

Lax Kw'alaams Band and
British Columbia Environmental Assessment Office

Dispute Resolution
Final Report

February 15, 2023

Patrick Kelly
Dispute Resolution Facilitator

British Columbia Environmental Assessment Office
Lax Kw'alems Band and

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A. Executive Summary

Options Available to the Chief Executive Assessment Officer (CEAO) – The Dispute Resolution Facilitator considered the options available to the CEAO under the *Environmental Assessment Act*, 2018 regarding the Ksi Lisims LNG project. Options include: 1. recommending that the project proceed to an environmental assessment; 2. the project be exempted from an environmental assessment; 3. that the project be terminated from the process; or 4. require the proponent to submit a revised detailed project description.

Facilitator's Recommendation – The Dispute Resolution Facilitator (DRF) recommends that, regarding the Ksi Lisims LNG project, the CEAO proceeds to a Readiness Decision based on the Environmental Assessment Office's (EAO) recommendation to proceed to an environmental assessment.

Dispute Resolution Initiation – The July 21, 2022 letter from the Lax Kw'alaams Band to the EAO initiated the dispute resolution process under the *Environmental Assessment Act*, 2018. Lax Kw'alaams expressed that the band and the EAO did not reach consensus on the EAO Section 16(2) recommendation that the Ksi Lisims LNG project proceed to an environmental assessment.

Dispute Resolution Process Begins – The Lax Kw'alaams Band and the EAO mutually agreed that Patrick Kelly would be the Dispute Resolution Facilitator (DRF). The dispute resolution began on November 4, 2022.

Information Reviewed Pertaining to the Issues Disputed – The DRF examined correspondence, both letters and emails, between the Lax Kw'alaams Band and the EAO. Summaries of the key content of correspondence are provided in Section H, pages 9-14.

Interviews Held with the Parties – The DRF interviewed representatives of both the EAO and Lax Kw'alaams independent of each other. The purpose of the independent meetings was to ensure that the DRF understood each party's information and perspectives on the issues.

Meetings Held Between the Parties – The DRF met with representatives of Lax Kw'alaams and the EAO jointly. The purpose of the joint meetings was to determine if the parties would be able to reach consensus on the disputed issues and that the CEAO proceed to the Readiness Decision regarding the Ksi Lisims LNG project. A summary of the outcomes of the joint meetings is provide in Section J, pages 16-18.

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The Dispute Resolution Issues – The EAO, on June 13, 2022, issued a draft readiness decision recommendation by EAO for the Ksi Lisims LNG project to proceed to an EA under Section 18(1) of the *Environmental Assessment Act*, 2018. Lax Kw'alaams, on July 21, 2022, initiates dispute resolution regarding the EAO recommendation. The band's issues include: 1. the proposed marine pipeline and cumulative effects assessment; 2. the interconnection transmission line (electrical); 3. legislated targets of emissions and power supply availability; and 4. infringement on Lax Kw'alaams ability to exercise rights. A summary of the issues is provided in Section K, pages 18-20.

DRF Examination of the Issues – The DRF considered the information noted above and summarized his examination of the issues provided in Section L, page 21.

DRF Conclusions – The DRF, after examining and considering the issues, drew conclusions on them. A summary of the conclusions is in Section M, page 22-24.

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B. Dispute Resolution Purpose

On July 21, 2022, Lax Kw'alaams initiated dispute resolution under Section 5(2) of the *Environmental Assessment Act*, 2018 in respect of a preliminary recommendation to the Chief Executive Assessment Officer ("CEAO") to proceed with an environmental assessment of the Ksi Lisims LNG project (Ksi Lisims) under section 18 of the Act ("Readiness Decision").

C. Dispute Resolution Objective

The objective of the dispute resolution process is to seek consensus on a recommendation to the CEAO on the Readiness Decision.

D. Dispute Resolution Authority

a. The *Environmental Assessment Act*, 2018, provides that under sections,

5 (1) "Subject to regulations under subsection (4) (a), the minister, after considering a recommendation, if any, of an Indigenous nation, may appoint individuals to facilitate the resolution of disputes in relation to the matter referred to in subsection (2)."

5 (2) "A participating Indigenous nation or the Chief Executive Assessment Officer may refer one or more of the following matters to a dispute resolution facilitator:

(a) a matter pending decision under section 14 (2), 17, 18, 19, 28 or 29;

(b) the provision of a notice under section 13 (1);

(c) any other prescribed matter."

5 (3) "On completion of a facilitation, as dispute resolution facilitator must provide a report to the participants and to the applicable of the Chief Executive Assessment Officer or the minister."

5 (4) "The Lieutenant Governor in Council may make regulations respecting the powers and duties of dispute resolution facilitators under this Act, including, without limitation, regulations respecting the following:

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- (a) qualifications of individuals who may be appointed under subsection (1);
 - (b) the powers and obligations of a dispute resolution facilitator to manage a referral made to the facilitator;
 - (c) matters that a dispute resolution facilitator must consider before making a report;
 - (d) referrals to a dispute resolution facilitator;
 - (e) the time by which a dispute resolution facilitator must complete a facilitation and provide a report.”
- 5 (5) If a matter pending decision is referred to a dispute resolution facilitator,
- (a) a decision on the matter may not be made under the applicable section until after the facilitator has provided a report, and
 - (b) if the participating Indigenous nation requests that the Chief Executive Assessment Officer take part in the dispute resolution process, the Chief Executive Assessment Officer must take part in the process.”
- 5 (6) Despite subsection (2), an Indigenous nation that has provided notice under section 14 (1) may refer to a dispute resolution facilitator a matter pending decision under section 14 (2).
- 5 (7) A report of a dispute resolution facilitator is not to be taken as guiding
- (a) the CEAO or minister respecting a project not addressed in the report, or
 - (b) a decision maker under another enactment.
- 5 (8) This section is not to be taken as limiting any right a participating Indigenous nation may have to seek a remedy from court.
- 5 (9) For certainty, nothing in this section, nor anything done under this section, abrogates or derogates from the rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

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E. Interim Guidelines for Dispute Resolution Facilitators

Section 5(4) of the *Environmental Assessment Act*, 2018 authorizes regulations respecting the powers and duties of dispute resolution facilitators. In its absence, as the regulation is under development, the Environmental Assessment Office (EAO) set out Interim Guidelines for Dispute Resolution Facilitators, under the Act.

- a. The purpose provides that dispute resolution facilitators assist the EAO and Indigenous nations in seeking to achieve consensus at specific milestones in the environmental assessment process. Participants may use the services of a qualified facilitator when they are unable to reach agreement or consensus on their own. During the Early Engagement phase, dispute resolution is available to any Indigenous nation who has provided notice of its intent to participate as an Indigenous nation under the Act, and the CEAO. For all subsequent phases of the EA, dispute resolution is available to participating Indigenous nations and the CEAO.
- b. Dispute resolution is a non-binding process. Only certain matters defined in the *Environmental Assessment Act* can be referred to a facilitator. If a matter pending decision is referred to dispute resolution, a decision on the matter cannot be made until the facilitator provides their report. Dispute resolution ends when the facilitator provides a report to the participants, and the CEAO or the Minister.
- c. The scope of services to be provided by a dispute resolution facilitator include:
 1. Develop a customized process for the facilitation that meets the needs of all participants;
 2. Identify the participants' preferences for other parties to participate in the facilitation;
 3. Deliver an Engagement Protocol that summarizes the procedural details agreed to by the participants;
 4. Deliver a Dispute Resolution Report within the targeted time of 60-days; and
 5. Consider termination of the facilitation, if necessary.

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d. The Powers of dispute resolution facilitators include:

1. Determine facilitation process for the individual facilitation with participants, including working with participants to incorporate Indigenous laws, practices, and protocols;
2. Manage the process so it is completed in a timely manner;
3. Advise the participants during the facilitation to assist them with seeking consensus;
4. Provide process recommendations, if any, in the report; and
5. Terminate the facilitation.

e. Confidentiality

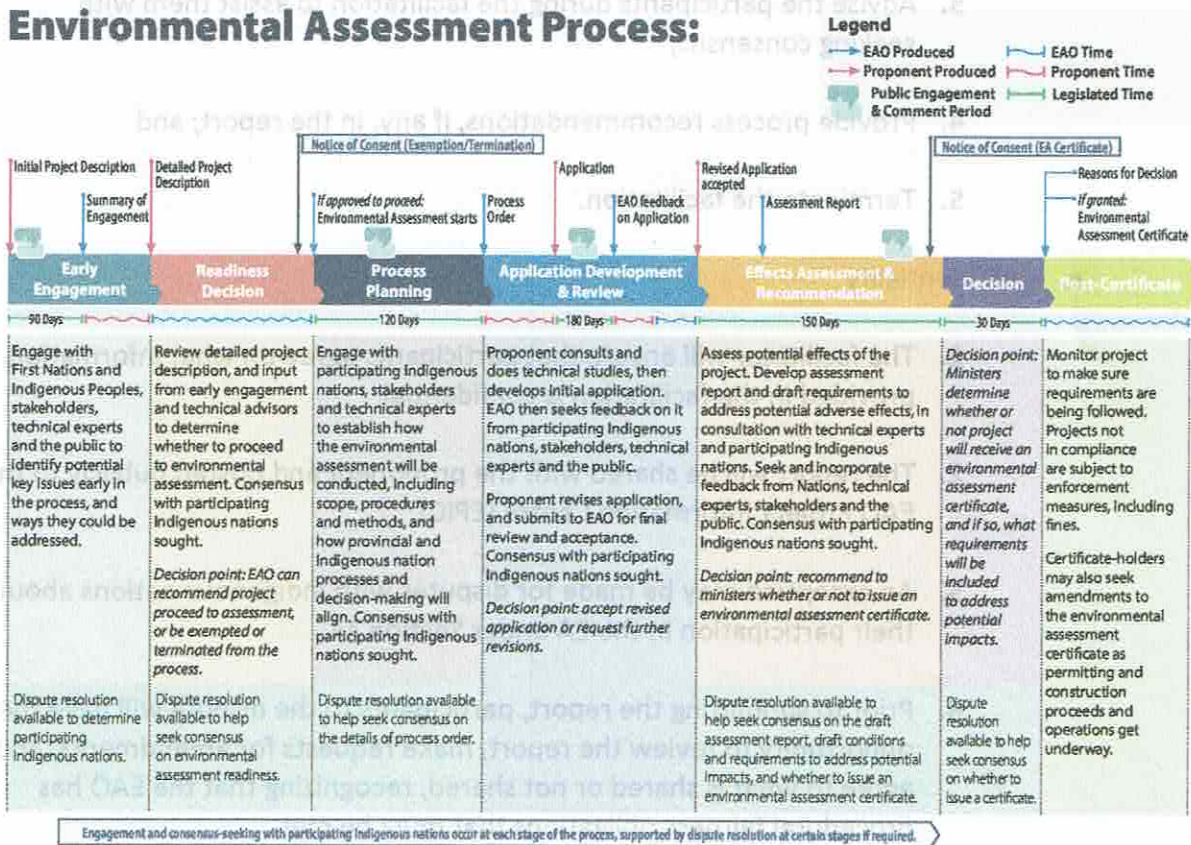
1. The facilitator will ensure that participants agree on what information provided in the facilitation is confidential.
2. The report will be shared with the proponent and posted publicly to the EAO Project Information Centre (EPIC).
3. An exception may be made for disputes with Indigenous nations about their participation in the EA under Section 14.
4. Prior to submitting the report, participants to the dispute will have the opportunity to review the report, make requests for amendments, and agree to what is shared or not shared, recognizing that the EAO has procedural fairness obligations that must be met.
5. Proponents may have the opportunity to review the report and other submissions made during the process as a matter of procedural fairness obligation, which is determined on a case-by-case basis.
6. The report may include a confidential memo that includes confidential information for the decision-maker (e.g., confidential Indigenous knowledge).

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7. The confidentiality provisions of the *Environmental Assessment Act* and the *Freedom of Information and Protection of Privacy Act* provide protection for confidential Indigenous knowledge.

F. The Environmental Assessment Process

Environmental Assessment Process Chart



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G. The Parties

a. **Lax Kw'alaams Band** is an Indian band as defined in the *Indian Act*.

b. The **EAO** is an office of the Government of British Columbia continued under the *Environmental Assessment Act, 2018*

H. Summary of Correspondence Between the Parties

During the course of the current Readiness Decision phase, the Lax Kw'alaams Band and the British Columbia Environmental Assessment Office had a string of correspondence (emails and letters) and meetings between them from April 27, 2022 to February 14, 2023. The EAO provided a summary of the "Consensus-Seeking Discussions during the Readiness Decision between Lax Kw'alaams and the EAO". The parties also met in person on January 18, 2023. All correspondence between the parties is available on the EAO website. The chronology shows:

1. April 27, 2022, the EAO shares the final Detailed Project Description (DPD) with Lax Kw'alaams;

2. May 20, 2022, letter from Lax Kw'alaams to the EAO on their assessment of the adequacy of the information contained in the DPD. The Band states its position that more detailed and specific information and engagement effort is required around the development and inclusion of Indigenous interests and issues into the DPD. Specifically in the areas of:

a. Natural gas pipeline components

b. Interconnection transmission line components

c. Freshwater use source considerations

d. Shipping route considerations

e. Marine response and communication requirements for safety

f. Sufficient and adequate engagement with relevant parties;

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Lax Kw'alaams states further its position that the DPD fails to include a sufficient level of information and adequacy of engagement to issue a decision under Section 16 (2) of the Act to exempt from or proceed to environmental assessment;

Lax Kw'alaams makes a statement in a letter attached to the May 20, 2022 package about their concern that the project occurs within Lax Kw'alaams territory, that fact is not recognized in the DPD, and it would appreciate an express statement on that;

The nation reiterates that it is opposed to the project as it has made clear in all communication on the matter. Lax Kw'alaams notes a key concern of theirs that there is no nation-to-nation engagement with the Nisga'a Nation which is part of the Project Proponent;

3. June 8, 2022, meeting between EAO, Lax Kw'alaams, and Metlakatla that reviewed the consensus tracking table, specifically the proponent's conclusions and the EAO's views;
4. June 13, 2022, the EAO shared its first draft of the Readiness Report seeking a review from all participants. This draft included the EAO's preliminary recommendation for the project to proceed to an EA;
5. June 30, 2022, letter from Lax Kw'alaams to the EAO on outstanding issues. It reiterates that they need more information, engagement, and clarification on:
 - a. Interconnection transmission line (electrical) components
 - b. Shipping route considerations

Appended to the letter was a consensus tracking table that indicates the parties reached consensus on the other issues noted above in the May 20, 2022 letter;

6. July 7, 2022, EAO email to Lax Kw'alaams to share, as requested, the second draft of the Readiness Report. The email provided responses to outstanding concerns regarding the transmission line and shipping route. The email references a letter from the proponent outlining all changes made to the DPD in response to federal agencies, including shipping;

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7. July 21, 2022, letter from Lax Kw'alaams to the EAO requesting Dispute Resolution. The nation does not consent to the Readiness Decision. It identifies outstanding consensus-seeking issues of:
 - a. Westcoast Gas Connector Transmission Project
 - b. GHG and the ability to meet legislated emission targets
 - c. Uncertainty around timing and quantity of power available;
8. August 2, 2022, email from EAO to Lax Kw'alaams requesting a meeting to seek clarity on issues that the nation wants to resolve in DR;
9. August 5, 2022, meeting between EAO and Lax Kw'alaams to clarify dispute resolution issues;
10. August 17, 2022, letter from EAO to Lax Kw'alaams;
11. September 1, 2022, letter from Lax Kw'alaams to EAO;
12. October 4, 2022, letter from EAO to Lax Kw'alaams;
13. November 4, 2022, EAO contracts Patrick Kelly as Dispute Resolution Facilitator;
14. December 12, 2022, meeting between Lax Kw'alaams and Facilitator. The Facilitator outlined the EAO process and sought to confirm understanding of the nation's interests and position. He recounted the key points from letters on the nation's position of no consent to the CEAO Readiness Decision for the Ksi Lisims LNG project. The nation is prepared to have its submissions stand as a basis for the dispute resolution report;
15. December 22, 2022, confidential letter from Lax Kw'alaams to the EAO entitled "Lax Kw'alaams Submissions for Dispute Resolution." The nation reiterates its position that it does not consent that the CEAO recommend that Ksi Lisims LNG proceed to an environmental assessment (i.e., a Readiness Decision). Lax Kw'alaams adds an additional position that the Ksi Lisims project be terminated. (Note: Letter appended to this report. It will be posted publicly with the report.)

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16. January 10, 2023, letter from EAO to Lax Kw'alaams expressing concern about the new position on termination and the lack of a clear path forward on reaching consensus to resolve the disputes. (Note: Letter appended to this report. It will be posted publicly with the report.)
17. January 11, 2023, virtual meeting between Lax Kw'alaams, EAO, and Facilitator. Facilitator provided update on separate engagements with both the EAO and Lax Kw'alaams to confirm understanding of background information and their context. The parties agree to meet on January 18, 2023 to review a draft interim dispute resolution report;
18. February 14, 2023, a 21-page submission from Lax Kw'alaams on the band's perspective on Extraordinary Adverse Effects (EAE) that the band believes the Ksi Lisims LNG project would have on the band's "rights as affirmed by Section 35 of the *Constitution Act, 1982*." (p. 1). The band's perspective remains consistent with its perspective expressed on the same matter in its July 21, 2022 letter;
19. "Lax Kw'alaams supports a recommendation to the Minister that the environmental assessment (EA) for the Project be terminated pursuant to applicable provisions of the *Environmental Assessment Act*." (p. 1) The band reiterates its position of opposition to the Ksi Lisims LNG project as referenced in its December 22, 2022 letter to the EAO;
20. The Lax Kw'alaams 21-page submission provides the band's perspective on how it considers the application of the Supreme Court of Canada's principle on the interpretation of legislation, in this case, Section 16(2)(c)(i)(B) of the *Environmental Assessment Act*, (SBC 2018), "... especially where the abrogation and/or preservation of rights is concerned." (p. 1 & 2);
21. The Lax Kw'alaams 21-page submission reiterates its perspective, "For Lax Kw'alaams it is patently obvious this Project will cause EAE as described." (p. 4) The band's perspective on this matter remains consistent with its views expressed in the January 18, 2023 in-person dispute resolution meeting between the parties;

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22. The Lax Kw'alaams 21-page submission provides the band's perspective on a range of matters including: GHG emissions and climate impacts; fishing; harvesting and gathering marine resources; hunting and trapping; harvesting forest resources and gathering and cultivating plants for food and medicinal purposes; cultural sites, infrastructure and safety; and cumulative effects and climate change. The EAO response to the February 14, 2023 Lax Kw'alaams submission is not available for this Final Report;
23. The Dispute Resolution Facilitator does not have the authority to address the issues noted above, nor their resolution. They are more properly left to others that have the authority and the qualifications to address and resolve them;
24. Lax Kw'alaams provides its perspective in its 21-page submission on a list of factors that it believes would be helpful to evaluate the Ksi Lisims LNG project under section 16(2)(c)(i). Those factors include timing, duration, magnitude, geographic extent, frequency, and reversibility. (p. 3 & 4);
25. Lax Kw'alaams, in its 21-page submission, asserts that the EAO must address the following factors, under section 16(2)(c)(i), the potential for the Ksi Lisims LNG project to cause EAE:
- a. The Project's contribution to climate change and global heating
 - b. The Project's outsized contribution to cumulative effects within the region (considering other fossil fuel projects)
 - c. The Project's adverse impact to multi-generational continuity of Lax Kw'alaams mode-of-life (p. 2);
26. Lax Kw'alaams also submits that the assessment of EAE be informed by the EAO's obligation under section 2(2)(ii) to support reconciliation, and the obligation under section 2(2)(i) to promote sustainability by protecting the environment and fostering a sound economy.

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27. "Although Lax Kw'alaams does not accept the EAO's policy framework for EAE as outlined by the EAO, Lax Kw'alaams submits the Projects effects nevertheless meet all criteria outlined. The Project's effects will be unmitigable, will be extreme relative to other large industrial projects for a similar cost and duration, and the existing cumulative effects of climate change on Lax Kw'alaams rights are already unacceptable to Lax Kw'alaams." (Lax Kw'alaams, February 14, 2023 letter, p. 4 & 5);

28. Lax Kw'alaams provides its conclusions on EAE at the end of the 21-page submission. The EAO, as the other party to the dispute, is the appropriate body to respond to the band's conclusions. But as noted above, the EAO response is not available for reference in this Final Report. The EAO response will be provided after this Final Report is filed with the CEAO.

The Dispute Resolution Facilitator does not have the authority to respond to the Lax Kw'alaams conclusions. It is the view of the DR Facilitator that the Lax Kw'alaams conclusions require delving much more deeply into the issues than is reasonably suited to the Early Engagement stage of the EA process, in which this dispute resolution is situated. Understanding and addressing the issues implicit in the band's conclusions would require their examination by professionals with appropriate technical qualifications and expertise. Such technical examination is not within the purview of this dispute resolution.

The Facilitator will focus on the subjects identified by Lax Kw'alaams in its July 21, 2022 letter as issues requiring dispute resolution. Those issues are the basis upon which Lax Kw'alaams does not consent to the recommendation under Section 16 (2) of the 2018 Act by the EAO to the CEAO that Ksi Lisims proceeds to an Environmental Assessment.

I. Interviews Held with the Parties (DR Facilitator)

a. Lax Kw'alaams, December 12, 2022

1. Reviewed the purpose of the DR process;
2. Reviewed the Environmental Assessment Process;
3. Confirmed the key points in Lax Kw'alaams correspondence to the EAO;

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4. Discussed next steps in the DR;
5. Lax Kw'alaams noted that there might be a range of alternative outcomes by engaging in both the DR and the assessment process;
6. Lax Kw'alaams reiterated its position that it opposes the Ksi Lisims LNG project and would like to see it terminated;
7. Lax Kw'alaams indicated that for the DR process, it would let its correspondence stand on its own merits, or if the EAO wishes to respond, Lax Kw'alaams would agree to a joint meeting with the EAO;
8. Lax Kw'alaams noted that there seems to have been some movement by the project proponent in some areas of the project description;
9. Lax Kw'alaams noted that the DR Facilitator's final report would have the effect of putting the band's issues and concerns on the record.

b. EAO, November 28, 2022

1. Reviewed the purpose of the DR process;
2. Reviewed the Environmental Assessment Process;
3. Confirmed the key points in EAO correspondence to Lax Kw'alaams;
4. Discussed next steps in the DR;
5. EAO noted that from the May 20, 2022 letter from Lax Kw'alaams, there were six outstanding issues;
6. EAO noted that by June 30, 2022, two outstanding issues remained i.e., electrical supply to the proposed project site, and the transmission line;
7. Discussed the next steps in the DR.

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J. Meetings Between the Parties

a. January 11, 2023 (Virtual)

1. Reviewed the 19-page December 22, 2023 Lax Kw'alaams submissions for dispute resolution;
2. Reviewed the 6-page January 10, 2023 EAO response to the Lax Kw'alaams December 22, 2023 submissions;
3. DR Facilitator reiterated the aim to seek consensus between the parties on the issues;
4. Lax Kw'alaams noted that it would like its December 22, 2022 correspondence to remain confidential;
5. Lax Kw'alaams indicated that it would need a bit more time to provide additional input and response to the EAO letter to solicit the views of community leadership;
6. Lax Kw'alaams did not anticipate any more submissions after the final dispute resolution report;
7. EAO noted that Lax Kw'alaams always has the option of providing a separate submission on its issues to the CEAO;
8. Discussed the matter of confidentiality of correspondence. Lax Kw'alaams recognizes that the DR Facilitator Final Report will be public. The band is comfortable sharing with the Ksi Lisims proponent the points identified in the EAO January 10, 2023 letter;
9. The parties agreed to meet in person on January 18, 2023.

b. January 18, 2023 (In Person)

1. The DR Facilitator provided an overview of the draft Facilitator's report that was provided to the parties to focus their discussion on key issues;
2. Lax Kw'alaams noted that the issues raised can and are most appropriately dealt with in the readiness decision phase;

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3. Lax Kw'alaams views that the Ksi Lisims LNG project constitutes EAE and is inconsistent with government policy based on what it has reviewed to date;
4. Lax Kw'alaams reiterated that since day one it has been opposed to the project;
5. Lax Kw'alaams noted that it is already experiencing climate effects on their way of life, and that the current state of the climate is untenable;
6. Lax Kw'alaams noted that in its view, EAE are inevitable. The band has a different view of the criteria for EAE;
7. Lax Kw'alaams expressed the view that it is patently obvious that Ksi Lisims won't be able to mitigate GHG emissions;
8. The EAO expressed the view that climate effects from Ksi Lisims would be assessed in subsequent phases and potential mitigation measures will be identified in an environmental assessment;
9. Lax Kw'alaams discussed that should termination not be the agreed to as an option, in the alternative it could be open to providing an opportunity for the proponent to respond to concerns the band has raised in a revised Detailed Project Description. The band noted that addressing these issues now could change how it engages in the assessment;
10. Lax Kw'alaams does not feel that they need any more information to conclude on effects of the project;
11. The EAO provided an overview of the environmental assessment process;
12. The EAO does not assess the feasibility of a project;
13. The EAO sees the concerns around climate change and GHG as issues that will be further investigated via specific information requirements in subsequent phases of an EA;

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14. The EAO noted that should uncertainty remain after additional information, the EAO has the ability to propose the terms of the project proceeding via the Certified Project Description or potential conditions;
15. The EAO noted that as part of earlier steps in the Readiness Decision Phase, the EAO canvassed all technical advisors, including Indigenous nations, of the sufficiency of the information contained in the Detailed Project Description and incorporated that feedback in the Draft Readiness Decision report that was circulated;
16. Lax Kw'alaams and the EAO will be provided opportunity to comment on the accuracy of the final dispute resolution report;
17. Lax Kw'alaams and the proponent will be provided opportunity to submit a separate submission to the CEAO to inform the decision;
18. Lax Kw'alaams continues to request that its submissions be kept private;
19. Lax Kw'alaams is okay with bullet points from the EAO's January 10, 2023 letter being shared with the proponents.

K. The Dispute Resolution Issues

a. Environmental Assessment Office (EAO)

The EAO initiated on June 13, 2022, a draft readiness decision recommendation by the EAO for the Ksi Lisims LNG project to proceed to EA under Section 18(1) of the *Environmental Assessment Act*, 2018. Lax Kw'alaams initiated dispute resolution on the draft readiness decision recommendation by the EAO. Correspondence on this between the parties is publicly available on the EAO website.

b. Lax Kw'alaams Band

Lax Kw'alaams, in its July 21, 2022 letter to the EAO, expressed significant concern about insufficient scope of the Ksi Lisims project's incidental components:

i. The proposed marine pipeline and cumulative effects assessment

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1. “The scientific understanding of the impacts of a Project of this kind (existing WCGT pipeline EAC) has dramatically changed since 2014.” (p. 1, para. 2)
2. “The cumulative effects of this pipeline, and the supply wells that must support it, have significantly changed, as has the role of Indigenous nations in cumulative effects assessment evolved.” (p. 1, para. 3)
3. “Given the proposed change in the WCGT starting point, the Ksi Lisims LNG environmental assessment will not sufficiently identify and consider cumulative effects (including emissions) of the existing WCGT EAC in their application as much uncertainty exists around the amendment process.” (p. 1, para. 3)
4. The 2014 approval happened under the old legislation which failed to give fair roles to First Nations as now deemed proper in the new 2018 legislation. (p. 1, para 3)
5. “The WCGT Certificate should not be amended to allow for a different pipeline to a different project along a different route, but instead should be required to undertake an assessment under the new *Environmental Assessment Act, 2018*.” (p. 1, para. 3)

ii. The interconnection transmission (electrical) line

1. “For Lax Kw'alaams, the detailed project description does not contain sufficient information to identify interactions of the (electrical) transmission line components on Lax Kw'alaams Indigenous Nation’s interests.”

iii. Legislated targets of emissions and power supply availability

1. “Natural gas production and export is a significant driver of BC’s emissions and, when combined with LNG emissions will break BC’s ability to meet its legislated targets under the *Climate Change Accountability Act*, specifically the Oil and Gas sector targets for 2030 and 2050.” (p. 1, para. 4)

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2. "The Project has identified that it is dependent upon obtaining power from the BC Hydro grid. A delay in this connection would ultimately deter the facility from achieving its "net zero" requirement." (p. 1, para. 4)

3. "Until such time that the Project can provide assurance around its ability to execute provincial climate objectives for GHG emissions through an appropriate plan for electrification, Lax Kw'alaams cannot consent to a decision by the CEO that Ksi Lisims LNG proceeds to an Environmental Assessment." (p. 2, para. 5)

iv. Infringement on Lax Kw'alaams ability to exercise its rights

1. "Lax Kw'alaams ability to exercise our rights as Indigenous People depends on maintaining the longstanding relationship within the territory's climate-induced environment." (p. 2, para. 5)

2. "Climate change is a direct existential threat to the cultural continuity of Lax Kw'alaams as an Indigenous people. Therefore, certainty must be provided by proponents who wish to operate within our territory, that an unjust infringement upon the ability the Lax Kw'alaams' rights will not ensue." (p. 2, para. 5)

c. Lax Kw'alaams and the EAO exchanged several other letters, meeting notes, and issue tracking notes prior to the July 21, 2022 and August 17, 2022 letters. However, the July 21, 2022 and the August 17, 2022 letters noted above pertain most directly to the matters related to Dispute Resolution. The December 22, 2022 nation letter, and the EAO response to that letter on January 10, 2023 will inform the Facilitator's examination of the issues, his conclusions, and recommendations.

L. DRF Examination of the Issues

a. Are the issues within the purview of this Dispute Resolution?

Environmental Assessment Act, 2018

Dispute Resolution Facilitators

February 15, 2023

Patrick Kelly, Dispute Resolution Facilitator

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1. Section 5(1) – Subject to regulations made under subsection (4)(a), the minister, after considering a recommendation, if any, of an Indigenous nation, may appoint individuals to facilitate the resolution of disputes in relation to a matter referred to in subsection (2);

- i. Lax Kw'alaams provided the EAO an Initiating Document on July 21, 2022 indicating its position “Until such time that the Project can provide assurance around its ability to execute provincial climate objectives for GHG emissions through an appropriate plan for electrification, Lax Kw'alaams cannot consent to a decision by the CEO that Ksi Lisims LNG proceeds to an Environmental Assessment.” (p. 2, para. 5)
- ii. November 4, 2022, EAO contracts with Patrick Kelly as Dispute Resolution Facilitator.

2. Section 5(2) – A participating Indigenous nation or the chief executive assessment officer may refer one or more of the following matters to a dispute resolution facilitator:

- (a) a matter pending decision under section 14(2), 17, 18, 19, 28, or 29;
 - i. Lax Kw'alaams and the EAO have not reached consensus that, “The matter of whether Ksi Lisims should proceed to an EA under Section 18(1) of the Act is within the scope of the matters listed in Section 5(2) of the Act.” (p. 2, para. 5, EAO August 17, 2022 letter to Lax Kw'alaams)
 - ii. The EAO communicated that it was prepared to proceed with dispute resolution on the draft readiness decision recommendation for Ksi Lisims LNG project to proceed to EA under Section 18(1) of the Act.

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M. DR Facilitator's Conclusions

a. Westcoast Gas Connector Transmission Project (WCGT)

The WCGT project is separate from the Ksi Lisims project. "As a certified project, the amendment process for WCGT does not fall within the criteria as an issue to be resolved within the scope of DR for Ksi Lisims." (p. 2, para. 8, EAO August 17, 2022 letter to Lax Kw'alaams). The Facilitator concurs with the assessment noted by the EAO regarding WCGT as it is currently a certified project approved previously under a regulatory jurisdiction with the authority to do so. The Facilitator has no subjects to consider for the amendment of the WCGT project in the context of the current dispute resolution process. Such subjects may arise in the future in a later phase of the prospective WCGT revised project link to Ksi Lisims but none are available now for substantive consideration.

b. Greenhouse gases and the ability to meet legislated emission targets

Lax Kw'alaams provided the EAO an Initiating Document on July 21, 2022 indicating its position "Until such time that the Project can provide assurance around its ability to execute provincial climate objectives for GHG emissions through an appropriate plan for electrification, Lax Kw'alaams cannot consent to a decision by the CEO that Ksi Lisims LNG proceeds to an Environmental Assessment." (Lax Kw'alaams, July 21, 2022 letter, p. 2, para. 5)

"In relation to greenhouse gas emissions, under Section 25(2) of the Act, every assessment must assess the predicted greenhouse gas emissions of the project, including potential effects of the province being able to meet its targets under the Greenhouse Gas Reduction Targets Act (Section 25(2) (h)), as well as alternative means of carrying out the project including the risks and uncertainties of those alternatives (Section 25(2)(i))." (EAO, August 17, 2022 letter, p. 3, para. 16)

The Facilitator recognizes a valid concern that Lax Kw'alaams has about GHG emissions and their legislated targets. The EAO in its August 17, 2022 letter noted that it is alive to this concern and under its assessment authority "Required assessment matters" Section 25, would follow the legal requirements on this important matter.

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c. Uncertainty of the scope of cumulative effects assessment for Ksi Lisims

"The cumulative effects of this pipeline, and the supply wells that must support it, have significantly changed, as has the role of Indigenous nations in cumulative effects assessment evolved." (Lax Kw'alaams, July 21, 2022 letter, p. 1, para. 3)

"Given the proposed change in the WCGT starting point, the Ksi Lisims LNG environmental assessment will not sufficiently identify and consider cumulative effects (including emissions) of the existing WCGT EAC in their application as much uncertainty exists around the amendment process." (Lax Kw'alaams, July 21, 2022 letter, p. 1, para. 3)

"With respect to Lax Kw'alaams concerns about the scope and nature of the cumulative effects assessment, as well as the scope of the project related to the transmission line, my preliminary view is that these concerns would be more appropriately addressed during Process Planning, the next phase of an EA, should Ksi Lisims proceed past the Readiness Decision." (EAO, August 17, 2022 letter, p. 3, para. 14)

The Facilitator recognizes the concern that Lax Kw'alaams has around cumulative effects. The EAO, as noted in their August 17, 2022 letter, is alive to the issue and would follow the legal requirements that bear on the Process Planning phase of the Ksi Lisims project.

d. Uncertainty around timing and quantity of power available

"Natural gas production and export is a significant driver of BC's emissions and, when combined with LNG emissions will break BC's ability to meet its legislated targets under the *Climate Change Accountability Act*, specifically the Oil and Gas sector targets for 2030 and 2050." (Lax Kw'alaams, July 21, 2022 letter, p. 1, para. 4)

"The Project has identified that it is dependent upon obtaining power from the BC Hydro grid. A delay in this connection would ultimately deter the facility from achieving its "net zero" requirement." (Lax Kw'alaams, July 21, 2022 letter, p. 1, para. 4)

"Until such time that the Project can provide assurance around its ability to execute provincial climate objectives for GHG emissions through an appropriate plan for electrification, Lax Kw'alaams cannot consent to a decision by the CEAO that Ksi Lisims LNG proceeds to an Environmental Assessment." (Lax Kw'alaams, July 21, 2022 letter, p. 2, para. 5)

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"Lax Kw'alaams also notes significant uncertainty about the Ksi Lisims electrification plan and the resulting uncertainty for the Province to meet its legislated climate targets. The EAO acknowledges this uncertainty and shares these concerns." "If there continues to be uncertainty by the end of the EA, the uncertainty will be described so that it may be considered in decision-making." (EAO, August 17, 2022 letter, p. 3, para. 15)

The Facilitator recognizes that Lax Kw'alaams and the EAO share the same concerns regarding the Ksi Lisims electrification plan. The issue is significant and would need to be addressed in earnest in relation to project decision-making.



Patrick Kelly
Dispute Resolution Facilitator

The Facilitator recognizes the concern that Lax Kw'alaams has around cumulative effects. The EAO, as noted in their August 17, 2022 letter, is alive to the issue and would follow the legal requirements that bear on the process planning phase of the Ksi Lisims project.

d. Uncertainty around timing and quantity of power available

"Natural gas production and export is a significant driver of BC's emissions and when combined with LNG emissions will press BC's ability to meet its legislated target under the Climate Change Accountability Act, specifically the Oil and Gas sector targets for 2030 and 2050." (Lax Kw'alaams, July 17, 2022 letter, p. 1, para. 4)

"The Project has identified that it is dependent upon obtaining power from the BC Hydro grid. A delay in this connection would ultimately delay the facility from achieving its 'net-zero' requirement." (Lax Kw'alaams, July 21, 2022 letter, p. 3, para. 4)

"Until such time that the Project can provide assurance around its ability to execute practical climate objectives for GHG emissions through an appropriate plan for electrification, Lax Kw'alaams cannot consent to a decision by the CEAO that the Ksi Lisims LNG proceeds to an Environmental Assessment." (Lax Kw'alaams, July 21, 2022 letter, p. 3, para. 5)

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Appendix 1

Lax Kw'alaams Submissions for Dispute Resolution
December 22, 2022

LAX KW'ALAAMS SUBMISSIONS FOR DISPUTE RESOLUTION

A. INTRODUCTION:

1. Lax Kw'alaams does not consent to the recommendation under Section 16(2) of the *Environmental Assessment Act* [SBC 2018, c.51] by the EAO to the Chief Executive Assessment Officer (CEAO) that Ksi Lisims LNG (the "Project") proceeds to an Environmental Assessment.

2. Lax Kw'alaams submits the chief executive assessment officer must recommend the Minister issue a termination order as:

(a) According to section 16(2)(c)(i)(B), the Project will have extraordinary adverse effects on Lax Kw'alaams due to adverse impacts on the climate; and

(b) According to 16(2)(c)(iii), is clearly incompatible with a government policy, mainly BC's climate related commitments.

3. In the alternative, Lax Kw'alaams submits the chief executive assessment officer must, at minimum, require the proponent to submit a revised detailed project description that addresses the concerns of Lax Kw'alaams.

B. CLIMATE & GHG-RELATED ISSUES

4. Lax Kw'alaams' ability to exercise our rights as Indigenous People depends on maintaining the longstanding relationship within the territory's climate-induced environment. Climate Change is a direct existential threat to the cultural continuity of Lax Kw'alaams as an Indigenous people. Therefore, certainty must be provided by proponents who wish to operate within our territory, that an unjust infringement upon the ability of the Lax Kw'alaams' rights will not ensue. The evidence is strong that proceeding with the Project will induce BC's failure to meet its climate targets as well as induce harmful climate related adverse impacts on Lax Kw'alaams people.

5. As described in Lax Kw'alaams Initiating document, Natural gas production and export is a significant driver of BC's emissions and, when combined with LNG emissions will prohibit BC from reaching its legislated targets under the *Climate Change Accountability Act*, specifically the Oil & Gas sectoral targets for 2030 and 2050.

6. The Project has identified that it is dependent upon obtaining power from the BC Hydro grid. A delay in this connection would ultimately deter the facility from achieving its "net-zero" requirement. The Project has based estimated carbon offsets for Project related GHG emissions solely on the premise of a successful BC Hydro grid connection, creating a significant misrepresentation of potential offsetting requirements for the Project. The Project's GHG emissions between the Base and Alternative Case vary considerably; creating significant concerns for BC to accomplish legislated emission targets under the *Climate Change Accountability Act*.

7. Additionally, as described below, the Project presents significant uncertainty around the timing and quantity of power available, necessary system enhancements and costs associated with delivering BC Hydro grid power to the Project. Without a guaranteed connection to the BC Hydro grid, both the Project and the province will lack the ability to meet legislated policy objectives for GHG emissions under the Climate Change Accountability Act for Oil and Gas Sector production and development.

8. Until such time that the Project can provide assurance around its ability to execute provincial climate objectives for GHG emissions through an appropriate plan for electrification, Lax Kw'alaams cannot consent to a decision by the CEO that Ksi Lisims LNG proceeds to an Environmental Assessment.

9. Lax Kw'alaams submits the chief executive assessment officer must recommend the Minister issue a termination order as the Project will have extraordinary adverse effects on Lax Kw'alaams due to adverse impacts on the climate and by extension: Lax Kw'alaams; and is clearly incompatible with a government policy, mainly BC's climate related commitments.

10. Full particulars of Lax Kw'alaams climate related concerns are detailed in the sections that follow.

2. Ksi Lisims will make it even harder for BC to meet its 2030 Target and Oil & Gas sector target:

11. BC's current climate plan does not put it on track to meet its 2030 emissions target.

Approval of the Ksi Lisims LNG Project will be inconsistent with BC's climate related policies including contributing to BC exceeding its GHG emissions targets.

12. The BC government has stated that all new LNG projects must fit within BC's climate targets. This requires Ksi Lisims to operate on electricity if it is going to proceed. The DPD claims that using renewable hydroelectricity from the BC Hydro grid to power the Project is important to the Nisga'a Nation, "one of the key features of the Project for its investors and customers" and that "in the event that there is no committed power connection to BC Hydro, then the project will not proceed".¹

13. Despite the purported importance of a BC Hydro grid connection, a connection from the Project to the BC Hydro grid does not exist yet and is not certain. Substantial system enhancements to the power grid are required to deliver the required power to the Project and the proponent has a third party – WindRiver, working with BC Hydro to identify the necessary upgrades and the timeline for connection.² If connection does not occur by 2027, the DPD contemplates self-generating power by burning natural gas on floating "power barges", and estimates that this may be necessary for 1-5 years - from commencement of operations in 2027 to 2032.³

14. Provided the Project can establish a connection to the BC Hydro grid (the "base case"), which is not guaranteed, the base case will produce between 0.25-0.4 Mt CO₂e/yr.⁴ This includes on-site emissions including combustion in acid gas incinerators, direct-fired process heaters, and vented, flared and fugitive sources and "acquired emissions" produced by BC Hydro

¹ Detailed Project Description, pp.6, 30 & 47.

² Detailed Project Description, pp.29-30, pdf p.649

³ Detailed Project Description, pp. 29-30, 44.

⁴ Operational emissions (Base case): 197,000 tCO₂e of annual direct energy GHGs + 50,000-200,000 tCO₂e of annual acquired energy GHGs (full electrical power acquired from BC Hydro grid) → 0.247-0.397 Mt (DPD, p.49). The acquired energy GHGs are based on BC's grid electricity GHG intensity factors for the "integrated grid" in 2020 and 2021 (DPD, p.48), which the BC government reports as 40.1 & 9.7 tCO₂e/GWh, respectively.

in generating electricity. When the power barges are in operation (the “alternative case”), the Project will produce 1.86-1.90 Mt CO₂e/yr.⁵

15. Neither of these emissions estimates include emissions from upstream production and transportation of natural gas or downstream shipment of the LNG, conversion to natural gas, and combustion of natural gas.

16. According to BC’s latest [2022 Climate Change Accountability Report](#), BC’s climate plans are currently projected to:

- (a) Bring BC 97% of the way to its 2030 Target, leaving a gap of 0.8 Mt.⁶ BC’s 2030 Target is to reduce emissions at least 40% (below 2007 levels), which equates to provincial emissions of 39.3 Mt in 2030.
- (b) Reduce BC’s Oil & Gas emissions by 32% (below 2007 levels) by 2030. BC’s Oil & Gas sector target is to reduce emissions 33-38% (below 2007 levels) by 2030, which equates to sector emissions of 8.25-8.91 Mt in 2030.

17. Of further concern is that BC appears to rely on policies that have not been developed to reach its required reductions, particularly in respect of the oil and gas sector target. Overall, this increases the uncertainty about meeting required targets and demands a cautionary approach to recommending new LNG facilities, such as the Project, for approval.

18. As shown in the table below, adding the emissions from the Project – both in the Base Case and Alternative Cases – will exacerbate the extent by which BC will miss both its overall and Oil and Gas Sector targets:

⁵ Operational emissions (Alternative Cases): 1,860,000-1,900,000 tCO₂e of annual direct energy GHGs (DPD p.49)

⁶ BC (Nov 2022) [2022 Climate Change Accountability Report](#), accessed 14 Dec 2022 [online](#), p.10-11.

Ksi Lisims emissions and BC's emissions and targets							
BC's emissions and targets				Gap to Target ⁷			
	2007	2020	2030 Target	2030 Projected	Existing	With Ksi Lisims Base Case	With Ksi Lisims Alt. Case
BC	65.5 Mt	64.6 Mt	40% reduction 39.3 Mt	38.8% reduction 40.1 Mt	3% 0.8 Mt	4-4.3% 1.05-1.12 Mt	10.2-10.3% 2.66 -2.7 Mt
Oil & Gas sector	13.3 Mt	12.4 Mt	-33-38% 8.25-8.91 Mt	-32% 9.04 Mt	3% 0.13 Mt	9-12% 0.38-0.53 Mt	45-46% 1.99-2.03 Mt

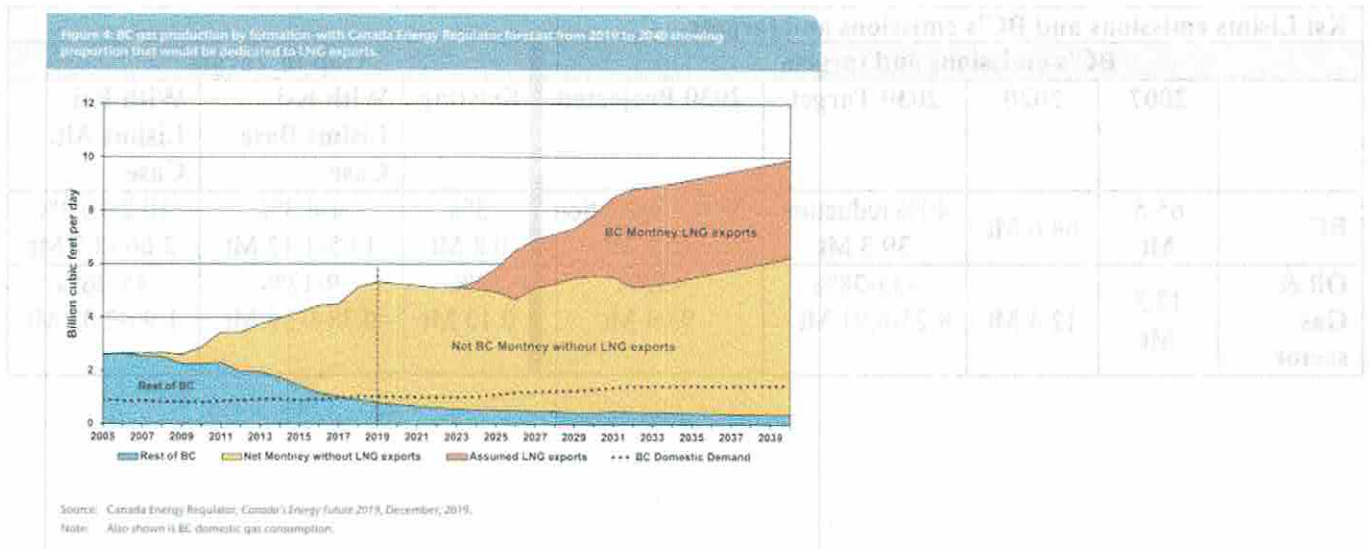
3. LNG is a driver of natural gas production and upstream emissions:

19. The DPD does not state the influence of the Project on natural gas production in BC. However, modelling for the BC government's CleanBC plan estimates that 60% of LNG production will be from an increase in supply and 40% will be from diversion of current production levels. Similarly, the Canadian Energy Regulator (CER) assumes that 75% of LNG feedstock will come from new production that only exists because LNG export capacity exists. The other 25% is diverted from production that would have occurred anyway. While these numbers differ, it is evident that LNG projects are expected to be significant drivers of new natural gas production.

20. The figure below, using data from a 2019 CER report, depicts the amount of natural gas production in BC's Montney formation that would be dedicated to LNG exports.⁸ The orange shape shows the increase in gas production driven by LNG exports.

⁷ The gap as expressed as a percentage is the amount of the required emissions reduction that is not expected to be achieved. Eg. BC needs to reduce 26.2 Mt of GHGs from 2007 levels to achieve the 2030 target; 0.8 Mt is 3% of that 26.2 Mt.

⁸ BC's Carbon Conundrum, p.19.



21. The DPD also does not state how many upstream emissions will be associated with the Project, although it suggests this will be calculated during the EA-IA process. Without experts, this is difficult to estimate, but a comparison with LNG Canada – whose upstream emissions have been calculated – can help.

22. A report by the David Hughes for the Canadian Centre for Policy Alternatives estimates that increasing production for LNG Canada (Phases 1 and 2) would add a total of 13 Mt of GHGs per year, including 3.96 Mt of GHGs from the terminal itself.⁹ This estimate assumed a 15 % reduction in upstream emissions through reduced fugitive methane and electrification. LNG Canada will require 3.7 bcf/day and will produce 26 Mt LNG/year at full build out.

23. The Project will receive 1.7-2.2 bcf/day and will produce up to 12 Mt LNG/year.¹⁰ This is 46-54% of LNG Canada's daily feedstock and 46% of LNG Canada's annual LNG output. Using these numbers as a guide suggests that production of natural gas to supply the Project will produce 46-54% of the emissions of LNG Canada, or between 4.1-4.9 Mt CO₂e/year. Adding these upstream emissions to the Project's operational emissions the Project will be responsible for the following emissions:

⁹ *BC's Carbon Conundrum*, p.9.

¹⁰ Detailed Project Description, p.xiii.

(a) Base Case: 4.35-5.3 Mt CO_{2e}/yr

(b) Alternative Cases: 6.0-6.8 Mt CO_{2e}/yr

24. These quantities of upstream emissions would make it virtually impossible for BC to achieve its 2030 targets, not to mention BC's 2040 and 2050 targets, which get progressively smaller. With upstream emissions and project emissions, even with electrification, this project would account for between 33-41% of all of BC's allowable emissions to meet its 2050 target.

4. BC is unlikely to have enough electricity to power the Project:

25. The DPD does not explicitly state how much electricity the Project will require to power its operations, which makes it difficult whether BC has the electricity available to power the Project. However, in stating the "annual acquired emissions...due to full electrical power acquired from the BC Hydro grid", the DPD provides some information that can be used to calculate the Project's electricity load.

26. The DPD states that the Project's annual acquired emissions are 50,000-200,000 tCO_{2e}/yr and that these are based on a "2020 and 2021 Integrated grid GHG emissions intensity factor, as published by the BC Government".¹¹ The relevant BC government publication states that the intensity factors were 40.1 tCO_{2e}/GWh in 2020 and 9.7 tCO_{2e}/GWh in 2021.¹²

27. It is logical to assume that two intensity factors (which are significantly different) produced the large range in the Project's annual acquired emissions. When solving for the annual electricity load for the Project, you would divide the annual acquired emissions by the intensity factor. Dividing the high end of the range by the high intensity factor and dividing the low end of the range by the low intensity factor should provide the same value, as below:

$$(a) \quad 50,000 \text{ tCO}_2\text{e/yr} \div 9.7 \text{ tCO}_2\text{e/GWh} = 5,154 \text{ GWh}$$

$$(b) \quad 200,000 \text{ tCO}_2\text{e/yr} \div 40.1 \text{ tCO}_2\text{e/GWh} = 4,988 \text{ GWh}$$

¹¹ Detailed Project Description, p.48.

¹² BC Government (2022) *Electricity emission intensity factors for grid-connected entities*, accessed 14 Dec 2022 [online](#).

28. These values are sufficiently close to suggest our calculations are correct. This indicates that the annual electricity load that the Project requires to operate is approximately 5,000 Gwh/yr. The Site C dam will generate about 5,100 GWh/yr,¹³ meaning that Ksi Lisims will require the equivalent of an additional Site C dam to itself.

5. Existing demands on BC Hydro grid:

29. BC will already struggle to generate or obtain enough electricity to power the province in a future where we achieve our legislated climate targets. The addition of already approved LNG projects will make this even more difficult.

30. A recent article by Clean Energy Canada noted that:

(a) BC Hydro has concluded that that, for B.C. to remain on track to meet its climate targets, it will need the electricity of one and a half more Site C dams by 2030 — or about 12% more electricity than currently planned.

(b) If LNG Canada's Phase 2 expansion proceeds (it has the necessary approvals) and uses electricity rather than natural gas for liquefaction (as it must to fit within the province's climate targets), the electricity equivalent of **three more Site Cs** will be needed by 2040 — most of which will be required in the early 2030s.

(c) Purchasing additional electricity will be difficult and costly as most western US states (from whom we buy electricity) also have climate plans requiring massive amounts of clean electricity. Already, none of the subregions in the western U.S. and Canada generate enough electricity to meet their own needs during periods of high demand.¹⁴

31. The article did not mention other LNG projects that expect to use electricity. The 2017 BC Hydro Load Forecast that was submitted for the Site C assessment indicates that the combined incremental demand for three LNG projects (LNG Canada Phase 1, Woodfibre, and

¹³ BC Government (n.d) FACTSHEET: Site C Hydroelectric Project, accessed 14 Dec 2022 [online](#).

¹⁴ Zacharias, M. (Nov 2022) *Canada's LNG export dreams could leave B.C. powerless to pursue other opportunities*, Clean Energy Canada, accessed 14 Dec 2022 [online](#).

Tilbury) in 2025 will be 2,662 GWh/yr.¹⁵ This is approximately half of the Site C dam's annual generating capacity.

- (a) Fortis BC Tilbury project will require 132 GWh/yr;
- (b) LNG Canada Phase 1 will require 946 GWh/yr (a CBC article indicates that it will need approximately 2,000 GWh/yr¹⁶); and
- (c) Woodfibre LNG will require 1,584 GWh/yr.

32. In summary, BC will struggle to find enough electricity to meet its climate targets and it may already be impossible to accommodate the addition of LNG Canada Phase 2 (which has already been approved by provincial and federal governments). In this context, powering Ksi Lisims on electricity seems out of the question.

6. New long-term LNG facilities like Ksi Lisims and projected LNG demand are not aligned with global net-zero emissions by 2050 and global temperature goals:

33. Despite the DPD continually repeating that the project is aligned with net zero and global temperature goals, recent analysis by the International Energy Agency makes clear that new LNG facilities that will not come online past 2025 are not aligned with net zero. Further, LNG supply and trade must decline continuously from 2021 on in order to achieve net-zero globally by 2050.

34. The DPD states that one of the four purposes of the project is to provide lower carbon intensive energy to meet growing global energy demands and support lower global GHG emissions.¹⁷ Further it says that the project will be one of the only net zero LNG facilities in the world and that it will align with limiting global warming to 1.5-2°C.¹⁸

¹⁵ Lee, M. (2019) *A critical look at BC's new tax breaks and subsidies for LNG*, Canadian Centre for Policy Alternatives, accessed 12 Dec 2022 [online](#), p.4; BC Hydro (2017) *BC Hydro Filing to the BCUC – Inquiry respecting Site C Clean Energy Project*, accessed 12 Dec 2022 [online](#), pp.6 & 23.

¹⁶ Lindsay, B. (Oct 2018) *Does B.C. need Site C to power massive LNG project?* CBC News, accessed 14 Dec 2022 [online](#).

¹⁷ Detailed Project Description, pp 3, 6.

¹⁸ Detailed Project Description, pp 44, 212.

35. The DPD claims both to have cost-effective LNG that will help meet increasing global demand for LNG by 2040 while claiming to have a goal of meeting net zero targets and working towards net zero LNG production.¹⁹ The DPD suggests that even if GHG emissions may increase in BC and Canada, global emissions from the project will decrease.²⁰

36. In 2021, the International Energy Agency released its groundbreaking Roadmap to Net Zero report, which concluded, among other things, that no new fossil fuel expansion projects were needed as of 2021. In 2022, its World Energy Outlook affirmed and strengthened those conclusions, even with the energy crisis caused by the invasion of Ukraine.²¹ Regarding gas demand, the World Energy Outlook concluded the following:

- (a) To reach net zero, natural gas demand must drop 20% between 2021 and 2030 by 2050, drops to only 15% of demand for gas. Rates of decline in the 2030s are by 7% per year on average.²²
- (b) Natural gas fired electricity generation peaks in 2025.²³
- (c) Gas production must contract in a scenario where net-zero by 2050 is achieved. It will only need to increase in a scenario where the world fails to meet its temperature goals and we have warming of more than 1C.²⁴
- (d) In a scenario where net zero is achieved, there is no need for additional LNG export capacity beyond what exists or is already under construction.²⁵
- (e) Further, greenfield projects like LNG Canada that require additional infrastructure to connect to gas fields as the “upper end of the scale” of breakeven costs for LNG – meaning they are unlikely to be cost-effective in a net zero scenario.

¹⁹ Detailed Project Description, p 30.

²⁰ Detailed Project Description, p 168.

²¹ International Energy Agency, *World Energy Outlook 2022*, [online](#).

²² World Energy Outlook, pp 133, 370, 377.

²³ World Energy Outlook, p 139.

²⁴ World Energy Outlook, p 378.

²⁵ World Energy Outlook, p 383.

(f) There is doubt whether natural gas as a transition fuel in Asia as “natural gas now faces existential questions about its long-term future”.²⁶

37. This analysis clearly shows that the Ksi Lisims project, which will not come online until 2027 at the earliest is not aligned with net zero globally. BC has committed to net zero by 2050. In order to meet this policy, BC cannot also undermine the world’s ability to meet net zero by approving projects that are not in line with a net zero scenario globally.

38. Given that there is no need for additional LNG export capacity globally, as supply must decrease between 2021 and 2030, Ksi Lisims would undermine its purpose of helping to achieve global climate targets and allowing BC to align with net zero by 2050.²⁷

39. The Project must be terminated because it does not align with government net-zero policy. However if the Project is not terminated, the DPD must be revised to acknowledge that LNG demand must decline significantly to align with net zero. The current DPD says that LNG demand is growing out to 2040 according to the IEA;²⁸ however, it omits that the IEA also projects LNG demand and supply must decline significantly as of 2021 to meet the net zero target. LNG demand only would rise past 2030 if the world failed to achieve its temperature goals. The proponent must revise their DPD to respond to the IEA net zero scenario, otherwise they are justifying their demand projections based on a scenario where the world fails to meet their climate targets while claiming that the project is aligned with net zero. It is misleading for the project to say it is aligned with net zero but use natural gas demand scenarios based on the world failing to meet that target.

C. NATURAL GAS TO SUPPLY THE PROJECT IS NOT “CLEAN” OR “LOW-CARBON”

40. The DPD attempts to justify the Project by claiming that that gas it will use to produce LNG is “clean” and “low-carbon”. The DPD does not substantiate this claim and evidence demonstrates this claim is false.

²⁶ World Energy Outlook, p 403.

²⁷ World Energy Outlook, p 370.

²⁸ Detailed Project Description, p xiv.

41. The DPD states that the Project will use Canadian natural gas from the Western Canadian Sedimentary Basin of northeastern BC and northwest/central Alberta as feedstock to convert into LNG. On several occasions the DPD refers to the natural gas that it will use as being “clean” or “low-carbon”.²⁹

42. The DPD does not define “clean” or “low-carbon” but, when used in relation to an energy source, “clean” usually means that the source is non-polluting, not harmful to human health, and does not impact the climate. “Low-carbon” also usually means that the energy source has a minimal impact on the climate. The DPD also does not calculate the upstream emissions associated with the Project, noting only that they are expected to exceed 500,000 tCO₂e, a value that will be refined at later date.³⁰

43. The natural gas that the Project intends to use is not “clean” or “low-carbon” because of the climate impacts of upstream fugitive methane and the pollution that natural gas production causes, as explained below.

1) Natural gas has a significant climate impact from upstream fugitive methane

44. When considering the emissions that are released over the entire lifecycle of natural gas – production, transportation, processing, and combustion – the climate impact of natural gas is comparable to other fossil fuels.³¹ Fugitive emissions – methane that leaks from natural gas production sites, pipelines, and processing machinery - contribute a significant share of natural gas lifecycle emissions. Natural gas production sites are typically the largest source of fugitive emissions in the natural gas lifecycle.³² Fugitive emissions make a meaningful contribution to Canada’s overall emissions; in 2020, fugitive methane emissions from oil and natural gas systems amounted to 7.5% of Canada’s total emissions.³³

²⁹ Detailed Project description, pp. xiii, xiv, 3, and 212.

³⁰ Detailed Project Description, pp.49-50.

³¹ Schneising, O. et al. (2020). *Remote sensing of methane leakage from natural gas and petroleum systems revisited*, Atmospheric Chemistry and Physics, 20(15), p.9169-9182.

³² The Atmospheric Fund (May 2022). *Fugitive Methane: New guidelines determine need to curb natural gas emissions in Ontario*, accessed 4 Sept. 2022 [online](#) (“TAF: Fugitive Methane Guidelines”), p.5; Hughes, J.D. (2020). *BC’s Carbon Conundrum*, accessed 13 Dec 2022 [online](#), p.48.

³³ Environment and Climate Change Canada (2022). *National Inventory Report 1990-2020: Greenhouse Gas Sources and Sinks in Canada*, accessed 5 Sept. 2022 [online](#) (p. 50).

45. However, it is likely that the full scale of fugitive methane emissions is unknown, in part because the natural gas industry and governments in Canada and around the world are not accurately tracking them. Recent studies show that fugitive methane emissions may be much higher than reported:

- (a) In B.C. oil and gas facilities, methane emissions are 1.6-2.2 times greater than federal inventory estimates;³⁴
- (b) In Ontario, fugitive methane emissions are at least 90% higher than federal inventory estimates;³⁵
- (c) In Alberta, the majority of oil and gas emissions are unreported under current reporting requirements;³⁶
- (d) Globally, methane emissions are 25-40% higher than reported,³⁷ though other studies have found that methane emissions could be as high as 70% higher than reported.³⁸

46. The climate impact of natural gas increases further when considering the significant impact of methane over the short-term. Methane only lasts 12 years in the atmosphere, while carbon dioxide lasts 300-1000 years. The standard timeframe for measuring the impact of GHGs on the climate is 100 years, known as “global warming potential 100” (GWP 100). This is what the Proponent uses in the DPD. Using this timeframe, methane is 30 times more effective than carbon dioxide at trapping heat in the atmosphere. However, measuring the impact of GHGs over

³⁴ Tyner, D., Johnson, M. (12 July 2021). *Where the Methane Is – Insights from Novel Airborne LiDAR Measurements Combined with Ground Survey Data*, Environmental Science & Technology, 55(14), 9773-9783, accessed Sept. 2022 [online](#).

³⁵ The Atmospheric Fund (May 2022). *Fugitive Methane: New guidelines determine need to curb natural gas emissions in Ontario*, accessed 4 Sept. 2022 [online](#), p.4.

³⁶ Zavala-Araiza, D. et al. (2018). *Methane emissions from oil and gas production sites in Alberta, Canada*. Elementa: Science of the Anthropocene, 6.

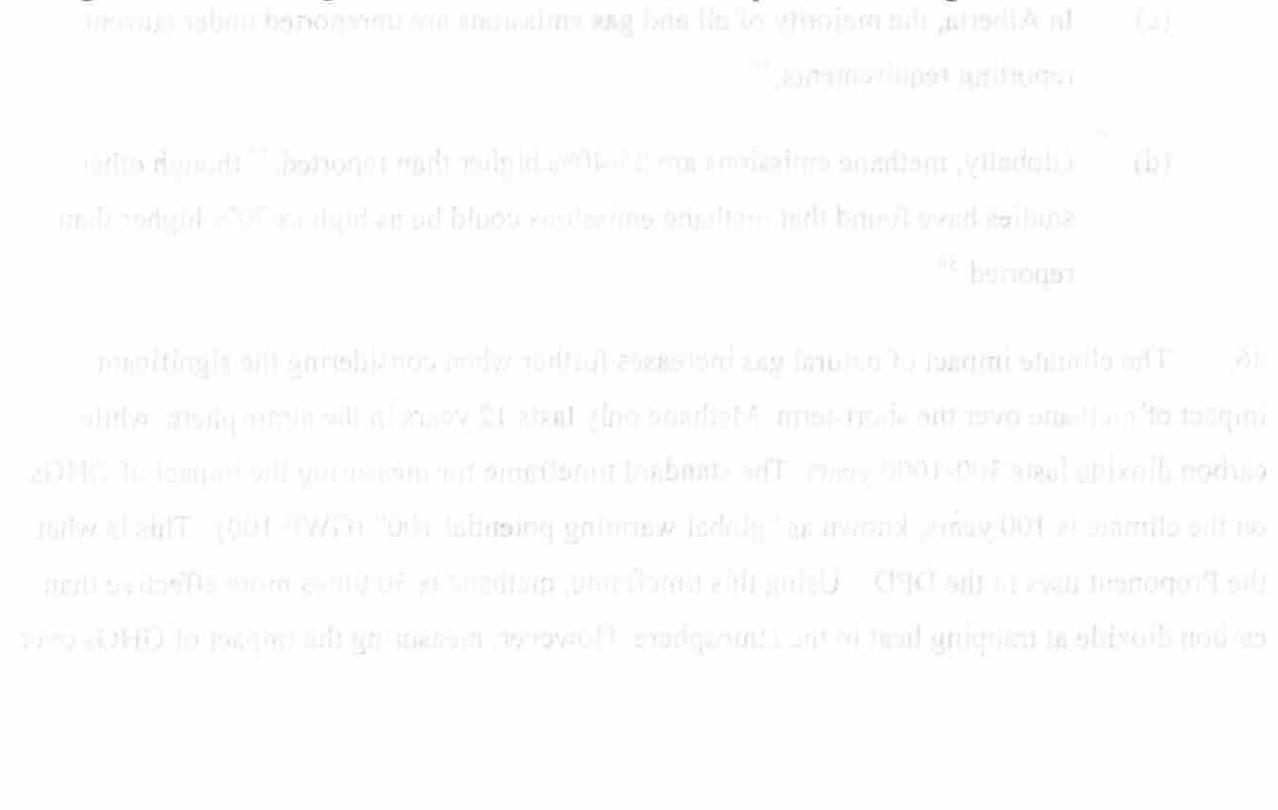
³⁷ Hmiel, B. et al. (2020) *Preindustrial 14CH4 indicates greater anthropogenic fossil CH4 emissions*, Nature, 578 (7795), pp. 409-412.

³⁸ IEA Global Methane Tracker (n.d.). *Overview*, accessed Sept. 2022 [online](#).

a 20 year time period – known as “global warming potential 20” (GWP 20) – methane is **at least 80 times** more effective than carbon dioxide at trapping heat in the atmosphere.³⁹

47. Using GWP 20 to assess the impacts of methane is more accurate because it aligns better with its lifespan. It also better reflects the timeframe within which the international community has agreed to tackle climate change; we must reduce emissions drastically by 2050 in order to achieve the 1.5°C goal.

48. The figure below, from a report by The Atmospheric Fund, compares the climate impact of natural gas and different fossil fuels over 100-year and 20-year timeframes. It demonstrates the significant role of fugitive emissions in the climate impact of natural gas.⁴⁰



³⁹ United Nations Environmental Programme (2021). *Methane Emissions are driving climate change. Here's how to reduce them*, accessed 9 Sept. 2022 [online](#).

⁴⁰ TAF: Fugitive Methane Guidelines

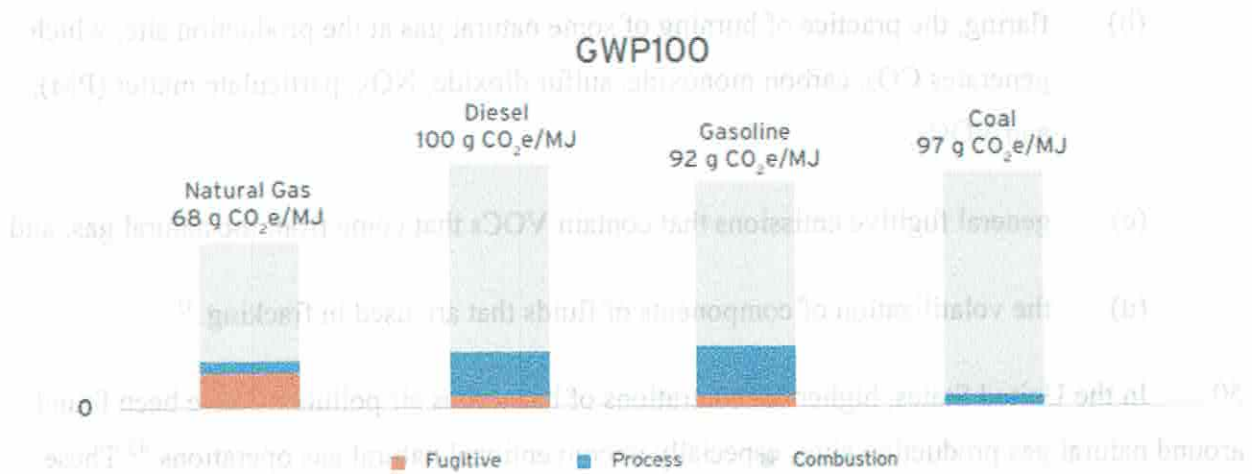


Figure 5: Comparison of the long-term impact of common fossil fuels, GWP100

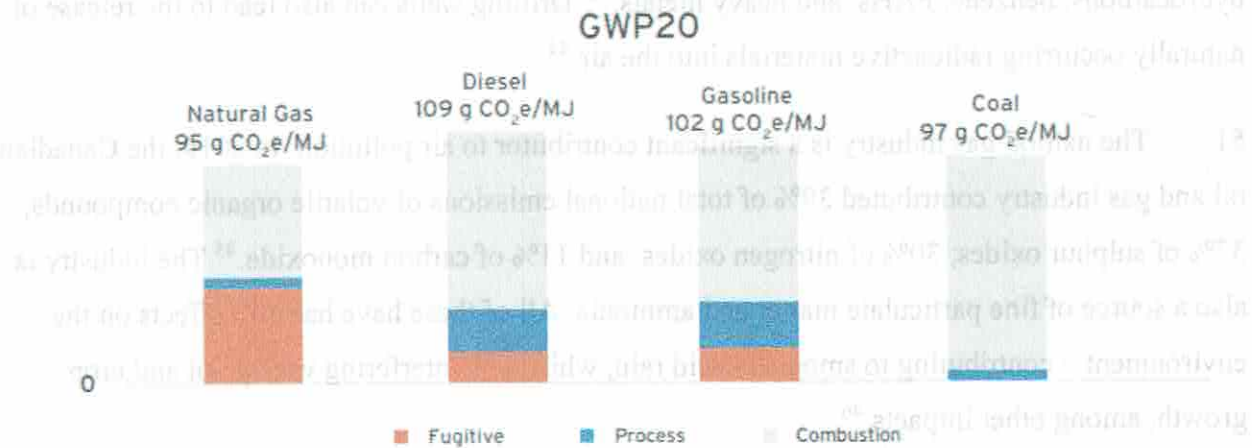


Figure 6: Comparison of the medium-term impact of common fossil fuels, GWP20

2. Natural gas production is highly polluting:

49. The production of natural gas causes negative environmental impacts – namely air and water pollution, which creates risks to human health. There are several sources of air pollution at a natural gas production site:

- (a) diesel engines that emit nitrogen oxides (NO_x), fine particulate matter (PM_{2.5}), volatile organic compounds (VOCs), and polycyclic aromatic hydrocarbons (PAHs);

- (b) flaring, the practice of burning of some natural gas at the production site, which generates CO₂, carbon monoxide, sulfur dioxide, NO_x, particulate matter (PM), and VOCs;
- (c) general fugitive emissions that contain VOCs that come from the natural gas, and
- (d) the volatilization of components of fluids that are used in fracking.⁴¹

50. In the United States, higher concentrations of hazardous air pollutants have been found around natural gas production sites, especially unconventional natural gas operations.⁴² These pollutants include VOCs and NO_x (precursors of ground-level ozone), as well as radon, hydrocarbons, benzene, PAHs, and heavy metals.⁴³ Drilling wells can also lead to the release of naturally occurring radioactive materials into the air.⁴⁴

51. The natural gas industry is a significant contributor to air pollution. In 2019, the Canadian oil and gas industry contributed 39% of total national emissions of volatile organic compounds; 37% of sulphur oxides; 30% of nitrogen oxides; and 11% of carbon monoxide.⁴⁵ The industry is also a source of fine particulate matter and ammonia. All of these have harmful effects on the environment – contributing to smog and acid rain, while also interfering with plant and crop growth, among other impacts.⁴⁶

52. Natural gas production also pollutes local water sources. This can occur through the construction of natural gas well pads, pipelines, and access roads which cause the erosion of dirt, minerals, and other harmful pollutants into nearby waterways.⁴⁷ Gas production can contaminate

⁴¹ Macfarlane, R. & Perrotta, K. (2020). *Fractures in the Bridge: Unconventional (Fracked) Natural Gas, Climate Change and Human Health*, Canadian Association of Physicians for the Environment, accessed 9 Sept. 2022 [online](#), (“Fractures in the Bridge”), p.18; US Energy Information Administration (2021). *Natural gas explained*, accessed 6 Sept. 2022 [online](#).

⁴² Macey, G.P. et al. (2014). Air concentrations of volatile compounds near oil and gas production: a community-based exploratory study. *Environmental Health*, 13(1), pp.1-18.

⁴³ Fractures in the Bridge, p.3.

⁴⁴ Fractures in the Bridge, pp.14-15.

⁴⁵ Environment & Climate Change Canada (2022). *Air Pollutant Emissions*, accessed Sept. 2022 [online](#):

⁴⁶ Environment & Climate Change Canada (n.d.). *Air pollution: drivers and impacts*, accessed Sept. 2022 [online](#):

⁴⁷ Williams, H.F.L et al. (2008). *Field-based monitoring of sediment runoff from natural gas well sites in Denton County, Texas, USA*. *Environmental Earth Sciences*, 55(7), accessed 9 Sept 2022 online: DOI:10.1007/s00254-007-1096-9, pp.1463–1471.

groundwater with fracking fluids, methane, and VOCs.⁴⁸ This kind of water contamination, which occurs primarily through well leakages or improperly handled wastewater, can lead to negative impacts on regional drinking water quality.

53. Fracking poses a particular risk of water pollution due to the large volumes of water and numbers of toxic chemicals that it uses. Over 1,000 different chemicals have been used in fracking fluids, including some carcinogens, reproductive or developmental toxicants, or endocrine disruptors, though toxicity data is not available for many of these chemicals.⁴⁹ Fracking can contaminate surface water and groundwater through underground well leakages and spills, through leaks of chemical additives, diesel or other fluids from equipment on-site, and through wastewater from storage, treatment, and disposal facilities.⁵⁰

54. Pollution from natural gas production poses serious risks to human health, including respiratory illnesses, cardiovascular disease, and impairments to infant and maternal health.⁵¹ Fracking in Colorado, USA, has been linked to an increased risk of acute lymphocytic leukaemia (a form of cancer) among children whose mothers live in close proximity to oil and gas wells during pregnancy.⁵² A study conducted in northeastern B.C. also found high levels of benzene metabolites in the urine of pregnant women who live in close proximity to fracking wells.⁵³ Benzene is a carcinogen and high levels of exposure in pregnancy is associated with low birth weight, an increased risk of childhood leukemia and a greater incidence of birth defects such as spina bifida.⁵⁴ Women, children, the elderly, Indigenous populations and racial and ethnic

⁴⁸ Union of Concerned Scientists (19 Jun 2014). *Environmental Impacts of Natural Gas*, accessed Sept. 2022 [online](#).

⁴⁹ Fractures in the Bridge, p.14.

⁵⁰ Fractures in the Bridge, p.17.; Burton, G.A. et al. (2013). *Hydraulic fracturing in the state of Michigan: Environment/ecology technical report*. University of Michigan, accessed 9 Sept. 2022 [online](#).

⁵¹ Epstein, A.C. (2017). *The human health implications of oil and natural gas development*. In: *Advances in chemical pollution, environmental management and protection* (Vol. 1, p. 113-145). Elsevier.

⁵² McKenzie, L. et al. (2017). *Childhood hematologic cancer and residential proximity to oil and gas development*, PLoS One 12(2), accessed 6 Sept. 2022 [online](#).

⁵³ Caron-Beaudoin, É. et al. (2018). *Gestational exposure to volatile organic compounds (VOCs) in northeastern British Columbia, Canada: A pilot study*, *Environment International* 110 (2018): p.131-138, accessed 6 Sept. 2022 [online](#).

⁵⁴ ScienceDirect (n.d.) *Benzene*, accessed 6 Sept. 2022 [online](#).

minority groups experience disproportionate health impacts from air, water and soil pollution associated with gas extraction and refining.⁵⁵

3. Life Cycle Emission Reduction Claims are Poorly Supported and Require Fulsome

Explanation:

55. The DPD claims that the project will reduce emissions by over 45 Mt per year when you examine life cycle emissions of the project.⁵⁶ This is a bold claim founded on questionable assumptions. First, as described above, it is worth noting that even if the project would decrease emissions slightly in the near future, there is no support for the claim that it would be in line with the emission reductions necessary to achieve net-zero emissions globally by 2050. Expanding gas supply results in the construction of carbon intensive infrastructure that will continue to operate for decades – Ksi Lisims itself plans to operate past 2050. These long-term developments postpone the adoption of low-carbon energy and “lock-in” emissions for decades – at a time when we must be reaching net zero emissions globally by 2050.⁵⁷

56. Further, the claim that the project will reduce emissions by over 45 Mt annually is based on the unrealistic assumption that all exported natural gas will displace coal. There is no way to guarantee that increased gas supply will be used to substitute coal.⁵⁸ Even if coal was switched for gas, fugitive emissions for gas must be below 3.2% to reduce emissions by switching to natural gas, despite current estimates in Canada being as high as 4.4%.⁵⁹

57. The Project makes claims about reducing life cycle emissions without actually quantifying upstream or downstream emissions. The proponent has committed to assessing

⁵⁵ Hemmerling, S.A., DeMyers, C.A. and Parfait, J., 2021. Tracing the flow of oil and gas: a spatial and temporal analysis of environmental justice in coastal Louisiana from 1980 to 2010. *Environmental Justice*, 14(2), pp.134-145.

Waldron, I.R., 2021. *There's something in the water: Environmental racism in Indigenous & Black communities*. Fernwood Publishing. p. 114

⁵⁶ Detailed Project Description, at 168.

⁵⁷ Horen-Greenford opinion, at p 9 ([Council of Canadians Cedar LNG Submission](#)).

⁵⁸ Horen-Greenford opinion, at p 20 ([Council of Canadians Cedar LNG Submission](#)).

⁵⁹ Horen-Greenford opinion, at p 21 ([Council of Canadians Cedar LNG Submission](#)); Alvarez, R. A., Pacala, S. W., Winebrake, J. J., Chameides, W. L., & Hamburg, S. P. (2012). Greater focus needed on methane leakage from natural gas infrastructure. *Proceedings of the National Academy of Sciences*, 109(17), 6435–6440.

<https://doi.org/10.1073/pnas.1202407109>; Johnson, M. R., Tyner, D. R., Conley, S., Schwietzke, S., & Zavala-Araiza, D. (2017). Comparisons of Airborne Measurements and Inventory Estimates of Methane Emissions in the Alberta Upstream Oil and Gas Sector. *Environmental Science & Technology*, 51(21), 13008–13017.

<https://doi.org/10.1021/acs.est.7b03525>.

upstream and other “scope 3” emissions, but the DPD seems to suggest that it will not calculate downstream emissions (i.e., the emissions from the combustion of exported natural gas in Asia). In order to justify its life cycle emissions claim, the proponent at minimum must provide this information for upstream and all downstream emissions so that decision-makers and stakeholders can assess the assumptions behind this life cycle emission reduction claim.

D. CONCLUSION:

58. Lax Kw’alaams does not consent to the recommendation under Section 16(2) of the 2018 Act by the EAO to the Chief Executive Assessment Officer (CEAO) that Ksi Lisims LNG proceeds to an Environmental Assessment.

59. Lax Kw’alaams submits the chief executive assessment officer must recommend the Minister issue a termination order as:

- (a) According to section 16(2)(c)(i)(B), the Project will have extraordinary adverse effects on Lax Kw’alaams due to adverse impacts on the climate; and
- (b) According to 16(2)(c)(iii), is clearly incompatible with a government policy, mainly BC’s climate related commitments.

60. In the alternative, Lax Kw’alaams submits the chief executive assessment officer must, at minimum, require the proponent to submit a revised detailed project description that addresses the concerns of Lax Kw’alaams as described above.

Lax Kw'alaams Band and
British Columbia Environmental Assessment Office
Dispute Resolution
Final Report

February 15, 2023

Appendix 2

EAO Response to Lax Kw'alaams Submissions
January 10, 2023



File: ENVA-30050-20/KSIL-04

Reference: 394850

January 10, 2023

SENT VIA EMAIL

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North Vancouver, BC V7M 3J3
JNicholls@ratcliff.com

Patrick Kelly
Dispute Resolution Facilitator
Patrick_Kelly_52@me.com

Dear Jeffrey Nicholls and Patrick Kelly:

On December 22, 2022, Patrick Kelly (the facilitator) shared a letter from Lax Kw'alaams Band (Lax Kw'alaams) with the Environmental Assessment Office (EAO), that was submitted as part of the currently ongoing dispute resolution process on the Readiness Decision for the proposed Ksi Lisims LNG Project (Ksi Lisims). The EAO appreciates the time that Lax Kw'alaams took to outline its concerns in the letter.

In the letter, Lax Kw'alaams has reiterated its position that it does not consent to the EAO's recommendation that Ksi Lisims proceeds to an environmental assessment. Lax Kw'alaams further reiterated its concerns around the project's potential climate and greenhouse gas (GHG) related impacts, similar to what was previously communicated, and subsequently responded to by the EAO, in correspondence dated [August 17, 2022](#) and [October 4, 2022](#).

In the letter of December 22, 2022, Lax Kw'alaams communicated its position that the Chief Executive Assessment Officer (CEAO) should recommend the Minister issue a termination decision citing the potential for extraordinary adverse effects (EAE) on Lax Kw'alaams due to adverse impacts on the climate and incompatibility with government policy. An alternative option was provided that the CEAO consider requiring the proponent to submit a revised Detailed Project Description.

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This is the first time that Lax Kw'alaams has communicated its position that the termination option be considered despite multiple attempts by the EAO to understand the remedy that Lax Kw'alaams has been seeking during the review of the Detailed Project Description in the early engagement phase, consensus seeking through the readiness decision phase, and through the dispute resolution process thus far.

As this is new information being provided by Lax Kw'alaams, the EAO is providing additional context below on the legal and policy framework guiding termination under Section 16 of the *Environmental Assessment Act* (2018) ("the Act"). In addition, the EAO is requesting that a clear, transparent and predictable process be defined should the facilitator determine there is value to extending the dispute resolution process.

Issue of Extraordinarily Adverse Effects

Under Section 16(2)(c)(i) of the Act, the CEAO is required to refer a project to the Minister for a decision under Section 17 with a recommendation that the Minister issue a termination order under that section if the CEAO considers that the project will have EAE:

- A. generally, or
- B. on an Indigenous nation or the rights recognized and affirmed by Section 35 of the *Constitution Act*, 1982.

When evaluating whether a particular project will result in EAE, the EAO considers the following:

1. If the project will clearly have unmitigable adverse effects, such that there is no value in carrying out an environmental assessment and the CEAO is satisfied they would likely recommend that no Environmental Assessment Certificate (EAC) be issued for the project if the project was to proceed through environmental assessment to a decision under Section 29;
2. How extreme the effects are generally, or on a specific Indigenous nation or its constitutionally protected rights, as compared to other projects of a similar type and size; and
3. How extreme the effects are generally, or on a specific Indigenous nation or its constitutionally protected rights, when considered in the context of existing cumulative effects.

Further to the above, the EAO considers the intent of Section 16 and Section 5 (referral of a matter pending decision to a dispute resolution facilitator) is not to require a "mini environmental assessment" to evaluate if a project will cause EAE. The assessment of EAE must be focused on effects that are unmitigable.

Generally, the EAO's view is that the readiness decision must be based on the information in the Detailed Project Description and obtained through early engagement. There is an acknowledgment that at this phase, there is still a lot of information yet to be provided, that would be included in an Application for an EAC should the project receive a readiness decision to proceed to an environmental assessment. As a result, the multiple points in the environmental assessment process where dispute resolution can be triggered reflect the different decision points and available information throughout the process allowing for distinct phases at which it would be most appropriate to have discussions on scoping, methods, information requirements, potential effects and/or effectiveness of mitigation measures. ...3

The EAO will consider additional information that a project will cause EAE generally or on an Indigenous nation or its rights if such an assertion is made by an Indigenous nation. However, if there is uncertainty as to whether a project will cause EAE or whether those EAE can be mitigated, it is the EAO's view that the appropriate venue to characterize potential effects and mitigations accurately and objectively is during the Application Review phase of the environmental assessment, via review by the Technical Advisory Committee.

Lax Kw'alaams submits in the December 22, 2022 letter that the project will have EAE on Lax Kw'alaams due to adverse impacts on the climate. However, beyond the assertion that the project will cause EAE on Lax Kw'alaams and its rights, there is no additional information provided by Lax Kw'alaams to articulate how these potential adverse effects on the climate would constitute EAE.

As previously communicated, under Section 25(2) of the Act, every assessment must consider required assessment matters, including: the predicted GHGs and the potential effects on the Province being able to meet its targets under the *Greenhouse Gas Reduction Targets Act* (Section 25(2)(h)); alternative means of carrying out the project, including the risks and uncertainties of those alternatives, (Section 25(2)(i)); and the effects of the project to Lax Kw'alaams rights and interests, including the effects of climate change on Lax Kw'alaams rights and interests (Section 25(1)).

In the later stages of the assessment process, there will be opportunities for the EAO and Lax Kw'alaams to work together to identify information requirements, review and assess the information generated through the assessment and identify possible ways to mitigate the potential adverse effects on Lax Kw'alaams from the GHG emissions of the project, such as:

- Consensus seeking on the Process Order including the Application Information Requirements;
- The opportunity for Lax Kw'alaams to conduct its own assessment of project effects to Lax Kw'alaams and its rights; and
- Consensus seeking on the referral package to Ministers including the EAO's Assessment Report and draft EAC including proposed conditions and project description.

Based on the information available at this stage of the process, including the submissions provided by Lax Kw'alaams, the EAO's view is that the potential adverse effects on the climate raised by Lax Kw'alaams are not unmitigable and therefore do not constitute EAE generally or on Lax Kw'alaams or its rights. As previously communicated, subsequent phases of the environmental assessment process will allow for more information to be provided, which will address the current uncertainty around effects to GHG emissions targets and impacts on the climate to support the assessment of effects on Lax Kw'alaams and its rights, and to evaluate the effectiveness of proposed mitigations.

Compatibility with Government Policy

Under the Act, another criterion for termination under Section 16(2)(c)(iii) is if, on the advice of the Minister or another minister, the project is clearly incompatible with a government policy.

Lax Kw'alaams submits that the project is clearly incompatible with government policy, mainly British Columbia (B.C.)'s climate related commitments. The EAO has previously communicated its views on compatibility with government policy in past correspondence dated [August 17, 2022](#).

Detailed Project Description

As the alternative to recommending termination of the project, Lax Kw'alaams submitted that the CEAO must require the proponent to submit a revised Detailed Project Description that addresses the concerns of Lax Kw'alaams. The EAO's view is that the Detailed Project Description contains sufficient information to inform the recommendation of the appropriate process under Section 18 of the Act and subsequent phases of an environmental assessment process. The issues raised to date are of the type that could be assessed in an environmental assessment process conducted by the EAO and the authorities delegated to the CEAO by the Minister under Section 19 are sufficient for determining the environmental assessment process and developing the Process Order for Ksi Lisims.

Process to Date

As outlined in the EAO's interim approach to dispute resolution, which was shared with both the facilitator and Lax Kw'alaams, the goal of dispute resolution is to help participants reach consensus.

The interim approach further outlines that for dispute resolution to be effective, the EAO recognizes the importance of processes that:

- Are flexible to allow for co-development and customization;
- Reflect the unique legal traditions and customs of Indigenous nations and communities; and
- Are predictable and timely.

The interim approach for dispute resolution intends to allow for a customized and predictable process within the time limit that can meet the needs of all participants. Ideally, the EAO and Lax Kw'alaams, as parties to the dispute, are working together, collaboratively, to define a process for this dispute which would allow us to meet face to face (or virtually) and discuss the issues with the support of the facilitator. This would support a predictable and timely process for all participants.

To support the timely progression of the dispute resolution process, the EAO set up multiple 'hold the date' meetings throughout the month of December in which the intent was for the two parties to come together to jointly discuss issues and work together to find a path forward with the support of the facilitator. The EAO is of the view that meeting and being able to discuss the issues in an open and transparent manner is critical in being able to seek a path forward and work towards consensus. Although Lax Kw'alaams representatives declined or were unable to attend each of these 'hold the date' meetings, no alternative options were suggested by Lax Kw'alaams.

It is unfortunate that we received Lax Kw'alaams' letter on day 48 of the recommended 60-day timeline for dispute resolution, which makes it challenging to have meaningful and productive conversations about the contents of the letter within the recommended timeframe. The concerns outlined in the December 22, 2022 letter are mostly a re-statement of Lax Kw'alaams concerns that were already known and communicated in previous correspondence prior to the beginning of the dispute resolution process.

As this dispute resolution process was initiated at the request of Lax Kw'alaams, and with the issues remaining the same today as they were at the beginning of the process, it is unfortunate that the parties have been unable to jointly meet to seek consensus and discuss a path forward together during the allotted timeline. In the absence of any additional information from Lax Kw'alaams, the EAO's view

continues to be that the appropriate venue to assess and characterize potential effects of the project and evaluate the effectiveness of proposed mitigations is during subsequent phases of the assessment.

Recommended Next Steps

Given the status and intent of the dispute resolution process mentioned in the previous section, and since the recommended 60-day timeline has now passed without a clear path forward or willingness to jointly meet to discuss, the EAO has concerns around the predictability, transparency, and timeliness of this dispute resolution process. As such, the EAO requests the facilitator assess the viability of the current dispute resolution process as a tool to support meaningful participation and the likelihood of the parties achieving consensus. Given the circumstances, the EAO would be comfortable with the facilitator choosing to move forward with preparing a report under Section 5(3) of the Act on the basis of the existing written submissions, including the prior correspondence leading up to the initiation of the dispute resolution process.

Finally, given the significance of the termination request by Lax Kw'alaams, the EAO has an interest in sharing information with the proponent on the progress of the dispute resolution process and any potential implications to the process or the project in a timely manner. The EAO understands that, for the time being, Lax Kw'alaams would prefer to keep the information in the December 22, 2022 letter confidential. The EAO respects this preference for the specific contents of the letter from Lax Kw'alaams and also acknowledges the need to ensure the EAO fulfills its procedural fairness obligations to the proponent.


The EAO requests the facilitator work with Lax Kw'alaams to identify the level of information that the EAO can share with the proponents by no later than January 20, 2023. The EAO proposes to the facilitator and Lax Kw'alaams that the following details of the December 22, 2022 letter be shared with the proponents by January 20, 2023:

- Lax Kw'alaams has reiterated its concerns around the project's potential climate and GHG related impacts;
- Lax Kw'alaams submitted that the CEAO must recommend the Minister issue a termination order as: (a) the project will have EAE on Lax Kw'alaams due to adverse impacts on the climate; and (b) the project is clearly incompatible with government policy, mainly B.C.'s climate related commitments; and
- Lax Kw'alaams submitted as an alternative option that the CEAO must, at minimum, require the proponent to submit a revised Detailed Project Description to address the concerns of Lax Kw'alaams.

The EAO requests that Lax Kw'alaams advise whether they consent to the EAO sharing this information verbally with the proponents by January 20, 2023.

In the meantime, if you have any questions, please do not hesitate to reach out to myself by email at Fern.Stockman@gov.bc.ca or by phone at 778 698-9313.

Sincerely,



Fern Stockman
Executive Project Director
Environmental Assessment Office

cc: Mayor Garry Reece
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