woodfibre's requirements related to consultation and plan development, particularly Condition 2. Condition 2 requires Woodfibre to maintain a consultation record related to management plan development and allows for the EAO to request this record. Considering the information received by Woodfibre from parties related to the content of management plans during the extension review (and prior) and any commitments made by Woodfibre regarding the content of plans, I have asked EAO staff to follow up with Woodfibre in this regard.

CONCLUSION

After consideration of the EAO's report, the review process undertaken, the approach to consultation with Indigenous nations and efforts to seek consensus, the existing EAC conditions, and the existing overall regulatory regime for the Project, I decided to issue an order under s.31(4)(a) to extend the EAC for the Woodfibre LNG Project for five years with no additional EAC conditions. The Woodfibre LNG Project must now be substantially started by October 26, 2025.



Elenore Arend
Chief Executive Assessment Officer
Environmental Assessment Office

Signed this 4th day of November 2020