

# Reasons for Decision of the Chief Executive Assessment Officer

## KSI LISIMS LNG READINESS DECISION

### 1.0 CONTEXT

The Ksi Lisims LNG – Natural Gas Liquefaction and Marine Terminal (Ksi Lisims LNG) entered the Readiness Decision phase on April 25, 2022, when Nisga'a Nation, Rockies LNG Limited Partnership and Western LNG LLC (the "Proponents") submitted a Detailed Project Description under Section 15 of the *Environmental Assessment Act* (2018) (the Act). In this phase, under Section 16 of the Act the Chief Executive Assessment Officer (CEAO) must:

- Require revisions to the Detailed Project Description;
- Make a recommendation to the Minister of Environment and Climate Change Strategy to exempt the project from an environmental assessment (EA) or issue a termination order; or,
- Determine that the project can proceed to an EA.

If the CEAO has determined that a project can proceed to an EA, they must also determine, under Section 18 of the Act, if the EA is to be conducted by the Environmental Assessment Office (EAO) under Section 19 or referred to the Minister for a determination under Section 24.

Consistent with the EAO's Readiness Decision Policy, EAO staff undertook a review process that sought consensus with participating Indigenous nations and advice from the technical advisors involved so far in this process. As part of this review process, Lax Kw'alaams Band, as a participating Indigenous nation, referred a matter to dispute resolution, which concluded with the submission of a final [dispute resolution report](#) by the dispute resolution facilitator to me. The facilitator's dispute resolution report included a description of the issues raised during dispute resolution, a summary of meetings held, and the facilitator's conclusions and recommendations. At the completion of the review process, to inform my decision, EAO staff prepared a [Readiness Decision Report](#) summarizing the review and engagement process undertaken, the key issues identified, and staff's conclusions regarding matters that may be pertinent to my decision. I have considered the Readiness Decision report, the facilitator's dispute resolution report, and the separate submissions I have received from the [Proponents](#) and [Lax Kw'alaams Band](#) in making my decision, which have been posted to the EAO's Project Information Centre (EPIC) website.

On March 16, 2023, I published a [notice of decision](#) under Section 18(2) that Ksi Lisims LNG will proceed to an EA. These are the reasons for my decision.

I am also aware that on March 14, 2023, the Province of B.C. announced a forthcoming [Energy Action Framework](#) aimed at ensuring that oil and gas sector projects fit within B.C.'s climate commitments. The Province also announced its intention to launch engagements with First Nations, industry, labour, environmental organizations, local governments and other stakeholders on the final design of the regulatory cap on oil and gas sector emissions, and indicated that the framework is intended to:

- require all proposed liquefied natural gas (LNG) facilities in or entering the EA process to pass an emissions test with a credible plan to be net zero by 2030;
- put in place a regulatory emissions cap for the oil and gas industry to ensure B.C. meets its 2030 emissions-reduction target for the sector;

- establish a clean-energy and major projects office to fast track investment in clean energy and technology and create good, sustainable jobs in the transition to a cleaner economy; and
- create a BC Hydro task force to accelerate the electrification of B.C.'s economy by powering more homes, businesses and industries with renewable electricity.

## 2.0 DECISION UNDER SECTION 16

In these reasons I will express my views regarding the factors relevant to making a decision under Section 16 of the Act. It is important that the decision, and the review process undertaken by the EAO to inform it, be considered in the context of:

- The Act in its entirety;
- Relevant common law;
- Past EAO practice;
- Submissions from participants in the process; and,
- Potential impacts of the decision on rights or interests.

I would also note that, before making a decision under Section 16, the Act requires that the CEO must seek to achieve consensus with participating Indigenous nations. Finally, I have considered all the relevant facts and all arguments raised in the final Readiness Decision Report and the referral materials even if they are not specifically identified in these reasons for decision.

## 3.0 CONSIDERATIONS

With respect to the matters relevant to my decision, I agree with the conclusions reached by EAO staff in the recommendations of the [Readiness Decision Report](#), for the reasons detailed in that report, in particular that:

- No technical advisors raised concerns about this project proceeding to an EA;
- The EAO has reached consensus with Nisga'a Nation, as a member of the Proponent team, a party to the *Nisga'a Final Agreement*, and the owner in fee simple of the land in which upland components of Ksi Lisims LNG will be situated on its recommendation that Ksi Lisims LNG proceed to an EA;
- The EAO has reached consensus with Gitga'at Nation, Gitxaala Nation and Kitselas First Nation on its recommendation that Ksi Lisims LNG proceed to an EA. Metlakatla First Nation has expressed that it does not object to the EAO's recommendation;
- The EAO has not reached consensus with Kitsumkalum First Nation due to outstanding issues related to greenhouse gas emissions, the scope of the EA and the assessment of cumulative effects. Despite this, the EAO and Kitsumkalum First Nation have committed to continuing to discuss these issues during subsequent phases of the EA;
- The EAO has not reached consensus with Lax Kw'alaams Band during the Readiness Decision phase on the recommendation that Ksi Lisims LNG proceed to an EA. Consensus was also not achieved at the conclusion of a dispute resolution process. The EAO remains committed to seeking consensus with Lax Kw'alaams Band during subsequent phases of the EA and working with Lax Kw'alaams Band to support its assessment of project effects to Lax Kw'alaams Band and its rights. I agree with the views expressed by the EAO that subsequent phases of the EA process will allow for the EAO and Lax Kw'alaams Band to assess and review the concerns raised by Lax Kw'alaams Band with the support of technical advisors;

- Consideration was given to Lax Kw'alaams Band's alternative submission that I must require the proponent to submit a revised Detailed Project Description. I agree with the views expressed by the EAO 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 the EA process.
- In my view the Crown has fulfilled its constitutional and statutory obligations to Indigenous nations regarding this readiness decision; and,
- The outstanding concerns raised during the review process are appropriately addressed through an EA process conducted by the EAO and will continue to be discussed by the EAO in subsequent phases of the EA.

## 4.0 EXTRAORDINARILY ADVERSE EFFECTS

In accordance with [Section 16\(2\)\(c\)](#) of the Act, the CEOA must refer a project to the Minister with a recommendation that the Minister issue a termination order under [Section 17\(1\)\(a\)](#) if the CEOA considers that the Project, as it is described in the Detailed Project Description:

1. Will have extraordinarily adverse effects generally, or to an Indigenous nation or its rights recognized and affirmed by Section 35 of the *Constitution Act*, 1982;
2. Will have extraordinarily adverse effects on a prescribed protected area;
3. Is, on the advice of a minister, clearly incompatible with a government policy; or,
4. Is substantially the same as a project that has previously been declined or terminated.

In addition to considering whether a project would have extraordinarily adverse effects or should otherwise be terminated for the reasons set out in Section 16(2)(c), in making a decision under Section 17 the Minister will also consider the sustainability and reconciliation purposes of the EAO (as described in Section 2 of the Act).

I acknowledge that, at this phase, there are outstanding concerns from participating Indigenous nations and technical advisors particularly concerning climate effects, scoping of the EA and assessment of cumulative effects. In particular, I note that Lax Kw'alaams Band's views, expressed through the dispute resolution process, are that Ksi Lisims LNG would result in extraordinarily adverse effects on Lax Kw'alaams Band and its rights.

If a participating Indigenous nation identifies what they believe to be a potentially extraordinarily adverse effect during early engagement, the EAO will seek to understand the concern, respecting the perspective of the Indigenous nation. It is my view that, given the structure of the Act and the EAO's purpose of promoting sustainability through robust assessment, "extraordinarily adverse effects" should be interpreted as those that are so severe that the CEOA is satisfied that, at the end of an assessment, they would recommend that no EA certificate be issued. As outlined in previous readiness decisions<sup>1</sup> where extraordinarily adverse effects were discussed, it is my view that the most appropriate standard is that used by courts in striking out civil claims -- i.e. that it be plain and obvious that the claim will not succeed. A determination of extraordinarily adverse effects is dependent upon many factors including the specific design of a proposed project, the existing conditions of the project area, the interactions of the project with environmental, economic, social, cultural and health values as well as Indigenous interests. I agree with the following factors considered by the EAO when evaluating if the Project will result in extraordinarily adverse effects:

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<sup>1</sup> Reasons for Decision of the Chief Executive Assessment Officer re Fording River Extension Project, February 22, 2023 ([https://www.projects.eao.gov.bc.ca/api/public/document/63f6b91c3747350022b4aafc/download/FRX%20Readiness%20Decision%20Reasons%20for%20Decision\\_FINAL.pdf](https://www.projects.eao.gov.bc.ca/api/public/document/63f6b91c3747350022b4aafc/download/FRX%20Readiness%20Decision%20Reasons%20for%20Decision_FINAL.pdf))

1. If the Project will clearly have unmitigable adverse effects, such that the CEO is satisfied they would recommend that no EA Certificate be issued for the Project if it proceeds through an EA 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 are these effects when considered in the context of existing cumulative effects on the environment in general or its constitutionally protected rights.

I have carefully considered the information that Lax Kw'alaams Band provided through the dispute resolution process and through the separate submissions on this matter. Based on the current phase of the process and the amount of information still to be provided, it is not plain and obvious that the project's effects will cause extraordinarily adverse effects, and it cannot be determined at this time whether those extraordinarily adverse effects can be mitigated. If there is uncertainty as to whether a project will cause extraordinarily adverse effects or whether those effects can be mitigated, then the appropriate venue to characterize these potential effects and mitigations accurately and objectively is during the Application Review phase of the EA, via review by the Technical Advisory Committee.

In making this decision I have also considered what information is appropriate for the CEO to consider in assessing potential extraordinarily adverse effects. In this regard, similar to previous decisions at this phase, I do not believe it is the intention of the Act for the EAO to carry out a "mini environmental assessment" when making a decision under Section 16 of the Act.<sup>2</sup> My view is that whether a project will cause extraordinarily adverse effects must initially be considered by the EAO based on the contents of the Detailed Project Description and does not require the EAO to carry out an assessment in order to decide whether to conduct an assessment. However, if technical advisors or participating Indigenous nations raise concerns that the Project will cause extraordinarily adverse effects it is appropriate for the CEO to consider relevant information that is submitted.

I also acknowledge Lax Kw'alaams Band's views that Ksi Lisims LNG will have an outsized contribution to climate change and will result in significant adverse cumulative effects within the region. I share many of the same concerns that Lax Kw'alaams Band, and other participants in the process to date, have raised in terms of the potential effects of Ksi Lisims LNG on climate and the Province's ability to meet its legislated climate targets. I agree with the EAO's views, as outlined in its letter to Lax Kw'alaams Band on February 21, 2023, that subsequent phases of the EA process will allow for more information to be provided, which will address the current uncertainty respecting the relationship between the project and Provincial climate targets and the project's impacts on the climate.

In relation to the above, I note the March 14, 2023 provincial announcement of a forthcoming [Energy Action Framework](#). It is clear from the Province of B.C.'s announcement of its intention to consult on the implementation of the framework. I have not been advised, pursuant to Section 16(2)(c)(iii), that the Ksi Lisims LNG project would be clearly incompatible with the framework. Consequently, I have determined that that section of the Act does not apply to my decision. Furthermore, in its Detailed Project Description and in a [subsequent letter](#) to me dated March 7, 2023, the Proponents articulated a plan to support their commitment to be net zero by 2030 which will be assessed as part of the EA process. Once the framework, and the commitments it outlines, are implemented, it will apply to the EA of the Ksi Lisims LNG project, including consideration of its potential effects, particularly concerning climate effects and greenhouse gas emissions.

## 5.0 DECISION UNDER SECTION 18

Pursuant to Section 18(1) of the Act, I have decided that it is appropriate for the EA of Ksi Lisims LNG to be conducted pursuant to Section 19.

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<sup>2</sup> *Ibid.*

## 6.0 CONCLUSION

After consideration of the EAO's [Readiness Decision Report](#), the facilitator's [dispute resolution report](#), the separate submissions received from the [Proponents](#) and [Lax Kw'alaams Band](#), the review process undertaken, and the approach to consultation with Indigenous nations, including consensus with or the absence of an objection from four of the six participating Indigenous nations on the recommendation that the project proceed to an EA, I decided under Section 16(2)(d) to issue a [notice of decision](#) under Section 18(1) to allow Ksi Lisims LNG to proceed to an EA, and decided that the EA should be conducted under Section 19. Ksi Lisims LNG may now commence the Process Planning phase of the EA, and within 120 days of the publication of my decision under Section 18(1), the EAO will issue a Process Order under Section 19(2) of the Act.



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Elenore Arend  
Chief Executive Assessment Officer  
Environmental Assessment Office

Signed this 16 of March 2023