



File: 30050-20/KSILIS 04 01

Reference: 417133

August 7, 2025

SENT VIA EMAIL

Councillor Joey Wesley
Rights and Title Committee Chair
Lax Kw'alaams Band
206 Shashaak Street
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Joey_council@laxband.com

Dear Councillor Joey Wesley:

I am writing in response to Lax Kw'alaams Band's (Lax Kw'alaams) letter of July 31, 2025, and in follow-up to my previous correspondence of July 23, 2025, regarding Lax Kw'alaams' submission seeking to initiate Dispute Resolution (DR) under Section 29(1) of the *Environmental Assessment Act* (2018) (the Act) on the Ksi Lisims LNG project (Project) Environmental Assessment.

As you are aware, I have been delegated the power to appoint DR facilitators under Section 5(1) of the Act, and I am writing to notify Lax Kw'alaams of my decision and reasons.

CONTEXT

In your letter dated July 11, 2025, Lax Kw'alaams sought to initiate DR. On July 23, 2025, I provided a letter responding to Lax Kw'alaams where I outlined my initial view that it would not be reasonable to appoint a facilitator under Section 5(1) of the Act given the specific circumstances outlined in my letter. I provided Lax Kw'alaams with an opportunity to be heard, for Lax Kw'alaams to share its perspectives in relation to my decision on whether to appoint a facilitator prior to referral of the Project to the Ministers for their decision on whether or not to issue an environmental assessment certificate (EAC) for the Project.

DECISION

I have carefully considered the information provided and the current circumstances regarding my decision on whether to appoint a facilitator.

Following the review of the information provided by Lax Kw'alaams as part of the opportunity to be heard, I remain of the view that it would not be reasonable to appoint a facilitator under Section 5(1) of the Act.

For the reasons set out below, I have decided not to appoint a facilitator under Section 5(1) of the Act in relation to Lax Kw'alaams' July 11, 2025, submission to initiate DR for the matter pending decision under Section 29(1). In making this decision, I have considered the Act in its entirety, relevant common law, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, past and current Environmental Assessment Office (EAO) practice, all relevant information and submissions provided by Lax Kw'alaams, the letter from the Proponent dated July 29, 2025, and the potential impacts of the decision on Lax Kw'alaams and its asserted rights or interests.

CONSIDERATIONS

Lax Kw'alaams' Interpretation of the Structure of the Act

The EAO has adopted the following process for initiating dispute resolution under Section 5 of the Act. First, the party seeking DR initiates the process by sending an initiating letter to the EAO. Once an initiating letter is received, the Minister or their delegate then considers whether to appoint a facilitator under Section 5(1) of the Act. If the Minister or their delegate appoints a facilitator, then the party may refer that disputed matter to that facilitator. This referral, under Section 5(2) or 5(6), triggers the timelines as set out in the *Environmental Assessment Dispute Resolution Facilitator Regulation* and the statutory pause in decision making under Section 5(5). This was the process that Lax Kw'alaams followed for its DR of a disputed matter under Section 28.

Your July 31, 2025, letter references the statement in the DR facilitator's report that the parties agreed that Lax Kw'alaams will be able to initiate a DR process under Section 29(1) in the future. In the letter to Lax Kw'alaams dated July 17, 2025, the EAO clarified this statement by explaining that Lax Kw'alaams is able to initiate a DR process in relation to a matter pending decision under Section 29(1) by sending an initiating letter. This is consistent with my interpretation of the Act as set out above.

As set out in Mr. Hume's July 22, 2025, letter and your July 30, 2025, letter, Lax Kw'alaams interprets Section 5(1) as concerning the general operation of the Act and not specific to a particular project, matter pending decision, or dispute. Lax Kw'alaams also takes the position that Indigenous nations have a statutory right to refer a disputed matter to a facilitator and that there is no discretion, for the Minister or anyone else, to

decide whether the disputed matter will receive a facilitator. In Lax Kw'alaams' view, once an Indigenous nation sends an initiating letter, such as your July 11, 2025, letter, Section 5(5)(a) prevents a decision on the matter from being made until after the facilitator has provided a report.

In my view, such an interpretation is contrary to the language and purposes of the Act. Section 5(1) grants the Minister the power, rather than the duty, to appoint a facilitator. The subsection also requires the Minister (or delegate) to consider an Indigenous nation's recommendation in deciding whether to appoint a facilitator. The only relevant Indigenous nation for such a decision is either the participating Indigenous nation seeking to refer a DR under Section 5(2) or the Indigenous nation seeking to refer a DR under Section 5(6). Based on this language, the power to appoint a facilitator can only be exercised on a case-by-case basis after an Indigenous nation initiates the DR process with the EAO as described above. As a result, the right to refer under Section 5(2) or 5(6) only arises if the Minister or their delegate first decides to appoint a facilitator. Similarly, the pause in decision making under Section 5(5) only arises if there is an appointed facilitator.

In my view, Lax Kw'alaams' interpretation of Section 5 would allow Indigenous nations to repeatedly refer the same disputed matter to DR and thus to delay indefinitely an assessment under the Act. While I recognize that the Act does not expressly provide for a limit on the number of dispute resolution processes that may be triggered before any matter pending decision is decided, I do not interpret the Act as requiring the Minister to appoint a facilitator every time an Indigenous nation, in its discretion, sends a letter initiating a DR. Such an interpretation would prevent the EAO from carrying out assessments in a thorough, timely, transparent and impartial way and would frustrate one of the key purposes of the Act. In some circumstances, it would not be reasonable to appoint a facilitator.

In the exceptional circumstances of this case, as outlined further below, I have decided that it is not reasonable to appoint another facilitator for a DR of Section 29(1).

Section 28 and 29 Matters

As noted in my previous letter, Lax Kw'alaams had the opportunity to participate in the DR process initiated by the Chief Executive Assessment Officer (CEAO) in relation to the matters pending decision under Section 29 (1) but chose not to do so. Lax Kw'alaams took the position that the DR processes "had to address Section 28 issues prior to addressing anything under Section 29".

In my view, the EAO's approach of seeking consensus on Section 28 and Section 29(1)-(2) matters concurrently through one comprehensive referral package is consistent with the structure of the Act. Section 29(2) sets out the 150-day legislated

timeline for the Effects Assessment and Recommendations phase, which begins with the acceptance of the Revised Application and ends with the referral under Section 29(1). The CEAO's referral under Section 29(1) must include all of the materials listed in Section 29(2), which include the final versions of the documents referred to in Section 28(2)(c) and the sustainability recommendation under Section 29(2)(b)(i).

The EAO was clear throughout the Effects Assessment and Recommendations phase of the Ksi Lisims Environmental Assessment that it was seeking consensus on all of these matters concurrently. On September 3, 2024, the Revised Application was accepted and on September 4, 2024, the EAO shared an initial referral package for a first round of review. On October 29, 2024, the EAO shared an updated referral package that included the sustainability recommendation in Section 10.5 of the Assessment Report for the purpose of consensus seeking under Section 29(3).

Recent DR Processes

On January 31, 2025, the last day of the 150-day legislated timeline for the referral under Section 29(1), Lax Kw'alaams sent a letter to initiate DR in relation to the matters pending decision under Section 28. To enable a DR process that could facilitate consensus seeking on both the matters pending decision under Section 28 and the sustainability recommendation under Section 29(2)(b)(1), the CEAO referred a matter pending decision under Section 29(1)—the decision to refer the entire referral package to the Ministers—to the same DR facilitator. These DR processes continued until June 30, approximately 150 days past the 150-day legislated timeline for the referral under Section 29(1).

Based on the DR facilitator's reports and subsequent correspondence, it is clear that the EAO and Lax Kw'alaams have engaged on the substance of the matters pending decision under Section 29 including the sustainability recommendation. This has included edits based on Lax Kw'alaams comments to Chapter 10: Ksi Lisims LNG's Contribution to Sustainability of the Assessment Report, which contains the sustainability recommendation, as well as edits to Appendix 12, Greenhouse Gas Emissions, of the Assessment Report and to the Lax Kw'alaams chapter of the Assessment Report.

Additional DR

Although your July 31, 2025, letter raises some additional information to support Lax Kw'alaams concerns about the sustainability recommendation and the overall referral under Section 29(1), my understanding is that EAO will be providing a further response in writing on these matters.

I have also considered the letter from the Proponent dated July 29, 2025, which requests that the referral under Section 29(1) be made without further delay. While I recognize the Proponent's interests that may be affected by an additional DR process, I

have also carefully considered the potential need for further assistance from a DR facilitator in order to adequately address the concerns that Lax Kw'alaams continues to raise.

I do not consider it necessary or reasonable for the EAO and Lax Kw'alaams to participate in another facilitated DR process. Dispute resolution is a tool to help resolve substantial disagreements as a next step to reach consensus if parties are unable to reach consensus on their own. As described above, EAO and Lax Kw'alaams have already had opportunities to engage on all of these matters with the help of a DR facilitator and have engaged over a period that has extended more than double the length of the legislated timeline for the referral under Section 29(1). Further, as Lax Kw'alaams has provided a notice of non-consent that is contrary to the sustainability recommendation, the Ministers must, before making a decision under Section 29(4)(c), offer to meet with Lax Kw'alaams and seek to achieve consensus under Section 29(5)-(6).

In my view it is appropriate in these exceptional circumstances that I do not exercise my power to appoint another DR facilitator.

NEXT STEPS

While the result of my decision under Section 5(1) is that there is no subsequent DR process, as I outlined above and in my letter of July 23, 2025, Lax Kw'alaams has the ability to meet with Provincial Ministers prior to their decision on whether to issue an EAC, in accordance with section 29(5) of the Act.

I understand that Lax Kw'alaams has already confirmed its interest in meeting with Ministers and the EAO Project Team will support in arranging a date and time for a meeting. Lax Kw'alaams's outstanding concerns and lack of consent regarding the Project and sustainability recommendation may be presented directly to the Ministers at this meeting, following referral and prior to their decision.

Sincerely,



Julie Chace

Senior Executive Director, Strategic Services and Compliance Division

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