

# **EAO's Recommendation Regarding Consent for Material Alteration**

*MT. POLLEY COPPER/GOLD PROJECT'S INTERIM TAILINGS  
STORAGE FACILITY RAISE*

**REQUESTED BY:**  
MOUNT POLLEY MINING CORPORATION

**March 12, 2025**

## 1.0 HISTORY OF MT. POLLEY COPPER/GOLD MINE

Mt. Polley Copper/Gold Mine (Mt. Polley Mine) is an open pit copper/gold mine located in the Cariboo region of central British Columbia (B.C.), approximately 56 kilometres northeast of Williams Lake. On October 6, 1992, a Mine Development Certificate was issued to Imperial Metals Corporation (now the Mount Polley Mining Corporation or "MPMC") for the Mt. Polley Mine). The Mine Development Certificate continued in force as a Project Approval Certificate #M96-07 under the first *Environmental Assessment Act* (1996) and then as an Environmental Assessment Certificate (EAC) under the *Environmental Assessment Act* (2002) (the Former Act) and later the *Environmental Assessment Act* (2018) (the Act) (EAC M96-07). Following the initial certification, permits were issued to MPMC under the *Mines Act*, *Environmental Management Act*, and other required authorizations.

Construction of the Mt. Polley Mine ended in 1997, and mine operations began. Mine operations were paused in October of 2001 due to low metal prices but reopened in December 2004, starting production in March 2005. On August 4, 2014, there was a breach in the dam of the Tailing Storage Facility (TSF), which caused tailings, water, and construction materials to flow into Polley Lake, Hazeltine Creek, and Quesnel Lake. After the breach, mining operations paused, and the TSF was built up to 950 metres to temporarily store freshet flows in 2015 and 2016. Limited operations resumed on August 4, 2015, with tailings being deposited in Springer Pit. On November 6, 2015, MPMC requested permission to fully restart operations, including raising the TSF to 970 metres and using it again for tailings storage. Approval was granted on June 23, 2016, and tailings deposition in the TSF resumed on June 27, 2016.

In its submissions to the Environmental Assessment Office (EAO) dated August 12, 2024 (pages 2-6), Xat'sùll First Nation described that the 2014 Mt. Polley dam breach caused widespread and long-lasting environmental damage and corresponding impacts to their title, rights, culture and way of life. Xat'sùll First Nation described impacts to Hazeltine Creek, fish and fish habitat, wildlife and medicinal plant habitat, harvesting, interruption to Rainbow Trout spawning from 2014 to 2017, as well as the destruction of archaeological sites and cultural heritage resources. As a result, Xat'sùll First Nation described serious impacts to their culture, way of life, ability to transmit traditional knowledge as well as Indigenous legal order and governance systems.

Since Mt. Polley Mine's initial certification and permitting, the *Mines Act* permit has been amended several times related to expansion of mining capacity, mine plan changes, and changing operational requirements. The *Environmental Management Act* permit has also been amended several times for various reasons including authorization of discharge to Quesnel Lake via Hazeltine Creek on November 29, 2016, and directly to Quesnel Lake on April 17, 2017.

[EAC M96-07](#) requires in Condition 2 that MPMC must obtain the written consent of the Ministers of the Ministry of Mining and Critical Minerals (MCM) and Ministry of Environment and Parks (ENV) prior to any material alterations of the Development ("Consent for Material Alteration") and that the determination of what may constitute a material alteration is made by the Minister of MCM.

The EAO has granted two Certificate amendments and Ministers have consented to two Material Alterations, including:

- Amendment #1, September 2, 1997 – To transfer EAC M96-07 to the Mount Polley Holding Company;
- Amendment #2, May 19, 2016 – To increase the maximum annual milling rate to 8.2 million tonnes of ore, remove the restriction of a maximum 14-year mine life, and change the Holder's name to Mount Polley Mining Corporation;
- Consent for Material Alteration #1, November 23, 2015 – To allow discharge of mine effluent to Hazeltine Creek where it would flow into a sediment pond and via pipeline to discharge at depth in Quesnel Lake; and
- Consent for Material Alteration #2, April 6, 2017 – To allow for the operational effluent discharge to Quesnel Lake to address the management of mine water during the remainder of mine life.

## 2.0 PROPOSED INTERIM TSF DAM RAISE

To continue mine operations, MPMC is planning to raise the TSF in a series of lifts over the course of several years. The first of which is MPMC's proposed *Mines Act* permit amendment to raise the TSF dam by 4 metres from the current height, to an elevation of 974 metres. This will accommodate tailings from the materials milled under the current authorization and continue operations through the high water and snowmelt period in spring 2025. MPMC indicated that without timely approval of the Interim TSF Raise, MPMC may be required to halt approved open pit mining operations in the Springer Pit in order to safely operate the TSF. To prevent flooding in the TSF, surplus water would need to be managed in other areas of the mine, including routing into the Wight Pit, which would stop operations. MPMC stated that any reduction in mining operations would lead to staff layoffs and financial impacts to MPMC employees and local communities. Xat'sùll First Nation's views on this issue are set out in a February 25, 2025 [letter](#) (Appendix 1, Entry 2).

The Minister's consent process for the proposed Interim TSF Dam Raise is not considered an amendment under Section 32 (amendments) of the Act as it does not require any changes to EAC M96-07. Xat'sùll First Nation does not agree with this position, and this was the subject of extensive discussion with Xat'sùll First Nation, which is described further in Section 4.1 of this report.

### 2.1. Current *Mines Act* Permit Amendment Request

An assessment of the potential effects and associated mitigation measures of this proposed Interim TSF Dam Raise was conducted through the Major Mines Office (MMO) in the MCM permitting and consultation process for the *Mines Act* amendment application, starting in August 2024. The MMO led a thorough technical review of the application and consulted with Williams Lake First Nation and Xat'sùll First Nation on the assessment of the effects of the Interim TSF Dam Raise. Concerns raised by technical reviewers and First Nations during the permit application review regarding technical issues and impacts to Section 35 Rights were resolved through technical discussions and/or permit conditions and used to inform the draft permit which was shared with First Nations on January 27, 2025. The Statutory Decision Maker for MCM will provide their decision on whether to approve the proposed *Mines Act* permit amendment following the Ministers' determination on whether to grant consent for the material alteration.

## 3.0 CONSENT FOR A MATERIAL ALTERATION REVIEW PROCESS

Condition #2 of EAC-M96-07 describes that if a change is considered 'material', then consent of the Minister of MCM and the Minister of ENV (together the Ministers) must be provided before the Certificate Holder can implement the proposed change. In this two-step process, MCM leads the technical review and consultation with First Nations associated with the first step, and the EAO leads the processes in support of the second step.

In accordance with EAC M96-07 Condition 2, MCM reviewed MPMC's proposed Interim TSF Dam Raise. On February 18, 2025, the Honourable Jagrup Brar, Minister of Mining and Critical Minerals, determined that the Interim TSF Dam Raise is considered a "material alteration" as described in Condition #2.

On November 28, 2024, the EAO notified MPMC that it would commence its review and provide a recommendation to Ministers as to whether or not consent should be provided to MPMC to implement the proposed change. The EAO noted that this process would incorporate the issues and concerns from potentially impacted First Nations and technical advisors. On the same date, the EAO notified Xat'sùll First Nation and Williams Lake First Nation about its proposed process for the consent for material alteration. The notification [letter](#) also invited them to share any additional comments or concerns regarding the proposed Interim TSF Dam Raise that had not been resolved during the technical review of the permit application and that were relevant under Section 25 of the Act.

While there is no legislated requirement for consensus seeking with First Nations for this process under Condition #2 of the Certificate, the EAO decided to undertake a consultation process with First Nations grounded in the principles of consensus seeking on key process steps and the recommendation to Ministers.

A draft of this report which included EAO's recommendation to Ministers, was provided to MPMC and First Nations for review. Consensus was sought on the content of this report as well as the EAO's recommendation to Ministers regarding the decision to provide consent to the material alteration. A meeting with the EAO to discuss any final consensus-seeking points was offered to First Nations following this review. All feedback received during the consent for material alteration process was taken into consideration in the drafting of this report.

## 4.0 SUMMARY OF KEY ISSUES RAISED BY FIRST NATIONS AND POTENTIAL EFFECTS TO FIRST NATIONS

### 4.1. Xat'sül First Nation

Xat'sül First Nation first expressed concern to the EAO regarding Mt. Polley in an August 12, 2024, submission to the Minister of Environment requesting that the proposed changes at Mt. Polley be required to undergo a new environmental assessment. Xat'sül First Nation's rationale for this request included concerns regarding continued impacts associated with the 2014 TSF dam breach, concerns with current operation of the TSF and water management, as well as potential significant impacts of the proposed mine expansion and Interim TSF Dam Raise on their Section 35 Rights, culture and way of life. The EAO responded that, as Mt. Polley already had the equivalent of an EAC, the process for considering changes would follow those set out in Condition #2, as described in Section 3.0 above.

Although Xat'sül First Nation and the EAO have discussed and exchanged correspondence on this process on several occasions, and the EAO has invited feedback and explained its reasons for the approach, the parties continue to hold different perspectives on whether the process meets legal requirements. Xat'sül First Nation shared with MMO in the *Mines Act* permit amendment process that it has serious, ongoing concerns related to the operation and proposed expansion of the Mt. Polley Mine and its associated TSF, adding that Xat'sül First Nation considers a Provincial approval for the TSF Dam Raise as "inconceivable" without the completion of an environmental assessment.

Xat'sül First Nation's submissions expressed their concern in separating the analysis for consent for material alteration of the Interim TSF Raise from the Springer Pit Expansion. MPMC's application for materiality assessments included both the Interim TSF Raise and the Springer Pit Expansion as two components of a single expansion. The EAO responded that due to the urgent need to consider the Interim TSF Dam raise prior to the spring freshet, it would not be practicable to consider the Springer Pit expansion at the same time. The EAO acknowledged that this may place additional burdens on the Xat'sül First Nation. Xat'sül First Nation will be consulted by MCM and the EAO on MPMC's proposed Springer Pit Expansion once that review for material consent begins. Xat'sül First Nation's views on this issue are set out in the following [letters](#): December 20, 2024 (pages 4-5), January 23, 2025 (page 4), and February 25, 2025 (Appendix 1, Entry 4).

Xat'sül First Nation also opposed the use of the consent for material alteration process and is of the view that changes to the EAC (that is, an amendment) would be necessary for the Interim TSF Raise to be authorized. The EAO is of the view that an amendment to this EAC is only required if the milling rate changes (Condition #4 of the EAC) and all other changes proceed through the material alteration process. However, in an effort to address Xat'sül First Nation's concerns with the material alteration process, the EAO proposed adding the two features of an amendment process into the consent for material alteration process – seeking consensus with First Nations on the recommendation and considering Section 25 matters under the Act.

The process that the EAO used in developing the recommendation for the consent for material alteration was in effect, very similar to an amendment process under Section 32 in the *Environmental Assessment Act* (2018). In light of its view that an EAC amendment is required for any changes to the EAC (and not just for milling rate changes), Xat'sül First Nation does not agree with this approach, for the reasons described in the following [letters](#): October 11, 2024 (pages 3-7);

November 22, 2024 (pages 4-7); December 20, 2024 (pages 4-8); January 23, 2025 (page 2); and February 25, 2025 (Appendix 1, Entry 3).

Xat'sull First Nation's submissions to the EAO and MMO have focused on their concerns with these agencies' administrative and consultative processes. Xat'sull First Nation expressed significant concern regarding the reliance on the technical review conducted by MMO as part of the *Mines Act* permit amendment process and the use of Condition #2 and not an amendment process to the EAC. Xat'sull First Nation stated that the environmental assessment asks broadly whether a proposed amendment to an EAC should be approved from the perspective of the factors in Section 25 the Act, and is designed to collect and consider a breadth of information (including environmental, economic, social, cultural and health effects) while the *Mines Act* permitting process is a technical exercise in which MCM determines if a given proposal is sound from a design and engineering perspective (see Xat'sull First Nation's January 23, 2025 [letter](#) page 3 for more detail on its position).

The EAO responded to state that the review conducted by MMO provides the opportunity for detailed understanding of technical concerns and mitigations and that the MMO process seeks to understand any potential impacts to Section 35 Rights. The EAO has communicated that, by coordinating with the MMO for the "materiality" and Condition #2 consent process, this avoids the burden of Xat'sull First Nation having to repeat its review and efforts where those potential impacts to Section 35 Rights as well as technical concerns have already been considered.

Additionally, Xat'sull First Nation raised objections to MCM's refusal to pause the review of the *Mines Act* permit application until the EAO and ministers complete their analyses. Xat'sull First Nation indicated that the *Mines Act* permit application and material alteration processes are placing strain on their human and technical resources, hindering their ability to effectively engage in both processes. The EAO acknowledges that the Condition #2 is atypical by today's EAC standards, and it has made its best efforts to provide a clear, reasonable and transparent process for First Nations. In consideration of the specific proposed TSF changes, the EAO and MMO consider the detailed *Mines Act* Permit amendment technical review processes for the Interim TSF Dam Raise to be the most appropriate means through which the Province can address Xat'sull First Nation's concerns and identify appropriate accommodations for this technical change.

On February 25, 2025, Xat'sull First Nation provided a [memorandum](#) which presented analysis from an engineering perspective as to the risks of the Interim TSF Dam Raise. The conclusions of the memorandum highlight several concerns regarding the integrity and safety of the TSF. In summary on this issue, and after further discussion with EAO and MCM on March 6, 2025, Xat'sull First Nation's view, in its own words, is that:

1. The EAO is using an inappropriate and outdated risk assessment framework. It has not properly assessed risk in light of international best practices, including lessons learned from the 2014 blowout. The EAO has focused solely on the technical details of MPMC's application and has not adopted a proper risk-based assessment approach incorporating the lessons learned from the 2014 blowout and other TSF failure experiences. This includes the fact that MPMC's system fails to allow third parties such as Xat'sull First Nation to be able to verify and satisfy themselves how much volume is behind the TSF and whether it is at a safe level, which is a key aspect of the community-based lessons learned from the 2014 blowout.
2. MPMC has not proposed an adequate plan as to how to manage water at elevated rates. There is no way for operations staff to actually know how much water is behind the TSF in real time. MPMC will be using a system that only actually measures the volume behind the TSF twice a year, via bathymetric testing, rather than, i.e., assessing water levels with reference to freeboard and beach width. MPMC's system fails to equip operational staff with the tools that they need to respond to emergent water management situations (spring freshet, atmospheric rivers, etc.) despite vague references to the fact that a committee has committed to 'discuss the TSF' periodically.

3. Adding the ability to store additional water behind the TSF (via the Dam Raise), in light of the flawed systems that are in place and that MPMC has proposed to use for the TSF raise, increases both the likelihood and consequences of a potential breach. MPMC will be commercially incentivized to store as much water as possible behind the (elevated) dam, and without a proper risk-based approach in place per the above, there is a higher likelihood of a blowout as the amount of water being handled increases and the margin for error decreases, and there are higher consequences of a blowout due to the elevated water levels being stored.
4. It is critical context that we are dealing with a TSF that has already catastrophically failed. These are not abstract or speculative concerns. MPMC's proposed manner of operating the heightened TSF, as evidenced in its application, looks no different than how the TSF would have been operating pre-blowout.

Xat'sull First Nation experiences a lack of trust in the company, the data, and this mine generally, in particular given the history, context and impacts on this Nation from the 2014 dam breach. MCM and the EAO have evaluated these concerns, and it does not change their assessment of the risks associated with the proposed Interim TSF Dam Raise. However, the EAO and MCM continue to work closely with Xat'sull First Nation and MPMC on ways to improve this trust, including the development of a new government-to-government mining agreement, improved data collection and transparency, and increased communication regarding the concerns raised.

On February 10, 2025, the EAO circulated a draft of this report to Xat'sull First Nation for review. Xat'sull First Nation provided their feedback on February 25, 2025. The EAO considered Xat'sull First Nation's feedback and made revisions to the draft Report as appropriate and provided written feedback on the remaining areas of non-consensus. Xat'sull First Nation requested a technical-level meeting as well as time to discuss any final consensus-seeking points. This meeting was held on March 6, 2025. Xat'sull First Nation also requested additional consensus-seeking steps, in particular, an issue or dispute resolution process for any remaining areas of non-consensus. Xat'sull First Nation's view is that "it is precisely when the parties appear to be far apart on issues that issues resolution is the most critical to resolve impasses, and that such a process is a component of consultation at the deep end of the spectrum (*Haida Nation v. British Columbia*, 2004 SCC 73 at para. 44)."

It is the EAO's view that additional discussions or issue resolution would not provide meaningful changes to these areas of non-consensus as they have already been discussed extensively through correspondence and meetings and will be continued through work with the Province on authorizations and a new government-to-government mining agreement. The EAO recommends to MCM for consideration that future *Mines Act* permit applications be required to include plain language summaries to support understanding by Xat'sull First Nation community members and that MCM consider ways to work with First Nations, MPMC, and government representatives to increase trust, information sharing, and partnership between the parties regrading dam safety. Based on the small increase in the dam height, the work with Xat'sull First Nation through this and the *Mines Act* process, and the ongoing work by the Province with Xat'sull First Nation, the EAO concludes that the proposed Interim TSF Dam Raise would not have significant adverse effects to Xat'sull First Nation or its Section 35 Rights.

## 4.2. Williams Lake First Nation

Although the EAO did not receive any comments from Williams Lake First Nation on any additional matters of concern, the EAO understands that Mt. Polley is within their asserted traditional territory and that Williams Lake First Nation has raised issues associated with the effects of the 2014 dam breach to the Province in other regulatory and government-to-government discussions. During the review of the draft *Mines Act Permit* for the Interim TSF Dam Raise, Williams Lake First Nation expressed concerns regarding dust management including its potential impacts on human health, cultural heritage and archaeological management practices, as well as invasive species, providing requested conditions for the permit amendments. These concerns were addressed in discussions with MMO and MPMC. On February 10, 2025, the EAO circulated this report to Williams Lake First Nation for review.

Based on the small increase in the dam height and the work with Williams Lake First Nation through this and the *Mines Act* process, the EAO's concludes that the proposed Interim TSF dam raise would not have significant adverse effects to Williams Lake First Nation or its Section 35 Rights.

## 5.0 THE EAO'S ASSESSMENT OF EFFECTS

Section 25(2) of the Act includes a list of matters that should be considered in each assessment. Although it is not necessary that this list be assessed by the EAO for the Mt. Polley Condition #2 consent for material alteration process, the EAO nevertheless considered the applicability and potential effects to each of these matters, taking into account the technical review and consultation that was managed by MMO.

This assessment is provided below in Table 1. The EAO's assessment on Section 25(1) matters are included in Section 4.0 of this report and have been thoroughly considered as part of the *Mines Act* permit amendment process. See Section 4.1 of this report for a summary of Xat'sùll First Nation's views on the use of the Section 25 factors in the context of this report (see also Xat'sùll First Nation's January 23, 2025 [letter](#) at page 3).

Table 1. Applicability and Effects to Section 25(2) Matters

Section 25(2) Matters	Assessment
Positive and negative direct and indirect effects on valued components.	The EAO is satisfied that positive and negative direct and indirect effects on valued components were considered appropriately in the <i>Mines Act</i> permit amendment process.
Risks and uncertainties associated with those effects.	The EAO is satisfied that risks and uncertainties associated with those effects were considered appropriately in the <i>Mines Act</i> permit amendment process.
Risks of malfunctions or accidents.	The Interim TSF dam raise is not anticipated to result in increased risks to malfunctions or accidents. This was also considered further in the <i>Mines Act</i> permit amendment process and is regulated by the Health, Safety and Reclamation Code for Mines in B.C.  See Section 4.1 of this report for a summary of Xat'sùll First Nation's concerns regarding the potential for increased risk of dam breach.
Disproportionate effects on distinct human populations, including populations identified by gender.	The Interim TSF dam raise would not have disproportionate effects on distinct human populations, including populations identified by gender.
Effects on biophysical factors that support ecosystem function.	The Interim TSF dam raise would not result in changes to biophysical factors that support ecosystem function. See Section 4.1 of this report for a summary of Xat'sùll First Nation's concerns regarding the potential for increased risk of dam breach.
Effects on current and future generations.	The Interim TSF dam raise would not result in effects on current or future generations.

Section 25(2) Matters	Assessment
	See Section 4.1 of this report for a summary of Xat'sùll First Nation's concerns regarding the potential for increased risk of dam breach.
Consistency with any land-use plan of the government or an Indigenous nation.	The Interim TSF dam raise is not anticipated to result in a change to the current land use plan and is being consulted on with First Nations.
Greenhouse gas emissions.	The Interim TSF dam raise would not cause significant increases in greenhouse gas emissions.
Alternative means of carrying out the project.	Alternative means were not proposed by MPMC which EAO believes to be reasonable. The alternative means of carrying out the project would include the construction of an entirely new TSF elsewhere on the mine site which would lead to greater impacts.
Potential changes to the reviewable project that may be caused by the environment.	The Interim TSF Dam Raise would not result in additional potential changes to Mt. Polley Mine that are caused by the environment.

## 6.0 CONCLUSIONS AND RECOMMENDATION

The EAO is satisfied that:

- The effects of the proposed four-metre Interim TSF Dam Raise on First Nations and their Section 35 Rights have been appropriately assessed and have been addressed to the satisfaction of the EAO;
- The matters described in Section 25(2) of the Act have been considered and there would be no significant change in the effects on these matters as a result of the proposed Interim TSF Dam Raise;
- Efforts to seek consensus on concerns that the First Nations raised with the proposed Interim TSF Dam Raise and these conclusions were undertaken and despite efforts, consensus was not reached with Xat'sùll First Nation; and
- The EAO has fulfilled its statutory and constitutional obligations owed to First Nations relating to the consent for material alteration to the Mt Polley Mine of the proposed Interim TSF Dam Raise.

Given that MMO conducted a comprehensive assessment of the potential effects and mitigation measures for the proposed Interim TSF Dam Raise as part of the *Mines Act* permit amendment process, which included a technical review and consultation with First Nations, that feedback from First Nations and technical advisors was integrated into the draft permit through technical discussions and permit conditions, and that this is the most effective and appropriate regulatory avenue for mitigation effects, the EAO recommends that the Ministers of MCM and ENV grant consent for the proposed Interim TSF Dam Raise.