FIRST NATIONS MAJOR PROJECTS COALITION

FNMPC BRIEFING PACKAGE ON THE *BUILDING CANADA ACT*

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SUMMARY OF THE BUILDING CANADA ACT

- On June 6, the Government of Canada tabled Bill C-5 in the House of Commons, Part II of which is the *Building Canada Act*. It expires 5 years after enactment.
    - An accelerated Parliamentary debate is underway, which is intended to secure a positive vote in the House by June 20 and Senate by June 27.
- The Act will give the federal government new powers to streamline and expedite regulatory assessments and permitting processes for projects that are deemed by the Governor in Council to be "in the national interest." For such projects, the Act would reorient federal regulatory and permitting processes from "whether" to "how" to approve.
- Upon deeming, national-interest projects would be considered approved for all intents and purposes. A single authorization and conditions document would be issued through a new and forthcoming Federal Major Projects Office.
- Sections 21-23 of the Act will give the federal government powers to relieve and vary any legislative or regulatory requirement, including:
    - *Indian Act*
    - *Fisheries Act*, *Migratory Birds Convention Act*, *Species at Risk Act*, Marine Mammal Regulations, Metal and Diamond Mining Effluent Regulations
    - *Impact Assessment Act*, *Canadian Environmental Protection Act*
    - *Canadian Energy Regulator Act*

WHAT DOES "IN THE NATIONAL INTEREST" MEAN?

- According to the Act, the Governor in Council may consider any relevant factors, including whether a project:
    - Strengthens Canada's autonomy, resilience, and security
    - Provides economic or other benefits to Canada
    - Has a high likelihood of successful execution
    - Contributes to clean growth and meeting Canada's climate change objectives
    - Advances the interests of Indigenous Peoples
- Projects will be added to a schedule of the Act by Order-in-Council. **No projects have been identified as of June 17, 2025.**

HOW ARE INDIGENOUS RIGHTS/INTERESTS ADDRESSED?

Preamble	Commits to working in partnership with "Indigenous Governments and Peoples" and "respecting the rights of Indigenous Peoples" Recognizes and affirms Section 35 Aboriginal and treaty rights Commits to respecting UNDRIP, but does not reference the federal *UNDRIP Act*
Section 5(6)	Lists "advancing Indigenous interests" as a national interest factor
Section 5(7)	Requires Section 35 consultation before deeming a project
Section 7(2)(c)	Requires Section 35 consultation before issuing conditions document
Schedule 2	Gives the Governor in Council powers to exempt or vary the *Indian Act*

CONSIDERATIONS FOR FNMPC MEMBERS

- The Crown's duty to consult and accommodate potentially impacted First Nation rights-holders is constitutionally protected and consultation must be undertaken before deeming a project as being in the national interest and before issuing an authorizations and conditions document.
- The Government of Canada is bound by the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*, which makes several references to Free, Prior, and Informed Consent, although there are competing understandings with respect to the application of FPIC in Canada.
- Notwithstanding the Crown's duty to consult and FPIC obligations, "no" does not necessarily mean that national-interest projects won't advance. Both obligations are mainly procedural in nature—they guarantee a process, not a particular result.
    - Since projects will be expedited, a significant risk is that consultations will be insufficient to honourably discharge the duty to consult and accommodate and respect FPIC. At a minimum, First Nations will most likely have reduced opportunities to influence project decisions, conditions, and oversight through the regulatory and permitting process.
- Sections 21-23 give the Governor in Council unfettered powers to relieve or vary the application of all federal legislation and regulation, including the *Indian Act* and *Impact Assessment Act*. In addition, the *Statutory Instruments Act* will not be applicable, likely making it more difficult for First Nations to challenge decisions on administrative or procedural grounds.
    - The Act does not relieve or vary the application of specific regulatory and permitting requirements, although it does give the Governor in Council power to do so.

QUESTIONS THAT FNMPC MEMBERS MAY WISH TO ASK

- What does "advancing the interests of Indigenous Peoples" mean? What criteria will be applied?
- How can First Nations be assured that either relieving or varying the application of certain federal legislative/regulatory requirements won't diminish Aboriginal and treaty rights? What happens if there is a change in government?
- How will Section 35 consultations be conducted? How will UNDRIP be applied?
- What opportunities will be available for First Nations to conduct traditional land-use studies or studies on potential impacts to rights and interests?
- The *Indian Act* is scheduled as legislation that the Governor in Council will have the power to exempt or vary. How will the *Building Canada Act* be applied to the *Indian Act*?
- If the impact of de-listing a project is that First Nation economic beneficiaries are no longer expected to benefit, how will the federal government accommodate?

PRESS RELEASE: FNMPC RESPONSE TO FEDERAL NATIONAL INTEREST PROJECT LEGISLATION

June 6, 2025 (Coast Salish Territory): Today, the Government of Canada tabled legislation in the House of Commons to streamline the approval of major projects that are deemed by the Crown to be "in the national interest." FNMPC is calling on the Government of Canada to ensure that First Nations are true partners at every step of the process, including to ensure that the legislation and regulations explicitly respect and protect Aboriginal and treaty rights, upholds the UNDRIP principles of FPIC, and advances the economic and environmental interests of First Nations across the country. In its submission to the Government, the FNMPC emphasized that First Nations must play a central role in the decision-making process around national-interest projects and that no national strategy to improve project delivery will succeed without embedding Indigenous partnership as a foundational element

"We understand the federal government's interest in moving fast to build out Canada's next generation of nation-building energy, mining, and infrastructure projects," said Sharleen Gale, Executive Chairperson of FNMPC's Board of Directors. "But history has shown us that speed without partnership leads to delay—not progress. This legislation could be a turning point if it is designed and administered in true partnership with First Nations."

While more information is expected to become available in the coming weeks, the First Nations Major Projects Coalition (FNMPC) is encouraged that there are explicit references to the Crown's duty to consult and accommodate Indigenous rights-holders and Free, Prior, and Informed Consent (FPIC) pursuant to the federal United Nations Declaration on the Rights of Indigenous Peoples Act. In addition, the FNMPC is encouraged to see that "[advancing] the interests of Indigenous peoples" is identified as a factor that will be considered in making national-interest determinations.

"As with all initiatives seeking to expedite major project development, it is essential that the Government proceed in a way that does not repeat past policy failures. First Nations are not obstacles to developing a national economy that promises prosperity for all Canadians. First Nations oppose proposals that ignore or dismiss our legitimate concerns as constitutionally protected rights-holders in the name of expediency and create a false sense of division and tension. We want meaningful partnerships—and we expect nation-to-nation collaboration," said Mark Podlasly, CEO of FNMPC.

Many First Nations across the country are ready to partner on, lead, co-own, and own major projects that benefit the Canadian economy. The experiences of FNMPC's membership and First Nations across the country are a testament to this: projects advance faster and with much greater legitimacy when First Nations are involved from the beginning as economic beneficiaries and environmental stewards. This could include:

- Economic participation obligations in national-interest project agreements, such as equity ownership or revenue sharing with impacted rights-holders.
- Access to capital through federal loan guarantees and concessional financing, and pooled investment vehicles tailored to Indigenous priorities.
- Embedded procurement requirements to ensure Indigenous businesses and labour are integrated into project supply chains.
- Recognition of First Nation approval processes as legitimate pathways.
- Transparent metrics and reporting on Indigenous inclusion tied to project approvals.

FNMPC commends the Government for its initiative to build a stronger Canada, but the national interest must not be defined exclusively by economic interests. It must reflect the honour of the Crown, the rights of Indigenous Peoples, and the environmental and social well-being of the country and all Canadians. If designed and implemented in partnership with First Nations, the measures set out in this legislation could mark a turning point in the Crown-First Nation relationship. It could help demonstrate that faster approvals and deeper reconciliation are not mutually exclusive—but mutually reinforcing. Advancing without strong Indigenous support will diminish certainty, invite delays, and erode legitimacy, all of which would risk derailing the very outcomes that this legislation means to secure at such an important moment in Canadian history. To ensure that a positive outcome is realized, FNMPC will continue to advocate on behalf of its members to ensure a positive outcome for First Nations.

"We can be stronger together if we do this right," said Gale. "This is the moment to build a modern, inclusive approach to major project development in Canada—one that moves at the pace of trust."

GLOBE AND MAIL OP-ED: ‘National interest’ must not be defined by economic interests alone. It must also reflect the rights of Indigenous peoples

June 6, 2025 (Globe and Mail): Last week, federal Minister of Intergovernmental Affairs Dominic LeBlanc tabled the Building Canada Act in Parliament. It proposes to give authority to the federal government to expedite and streamline approvals and permits for projects deemed by cabinet to be in the national interest. The plan is to enact legislation immediately.

The desire to move fast is understandable. Our economic partnership with the United States has come undone and global energy and trade relationships are realigning rapidly. Canada must take steps to become more competitive and connected. A more efficient and resilient framework for approving major projects is a great place to start – but no strategy to improve project delivery will succeed without First Nations partnership and leadership at every step.

First Nations can be expected to oppose anything that ignores, dismisses or reduces their role as constitutionally protected rights holders in the name of expediency or convenience. History has shown us that speed without partnership and mutual respect leads to delay, not progress. Backlash in British Columbia and Ontario to similar legislation has proven this. The federal government’s decision to give First Nations just one week to submit responses to the draft legislation before tabling it on June 6 drew similar criticism.

First Nations are not obstacles to development. Many are involved in planning, building and owning roads, railways, pipelines, ports, mines, power plants, transmission lines and other infrastructure that benefit their members, communities and economies.

In British Columbia, the 10 projects selected in BC Hydro’s 2024 Call for Power all have First Nations ownership stakes. First Nations across Alberta own a diverse portfolio of assets, including bitumen pipelines, wind and solar farms, a natural gas-fired generating facility and electric transmission lines. Selkirk First Nation initiated a process to acquire the full rights to Minto Mine in the Yukon and in Manitoba, Norway House Cree Nation recently purchased the Minago mine. Taykwa Tagamou Nation and Canada Nickel formed an investment partnership to develop the Crawford Nickel Sulphide Project in Ontario.

In the Northwest Territories, 27 Dene First Nations through Denendeh Investments own 50 per cent of Naka Power. Saskatchewan, Ontario and New Brunswick First Nations are involved in the nuclear sector, from generation and transmission to isotope production and waste storage. The Canada Infrastructure Bank and Hydro-Quebec are working together to support First Nation ownership of provincial wind projects. The list goes on.

Moreover, examples abound of First Nation employment, procurement and benefit sharing. While Indigenous individuals represent 4 per cent of Canada’s total workforce, they make up 6.9 per cent in oil and gas, 10.8 per cent in mining and 9.2 per cent in forestry. First Nation businesses are also increasingly involved in supporting major project development. Billions worth of contracts were awarded for LNG Canada and TMX alone. Natural Resources Canada is tracking more than 500 relationship agreements between First Nations and mining companies (e.g., impact benefit agreements).

The depth of First Nation participation in developing the Canadian economy should surprise nobody. Projects advance faster, and with more certainty and legitimacy, when First Nations are involved at the start as constitutional rights holders, environmental stewards, economic beneficiaries and commercial partners.

We commend the government of Canada for its initiative to build a stronger Canada, but the “national interest” must not be defined exclusively by economic interests. It must reflect the rights of Indigenous peoples, the honour of the Crown and the well-being of all Canadians. If designed, implemented and executed in true nation-to-nation partnership, the measures set out in the Building Canada Act could mark a turning point in Crown-First Nation relations. They could help demonstrate that faster project approvals and deep reconciliation are not mutually exclusive but mutually reinforcing if First Nation rights and interests are protected. Respect, joint decision-making and co-developed governance is required. The proof will be in implementation and careful steps must be taken to cultivate trust and build legitimacy.

The legislation affirms the Crown’s constitutional duty to consult and accommodate, as well as the principles of Free, Prior and Informed Consent as set out in the United Nations Declaration on the Rights of Indigenous Peoples. In determining whether a project is in the national interest, advancing “the interests of Indigenous peoples” is listed as one factor. The federal government also committed to investing in capacity development to help ensure that rights holders can make informed decisions and to supporting Indigenous economic participation and equity investment so that Indigenous peoples have more opportunities to influence and benefit from projects. We recommend going even further by including:

- Indigenous employment, procurement and ownership targets and requirements

- Access to capital supports through grants, concessional loans and loan guarantees
- Recognition of Indigenous approval processes
- Transparent metrics and reporting on Indigenous inclusion tied to project approvals

Canada's Minister of Energy and Natural Resources, Tim Hodgson, remarked that "Indigenous partnership is at the heart" of the legislation. This sentiment is positive, but it raises the bar. It risks being perceived as symbolic and falling short of the nation-to-nation partnership that true reconciliation requires without concrete action. We can all be stronger together if we do this right and move at the pace of trust.

Mark Podlasly is a member of the Nlaka'pamux Nation and CEO of the First Nations Major Projects Coalition. Shaun Fantauzzo is the vice-president of policy at the First Nations Major Projects Coalition and formerly the director of Indigenous access to capital at Natural Resources Canada.

FIRST NATIONS MAJOR PROJECTS COALITION

Briefing on the Building Canada Act

June 2025

SUMMARY OF THE BUILDING CANADA ACT

- On June 6, the Government of Canada tabled Bill C-5 in the House of Commons, Part 2 of which is the *Building Canada Act*. The Act expires 5 years after enactment.
- The Act will give the federal government powers to streamline and expedite regulatory assessments and permits for projects deemed by the Governor in Council to be "in the national interest." This approach shifts from "whether" to "how" to approve.
- Once deemed, a project will be considered approved for all intents and purposes. One authorizations and conditions document would be issued through a new forthcoming Federal Major Projects Office.
- Projects will continue to be subject to regulatory and permitting requirements and proponents would still be required to "take all measures that they are required to take."
- Sections 21-23 of the Act will give the federal government powers to relieve or vary any legislative or regulatory requirement.

WHAT DOES THE PREAMBLE SAY?

- It is in the interests of Canada's economy, sovereignty, and security, including its energy security, to urgently advance projects throughout Canada, including in the North, that are in the national interest, including projects that:
  - ✓ Foster the development of economic and trade corridors
  - ✓ Connect different parts of. The country and get goods to market
  - ✓ Strengthen Canada's ability to trade
  - ✓ Enhance the development of Canada's natural resources, energy production, and infrastructure
- The Government is committed to working in partnership with provincial, territorial, and Indigenous governments and respecting the rights of Indigenous Peoples recognized and affirmed by Section 35 of the *Constitution Act* and the rights set out in the UNDRIP.
- The Government of Canada is committed to upholding rigorous standards with respect to environmental protection.

WHAT DOES "IN THE NATIONAL INTEREST" MEAN?

- The Governor in Council may consider any relevant factor, including whether a project:
  - ✓ Strengthens Canada's autonomy, resilience, and security
  - ✓ Provides economic or other benefits to Canada
  - ✓ Has a high likelihood of successful execution
  - ✓ Contributes to clean growth and meeting Canada's objectives with respect to climate change
  - ✓ **Advances the interests of Indigenous Peoples**
- Projects will be added to a schedule of the *Building Canada Act* by Order-in-Council.

No projects have been identified as of June 17, 2025

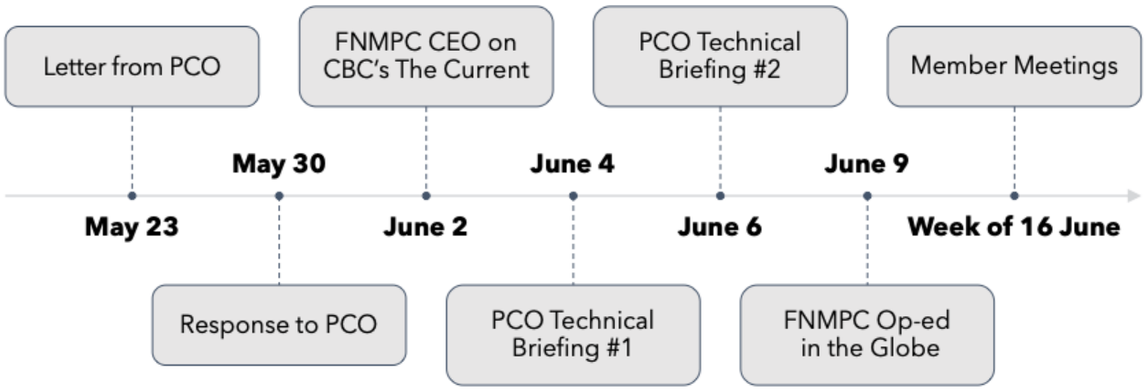
APPLICATION OF OTHER LEGISLATION/REGULATIONS

- Sections 21-23 of the *Building Canada Act* will enable the Governor in Council to relieve or vary the application of any federal legislation and regulation, including:
  - ✓ ***Indian Act***
  - ✓ *Canada Marine Act, Canadian Navigable Waters Act, Canadian Transportation Act, Fisheries Act, Migratory Birds Convention Act, Species at Risk Act*
  - ✓ *Canadian Energy Regulator Act, Canadian Environmental Protection Act, Impact Assessment Act*
  - ✓ Metal and Diamond Mining Effluent Regulations, Marine Mammal Regulations
- The Commission of the Canadian Energy Regulator and Canadian Nuclear Safety Commission must confirm that projects in their jurisdiction are safe to proceed (although Section 23 will enable the GIC to relieve or vary this requirement).
- While the *Statutory Instruments Act* will not apply, projects deemed to be in the national interest will still be published in the *Canada Gazette*.
- The Duty to Consult and Accommodate will continue to apply.

HOW ARE INDIGENOUS RIGHTS/INTERESTS ADDRESSED?

Preamble	• Commits to working with "Indigenous Governments and Peoples" • Commits to "Respecting the rights of Indigenous Peoples" • Recognizes and affirms Section 35 of the Constitution Act • Commits to respecting the UNDRIP
Section 5(6)	• Lists "advancing Indigenous interests" as a national interest factor
Section 5(7)	• Requires consultation before deeming a project
Section 7(2)(c)	• Requires consultation before issuing a conditions document.
Schedule 2	• Lists the Indian Act as an enactment that can be exempted or varied by the Governor in Council

FNMPC PARTICIPATION TO DATE



WHAT HAS FNMPC SAID TO DATE?

- Providing First Nations with just seven days to respond does not meet the standards of "in consultation and cooperation" set out in the UNDRIP Act.
- First Nations are not obstacles to project development–but ignoring or dismissing First Nations in the name of expediency will break trust and create a false sense of division.
- No national strategy to improve project delivery can succeed without meaningful First Nation partnership and leadership as a foundational element.
  - ✓ "Real progress–measured in speed and legitimacy–will require mutual respect, joint decision-making, and co-developed governance from the outset."
- The experience of FNMPC members proves that projects move faster and with more legitimacy when First Nations are involved from the start as economic beneficiaries and environmental stewards.
- **No views of FNMPC members or individual First Nations have been shared by FNMPC representatives to date.**

WHAT HAS FNMPC SAID TO DATE?

- The "national interest" must not be defined solely by economic interests. It must reflect First Nation rights, the honour of the Crown, and the well-being of all Canadians.
  - ✓ "Fast project approvals and deep reconciliation are not mutually exclusive but mutually reinforcing if First Nation rights and interests are protected."
- FNMPC has recommended the following measures and commitments be included:
  - ✓ Free, Prior, and Informed Consent every step of the way
  - ✓ First Nation employment, procurement, and ownership targets
  - ✓ Access to capital support through grants, concessional loans, and guarantees
  - ✓ Recognition of First Nation assessment processes
  - ✓ Transparent metrics and reporting
- **FNMPC issued a press release and submitted an opinion piece to the Globe and Mail stating these views and recommendations.**

CONSIDERATIONS FOR MEMBERS

- The duty to consult and accommodate potentially impacted First Nation rights-holders is constitutionally protected. Consultations will be undertaken before deeming projects in the national interest and before issuing an authorizations and conditions document.
- Although the Government of Canada is subjected to the federal *UNDRIP Act*, there are competing understandings with respect to the application of FPIC in Canada.
    - Notwithstanding the Crown's obligations, "no" does not necessarily mean that projects won't advance. Both obligations basically guarantee a process and not a particular result.
- Since projects will be expedited, a major risk is that consultations will be insufficient to uphold the duty to consult and accommodate and FPIC. At a minimum, First Nations will have reduced opportunities to influence project outcomes.
- Sections 21-23 give the Governor in Council powers to relieve or vary the application of all legislation and regulation, including the *Indian Act* and *Impact Assessment Act*. In addition, the Statutory Instruments Act does not apply, making it more difficult to challenge decisions.

QUESTIONS FOR MEMBERS TO CONSIDER ASKING

- What does "advancing the interests of Indigenous Peoples" mean? What is the criteria?
- How can First Nations be assured that relieving or varying the application of legislative or regulatory requirements won't diminish Aboriginal and treaty rights? What happens if there is a change in government?
- How will consultations be conducted? How will UNDRIP be applied?
- What opportunities will be available to conduct traditional land-use studies or studies on potential impacts to rights and interests?
- The *Indian Act* is specifically listed as a legislative enactment that the Governor in Council would have the power to exempt or vary. How is the *Building Canada Act* going to be applied to the Indian Act?
- If the potential impact of de-listing a project is that First Nation economic beneficiaries are no longer expected to benefit, how will the federal government accommodate?