

New opportunities for collaborative closure planning in Canadian regulatory frameworks

T Kuzyk *ERM Consultants Canada Ltd., Canada*

G Gregory *ERM Consultants Canada Ltd., Canada*

R Pedlar-Hobbs *ERM Consultants Canada Ltd., Canada*

Abstract

Environmental approval of major projects was transferred to the newly created Impact Assessment Agency of Canada (IAAC) in 2019, bringing into being the Impact Assessment Act (SC 2019, c 28, s 1). The Act represents the first time that conspicuous consideration of impacts to Indigenous rights have been legislated as part of the Environmental Assessment process for major projects in Canada. In the province of British Columbia (BC), the joint federal and provincial application is now seeing its first successful applicants move through this new legislation.

Under IAAC, there is also an increased expectation of and emphasis on collaboration with impacted Indigenous groups—a change from the recent standard of consultation and the development of Impact or Mutual Benefit Agreements. On one hand, an increased focus on collaboration can appear to constrain operators' independent decision-making capacity and corresponding timeframes for mine life planning, including progressive reclamation, closure, and returning land use possibilities. On the other, a focus on collaborative and mutually beneficial outcomes allows for the development of integrated closure plans and post-closure land use planning that more conspicuously align with stakeholder and Indigenous groups' values and priorities and, in doing so, may reduce (financial and environmental) liabilities associated with closure.

Given how novel the IAAC process is, no major mine has yet made it through the complete process that would provide evidence of how enhanced collaboration affects closure planning. However, we can examine in-process studies for directional indications of how the novel IAAC process relates to closure. In this paper, we review a combination of publicly available case studies for major capital projects in BC where productive collaboration and engagement with Indigenous and external stakeholders is being taken as a business imperative, and where mines are working to develop more fully integrated closure approaches. In doing so, we provide a preliminary outline of best practices in collaborative closure planning in western Canada.

Keywords: *Integrated closure; stakeholder engagement; post-closure visioning; collaboration; sustainable mine planning; Indigenous*

1 Introduction

In 2019, the Impact Assessment Act (IAA; SC 2019, c 28, s 1) repealed and replaced the Canadian Environmental Assessment Act (2012). This resulted in the transfer of environmental approval for major projects from the Canadian Environmental Assessment Agency (CEAA) to the Impact Assessment Agency of Canada (IAAC). For projects in British Columbia (BC), Canada, there is a framework in place for projects to move through the federal and provincial processes in tandem, in alignment with 'one project, one assessment' (Government of Canada [GoC], 2019).

Instrumental in the development of the IAA was the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP or the Declaration; 2021). The Declaration set out the individual and collective rights of Indigenous peoples, as well as cultural rights and identity. As part of UNDRIP, Article 19 calls for consultation and collaboration with Indigenous peoples to obtain their free, prior, and informed consent (FPIC) prior to undertaking any work that might influence their rights. UNDRIP and the concept of FPIC have led the way for intentional ongoing engagement to support project development.

There is a duty to consult that extends throughout the Environmental Assessment (EA) process for both IAAC and the BC Environmental Assessment Act (BC EAA, 2018). The increased focus on engagement allows for the development of integrated closure plans that are collaborative and mutually beneficial, and post-closure land use planning that more conspicuously aligns with the values and priorities of Communities of Interest (COIs) and Indigenous people. The long-range benefit to this engagement is the potential reduction of financial and environmental liabilities that are often associated with mine closure, and, moreover, sustainable regional development.

Four years after implementation of the IAA (2019) in Canada, the influence of the revised legislation on engagement, planning, and project development is gradually being seen across multiple projects. Using publicly available information, this paper will explore how the mines and minerals ecosystems are evolving at sites across BC to develop closure plans that look to create shared value for communities, deliver nature positive outcomes, and working to proactively create positive legacies.

2 Comparison of the Impact Assessment Act and Canadian Environmental Assessment Act

The IAA (2019) represents a conspicuous shift in the legislative approach to project development for EAs. While this paper focuses on EAs, it is worth noting that the production of a closure plan is central to EA submission; a submission is considered incomplete without an accompanying closure plan that acknowledges how the project area will ultimately be returned to the community; be it as natural area or as a favourable end land use chosen in consultation with COIs and Indigenous people.

Changes to the IAA (2019) have included consolidation of responsible authorities for EAs, and therefore closure plans, and increased flexibility in timelines. Related specifically to this paper are the increased focus on sustainability and the requirement of integrating Indigenous knowledge and feedback into project and therefore closure planning in the EA process; these ideas are explored in detail below.

2.1 Sustainability

The IAA specifically considers sustainability as part of the assessment process; particularly, how a project designated for review under the IAA contributes to sustainability. Four sustainability principles were developed as part of implementing the IAA (GoC, 2021):

1. Consider the interconnectedness and interdependence of human-ecological systems.
2. Consider the well-being of present and future generations.
3. Consider positive effects and reduce adverse effects of a designated project.
4. Apply the precautionary principle and consider uncertainty and risk of irreversible harm.

Under CEAA (2012), EAs were focussed on minimization of adverse environmental effects. Under IAA (2019), the evaluation process has evolved to include impact assessment, including both the positive and negative environmental, economic, social, and health impacts of the projects. By considering positive impacts as well as negative, decisions regarding the approval of a designated project can be considered in the context of sustainability, and negative impacts can be mitigated or minimized where possible.

In a project-specific context, the sustainability of Indigenous livelihoods, traditional land uses, and cultural values are key issues. Often, designated projects for EAs are located far from urban centres, but near or on the asserted traditional territories of one or several Indigenous Nations. The proximity of designated projects to COIs and Indigenous peoples emphasizes the importance of early engagement, but less obviously highlights the importance of engagement specifically around closure, so that the returning land use contributes positively to the local culture and provides a sustainable landscape for the future.

2.2 Engagement and consultation with Indigenous peoples: a changing relationship

A major change to the EA process with the introduction of the IAA (2019) was the addition of an early planning and engagement phase. When compared to CEAA (2012), all other application lifecycle stages are exactly the same. The early planning and engagement phase provides the framework for consistent engagement with Indigenous peoples, provincial governments, and COIs to identify and discuss concerns and issues around the project from initial stages, theoretically leading to better project design and a closure concept that is in alignment with local values and needs.

The key to IAA (2019) is the expected consistency of engagement. Under CEAA (2012), governments were (and continue to be) legally obligated to consult and accommodate potentially impacted Indigenous communities when making decisions, such as regarding the approval of a new mining project, as part of the Duty to Consult. However, the degree to which engagement took place as part of CEAA (2012) varied across provincial and territorial jurisdictions.

With the enactment of UNDRIP (2021) and development of the IAA (2019), engagement is woven throughout the assessment process, which covers all phases of the project lifecycle from inception through to closure. The intent of this ongoing engagement is to build consent with affected parties (UNDRIP, 2021), particularly through the acknowledgement of Indigenous rights and interests from the outset, and to integrate Indigenous knowledge with project development, mine planning, and closure planning.

Indigenous knowledge is critical for proponents to fully understand the existing and potential relationships between anthropogenic activities and the ecosystem, including Indigenous values that are connected to or considered part of landscapes where major projects are often proposed. As these relationships may express themselves in both direct and indirect ways, applying Indigenous knowledge obtained through generations of close cohabitation with the local environment will help proponents identify key aspects for communities in the context of the project. Engagement with Indigenous peoples is also critical for determining how a designated project may impact future generations, tying back into the principle of sustainability for designated projects as well.

3 Joint federal and provincial environmental assessment in BC

The BC Environmental Assessment Office (EAO) is the provincial counterpart to the IAAC. Since 2004, there has been an ongoing Cooperation Agreement (GoC, 2019) between the Canadian government and the BC provincial government, through the various agencies that govern impact assessments and, inherently, closure planning. The agreement comes into force in situations where a designated project falls under both federal and provincial jurisdiction, and outlines how the two governments will cooperate through the EA process while retaining decision making powers. Under the Cooperation Agreement (GoC, 2019), there are three options:

1. **Coordination:** jurisdictions coordinate activities, timelines, and documents, where possible.
2. **Substitution:** the BC EAO conducts the EA on behalf of the IAAC; however, each jurisdiction makes their own determination based on a single assessment report prepared by the proponent.
3. **Joint Review Panel:** jurisdictions jointly appoint panel members and agree on terms of reference for an independent panel to conduct the impact assessment.

Note that, regardless of the selected option under the Cooperation Agreement (GoC, 2019), the closure plan will follow the selected option. That is, the evaluation of the closure plan follows the evaluation of the EA as a whole.

The Cooperation Agreement (GoC, 2019) includes explicit directives to coordinate and collaborate with Indigenous peoples and to ensure compliance with treaty obligations at the provincial and federal level. Regardless of the option for EA evaluation, the duty to consult and ensure that all affected treaties are engaged remains with both agencies.

4 Case studies

Publicly available information for three projects currently at various stages in the EA process in BC were reviewed to explore how the new legislation has resulted in the evolution of mining ecosystems. The review focused on how sites are working to create shared value, deliver nature positive outcomes, and leave positive legacies as part of integrated closure planning.

4.1 Blackwater

The Blackwater Mine is an open pit silver and gold mine located in central BC, Canada operated by BW Gold Ltd. (BW Gold), a wholly owned subsidiary of Artemis Gold Inc. (Artemis). The mine is located approximately 160 km southwest of Prince George, BC, and 446 km northeast of Vancouver, BC (Figure 1). Based on the current resource estimate, the anticipated life of mine is 22 years (Ausenco Engineering Canada Inc. [Ausenco], 2021).

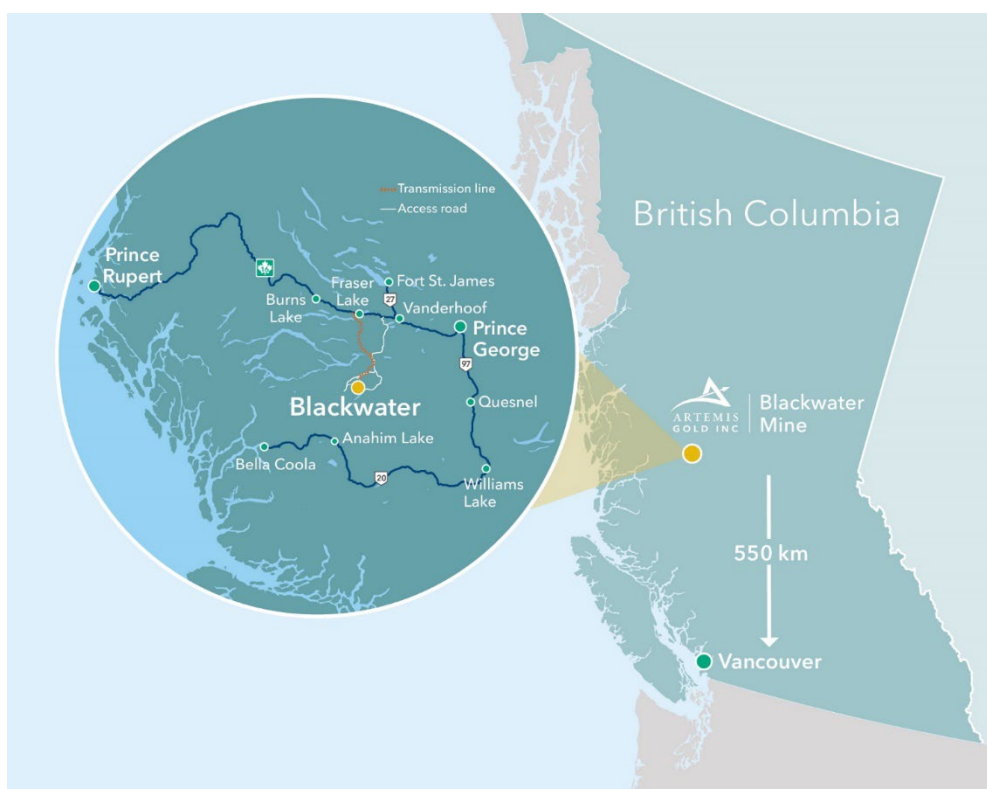


Figure 1 Blackwater project location map (Artemis, 2023)

The Blackwater mine is located in the traditional territories of the Lhoosku'uz Dene Nation (LDN) and Ulkatcho First Nation (UFN; Artemis, 2023). Artemis has also signed an impact benefits agreement with the Nazko Nation in 2021 and is in continued negotiations with the Carrier Sekani First Nations (i.e., Saik'uz First Nation, Stellat'en First Nation, and Nadleh Whut'en First Nation). It is worth noting that while all Indigenous peoples impacted by the project were consulted, the focus has been on LDN and UFN, who are directly impacted.

The proposed mine is located on Mount Davidson, which has been identified by LDN and UFN as a sacred site with traditional healing powers (Keefer Ecological Services Ltd. [KES], 2019), and is also an important traditional site for hunting and berry gathering. In a supporting document to the EA, the Aboriginal Information Requirements or Part C (KES, 2019), LDN and UFN representatives indicated that many people in the community still actively practice and depend on the hunting and gathering lifestyle; therefore, they

have indicated that the health of the land, water, and wildlife has a direct impact on their ability to continue practicing traditional and rights-based activities.

Because the perceived environmental effects of the Blackwater project were that the health of the land, wildlife, and water would be compromised, and therefore the LDN and UFN people, culture, and spirituality would be compromised. LDN and UFN retained a third party (i.e., KES) to review the EA and associated plans, such as the closure plan, to ensure that critical values, rights, and interests were considered (KES, 2019). This included the development of a methodology to quantify the severity of biophysical impacts of the proposed Blackwater mine on the LDN and UFN. The review indicated that, while many concerns were addressed through the production of monitoring and mitigation plans, the efficacy of these mitigations was unclear.

A review of BC's EAO Project Information Centre (EPIC) shows various letters, comments, and submissions from LDN and UFN over the EA process. The BC EAO, IAAC, and Artemis have engaged with LDN, UFN, and the other affected Indigenous peoples on topics including tailings storage facility (TSF) capacity, wetlands, wildlife, fisheries, and cumulative effects over multiple rounds of comments.

Engagement around the project has precipitated through many of the documents that support the EA, including the end land use plan (ELUP). The ELUP (ELUP; Artemis, 2022) was prepared to meet not just the EA condition on land use but to meet the aspirations of end land use for the project with Indigenous peoples identified through the EA, including LDN and UFN. This plan directly informs what the closure vision is for the property, and how BW Gold will meet LDN and UFN expectations around returning land use. The first objective of the ELUP is to produce sustainable conditions that support wildlife habitat as well as traditional and current use by Indigenous peoples (Artemis, 2022). BW Gold engaged with LDN and UFN on the end land use objectives, as well as the recommended plant and wildlife species, and reclamation priorities; all of these items were consequently worked into the preparation of the closure plan for the project. The wildlife habitat end land use objectives are reported as being subject to continued, iterative engagement with LDN and UFN, and may inform future updates to the closure plan that address such.

It is clear from review of the available information that the BC EAO, IAAC, and BW Gold / Artemis have and continue to engage extensively with the LDN, UFN, and other Indigenous peoples around the Blackwater project. This is evident in the public records of engagement, as well as the development of management plans geared to cultural and spiritual resources and community effects. The ongoing collaboration, including the integration of Indigenous aspirations for future land use as the first objective in end land use planning indicates that the acceptance and support of the local Indigenous communities is not taken for granted, but is part of a cultivated and ongoing relationship. This is reflected in the increasingly frequent practices of Indigenous-led impact assessment (IA), collaborative approaches to IA, and Indigenous input and design on IA components, such as the specification of Valued Components (VCs; University of British Columbia Centre for Environmental Assessment Research, 2022)

4.2 Eskay Creek

Eskay Creek is a gold and silver mine located in what is known as the 'golden triangle' in BC, Canada. The project is wholly owned by Skeena Resources Ltd. (Skeena). The project is located approximately 83 km northwest of Stewart, BC, and 125 km south of Iskut, BC (Skeena, 2023; Figure 2). Eskay Creek is located within the traditional territory of the Tahltan Nation and the asserted traditional territory of the Skii Km Lax Ha Nation.

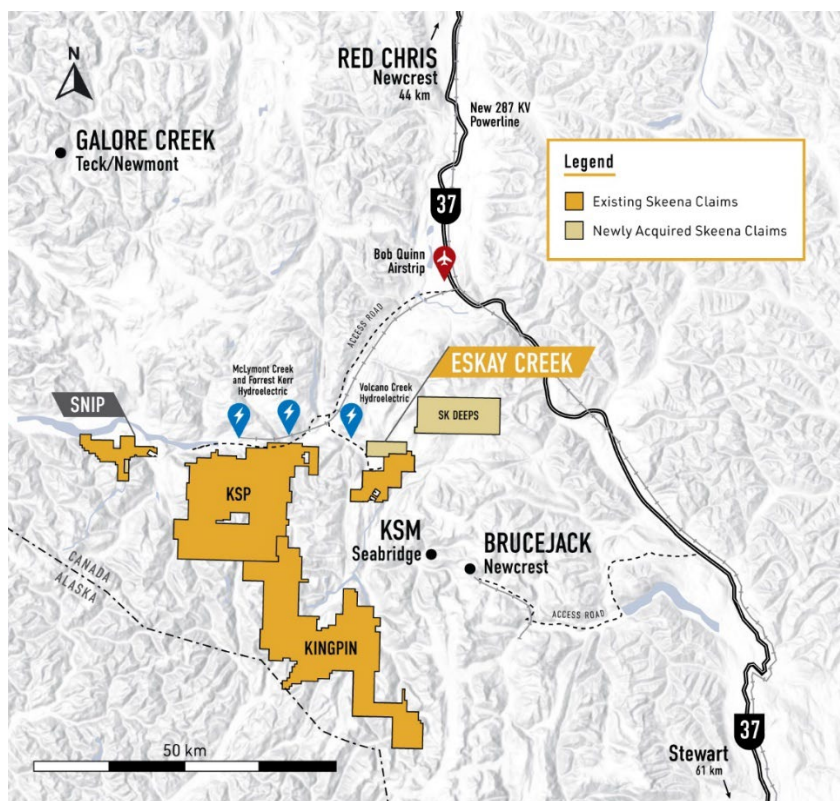


Figure 2 Eskey Creek project location (Skeena, 2023)

The history of the project dates back to initial prospecting activities in 1932 (Ausenco, 2022). Major works were completed underground from 1994 to 2008, at which point the site was considered closed. Skeena is proposing to restart the historic underground mine as an open pit mine as part of the Eskey Creek Mine Revitalization project.

In 2022, the Province and the BC EAO entered into a consent-based decision-making agreement with the Tahltan Central Government (TCG; Province of British Columbia, 2023). The agreement honours Tahltan jurisdiction in land management decisions in Tahltan Territory (Office of the Premier, 2022) and paved the way for the BC EAO and TCG to begin a collaborative review of the Eskey Creek Mine Revitalization project. In 2023, The BC EAO issued a set of Hybrid Application Information Requirements (Hybrid AIR) for the Eskey Creek project that captured not only the requirement of the IAAC and BC EAO, but also the requirements of the Tahltan Risk Assessment and an assessment of the effects to the Nisga’a Nation’s Treaty Interests (BC EAO, 2023). The Hybrid AIR is a revolutionary document, as it has an entire section devoted to Tahltan specific requirements for the application; these include:

- Laws and stewardship principles, including sustainability and generosity.
- Application of Tahltan and Indigenous knowledge in regulatory reviews.
- Tahltan values related to land, water, human health, and heritage resources.
- The effects of the project on future generations.
- The ability of the Eskey Creek Mine Revitalization project to meet Tahltan sustainability requirements.

Indigenous knowledge is an important part of the Hybrid AIR and extends to not only the Tahltan but also the Nisga’a Nation as custodians of the land.

While the Eskay Creek project is not as advanced as the Blackwater project, the level of engagement is much deeper. This is largely due to the content-based decision-making agreement with the TCG, which affords the TCG the same degree of control as the BC EAO and IAAC over the development of mine plans and closure plans. With social and environmental design principles developed by Tahltan and Skeena (Skeena, 2021), the closure vision for the site is focused on the return of a stable, revegetated site designed to mitigate potential risks. The closure plan for the site is under development but is reported to focus on land use objectives such as the preservation of wildlife habitat in the region (Skeena, 2021). The closure vision and design parameters were developed in 2021 as part of bi-weekly meetings between Skeena and the Tahltan Heritage Resources Environmental Assessment Team (THREAT).

The vision for the Eskay Creek Mine Revitalization project is to demonstrate that mining is a temporary use of the land, and that long term effects can be mitigated through proper care and planning (Skeena, 2021). Mining as a temporary land use is a diversion from the norm, where the effects of mining can remain as a scar on the landscape for generations. From available public communications, Skeena prioritizes and values engagement and reconciliation activities.

4.3 Crown Mountain

Crown Mountain is a proposed open pit coking (i.e., metallurgical, or steelmaking) coal project located in the Elk Valley in southeastern BC (NWP, 2014). The project has been proposed by NWP Canada Limited (NWP), a wholly owned subsidiary of Jameson Resources Ltd. The project is located approximately 150 km from Calgary, Alberta, and 12 km northwest from the District of Sparwood, BC (Figure 3; NWP, 2023).

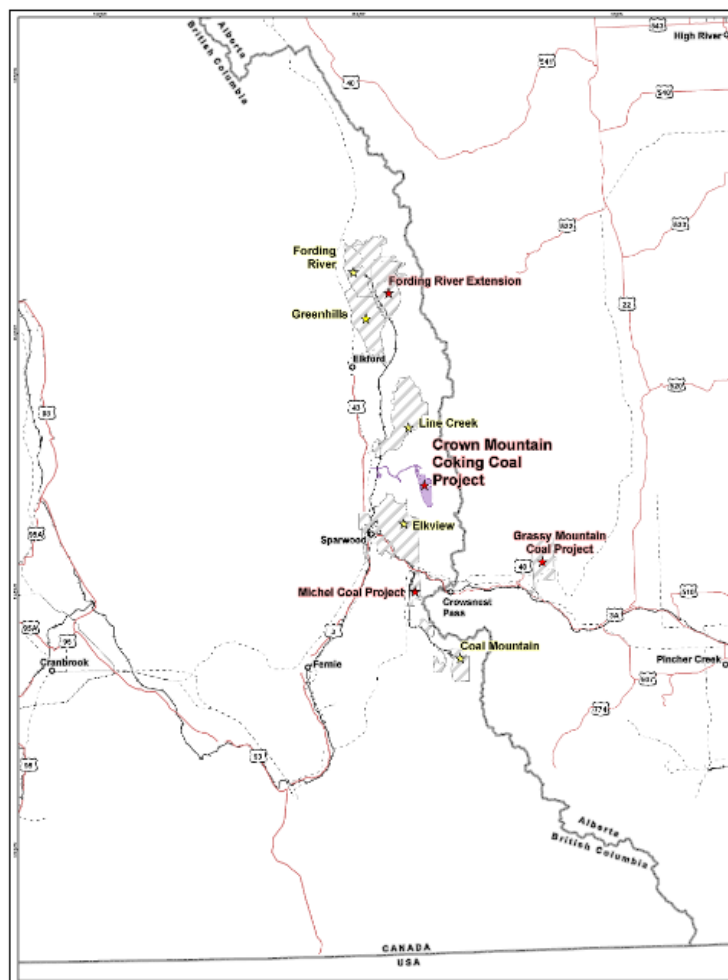


Figure 3 Crown Mountain project location (NWP, 2023)

The project is located within the traditional territory of the Ktunaxa Nation. The members of the Ktunaxa Nation Council (KNC) include:

- the ʔakisq nuk First Nation (formally the Columbia Lake Band - Windermere).
- the ʔaq am – St. Mary’s First Nation (Cranbrook).
- the yaqan nukiy – Lower Kootenay Band (Creston).
- the Yaqit ʔa-knuqʔi’it – Tobacco Plains Indian Band (Grasmere).

The project is also within the asserted traditional territory of the Shuswap Indian Band of the Shuswap Nation Tribal Council. Based on the available information, NWP did not anticipate that the project would impact the Métis Nation of BC (NWP, 2014).

While the Project Description (NWP, 2014) contains dated information on engagement, the Crown Mountain project has made significant changes recently. NWP signed an Environmental Assessment Process and Consent agreement with the Yaqit ʔa-knuqʔi’it (YQT) in 2023, whereby the YQT will act as a regulator and reviewer of the Crown Mountain EA (ASX, 2023). This is in alignment with UNDRIP (2021) and the concept of FPIC.

The consent-based agreement is the first of its kind and sets a precedent for future engagement in the region by creating shared value between the proponent and local Indigenous peoples. As the project advances under the new agreement with the YQT, it is expected that the integration of Indigenous knowledge through operations and mine closure will continue such that NWP is able to leave a lasting legacy for the region. YQT input will be foundational in the preparation of a closure plan for the project that meets the needs of the region. Furthermore, integration of YQT consent into the formal decision-making process will result in a significant role for the YQT in project development as a whole. This will allow the YQT to withdraw their consent where project advancement contradicts the values of the YQT.

5 Conclusion

The increased focus of the IAA (2019) on engagement and sustainability is already having notable impacts on how major projects in BC develop EAs and move through the permitting process. With these principles now framed as business imperatives, proponents are being forced to consider how major projects influence the well-being of current and future generations, and impact not just the environment but also society and the economy over extended timescales. The overall impact of this change in legislation is that new projects are required to take a more integrated approach to project planning and incorporate progressive reclamation early in project development, as well as ensuring end land possibilities for sites are part of the initial discussion. Indigenous peoples are partnering extensively with proponents and industry to ensure that Indigenous knowledge and values are part of the integrated approach to mine planning and closure planning. Equally, Indigenous and external stakeholder representation, consent-based processes, recognition and validation of traditional territories regardless of treaty stage, and progress towards separating ‘pre-mining conditions’ from end land use planning so the utopian view that mine closure leads to pre-mining conditions, is fading. Best practices for engagement as part of the EA process outlined in the case studies, and the implications this engagement has on closure planning, shows how increased engagement can help projects to create shared value, deliver nature positive outcomes, and leave positive legacies for new mines.

References

- Artemis Gold Inc. 2022. ‘Blackwater Gold Project End Land Use Plan’, prepared by ERM Consultants Canada Ltd. and Integral Ecology Group. November 2022.
- Artemis Gold Inc. 2023. ‘Blackwater Overview’, viewed 13 June 2023 <https://www.artemisgoldinc.com/blackwater-project/blackwater-gold-project/overview/>

- ASX 2023. 'Crown Mountain Hard Coking Coal Project Landmark Indigenous Engagement Agreement Signed', viewed 18 June 2023 <https://www.listcorp.com/asx/jal/jameson-resources-limited/news/jal-crown-mountain-landmark-indigenous-engagement-agreement-2824509.html>
- Ausenco Engineering Canada Inc. 2021, 'Blackwater Gold Project NI 43-101 Technical Report on Updated Feasibility Study, British Columbia, Canada', prepared for Artemis Gold Inc.
- Ausenco Engineering Canada Inc. 2022, 'Eskay Creek Project NI 43-101 Technical Report and Feasibility Study, British Columbia, Canada'.
- British Columbia Environmental Assessment Office 2023, 'Schedule C – Hybrid Application Information Requirements for the Eskay Creek Revitalization Project'. Proposed by Skeena Resources. 18 April 2023.
- Canadian Environmental Assessment Act, 2012, SC 2012, c 19, s 52, <<https://canlii.ca/t/52zzf>> retrieved on 2023-06-14
- Environmental Assessment Act, SBC 2018, c 51, <<https://canlii.ca/t/55xbd>> retrieved on 2023-06-14
- Impact Assessment Act, SC 2019, c 28, s 1, <<https://canlii.ca/t/543j0>> retrieved on 2023-06-14
- Government of Canada 2019, 'Impact Assessment Cooperation Agreement Between Canada and British Columbia'.
- Government of Canada 2021, 'Guidance: Considering the Extent to which a Project Contributes to Sustainability', viewed 15 June 2023 <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-considering-extent-project-contributes-sustainability.html#toc6>
- Keefer Ecological Services Ltd. 2019, 'Ulkatcho First Nation and Lhoosk'uz Dene Nation Part C – Blackwater Gold Mine Project'.
- NWP Coal Canada Ltd. 2014, 'Crown Mountain Coking Coal Project, Project Description'.
- NWP Coal Canada Ltd. 2023. 'Project Overview', viewed 18 June 2023 <https://nwpcoal.com/crown-mountain-coking-coal-project/>.
- Office of the Premier 2022, 'Tahltan Central Government, B.C. make history under Declaration Act', viewed 18 June 2023 <https://news.gov.bc.ca/releases/2022PREM0034-000899>
- Province of British Columbia 2023, '2018 Environmental Assessment Act, Regulations and Agreements', viewed 15 June 2023 <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/act-regulations-and-agreements/2018-act-regulations-and-agreements>
- Skeena Resources Ltd. 2021. 'ESG Report 2021', viewed 16 June 2023 https://skeenaresources.com/site/assets/files/6433/skeena_inaugural_esg_report_final3.pdf
- United Nations Declaration on the Rights of Indigenous peoples Act, SC 2021, c 14, < https://social.desa.un.org/sites/default/files/migrated/19/2018/11/UNDRIP_E_web.pdf>
- University of British Columbia Centre for Environmental Assessment Research 2022, 'Indigenous-Led Impact Assessment, An Introduction'.