## **Free, Prior and Informed Consent**

## WITHIN THE CONTEXT OF UNDRIP AND ENVIRONMENTAL ASSESSMENTS

Free, Prior and Informed Consent (FPIC) is an integral aspect of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), so it's important that FPIC as it applies to EAs is clearly understood.

The chart below illustrates how the new environmental assessment process will implement UNDRIP, which is suported by a report recently released by the United Nations Human Rights Council: Free, prior, and informed consent: a human rights-based approach study of the expert mechanism on the rights of Indigenous Peoples.

See the reverse page to see how points in the environmental assessment process support Free, Prior and Informed Consent

	Free	Prior	Informed	Consent
Description	The absence of both direct and indirect factors that may hinder Indigenous peoples' free will	Consent is sought before any other decisions allowing a proposal to proceed, and should begin as early as possible	Information provided should be sufficient, objective and accurate, and supported by adequate resources and capacity	Indigenous nations are entitled to give or withhold consent to proposals that affect them. Consent can only be received when the criteria of having been free, prior, and informed, has been fulfilled
Examples of alignment through EA revitalization with the criteria for Free, Prior and Informed Consent	nations to freely determine how they engage in EAs, through government-to- government agreements or as part of a Process Order, ranging from collaborative to Indigenous-led EAs	3 Introduces an Early Engagement phase to foster relationship building and ensure Indigenous nations are well informed before a decision is made on whether to conduct an EA on a proposed project  4 Legislates requirements for the EAO to seek consensus with Indigenous nations throughout the EA process	<ul> <li>Provides an opportunity for Indigenous nations to identify their information needs to support their decision-making and assessment of potential project impacts on Indigenous nations and their rights and title</li> <li>Introduces a new capacity funding model for Indigenous nations (subject to future engagement)</li> <li>Incorporates Indigenous knowledge in the Effects Assessment</li> </ul>	Provides formal opportunities for Indigenous nations to provide their consent at key points throughout the EA process, including any exemptions from the EA, terminations from the process, and the final decision by Ministers as to whether or not to issue an EA certificate  Requires the Ministers to consider consent or lack of consent of any participating Indigenous nations prior to deciding whether or not to issue an EA certificate, and the Ministers must provide reasons for their decision in light of the decision of Indigenous nations



# **Proposed Environmental Assessment Process**

### **Free, Prior and Informed Consent:**

notify the EAO

if they want to

Indigenous nations (nonbinding, voluntary dispute resolution available among Indigenous nations)

be participating

voluntary, timebound

dispute resolution

process available

resolution process

available

Obtaining Free, Prior and Informed Consent is an integral aspect of the United Nations Declaration on the Rights of Indigenous Peoples. The new EA process is designed to ensure that any decision taken on the question of consent by an Indigenous nation is free, prior and informed. Respectful of their own Indigenous laws, traditions and right of self-determination, a key objective of the new EA process is to create the opportunity for Indigenous nations to make a decision on consent. It is an objective that proponents, the Province and Indigenous nations should be working to achieve. The new EA process facilitates that objective throughout the process.

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### Process Order **Initial Project** Detailed Project Application Assessment Report Description Description Public Engagement Public Engagement Public Engagement Public Engagement 4 4 **Process Planning Application** Effects **Early EA Readiness Post Certificate Decision** Development & Review **Engagement Assessment** Decision Proponent Participating Approach to assessment 5 Opportunity for Participating Participating Authority for Proponent develops submits Indigenous nations is collaboratively Indigenous nations Indigenous . the EAO to enter participating its draft Application, and the EAO seek determined, including and the EAO seek nations decide **Initial Project** into agreements receiving feedback Indigenous nations Description whether to consensus on whether with Indiaenous alignment of to assess the impact consensus on the from the EAO. the project should: Indigenous & provincial of a project on their recommendation of consent or nations regarding participating Indigenous processes & decisionwhether to approve withhold consent compliance and interests Indigenous nations nations and · Proceed through enforcement on the project making, information the project and the Technical communities the formal EA 6 Participating requirements, and activities **Advisory Committee** identify interests process Indigenous nations Non-binding, Ministers' decision timelines and issues to voluntary, time to issue or not and the EAO seek Proponent prepares Go straight to inform project Options for participating bound dispute issue an EA final Application in consensus on the permitting without design and Indigenous nations are: resolution process certificate must response to feedback assessment of the an assessment (in development effects of a project available consider the rare circumstances) Conduct the entire through collaboratively and produce an assessment through developed engagement by **Assessment Report** engagement substitution the EAO and the report and and recommended Proponent conditions recommendations, Leave the Seek consensus with the and participating process (in rare **EAO** on administering A summary of Indiaenous the process, including circumstances) engagements is nations' consent or conducting a portion of provided by the Opportunity for lack of consent the assessment EAO to inform participating the Proponent's Indigenous nations to Scope of EA inclusive development of express consent prior of Indigenous nations' its Detailed Project to any exemption or interests Description termination decision Non-binding, voluntary, Indigenous nations Non-binding, timebound dispute