

BC Environmental Assessment (EA) Revitalization Process
Business Council of BC (BCBC) – Meeting Summary
April 24, 2018 / 9:00 AM to 11:45 PM
Suite 805, 1050 West Pender Street, Vancouver, BC

Meeting Participants

- Paul Craven, EAO
- Nathan Braun, EAO
- Fern Stockman, EAO
- Alex Denis, EAO
- Lindsay Kislock, Mining Association of BC
- Diana Walls, Mining Association of BC
- Jonathon Buchanan, Association of Mineral Exploration BC
- Sandra Webster, Stantec
- Jordan Bell, FortisBC
- David Bursey, Bennett Jones LLP
- Sharon Singh, Bennett Jones LLP
- Donny Van Dyk, Enbridge Inc.
- Julia Mancinelli, Innergex Renewable Energy Inc.
- David Williams, BCBC
- Denise Mullen, BCBC
- Tom Syer, Teck Resources Limited

Final Summary Notes

Paul Craven, Fern Stockman and Nathan Braun provided an update on EA revitalization engagement since the previous BCBC meeting on April 9, 2018. The EAO also provided an overview of the main points of discussion from April 9th; including what industry thinks is working with the current process. The following represents a summary of the discussion between the EAO and BCBC members during the meeting:

Federal Review

- Flexibility of EAO's process is appreciated, especially as compared with some aspects of the proposed federal Impact Assessment (IA) legislation. For example, the federal section 22 factors have not allowed for this same flexibility – a problem section that needs reconsideration.
- Alignment of EA revitalization with the federal IA process and coordination with subsequent permitting authorizations will be critical to avoid duplicative requirements without adopting some of the worst elements of proposed federal IA legislation
- Industry highlighted the need to avoid simultaneous federal, provincial and First Nations' reviews of a project, as this is a risk of the new model. The EAO stated that the model of one project, one assessment will be followed.

Social/Cultural Impacts

- Are legislative changes to the social pillar planned? The EAO responded that social impact assessment policy and guidance are being developed and this evolution would occur without EA revitalization. Recommendation for the EAO to consider looking at Saskatchewan's guidance for this.
- How are cultural processes/impacts integrated during consultation on a linear project, which can involve a significant number of First Nations? Early engagement will help direct this engagement and how cultural impacts are best assessed. The process will need to be adaptable to each specific project and different tools may be required for linear projects.

Early Engagement and the Readiness Test

- Proponents require flexibility during early engagement to be creative and problem solve.
- Prematurely cutting a project off after the readiness test should require caution by the EAO. Proponents have a right to propose a project and the opportunity to resolve issues through the process.
- Concerns with proponents being seen as hiding details during engagement on the initial Project Description (PD) as in order to have a project ready to proceed through an EA, many more details would already be decided.
- The EAO would engage further on what's required in both PDs and would expect these differences to be excluded from legislation so the EAO is able to adapt on the ground and ensure both documents are effective.
- One purpose of early engagement is to unearth potential issues early on and begin discussions of alternatives, before issues are uncovered in Application Review and projects are subsequently stalled.
- Industry sees the value in demonstrating the ways in which projects have changed based on feedback and early engagement.
- Industry would aim to ensure it has appropriate levels of information at all stages of the process, for example, the detailed PD would have an executive summary.
- The EAO asked members its envisioned length of early engagement and the signal for when this stage is complete? Timeframes were discussed ranging from 30 days (for the comment period on the product of the early engagement phase) to 3 years, depending on the project. The EAO would set guidance on the expected outcomes of this stage and would want to ensure that following the readiness test, the proponent could easily move into setting information requirements.
- What is the role of the EAO during early engagement? The EAO responded to state the degree of direct involvement would vary depending on the project and would involve setting expectations and outcomes, holding community meetings, assisting in the identification of early issues and beginning First Nations consultation. Early engagement is also an opportunity for the EAO to involve the public and explain the process.
- Some kind of product should come from the EAO after the early engagement stage is complete, which is intended to inform the detailed PD.

Achieving Reconciliation

- A key concern for credible proponents is the Crown's ability to understand shared accountability and/or decision-making frameworks with First Nations, which can significantly de-risk projects. As the province is heading down a revitalized pathway, it will be critical to understand a dispute resolution process for any challenges that come up.
- The new EA act is hoped to provide the tools and commitment to allow deeper First Nations participation and determine who is best placed to evaluate different aspects. In many cases, it is First Nations that should be setting information requirements.
- How does the federal framework fit into where BC is heading with reconciliation? The EAO responded to state that reconciliation is a focus across the provincial government. The EAO has the opportunity to show how reconciliation may look in the context of an EA but acknowledges it is only a piece of the framework.
- Reconciliation involves clarity of the role of EAO/Crown versus private sector on a government to government basis.
- Industry stated the revitalized EA process would miss opportunities if the ability to accelerate aspects of the process were not included. This acceleration would occur in instances where key aspects are already in place, such as strong working relationships between parties or signed agreements.
- Economic participation of First Nations in EA is often downloaded on the proponent almost entirely. Industry stated that the Crown could assist through determining what sort of economic accommodation a project can withstand, through revenue sharing or other mechanisms. Shared territory issues have created economic leverage, in that proximity to the project can create different benefits among First Nations. Economic reconciliation is required to ensure no Nations are left behind.
- Should Impact Benefit Agreements (IBAs) be brought into the EA process? Industry responded to state that elements of this conversation could be introduced during building blocks. IBA negotiations would be smoother if the Crown and Indigenous governments have Crown/First Nations features worked out. A transparent "market" for IBAs could help with best practices.
- What is the role of First Nations in the final project decision and does EAO foresee a separate process where Nations collectively decide with the Ministers? No, the concept is that the revitalized process would include the space for a First Nation's decision on a project in advance of the Ministers' decision so the provincial decision could be informed by the First Nation's decision.

Demonstrating Independence and Neutrality

- Members noted that plain language was a simple tool brought up during the federal review to increase transparency and accessibility.
- How will the balancing of multiple factors in project decisions be clearly stated? Impacts commonly flow from intersections between pillars, such as social impacts flowing through environmental impacts. The EAO wants to ensure the balancing of decision factors is clear, as shown by the recent use and posting of documents such as the Minister's Reasons for Decision and the Recommendations of the Executive Director.

- Better early communication by EAO regarding the role and expectations of the proponent, EAO, public and First Nations will assist in increasing understanding of process, addressing issues early on and having a strong record of the process.
- The 80/20 percent rule may apply in that those who are vocal about their lack of faith in the EA process are unlikely to change their view. Members stated that EAO's obligation should be to the 80 percent who believe the EA process is effective.
- Industry is of the view that significance is a critical word for proponents, and if a significance determination is not made, there is no point in doing the science. Many values input into the proponent's determination of significance and often the end result is more opportunity for objectivity to be criticized.
- Comparing the proponent's and the EAO's significance determination can lead to disagreements instead of a focus on effects. Industry is of the view that the focus should be on proponent's data regarding mitigation measures based on best available technologies.

Iterative Development of the Application

- Addressing issues early would be helpful. Instead of just one thirty-day screening period, this approach could allow flexibility.
- Expect this approach to be challenging for the public's understanding and for other regulatory requirements.
- Proposal to have neutral specialist(s) hired by the EAO to assist on Working Groups to provide expertise. The challenges could be identifying who would fill the role and the costs associated.

Next Steps

- Discussion paper to be launched end of May/early June for a public comment period. The EAO to return June 19th, 2018 for a meeting on the paper.