

# GCT Deltaport Expansion – Berth Four Project Review Panel Terms of Reference

DRAFT VERSION FOR CONSULTATION

February 28, 2023

**TABLE OF CONTENTS**

**1. Introduction..... 3**

**2. Description of the Project..... 4**

**3. Mandate of the Review Panel..... 5**

Duties of the Review Panel ..... 5

Principles of Engagement and Participation..... 6

Scope of the Assessment by the Review Panel ..... 7

Impacts on Indigenous Interests..... 9

**4. Assessment Process ..... 11**

*Impact Statement Development and Review Phase ..... 11*

Review Panel Appointment ..... 11

*Impact Assessment Phase..... 12*

Review Panel Sufficiency Review ..... 12

Public Hearing ..... 13

Impact Assessment Report ..... 14

**5. Review Panel Secretariat..... 15**

**6. Specialist Advisors to the Review Panel ..... 15**

**7. Clarifying or Amending the Terms of Reference ..... 16**

**8. Record of the Impact Assessment..... 16**

## 1. INTRODUCTION

On October 28, 2021, the Impact Assessment Agency of Canada (the Agency) determined, in accordance with section 16 of the *Impact Assessment Act* (the IAA), that an impact assessment was required for the GCT Deltaport Expansion – Berth Four Project (the Project) proposed by GCT Canada Limited Partnership (the Proponent).

The federal Minister of Environment and Climate Change (the Minister) referred the impact assessment of the Project to a Review Panel on November 3, 2021.

[The Canada-British Columbia Cooperation Agreement on the coordination of the environmental and impact assessment processes for the GCT Deltaport Expansion - Berth Four Project](#) (the Cooperation Agreement) describes how the Agency and the British Columbia Environmental Assessment Office (EAO) will coordinate during the assessment of the Project. The EAO intends to principally rely on the federal Review Panel process to meet the provincial requirements for the assessment.

The Agency and EAO jointly conducted the Planning Phase for the Project. All of the documents listed below were developed and issued jointly with the EAO during the Planning Phase to help guide the assessment of the Project:

- [Joint Guidelines](#);
- [Joint Assessment Plan](#);
- [Joint Indigenous Engagement and Partnership Plan](#); and
- [Joint Permitting and Regulatory Coordination Plan](#).

The Joint Guidelines identify for the Proponent the minimum information requirements for the preparation of its Impact Statement, and define the scope of the Project and the assessment. The Joint Guidelines were tailored for the Project by the Agency and the EAO to ensure the document reflects both federal requirements under the IAA and provincial requirements under the British Columbia *Environmental Assessment Act, 2018* (EAA).

The Joint Assessment Plan, the Joint Indigenous Engagement and Partnership Plan and the Joint Permitting and Regulatory Coordination Plan set out general expectations for the assessment process. However, the Review Panel may elaborate on these plans, where relevant, and adapt its approach based on changes that may be required during the assessment, or based on comments and requests received from participants.

The Minister will establish these Terms of Reference for the Review Panel in accordance with section 41 of the IAA. In accordance with section 49 of the IAA, these Terms of Reference reflect the issues documented in the Joint Summary of Issues and Engagement, as raised by the public, Indigenous

nations<sup>1</sup>, and federal authorities, as well other issues raised during the Planning Phase. In addition to identifying the mandate of the Review Panel, these Terms of Reference also set out the framework for the assessment, identify the composition of the Review Panel, and set out the timelines for the process.

The Agency is required to establish the overall time limit for the Impact Assessment Phase of the Project (i.e. from the issuance of the determination that the impact statement contains the required information or studies (subsection 19(4) of the IAA) until the submission by the Agency of its recommendations to the Minister (subsection 55.1(1) of the IAA)). The Agency is proposing an overall time limit of 600 days.

This time limit provides 450 days for the Review Panel to submit its impact assessment report to the Minister following the commencement of the Impact Assessment Phase. Once the Review Panel submits its report, the Agency will have 150 days to post its recommendations under subsection 55.1(1) to assist the Minister in establishing proposed conditions with respect to the Decision Statement for the Project, should the Project proceed. Following the posting of the Agency's recommendation, the Governor in Council will have 90 days to make the public interest determination under the IAA.

## **2. DESCRIPTION OF THE PROJECT**

GCT Canada Limited Partnership is proposing to expand its existing GCT Deltaport Container Terminal, a container storage and handling facility located in Delta, British Columbia, approximately 35 kilometres south of Vancouver. As proposed, the Project would add a fourth berth on the east side of the Roberts Bank Causeway, include an expansion of the intermodal rail yard along the causeway (Roberts Bank Way) and dredging to provide safe access for ships. The additional land-based container storage and handling facilities would provide an additional two million 20-foot long storage containers (otherwise referred to as 20-foot equivalent units or TEUs) per year at the existing terminal.

The description of the Project for the purpose of the assessment is the construction, operation and, where relevant, decommissioning of project components and physical activities, including mitigation measures that are proposed to mitigate the predicted impacts of the Project. Marine shipping and rail transportation are incidental to the Project and considered part of the designated project, as defined in the IAA. These activities form part of the description of the Project for the purposes of the assessment, to the geographic extent described below.

The geographic extent of marine shipping incidental to the Project includes the marine shipping routes from the proposed terminal at Roberts Bank to the outer limit of Southern Resident Killer Whale critical habitat, as defined in the 2018 Recovery Strategy for the Northern and Southern Resident Killer

---

<sup>1</sup> For clarity, the term "Indigenous nations" is defined as the First Nations and Métis peoples of British Columbia.

Whales (*Orcinus orca*) in Canada. This extent also includes the Maa-nulth Domestic Fishing Area as defined under the *Maa-nulth First Nations Final Agreement*.

The geographic extent of rail transportation incidental to the Project includes the rail lines that would be used by project-related rail traffic between the Deltaport terminal and Spuzzum, British Columbia, at the northern boundary of S'ólh Téméxw or Stó:lō Territory.

The description and components of the Project to be considered in the assessment are identified in section 2 of the Joint Guidelines.

### **3. MANDATE OF THE REVIEW PANEL**

In fulfilling its mandate, the Review Panel shall respect the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*, and ensure that its engagement efforts with Indigenous peoples are guided by the Government of Canada's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) as a comprehensive international human rights instrument and Canada's roadmap for reconciliation. The Declaration emphasizes the importance of recognizing and upholding the rights of Indigenous peoples and ensuring that there is effective and meaningful participation of Indigenous peoples in decisions that affect them, their communities, and territories.

#### *Duties of the Review Panel*

- 3.1. The Review Panel shall conduct an impact assessment of the Project, including incidental activities<sup>2</sup>, in accordance with the requirements of the IAA and in a manner consistent with these Terms of Reference.
- 3.2. In accordance with subsection 51(1) of the IAA, the Review Panel must:
  - a. conduct an impact assessment of the Project;
  - b. ensure that the information that it uses when conducting the impact assessment is made available to the public;
  - c. hold hearings in a manner that offers the public an opportunity to participate meaningfully, in the manner that the Review Panel considers appropriate and within the time period that it specifies, in the impact assessment;
  - d. prepare a report with respect to the impact assessment that:
    - i. sets out the effects that, in the opinion of the Review Panel, are likely to be caused by the carrying out of the Project;

---

<sup>2</sup> The requirements related to the scope of the assessment of marine shipping and rail transportation incidental to the Project are set out in Section 16.4 and Section 17.4 of the Joint Guidelines, respectively.

- ii. indicates which of the effects referred to in subparagraph (i) are adverse effects within federal jurisdiction (as defined in section 2 of the IAA) and which are adverse direct or incidental effects, and specifies the extent to which those effects are significant;
  - iii. subject to section 119 of the IAA, sets out how the Review Panel, in determining the effects that are likely to be caused by the carrying out of the Project, took into account and used any Indigenous Knowledge provided with respect to the Project;
  - iv. sets out a summary of any comments received from the public; and
  - v. sets out the Review Panel's rationale, conclusions and recommendations, including conclusions and recommendations with respect to any mitigation measures and follow-up program;
  - e. submit the report with respect to the impact assessment to the Minister; and
  - f. on the Minister's request, clarify any of the conclusions and recommendations set out in its report with respect to the impact assessment.
- 3.3. The Review Panel shall consider the approach presented in the most recent version of the *Agency's Guidance: Describing effects and characterizing extent of significance* when fulfilling the requirements of subparagraph 51(1)(d)(ii) of the IAA.
- 3.4. To conduct its assessment, the Review Panel shall use the information collected during the assessment process available on the Public Registry, in addition to any information submitted to the Review Panel in confidence as per the provisions of the IAA.
- 3.5. The Review Panel shall consider all relevant information from existing initiatives as well as past assessments in the region, to the extent that information is provided to the Review Panel on the record of the assessment.
- 3.6. The Review Panel shall ensure that the assessment takes into account scientific information, Indigenous Knowledge, and community knowledge.
- 3.7. The Review Panel shall assess the effects and impacts of the Project in a careful and precautionary manner in an effort to minimize the adverse effects of the Project and enhance positive benefits.
- 3.8. The Review Panel shall strive to establish a fair, predictable, efficient and cost-effective process.

*Principles of Engagement and Participation*

- 3.9. The Review Panel shall ensure that opportunities are provided for meaningful public participation and Indigenous engagement during the impact assessment.
- 3.10. The Review Panel shall design its approach to engagement and participation in compliance with the IAA and following the most recent frameworks and guidance documents produced by the Agency, including:
- a. *Framework: Public Participation under the Impact Assessment Act;*

- b. *Guidance: Public Participation under the Impact Assessment Act;*
  - c. *Policy Context: Indigenous Participation in Impact Assessment; and*
  - d. *Guidance: Indigenous Participation in Impact Assessment.*
- 3.11. The Review Panel shall design its approach to engagement and participation in consideration of the objectives presented in the [Joint Assessment Plan](#) and the objectives identified by Indigenous nations in Section 3 of the [Joint Indigenous Engagement and Partnership Plan](#).
- 3.12. The Review Panel shall design its approach to engagement in a manner that facilitates the participation of diverse groups, and in consideration of the principles of gender-based analysis plus as described in the most recent version of the Agency's *Guidance on Gender-based Analysis Plus in Impact Assessment*.

*Scope of the Assessment by the Review Panel*

- 3.13. In conducting the assessment, the Review Panel must take into account the factors listed in subsection 22(1) of the IAA:
- a. the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the Project, including:
    - i. the effects of malfunctions or accidents that may occur in connection with the Project;
    - ii. any cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out; and
    - iii. the result of any interaction between those effects;
  - b. mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the Project;
  - c. the impact that the Project may have on any Indigenous groups and any adverse impact that the Project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
  - d. the purpose of and need for the Project;
  - e. alternative means of carrying out the Project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;
  - f. any alternatives to the Project that are technically and economically feasible and are directly related to the Project;
  - g. Indigenous Knowledge provided with respect to the Project;
  - h. the extent to which the Project contributes to sustainability;

- i. the extent to which the effects of the Project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;
  - j. any change to the Project that may be caused by the environment;
  - k. the requirements of the follow-up program in respect of the Project;
  - l. considerations related to Indigenous cultures raised with respect to the Project;
  - m. community knowledge provided with respect to the Project;
  - n. comments received from the public;
  - o. comments from a jurisdiction that are received in the course of consultations conducted under section 21 of the IAA;
  - p. any relevant assessment referred to in section 92, 93 or 95 of the IAA;
  - q. any assessment of the effects of the Project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the Project;
  - r. any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 of the IAA — that is in respect of a region related to the Project and that has been provided with respect to the Project;
  - s. the intersection of sex and gender with other identity factors; and
  - t. any other matter relevant to the impact assessment that the Agency requires to be taken into account.
- 3.14. In conducting the assessment, the Review Panel must take into account the following list of relevant matters in accordance with subsection 22(1)(t) of the IAA:
- a. Road transportation associated with the Project to the geographic extent and within the scope identified in Section 18 of the Joint Guidelines;
  - b. Potential impacts of the Project on biophysical factors that support ecosystem function;
  - c. Consistency of the Project with relevant land-use and marine use plans of the Province of British Columbia or of an Indigenous nation;
  - d. Ability of the Province of British Columbia to meet its greenhouse gas targets;
  - e. Provincially managed areas potentially impacted by the Project, including but not limited to the Roberts Bank Wildlife Management Area and Agricultural Land Reserve; and
  - f. Provincially endangered and threatened species potentially impacted by the Project.
- 3.15. The Review Panel shall make conclusions and recommendations pertaining to the matters identified in clause 3.14, to the extent the Review Panel receives specialist or expert information or knowledge related to the assessment of the Project from provincial authorities.

- 3.16. The Review Panel shall identify the adverse effects of the Project on species listed under the *Species at Risk Act* and their critical habitat, and identify measures that could be taken to avoid or lessen those effects and to monitor them. The Review Panel must document in its assessment report how those measures are consistent with any applicable recovery strategies and action plans.

Impacts on Indigenous Interests

- 3.17. The Review Panel shall assess the potential impacts that the Project may have on the Indigenous interests<sup>3</sup> of the Indigenous nations listed in section 4.1 of the Joint Indigenous Engagement and Partnership Plan, to the extent the Review Panel receives such information during the impact assessment process. For clarity, the Crown retains the duty to consult.
- 3.18. The Review Panel shall request that Indigenous nations identify their preferred method to provide information during the assessment. The Review Panel shall not be limited to receiving information from Indigenous nations in a written format and may accept information provided during oral information gathering sessions or visits on the land or water. The Review Panel shall make meaningful attempts to accommodate requests of an Indigenous nation regarding their preferred means of participation.
- 3.19. The Review Panel must invite submissions and participation from Indigenous nations to further inform its analysis, rationale, and conclusions and recommendations regarding Indigenous interests in its impact assessment report. The Review Panel shall, at a minimum, invite Indigenous nations to provide the following information as early in the assessment as possible:
- a. information about cultural protocols, cultural safety and context of each Indigenous nation that may be relevant for the Review Panel process;

---

<sup>3</sup> The term “Indigenous interests” refers to all the requirements relating to Indigenous peoples required by both the IAA and the EAA. This includes paragraph 22(1)(c) of the IAA which requires the assessment of the impacts that the proposed project may have “on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*”. It also includes section 2 of the IAA, which provides a definition of effects within federal jurisdiction. This definition includes the following with respect to the Indigenous peoples of Canada, including an impact — occurring in Canada and resulting from any change to the environment — on (i) physical and cultural heritage, (ii) the current use of lands and resources for traditional purposes, (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; and (iv) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada. EAO’s Effects Assessment Policy describes Indigenous Interests as “those interests related to an Indigenous nation and their rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, including Treaty rights and Aboriginal rights and title, that may be impacted by a proposed project” which must be assessed per subsection 25(1) of the EAA.

- b. information about past, present and anticipated future use of the project area and areas affected by incidental activities by Indigenous nations over time, and practices in the project area regarding the Indigenous interests;
  - c. information about the potential adverse and positive impacts of the Project on Indigenous interests, potential impacts related to those interests, and information on approaches to assess impacts on Indigenous interests including:
    - i. impacts on asserted or established Aboriginal and Treaty rights; and
    - ii. the extent of significance of adverse effects within federal jurisdiction;
  - d. any assessment of the potential impacts of the Project that is conducted by or on behalf of an Indigenous nation;
  - e. any measures proposed to mitigate, accommodate, and/or avoid adverse impacts on Indigenous interests and measures to enhance positive impacts; and
  - f. any information from past assessments that may be relevant to the impact assessment of the Project.
- 3.20. The Review Panel shall invite Indigenous nations to provide information regarding whether there is sufficient information for the Review Panel to conduct the impact assessment and to proceed to a public hearing.
- 3.21. In undertaking its analysis and reaching its conclusions and recommendations on the potential impacts of the Project on Indigenous interests, the Review Panel must use the methodology as described in the most recent version of the *Agency's Guidance on the Assessment of Potential Impacts on the Rights of Indigenous Peoples*.
- 3.22. The Review Panel shall consider Indigenous Knowledge in a manner that is consistent with the most recent version of the *Government of Canada's Indigenous Knowledge policy framework for project reviews and regulatory decisions*.
- 3.23. Should an Indigenous nation choose to share Indigenous Knowledge with the Review Panel in confidence, as provided by section 119 of the IAA, the Review Panel shall ensure it follows any Indigenous Knowledge protocols of that Indigenous nation, and that the Indigenous Knowledge is protected in accordance with the most recent version of the *Agency's guidance on Protecting Confidential Indigenous Knowledge under the Impact Assessment Act*.
- 3.24. The Review Panel may develop procedures for the protection of Indigenous Knowledge. If any such procedures are developed, they will be posted on the Public Registry.
- 3.25. The Review Panel shall refrain from providing conclusions or recommendations regarding the validity of Aboriginal or Treaty rights, including how historic or modern treaties should be interpreted, and the scope or adequacy of the Crown's duty to consult Indigenous peoples.

## 4. ASSESSMENT PROCESS

- 4.1. These Terms of Reference focus on two phases of the assessment process, the Impact Statement Development and Review Phase and the Impact Assessment Phase.
- a. The Impact Statement Development and Review Phase commenced on June 1, 2022, with the posting of the federal notice of commencement on the Public Registry and the provincial process order on the EAO Project Information Centre. This phase will conclude with the posting on the Public Registry of the notice that the Agency is satisfied that the Impact Statement contains the required information or studies (pursuant to subsection 19(4) of the IAA) and the notice that the EAO has accepted the application (pursuant to subsection 28(1) of the *Environmental Assessment Act*).
  - b. The Impact Assessment Phase consists of two parts, one led by the Review Panel and one led by the federal and provincial governments.
    - i. Part 1 of the Impact Assessment Phase is led by the Review Panel. It begins the day after the notices pursuant to subsection 19(4) of the IAA and subsection 28(1) of the EAA are posted, and concludes with the submission of the impact assessment report by the Review Panel to the federal Minister. A time limit of 450 days has been established for this part of the process.
    - ii. Part 2 of the Impact Assessment Phase is led by government, and includes the period of time from the submission of the impact assessment report by the Review Panel until the posting of the Agency's recommendations to assist the federal Minister in establishing conditions, pursuant to section 55(2) of the IAA and when the EAO submits a provincial referral package to provincial Ministers. A time limit of 150 days has been established for this part of the process.
- 4.2. Information regarding how the Agency and the EAO intend to coordinate on the assessment of the Project can be found in the [Cooperation Agreement](#).

### Impact Statement Development and Review Phase

#### Review Panel Appointment

- 4.3. The Review Panel shall be established no later than 45 days following the Agency's decision as required under subsection 19(4) of the IAA, during the Impact Assessment Phase. However, the Review Panel may be appointed during the Impact Statement Development and Review Phase, following the receipt of the impact statement.
- 4.4. If the Review Panel is appointed during the Impact Statement Development and Review Phase, it shall be restricted to undertaking the following activities:
- a. training and orientation activities such as cultural training with Indigenous nations, and orientation sessions with federal and provincial authorities;
  - b. review of the information on the Public Registry; and
  - c. any other activities specifically outlined in its appointment letters.

- 4.5. The Agency will appoint a Chairperson and at least two other members.
- 4.6. As provided by subsection 41(1) of the IAA, the persons appointed to the Review Panel must be unbiased and free from any conflict of interest relative to the Project and have knowledge or experience relevant to the Project's anticipated effects or have knowledge of the interests and concerns of Indigenous nations that are relevant to the assessment.
- 4.7. In the event that a Review Panel member resigns or is unable to continue to work, the remaining members shall constitute the Review Panel unless the Agency determines otherwise. In such circumstances, the Agency may choose to replace the Review Panel member.

### **Impact Assessment Phase**

- 4.8. The Review Panel must submit its impact assessment report to the Minister within 450 days from the day after the posting of the Agency's notice under subsection 19(4) of the IAA. This time limit runs continuously. For clarity, the time limit does not pause if the Review Panel issues any information requirements to the Proponent as described in clause 4.10.

### **Review Panel Sufficiency Review**

- 4.9. The Review Panel shall review the Impact Statement and analyze the information available on the Public Registry, including any comments received, to determine whether, as provided by subsection 52(2) of the IAA, the information available in relation to the assessment of the Project is sufficient for the purpose of conducting the impact assessment and to proceed to a public hearing.
- 4.10. If the Review Panel determines that there is insufficient information to proceed to a public hearing, it may require additional information to be provided or studies to be undertaken by the Proponent or other participants. The Review Panel will send any such information requirements to the Proponent, or relevant participant(s), and post the requirements on the Public Registry.
- 4.11. Any additional information or studies submitted by the Proponent or other participants in response to information requirements issued by the Review Panel (as provided by clause 4.10) will be made available on the Public Registry.
- 4.12. At any time during its sufficiency review, the Review Panel may, at its discretion, hold a public comment period on any additional information provided by the Proponent or other participants.
- 4.13. The procedures described in clauses 4.9 to 4.12 will apply until the Review Panel determines it has sufficient information to proceed to a public hearing, subject to the time limit specified in clause 4.8.

- 4.14. Once the Review Panel determines it has sufficient information to proceed to a public hearing it will post a notice of this determination on the Public Registry.

Public Hearing

- 4.15. The Review Panel must develop public hearing procedures to guide the conduct of the public hearing and must post the draft public hearing procedures on the Public Registry for comment.
- 4.16. The Review Panel shall make reasonable efforts to hold the public hearing in the communities in closest proximity to the Project, including Indigenous communities, to provide access for Indigenous nations and local communities.
- 4.17. The Review Panel may also consider arranging virtual participation at the public hearing, where this has been requested. The Review Panel shall ensure that all its in-person, hybrid, or virtual hearing sessions are accessible and conducted in a fair and equitable manner, with due consideration given to any potential technological barriers that may limit meaningful participation. All hearing sessions will be conducted publicly either in person or virtually.
- 4.18. Where a public hearing session is planned to be held in an Indigenous nation's community, the Review Panel shall engage with that Indigenous nation to ensure that the public hearing is carried out in a manner that is culturally appropriate for that Indigenous nation.
- 4.19. The Review Panel shall consider the timing of traditional and cultural activities of individual Indigenous nations when setting the time and location of the public hearing, having regard for the time limit set out in clause 4.8.
- 4.20. The Review Panel shall consider requests for interpretation services for Indigenous languages during the public hearing, where requested by an Indigenous nation, and where interpreters are available.
- 4.21. As provided by section 54 of the IAA, the Review Panel shall, to the extent that is consistent with the general application of the rules of procedural fairness and natural justice, emphasize flexibility and informality in the conduct of the public hearing.
- 4.22. The Review Panel shall ensure that the public hearing adheres to all applicable public health guidelines that are in place at the time of the public hearing.
- 4.23. The Review Panel will invite hearing participants and the Proponent to submit written or oral closing remarks in relation to the Project.
- 4.24. Following the submission of written or oral closing remarks, the record of the assessment will be closed except for the purposes noted in clause 4.29.

Impact Assessment Report

- 4.25. Following the receipt of closing remarks, the Review Panel shall prepare the impact assessment report. The impact assessment report must include the items required by subparagraph 51(1)(d) of the IAA.
- 4.26. The report shall take into account and reflect the views of each member of the Review Panel.
- 4.27. In its impact assessment report, the Review Panel shall set out all effects that are likely to be caused by the Project.
- 4.28. The Review Panel's impact assessment report must contain a unique section or subsection that presents its analysis, conclusions and recommendations regarding:
  - a. each Indigenous nation outlined in section 4.1 of the Joint Indigenous Engagement and Partnership Plan; and
  - b. the matters required under section 22(1)(t) of the IAA as described in clause 3.14.
- 4.29. Following the public hearing, the Review Panel may post on the Public Registry the draft sections of its report described in clause 4.28 (a). Should the Review Panel post the draft sections of its report on the Public Registry, the Review Panel shall:
  - a. invite Indigenous nations to comment on those sections pertaining to their specific Indigenous nation to validate the Review Panel's understanding and characterization of potential effects and impacts of the Project on Indigenous interests;
  - b. provide Indigenous nations up to 21 days to review the draft sections and provide comments;
  - c. allow the Proponent the opportunity to respond to comments provided; and
  - d. consider all comments received in the finalization of the impact assessment report.
- 4.30. The Review Panel shall submit the impact assessment report to the Minister at the earliest possible date and within the time limit specified in clause 4.8.
- 4.31. The Review Panel shall submit with its report an executive summary in both official languages of Canada. If requested by Indigenous nations, the Review Panel will also make best efforts to translate the executive summary into Indigenous languages. The Agency will be responsible for the translation of the full report into the official languages of Canada after the Review Panel has submitted its report.
- 4.32. Upon receiving the report submitted by the Review Panel, the Agency, on behalf of the Minister, will make the report available publicly as soon as possible and will notify participants that the report is available.
- 4.33. In accordance with paragraph 51(1)(f) of the IAA, the Review Panel may be required to clarify any of the conclusions and recommendations set out in its report with respect to the impact assessment.

## 5. REVIEW PANEL SECRETARIAT

- 5.1. The Agency will establish a Secretariat to support the Review Panel in conducting an efficient and cost-effective assessment.
- 5.2. The Secretariat will be composed of staff from the Agency who will be assigned to provide technical, procedural and administrative support to the Review Panel.
- 5.3. The Agency will ensure that the Secretariat is structured to maintain the deliberative privilege of the Review Panel.
- 5.4. Members of the Secretariat shall be free from any real or perceived conflict of interest, and shall be guided in their work and professional conduct by the *Values and Ethics Code for the Public Service*.

## 6. SPECIALIST ADVISORS TO THE REVIEW PANEL

- 6.1. As per section 23 of the IAA, the Review Panel may request specialist or expert information or knowledge with respect to the Project from federal authorities in possession of such information or knowledge. Any such information received from federal authorities will be provided on the Public Registry in accordance with paragraphs 51(1)(b) and 105(3)(d) of the IAA.
- 6.2. The Review Panel may request specialist or expert information or knowledge with respect to the Project from provincial authorities in possession of such information or knowledge. Any such information received from provincial authorities will be provided on the Public Registry in accordance with paragraph 51(1)(b) of the IAA.
- 6.3. The Review Panel may also retain the services of independent non-government experts to provide advice in order to meet the requirements of these Terms of Reference. Persons retained in service of the Panel must be unbiased and free from any conflict of interest relative to the Project and should be able to provide advice in relation to scientific information, Indigenous Knowledge, and/or community knowledge.
- 6.4. The names of the experts retained by the Review Panel and any documents obtained or created by the experts and that are submitted to the Review Panel will be placed on the Public Registry in accordance with paragraph 51(1)(b) of the IAA. For greater certainty, this will exclude any information subject to solicitor-client privilege where the expert is legal counsel retained by the Review Panel.
- 6.5. The Review Panel may require any expert referred in clauses 6.1 to 6.3 to appear before the Review Panel at the public hearing and answer questions in regard to the documents they have submitted to the Review Panel that were made public.
- 6.6. The Review Panel may also request an External Technical Review by independent scientific and technical experts. The review could examine specific issues or questions related to the Project, including elements such as the adequacy of the procedures and methods used, the

reasonableness of the conclusions, and the level of risk and/or the degree of uncertainty. The Review Panel is encouraged to review the Agency's most recent policy on *External Technical Reviews* for more information.

## **7. CLARIFYING OR AMENDING THE TERMS OF REFERENCE**

- 7.1. The Review Panel may request clarification of its Terms of Reference by sending a letter signed by the Chairperson to the President of the Agency setting out the request. The President of the Agency is authorized to act on behalf of the Minister to provide to the Review Panel such clarification. The President may consult with other parties as necessary to provide a response, and will make best efforts to provide a response to the Review Panel within 14 calendar days. The Review Panel will continue with the review to the extent possible while waiting for the response in order to adhere to the time limits established for the impact assessment. The Review Panel will provide public notification of any request for clarifications to its Terms of Reference. Any requests for clarification under this clause, as well as any response, will be posted on the Public Registry.
- 7.2. The Review Panel may seek an amendment to its Terms of Reference by sending a letter signed by the Chairperson to the Minister setting out the request. As appropriate, the Minister may delegate to the President of the Agency the authority to act on the Minister's behalf and consider and respond to any request from the Review Panel to amend the Terms of Reference. The Minister or the President may consult with other parties as necessary to provide a response, and will use best efforts to ensure a response is provided to the Review Panel's letter within 30 calendar days. The Review Panel will continue with the impact assessment to the extent possible while waiting for the response in order to adhere to the time limits for the impact assessment. Any requests for amendments under this clause, as well as any amendments to these Terms of Reference, will be posted on the Public Registry.
- 7.3. The Minister may amend these Terms of Reference at any point during the process. Any such amendments will be posted to the Public Registry.

## **8. RECORD OF THE IMPACT ASSESSMENT**

- 8.1. The Public Registry will be maintained as the record of the review and will be maintained in a manner that provides for convenient public access and that complies with sections 104 and 105 of the IAA.
- 8.2. The Review Panel will be responsible for maintaining the Public Registry from the commencement of the Impact Assessment Phase until the submission of the impact assessment report, in accordance with paragraph 51(1)(b) of the IAA. As provided by section 55 of the IAA, the Agency will, on behalf of the Minister, post the impact assessment report on the Public Registry.

- 8.3. Subject to subsection 105(3) of the IAA, the Public Registry will include all records produced, collected or submitted relating to the assessment of the Project conducted by the Review Panel, with the exception of records determined to be privileged or confidential as provided by sections 53 and 119 of the IAA.

DRAFT