

BRIEFING NOTE FOR THE DIRECTOR GENERAL HABITAT MANAGEMENT

**KELTIC LIQUEFIED NATURAL GAS
TERMINAL AT GOLDBORO NOVA SCOTIA**

(Information Only)

SUMMARY

- You are requested to attend an Assistant Deputy Minister level meeting at the Canadian Environmental Assessment Agency (the Agency) on Thursday, February 24, 2005 at 3:30 p.m. in the main boardroom on the 22nd floor, on behalf of Sue Kirby.
- The goal of the meeting is to discuss and reach a common understanding and move forward on the issues surrounding the scope of project when conducting environmental assessments (EAs) of Liquefied Natural Gas (LNG) terminals; in particular Keltic and Kitimat LNG terminals proposed for Nova Scotia (N.S.) and British Columbia (B.C.), respectively.
- Determining the scope of the Keltic project has been a difficult task, which began approximately 4 months ago.

Issue

- You are requested to attend an ADM level meeting at the Agency on Thursday, February 24, 2005 at 3:30 p.m. in the main boardroom on the 22nd floor, on behalf of Sue Kirby.

Background

- The goal of the meeting is to discuss and reach a common understanding and move forward on the issues surrounding the scope of project when conducting EAs of LNG terminals; in particular Keltic and Kitimat LNG terminals proposed for N.S. and B.C., respectively.

- Determining the scope of the Keltic project has been a difficult task, which began approximately 4 months ago. A chronology of events, discussions and conference calls is attached for reference regarding Fisheries and Oceans Canada's (DFO's) position on the scope of the Keltic LNG project. The important milestones are highlighted in the attachment. (Annex 1)
- On February 17, 2005, Mr. Roger Cuzner, the Liberal M.P. for the riding of Cape Breton-Canso has corresponded with Minister Reagan on the lack of a federal response regarding its EA track for the Keltic LNG proposal. His letter is attached for reference. (Annex 2)
- Of the 2 LNG projects in Quebec Rabaska has been referred to a review panel by the Minister of the Environment primarily due to public safety concerns, as well as the proximity of the proposed installations to the St. Lawrence Seaway; Cacouna Énergie is subject to a public consultation process under section 21 of the *Canadian Environmental Assessment Act (CEAA)* to determine if the EA track should be a comprehensive study or referred to a review panel.
- DFO has agreed to a broader scope of project for Rabaska LNG and Cacouna Énergie. The lead responsible authority (RA) for Rabaska is the National Energy Board which has jurisdiction over the pipeline and the importation of the gas. The Cacouna Énergie project would be built and operated on land owned by Transport Canada (TC) and LNG Tankers would pass through and dock in the upper estuary of the St. Lawrence, which is proposed as a Marine Protected Area by DFO for the protection of marine mammals. As well, there is a marine national park at the mouth of the Saquenay Fiord opposite the proposed LNG terminal.
- Two EAs for LNG projects in Canada have been completed; Irving LNG a comprehensive study and Bear Head LNG screening projects.

Analysis / DFO Comment

- DFO has consistently determined the scope of LNG projects to be those components which will or are likely to require a section 35(2) authorization pursuant to the *Fisheries Act* (the harmful alteration, destruction, or disruption of fish habitat (HADD)). DFO has also considered other factors regarding LNG projects beyond the component that actually would cause the HADD to determine if these factors have any bearing on the Department's mandate under the *Fisheries Act*.
- The Keltic project is a case in point where the Department determined that the only component that would likely cause a HADD is the marginal wharf. The rationale for this determination is outlined in your letter of February 18, 2005 to the Director General of Environmental Affairs for TC and the Director of Environmental Assessment at Environment Canada (EC). (Annex 3)

- The reason for the protracted timeline to determine the scope of the Keltic project stems from EC's insistence that the scope include all components of the LNG facility and the Agency's insistence that there be one scope and one project pursuant to the spirit of *CEAA*. EC has also insisted that it is an RA despite written assurances from Keltic's consultant that the project would not involve dredging and therefore no ocean dumping permit would be required.
- It is Habitat Management's (HM's) intention to reply to Mr. Cuzner, M.P. for Cape Breton Canso, in the same vein communicated to TC and EC in your letter of February 18, 2005.
- The 2 projects in Quebec are fundamentally different from the Keltic project in that there are broader issues for DFO regarding Cacouna Énergie in the marine environment, and in the case of Rabaska the importance of the public concern and the potential impacts of malfunctions or accidents on the environment.

Recommendations / Next Steps

- It is recommended that you attend the meeting on February 23, 2005 and reemphasize HM's position of with respect to our scope of a project in relation to its regulatory trigger as set out in your letter of February 18, 2005.

Attachments

R. Baxter/ S. Dean/ M. Bourgon/ T. Surette

SPEAKING POINTS

- **The Department of Fisheries and Oceans has consistently determined the scope of a project in relation to its regulatory trigger pursuant to section 35(2) of the *Fisheries Act*. Keltic Liquefied Natural Gas is a case in point.**
- **The Department intends to continue to scope in accordance with its regulatory responsibilities.**

ANNEX 1

Keltic Chronology

Keltic submitted a draft project description (PD) to the NSEL for circulation to the Agency.

May 20, 2004 – The Agency responded that the document was inadequate. A further draft was later submitted.

June 22, 2004 – meeting with the Agency, NSEL & Proponent. **The Proponent declined opportunity to meet with potential regulators.** A further draft PD was submitted.

July 22, 2004 – meeting held. Attendees – Agency (RL&G and Project Assessment [by phone]), NSEL, Proponent and consultants.

August 10, 2004 – The Agency (RL&G, HQ) & NSEL teleconference to discuss harmonization. Agreed to coordinate front end of federal process with Class 2 process, as per lead-Party in EA Sub-agreement.

August 23, 2004 – meeting held with Proponent to recommend submitting PD rather than NSEL registration to ensure harmonization options.

August 24, 2004 – The Agency & NSEL teleconference to discuss in more detail options for coordinating the federal scoping process into Class 2 Terms of Reference process.

August 30, 2004 – The Agency (RL&G) initiated FCR process.

September 1, 2004 – DFO received a Project Description and FCR notification from the Agency asking if DFO would require an EA or was in possession of specialist advice.

September 3, 2004 – The Agency circulated a 1st Draft Joint ToR\Scoping document dated September, 2004 for review.

September 21, 2004 – initial meeting of FAs and Agency to discuss their role in the EA, any additional information requirements for making FCR determinations, and the Joint ToR\Scoping document and a harmonized federal provincial review, scope of project, lead RA, workplan and initiation of the CEAR (FCR determinations not yet complete).

September 29, 2004 – DFO requests additional information to make FCR determination.

October 4, 2004 – DFO receives information in response to September 29, 2004 request.

October 13, 2004 – DFO provides FCR determination to the Agency, EA likely for a portion of the project.

October 14, 2004 – meeting between EC and proponent, so proponent could provide information that would allow EC to make an FCR response regarding disposal at sea matters (Melanie participated).

October 19, 2004 – Cheryl Benjamin (Agency) & Peter Geddes met with Alan Bell (the consultant) to discuss overall progress of EA. Next federal step is to determine scope of project – meeting scheduled for October 25, 2004.

October 22, 2004 – the Agency advises that EC has determined that they are likely to require an EA.

October 22, 2004 – DFO provides draft preliminary wording for our scope of project to the Agency.

October 25, 2004 - meeting of RAs and Agency to discuss scope of project, harmonized assessment, harmonized scoping document, CEAR: it was understood at the end of this meeting that the project scope would include undertakings associated with the marginal wharf and LNG Terminal. **Based on a project scope to regulatory triggers, DFO offered to accept responsibility for the CEAR but not all the costs associated with the registry (those would be shared among the RA's);** however, several days following this meeting it was evident that there were different understandings on what was agreed to for the scope of project; apparently EC did not agree to the idea of scoping to the regulatory triggers (Richard, Bruce, Stuart, Francois, Melanie participated)

October 27, 2004 – 2nd draft Joint ToR\Scoping document dated November 2004 circulated for comment

November 2, 2004 – meeting with proponent to discuss Fisheries Act review process and information requirements, and implications to the environmental assessment (Melanie participated)

November 10, 2004 – EC provided documentation on their mandated interests and scoping concerns with respect to the Keltic proposal.

November 10, 2004 – meeting of RAs and Agency to clarify understanding on scope of project and to discuss possible consideration of a s. 25 referral to panel. **It was agreed that TC and EC would complete their scope of project (as previously done by DFO) so that it can be circulated to everyone.** EC would work on the s.25 referral justification and the Agency would speak to the province and proponent about a possible s.25 referral. (Phil, Stuart participated)

November 19, 2004 – TC provides their individual draft wording for scope of project to the Agency. EC clarified their position on scoping and explained that they believe all components of the project be included in the scope.

December 3, 2004 – teleconference meeting of RA's and Agency to discuss s. 21 track and s.25 track. It was agreed that DFO would follow up with proponent to clarify our information needs and requirements with respect to our Fisheries Act obligations. EC would look at s.25 referral to panel and work on developing documentation that would assure the other RA's that EC would remain as lead even if it had to withdraw as an RA. DFO would work on plan for the s.21 track.

December 20, 2004 – letter dated December 13, 2004 sent to proponent outlining *Fisheries Act* review process, advising that construction of the marginal wharf likely to be a HADD, advising of options for relocation and redesign and discussing associated CEAA responsibilities should DFO consider issuance of an authorization; included a request for additional information in order to make a determination whether DFO would consider issuance of an authorization (i.e. for the marginal wharf etc).

December 21, 2004 - meeting of RA's and Agency to discuss whether proposal should be referred immediately to panel, who should take the lead role, project scope, harmonized assessment. **The Agency expressed the desire to focus more on the s.21 option now rather than the s.25 option. This was based on the fact that there was not enough justification yet to consider the s.25 option. The Agency also pushed for a scoping to the RA's regulatory triggers. DFO and TC agreed with this approach but EC expressed difficulty with accepting this approach.**

January 4, 2005 – Received response from proponent to DFO's December 13, 2004 letter; proponent advised that they would hire a consultant later in the year to determine if redesign was an option; requested information not provided.

January 4?? – meeting between the Agency, proponent and proponent's lawyer.

January 5, 2005 – teleconference meeting between RA's and Agency to discuss recent ADM level meeting and its impact on our scoping decisions. Agency pushed more for the s.21 track and asked that DFO or TC take the lead. Agency expressed desire to get the notice of assessment up and the registry started. TC said they would get back to the Agency on whether they could take the lead. DFO re-stated that the offer to take on the registry still stands if scope of project is to regulatory triggers. Several days after the meeting, TC confirmed that they were in no position to take the lead since they did not currently have the capacity to handle the administrative aspects of the EA.

January 7, 2005 – the Agency circulated a draft agreement for a coordinated federal-provincial EA for review (draft agreement was developed by proponent).

January 12, 2005 – proponent registered a Class II Environmental Assessment Registration Document with the Nova Scotia Department of Environment and Labour which initiated the provincial environmental impact assessment.

January 13, 2005 – the Agency circulated a draft Scoping document for review.

January 18, 2005 – teleconference meeting between RA's and Agency to discuss registration by province, draft provincial TOR and an upcoming meeting with the consultant. (Michel, Melanie, Stuart participated). RA's to provide comments to Cheryl on draft scoping document. EC to be lead RA on broad scope of project (to be confirmed tomorrow by EC).

January 19, 2005 – meeting of DFO and proponent's consultant to discuss the *Fisheries Act* review process and information requirements, and implications to the environmental assessment (Melanie participated). Consultant has promised to provide DFO with the necessary information required in the next few weeks (i.e. underwater habitat survey etc.).

January 21, 2005 – DFO Region receives a copy of the Class II Environmental Assessment Registration Document from the Nova Scotia Department of Environment and Labour.

January 25, 2005 (1 pm) – meeting of RAs to discuss the document entitled "Comprehensive Study Scoping Document for the Keltic Petrochemicals Inc. Proposed Liquefied Natural Gas Facility and Petrochemical Plant" dated January 13, 2004 circulated for comment on January 13, 2005; also discussion on scope of project (Michel, Stuart, Melanie participated).

January 25, 2005 (2 pm) – meeting of RAs and project proponent's consultant to discuss the proposal by Keltic and the environmental assessment process (Michel, Stuart, Melanie participated). Discussions centered on harmonization of federal process now that the provincial process had started, EC's disposal at sea information requirements and TC's NWP information requirements. Consultant expressed (several times) the desire to see the two processes harmonized so that one EA would suffice. Consultant wanted to know why EC remained as an RA when it was made clear that no dredging or disposal at sea would be necessary for the Keltic development. EC would re-consider their position when they receive the nautical survey/navigation study from the consultant.

February 1, 2005 – CEF Consultants Ltd. (the consultant for the proposed Keltic development) sends a memo to EC outlining the results of the nautical survey/navigation study. The study further supports Keltic's previous claims that there will be no requirement for dredging and therefore no disposal at sea requirements. Apparently EC was satisfied with the results of this survey, however EC were now concerned that there would be side-casting associated with the construction of the marine terminal (specifically during the pipe piling activity). This work could require a disposal at sea permit.

February 3, 2005 - DFO sends (via email) a revised version of the document entitled "Comprehensive Study Scoping Document for the Keltic Petrochemicals Inc. Proposed Liquefied Natural Gas Facility and Petrochemical Plant" to the Agency and the other RA's. DFO does not include our scope of project in this document as this would follow at a later date. At this time, the other RA's had not provided comments on the scoping document.

Apparently TC and EC are waiting for further direction from senior level discussions and from legal counsel.

February 14, 2005 - CEF Consultants Ltd. sends a second memo to EC further detailing the construction methods for the marine terminal and marginal wharf. These details indicate that no dredging will be required for the construction of the marine terminal/marginal wharf. The construction of the marine terminal will utilize pipe piles driven into the seabed, a method that does not disturb the surficial material on the seabed. This proposed method is similar to the method proposed in the Bear Head LNG project, where apparently EC concurred that no dredging was required.

February 17, 2005 – DFO receives Fish Habitat Report from CEF consultants Ltd. with respect to Keltic’s marginal wharf and LNG terminal site. DFO will provide a quick preliminary review of the report to ensure that it covers all our requirements.

February 18, 2005 – DFO sends letter to the other RA’s (cc. to the Agency) indicating that DFO has determined that the construction and operation of the “marginal wharf” (for vessels no larger than 25,000 DWT) will be its scope of project pursuant to CEEA for the proposed Keltic Petrochemical/LNG development.

February 21, 2005 – DFO’s Minister receives letter from MP (Rodger Cuzner, Cape Breton-Canso) urging federal departments to work together to progress the federal EA for this project and recognize the importance of this proposal for his constituency.

ANNEX 2

ANNEX 3