Roberts Bank Terminal 2 Project
Amended Review Panel Terms of Reference

The federal Minister of the Environment, (the Minister) has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and, after considering whether the designated project may cause significant adverse environmental effects and public concerns related to such possible significant environmental effects, has referred the environmental assessment of the proposed Roberts Bank Terminal 2 Project to a Review Panel in accordance with section 38 of CEAA 2012.

Environmental assessment is a planning tool used to ensure that projects are considered in a careful and precautionary manner in order to avoid or mitigate possible adverse environmental effects. One of the purposes of CEAA 2012 is to ensure opportunities for meaningful public participation during an environmental assessment. Meaningful participation is best achieved when all parties have a clear understanding of the proposed project, timely access to information regarding the assessment, and an opportunity to have their views heard and considered.

The *Updated Guidelines for the Preparation of an Environmental Impact Statement for the Roberts Bank Terminal 2 Project* (EIS Guidelines) identify for the proponent the minimum information requirements for the preparation of its Environmental Impact Statement (EIS). The document specifies the nature, scope and extent of the information required including a description of the project, existing environment, predicted environmental effects and proposed measures to mitigate any adverse environmental effects. The EIS Guidelines were released to the proponent and made publicly available on January 7, 2014 and were updated in February 2015.

Pursuant to subsection 42(1) of CEAA 2012, the Minister must establish the Review Panel Terms of Reference. These Terms of Reference establish the composition and mandate of the Review Panel and also set out the framework of the process that the Review Panel will follow.

1. Description of the Project

1.1. On September 12, 2013, the Canadian Environmental Assessment Agency (the Agency) received the Roberts Bank Terminal 2 Project Description from Port Metro Vancouver (the proponent). The proponent proposes to construct and operate the Roberts Bank Terminal 2 Project (the project), a new three-berth marine container terminal located at Roberts Bank in Delta, British Columbia, approximately 35 kilometres south of Vancouver. Located next to the existing Deltaport and Westshore Terminals, the project would provide an additional 2.4 million twenty-foot equivalent units of container capacity per year at Roberts Bank.

1.2. The description of the project for the purpose of the environmental assessment is the construction, operation and where relevant, decommissioning of project components and physical activities, including mitigation measures that are

proposed to mitigate the predicted environmental effects of the project. Marine shipping activities within the 12 nautical mile limit of Canada's territorial sea are incidental to the marine container terminal and therefore part of the description of the project for the purposes of the environmental assessment. The requirements for a detailed description of the project are provided in the EIS Guidelines and the description will be included in the proponent's EIS.

2. Factors to be Considered

2.1. The environmental assessment by the Review Panel must take into account the following factors listed in subsections 19(1) and 19(3) of CEAA 2012:

a. the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other physical activities that have been or will be carried out;
b. the significance of the effects referred to in section 2.1(a);
c. comments from the public that are received in accordance with CEAA 2012;
d. mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project;
e. the requirements of the follow-up program in respect of the project;
f. the purpose of the project;
g. alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;
h. any change to the project that may be caused by the environment; and
i. community knowledge and Aboriginal traditional knowledge.

2.2. The term "environmental effect" is described in section 5 of CEAA 2012.

2.3. As required by the Minister pursuant to paragraph 19(1)(*j*) of CEAA 2012, the environmental assessment must also take into account the following matter that is relevant to the environmental assessment:

a. the potential economic, social, heritage and health effects of the project, including cumulative effects, that may not be encompassed by the definition of environmental effects under CEAA 2012, and practicable means to mitigate such potential adverse effects.

2.4. For greater certainty, the potential economic, social, heritage and health effects of the project, including cumulative effects, that are not encompassed by the definition of environmental effects under CEAA 2012 are not environmental effects of the project for the purposes of the Minister's decision on whether the project is likely to cause significant adverse environmental effects and will not be subject to conditions to the proponent in any decision statement issued by the Minister under CEAA 2012.

2.5. The scope of the factors to be considered in the environmental assessment are outlined in the EIS Guidelines.

3. Mandate of the Review Panel

3.1. The Review Panel shall conduct an assessment of the environmental effects of the project in a manner consistent with the requirements of CEAA 2012 and these Terms of Reference.

3.2. In accordance with section 43 of CEAA 2012, the Review Panel must:

a. conduct an environmental assessment of the project;
b. ensure that the information that it uses when conducting the environmental assessment is made available to the public;
c. hold hearings in a manner that offers any interested party an opportunity to participate in the environmental assessment;
d. prepare a report with respect to the environmental assessment that sets out:
    i. the rationale, conclusions and recommendations of the Review Panel, including any mitigation measures and follow-up program; and
    ii. a summary of any comments received from the public, including interested parties;
e. submit the report with respect to the environmental assessment to the Minister; and
f. on the request of the Minister, clarify any of the conclusions and recommendations set out in its report with respect to the environmental assessment.

3.3. The Review Panel shall have all the powers and duties of a panel described in section 45 of CEAA 2012.

3.4. The Review Panel may receive and take into account information with respect to whether any significant adverse environmental effects may be justified in the circumstances.

3.5. In accordance with sections 47 and 52 of CEAA 2012, if the Minister decides that the project is likely to cause significant adverse environmental effects, the Minister will refer the matter to the Governor in Council (Cabinet) who must decide whether those environmental effects are justified in the circumstances.

<u>Potential or Established Aboriginal or Treaty Rights and Interests</u>

3.6. For legal and policy reasons, the Crown consults with and, where appropriate, accommodates Aboriginal groups regarding the potential adverse impacts of its decisions on potential or established Aboriginal or Treaty rights. Aboriginal consultation is integrated with the review panel and regulatory process to the extent possible.

3.7. Through these Terms of Reference, the Review Panel is given the mandate to collect information on behalf of the Crown as outlined in sections 3.9 to 3.11. The federal government maintains the duty to consult throughout the environmental assessment process and will be responsible for the items detailed in section 3.8, where necessary.

3.8. The Review Panel will not make any conclusions or recommendations as to:
   a. the validity of potential or established Aboriginal or Treaty rights asserted by an Aboriginal group or the strength of such claims;
   b. the scope of the Crown's duty to consult an Aboriginal group;
   c. whether the Crown has met its respective duty to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
   d. whether the project would be an infringement of potential or established Aboriginal or Treaty rights; and
   e. any matter of Treaty interpretation (historic or modern).

3.9. The Review Panel shall accept as part of the environmental assessment:
   a. information presented by Aboriginal persons or groups regarding the location, extent and exercise of potential or established Aboriginal or Treaty rights that may be affected by the project;
   b. information presented by participants in the review panel process that relates to any potential adverse impacts of the project on potential or established Aboriginal or Treaty rights and related interests including, where appropriate, identification of the specific treaty provision at issue and potential or established Aboriginal title claims. Information received by the Review Panel may also be relevant to its assessment of the environmental effects of the project, including those environmental effects that might adversely impact potential or established Aboriginal or Treaty rights. Relevant information could include but is not limited to:
      i. impacts on uses of lands and resources by Aboriginal groups;
      ii. impacts on hunting, marine, riverine and terrestrial harvesting including fishing, gathering and other traditional uses of land (e.g. use of sacred sites) in addition to related effects on lifestyle, culture, health, socio-economic conditions and quality of life of Aboriginal people;
      iii. alterations to access into areas used by Aboriginal people for traditional uses; and
      iv. the ability of future generations to pursue traditional activities or lifestyle;
   c. information about the potential seriousness of potential impacts of the project on the exercise of potential or established Aboriginal or Treaty rights, and information on approaches to assessing the seriousness of the impacts; and
   d. information presented by participants in the review panel process concerning measures proposed to mitigate and/or avoid any identified adverse impacts on potential or established Aboriginal or Treaty rights and interests.

3.10. The Review Panel will provide a summary of the information received in the Review Panel Report.

3.11. The Review Panel may use the information received through the review panel process to make recommendations which, if implemented, would avoid or mitigate the environmental effects of the project; including those environmental effects that might adversely impact potential or established Aboriginal or Treaty rights.

4. The Environmental Assessment Process

The Review Panel

4.1. Pursuant to section 42 of CEAA 2012, the Minister will appoint as Members of the Review Panel persons who are unbiased and free from any conflict of interest relative to the designated Project and who have knowledge or experience relevant to its anticipated environmental effects.

4.2. The Review Panel will consist of at least three Members, including one Chairperson. In the event that a Review Panel Member resigns or is unable to continue to work, the remaining Members shall constitute the Panel unless the Minister determines otherwise. In such circumstances, the Minister may choose to replace the Review Panel Member.

4.3. By way of letter from the Chairperson, the Review Panel may request clarification of its Terms of Reference from the President of the Canadian Environmental Assessment Agency (the Agency). Upon receiving such a request, the President is authorized to act on behalf of the Minister to provide the clarification. The President shall use best efforts to provide a response to the Review Panel within 14 calendar days. The Review Panel shall continue with the environmental assessment to the extent possible while waiting for a response in order to comply with the timelines of these Terms of Reference. The Review Panel shall issue a notice to Aboriginal groups, government bodies, the public and other interested parties regarding any clarifications to its Terms of Reference and shall make those clarifications available on the public registry.

4.4. By way of letter from the Chairperson, the Review Panel may request an amendment to its Terms of Reference from the Minister. The Minister may delegate authority to the President of the Agency to act on the Minister's behalf in the consideration of and response to a request from the Review Panel for an amendment to the Terms of Reference. The Review Panel shall continue with the environmental assessment to the extent possible while waiting for a response in order to comply with the timelines of these Terms of Reference. The Minister or the President of the Agency, as the case may be, shall use best efforts to provide a response to the request for an amendment to the Terms of Reference within 14 calendar days. The Review Panel shall issue a notice to Aboriginal groups, government bodies, the public and other interested parties regarding any amendments to its Terms of Reference and shall make those amendments available on the public registry.

The Panel Secretariat

4.5. The Panel Secretariat will provide administrative, technical, and procedural support as requested by the Review Panel and shall be comprised of staff from the Agency. The Secretariat will report to the Review Panel and will be structured to allow the Panel to conduct its environmental assessment in an efficient and cost-effective manner. Members of the Secretariat shall be free from any real or

perceived conflict of interest, and shall be guided in their work and professional conduct by the *Values and Ethics Code for the Public Service*.

Completeness Review of Environmental Impact Statement (EIS) by the Agency:

4.6. The proponent will prepare its EIS in accordance with the EIS Guidelines and submit it to the Agency.

4.7. Prior to the establishment of the Review Panel, the Agency will make the EIS available for a review and comment period to receive input on the completeness of the EIS as evaluated against the requirements of the EIS Guidelines and applicable legislation. The Agency will determine if the required information is present and if there is enough information for the Review Panel to commence its sufficiency review of the EIS.

4.8. If the Agency determines that the EIS is not complete, it shall request additional information from the proponent. Upon receipt of the additional information, the Agency shall determine if an additional review and comment period is required, and if so, will conduct the additional review and comment period.

4.9. The procedures above will apply until such time as the Agency determines that there is enough information for the Review Panel to commence its sufficiency review of the EIS.

4.10. When the Agency determines that the there is enough information for the Review Panel to commence its sufficiency review of the EIS, the Review Panel will be appointed by the Minister in accordance with the timeline set out in section 4.12.

4.11. The Agency review of the EIS for completeness does not affect or predetermine the result of the Review Panel assessment of the sufficiency of the EIS.

The Review Panel Process

4.12. The timeline for the establishment of the Review Panel is 150 days (5 months) from the date of the referral of the environmental assessment to Review Panel. This 150-day period does not include time taken by the proponent to submit its EIS or any additional information that is required by the Agency.

4.13. The Review Panel shall undertake its mandate in three stages:
Stage 1- Sufficiency review of the EIS
Stage 2- Conduct a public hearing
Stage 3- Prepare and submit a report to the Minister

4.14. The Review Panel shall fulfill its mandate and submit its report to the Minister within 430 days (14 months) of the date of establishment of the Review Panel. The 430 days does not include the time period(s) between when the Review Panel may request information from the proponent and receipt of the requested information by the Panel.

Stage 1 - Sufficiency Review of the EIS by the Review Panel

4.15. The EIS will be provided by the Agency to the Review Panel upon appointment of the Members. The Review Panel will initiate a comment period of not less than 60 days to allow Aboriginal groups, government bodies, the public, and other interested parties to submit comments to the Review Panel on the sufficiency and technical merit of the EIS.

4.16. If the Review Panel determines that the EIS is not sufficient to proceed to a public hearing, it shall request additional information to be provided by the proponent

4.17. The Review Panel will allow for the review of and comment on additional information it receives.

4.18. The process described above will apply, with any necessary adjustments, until such time as the Review Panel determines it has sufficient information to proceed to a public hearing.

4.19. The Review Panel may request specialist or expert information or knowledge with respect to the project from federal or provincial authorities in possession of such information or knowledge.

4.20. The Review Panel may retain the services of independent non-government experts to provide advice on certain subjects with respect to the environmental assessment of the project.

4.21. The Review Panel shall notify Aboriginal groups, government bodies, the public and other interested parties of the names of experts retained by the Panel, and any documents obtained or created by the experts that are submitted. This shall exclude any information subject to solicitor-client privilege.

4.22. The Review Panel may require any expert to appear at the public hearing to address the document(s) they have created or obtained and that were submitted to the Panel and made public in accordance with the preceding paragraphs.

Stage 2 – Public Hearing

4.23. Once the Review Panel determines that the EIS contains sufficient information to proceed to a public hearing, it will schedule and announce the public hearing. The Review Panel shall provide a minimum of 45-day notice of the start of the public hearing.

4.24. The Review Panel shall issue procedures for the conduct of the public hearing. These procedures will allow for the hearing to be open to Aboriginal groups, government bodies, the public and other interested parties, subject to subsection 45(3) of CEAA 2012, and be conducted in a manner that offers all interested parties an opportunity to participate in the hearing process.

4.25. The Review Panel shall, where practicable, hold the public hearing in the area(s) in closest proximity to the project, including Aboriginal communities, to provide convenient access for potentially affected Aboriginal groups and local communities.

4.26. The Review Panel shall take into account the timing of traditional activities in Aboriginal and local communities when setting the time and location of the public hearing.

Stage 3 – Review Panel Report

4.27. Following the completion of the public hearing, when the Review Panel determines that it has all of the information that it requires, the Panel will close the record for the environmental assessment and shall prepare and submit a report to the Minister.

4.28. The report shall include:
   a. the rationale, conclusions and recommendations of the Review Panel on the environmental assessment of the project including any mitigation measures and follow up programs;
   b. a summary of the report;
   c. a summary of any comments received including those from Aboriginal groups, government bodies, the public and other interested parties;
   d. an identification of those conclusions that relate to the environmental effects of the project defined in section 5 of CEAA 2012;
   e. an identification of recommended mitigation measures and follow up programs that relate to the environmental effects of the project defined in section 5 of CEAA 2012, including, as appropriate, any commitments identified by the proponent in the EIS or during the review panel process; and
   f. a summary of the information received by participants as set out in section 3.10 above.

4.29. If, taking into account the implementation of any mitigation measures, the Review Panel concludes that the project is likely to cause significant adverse environmental effects, the Panel may include in its report information that it has received with respect to whether those significant adverse environmental effects are justified in the circumstances.

4.30. The report shall reflect the views of each member of the Review Panel.

4.31. The Review Panel must consider any requests made by Aboriginal groups to have the report summary translated into their Aboriginal language(s). If the Review Panel agrees with such a request, it must recommend to the Agency that such translations be provided by the Agency in a timely manner.

4.32. The Review Panel will submit its report to the Minister at the earliest possible date and within the overall time limit established by the Minister for the three stages of the Panel's mandate.

4.33. Upon receiving the report submitted by the Review Panel, the Minister will advise Aboriginal groups, government bodies, the public and other interested parties that the report is available.

4.34. In accordance with subsection 43 (1)(f) of CEAA 2012, the Review Panel may be required to clarify any of the conclusions and recommendations set out in its report with respect to the environmental assessment.

5. Government of the Province of British Columbia

5.1. The Roberts Bank Terminal 2 Project constitutes a reviewable project pursuant to Part 8 of British Columbia's *Reviewable Projects Regulation*. The order pursuant to section 14 of the British Columbia *Environmental Assessment Act*, issued on December 19, 2014 by the provincial Minister of Environment, describes the provincial environmental assessment of the proposed Project.

5.2. The factors to be considered in the provincial environmental assessment include the factors described in Part 2 of these Terms of Reference.

5.3. Subject to subsections 45(3), (4) and (5) of CEAA 2012, all information received by the Review Panel will be available to British Columbia. To the extent possible, British Columbia intends to rely on the information produced in the federal review panel process for the provincial environmental assessment. British Columbia intends to actively participate in the review panel process.

6. Record of the Environmental Assessment

6.1. From the appointment of the Review Panel to the submission of the Review Panel Report, a public registry will be maintained by the Panel Secretariat in a manner that provides for convenient public access, and that complies with sections 79 to 81 of CEAA 2012.

6.2. Subject to subsections 45(3), (4) and (5) and 79(3) of CEAA 2012, the public registry will include all records produced, collected or submitted relating to the environmental assessment of the project.