

# COMMENTS ON THE B.C. ENVIRONMENTAL ASSESSMENT REVITALIZATION DISCUSSION PAPER

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Business Council of  
British Columbia  
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**WHERE LEADERS MEET TO UNLOCK BC'S FULL POTENTIAL**





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The Business Council offers the following comments on the above noted document.

### What Is/Is Not Changing

We understand that two components of B.C.'s current EA process are not changing:

- **One project, one assessment:** The Business Council strongly supports the continuation of this approach. The move to enable greater Indigenous participation in decision-making and the major changes planned for the federal government's impact assessment process make it even more critical to retain a one project, one assessment model.
- **Project description:** We support the current structure but would note that some tweaking of the content is likely since the province appears intent on adding new factors for environmental assessment.

We understand that the next set of items are not changing in concept, but may have some new elements:

- **Reviewable projects regulation:** We understand this regulation will remain as the guide for the types of projects subject to assessment, but that changes to project attributes (i.e., production thresholds) will undergo review beginning later this year or in 2019, as will consideration of potential additions to "what's in" or "what's out."
- **Early engagement:** British Columbia already facilitates early engagement. The *Discussion Paper* suggests a focus on formalizing this part of the process, including adding an initial project description requirement and providing for formal Indigenous and public involvement.

- **Timelines:** We understand the province remains committed to maintaining project assessment timelines.
- **Significant effects:** We understand that B.C. is retaining a “significant effects” evaluation approach for considering impacts. However, the province may augment the current focus on “negative” impacts by including provisions whereby “positive” aspects are also considered in future assessments.
- **Compliance and enforcement:** The *Discussion Paper* suggests expanding compliance and enforcement provisions in the Act, along with including additional tracking and reporting requirements.
- **Strategic assessment (SA)/cumulative impact assessment (CIA):** The current Act already provides for SA and CIA. The summary of engagement document suggests that these could become pre-requisites in certain areas, if the required information is available.
- **Public participation:** Public participation is already an integral part of the provincial review process. The *Discussion Paper* signals a desire to widen the scope for this and create more formal public comment periods.

We understand that the following items are new:

- **Indigenous peoples’ place in decision-making:** B.C. has committed, generally, to enhance the role of Indigenous people in a variety of regulatory and shared-decision making processes. Environmental assessment is one of these. The changes being contemplated in this policy area may also include an experiment with a time-bound Alternative Dispute Resolution mechanism.
- **Regional “reconciliation”/“sustainability” offices:** The *Discussion Paper* states that these “offices” are for data management and assessment along with other functions related to Indigenous peoples’ relationship-building.
- **Readiness gate:** As part of early planning, B.C. is proposing a go/no go decision point about whether a proposed project can/should proceed to the assessment phase.
- **Use of plain language and support for data integrity:** The *Discussion Paper* calls for enhanced use of plain language and a greater focus on data, data access, and data integrity.
- **New factors:** The paper raises the possibility of additional factors being incorporated into EA decision-making, including gender.

- **New terms:** Including new terms in legislation, such as sustainability and the precautionary principle, is highlighted as one of the desired outcomes of the EA revitalization process.
- **Public comments on draft assessment report and certificate:** The province is looking at an enhanced public role in commenting on draft assessment reports and draft certificates, as well as more direct opportunities for public participation in the dialogue with proponents during the review process.

### Business Council Comments

**Use of plain language and support for data integrity:** Use of plain language and efforts to strengthen data integrity and access are important. The business community and ENGOs occupy common ground when it comes to improvements in information/data management. We support investments in data infrastructure, consolidation of the myriad existing data sets, and broader access to information around B.C. that can help inform conversations rather than feed opinions. We also encourage the development of guidance for preparing “plain language” summaries of technical and scientific information, so that applications and their supporting studies are less confusing, ambiguous, or overwhelming. Concrete action on these items should increase transparency, which is one of the objectives of the EA review.

**Early planning:** B.C. already facilitates early planning, albeit informally. The Business Council supports the concept of more early planning, but with finite timelines. Codifying and constraining time, costs, and the scope of content is important. We are concerned about the possibility that the actual assessment of impacts will be moved forward; this is likely to defeat the purpose of early planning. We urge caution around scope creep based on pressures created by enhanced public engagement, changes to the roles and scope of Indigenous peoples’ involvement in EA reviews, and additional information requirements. Moving down this path is likely to have negative effects on the timelines, costs, and complexity of project reviews.

**Readiness gate:** The concept of a “gate” is a project management term. The Business Council favours greater certainty, sooner in the review process. This suggests that, at least in theory, an early go-no-go decision may be beneficial. However, we worry that, in practice, this stage will be used by those who are opposed in-principle to certain kinds of industrial activity (e.g., mining; oil and gas development) to initiate a “what businesses are we in” debate — which is not the purpose of an EA process. Absent details on the criteria to be used for decisions; the structure, function, and approach to Alternative Dispute Resolution with Indigenous peoples; and the role of the public in a formal

early planning process, the Business Council is unable to offer detailed comments on the criteria to be used for designing and implementing a readiness gate.

**Timelines:** We recommend no changes to the current B.C. timelines (in total).

**Significant effects evaluation:** Decades of environmental assessment practice and court affirmations have helped to define significant effects evaluation. We support the ongoing use of the current methods for assessing impacts, while also broadening them to include positive attributes. The details of “how to” in practice are important to facilitate additional discussion with stakeholders and provide for a balanced consideration of both positive and negative effects. Importantly, the Business Council does not support the direction taken by Canada in its new *Impact Assessment Act* and the adoption of an undefined and impractical “sustainability” test. We request that British Columbia not follow suit.

**Indigenous decision-making role consistent with the Canadian Constitution:** We believe that a strong economy and the investment in development that supports it are in part facilitated through large projects subject to Environmental Assessment reviews. The benefits from the initial investment and on-going operations enable sole source income and the self-determination for Indigenous communities that help to accelerate reconciliation. This is a shared goal of Indigenous peoples, industry leaders and governments.

The practice of shared decision-making processes occurs in BC today in the context of some Crown-to-nation agreements, and also with many business-to-Indigenous community economic benefit agreements, as one aspect of partnerships.

B.C. and the federal government are committed to advancing true reconciliation and have committed to implement UNDRIP within the context of Section 35 of the Constitution. This cannot be purely aspirational but must be practical in its ability to meet the Right and Title requirements of Indigenous people, legal jurisprudence and proponent expectations for timely, efficient process in the public interest.

Importantly, what is missing from this document is the advancement of direct government-to-government conversations to design and build the infrastructure and accountabilities and provide the resources to support an integrated regulatory framework for Indigenous peoples. Only Canada and B.C. can do this work, which must be pursued as an up-front task.

Also missing in this paper is the requirement for governance and accountability of and among Indigenous peoples that enables shared decision-making. This requires nation building, and clear governance structures and accountabilities that enable communities on a regional basis, as contemplated in Tsilqhot'in, to address shared territories and overlapping claims in the absence of Treaty. Territorial governance models will vary across the province; however, they must have mechanisms to enable legally binding participation and decision-making on behalf of Right and Title holders through shared processes that are timely and transparent.

This includes clear affirmation of who acts for communities and the Rights and Title holders, which is at issue currently in parts of the province and among some communities.

Despite public statements from the Premier and Prime Minister, the practical interpretation of free, prior and informed consent is creating expectations amounting to a yes-no outcome. This is an inferred veto that is not supported in the application of UNDRIP internationally, federally within Canada, nor in the existing jurisprudence. Decision-making is far more nuanced, and government policy should make clear that there is no blanket Indigenous peoples' veto over resource development in British Columbia.

The risk of a muddled policy approach in this area is of a series of unconnected and un-sequenced decisions, guaranteed to produce arbitrary results, raise expectations that can't be met, and generate outcomes that undercut progress leading to frustration and conflict.

In addition, we note that the *Discussion Paper* identifies opportunities for Indigenous groups to participate in the collection of baseline data, provide input or prepare aspects of a proponent's application, as well as participate in decision-making. Involvement in all dimensions of the regulatory process increases the risk of conflicts of interest and depends on organizational structures, capacity of resources, consolidated data bases and conflict provisions that do not yet exist. Clarity of structures, process and expectations is required in all aspects that relate to the roles of Indigenous communities in resource development and project assessments.

Combined, the issues raised above are pre-requisites to changes to any singular process and must include mechanisms that lead to legally binding participation and decision-making on behalf of Indigenous Right and Title holders.

### **Indigenous participation and Alternative Dispute Resolution:**

As noted, the Business Council agrees that governments must have more direct and active consultation and engagement with Indigenous people in connection with industrial and resource development. We are concerned, however, that the current patterns of delegating the cost and process demands to business and proponents will continue. This is in addition to partnerships and economic accommodation arrangements that are being pursued and successfully undertaken across all sectors in B.C.

Adequate resourcing is necessary for governments to properly fulfill their legal and fiduciary obligations to Indigenous people. As such, in concept, we support the development of a time-bound Alternate Dispute Resolution framework to support government-to-Indigenous conversations. The details are critical to avoid falling into decision-making limbo that jeopardises efficient project assessments and one project, one review approaches. A key element of any ADR system is establishing a common understanding of facts, which must be available publicly.

**Reviewable projects list:** This is an important item for the business community. As noted above, we understand that the scope and possible changes to the reviewable projects list are for later discussion. We recognize that there is a desire for more clarity on the methods used to capture projects that are slightly under a regulatory threshold. Conceptually, we support the notion of adding criteria to help differentiate the types of projects defined as reviewable. Our preference is not to stray far from the production-based method used today. We do not support the introduction of a “permit trigger” or expanded discretion for regional statutory decision-makers.

**Compliance and Enforcement (C&E):** The Business Council strongly opposes the continuing transformation of environmental assessment into a *de facto* permitting process. As such, we believe B.C. should avoid expanding the existing relevant provisions of the Act. Instead, the Business Council supports the concept of a permitting plan, clearly mapping activities and follow-on decisions from the planning assessment outcome to the authorization to commence operations. More public communication is required to educate the public on the difference between project review and project permitting. Conditions of project approval including permitting fall within the purview of legislative and statutory decision makers

### **Strategic Assessment (SA) and Cumulative impact assessment (CIA):**

We are concerned about the weight and focus being put on SA and CIA, and the potential for these activities to become pre-requisites to project initiation.



Both SA and CIA are nascent, complex processes, lacking in standardized techniques or methodology, and have few proven positive outcomes. In addition, a defensible SA and CIA is linked to clear land use planning objectives, which are not currently in place across most of British Columbia. Given this, we oppose including SA/CIA as preconditions for development. But we see value in further research on and piloting of SA and CIA in British Columbia.

**Public Engagement:** Reducing conflict is important. However, greatly expanded scope for public participation does not guarantee conflict resolution – but it does mean increased costs and more process complexity and time for government, Indigenous peoples and proponents. Importantly, the EA process must not foster or encourage a project-by-project public referendum, which is a real risk with a sharp increase in the number of intervenors – many of whom will not have specific interests or expertise relevant to a given project. Unfortunately, some will see an expanded public role as an invitation to stop projects within a certain sector on a values basis, rather than on an objective evaluation of how a proposal should or could proceed. Careful consideration is required on public engagement to reduce the risk that it becomes a means to usurp the project review process. Lastly, the expanded public engagement budgets should come from government's general revenue as opposed to being recovered through additional fees.

**Regional/sustainability offices:** Absent additional information about the scope and role of the regional/sustainability offices, we have no specific comments. In general, the Business Council recognizes the need for adequately staffed regulatory processes with skilled practitioners and professionals, as well as enhanced data management (see above). Any new organizational capacity must have adequate management oversight and operate on the basis of clear and centralized policy direction.

**Factors and Decision Criteria:** We recommend that British Columbia avoid the current problematic approach taken by the federal government in its new impact assessment legislation, which lists 20 MUST consider factors for decision-making; this promises to be unworkable and will discourage new capital projects on the land base in B.C., thus eroding the economic and reconciliation objectives being sought by the province. Any amendments considered to the B.C. legislation should use the words “MAY consider” to provide flexibility and encourage attention by decision-makers to the factors that are most relevant to a proposed project and its region. In addition, we support the inclusion of a principle or objective that ensures the most efficient (measurable) impact assessment process possible.

**New undefined terms:** The Business Council is opposed to amendments to the Act that add vague and broad-reaching terms like “precautionary principle” (which currently lacks an accepted and consistent legal definition) and “consensus.” Such terms raise expectations while creating extra legal uncertainty for proponents and capital markets.

**Public Comment on draft assessment report and certificate:** We understand that there has been some pilot testing of this concept. The decision whether to implement a legislative change along these lines must be based on the assessment and presentation of results, rather than on the assumption that such a change is a “good” idea.

**General:** We are concerned about the speed of the EA review and its timing relative to yet-to-be completed federal Impact Assessment Act. It is far more important for the government to “get it right” than to rush to complete the revitalization of the B.C. regime. We urge caution in the use of language in communications material supporting the idea that there is lack of public trust and low confidence in the B.C. regulatory system; we don’t believe this is the case. And we urge proactive relationship building with Indigenous people to increase their economic, social, and health welfare and avoid raising expectations that changes to one process is the full solution.

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The Business Council of B.C., established in 1966, is an association representing 260 large and medium-sized enterprises active in every sector of British Columbia’s economy. We are a public policy organization, providing research, analysis, commentary, and advocacy on issues relevant to strengthening Canadian and B.C. competitiveness and prosperity. We support competitive taxes, effective and nimble regulation, and responsible fiscal policies to enable vigorous business activity and provide the resources necessary to pay for education, health care, and other public services for citizens. We have a proven record of constructive policy advocacy on environmental sustainability, economic reconciliation with First Nations, innovation and productivity, climate change and energy, tax and fiscal policy, smart regulation, trade policy, and the development and attraction of skills and talent.

Our members come from all major sectors of the province’s economy, including forestry, energy, mining, manufacturing, transportation, advanced technology, health research and life sciences, tourism, retail and wholesale trade, construction, utilities, post-secondary education, and professional, scientific, and technical services. Taken together, the enterprises, academic institutions, and sectoral associations affiliated with the Business Council account for approximately one-quarter of all private sector payroll jobs in B.C.