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August 7, 2025

SENT VIA EMAIL

Ryan Leighton
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Dear Ryan Leighton:

I am writing in response to Metlakatla First Nation's (Metlakatla) letter dated July 30, 2025, and in follow-up to my previous correspondence of July 23, 2025, regarding Metlakatla's 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 (EA).

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 Metlakatla of my decision and reasons.

CONTEXT

In your letter dated July 11, 2025, Metlakatla provided a notice of non-consent for the Project and sought to initiate DR for the reasons set out in "Schedule A" of your letter.

On July 23, 2025, I provided a letter responding to Metlakatla 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 Metlakatla with an opportunity to be heard, for Metlakatla 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 Metlakatla 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 Metlakatla's 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 Metlakatla, the letter from the proponent dated July 29, 2025, and the potential impacts of the decision on Metlakatla and its asserted rights or interests.

CONSIDERATIONS

Metlakatla's 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 Metlakatla followed for its DR of a disputed matter under Section 28.

Schedule B in your letter dated July 30, 2025, references the statement in the DR facilitator's report that "EAO acknowledged that Metlakatla would be able to initiate a Section 29 DR in the future." In the letter to Metlakatla dated July 22, 2025, the EAO clarified this statement by explaining that Metlakatla 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.

In Schedule B of your letter dated July 30, 2025, Metlakatla takes the position that it has a procedural right to trigger DR and that, while the use of the word "may" in Section 5(1) implies discretion, DR, once initiated, is not discretionary in nature. In Metlakatla's view, once an Indigenous nation sends an initiating 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, Metlakatla's 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, Metlakatla 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. Metlakatla stated it did not see "anything in the EA Act, its regulations, government policy or EAO guidance materials that suggests that DR under Section 28 (Effects Assessment) and Section 29 (Decision on application for environmental assessment certificate) are intended to be combined into one DR process". Rather, Metlakatla takes the position that there are two referral points and therefore two opportunities to initiate DR, based on the text of Section 5(2)(a) of the Act referencing DR referral points matters pending decision under both Section 28 and Section 29, and on Section 28 dealing with "draft" reports and Section 29 requiring "final" versions of the assessment report and the environmental assessment certificate.

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 CEO'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 EA 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), Metlakatla 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 CEO 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, 2025, 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 Metlakatla have engaged on the substance of the matters pending decision under Section 29, including the sustainability recommendation. This has included updates based on Metlakatla's comments to the Conditions and the Assessment Report, including Chapter 10: Ksi Lisims LNG's Contribution to Sustainability which contains the sustainability recommendation, specifically in response to concerns regarding marine shipping and the Project's greenhouse gas (GHG) emissions.

Additional DR

Although your July 30, 2025, letter provides some additional responses to support Metlakatla's concerns about the sustainability recommendation and economic aspects of the project, my understanding is that EAO will be providing a further response in writing on these matters. Additionally, I understand that you met with the EAO on August 1, 2025, to share Metlakatla's view of the sustainability recommendation, specifically regarding the matters of economic sustainability.

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 Metlakatla continues to raise.

I do not consider it necessary or reasonable for the EAO and Metlakatla 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 Metlakatla 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 Metlakatla 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 Metlakatla 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, Metlakatla has the ability to meet with Provincial Ministers prior to their decision on whether to issue an EAC, in accordance with Section 29 of the Act.

I understand that Metlakatla has already confirmed its interest in meeting with Ministers and the EAO Project Team is supporting arranging a date and time for a meeting. Metlakatla'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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