

Stakeholder Implementation Committee

Summary Meeting Notes

October 2, 2019, 8:30 am

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

Chair: Paul Craven

Members: Meera Bawa, Bob Bocking, Carmen Holschuh, Brain McGuigan for Geoff Morrison, Gavin Smith, Kevin Hanna, Marla Orenstein, Rob Stevens, Hanna Askew, Karen Campbell, Ward Prystay, Karen Elliott,

by phone: Greg Knox,

EAO Attendees: Scott Bailey, Nathan Braun, Lindsay Luke, Amy Thede, Trish Sterloff, **by phone:** Amy Avila, Mark Haines, Fern Stockman

Regrets: Denise Mullen

Guests: None

1.0 Opening Remarks

- The chair reminded the SIC that the focus of reviewing documents is to get the content right, presentation will be considered later.

2.0 Update on Engagement and Indigenous Implementation Committee (IIC)

- IIC met October 1st
- The IIC focused on identifying what they want to prioritize in their next 4 meetings, narrowed it down to 3 main topic areas
- The IIC highlights the importance of relationship building

3.0 Effects Assessment – 2nd Review

Documents presented: 3.0 - PowerPoint – Effects Assessment

3.1 – EA Methods Draft Guidance

- The effects assessment guidance is largely an update to current guidance – *Guideline for the selection of Valued Components and Assessment of Potential Effects*. Goals were to increase clarity, reflect current practice, focus EA, and incorporate learnings from past EAs, as well as incorporate the requirements of the new Act.
- SIC Discussed the term “Interactions”. During early engagement, it’s too early to talk about effects, as we have not done effects assessment at this point. Interactions refer to how the project could interact with biophysical, social environments, and indigenous interests. Using the word interactions during early engagement, intentionally.
- SIC asked if EAO has engaged with Ministry of Health and Ministry of Environment on development of Valued Components? Sometimes the same assessment is done twice in an EA – e.g. HHRA and water quality use the same data. Duplication of the process. Could air quality and

water quality be removed as individual VCs and included in Human Health Risk Assessment (HHRA) only, to reduce duplicating efforts?

- Need to clearly demonstrate what VCs are being assessed and where, need to demonstrate clearly that nothing is left out
- EAO suggested that this issue requires more exploration and consideration, there is potential for opportunities to reduce duplications, to consider the organization and definitions of VCs, and these would have to be explored early in an EA process, on a project by project basis.
- Candidate Valued Components Considerations - Does a legally binding government requirement (e.g., regulation, management framework) already exist to protect the component? If the answer is yes, is it required to be a VC?
 - This is a consideration, not a requirement.
- Audience for this guidance is focused on practitioners but still needs to speak to other audiences, it needs to be accessible to all participants.
 - Need to include some key messages/summary and definitions for the front of this document
- Key Considerations in Evaluating Candidate Valued (table on page 17 of guidance). It was suggested that this matrix format does not narrow down the candidate list of VCs – not necessarily helpful in narrowing down. Reconsider format.
- SIC discussed the Potential Interaction Matrix (page 26 of Guidance).
 - ‘Project activity’ terminology – doesn’t often fit well with more human/social VCs.
 - This table is meant to be an illustration of how the project is going to interact with these VCs that have been selected. Consider other ways to present this information.
 - Providing examples in the guidance might be helpful
 - SIC members will provide some further input/suggestions on this
- SIC discussed the purpose of the Regional Study Area - RSA.
 - Agencies need to have the same understanding of RSA and its purpose
 - EAO will clarify this further
- SIC discussed the term ‘Enhancement’ – was flagged as potentially confusing
 - Section 3.4 in guidance – Mitigation and enhancement
 - SIC discussed role of assessment of effectiveness of mitigation, potential for third party assessments of mitigation measures
 - In the past, EAO has required Risk Assessments, escalating Information Requirements, government agencies undertaking a risk assessment when expertise available
 - Proponents present mitigation measures and the proof/rationale
 - Example of Manage Objectives and Desired End Results – MODERs in TMX anchor loop project. Post construction monitoring continued until MODER was reached.
 - Discussion of definition of ‘economically feasible’ mitigations
 - Ultimately the province decides, by imposing a condition or not. Reasonableness judgement is made by Ministers on the conditions, based on recommendations by EAO.
 - Proponents re-evaluate projects all the time based on many factors.
 - SIC discussed multiple examples of positive effects vs. mitigations
 - Consider including examples in guidance

- Offsetting was raised an issue and how it factors in to the characterization of Residual effects
 - EAO will clarify the use of offsetting in guidance
- Clarify links to Human Environment Guidance
- SIC member has some suggested rewording for Risk section

Next Steps on Effects Assessment Guidance:

- EAO will circulate updated draft for SIC comments but it will not be reviewed in a SIC meeting again

4.0 Technical Advisory Committee – 2nd Review

Documents reviewed: 4.0 - PowerPoint - Technical Advisory Committee

4.1 - Technical Advisory Committee draft Terms of Reference

- Technical Advisory Committee (TAC) draft Terms of Reference has been updated based on input
- Consensus seeking is between EAO and INs – TAC not bound by this.
 - TAC is striving towards consensus but achieving it might not be the outcome
- Suggested change: Local Government can participate on CAC and/or TAC
- Would comments all be attributed to individuals? E.g. in TAC meeting notes
 - Typically attributing to organization, not name, and usually they are summary notes
- Expectations of TAC – addition of “within the mandate of their organization”
- External communications – Order being developed on what documents will be made public?
 - EAO will report back on status of the draft Order
- EAO will seek to improve clarity around TAC members responsibility around communications with their organizations about the EA.
- External communications
 - Who speaks for the TAC?
 - EAO does
- TAC TOR should address role of the proponent and their technical experts at TAC meetings
 - Are they considered observers? Guests?
 - Participation of project proponents – add this heading. Clarify rationale about why and when they would be invited or not.
- Process and criteria for when independent expert is appropriate or not?
- Transparency around where consensus wasn’t reached
 - Consensus is not always the goal on TAC, although it is strived for
- Suggestion to look EPA – Principles of scientific integrity as an example
- Will this TOR be reviewed and signed off by TAC members?
 - This is meant to be a standard version to be tailored for each project, signed off by members and posted publicly
 - Explicitly add this information on sign off and posting for clarity
- EAO will seek to add clarity on when the tools such as independent reviews would be used

Next steps on TAC TOR:

- We will circulate this doc again once updated, but no further discussion.

5.0 Dispute Resolution

5.0 - Dispute Resolution Presentation

- Initial conversation on Dispute Resolution started at IIC two meetings ago
- Content of Assessment Report as point of dispute resolution
 - Assessment report content or conclusions?
 - Sufficient information provided on whether or not we can reach conclusions
 - EAO will clarify the sections on slide 6 and the diagram on slide 9 on presentation
- SIC questioned how will the public be notified if Dispute Resolution is triggered? What details will be made available, and will the report be made public?
 - These details have not been worked out yet, but guidance will be provided
- Dispute Resolution Regulation
 - Under development, objective is to have it ready to come into force with the Act later this fall Approach to the regulation
 - EAO will be supplementing the Regulation with policies and procedures as well
- Guidance should explain why Indigenous Nations have access to Dispute Resolution and other parties do not
- Timelines – what principles are you trying to include when defining the time-bound process?
 - EAO has been meeting with experts on this
 - 60 days was proposed but may be too ambitious
 - Reasonableness is key
 - How will it work with legislated timelines?
 - Depends on when Dispute Resolution is triggered in the process
 - Act does have a general provision to extend timelines, but with a high
- How does the proposed provincial United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) legislation inform DR Regulation?
 - EAO is working with the Ministry of Indigenous Relations and Reconciliation
 - This EA Act is in place, EAO is not aware of any paramouncy of new UNDRIP legislation that would impact EA Act
- EAO is currently considering how the roster of facilitators will be developed
- Will the Dispute Resolution Regulation go out for public comment?
 - Still under consideration
- Will boundaries/scope be made around Dispute Resolution for each dispute?
 - Scope, parameters, will be covered in guidance
 - Intention is to establish what is in and out of scope

Next Steps on Dispute Resolution Regulation:

- Development of framework regulation
- Discussion with IIC on content in next meeting, then discuss with SIC
- Prepare regulation to come into force as close to the Act as possible
- Operational details to be further worked out in policy

6.0 Assessing Effects on Indigenous Nations

Documents presented

6.0 - 19(4) Assessments -with respect to the potential effects on a Nation and on its rights

6.1 - Assessing Effects on Indigenous Nations Presentation

6.2 - Assessing Effects on Indigenous Nations draft Outline

- All materials have been reviewed with the IIC and have been updated with IIC suggestions
- SIC discussed timeline implications of Scenario B – 19(4) - Indigenous Assessment and broader EA based on common inputs
 - How would that scenario align with timing of EA process?
 - EAO would seek to align the timing of information from the Indigenous assessment within the Process Order to ensure alignment for effects assessment stage of EA.
 - The Process Order will outline timing, and will be developed to minimise timeline risk
- Guidance for Indigenous Knowledge
 - Need procedural certainty for incorporating information
- How does this interact with the ability to have a substituted indigenous assessment?
 - S. 41 substituted – would have to fulfill all the requirements and have governance and technical structures in place to replace an EA. This is expected to be less frequently utilized.
 - S. 19(4) – taking on certain parts of the assessment. EAO expects this to be the most common scenario chosen by Indigenous nations.
- Under an Indigenous Nation-led assessment how would EAO ensure participation of the public and others?
 - Transparency is a key principle, information that is required to be publicly posted
 - Principles of administrative fairness, any information from assessments conducted under section 19(4) would come through the TAC discussions
- Question raised regarding the use of Strength of Claim for accommodations
 - Commitment has been made in the EA Revitalization that Strength of Claim will not be used to determine participating Indigenous nations.
 - The Province is still required to fulfill consultation obligations, including effects on indigenous rights – legal obligations need to be met
- Is the Process Order applicable for proponent only?
 - It is intended to be for all participants, applicable more broadly to EA process
 - Process order will include timelines for all participants
- Next steps:
 - Continue work with IIC on details

7.0 Consensus and Consent Guidance

Documents presented or provided for background:

- 7.0 - Consensus Seeking and Consent Presentation
- 7.1 - UN Rapporteur's Report
- 7.2 - Free, Prior and Informed Consent within an EA Context
- 7.3 - Matrix UN Declaration and the Act
- 7.4 - Draft Outline of Consensus Seeking and Consent Guidance
- 7.5 – Draft Consensus Tracking Table Template

- Further clarity is required to see how this all fits together into broader EA process
- Sic raised the issue of ensuring investor confidence, meeting timelines, considerations to impact benefit agreements that will be negotiated at the same time between proponents and Indigenous nations
 - EAO is seeking to improve clarity, draw lines to all pieces in the next drafts of these documents
 - Impact benefit agreements are up to the proponents
- SIC indicated that clarity on timelines will be important, need to demonstrate timelines for all parties
- How will consensus be sought between Indigenous nations, between different groups and levels within Indigenous nations?
 - EAO is considering ways to address these issues – under development
 - Indigenous nations will have to work through this as well
 - Governance structures and understanding them will be key

Next steps on Consent and Consensus Guidance:

- Draft guidance document November 2018
- Further discussions at IIC

8.0 Closing Remarks

- Three more meetings remain