

Stakeholder Implementation Committee Meeting

Summary Meeting Notes

October 17, 2019, 8:30 am

SFU – Harbour Centre, 515 West Hastings Street, Vancouver BC

Chair: Paul Craven

Members: Hannah Askew, Meera Bawa, Bob Bocking, Karen Campbell, Karen Elliott, Kevin Hanna, Dana Charlton for Kai Horsfield, Matt Kennedy, Greg Knox, Carmen Holschuh, Geoff Morrison, Denise Mullen, Marla Orenstein, Ward Prystay, Gavin Smith, Rob Stevens

EAO Attendees: Scott Bailey, Amy Thede, Amy Avila, Trish Sterloff, Nathan Braun

IIC Representative: Ang Smith, Sunny LeBourdais

Regrets: none

1.0 Opening remarks

- Welcome and introduction of guests from the Indigenous Implementation Committee – Ang Smith and Sunny LeBourdais

2.0 Update on Engagement and Indigenous Implementation Committee report out

- IIC met yesterday, October 16
- Dispute resolution and Indigenous Knowledge was the focus of the discussion
- IIC has been describing the use of Indigenous Knowledge and Western Science in EA as “walking on two legs”, or “canoeing with two paddles” to illustrate how they are both needed equally in the process

3.0 Indigenous Knowledge Overview

Documents: 3.0 - Indigenous Knowledge Presentation

3.1 - Draft Indigenous Knowledge Guidance

- Next draft of IK Guidance document will have more focus on Indigenous governance – this is an outcome from recent IIC discussion
- Used Guidelines for Indigenous Knowledge from Mackenzie Valley Review Board as a starting point for the conversation, common themes, and structure
- Relationship between Indigenous knowledge and other knowledge systems and ways of knowing, and developed draft operating principles, IIC and EAO are still refining these.
- Data management pieces, for indigenous knowledge- work being done to develop policy and procedures, considering confidentiality, etc.
- Audience for this guidance is EAO staff, Proponent, and INs – clarifying this in the document
- Core principles for Indigenous Knowledge are being re-drafted and refined based on recent IIC discussions
- Context – also refers to the concept of building equity of Indigenous Knowledge, law, governance, the application or interpretation of Indigenous Knowledge has to consider each Nation where it comes from, respect their different governance structures and laws.
- IIC is going to try to articulate in a visual way the complexities around IK
- What is the intersection with an Indigenous-led assessment and not Indigenous EA?

- Respect for governance
- Through planning, process order, there is an opportunity to define what the process could look like as “walking on two legs”, hopefully a nation is not driven to do their own full assessment because they see themselves and their governance in the EA process that is developed collaboratively, and identifies when does the nation need to do its own work under s. 19(4)
- Current Culture of writing EAs is very dry, does not really allow for storytelling, voices to come forward, things get distilled to one summary sentence.
 - Is there a role for EAO to be encouraging different formats to incorporate more quotes, stories, have them woven in, to be represented in the Application or the EA report?
 - Ways to make sure the message is conveyed without stripping out the meaning
 - This is a universal theme – this would help the public as well, voices can be seen, heard, and responded to
- Is there the opportunity to include in the guidance – how does different IK from multiple different nations get reconciled into an EA? Principles or process for that?
 - All nations would be included, their needs would be accommodated into the process planning phase and assessment plan
 - EAO already does this work with multiple nations on projects
 - Dispute resolution pieces – between nations, to build relationship and clarity, a place for the discussions between nations to happen
- What is not Indigenous Knowledge?
 - E.g. is a technical review from a consultant on behalf of a nation considered IK?
 - First nations have to identify themselves what is IK
 - Difficult to compartmentalize in that way
 - It’s a perspective that can be applied across any number of things in an EA
 - It’s a large spectrum of things – a body of knowledge
- Guidance states a requirement in Detailed Project Description “*A statement indicating that the Indigenous nation supports the characterization and application of any Indigenous knowledge contained within the Detailed Project Description*”
 - Concern was raised that this requirement could pose a challenge to proponents if a Nation is against the project
 - Proponents must demonstrate a relationship or support from Indigenous Nations on how Indigenous Knowledge has been obtained, by respectfully outlining the views and being transparent
 - Early engagement and process planning phases are intended to bring clarity by the time you reach process order
- SIC discussed how will proponents actually get and use Indigenous Knowledge - practically?
 - How can conflicting information be reconciled? e.g. Wildlife studies of western science and IK on wildlife migration that may not align or show the same
 - The order in which the information is collected is important - Early engagement is about asking first, studying second
 - Proponents will be encouraged to have conversations with the right people and communities early on to get information – eg. Asking Indigenous nation where do the moose migrate – here, here and here. Could save years of study, or give direction for study.

- Summary of Indigenous Knowledge approach:
 - EAO is trying to create space for a respectful approach, for the right conversations to happen- the principled approach is a framework, a starting place for an EA.
 - Principle-based – principles can be applied to each unique situation, it is not a cookie-cutter approach, will need to revisit and apply to each project. The IK guidance is not a how-to manual, but a starting place for conversations.
 - Other ways we can get information are valuable – stories, visual, these approaches are valuable universally, not just to the INs but to the public as well.
 - Some rich examples exist of industry, EAO and nations working together

4.0 Process Planning – 2nd review

Documents: 4.0 - Process Planning Overview

4.1 - Process Planning Guidance

Process Order

- Initial identification of Valued components
 - At what point are they final?
 - After the process order, they are finalized...clarify guidance
 - Valued Components - visual display of them in the process?
- Some suggestions around removing repetition and adding clarity to these documents/guidance, addition of an example or mock project in the new process, applying an example
 - New Federal IAAC training uses example, focusing on aspects, e.g. GBA+ analysis
- EAO will consider how to make the process diagrams more understandable for all audiences
- Training is being planned for early in the new year for practitioners, proponents, participants
- Technical Advisory Committee (TAC) – when are they involved? Before the process order?
 - TAC will be established in early engagement, to inform and advise
 - Process Order is the legal instrument that formalizes the TAC but operationally it will be formed and involved in the early engagement phase
- Different projects that are related to each other in one area need to demonstrate timelines in one document
 - E.g Woodfibre plant + LNG pipeline + hydro
 - Different EAs but one goes with the other, and other below-threshold projects that may also be related, all in the same area
 - Could the Process Order identify to have one final, rolled up story and timelines in post-certificate phase – would be helpful for communities etc. re: timelines, workforce, for multiple related projects, all compiled into one place
 - The right mechanism to address this issue is a Condition – e.g. a required implementation plan in conjunction with all related projects, or give the EAO authority to require it later
 - The public, community and others need to know when things are happening - communication requirements, so they can mitigate, and be prepared
 - This is a Post-certificate issue that EAO needs to address

Assessment Plan

- Can EAO demonstrate changes that have been made/suggested from other groups?
 - Summarize changes in next draft when bring it back to SIC

- Local Government participation options and roles/responsibilities need to be more flexible and clearer, not just through TAC/CAC
 - Develop a plan with the local government for their involvement, to be defined through early engagement and formalized in process order; it would be unique to each – different governments would want to be involved in different ways
- What is the role of local gov't when an Indigenous nation is doing their own assessment?
 - Case by case, general expectations would include information flows, transparency
- When do Indigenous nations have to submit consent or lack of consent
 - before referral to ministers
 - Prior to this it would go to Dispute Resolution
 - Signal timeline where this happens in the process
- Change Request process
 - Need to develop criteria for what constitutes a change
 - This process would be meant to articulate the rationale, documenting, and demonstrating the consequences, the shifting of timelines for major changes in process in the Assessment Plan
 - Helpful to have some examples of what this could be and when it would be necessary

Information Requirements

- No major suggestions at this time

Permitting Plan

- It was noted that proponents may not know the linkages and what permits will be required until after assessments are complete
 - Eg fisheries Act authorization - may not know it's needed until studies are done
- Permitting Plan will evolve throughout the process, be updated throughout, but it is meant to start with what is known or likely
- It is also to be used as a communication tool to bring clarity to show what permitting agencies are going to do, and demonstrate where issues/mitigations will be addressed in each respective process
- Permitting plan is meant to create clarity around role of permitting agencies and the regulatory continuum
- May be useful to show an example of a permitting plan for a project
- Add a roles and responsibilities table for permitting plan – appendix 4 guidance. To show who will be involved in permitting plan, reviewing etc
- Identify transition from EA to permitting – relationships, is there a way to demonstrate this?
 - A more integrated transition, reduce repetition
 - Roles and responsibilities of INs in permitting and regulatory continuum
 - And how indigenous engagement, information and relationships are transitioned and brought along into permitting, creating a more respectful transition between groups and phases
- Regulatory continuum: Linkages to listening phase of early engagement, Process in order is EAO explaining and deciding, Transition phase to permitting agencies

6.0 Reviewable Projects Regulation (RPR)

- Public Comment Period on RPR – September 6- October 7 2019
- 28 formal submissions: 14 Industry, 7 NGO, 3 Indigenous nations, 3 Other
- 676 Complete survey responses, over 1500 including partial responses
- Demographics of respondents:
 - 85% identified as members of the public
 - 45% lower mainland, 35% Vancouver Island, 20% elsewhere
 - Over 50% have visited EAO's website and EPIC
 - About 25% have participated in an EA
- Some of the themes/views:
 - GHGs – thresholds were suggested
 - Concern about area of disturbance >600 ha –some parties suggested should be less
 - Existing projects - subthreshold, expansion over threshold – various views
 - Rights of Way – pipelines, transmission lines – differences in length, how measured and defined, compared to federal government regulation
- Is EAO applying any weighing the 1500 survey responses?
 - Not quantity over quality of survey responses
 - Looking at substantive suggestions that have been made, arguments and rationale
 - Considering the recommendations that have been made
 - Consistent with the approach we took with the Intentions Paper
- The question was raised: Has the RPR been strengthened? Will more projects be captured?
 - Some concerns that no new projects will trigger an EA , many major projects will still not be capture under proposed RPR
 - Refer to an analysis of the proposed RPR by West Coast Environmental Law
 - Eg. Placer mining, upstream oil and gas projects
- The purpose of the RPR is to capture projects with the potential for Significant Adverse Effects
- EAO is going to have to make some decisions based on input and various perspectives that have been ongoing, a wealth of material to be considered in the RPR
- Anyone can still request that a project be designated as reviewable -s.11 request to Minister
- Next steps on RPR:
 - More policy analysis
 - More engagement with other government agencies on draft RPR
 - Seeking Minister approval on direction to take
 - Many areas of acceptance within this regulation
 - Regulation gets approved by Cabinet

Prescribed Protected Areas Regulation

- EAO will circulate an update on the status

7.0 Meeting Close

- Any SIC members who want to attend IIC - 2 people per meeting, please let Scott know (an email will be sent out)
- Two more SIC meetings remain – November and December