

Readiness Decision Policy

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ISSUED BY:



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EAO

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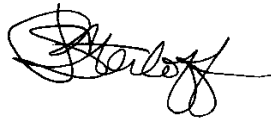
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INTRODUCTION

This document provides guidance for the readiness decision phase of an environmental assessment (EA) pursuant to sections 15 to 18 of the [Environmental Assessment Act \(2018\)](#) (Act). The primary user of this guidance will be project proponents and participating Indigenous nations. However, other participants in a provincial EA may also use this guidance document to understand the roles, responsibilities, and process during the readiness decision. This Readiness Decision Policy is to be read and interpreted in conjunction with the Act.

Purpose and Objectives of the Readiness Decision

Under section 16 of the Act, the Chief Executive Assessment Officer recommends whether or not a project should proceed to an EA that evaluates the effects of the project. This is referred to as the readiness decision.

The EAO will seek consensus with participating Indigenous nations before making a recommendation regarding the readiness decision and provide an opportunity for expression of consent for termination or exemption decisions. If consensus is not reached, a pending decision may be referred to dispute resolution.

The objectives of the readiness decision are to:

- Ensure sufficient proponent engagement with participating Indigenous nations, agencies, local governments, and the public has occurred including adequate opportunities to comment on project design, siting, and alternative approaches to developing the project;
- Ensure sufficient information is available to initiate an EA including the scope and information requirements for the project's environmental assessment;
- Transparently identify key project issues for resolution during the environmental assessment; and
- Provide for a decision if a project should be terminated or exempted from an EA.

Overview of the Readiness Decision

The early engagement phase, set out in sections 13 and 15 of the Act, provides the necessary inputs for a readiness decision, specifically:

- An understanding of how EA participants want to be engaged in the EA;
- An understanding of Indigenous nations' interests in the project area and potential project interactions with those interests;
- The Detailed Project Description, including the proponent's proposed assessment scope;
- The Summary of Engagement identifying the key issues and information gained from engagement with all parties and any direction for the Detailed Project Description; and
- Information respecting agreements reached with participating Indigenous nations.

During early engagement, the EAO engages participating Indigenous nations to develop a preliminary Understanding of Indigenous Interests to scope the EA to be reflective of the Nations' governance imperatives. Through this collaborative engagement, Nations may identify their expectations for the Detailed Project Description. This information will help inform the proponent in the preparation of their Detailed Project Description and may be included in the Summary of Engagement and will be the focus of the EAO's consensus seeking engagement with participating Indigenous nations.

The EAO will work with proponents in early engagement to proactively identify issues and assist in determining which need to be addressed during early engagement or identify the pathway to addressing the issues through the course of the EA. The EAO requires that proponents engage participating Indigenous nations and other specified parties in the

development of the Detailed Project Description. The more the proponent is able to resolve issues with parties prior to submitting the Detailed Project Description, the more this will support a quicker, more streamlined EA readiness decision phase.

The readiness decision phase begins when the proponent submits the Detailed Project Description. The EAO and participating Indigenous nations will conduct an evaluation of the Detailed Project Description against the requirements outlined in the Detailed Project Description Guideline or Exemption Policy and the direction provided in the EAO's Summary of Engagement to determine whether the information provided is adequate to inform the readiness decision including the proponent's engagement with participating Indigenous nations. The EAO will also evaluate the proponent's engagement with agencies, local governments, and the public. The evaluation will determine whether there is sufficient information to proceed to an assessment, or if there is sufficient information to address the decision criteria identified in the Act for exemption or termination decisions.

The EAO will then seek consensus with participating Indigenous nations before exercising one of the options in section 16(2) of Act:

- Require a revised Detailed Project Description;
- Proceed to an EA;
- Refer to the minister with recommendation that an assessment body conduct the assessment under Section 24;
- Recommend that the minister exempt the project from the requirement for an EA; or
- Recommend that the minister terminate the project from the process.

Dispute resolution facilitation is available if consensus cannot be reached on the following options:

- Proceed to an EA;
- Refer to the minister with recommendation that an assessment body conduct the assessment under Section 24;
- Recommend that the minister exempt the project from the requirement for an EA; or
- Recommend that the minister terminate the project from the process.

Details on the information requirements and process for each decision option are described below.

This phase ends when an EA readiness decision is made under section 17 or 18 of the Act and reasons are posted.

The timeline for this phase will vary. Factors that may influence the timelines include:

- the ability of the proponent and the EAO to proactively resolve issues during early engagement to the extent necessary for advancing in the EA;
- the extent the proponent has engaged the participating Indigenous nations and other parties in the development and review of a draft Detailed Project Description;
- the extent to which requirements identified by the EAO and participating Indigenous nations in the Summary of Engagement have adequately been addressed in the Detailed Project Description;
- if dispute resolution is triggered; and
- whether the EAO directs any additional engagement.

Where all substantive issues that are relevant to the decision have been clearly, and transparently addressed by the proponent in advance, the decision may be made within days or weeks. In cases where issues have been largely addressed, but the EAO must engage parties, the EAO will endeavor to complete this phase within 60 days. Where there remain substantive outstanding issues, there is a greater likelihood that the decision may take longer or that the proponent may be directed to address additional issues in a revised Detailed Project Description.

Below is an overview diagram of the readiness decision process.

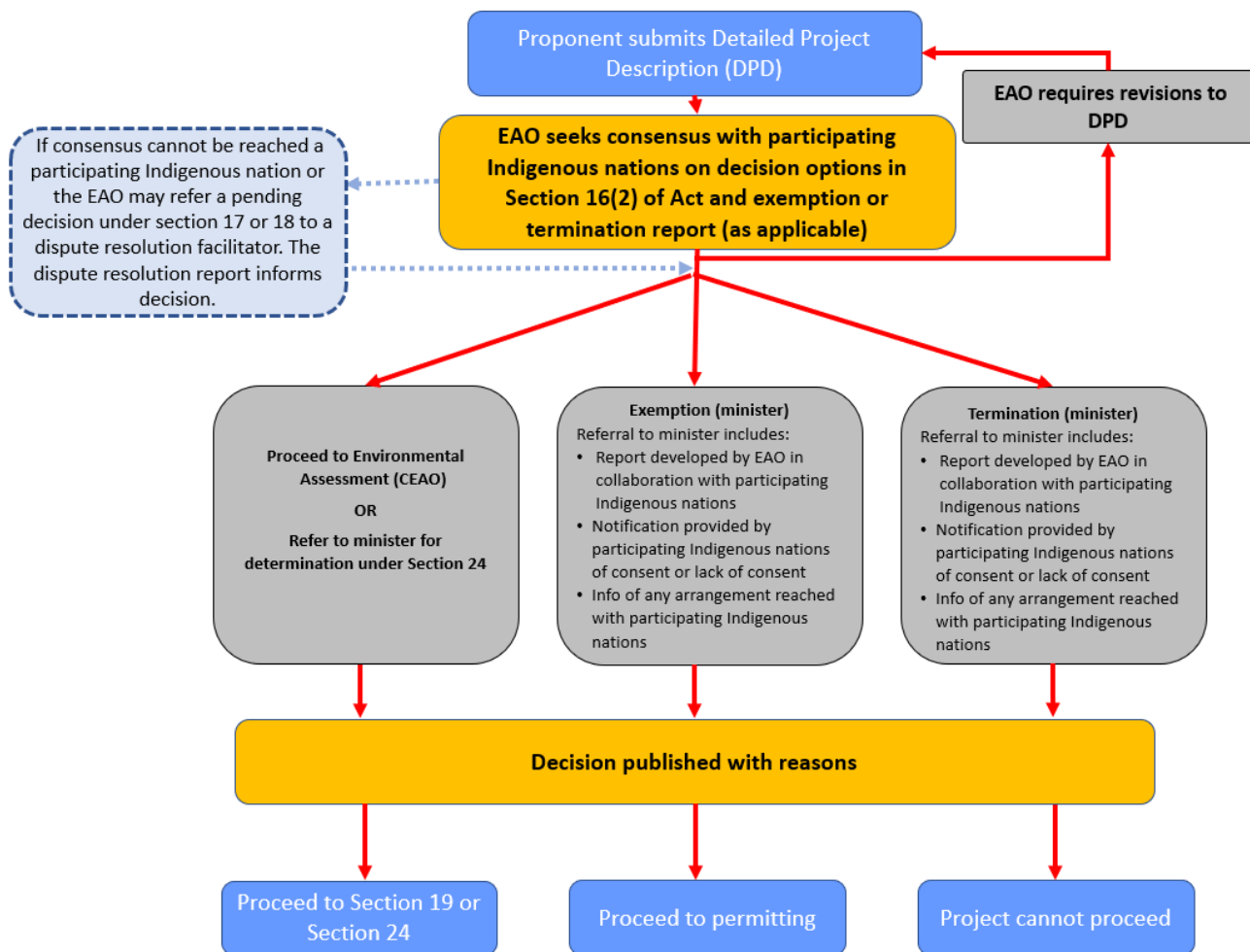


Figure 1: Readiness Decision Process Flow Diagram

READINESS DECISION

Require a Revised Detailed Project Description

If the Detailed Project Description does not provide sufficient information to make a readiness decision (i.e., the requirements of the Detailed Project Description Guideline and the issues and information requirements identified in the Summary of Engagement are not addressed), the Chief Executive Assessment Officer can require the proponent to submit a revised Detailed Project Description to address any deficiencies and to conduct further early engagement.

The [Early Engagement Policy](#) describes the role of the EAO's Summary of Engagement in identifying issues and information requirements to be addressed in the Detailed Project Description, including specific concerns of participating Indigenous nations and other parties. Considerations respecting the sufficiency of information in the Detailed Project Description include an evaluation of whether:

- the proponent sufficiently engaged with relevant parties and sought to address their input in developing the Detailed Project Description; and
- there is sufficient information to determine the project scope and scope of the assessment.

Further early engagement requirements would depend on the nature of the project and the issues raised.

Proceed to EA

Under section 18 of the Act, if the Chief Executive Assessment Officer does not require a revised Detailed Project Description or is not referring a decision to the minister for exemption or termination, the Chief Executive Assessment Officer must either:

- proceed with the EA; or
- refer the project to the minister for a determination under Section 24, with recommendations, including recommendations respecting whether the assessment should be conducted by an assessment body.

Recommendation for an Assessment Body to conduct the Assessment

The Chief Executive Assessment Officer can recommend that the minister determine the scope, procedures and methods of the assessment. The minister can require that the assessment be conducted by a commission, hearing panel, or another individual (section 24 of the Act).

Notice of Decision

The EAO will publish a notice of a decision once a determination is made to proceed with an EA, that:

- addresses consensus seeking with participating Indigenous nations;
- includes any recommendations from dispute resolution;
- identifies the key issues from early engagement to be addressed in the assessment; and
- provides reasons for the decision.

Exemption

The Chief Executive Assessment Officer may refer a project to the minister with a recommendation that the minister issue an exemption order if the Chief Executive Assessment Officer, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects of the project, considers that the project:

- will not have a significant adverse environmental, economic, social, cultural or health effect; or
- will not have serious effects on an Indigenous nation or its rights.

A proponent is required to identify that an exemption is sought at the beginning of the Early Engagement Phase in the Initial Project Description to ensure all parties are made aware of this intent and can provide feedback (see Initial Project Description Guideline and Certificate Exemption Policy). The Initial Project Description must provide sufficient evidence that there is no potential for significant adverse effects (without the conducting of a full assessment) and clearly explain the rationale used to reach these conclusions. The Detailed Project Description will require any additional information to inform the consideration of an exemption request.

Refer to the [Certificate Exemption Policy](#) for guidance on determining if a proposed project is a potential candidate for an exemption, and the information and process requirements associated with an exemption request.

Termination

In accordance with section 16(2)(c) of the Act, the Chief Executive Assessment Officer may refer a project to the minister with a recommendation that the minister issue a termination order under section 17(1)(a) if the Chief Executive Assessment Officer considers that the project, as it is described in the Detailed Project Description:

- Would have extraordinarily adverse effects
 - Generally, or
 - to an Indigenous nation or its rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- Would have extraordinarily adverse effects on a prescribed protected area;
- Is, on the advice of a minister, clearly incompatible with a government policy; or
- Is substantially the same as a project that has previously been declined or terminated.

In addition to considering whether a project would have extraordinarily adverse effects, or should otherwise be terminated for the reasons set out in section 16(2)(c), in making a decision under section 17, the minister will also consider the sustainability and reconciliation purposes of the EAO (as described in section 2 of the Act).

The EAO's engagement with relevant government agencies (provincial, federal and local), Indigenous nations and the public during early engagement would identify the potential of the project to result in extraordinarily adverse effects, incompatibility with a government policy or whether the proposed project has previously been refused.

If a participating Indigenous nation identifies what they believe to be a potentially extraordinarily adverse effect during early engagement, the EAO will seek to understand the concern, respecting the perspective of the Indigenous nation. In considering if a project presents a potential extraordinarily adverse effect, the EAO and participating Indigenous nations may want to consider the following questions:

- Will an EA, including technical studies and the development of mitigation measures, potentially inform whether this project could be acceptable?
- Can an EA be designed to sufficiently assess the potential extraordinarily adverse effect?
- Are there opportunities for the proponent to revise their Detailed Project Description to address the potential extraordinarily adverse effect?

As part of the EAO's efforts to seek consensus with participating Indigenous nations on the sufficiency of information provided in the proponent's Detailed Project Description at the readiness decision, the EAO will seek consensus regarding whether the Detailed Project Description addresses the identified concerns regarding an extraordinarily adverse effect, including how the potential effect would be adequately assessed. The nations' views will be documented and tracked in the EAO's consensus tracking. These views may be highlighted in the readiness decision materials.

Participating Indigenous nations will be provided the opportunity to submit a notice of consent or lack of consent prior to the Chief Executive Assessment Officer's recommendation to the minister to terminate an assessment of a project. This notice of consent or lack of consent may be provided in a form chosen by the Indigenous nation however would typically take the form of a letter provided by the Indigenous nation that states its position on consent and provides reasons for the nation's decision.

If the Chief Executive Assessment Officer does not recommend a project for termination or a termination order is not issued, and the project proceeds to an assessment, the reasons for that decision under section 18 of the Act would clearly communicate the key issues to be resolved in the EA.

Referral to Minister

The referral to the minister will include the notification provided by any participating Indigenous nation of its consent or lack of consent and information, if any, respecting an arrangement reached with a participating Indigenous nation in relation to the potential effects of the project on the Indigenous nation; see section 16(5)(b) and (c).

The referral to minister for a termination will include a report developed by the EAO through consensus seeking with participating Indigenous nations, addressing the following:

- Description of:
 - extraordinarily adverse effects of the project generally, or to an Indigenous nation or its rights;
 - extraordinarily adverse effects of the project to a prescribed protected area;
 - incompatibility of the project with a government policy; or
 - the efforts made by the proponent to address the issues of a previously refused version of the project proposal.
- Explanation of the grounds for the recommendation;
- Results of public engagement;
- Applicable regional or strategic assessments; and
- Consistency with any land-use plan relevant to the assessment.

The referral may also include recommendations for any conditions of a termination order.

Because the minister's decision under section 17(1)(a) must include consideration of the sustainability and reconciliation purposes of the EAO in addition to any prescribed matters, the referral materials will also include information to inform the minister's decision.

Additional engagement may be conducted on a potential termination decision including public engagement. Proponents will be provided an opportunity to be heard, through a written submission for inclusion in the referral materials, in advance of the termination referral being made to the minister.

Minister's Decision

In making an exemption or termination decision, under section 17(2) the minister must consider:

- the purpose of the office to promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities;
- the purpose of the office to support reconciliation with Indigenous peoples in British Columbia; and
- the prescribed matters, if any.

A termination or exemption order must set out the reasons for the order and must, in a case where a decision is contrary to the notification of consent or lack of consent received from participating Indigenous nations, give reasons for why the decision to issue the order was made.

A termination or exemption order does not relieve the proponent from compliance with the applicable requirements that pertain to the project under other enactments.

DISPUTE RESOLUTION

Either a participating Indigenous nation or the EAO may refer a recommendation to proceed to an EA, exempt, or terminate to dispute resolution. Where consensus cannot be reached, a time-bound dispute resolution process provides an opportunity to ensure that full efforts are made to both seek consensus and consent.

Where a decision is referred to a dispute resolution facilitator, no decision may be made until after the facilitator has provided a report. The decision maker (Chief Executive Assessment Officer for proceeding to an EA or Minister for an exemption or termination) must in the reasons for decision, reference how the facilitator's report was considered in the decision making.

Details of dispute resolution will be set out in regulation and policy.