



Lı́ıdlı́ı Kúé First Nation

P.O. Box 469, Fort Simpson, NT X0E 0N0

Phone: 867-695-3131

Fax: 867-695-2665

December 20, 2024

Seth Bohnet
Director, Strategic Infrastructure
Government of the Northwest Territories Department of Infrastructure
Seth_Bohnet@gov.nt.ca

Patricia Coyne
Manager, Mackenzie Valley Highway Environmental Affairs
Government of the Northwest Territories Department of Infrastructure
Patricia_Coyne@gov.nt.ca

Dear Mr. Bohnet and Ms. Coyne,

Subject: Requirement for Crown Consultation and Accommodation – Anticipated Adverse Impacts from the Proposed Mackenzie Valley Highway Project to the Rights of Lı́ıdlı́ı Kúé First Nation

Lı́ıdlı́ı Kúé First Nation (LKFN) met with you virtually on Thursday November 14, 2024, to discuss negotiating accommodations related to the anticipated adverse impacts to our Nation from the Mackenzie Valley Highway Project (MVH; the Project). At the meeting, you reiterated the Government of the Northwest Territories' (GNWT) position that it would not engage in formal negotiations with LKFN for accommodations related to the Project. As the Chief of LKFN, it is my responsibility to ensure that all impacts to my Nation's Treaty and Aboriginal rights and interests from activities on our territory are commensurately avoided, mitigated and accommodated. The formal negotiation of accommodations between our Nation and project proponents is the means by which we provide our consent for projects in our territory. This applies to both private sector and public sector proponents and we do not make exceptions. For this reason, I am reiterating our requirement for the GNWT to engage with LKFN to formally negotiate appropriate accommodations for the anticipated impacts of the Project on our Treaty and Aboriginal rights.

This requirement is a legal duty, grounded in the honour of the Crown. We recognize the importance of the MVH to the communities along its route that lack year-round road access, and we support efforts to create this essential connectivity. Nevertheless, the proposed Highway will have significant adverse impacts on LKFN, and those impacts will not be sufficiently accommodated by the measures proposed in the Environmental Assessment (EA). At clear risk of breaching well-established law, LKFN requires the GNWT-INF to engage with LKFN to negotiate appropriate accommodation measures.

To be clear, our request is not unusual or unprecedented. In fact, GNWT's continued rejection of our reasonable requests towards this end defies the norms, and the laws, around accommodating impacts for road projects across Canada. This letter provides further context and outlines critical next steps.

Context

When the GNWT initially proposed the Project, it did not include LKFN on its consultation list. This was a mistake and, in effect, illegal. The GNWT reached out to Dehcho First Nations (DFN), which – as the GNWT is aware – does not speak for LKFN on matters of consultation for major development projects. As a result, LKFN was not consulted in early phases of the Project, which – the GNWT has argued – has severely reduced our ability to inform key aspects of the MVH Project because the “ship has sailed”.

When LKFN commenced engagement with the GNWT on the MVH file, LKFN immediately raised the need to negotiate a process agreement, followed by negotiations on appropriate accommodations. This is standard procedure for LKFN on all major development projects within our territory. As noted repeatedly throughout our engagement, our Nation does not view the MVH proponent as different from any other private sector proponent. Likewise, the laws in this area do not recognize a meaningful distinction between private sector and public sector projects.

LKFN once again raised these concerns at the Project's technical hearings, requesting the Proponent commit to entering into formal negotiations; no satisfactory commitments have been forthcoming.

Requirements for Accommodation

The Crown has a legal duty to consult and, where appropriate, accommodate First Nations whenever the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights. This legal duty stems originally from the Supreme Court of Canada's decisions in the *Haida Nation*, *Taku River*, and *Mikisew Cree* cases. This critical legal duty has been well defined since those decisions, and it clearly applies in the context of MVH. The duty is grounded in the honour of the Crown and is a constitutional obligation enshrined in section 35 of Canada's Constitution. The duty to consult and accommodate is a legal obligation that applies at all levels of government in Canada, including territorial governments.

To be clear, and without any question, the Project will materially impact the Treaty and Aboriginal rights of LKFN. Within the Dehcho Region, LKFN will be the most adversely impacted community from this Project, other than Pehdzeh Ki First Nation. Independent LKFN/GNWT negotiations regarding appropriate accommodation of LKFN rights impacts are critical. Further refusal by GNWT to formally engage here would bring dishonour on the territorial government.

LKFN has made proactive attempts to participate within the technical evaluation of the Project and the socio-economic assessment. LKFN has also completed a Dene Knowledge report documenting our Nation's knowledge and land use near the Project, as well as our hopes and concerns associated with the Highway. Throughout our engagement, we have consistently raised concerns that – while the Project will create many benefits – it will also have many adverse impacts to LKFN, including impacts which may not be mitigated against. The social impacts within Fort Simpson, along with the impacts to the lands and waters of the Project site – an area where LKFN has extensive historical and present-day use – will be significant to our Nation.

Recent high-profile cases involving road projects and formal accommodations reached between the Crown-as-developer and First Nations are illustrative. Consider the below examples:

- Agreement between Ontario and Animbiigoo Zaagi'igan Anishinaabek, Aroland First Nation, Ginoogaming First Nation and Long Lake First Nation: <https://www.aptnnews.ca/featured/ring-of-fire-roads/>
- Agreement between Shawanaga First Nation and Ontario for the Highway 69 rebuild: <https://www.cbc.ca/news/canada/sudbury/highway-69-first-nations-safety-four-laning-1.7378791>
- The Webequie First Nation and Marten Falls First Nation agreement with Ontario for community infrastructure needs related to the impacts of the Ring of Fire roads: <https://www.timminspress.com/news/province-agrees-to-fund-shovel-ready-projects-on-first-nations>

Some of the key elements within these negotiated agreements include elements similar to those LKFN has been calling for, including:

- Funding for Indigenous workforce training and support to secure jobs related to the construction and operation of the road;
- Funding to construct and maintain a rest stop to deal with the increased traffic and roadway infrastructure needed when the new all-season road is put through, and that will create jobs and revenue for the First Nation;
- Changes to policing to address the need to ensure sufficient police support for the increased traffic levels;
- Preferential contracting opportunities to allow a First Nation Joint Venture to participate in the construction; and
- Funding for other community infrastructure projects (health, recreation, and commercial facilities to improve the readiness of the First Nations to participate in the road construction and operations opportunities).

To reiterate, the GNWT's refusal-to-date to commit to engaging in formal accommodation discussions with LKFN on MVH is a flagrant violation of the GNWT's duty to honourably consult and accommodate. It also violates the *United Nations Declaration on the Rights of Indigenous Peoples* (which is now part of established law in Canada¹), and Bill 85. The current Project is not dissimilar to those outlined above and must not be held to a lesser standard. The severity of potential impacts to LKFN rights and interests requires the GNWT to engage in "deep" consultation with LKFN and to meaningfully accommodate LKFN concerns related to potential rights impacts. Under law, it is simply not open to the GNWT to effectively take advantage of its previous failures to consult LKFN and to essentially say "it's too late to start now."

¹ See, e.g., *C-92 Reference (Reference re An Act respecting First Nations, Inuit and Métis children, youth and families)*, 2024 SCC 5, in which the Supreme Court of Canada recently concluded that UNDRIP has been "incorporated into the country's domestic positive law" (para. 15, see also para. 4).

The Crown's obligation here can only be discharged through independent, robust, and funded negotiations between LKFN and GNWT.

LKFN (and law) requires the GNWT to engage with LKFN in formal negotiations towards accommodation of anticipated adverse impacts by MVH to LKFN rights and interests. Should GNWT refuse this request, it will bring dishonour on the Crown.

Mackenzie and Liard Bridges

LKFN has notified GNWT that one important accommodation it is seeking is a commitment to provide funding for and expedite the construction of the Liard River Bridge and Mackenzie River Bridge. Our Nation views these pieces of infrastructure as critical to achieve the stated goals of the Project, and to meet our Nation's goals related to climate change, emergency preparedness and service availability. The improper consultation that occurred at the onset of this Project prevented LKFN from advocating for these important developments; the illegal actions that prevented this consultation should not prevent a serious consideration of these critical components.

We believe that advancement of the Mackenzie and Liard Bridges are clearly linked with the MVH Project. The GNWT recently communicated to LKFN that the bridges are out of scope in the context of MVH discussions. LKFN does not see that as a tenable position for the government to maintain. The bridges are required to help alleviate the impacts that MVH will undoubtedly cause to LKFN rights and interests.

A new report by the Standing Senate Committee on Transportation and Communications details a substantial infrastructure deficit in the North and describes the territories as akin to third-world countries.² The report called for a detailed plan to address transportation infrastructure needs in northern communities, emphasizing an urgent need for a federal response and underscoring that things will get worse very quickly without this. Much of what the report details includes concerns LKFN has raised that the Project will not effectively solve without the inclusion of the bridges.

LKFN has presented numerous arguments for the inclusion of these bridges, including critiquing the degree to which an intermittently-accessible Highway will appeal to business and support expansion and diversification of the territorial economy, and the degree to which "Arctic Sovereignty" – as lobbied for by Minister Michael McLeod and the Honourable RJ Simpson in a recent supplication to our federal government – will be achieved.

Clearly, any foreign body will be aware that the North is at its most vulnerable during the shoulder seasons. NATO spending should encompass these critical projects. This speaks nothing to the potential humanitarian crisis that could occur without permanent year-round access. As climate change drives more aggressive forest fires, delayed/less predictable shoulder seasons, less reliable ice roads, cancelled ferrying (including the Lafferty ferry in Fort Simpson this past year), and cancelled barging to selected areas, the North is becoming, and will continue to become, increasingly inaccessible – with or without this Highway.

To-date, the proponent has refused to engage with LKFN on pushing forward the development of the bridges. LKFN is aware that Minister Wawzonek has stated that the GNWT is not considering the construction of bridges at ferry crossings at this time and has requested a meeting to discuss this further.

² See https://sencanada.ca/content/sen/committee/441/TRCM/reports/TRCM_Climate-Infrastructure-Report_E.pdf

LKFN is exploring numerous avenues to have these bridges constructed; however, our preferred approach is to work with the GNWT. In a recent engagement with Canada Infrastructure Bank, that entity notified LKFN it could front 50% of pre-feasibility costs. We are seeking a common ground and creative solutions to help push these projects forward. We seek support from the GNWT to engage in these conversations to help unlock these important projects and, again, we see these bridge projects are linked with MVH.

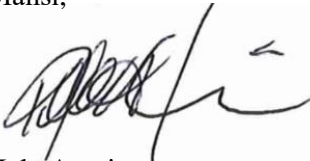
Next Steps

The Mackenzie Valley Highway is a critical piece of infrastructure and LKFN is generally supportive of its development. However, the Project will have significant adverse impacts on LKFN that must be accommodated. To ignore them is to flagrantly breach established law. LKFN requires the GNWT to formally and honourably negotiate accommodations with LKFN in this context that are commensurate with the impacts anticipated, in line with established law and the honour of the Crown.

LKFN does not wish to delay or obstruct the Project, and we will commit to working efficiently with the GNWT towards appropriate accommodations. That said, if GNWT continues to refuse to honourably consult with us towards this end, LKFN is prepared to consider and pursue all possible options at its disposal. We cannot, and will not, sit idly by while laws are being broken and while our rights are being dishonoured.

We look forward to your prompt response on this important matter and to future negotiations.

Mahsi,



Kele Antoine
First Nation Chief
Líídlíí Kúé First Nation
Box 469, Fort Simpson, NT
X0E 0N0
867-695-3131
chief@liidliikue.com

Cc.

Senator Dawn Anderson
Premier RJ Simpson
NWT MP Michael V. McLeod
Catherine Fairbairn
Malorey Nirlungayuk
Clémentine Bouche
Lorraine Land
Jamie Dickson