

BC Environmental Assessment (EA) Revitalization Process
Business Council of BC (BCBC) – Meeting Summary
April 9, 2018 / 9:00 AM to 12:00 PM
Suite 805, 1050 West Pender Street, Vancouver, BC

Meeting Participants

- Scott Bailey, EAO
- Paul Craven, EAO
- Nathan Braun, EAO
- Fern Stockman, EAO
- Alli Morrison, EAO
- Kai Halderson, Fasken Martineau DuMoulin LLP
- Shannon Bard, Hemmera
- Jordan Bell, FortisBC
- David Bursey, Bennett Jones LLP
- Nardio Chernawsky, Blake, Cassels & Graydon LLP
- Mark Freberg, Teck
- Bryan MacLeod, Clean Energy BC
- Julia Mancinelli, Innergex Renewable Energy Inc.
- Tim McEwan, Independent Contractors and Businesses Association of BC
- Kathy Miltimore, BC Hydro & Power Authority
- Steward Mui, Resource Works
- Denise Mullen, BCBC
- Tiffany Murray, Steelhead LNG
- Mark Oikawa, Urban Development Institute
- Megan Owen-Evans, Cascadia Port Management Corporation
- Christina Proseilo, Vancouver Terminals
- Jennifer Robertson, FortisBC
- Sharon Singh, Bennett Jones LLP
- Diana Walls, Mining Association of BC
- Sandra Webster, Stantec
- Jonathon Buchanan, Association of Mineral Exploration BC

Final Summary Notes

Paul Craven, Fern Stockman, Scott Bailey and Nathan Braun presented an overview of EA revitalization, including a draft conceptual model designed to present a possible future state for discussion purposes. The following represents a summary of the discussion between the EAO and BCBC members during the meeting.

Environmental Assessment Advisory Committee (EAAC)

- What is the weight given to the recommendations made by the EAAC compared to other outreach? The EAO responded that each of the streams (refer to infographic of EA revitalization process) are important. The EAAC has the benefit of bringing individuals representing First Nations and stakeholders to the same forum. What is being heard in the direct engagements has not been fully analyzed but similar themes are emerging.

Federal Review

- Industry does not support aspects of the new proposed federal IA legislation. The province should not adopt the federal approach but ensure integration to the extent possible. The EAO responded that the province does not intend to do so. However, given the province still wants to achieve 'one project, one assessment', it is important to have alignment. Industry supports one-project-one-assessment.

Criticisms of the Current EA Process

- Where are these criticisms being heard (refer to slide deck)? Some of them untrue and may simply be expressed repeatedly by a minority. The EAO responded that they have heard similar concerns throughout the EA revitalization engagement process, as well as through years of conducting EAs.
- Members noted that just because these issues are heard does not mean they are real - they could be perceptions rather than substantive.
- Is there a conversation about why exactly these are criticisms? They could be due to communication issues as opposed to something being "broken". The EAO agreed that communication of the EA process is a challenge and should be addressed in order to increase public confidence/transparency.
- Two additional concerns were noted by BCBC: 1) inadequate consideration of the economic value of projects, and 2) high employee turn-over at the EAO which can present challenges in terms of continuity and timelines.

New Legislation

- It was noted that the BC EA process was referenced in submissions by BCBC during the federal EA review as a good model. There is a misconception that the EA process needs a complete overhaul. BCBC members notes this is an incorrect conclusion and cautioned against contributing to validating this message.
- Concerns were noted regarding the term "new legislation" and expectations for the legislative changes and messaging to the public.
- New EA legislation should be designed in a way that reflects the natural progression of project development (e.g. not expecting detailed engineering type information too early in the process when it is not available).

Regulatory Continuum

- It was noted that EA is a planning process, and should not include compliance and enforcement activities. The EAO responded that this can be challenging to navigate given existing statutes and legislation.
- Members wanted to ensure a revitalized EA Act would avoid further transformation of EA into a permitting process. There needs to be a balance given that obligations made in an EA certificate will change as more details of the project are surfaced as part of subsequent permitting.

Strategic Environmental Assessments (SEA)

- It was noted that project EAs require input from SEAs, which is the responsibility of government to undertake. Some members were sceptical of land use planning exercises (i.e. SEA and cumulative impact assessments), while other members think they are useful. Members expressed that the legislation is already enabling and no changes need to happen in this regard.

Reconciliation, Strength of Claim (SOC) and Implementation of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

- BCBC supports reconciliation with Indigenous groups. Members want to ensure that the Crown does not download the Crown's responsibilities with respect to Indigenous groups on industry.
- Selecting the approach for the involvement of Indigenous groups in the EA process early in the process would be helpful for industry in increasing certainty in the EA process. The preference is to have an agreement in place earlier on with Indigenous groups as to how an EA would be conducted.
- Concerns were expressed that the duty to consult based on SOC assigned by the province becomes the responsibility of the proponent. Reconciliation should occur between the government and Indigenous groups.
- The EAO has been successful in meeting consultation requirements as set out by the Crown, but there are also considerations related to UNDRIP in supporting confidence in the process and striving for consensus.
- How will approaches to Indigenous involvement differ for linear projects vs. site-specific projects? Is there a role for government in designing an administrative process or protocol that drives towards a similar approach for one project and prevents one Indigenous group out of 96 groups on a linear project, for example, wanting to complete an EA independent from government?
- Setting up clear expectations at the beginning of the process as to the approach to involvement of Indigenous groups will increase certainty in the EA process.
- It is important to define UNDRIP.
- A member noted that UNDRIP was developed to meet specific needs in the developing world. Industry in Canada is very progressive already in terms of engaging with Indigenous groups.
- Has the EAO completed any research on what is currently being done in practice? BCBC has two surveys with the last one conducted two years ago.

Early Engagement

- Are there timelines associated with early engagement? Without timelines, the amount of work for the proponent could be extensive, and with timelines, the amount of work for the EAO could be substantial. Yes, the EAO is determining what might be appropriate timelines for the early engagement phase. The aim is to identify issues and pathways for resolution early in the process to reduce the risk of timeline delays later in the EA process.
- A BCBC member noted that proponents are undertaking early engagement prior to project design. These early conversations are about building relationships. If these conversations were on the record it would change the type of conversations. Project descriptions should be at a high level (“less is more”), which contributes to meaningful relationship building instead of consultation as a check box.
- Engagement summaries should be more issues focused regarding how decisions were made instead of a detailed consultation record.
- For example, in designing a pipeline, it is beneficial to select a wide corridor and consult on the feasibility of the corridor with Indigenous groups and stakeholders. The goal of which is to make an appropriate route decision based on the substantive issues raised during consultation as opposed to simply getting the consultation on record.
- There are concerns with making the public and Indigenous groups de facto board members, and determining who the company is accountable to in terms of making a business case. This may simply be an issue of communication and managing expectations.

Readiness Test

- BCBC members generally agreed that it would be helpful to industry to have an initial “test” that highlighted any potential showstoppers. The current terminology in the latest conceptual model diagram regarding “early indication of the likelihood of project success” may be concerning in terms of communication as it could reflect a ‘rubber stamp’ and green-lighting a project without going through a full EA. The EAO responded that the readiness test may identify a handful of key issues with one or two that are perhaps critical path, as opposed to indicating whether or not a project will be successful.
- What is meant by “decision making opportunity for First Nations” in the conceptual model, and what if First Nations say no? The EAO responded that it is meant to provide an opportunity for First Nations to clearly identify what the key issues may be, and what is needed to advance the EA. If First Nations do not support a project early on then there should be processes in place that build consensus and define dispute resolution (including triggers for) in early agreements with First Nations. There may be a no-go zone for some First Nations, which is important to define early on. A “gate” may be a better term.
- Concerns were expressed that the readiness test may lead to a policy debate in the EA process, which is not an appropriate forum. The EAO noted that it is a ‘policy taker’.
- The readiness “test” could be considered a prioritization of issues which was generally supported by BCBC members. It was suggested that EAs should focus on the key issues and not

repeat assessments for smaller issues that have standard best management practices to mitigate impacts.

Impact Benefit Agreements (IBAs) and Capacity Funding

- A BCBC member noted it is important to recognize the role of IBAs in overcoming initial opposition to a project. New EA legislation is attempting to capture or describe the whole process including IBAs – the more success in doing so may crowd out the role of proponents in creatively addressing concerns of Indigenous groups. The increase in legislated check points, capacity funding requirements, etc., the less opportunity for private actors to achieve agreements with Indigenous groups separate to the EA process.
- The definition of UNDRIP is unclear but it is not meant to reflect decision making. Even so, we are striving for consensus through dispute resolution, which reflects a form of decision making. This could negate the benefits of IBAs in the process. Some groups have suggested that requiring IBAs may be an option.
- There were concerns that new EA legislation may put into law what is already best practice for some companies. The proponents/industry that are doing good things are being penalized due to the laggards.
- Concerns were expressed that IBAs may result in economic extortion. The cumulative financial impact of several IBAs can be challenging and limits the competitiveness of proponents. There is a danger in providing money to the public and other stakeholders to provide an opinion that is not based on facts.

Third Party Experts and Transparency

- Is it possible for the EAO to hire experts on certain issues? This could contribute to the transparency of the information. For example, the EAO could hire assessment practitioners/ project managers with dual experience in government and industry to ensure an appropriate skill mix and enable the deft sorting of issues relevant to a project based on an understanding of risk and risk management.

Data Sharing

- Suggest it may be beneficial for project proponents to share their vast amount of data that is collected over the course of an EA. Collecting this information into a usable platform would be a massive undertaking but an aspirational goal.
- Resolving data-sharing protocols among governments, data definitions/ format conflicts, and improving data storage capacity, along with developing accessible tools for mapping and analytics, is critical.

Reviewable Projects Regulation (RPR)

- Would new EA legislation apply to all projects? The EAO noted that they would continue to utilize the RPR in determining which projects would be required to go through the EA process. It

was recognized that a review of the RPR would be required moving forward. The focus right now is the EA process, but the EAO intends to engage further on the RPR. The EAO noted that not all projects might require the same depth of review.

EA Milestones/Gates

- A BCBC member noted that there are various phases and buckets in the conceptual model – each of which could be massive undertakings for proponents. It would be useful to identify milestones as you move through the process to achieve certainty for proponents.