

Environmental Assessment Revitalization Indigenous Implementation Committee Meeting – August 13, 2019 – 9:00 AM to 4:30 PM

Chairs: Bob Chamberlin and Scott Bailey

Attending Members:

Anna Osborne, Bruce Muir, Nicole Kapell, Angel Ransom, Chief Maureen Chapman, Ang Smith, Melanie Walker, Jackie Thomas (by phone)

EAO Attendees: Amy Avila, Nathan Braun, Danielle Smyth, Kate Haines

FNEMC Observer: Paul Blom

AFN Observer: Jamie Sanchez (Advisor to Regional Chief Teegee)

Regrets: Nalaine Morin, Sunny LeBourdais, John Risdale (Chief Na'Moks), Dave Nordquist, Verna Power

Opening Remarks

- List of priorities has set course for upcoming meetings which can be adjusted as we move forward.
- IIC noted that the pre-meeting held on August 12 was productive. EAO indicated an interest in hearing about the outcomes.
- Meeting today focused on deep dive into the Reviewable Projects Regulation.
- With some people unable to attend today's meeting EAO will ensure that all members can share their views and provide input.

Remuneration

- Several IIC members remarked that remuneration that is being offered is inadequate and that this may be the last meeting they will attend until issue is addressed.
- EAO noted that:
 - Remuneration of provincial advisory boards is provided in accordance with the Treasury Board directive which sets out the Province's remuneration framework that applies to all provincial boards including the IIC and the Stakeholder Implementation Committee.
 - The general expectation is that boards will be classified at Level 1 and the default level 1 guidelines provide remuneration only to the chair(s).
 - However, in recognition of the many factors that have been raised by the IIC, EAO made the case and was successful in its request to depart from the policy and have the committees remunerated at level 2.
 - EAO offered a solution to remuneration for half or full day pre-meetings by suggesting these meetings a collaborative forum to canvas questions, concerns, interests, etc.
 - Minister Heyman was following up with Minister Fraser on the issue. However, Minister Heyman is away until end of August therefore will be difficult for EAO to resolve before the meeting on August 27.
 - [Since August 13, further discussions have occurred between IIC Co-Chairs]

- IIC member noted that the issue has been forwarded to the Premier's Office and Leadership Council.
- The EAO reiterated a proposed solution to remunerate members for pre-meetings that relate to the IIC; IIC members remarked that it is disrespectful that a Provincial representative would have to attend the pre-meeting for the meeting to be eligible for remuneration.

Terms of Reference

- No major issues raised.
- Remuneration paragraph may require minor changes to leave space to further address the issue.
- **ACTION:** EAO to add language about ongoing remuneration discussions and that the discussions will bind parties not the TOR.
- **ACTION:** Will send out to the IIC and request any final comments within one week for final approval.
- **DECISION:** TOR adopted in principle.

Meeting Schedule

- IIC would like to have the November 4 meeting end by 2pm to allow for reporting to Leadership Council on the same day.
- A reminder was made that IIC members who cannot attend may send delegates.
- The intention is to bring back Reviewable Project Regulation (RPR) related items to the IIC meeting on October 16 (as opposed to Oct 1). May need to adjust current planned topics for October 1 as a result.
- To date meetings are planned for Vancouver until confirmation from IIC members is received about meetings to be held in a Northern location (likely Prince George).

ACTION: EAO to adjust meeting schedule to align with when RPR materials are coming to IIC.

ACTION: EAO to send a reminder request for members to determine what meeting may be held in Prince George.

SharePoint and BCEID

- EAO reminded members to set up BCEID to access SharePoint
- EAO will file all materials relevant to meetings as well as all background information
- Files will be clearly marked and organized
- Overview of SharePoint site can be given at August 27 meeting
- Printing – EAO will bring less copies next time

July 24 Meeting Minutes

- Comments/edits provided from IIC members the morning of August 13
- **ACTION:** one final edit required to fix the spelling of Bob's name.
- **DECISION:** Minutes adopted.

Leadership Council – Communication and Guest Attendance

- Terms of Reference sets out that there are three seats for observers from FNLC.

- Members of the IIC noted that the First Nations Leadership Council (FNLC) played an important role in selecting members of the IIC and that having guests attend will strengthen the linkage between technical and political levels.
- Clarification was provided that FNEMC representation is as a secretariat (sends notes, emails, reminders, location) for the IIC.
- Some IIC members reiterated the desire to present to First Nations Leadership Caucus in November.
- EAO requested that advanced notice of guest attendance be provided to the Co-Chairs and IIC members in advance.

Linkages with Stakeholder Implementation Committee (SIC) and Practitioners Group

- IIC members asked for schedule of SIC meetings
- IIC wants a member of IIC to attend SIC meetings on a regular basis and invite a member of the SIC to attend IIC meetings.
- Melanie (and potentially Bruce) have offered to represent the IIC 1-2 times at SIC meetings.
- Suggestion for a pre-meeting with the Chairs and/or a member of the SIC and IIC to review respective priorities and have an introduction to the groups prior to attending each respective meeting.
- EAO clarified that the EA Practitioners focus group is ad-hoc and IIC members confirmed that their interest is with the SIC.
- **ACTION**: EAO will share meeting schedule for SIC.
- **ACTION**: EAO will schedule a pre-meeting late August/early September between IIC and SIC

Reviewable Projects Regulation (RPR) – Context/Vision

- EAO has had many discussions across the Province directly with Nations as well as the SIC and some industry associations.
- EAO working towards having RPR intentions paper out for public comment through September. The paper will include the substance of the Regulation.
- Regulation will be at the same time as the EA Act comes into force; aiming for November.
- EAO cannot provide the drafting instructions for the Regulation itself but the EAO is providing all the substance of the proposed changes and content of the Regulation in the material provided to the IIC. The draft content of the regulation will be provided for consultation along with the Intentions Paper.
- IIC members expressed surprise to hear that consultation cannot occur on the drafting instructions for the Regulation.
- IIC requested whether EAO can point to a statute that prevents consultation on the drafting instructions for the Regulation.
- EAO clarified that the concern of the Ministry of Attorney General is waiver of solicitor client privilege.
- IIC member noted that the Province can choose to waive solicitor client privilege
- EAO reiterated that none of the substance is being held back from the Regulation and a similar model is being proposed that was used last year with the FNLC and the Act.

- In the case of RPR, the substance of the Regulation is being shared through the Intentions Paper therefore non-disclosure Agreements are not required.
- Following the public comment period, the EAO will continue to discuss the feedback received, and any potential additional changes to the RPR, with the IIC.

Presentation (EAO – Nathan provided presentation on the RPR and notes are based on discussion)

- IIC member suggested to include a trigger that looks at Projects from a lens of how they advance reconciliation and UN Declaration. The member would further turn their mind to what this specific trigger(s) may be and provide advice to the EAO, as appropriate.
- IIC noted that it is seeking to collaboratively develop EA triggers including looking at:
 - a rights-based trigger that could be used to scope in projects that may not trigger one of the other effects or design thresholds but have the potential to impact Indigenous Rights;
 - triggers that take into consideration the impacts that Nations are observing on the land and what they are concerned about regarding project impacts;
 - cumulative and multiple effects to communities being considered as part of the thresholds.
- IIC noted that MIRR is moving ahead with UNDRIP legislation that will address consent and the RPR will need to align with this legislation.
- EAO noted that:
 - Section 11 allows Indigenous Nations to request that an EA be triggered (Minister does decide)
 - The purpose of engagement with the IIC is to seek input on the proposed changes and thresholds and identify gaps, including in relation to thresholds.
 - Government to government discussions including land use planning can bring forward sensitive areas that need to be considered and may lead to a project being reviewable
 - Thresholds are proxies that are not all encompassing; projects may be below the threshold but may require an EA for some reason and that is why we have Section 11 and 10 to allow flexibility to allow projects to come into the EA process
 - The RPR is one way for projects to enter EA but the EA Act provides other paths for projects to enter EA.
 - Thresholds, including any potential threshold related to impacts to rights, would need to be clear and measurable.
 - Impacts to rights is a factor that EA considers
 - EAO previously expressed the view new EA Act very much represented an implementation of the UN Declaration. However, EAO may also consider any potential need for updates following any broader legislation related to UN Declaration.
- An IIC member indicated that they want to dive into the difference between Section 11 (which allows any party to apply to the Minister to request an EA) and a specific mechanism for Indigenous Nations to request a project be reviewed.
- IIC members noted that in their experience, Indigenous Nations have put forward requests for EA's in the past with little success therefore there are concerns that without a specific requirement related to impacts to rights in the RPR, we will not move beyond the status quo.

- IIC member inquired whether it would be possible to create a separate Regulation that is specific to Indigenous interests which could, for example, provide greater details to how the purpose of the Act is met under Section 2 or how designation occurs under Section 11.
- EAO noted that it is taking broad view of potential impacts to Indigenous nations (interests and S. 35 Rights) under the new EA Act and there may already be avenues in the Act to consider the IIC's view on triggers.

ACTION: To support further discussions on suggestions from the IIC to consider a specific “Indigenous Regulation” (related to the UN Declaration and indigenous perspectives through implementation of the Act) and/or consider a trigger in the RPR related to impacts (how Indigenous perspective and interests are represented in the RPR), EAO will complete an analysis of the Act. The analysis will consider existing mechanisms under the Act that may meet the intent of the IIC's recommendation and will inform whether Regulation is the right tool to achieve this (**analysis to be brought back to IIC Meeting on September 17 for further discussion**). **Sectors**

- EAO provided an overview of the current and proposed sectors within the scope of the RPR
- An IIC member reiterated the view that fish farms should be scoped into RPR
 - EAO noted that fish farms are primarily within Federal jurisdiction to regulate
 - IIC member noted that the Provincial grants tenure for tidal and sub-tidal lands.
 - EAO noted that shoreline and submerged land thresholds would still apply to fish farms or aquaculture (i.e. currently up to 1000m linear shore or up to 2 ha of submerged land)
- An IIC member expressed the view that timber harvesting should be scoped into the RPR. The EAO discussed the existing regulatory regime for timber harvesting, and why the nature of those tenure decisions would not constitute a major project.
- The IIC is also seeking confirmation that criteria within G2G Agreements, land use plans, accommodation commitments, etc. are used to inform triggers in the Regulation and are being used to inform Minister decision.

Project Design Thresholds

Mines

- EAO provided a detailed comparison of current RPR and proposed changes which represent the substantive instructions that have been provided to drafters of the RPR.
 - For example placer is now scoped in based on lowered pay dirt thresholds (250,000 tpy)
 - IIC member requested confirmation of how many placer mines would the proposed thresholds scope in Provincially?
 - EAO noted that it is working with EMPR to collect the data in a way that is consistent with how thresholds are proposed in the RPR.
 - **IIC expressed importance of ensuring that pay dirt data is being collected in a manner that accurately captures the current disturbance.**
 - EAO confirmed this is their intent.

Electricity

- IIC member asked about instances where transmission lines are not continuous, therefore do not trigger the RPR but cumulatively would create issues of fragmentation, cumulative effects, etc., with other projects or activities in the area.
 - EAO indicated that these potential effects would be factors that are taken into consideration when assessing impacts or they may be issues raised during discussions in Early Engagement to inform potential changes to transmission line.
- **IIC would like to explore the relationship between RPR and Regional or Strategic EA, including how triggers under the RPR may lead to a regional or strategic EA.**

Petroleum and Natural Gas

- IIC member inquired why the thresholds are based on 2030 Climate Action targets and not 2050 targets?
 - EAO indicated that this was based on advice from the Climate Action Secretariat.
 - EAO confirmed that if threshold were based on 2050 targets, based on 2017 data provided, multiple additional projects would have triggered an EA.
- **The IIC provided advice to the EAO that the threshold for GHG be set at 1% of 2050 levels.**

Transportation

- IIC member raised that (in their experience) the Ministry of Transportation and Infrastructure may be incrementally expanding or developing highways infrastructure that means individual activities are sub-threshold, but the sum of the activities would be above threshold (e.g. the expansion of the Trans Canada Highway in southeast BC).
- IIC members asked what assurances can be provided that other regulatory bodies are adhering to EA legislation and whether there is a mechanism to request a regional EA if Nations are noticing these types of effects. The EAO noted the legal restriction in the new EA Act that precludes provincial agencies and local/regional governments from issuing any authorizations related to the construction or operation of an EA-reviewable project.

Project Effects Thresholds

- IIC members asked questions about potential cumulative effects related thresholds. EAO noted that there are multiple provincial initiatives are underway (Environmental Stewardship Initiative, Collaborative Stewardship Framework, Cumulative Effects Framework, land use planning, etc.) and an outcome of a workshop held in May is to further explore linkages to these initiatives and regional or strategic EAs to determine how they align.
- IIC member asked how the outcomes of these broader provincial initiatives brought into the RPR and the decision as to whether an EA is required.
 - The EA Act references land use plans (i.e. Section 25 mandatory considerations) and EAO is taking broad consideration of what this means
 - There is broad discretion to consider how the location (region) of a project matters regardless of the design threshold.
- IIC member noted that current state of development and values is an important consideration in how thresholds are calculated.
- EAO noted that guidance for effects assessment can be tailored to ensure connections are drawn to land use planning, current conditions, etc. For example, if a regional threshold has

been established through a land use plan and a project triggers this lower threshold, this would be a consideration in whether an EA is required.

Prescribed Protected Areas

- IIC members noted that are culturally sensitive areas or gravesites that should be protected and some areas cannot be communicated clearly or put on a map because only some community members are the keepers of this knowledge.
 - EAO noted that these are very important areas to understand during the assessment of any project. EAO noted that this is an important point which is linked into Traditional Knowledge and requires further discussion on August 27.
- EAO noted that the PPA could be amended in the future to include other areas, for example Tribal Parks, if the intent is to exclude development, and if they are designated (provincially) by Cabinet or the Legislature.

Notification Thresholds

- New provision in the EA Act that requires that EAO is formally notified of certain classes of projects.
- **IIC recommends that 25% be the threshold to trigger a notification**
 - The rationale would be that Nations would have the chance to take a closer look at projects that may be project splitting, where there may not cumulative effects framework in place, etc.
- EAO noted that a higher threshold could have broader impacts (including “cool down” that should be considered). EAO also noted that many of our proposed reviewability thresholds are equal to or lower than the federal government.
- EAO’s objective of being notified is to build a better understanding of projects in close proximity to the reviewability threshold. Currently EAO is only being notified if EAO hears about it from the public or Nations, do not have the data to understand and quantify how many projects are sub-thresholds. Notification also gives an opportunity for Nations to be aware of projects in their territory. Notification is not just about bringing in more projects.
- Once EAO is notified, a project would be posted publicly and EAO would be required within 60 days to respond.
- IIC members asked when a Project would be required to provide notification to EAO?
 - EAO noted that its expectation would be at the outset of the project they would need to provide notification
 - Guidelines will be developed to outline process for how this would occur
 - Administrative penalties could potentially apply if the notification is not provided

August 27 Meeting Preparation

- Discussion occurred to inform August 27 meeting preparation. The following suggestions were provided:
 - Setting the context (morning)

- Ensure we start the meeting in a good way (i.e. with a prayer or song)
 - How should we be thinking about the relationship between IK and Western Science to develop common understanding of interaction between different knowledge systems.
 - IK is as valid as anything else.
 - Consider inviting Nicole to give a presentation for August 27 on the multiple evidence-based assessments.
- Practicalities (afternoon)
 - Security of the information and confidentiality and potential impacts if Indigenous Knowledge is not protected
 - Where and how IK would be incorporated into the assessment process
 - What happens when an Indigenous Nations does not want to share information with a Proponent?
 - How do we ensure that the Indigenous knowledge keepers are respected? (i.e. avoiding standard approach of practitioners coming in to *collect* the knowledge and then using in their own assessment)
 - Could use the deep dive session to generate questions that we want to ask the MVRB and plan for a session with them
 - Looking at MVRB as case study:
 - is this a good place to start? What are the gaps?
 - They do not define IK but they identify elements of IK that generally apply to EAs
 - Do we have the right objectives for the guidance?
- Comments and Questions from IIC to consider further on August 27:
 - IIC would welcome MVRB to attend August 27 meeting (and pre-meeting)
 - How does culture fit in?
 - Traditional foods – not just a menu choice; it's about economy, culture
 - Understanding the context and the implications of the Knowledge that will be brought forward
 - Mitigation not a good word
 - Concept of cultural humility: Need to bring cultural pieces into EA and not expect everyone to truly understand.
 - Multiple evidence-based assessments (Tengo): paper explaining multiple perspectives that are grounded in an appreciation of each.
 - Analogy (Kimmerer) – Fortress (one is better than the other), River (different perspectives rowing in same direction but not really helping each other) and Garden (multiple perspectives that are in symbiotic relationship)
 - Diverse ideas working together for common outcomes
 - Need to balance theory/academic concepts with practical or on the ground examples and steps
 - Difficult to define Indigenous Knowledge because it is so broad and means so many different things

- Not trying to “prove” traditional knowledge
- **Want to keep it simple**
- **ACTION:** Nicole to share paper on multiple evidence-based assessments.
- **ACTION:** EAO to re-circulate the MVRB and CEEA guidance.
- **ACTION:** Amy to work with Ang to develop a meeting agenda for the IK deep dive based on the discussion with the group.

Action Items

Action	Lead	Date/Status
EAO to add language about ongoing discussions about remuneration and that the discussions will bind us not the TOR.	Danielle	Complete
EAO will send out the TOR to the IIC and request any final comments within one week for final approval.	Danielle	Complete
EAO to send out reminder of instructions and IIC members to set up BCEID and SharePoint (by August 27)	Danielle	Complete
EAO to adjust meeting schedule to align with when RPR materials are coming to IIC when.	Danielle	In-progress
EAO to send a reminder request for members to determine what meeting may be held in Prince George	Danielle	Complete
One final edit required to the July 24 Minutes to fix the spelling of Bob’s name.	Danielle	Complete
EAO will share SIC meeting schedule with the IIC.	Danielle	Complete
EAO will schedule a pre-meeting late August/early September between IIC and SIC.	Danielle	In-progress
Melanie (or Bruce) may attend SIC meetings on behalf of IIC (TBD based on SIC meeting schedule.		
To support further discussions on suggestions from the IIC to consider a specific “Indigenous Regulation” (related to the UN Declaration and indigenous perspectives through implementation of the Act) and/or consider a trigger in the RPR related to impacts (how Indigenous perspective and interests are represented in the RPR), EAO will complete an analysis of the Act. The analysis will consider existing mechanisms under the Act that meet the intent of the IIC’s recommendation and will inform whether Regulation is the right tool to achieve this (analysis to be brought back to IIC Meeting on September 17 for further discussion).	TBD	
Nicole to share paper on multiple evidence-based assessments.	Nicole	Complete
EAO to re-circulate the MVRB and CEEA guidance.	Danielle	Complete
Amy to work with Ang to develop a meeting agenda for the IK deep dive based on the discussion with the group.	Amy	Complete