

Collaborative Assessments: Melding Indigenous Nation Wants with Project Proponent Needs

Introduction

We would like to acknowledge that we are grateful to learn, live, work and have access to amazing recreation opportunities in the Coast Salish world and other amazing Indigenous territories.

This paper describes an exciting project between the Ts'uubaa-asatx, FortisBC Holdings Inc. (FortisBC), and Jacobs. Ts'uubaa-asatx were formerly known as Lake Cowichan First Nation. They are "People of the Lake" who reside in and practice traditional activities in and around Lake Cowichan on Vancouver Island and neighbouring islands, across the Strait of Georgia. The Nation's territory includes a corridor on the mainland and encompasses an area known as Tilbury Island, where FortisBC holds a number of energy interests.

Ts'uubaa-asatx have roots with the Ditidaht and with familial ties to the neighbouring Hul'q'umi'num' speaking peoples. Once a populous Nation, the effects of colonialism and other factors led to a severe population decline and at present Ts'uubaa-asatx is one of the smaller Nations in the province of BC with about 30 members residing on its single reserve. Ts'uubaa-asatx is working on building a strong, healthy, and economically viable community that maintains its connection to its lands and culture. One of the Nation's most important goals is to bring more of its members home and it is striving to build capacity for effective economic growth while continuing in its important role of responsibility over its territory. Benefitting from major projects such as FortisBC's proposed Tilbury Phase 2 LNG Expansion is a key component of the Nation's economic development plan.

Equally important to Ts'uubaa-asatx is the re-awakening and sharing of its culture, song, dance, and heritage with its settler neighbours and proponents such as FortisBC.

Regulatory Context

The regulatory requirements for major projects being proposed in BC is daunting to Indigenous Nations and proponents alike. The review of complex and lengthy technical documents for projects whose assessments may take years through the provincial and federal regulatory processes is labour intensive, and highly and diversely technical. The work involved is particularly problematic to small Nations such as Ts'uubaa-asatx who have limited capacity and large numbers of projects in their territories. Ts'uubaa-asatx responded to this challenge by sourcing out expertise to liaise between proponents and its Chief and Council and to set a strategic vision for multiple projects being proposed in the Lower Mainland portion of its traditional territory (the Hul'qumi'num' Treaty Group core territory includes the south arm of the Fraser River to Douglas Island, Tilbury Island, and the historic Tl'uqtinus village lands). Ts'uubaa-asatx hired a consultant with Crown consultation experience, Kathleen (Kat) Johnnie, to fill this role. Kat assisted in setting the strategic vision, which was to include economic benefits, the renewal of cultural practices and the education of proponents about cultural traditions such as respect for scheduling meetings around cultural practices. The strategic vision was also meant to put a stop to the "binder

henge" that Kat was experiencing as she reviewed binder after binder of environmental assessment (EA) documents from Lower Mainland projects.

Kat worked with Ts'uubaa-asatx to develop a different approach for EA reviews for the multiple projects being proposed on the Lower Mainland. Three policy documents were developed to replace the project-by-project review approach:

1. Lake Cowichan First Nation: Vision, Goals and Objectives for the South Arm of the Fraser River and its Approaches
2. Lake Cowichan First Nation Policy: South Arm of the Fraser River and Approaches
3. Lake Cowichan First Nation Archaeology Permit Requirement Checklist

These policy documents incorporated the Indigenous Knowledge (IK) that Ts'uubaa-asatx had been collecting for years, including areas where Ts'uubaa-asatx members practice traditional activities. The primary purposes of these policy documents are to:

1. Proactively front end Ts'uubaa-asatx's interests in every project so proponents and regulators understand Ts'uubaa-asatx's interests and approach
2. Provide Ts'uubaa-asatx with leverage when providing input into projects
3. Allow efficiency and flexibility for EA reviews

As Ts'uubaa-asatx was developing its policy documents, the governments of BC and Canada were examining the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into its EA process. Both governments introduced and ultimately passed legislation to harmonize their laws with UNDRIP. The Tilbury Phase 2 LNG Expansion Project is subject to the regulatory reviews of BC and Canada, and so both governments' new legislation is relevant to the proposed project. Although the assessment of Indigenous Interests was required by BC and Canada under their previous legislations, the new requirements take a more holistic and expansive view of Indigenous perspectives. Now a proponents' ability to identify and resolve or mitigate Indigenous Interests is one of the top determinants for gaining regulatory approval of energy projects in BC.

The assessment of Indigenous Interests has traditionally relied heavily on the identification of areas of traditional use as well as information obtained through traditional engagement methods. However, the modernized provincial and federal processes for assessments of Indigenous Interests provide flexibility in how assessments on Indigenous Interests may be conducted, and how IK should be incorporated and considered in assessments. This flexibility allowed Ts'uubaa-asatx and FortisBC to use the three policy documents, which as noted above already incorporates the Nation's IK, as Ts'uubaa-asatx's preferred approach for identifying and assessing its Indigenous Interests in relation to the proposed Project.

Tilbury Phase 2 LNG Expansion Project

FortisBC is one of BC's largest energy providers, providing natural gas, electricity and renewable energy to approximately 1.2 million British Columbians. FortisBC currently serves 58 Indigenous communities in BC with natural gas, renewable energy, and electricity and operates infrastructure which crosses over 150 Indigenous Nations' traditional and treaty territories. This close connection led to the development

of the company's Indigenous engagement principles and community partnerships strategy, with the goal of becoming BC's Energy Partner of Choice with Indigenous communities.

As part of its strategy to increase resiliency in its liquefied natural gas (LNG) system on the Lower Mainland of BC, FortisBC proposes to expand its existing LNG facility on Tilbury Island to increase the LNG storage capacity of the facility and help to reduce customers' greenhouse gas emissions. Although Tilbury Island is a heavily industrialized area, it is located on the Fraser River in an area of great importance to Indigenous Nations.

FortisBC is regularly engaging with 15 Participating Indigenous Nations on the project and is keeping other Nations informed of Project milestones. Ts'uubaa-asatx is one of the Participating Indigenous Nations.

Effects Assessment Approach

Participating Indigenous Nations are concerned about the potential effects of further industrialization of Tilbury Island and the surrounding area, among other environmental and socio-economic concerns. FortisBC has engaged the services of Jacobs to conduct the EA for the proposed project, including the effects assessment on Indigenous Interests.

Ts'uubaa-asatx's interests in the project include:

- Harvest locations including resource camps, as well as the harvesting of berries, medicine, fish and seals
- First Nations Government to First Nations Government relations and intercommunity relations
- Use of traditional trade areas and gathering sites along the South Arm of the Fraser River
- Re-establishing traditional uses and occupancy in the Lower Mainland

At the beginning stages of engagement, FortisBC sought to identify and consider Ts'uubaa-asatx's Indigenous Interests in the proposed project. Ts'uubaa-asatx shared the three policy documents described above that support Ts'uubaa-asatx goals for the lower Fraser River. Ts'uubaa-asatx requested that FortisBC review their policy documents to identify areas in the Detailed Project Description (DPD), a regulatory document, related to the interests of Ts'uubaa-asatx. Ts'uubaa-asatx informed FortisBC that it would use these responses to focus the Nation's review of the DPD and other regulatory documents to identify any gaps between Ts'uubaa-asatx's interests and issues and FortisBC responses.

FortisBC and Jacobs (hereafter referred to as the FortisBC team) developed a process that would clearly link Ts'uubaa-asatx interests to the components of the DPD in a tabular format, which could be easily reviewed by Ts'uubaa-asatx and facilitate discussions about how interests are being addressed. The resulting table was meant to demonstrate where the FortisBC team believed the DPD addressed the issue or interest identified by Ts'uubaa-asatx. If Ts'uubaa-asatx's issue or interest was not covered by the DPD, the table noted where the Project Application would address it during the EA, or where an alternative process would address them. The table also identified where the FortisBC team believed the interest or issue was beyond the scope of an individual project such as the Tilbury Phase 2 Expansion or was more appropriate for a regulator to address.

Ts'uubaa-asatx then requested that additional columns be added that identify:

- Where the Nation would need to expand its existing policies or develop new policies to round out its interests in all VCs/topics covered by the new Assessment Acts, and
- How the VCs and Project Application would address Ts'uubaa-asatx's issues and interests so that it could affirm the interest/issue has been met.

The FortisBC team expanded the table and changed the format to include a number of new columns to accommodate the Ts'uubaa-asatx request and to facilitate the identification of Ts'uubaa-asatx's Interests in a way that supported the effects assessment of valued components (VC) and Indigenous Interests, ensuring every Interest and Issue would be addressed while meeting regulatory requirements. Ts'uubaa-asatx and the FortisBC team reviewed the table VC-by-VC and topic by topic over the course of multiple bi-weekly meetings. The process included Ts'uubaa-asatx's notation of where it required internal follow-up and/or the development of new policies to round out its interests in all VCs and interests.

Results

The collaborative review approach produced a 40-page table of connections between each of Ts'uubaa-asatx's policies and the proposed Project's VCs and interests.

Valued Component and Sub-Components	Topics to be Captured in the Project Application	Anticipated Linkages to other Valued Components or Sections	Valued Component and Sub-Component Rationale	Ts'uubaa-asatx Policy Linkages	Identified Gaps	Project Potential Effects	Ts'uubaa-asatx Identified Issue / Interest (in all VCs sections)	Indigenous Interests Section
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The results served the purposes of all parties involved in the EA. It demonstrated that early collaboration between a proponent and an Indigenous Nation could ensure common goals were achieved and ensured an Indigenous Nation's interests are known and addressed appropriately in the early stages of a Project.

Ts'uubaa-asatx was able to see their policies used in an EA from the beginning of a proposed project and how they would work in an EA. It showcased the strengths of the approach and set a framework for the Nation to adopt the process in other major project reviews. The table also served the benefit of identifying where the topics in the EA are:

1. Closely aligned with the Ts'uubaa-asatx policy documents and have no gaps between the topics to be captured and the policy documents (example, Culture VC),
2. Somewhat aligned with Ts'uubaa-asatx policy documents and have gaps between the topics to be captured and the policy documents. These gaps informed Ts'uubaa-asatx where it could update and expand its policy documents (example, Employment and Economy VC), and
3. Not covered by the Ts'uubaa-asatx policy documents and could be included in updated and expanded policy documents (example, Climate Change section).

For Tsuubaa-asatx, this and future tables serve to demonstrate how Regulatory, Proponent and Ts'uubaa-asatx interests may be woven together and if done well, a pattern showing true collaboration will emerge.

For the FortisBC team, the collaborative approach provided an opportunity to deeply understand Ts'uubaa-asatx's Interests in the proposed project and gain an appreciation for the community and its culture. It also allowed the team to identify issues early in the EA and develop the outline of how Ts'uubaa-asatx's Interests would be assessed in the Project Application. The investment of time early in the engagement process allows for a streamlined EA review process as the proposed project progresses through the EA.

The table has also been provided to the regulators who are able to ensure Ts'uubaa-asatx's consensus on the assessment approach for each step of EA, which will meet new requirements under the updated provincial and federal regulatory processes.

Closing

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Thank you, thank you all.