

The Squamish Nation Process

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Case Studies and Experiences in Indigenous-led
Impact Assessment



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The case studies in this series look at some of the ways that Indigenous Nations and organizations in Canada have implemented their own environmental impact assessment processes. The series provides examples, experiences, and information that can help Nations interested in developing their own assessment process. The cases illustrate how Indigenous-led impact assessment has been designed to reflect the distinct location, histories, natural resource issues, and governance approaches of a Nation.

The Nation

The **Squamish Nation** is a Coast Salish First Nation whose traditional territories cover the region commonly referred to as the lower mainland of British Columbia (BC). This includes the Greater Vancouver area, Gibson's landing, and the Squamish River watershed.

The Woodfibre Liquefied Natural Gas Plant and Export Terminal Proposal

In 2013, Woodfibre LNG (Liquefied Natural Gas) and Fortis BC proposed an LNG processing and export facility at the former Woodfibre pulp mill site, about seven kilometers southwest of Squamish. The LNG plant would have a production capacity of 2.1 million tons of LNG per year. With the export capabilities of the proposed LNG facility, an additional two tankers would travel up the Howe Sound each month to transport LNG for global markets.

Due to the type and scale of the project – the Woodfibre LNG proposal required both a BC environmental assessment (under the BC 2002 *Environmental Assessment Act* (EAA)) and a federal environmental assessment (under the *Canadian Environmental Assessment Act* 2012 (CEAA 2012)). The Federal Minister of Environment approved a request to substitute the BC review process for the federal review process, making the **BC Environmental**

Cover photo: View of the Stawamus Chief and Mount Garibaldi in Squamish, British Columbia, Canada.
(Photo credit: Kevin Miller)



Photo credit: Photawa

Salmon during spawning season near Squamish, British Columbia, Canada.

Assessment Office (EAO) the government authority for the assessment. A significant portion of this project would take place in the Squamish Nation's territory. The BC EAO identified that the project had potential impacts to the Squamish Nation's rights and title. These potentially impacted rights included:

- Hunting
- Fishing
- Trapping
- Gathering
- Navigation (trails and travel ways)
- Archeological and heritage resources and sites

Developing the Squamish Nation Process

Prior to the Woodfibre LNG proposal, the Squamish Nation had participated in several **environmental impact assessments (EIA)**.

The Squamish Nation viewed the EIA processes administered through the provincial and federal agencies as falling *“short of what is required to fulfill the Crown’s constitutional obligations to [the] Squamish [Nation], and certainly do not provide a venue through which Squamish [Nation’s] consent for projects could be secured”*².

In response to the Woodfibre LNG proposal, the Squamish Nation developed and implemented its own independent assessment process for major projects within its territory: the **Squamish Nation Process**. An objective of the Squamish Nation Process was to assert the Nation’s jurisdictional capacity to make free and informed decisions regarding project proposals, which reflect concerns and interests of the Squamish Nation.

To create a process that operates independently of the provincial and federal EIA process, the Squamish Nation established a **Framework Agreement** (Box 1). This is a legally binding agreement between the project proponent and the Nation, setting out the terms and conditions of participating in the Squamish Nation Process. The terms and conditions included:

- The Squamish Nation will undertake their own independent assessment and make their own determination of the project impacts on their rights and title.
- The Squamish Nation Process is confidential. Any information regarding Squamish Nation’s rights, title, or interests must not be included within any of the proponents provincial/federal EIA submissions without the Nation’s consent.
- The Squamish Nation Process will run parallel to provincial/federal EIA timelines (to the extent possible).
- The Squamish Nation does not formally participate in the provincial/federal EIA, but will use technical information to avoid duplication, provide efficiencies, and reduce costs. The Squamish Nation will use technical consultants to attend EIA Working Group sessions to gather information for use in the Squamish Nation Process (Box 2).

- The proponent must provide supplemental information to the Squamish Nation through information requests, even if not required under the provincial/federal EIA process.
- The Squamish Nation will consider the outcomes of an independent Traditional Land Use and Occupancy Study to make their own determinations on the findings.
- The proponent must pay process fees and fully fund the Squamish Nation Process.
- If the Squamish Nation Process points to approval, the Nation will issue a legally binding Environmental Certificate that sets out the conditions for approval (see Box 1). The Squamish Nation Environmental Certificate is separate from any additional impacts and benefits agreements.

BOX 1: Legally Binding Proponents to the Squamish Nation Process

The Framework Agreement: Implementing a process outside of the provincial/federal EIA required a contractual arrangement (i.e., “Framework Agreement”) with project proponents. Framework Agreements are used to outline the terms and conditions of operating within the Squamish Nation legal process, providing the Nation with both legal and political leverage. Proponents are not required to enter a separate Indigenous-led assessment under BC’s 2002 EAA or Canada’s CEAA, 2012, so this *“buy in”* through the signing of a Framework Agreement is integral to the successful implementation of the Squamish Nation Process.

The Squamish Nation Environmental Certificate: As set out by the terms and conditions of the Framework Agreement, if the project is approved through the Squamish Nation Process, the proponent is required to enter into a legally binding agreement that outlines requirements including conditions, compliance, and enforcement for the project operation. These are solidified through a Squamish Nation Environmental Certificate. If the proponent is unable to meet the requirements set out by the Squamish Nation Environmental Certificate, the Nation maintains the authority to revoke it.

¹ The term ‘Crown’ refers to the Canadian state, and its provincial and federal governments that exercise executive powers to govern the country.

² Bruce, A., and Hume, E. (2015). The Squamish Nation Assessment Process: Getting to Consent. (November), 1–19.

Implementing the Squamish Nation Process

As seen in Figure 1, six steps were utilized to assess the Woodfibre LNG proposal through the Squamish Nation Process. A unique aspect within the Squamish Nation Process was how the Squamish Nation identified their key interests through a single valued component³ and interconnected guiding topics (as discussed in Figure 1- step 3). For the assessment of Woodfibre LNG, the Squamish Nation focused on assessing the projects anticipated impacts on Aboriginal⁴ rights and title which was applied as an overarching valued component. Several interconnected measures (guiding topics) were used to gauge anticipated impacts to the valued component of Aboriginal rights and title (see Figure 2).



Photo credit: fremme

The Howe Sound in Squamish, British Columbia, Canada.

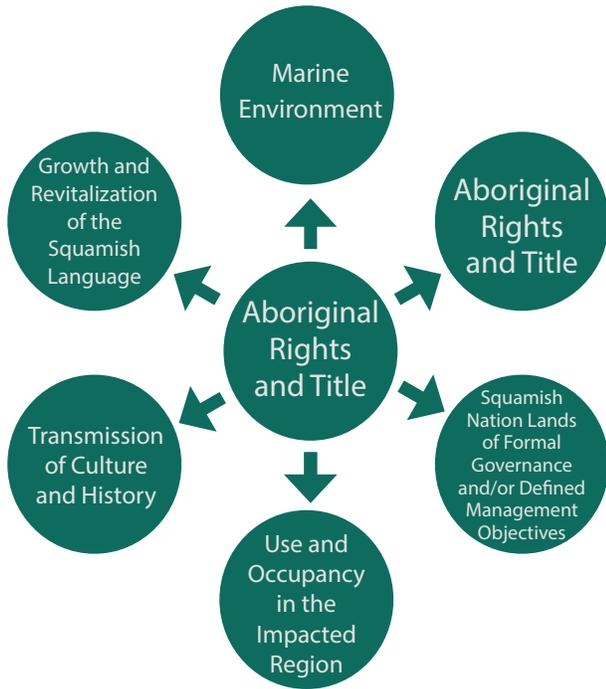
FIGURE 1: The Six Steps of the Squamish Nation Process

Step 1: Introduce Proposed Project	Project is introduced to Squamish Nation (community members, staff, and leadership), where the Squamish Nations members are given the opportunity to voice initial perspectives on the project (including concerns and opportunities).
Step 2: Technical Information Collection	On behalf of the Squamish Nation, independently hired consultants coordinate with provincial/federal EIA activities to gather technical information (i.e., proponent studies) that could be used within the Squamish Nation Process (Box 2). The Squamish Nation then determines whether they agree or disagree with the studies collected.
Step 3: Defining Interests & Scoping Assessment	Confirm the scope of work, budget, assessment methods, confirmation of valued components- including measures and indicators (Figure 2), and interview instruments.
Step 4: Assessment	Anticipated impacts, and the significance of impacts on the guiding topics, are measured and interpreted. Once anticipated impacts are interpreted, a draft assessment report is produced.
Step 5: Present Results to Community & Chiefs & Council	Results of the previous steps are presented to community members, and they are given an opportunity to develop draft conditions that must be met for the project to proceed. Following this, Chiefs and Council review all relevant information, ask questions, and provide feedback. Information from community members and Chiefs and Council is then used to revise and finalize the final assessment report.
Step 6: Final Decision- Making & Conditions	The final assessment report is submitted to Chiefs and Council, and they vote on either accepting or rejecting the draft conditions. If accepted, the proponent would enter into a legally bindings agreement that solidified requirements, conditions, compliance, and enforcement. If rejected, the Squamish Nation would only discuss the conditions required for their approval, or they would pursue legal options available.

³ Valued components can include aspects of the environment, society, culture, rights, economy, etc., that are of significance. In EIA, valued components are commonly used to assess the effects of a proposed activity, including anticipated impacts.

⁴ Aboriginal is a term sometimes used to describe First Nations, Inuit, and Metis people, Nations, and groups when referring to the constitutionally protected Aboriginal and Treaty rights or policies, regulations, or laws used by provincial or federal governments.

FIGURE 2: Squamish Nation Process Valued Component and Guiding Topics



BOX 2: Avoiding Duplication and Working Independently of the BC Government and Proponents

The Squamish Nation used independent consultants (Figure 1-step 2) to coordinate with the BC EAO’s assessment by gathering technical information that could be used within the Squamish Nation Process. This helped to make the Squamish Nation Process more efficient and avoided unnecessary duplication between the separate provincial assessment. By using independent consultants to collect information and participate in the provincial assessment activities, the Nation avoided participating in any form of Crown consultation. Therefore, federal, and provincial decision-makers were unable to approve the project based upon the assumption that the duty to consult⁵ had been fulfilled, as the Squamish Nation had not participated in any form of consultation while undertaking their assessment.

⁵ The duty to consult refers to the legal requirement of federal, provincial, and territorial governments to consult (often including notification, identification of rights and interests, and where appropriate, accommodation) Indigenous Nations prior to approving an activity that may have adverse consequences for treaty and Indigenous rights.

Outcomes of the Squamish Nation Process

For the last step in the Process (Figure 1), the Chiefs and Council voted on whether to reject the project, or accept the 25 recommended conditions for approval.

The conditions were approved and included within the Squamish Nation Environmental Certificate. If BC and proponent agreed to meet the conditions, the Nation would then consent to the project proceeding in their territory.

The desired outcome was for the Nation, proponents, and the BC government to discuss the addition of Squamish Nation’s proposed conditions and mitigation measures into the provincial EIA Certificate or federal Environmental Assessment Decision Statement.

Since the Nation did not formally participate in the BC assessment or consultation, this would have been the start of meaningful consultation.

However, BC did not include the Nation’s conditions within the BC and federal conditions for approval, and therefore did not recognize the authority of the Squamish Nation Process

Regardless of actions by the BC or Federal governments, the proponents were still legally bound to the conditions for approval set out by the Squamish Nation Environmental Certificate, and this meant that if approved, the requirements, conditions, compliance, and enforcement conditions would be met - or the Squamish Nation would pursue their legal options (Box 1).

The proponent filed an application for BC to amend its conditions of approval under the Woodfibre LNG Environmental Assessment Certificate to now include the conditions for approval set out by the Squamish Nation Environmental Certificate.

At this point, BC did make modifications to include the Squamish Nation conditions for approval as part of BC’s conditions.

With this, the proponent could be confident that the review addressed the Squamish Nation’s concerns and interests. Most importantly, it meant that the Squamish Nation provided consent for the project.

Lessons Learned from the Squamish Nation Process

This case study illustrates the importance of exploring legally binding cooperative or joint management agreements that provide leverage when working with proponents and/or the Crown. In this case, the Squamish Nation used a contractual Framework Agreement with the proponent to outline the terms and conditions of participating in the Squamish Nation Process. In doing so, the Squamish Nation had their assessment fully funded by the proponent, while also gaining certainty that their assessment would be used as intended and given adequate consideration. This provided leverage for the Nation, and helped guarantee that their conditions for approval were met before the project was able to proceed to development.

Where to Learn More About the Squamish Nation Process

Squamish Nation Website: <https://www.squamish.net>

Bruce, A., and Hume, E. (2015). *The Squamish Nation Assessment Process: Getting to Consent*. (November), 1–19. Retrieved from <https://www.ratcliff.com/wp-content/uploads/2020/10/The-Squamish-Nation-Assessment-Process-Getting-To-Consent-Ratcliff.pdf>

Papillon, M., and Rodon, T. (2019). The Transformative Potential of Indigenous-Driven Approaches to Implementing Free, Prior and Informed Consent: Lessons from Two Canadian Cases. *International Journal on Minority and Group Rights*, 27(2), 314–335. <https://doi.org/10.1163/15718115-02702009>

Squamish Nation (SN). (2015). SUMMARY / PGL's Environmental Report on Woodfibre LNG Proposal. Retrieved from <https://www.squamish.net/wp-content/uploads/2015/07/SN-WoodfibreUpdate-Summary-03.pdf>

Other case studies and resources in the series

Indigenous Led Impact Assessment, An Introduction

The Stk'emlu'psemc te Secwepemc Nation Assessment Process and the Ajax Mine Proposal

The Tsleil-Waututh Nation Assessment for the Trans Mountain Pipeline and Tanker Expansion Proposal

The Mikisew Cree First Nation Culture and Rights Assessment for the Frontier Oil Sands Mine Project

The Ktunaxa Nation Rights and Interests Assessment and the Fording River Operations Swift Coal Mine Expansion



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