

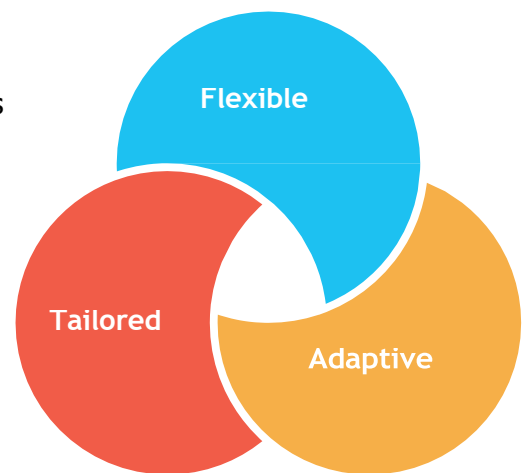
Seeking Consensus

Indigenous Engagement in Impact Assessments in Canada

In Canada, there is no universal method for consensus-seeking in impact assessments, as it varies across projects, Indigenous Nations, and jurisdictions. A guiding framework is essential to ensure approaches to consensus-seeking remain consistent yet flexible, tailored, and adaptive.

Practitioners can leverage and adopt key features and conditions provided in this infographic to facilitate effective consensus-seeking creating Indigenous Nation-centric approaches for diverse contexts in impact assessment.

This infographic was prepared for the Impact Assessment Agency of Canada, based on research funded by the Science & Research, National Programs Division.



What is Consensus Seeking in Impact Assessment?



- ✓ Consensus-seeking involves collaboration between regulators and participating Indigenous Nations, both among and within Nations to reach a shared agreement on procedural and technical decisions in impact assessments.
- ✓ Principles of consensus-seeking involve early and continuous engagement, mutual understanding of shared interests and issues, respecting diverse views and Indigenous protocols, mechanisms for dispute resolution, and Nation-led internal consensus processes.
- ✓ Consensus-seeking is distinct from consent in impact assessment.
- ✓ Consensus-seeking is an ongoing collaborative process through which free, prior, and informed consent may be advanced.
- ✓ Consent implies obtaining approval of impacted Nations to proposed development projects on Indigenous territory.

“ True consensus sometimes [means] not everyone is happy in it, but there's an understanding of the benefit of moving forward together in a good way. (Lucas King, personal communication, March 21, 2024) ”

Consensus Seeking Factors



Principles for Consensus-seeking and Indigenous Inclusion



UNDRIP

Ensure Indigenous Peoples' meaningful involvement in all phases of impact assessments.

FPIC

Indigenous peoples' right to free, prior, and informed consent is enshrined in UNDRIP. Nation-states must consult before projects affecting Indigenous lands, territories, and resources are undertaken.

Duty to Consult

The Crown has a legal obligation to consult and, where appropriate, accommodate Indigenous Peoples before making decisions that may infringe on Aboriginal and treaty rights.

Reconciliation

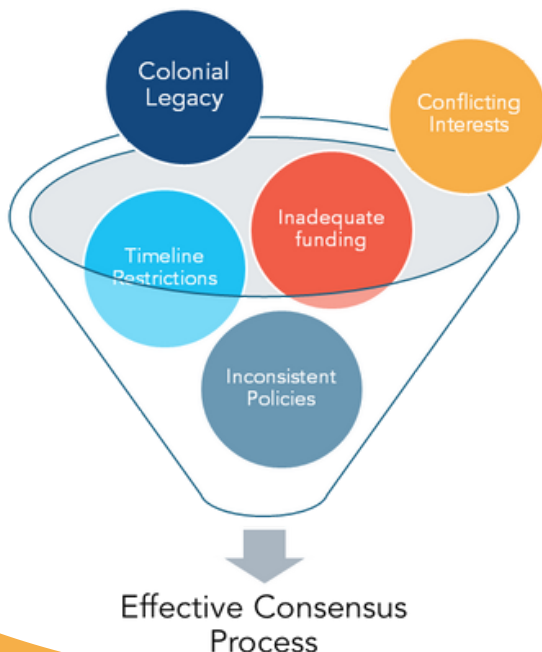
Honor treaties, respect Indigenous rights and title, Indigenous culture and beliefs, and support developing Indigenous Capacity.

“

I think it's just being flexible with each Nation that is working through the process. Not every Nation is the same.” (Indigenous Nation Representative, personal communication, March 6, 2024)

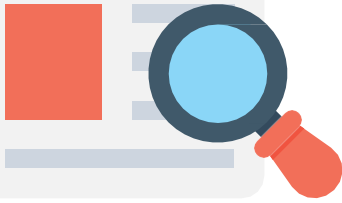
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Challenges to Consensus-Seeking for Indigenous Nations



- Insufficient funding support for Indigenous Nations.
- Inflexible and rigid timelines in consensus-seeking processes.
- Inconsistent policies lead to differing engagement levels in consensus-seeking for First Nations, Métis, and Inuit.
- Conflicting interests and confidentiality issues involving multiple Indigenous Nations can result in distrust and tension.
- Colonial approaches to consensus-seeking overlook the diversity of Indigenous perspectives, laws, and culture.

CASE STUDY

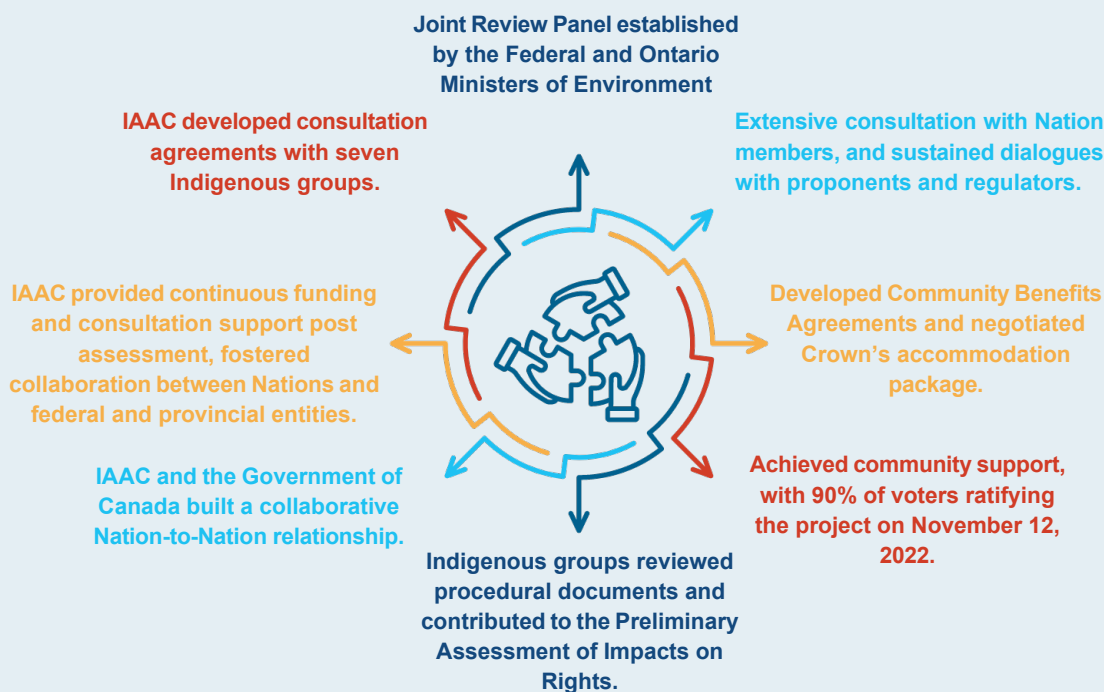


Biigtigong Nishnaabeg First Nation & Marathon Palladium-Copper Project, Northwest Ontario - Approved in 2022

Canadian Environmental Assessment Act, S.C. 2012, c. 19, s. 52 (CEAA 2012) and the Ontario Environmental Assessment Act - Joint Review Panel process.

The Marathon Palladium-Copper Project, led by Generation PGM Inc, is a proposed open pit palladium mine complex located 9.3 km from the Biigtigong Nishnaabeg First Nation reserve in northwest Ontario, within their traditional territory. The project faced numerous challenges, including unresolved Aboriginal title claims, difficulties in reaching internal consensus, environmental concerns, impacts on traditional lands and resources, and the pressure on community infrastructure due to the potential influx of workers.

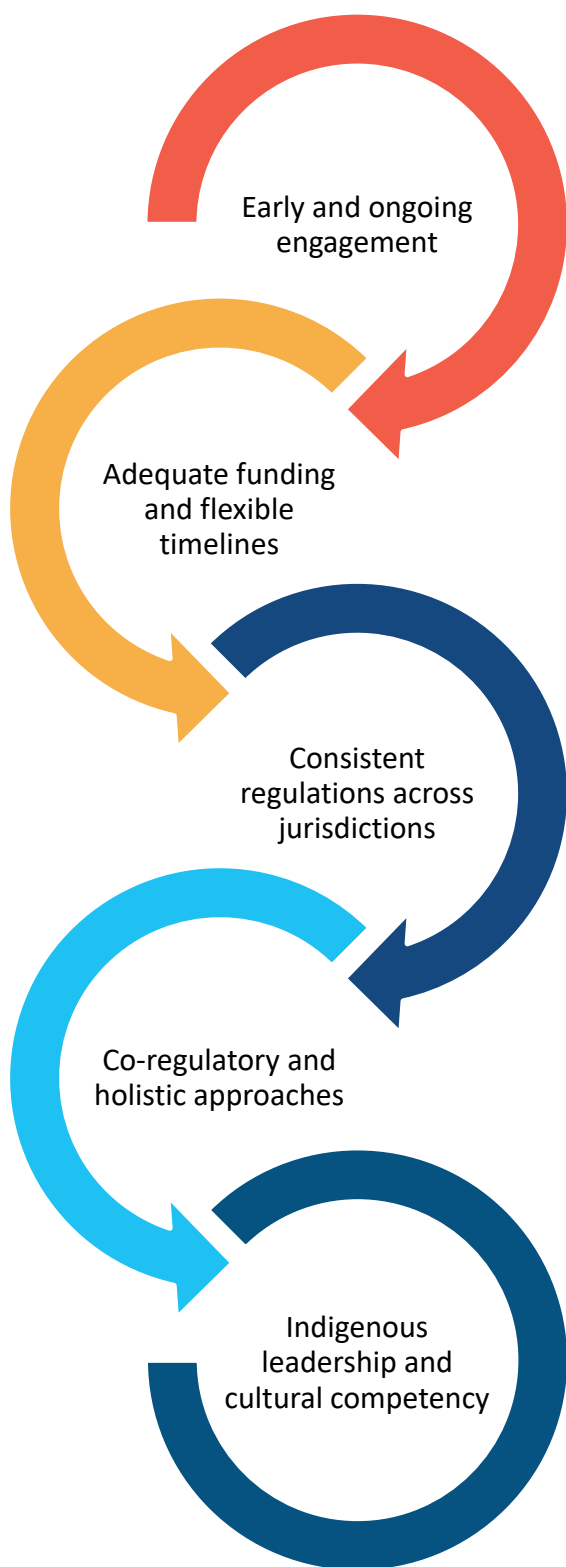
Despite these challenges, free prior and informed consent was advanced through a Nation-centric, collaborative consensus-seeking process between the Government of Canada and Biigtigong Nishnaabeg First Nation. This process involved extensive community engagement, ongoing consultation culminating in community ratification of the project. The graphic below highlights the key factors contributing to the project's success, showcasing best practices in collaborative consensus-seeking with Indigenous Nations.



Best Practices in Action

- Nation-to-Nation relationships through early and ongoing Indigenous engagement.
- Support for Nation-specific internal consultation and consensus-seeking protocols, including benefits agreement negotiation, ongoing consent and community ratification process.
- Capacity funding support from the government for the Nation-specific consensus-seeking process.
- Continuous and open communication between regulators and proponents throughout the impact assessment process.
- Optimize Indigenous leadership in consensus-seeking by centering Nation-led processes.
- Regulator support for community ratification process and ongoing consultation post-impact assessment decision.

Pathways to Equitable and Effective Consensus-seeking



1. Regulatory requirements for early, ongoing, and meaningful engagement for proponents before entering regulatory processes.
2. Holistic regulatory approaches that acknowledge and uphold Indigenous Peoples' treaties, inherent rights and titles.
3. Support collaborative regulatory approaches between Indigenous Nations and regulators, ensuring shared responsibilities and mutually beneficial outcomes.
4. Sustained government funding for meaningful Indigenous, engagement and leadership including building internal capacity.
5. Flexible timelines tailored to project specific needs, accommodating Nation's varying capacities to meet regulatory requirements.
6. Minimize provincial irregularities in Indigenous engagement and consultation policies to ensure equitable in consensus-seeking across all Indigenous Nations through consistency in regulatory requirements.
7. Foster Nation-led consensus-seeking processes that leverage the diversity of Indigenous protocols, values and culture.
8. Build Indigenous cultural competency among regulators and practitioners through targeted training, engagement with Elders, land-based learning, use of cultural protocol guides, and sustained partnerships with Indigenous communities.

“ I still believe that the biggest strength is doing things from the ground up together, that is the biggest strength in making sure you are trying to ultimately meet the end goals of getting consensus amongst the parties. (Indigenous Nation Representative, personal communication, March 6, 2024) ”