

The Tsleil-Waututh Nation Assessment

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Case Studies and Experiences in Indigenous-led
Impact Assessment



The Tsleil-Waututh Nation Assessment

The case studies in this series looks 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 **Tsleil-Waututh Nation (TWN)** are a Coast Salish First Nation, whose traditional territories include what is often referred to as the Lower Mainland and Vancouver, British Columbia (BC). The TWN traditional territories encompasses the wilderness and watersheds northwards to Mount Garibaldi, Coquitlam Lake in the east, and Howe Sound to the west.

The Trans Mountain Pipeline and Tanker Expansion Proposal

In 2013, Kinder Morgan Canada filed an application with the National Energy Board (NEB) for the **Trans Mountain Pipeline and Tanker Expansion (TMEX)** proposal¹. The proposal was to add a new line to the existing Trans Mountain Pipeline that would carry crude and refined oil from Alberta to the coast of BC mostly for export overseas from the existing Westridge Marine Terminal in Burnaby, BC.

These marine shipping activities would depart from and travel through TWN territories. Of particular significance to TWN, the resulting marine exports from the pipeline would increase the frequency of tanker departures through the Burrard Inlet - moving from approximately one per week to roughly one every two days.

The Burrard Inlet is significant for TWN title, rights, and culture. It has been occupied and cared for by TWN peoples since time immemorial and continues to support cultural and subsistence activities.

¹ In 2018, the Trans Mountain Pipeline was purchased from Kinder Morgan Canada by the Government of Canada and is now owned through the Trans Mountain Corporation- a subsidiary of the Canada Development Investment Corporation. Following the purchase, the federal government became the proponent of TMEX. Cover photo: Belcarra Park and Burrard Inlet, British Columbia, Canada. (Photo credit: jamesvancouver)



Photo credit: Maxvis

Oil tanker in Burrard inlet, British Columbia, Canada.

This project triggered both provincial (BC) and **National Energy Board (NEB)** assessments. A substitution request was made by the NEB to the BC **Environmental Assessment Office (EAO)** for the NEB became the lead assessment agency of the TMEX proposal, this was granted, but the BC EAO would conduct Aboriginal² consultation in collaboration with the federal government.

Implementing the Tsleil-Waututh Nation Assessment

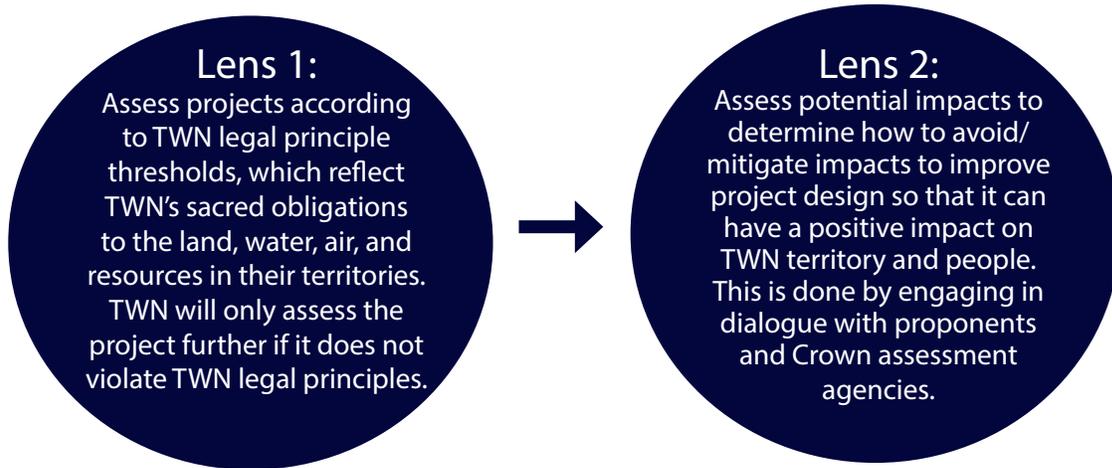
The **Tsleil-Waututh Nation (TWN)** have an established **Consultation Area**, which outlines TWN's territorial jurisdiction. It extends from the United States border (in the south) to Mt. Garibaldi (in the north). In 2009, TWN created their **Stewardship Policy**, as an expression of TWN' jurisdiction, laws, and obligations for their territory. The TWN Stewardship Policy established that any decisions or activities that may potentially impact TWN rights, title, or interests within the Consultation Area must undergo a process of consultation and review.

The TWN Stewardship Policy was created as an assertion of TWN's inherent governance and jurisdiction, providing opportunities for TWN and the Crown³ to engage through government-to-government dialogue. For project proposals identified as potentially impacting TWN rights, title, or interests, TWN's decision- making structure has two broad lenses (Figure 1).

² 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.

³ The term 'Crown' refers to the Canadian state, and its provincial and federal governments that exercise the executive powers that to govern the country.

FIGURE 1: Tsleil-Waututh Nation Stewardship Policy Decision-Making Lenses



Since several parts of the TMEX proposal fell within the TWN Consultation Area, pursuant to the TWN Stewardship Policy, TWN carried out their own assessment, which was intended to run in parallel to the Crown process.

The **TWN Assessment Process** was implemented as an assertion of the Nation's inherent jurisdiction and law, acting on their authority to assess and decide whether TMEX should proceed.

The TWN assessment was designed to measure biophysical components, and the cultural, spiritual, legal, and governance rights and responsibilities of TWN.

For the TMEX proposal, the TWN assessment started with the first lens, which involved reviewing the project in relation to TWN legal principles. This involved defining TWN title, rights, and interests according to

community-defined values (i.e., valued components) (Figure 2).

Once values were defined, a series of investigative questions were answered (Figure 3) using 5 structured steps (Figure 4). For the TWN assessment of the TMEX proposal, their Treaty, Lands, and Resources Department undertook the bulk of the assessment work associated with answering the investigative questions (Figure 3).

FIGURE 2: Valued Components for the Tsleil-Waututh Nation Assessment

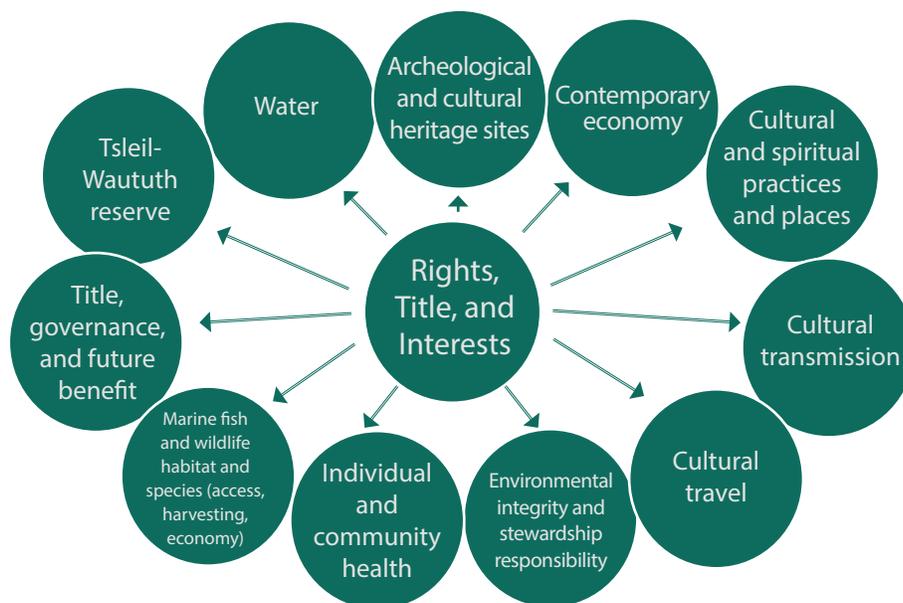


FIGURE 3: The Key Questions Guiding the TWN Assessment of the TMEX Proposal

**Lens 1
Assessment Key
Questions**

What impact will the TMEX proposal have on the natural and cultural resource base of the proposed project area?
What impact will the TMEX proposal have on the socio-economic and cultural conditions of Tsleil-Waututh?
Will the TMEX proposal interfere with Tsleil-Waututh stewardship and restoration efforts?
What will the TMEX proposal contribute to the cumulative effects of past land-use decisions?
Does the TMEX proposal have the potential to deprive future Tsleil-Waututh generations of the control and benefit of their waters and lands?
Does the TMEX proposal jeopardize, prejudice, or otherwise compromise Tsleil-Waututh title, rights, or interests?
Does the TMEX proposal represent the best use of lands and resources for the present and for the future?

FIGURE 4: Steps in Answering the Key Questions of the Lens 1 Assessment

Step 1: Review	Review of available information and reports provided by technical experts commissioned by TWN. In completing the lens one assessment, TWN commissioned five expert reports to review the risk, response, and consequences of oil spills in the Consultation Area.
Step 2: Assessment	Assessment of how information informs key questions.
Step 3: Information Preparation and Community Engagement	Application preparation of all relevant information to answer each key question (figure 3). While the report for the first lens was being prepared, a community engagement meeting was held to gather community input, review evidence, and discuss potential effects.
Step 4: Recommendation	TWN staff provided findings on whether the TMEX proposal was an appropriate land-use decision in accordance with the Stewardship Policy.
Step 5: Lens 1 Threshold Decision-Making	Once assessed through the first lens by TWN staff, the information was presented to TWN Chief and Council to decide whether they would accept the findings, and either withhold or provide consent for the project. Only if the project was approved through the first lens could the proposal proceed to the second lens for final consent for the project to proceed.



Photo credit: Don White

Vancouver harbour and North Vancouver.

Outcomes of the TWN Assessment

Lens 1 of the TWN assessment concluded that the TMEX proposal did not represent the best use of TWN territory, including its water, land, air, and resources. Based on this assessment, TWN Chief and Council decided to reject the project. Therefore, the TMEX proposal was not subject to an assessment under the second lens of inquiry (i.e., further assessing potential impacts while engaging in dialogue with proponents and assessment/regulatory agencies to determine how to avoid/mitigate impacts and improve project design so that it has a positive impact on the TWN territory and people).

Once TWN completed their review of the project, TWN filed their assessment report with the NEB as an independent jurisdiction. The intention was for the NEB to use the TWN assessment in parallel to the Crown assessment as a basis for a government-to-government discussion and to help reconcile conflicting views TWN and the Crown held towards the project, but this did not occur. The NEB did not have a process in place for engaging with Indigenous Nations/groups as a separate jurisdiction and received the TWN Assessment as a *“traditional land and resource use study”*⁴, without addressing or acknowledging the application of TWN laws and jurisdiction enacted through the review and rejection of the project.

Concluding the Crown assessment, both the NEB and EAO advised that the project should be approved.

The decision to recommend project approval was partially made due to the NEB and the EAO’s determination that the Crown’s duty to consult and accommodate Aboriginal groups had been satisfied, and that project approval was in reflection of public interest. Following these recommendations, the project received federal approval in 2016, and a BC Environmental Assessment Certificate in 2017. Litigation has followed to appeal these decisions, but the approval has been upheld and construction of the project has begun.

Lessons Learned from the TWN Assessment Process

This case study illustrates an effective way of establishing consistent assessment requirements and expectations for the Crown and proponents who will be engaged in consultation.

For example, TWN uses their Consultation Area and Stewardship Policy to outline TWN’s jurisdictional authority and designates any activities falling within these boundaries which may impact TWN rights or title as requiring a process of consultation and review.

In addition, consistent decision-making criteria are outlined for the Crown and proponents through the two-lens decision-making structure utilized by TWN, which communicates that the benefits of development will only be considered if they do not violate TWN legal principles.

⁴ Clogg, J., Smith, G., and Carlson, D. (2017). Paddling Together: Co-Governance for Regional Cumulative Effects Management. West Coast Environmental Law, (June), 1–120.

Where to Learn More About the Tsleil-Waututh Nation Assessment

The Tsleil-Waututh Nation Website: <https://twnation.ca>

Clogg, J., Smith, G., and Carlson, D. (2017). Paddling Together: Co-Governance for Regional Cumulative Effects Management. *West Coast Environmental Law*, (June), 1–120.

Treaty, Lands, and Recourses Department (TLRD) Tsleil-Waututh Nation. (2015). Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal. TWN. Retrieved from <https://twnsacredtrust.ca/wp-content/uploads/2015/05/TWN-Assessment-Summary-11x17.pdf>

Case Study Development

This case study was constructed using a review of published (print and online) primary and secondary documents that are publicly available. This includes sources such as independently produced assessment reports by the Tsleil-Waututh Nation and associates, EIA reports, Crown consultation and accommodations reports, decision statements, and proponent project applications. A special thanks is owed to Erin Hanson, who provided feedback, expertise, and guidance on the accuracy of this case study.

Other case studies and resources in the series

Indigenous Led Impact Assessment, An Introduction

The Squamish Nation Process for the Woodfibre Liquefied Natural Gas Plant and Export Terminal Proposal

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