



July 30, 2018

Teck's submission in response to the Government of British Columbia's Environmental Assessment Revitalization Discussion Paper

Overview

Operating in Canada for more than 100 years, Teck has substantive experience with environmental assessment processes, particularly in British Columbia where we have six operating mines, one of the world's largest smelting and refining complexes, and several highly prospective development projects. We are committed to environmental protection and responsible resource development and we recognize that building relationships with communities and Indigenous Peoples is fundamental to our success.

As a current and future project proponent in the province, the outcome of the BC Government's Environmental Assessment Revitalization review is critical to our potential to invest and to create jobs in the province. Overall, we support the objectives driving the BC Government's review of environmental assessment (EA) processes including enhancing public confidence; advancing reconciliation with Indigenous Peoples; and protecting the environment while enabling continued economic development. We appreciate the extensive outreach and consultations the BC Government has undertaken to inform this review. However, at the same time, we are concerned that the lack of details in the Discussion Paper makes it difficult to assess whether the potential for improvements to the EA process will actually be realized to enable good projects to move through the process in a timely and improved fashion. To this end, we are concerned that insufficient time has been allowed for this important review and that there is a risk of contributing to the compounding competitiveness challenges facing many sectors working on the land base across the province, including mining. We are of the view that if potential improvements are unrealized or worse, further impediments introduced, BC's already challenging reputation on the regulatory front will worsen.

Regulatory certainty is one of the most important factors affecting business competitiveness in BC and in Canada more broadly. International studies on regulatory matters, such as construction permitting timelines, have shown Canada is alarmingly behind other key competitors. For example, the OECD's review of construction permitting timelines found Canada 34th out of 35 countries surveyed. As a sector that has a significant portion of projects go into the EA process, a review of mining applications in the BC process indicates that the success rate for projects completing the process and mines actually being built is less than 10 percent. While there may be a multitude of reasons for this, currently the EA process in BC is already viewed as one of the most rigorous and challenging anywhere in the world.

The BC Government's decision to undertake the EA review is generating uncertainty because it is being done in parallel to the Professional Reliance model review, the introduction of the aquaculture tenure policy and the drafting of the 10 principles to guide the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This is particularly the case because it is not evident that these separate processes are informing each other, and, as such, we remain concerned that their outcomes may lead to confusion among all parties involved, including proponents, Indigenous Peoples, communities and the BC Government itself. While the goals may be laudable, much more attention is required to the detailed aspects of these regulatory-related functions.

Further, with rising geopolitical uncertainty around the world – from the unpredictable future of NAFTA to the volatile market effects of Brexit to all the consequences of potential escalation in the China-U.S. trade war – it is more important than ever that certainty and predictability underpin provincial regulatory regimes for ensuring the competitiveness of local businesses, attracting investment and continuing to drive toward a prosperous BC. If this EA revitalization process continues in isolation of the other reviews, we fear the level of uncertainty will escalate further and severely impact the economic fundamentals of this province at precisely the wrong time – missing significant opportunities to improve BC's competitiveness through stronger relations with Indigenous communities, a more open approach to innovation, and an understanding that the transition to a low-carbon economy can be a strength for BC going forward.

With the context above in mind, we offer the following comments and recommendations in response to the proposals outlined in the Discussion Paper. We also contributed to and support the Mining Association of British Columbia's (MABC) and the Association of Mineral Exploration's (AME) written submissions. While Teck's submission reflects many of the same or similar recommendations offered by MABC and AME, we have provided additional insights based on our experience as a mine operator and project proponent in BC and elsewhere around the world.

About Teck

Proudly Canadian, Teck is a diversified natural resource company and global sustainability leader with business units focused on steelmaking coal, copper, zinc and energy. Headquartered in Vancouver, we own, or have an interest in, 12 mines in Canada, the United States, Chile and Peru. In BC, we own five steelmaking coal operations in the Elk Valley; one of the world's largest fully integrated zinc and lead smelting and refining complexes in the community of Trail; a copper and molybdenum operation near Kamloops; a 50 percent share of the Neptune port facility in Vancouver; and two major mining projects in northern BC. We directly employ approximately 7,000 people in the province. Our business also supports a significant number of British Columbians indirectly across the supply chain, from our suppliers and contractors to rail and port employees.

Comments and Recommendations – Overarching Issues

There are two overarching issues that require significant consideration before an Intentions Paper and legislation are drafted. The first relates to the challenging timelines under which this legislative review is being developed. The second is the fundamental importance of ensuring that the objectives of reconciliation sought through new legislation are accessible and well understood. This includes the need for clarity on decision points and how the integration of consensus decision-making and dispute resolution will contribute to confidence and credibility in the assessment process.

The Revitalization Review Timeline

As referenced already, a target timeline of Fall 2018 to introduce new legislation does not allow for thorough consideration of significant issues that should inform the revitalization review. We heard time and again during the consultation period that the new legislation will be enabling with details on timelines and scope with alternative dispute resolution to be left to regulations that would be drafted sometime in the future. Regulatory certainty is one of the most critical factors in ensuring good projects are built. The absence of key regulations to support new legislation could lead to significant delays, compounding uncertainty and uneven application as regulators, Indigenous Peoples and proponents struggle to fill in gaps to move assessments forward in the intervening period of time between legislation introduction and regulatory details.

Coupled with this are indications that the revitalization process has not considered alignment with other provincial regulatory reviews that will directly influence the implementation of new legislation. This includes the current review of the Professional Reliance model, the impact of the 10 draft guiding principles for UNDRIP implementation, as well as the possible application of the aquaculture license policy on future EA processes. Federally, given that the Government of Canada is currently in the legislative phase of reforming its environmental assessment processes (Bill C-69, *Impact Assessment Act*), we believe it is prudent for the BC Government to consult the proposed federal process to ensure that alignment, where feasible, is achieved, particularly in terms of timelines and informational requirements for the early planning stages.

Recommendations:

Key regulations should be drafted and in force at the same time as new environmental assessment legislation. This would include providing the broad framework for regulations that address timelines, dispute resolution, and expectations for the early planning stage. Establishing this clearly will be critical to ensuring an effective implementation period that is not protracted and does not subsequently require legislative amendments.

We also recommend that government extend the EA revitalization review process to enable consideration and, where feasible, alignment with other provincial and federal legislation that overlaps or complements the proposed EA process. Of particular note, substitution remains a critically important aspect of effective EA implementation.

Reconciliation with Indigenous Peoples

Addressing Indigenous rights, interests, and participation in a revitalized EA process is of fundamental importance and constitutes an opportunity to better define and highlight BC's leadership in the efforts to move forward with economic reconciliation. We agree with and strongly support advancement of reconciliation objectives with Indigenous Peoples in BC through legislative reviews and encourage government to ensure that the EA process is just one facet of a much broader approach that covers all phases of resource development in BC. All parties – industry, government, stakeholders and Indigenous Peoples – must share confidence in the EA process for it to be successful. This requires development of clear and thorough legislation. In our review of the Discussion Paper and from our participation in meetings with government, we are concerned that shared confidence will be difficult to achieve if drafting

proceeds without first clarifying matters like the roles and responsibilities of proponents and the Crown throughout the Early Engagement stage, the process for consensus decision-making, and the outcome of contrary decision recommendations between Indigenous Peoples and the Crown. It is our view that without this clarity, the opportunity for building stronger relationships and a clearer path to undertaking EAs in BC will be missed.

Early Engagement

Teck is committed to building respectful relationships through early, inclusive dialogue and collaborative processes. This is consistent with Teck's best practices and is incorporated in our corporate-wide Indigenous Peoples Policy. While we understand a driver for the conversion of this best practice to a legislative obligation is to standardize early engagement across all EA reviews, we are concerned that the current proposal does not consider how this change may challenge established norms of engagement between proponents and Indigenous Peoples.

For example, the Discussion Paper suggests that early engagement will be led by the Crown and that discussions and structure of engagement will be driven to fulfill consultation requirements. At the same time, proponent-led early engagement may include discussions related to negotiation of Impact Management Benefit Agreements, project design, and partnership. With these different but complementary objectives, as written in the Discussion Paper, it is unclear how new legislation will manage information-sharing and coordination to facilitate an efficient and meaningful Early Engagement process given the different objectives of government-led and proponent-led engagement. Since this stage is foundational to the ability of a project to progress through the assessment stage, it is critical that these questions and details are well established and accepted by Indigenous Peoples, proponents and government before new legislation is introduced.

Moreover, for proponents with strong and in-place agreements with Indigenous communities, the governance and engagement aspects of future development may already be established. Early Engagement processes must respect and enable these processes to expeditiously recognize existing processes and enable proponents and Indigenous communities with agreements to benefit from such relationships with the Crown's understanding and engagement to reflect these positive relationships.

Recommendation:

It is critical that proponent-led early engagement practices are contemplated in the Early Engagement stage so that structure, timing, and scope of government-led engagement and proponent-led engagement are well understood by Indigenous Peoples, proponents, and government. Mechanisms for information-sharing and coordination are essential to avoid redundancies and to achieve well-informed decision-making.

Consensus Recommendations and Dispute Resolution

Teck supports BC's view that recognition of Indigenous Peoples as decision-makers in their territories will advance reconciliation and help create predictability for other users of the land. However, the Discussion Paper simply does not provide enough information about the process to generate consensus recommendations, or the relationship between a decision made by Indigenous Peoples and the decision-making authority of the provincial government. In particular, it is not clear how consensus decisions by Indigenous nations and the Environmental Assessment Office (EAO) at the Readiness Gate and

Recommendation stages will be reached, or whether there is any role for proponents in this effort. A key consideration in the relationship between Indigenous and government decisions under this process will be the extent to which the processes enabling such decisions are consistent with UNDRIP.

When decisions cannot be made on a consensus basis, an alternative option must be available to ensure EA processes are able to proceed. The Discussion Paper makes numerous references to an alternative dispute resolution (ADR), but provides no details on how ADR would be employed. For example, there is no clarity on when disputes would be moved to the ADR process, how a dispute is defined or the format of the ADR mechanism (e.g. mediation, arbitration, etc.). It is also not clear how dispute resolution processes would interact with the Crown's authority. We strongly recommend the BC Government provide greater clarity in this critical area as part of a framework package of regulatory measures that would accompany legislation. We encourage the BC Government to consult widely on ADR, particularly with respect to how such processes work in practice among the many agreements between industry and Indigenous communities.

Recommendations:

Prior to implementation of new legislation, provide a regulatory framework detailing agreement on the definition of consensus decision-making that must include direct input and agreement from Indigenous communities with strong familiarity on EAs. Importantly, there must be clarity on the relationship between a consensus decision and a decision made under authority of the Minister.

Furthermore, a detailed explanation of what is intended for the ADR process must be clearly defined before new legislation is enacted. This should include the specific circumstances under which it is triggered, the rules and form of the process and how the outcome of an ADR decision interacts with decisions of the Crown. The certainty of a final decision must be the intent of the ADR process.

Comments and Recommendations – Proposed Revitalized Process

The Discussion Paper includes a conceptual model that outlines stages of the proposed revitalized process. Overall, the very high-level description of each stage makes it difficult to comment on the feasibility and comprehensiveness of the proposed changes. That said, we offer the following comments and recommendations on the proposed project descriptions, the Readiness Gate phase, and timelines.

Initial Project Description and Detailed Project Description

We agree conceptually with the incorporation of an initial project description and detailed project description to facilitate identification of key issues of concern during the Early Engagement phase. As described in the Discussion Paper, this step should better inform proponents on design considerations that may require additional public engagement and analysis of alternative approaches. Key to this will be a requirement that the EAO provide feedback to the proponent on key issues identified at this stage. However, without details on the category of information required, the level of detail expected, and the timeline for government decisions for these deliverables, there is risk that an assessment may never progress beyond the Early Engagement phase.

Given that the concepts of an initial project description and detailed project description are contemplated in the proposed federal impact assessment process, it would be instructive for the EA review to consider the input from that process and how it may inform provincial requirements. For example, outlining the requirements for these deliverables in a regulation would achieve transparency and contribute to shared understanding of expectations among all stakeholders for the level of detail and desired outcome for this stage of the process. Additionally, timelines for the review of these deliverables along with clear thresholds of the level of detail required at this stage should be contemplated. Without this clarity, assessments will undoubtedly be stalled at this early stage of the process.

Recommendation:

Sufficient detail on the scope and review period for information required in the initial and detailed project description should be included in regulations. Development of the regulations should be informed by consultation with proponents.

Readiness Gate Phase

The proposed Readiness Gate phase is an opportunity to route potential projects along different paths. For example, the ability to move projects from the Readiness Gate to the permitting stage is encouraging when there is agreement between Indigenous Peoples and government and where concerns of impacted communities are resolved. However, the option to reject a project at this stage is one that should be used both extremely cautiously and sparingly. At this stage of an assessment, it is difficult, if not impossible, to accurately assess the full extent of potential project effects. Proponents are often able to address what seem to be major obstacles to success if they are provided with clear feedback from the EAO and Indigenous communities and given the opportunity to address those obstacles from both a design perspective and through ongoing engagement as the review proceeds. The purpose of the Readiness Gate phase should therefore be constrained to determining whether or not a proponent has met the information disclosure requirements. If so, the next step may be to fast track the project to the permitting stage or to outline issues that require further consultation.

Recommendation:

The BC Government needs to clarify who is involved in the decision-making around the Readiness Gate phase and what that decision-making process would look like in practice, particularly as the proposed Readiness Gate indicates that Indigenous communities will be co-decision makers in determining if an EA should advance past this phase. Ensuring opportunities for expedited processes – including straight to permitting options – should be clearly articulated.

Timelines

The Discussion Paper poses the question on whether timelines would be appropriate for each phase of the assessment. In this submission, we have addressed the importance of timelines for the Early Engagement phase and have outlined our concerns with the absence of certainty on timelines for proposed dispute resolution processes. Overall, we submit that timelines and clarity on how timelines are controlled is essential to a well-functioning EA process. Built into the structure should also be an opportunity to proceed more quickly through stages of the assessment. For example, in instances where a proponent and an Indigenous Nation have signed an Impact Benefit Agreement and where consultation

with potentially impacted communities has completed, the timeline to complete the Early Engagement phase should be significantly reduced. Given that the Discussion Paper does not include proposed timelines, this should be an area of further consultation before finalization of new legislation.

Recommendation:

We recommend the BC Government undertake further consultation to determine appropriate timelines for each stage of the proposed assessment process and that opportunities for advancing processes more quickly be included in this consultation.

Conclusion

In conclusion, we appreciate the importance of ensuring that British Columbians have confidence in how projects are reviewed, considered and ultimately decided upon, and we support the BC Government's overall intent to achieve this.

However, while advancing these consultations and before drafting the Intentions Paper, we urge the BC Government to strongly consider our recommendations that we believe can instill greater certainty into EA processes if implemented. As illustrated throughout our submission, regulatory certainty is one of the most important factors affecting business competitiveness in BC. And, at a time when attracting mining investment is becoming increasingly more competitive, it is critical that new EA processes address, not exacerbate, the compounding competitiveness challenges facing Teck and the BC mining sector.

As such, in parallel to the main objectives stated in the Discussion Paper, the BC Government must ensure that any changes to current EA processes are made with competitiveness considerations in mind so that these processes enable good projects to get built and support Teck and the province's mining sector to continue driving a modern and prosperous British Columbia. While not covered in detail, we believe EA legislation could also more cogently enable and reflect advances in innovation. A more enabling amendment process should be introduced that also allows for new best practices in resource management and compliance – such as remote monitoring and new earth data technologies – to be seamlessly introduced with permitting agencies.

Teck appreciates the opportunity to participate in these consultations and we thank you for considering our comments and recommendations.