

Stakeholder Implementation Committee Meeting - April 3, 2019

Attendees: Karen Campbell, Ward Prystay, Hannah Askew, Denise Cullen, Matt Kennedy, Marla Orenstein, Scott Lunny, Karen Elliott, Gavin Smith, Greg Morrison, Carmen Holschuh, Meera Bawa, Kevin Hanna, Rob Stevens

Guest: Bruce Fraser

EAO Attendees: Paul Craven, Scott Bailey, Kate Haines, Fern Stockman, Heather Noble, Sheldon Foote, Mary Rathbone

By Phone: Kai Horsfield

Opening Remarks, Committee Process and Objectives - EAO

- A PowerPoint presentation (filename StakeholderIC_04032019 Powerpoint) was presented for discussion. Additional documents were provided for review and discussion:
 - Filename 2.0 Proposed Environmental Assessment Process Diagram
 - Filename 2.2 Stakeholder Implementation Committee draft Terms of Reference
- The new *Environmental Assessment Act* (new Act) is expected to come into force in Fall, 2019
- The purpose of the Stakeholder Implementation Committee (SIC) is to review and provide input on materials produced by the EAO. This will require being respectful of discussions, and ensuring documents aren't shared outside the committee. The committee will not produce a report.
- The SIC will strive to work towards consensus.
- A separate Indigenous Implementation Committee will be established. These committees can be brought together if necessary and where manageable with the large number of participants. Generally, these committee meetings will be held back to back, and there will be cross pollination.

Overview of the Environmental Assessment Advisory Committee – Bruce Fraser

- There are differing perspectives on how implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in the new Act will be done, with questions on who will bear the costs (proponents, governments), and who will determine whether goals are being met.
- The specifics of the new process such as establishing processes to determine cumulative effects, authority sharing, and dispute resolution process will be difficult and require time to seek consensus.
- Indigenous culture is not a historical archive; Indigenous cultures are alive and evolving, and the adaptive process is very much alive in Indigenous communities as well.
- The implications for the people affected by an environmental assessment (EA) are now going to be in constant flux. There is a need for this committee to provide a mechanism for increased scrutiny in a time of increasing economic volatility.
- Last year's EA Advisory Committee was able to work efficiently because of preparatory work done by EAO staff in advance of meetings, and members being open-minded and non-judgemental of all ideas.
- Other members of the EA Advisory Committee echoed that it was a quick process but a practical one that generated influential material for the new Act that represented a broad variety of perspectives and interests.

- SIC members (Members) are encouraged to engage in discussion with EAO staff members, and to consider the implications of a proposal on their constituency.

Opening Comments – Committee Members

Members shared their opening views on revitalization and the SIC. Themes included:

- A sense of trepidation and fear due to the change in process, and the subsequent need for increased understanding of the new process;
- A need to understand the transitional process for the change;
- The changing legal landscape on Indigenous law and governance;
- A desire for some level of integration with the Indigenous Stakeholder Committee;
- The need to consider competitiveness and facilitate business and development, including timeliness and predictability in EAs. Concern that British Columbia (BC) already has a stringent process compared to other places in the world and adding more layers may decrease viability of doing business. Need to ensure any additional layers are adding value to the process;
- Local governments represent citizens who experience divisiveness over projects in their communities, and the need for increased capacity for local governments to participate in EAs, including longer public comment period timelines;
- Long-term ecosystem health forms the basis for all communities; and
- A need to understand the interaction of the new Act with other regulatory processes both provincially and federally.

Overview of the New Environmental Assessment Act and Process

- Additional documents were provided for review (filename 4.0 Bill 51 – Environmental Assessment Act).

Terms in the new Act

- Concern expressed over the definition of the terms “sustainability” and “well-being” as referred to in section 2 of the new Act; clear policy will be needed for interpreting this. The *UN Sustainable Development Goals* is currently the go-to source for defining sustainability.
- Section 2 of the new Act also talks about “best available science” with no clear definition.
 - EAO: the term is relative and changing, and the methodology will be defined for each project and balanced with Indigenous knowledge.
- The term “good project” is used a lot, but it is not clear what that refers to. Is it “good” according to the details of the process, or is there a policy decision around what is a good project? Suggestion there be communication material around what is “good”.
 - EAO: We don’t define in that sense what a good project is (we are policy takers, not makers). When we talk about a good project, we are more referring to a project that has a clear path forward. Do we see a path forward for reaching issues resolution? Or are there unsolvable issues? When you see a project early on with a myriad of issues that appear to be complex or intractable, it doesn’t mean they aren’t necessarily a good project, but a lot of work needs to happen to see that clear path forward.

Exemption and Early Termination

- Is there going to be guidance around exemptions and early termination? Will the fact something is being considered for exemption be signaled to the public?
 - EAO: There will be transparency early on if a project is being considered for exemption.

Determining Significance

- Will the EAO be concluding on significance of residual adverse effects? Does the EAO have the resources and capacity to do this?
 - EAO: This is something we already do, the EAO has methodology for assessing significance. The EAO will use the proponent's characterization of effects in the Application as a starting place. The EAO then seeks advice from the Technical Advisory Committee (TAC) to inform the final characterization and significance determination.
- Members noted that everyone determines what is "significant" differently, as there is no scientific consensus on what is significant. This misdirects the conversation from the important issue at hand to a debate over terminology. Having the EAO conclude significance brings more consistency and eliminates the potential for proponents to pressure their consultants to rate significance lower.
- To complicate things further, federal determination of significance is a legal one, while the provincial finding of significance simply informs the Ministers' decision. Note this is under the current federal act, but not under bill C-69.
- From a fairness perspective, a finding of significance should not be a surprise for a proponent or any other party.
- Suggestion to have a database of significance determinations from previous projects that underwent an EA. Would be helpful to see what factors lead to significance determinations.

Chief Assessment Officer and Perception of Political Interference

- How is the Chief Executive Assessment Officer (CEAO) determined? Is this a political appointment? This role should be communicated clearly to instill confidence in the process, to provide assurances that the CEAO is an independent decision-maker and that there are institutional guards against political interference.
 - EAO: The CEAO role is held by a public servant, who has authority as a Statutory Decision Maker (SDM) under the EA Act. The same individual who is the CEAO is also the Associate Deputy Minister responsible for the EAO.
 - The EAO will be developing a User Guide that goes through everything in the new process; this is a place where we can ensure the roles (including that of the CEAO) are understood.

Early Engagement

- Many proponents are already doing the steps outlined in early engagement, the shift is that the EAO is now involved. Members sought clarity on this mechanics of this phase, noting it is important to clarify the roles of proponents and the EAO during early engagement.
- Early engagement should be used as an opportunity to set expectations for communities. The challenge with the Initial Project Description (IPD) is that it will contain limited information which leads to lots of questions on aspects that have yet to be determined. It will be important to set expectations for communities on what things can and can't be changed at this stage.

- There will be an art to drafting an IPD considering that investigative exploratory work will have already taken place. There will need to be flexibility by project based on the work done (e.g. mining project may have further details available at the IPD stage).
 - EAO: You will be creating the IPD to start a conversation based on what work is already done. This will identify issues much earlier in the process.
- The 30-day public comment period does not work for local governments (generally – for this comment period or anywhere else in the EA process).
- Concern that early engagement will raise so many issues including issues/values that should not necessarily be assessed as part of the EA.
 - EAO: In the Summary of Engagement document, the EAO will acknowledge community values/issues, and identify key issues for the EA. We may be able to better scope an EA based on the key issues identified.
- How is this going to work with substituted projects?
 - EAO: Early engagement is going to be very similar in the federal process. The EAO is communicating with the federal government to ensure the provincial and federal processes align.
- How will Participating Indigenous Nations be identified?
 - EAO: Standard to current practice, we will use the IPD to identify traditional territories that overlap with the geographic area of the project. We will then ask these Indigenous nations if they want to be a Participating Indigenous Nation (PIN – section 14).
 - The EAO is and will continue to engage with Indigenous nations to work on governance issues, to understand their processes and alignment with the province's. The more this can be done before a project comes in, the better.

EA Readiness Decision

- Question whether seeking to achieve consensus with First Nations at the readiness decision is this on the project should proceed? Is this premature when there are still a lot of details to come forward? What does consensus mean? Is the proponent involved in this discussion?
 - EAO: The basis for the decision will be the Detailed Project Description (DPD), which reflects engagement on the IPD. This is where those intractable issues will have surfaced. Seeking to achieve consensus means working with Indigenous nations to come to an agreeable solution for both governments; this is a continuous process throughout the EA. The proponent will not be included in all conversations, but in terms of procedural fairness the proponent will be aware of what those conversations are about.
- Will there be guidance on how an exemption might be possible? It would be nice to know early if this is achievable and how to go about doing this. Request to be involved in drafting this guidance.
 - EAO: Yes, there will be guidelines on what a candidate for exemption would look like, and what the requirements are.

Process Planning

- Timelines are a big concern – it will be good to have these laid out when committee talks about the process planning phase in detail.

- Question around how the TAC and any independent experts will interact. Can the independent experts sit on the TAC?
 - EAO: There is flexibility in filling gaps in expertise by having an independent expert sit on the TAC, or to provide a report, for example.
- Written policy is needed on how the TAC, independent experts and EA practitioners will be expected to interact, and what their roles and responsibilities will be.

Required Assessment Matters (Section 25)

- Request for guidance on Section 25 factors.
- These criteria should be looked at in the context of Section 22 of Bill C-69.

Application Development Review

- Feedback on proponent's study plans needs to take place before this phase (i.e., during early engagement).
- Question regarding timelines and control of the clock for extensions. Need to contemplate and clarify how a proponent requests an extension to a timeline.
 - EAO: There are provisions in the new Act for extending timelines. There is an opportunity in process planning to shorten timelines, allowing for scalability of process. Clarity on timelines will be provided, as well as comparison with the federal process where possible.
- How is consensus with Indigenous nations achieved at this stage?
 - EAO: Indigenous nations will have representation on the TAC. The decision point at this stage is whether the application contains all information needed to move to the next phase. Consensus achieved with Indigenous nations at this stage is intended to be at the technical level; the EAO decides at the end of the 180-day review period if the studies as presented in the Application are sufficient, with advice from the TAC.
- Suggestion to use a hypothetical project to walk through the new Act to take a deeper dive on specifics of each stage.

Decision

- Which Ministers make the EA Certificate decision? Is it consensus based, joint-decision making?
 - EAO: The Minister of Environment along with the responsible Minister. For example, for a mining project it would be the Minister of Energy, Mines, and Petroleum Resources. If the two Ministers don't agree, a certificate wouldn't be issued but they generally come to a consensus.

Indigenous Nation Capacity Funding

- Where is capacity funding going to come from (i.e. proponent, EAO)? Does the EAO foresee proponents having to pay for an Indigenous nation to conduct their own EA? It will be important to have criteria on funding, as it could become quite open-ended to provide funding to build capacity for Indigenous nations to conduct an EA. Will be an important topic to bring to the SIC.
 - EAO: Capacity funding and fees will be developed later in a regulation. Currently, the EAO provides a small amount of funding for an EA. Proponents also provide varying

levels of funding for participation. Feedback received suggests that there is a role for government to regulate this, which is why we included this authority in the new Act. We will have further discussions with proponents and nations on if/how to operationalize that authority.

- Local governments also have capacity issues and should be included in these discussions.
 - EAO: There will be conversations about funding for other participants as well. There is a commitment in the Intentions Paper for a capacity funding program for other participants.

Going Forward

- Topics for the next meeting will include:
 - Early Engagement process, including: Initial Project Description and Engagement Plan, Detailed Project Description, and EAO Summary of Engagement;
 - Assessment of Human Environment guidance
- Interest expressed in delving into the following topics at future meetings: regional assessments, baseline data sharing policy platforms, new authority for mitigation effectiveness, qualifications of experts, and dispute resolution.
- It would be useful to see reports on Indigenous Implementation Committee that is happening in parallel to this committee.
- There will be a workshop on Regional Environmental Assessments on May 22nd. If you are interested in participating, please contact Kate Haines.

Reviewable Project Regulations

- The triggers used in the current Reviewable Project Regulations (RPR) were brought in from previously existing acts, such as the *Mine Development Review Act* and the *BC Utilities Act*; therefore, they weren't developed specifically for the EA process.
- The word "trigger" has negative historical connotations from the old federal process that brought in projects based on factors other than project impacts. "Threshold" or "reviewability" may be better alternatives.
- Government needs to encourage public awareness of, and confidence in, other regulatory regimes for sub threshold projects.
- Will the new RPR bring more projects into the EA process?
 - EAO: When the EAO settles on final thresholds for the updated RPR, it will do an analysis to determine what projects would come in under new criteria (i.e. more or less than under the current criteria). The objective is not to bring in more projects.
- Question on the definition of "major" projects. Initially it makes you think of projects with a large capital investment, not necessarily a project that has significant effects. Small projects sometimes have much bigger impacts than big projects. In this context, the word "major" is almost irrelevant.
 - The EA Advisory Committee spent a lot of time talking about this last year. It determined that a project's consequences are more important than whether it is "major".
 - EAO: The definition is subjective but in terms of the Act we are looking at projects that have significant adverse effects. The definition of a major project is something that is

reviewable under the RPR. Acknowledgement that this isn't going to be perfect, which is why there will be safeguards.

Secondary Criteria

- Do the secondary criteria constitute “screening”, as in the old federal system of screening?
 - EAO: the secondary criteria will be “knowable” at the IPD stage – a proponent will be able to determine from reading the RPR whether their project is reviewable. It is not intended that a mini-assessment would be required to determine reviewability.
- Some projects in the past that did not come into the EA process under primary criteria would now come in through the proposed secondary criteria. The secondary criteria are intended to be a safeguard to ensure that projects with particular characteristics that have the potential to cause significant adverse effects are reviewed, despite not meeting a production capacity threshold.
- There is public concern on the arbitrariness in certain circumstances of having purely production-based thresholds. These concerns can be addressed through the secondary criteria.
- If the purpose of an EA is to look at projects fairly and to provide communities the opportunity to provide input on projects that affect them, why are we limiting the categories of projects that can trigger an EA? For example, large agriculture projects that might trigger the secondary criteria.
 - EAO: Perhaps there are other categories we need to consider. The thought is those categories have a robust regulatory process to do an assessment.
- Industry is concerned that secondary criteria are going to increase the number of required reviews, and drive investment away. For example, a proponent will have bought tenure to a resource 20 years ago, is still waiting to develop it, and now there is unpredictability about how to proceed.
- Projects proposed in developed areas will have different effects than projects proposed in more remote settings. Noise could be used as a tool to determine how close is too close.
 - EAO: Proximity to communities and workforce are factors that have come up in discussions, but they are difficult things to define (what is the threshold for proximity? Noise is subjective, and changes with time). Need to ask what the impacts really are and what is triggering the concern, find a measure that is fair and knowable at the time of the IPD.
- Question as to whether greenhouse gasses (GHGs) are appropriate as a secondary criterion. GHGs are often produced at construction phase and not again. Everything emits GHGs - it depends where in the lifecycle it emits. However, the province now has a GHG budget.
 - EAO: There are lots of different opinions on this and it has come up frequently in engagements to date. The purpose here is having the ability to bring in a project that has a strong possibility of large GHG emissions that wouldn't be brought in under the primary thresholds.
- Recommendation that water quantity be included as a secondary criterion.
- Recommendation that fire risk be considered, due to BC's increasing wildfire problem. Fire risk might be quantified by how big a buffer zone there is between project and vegetation.
- Will there be some discretion in applying the criteria to projects to avoid reviewing projects that won't have significant adverse effects?

- EAO: We are not contemplating a discretionary element in the RPR thresholds – this would go against the “knowability” principle. The route to non-reviewability for a project that meets the criteria would be to complete early engagement and then obtain an exemption.
- There is old infrastructure, built before the Act, that can expand many times without triggering an EA, and new infrastructure that make the smallest change and they are into an amendment for their certificate. Is there potentially a timeline limitation on when amendments are needed? Practitioners are getting strategic when drafting applications to avoid triggering amendments.
 - EAO: We have heard this is an issue and are looking at it in terms of reviewability for modifications. Trying to bring those in under the secondary criteria. For older projects that don’t have an EAC, the modification threshold determines reviewability by EAO. If a historical project without an EAC does become reviewable through the modification thresholds, only the incremental change would be considered in the assessment, not the existing infrastructure.
 - For projects that have an EAC, those projects must be constructed as specified in the certificate – project changes require an appropriate amendment to the EAC.
- Will both primary and secondary criteria be industry-specific?
 - EAO: We are thinking about whether secondary criteria will apply across the board or be bundled according to industry. The draft will go to this group for input.
- Regional environmental assessments (REAs) may help address some of the issues identified with the current RPR. For example, they may identify values to be included in the secondary criteria and better accommodate cumulative effects
 - It will take time for the EAO to determine how to operationalize REA in the context of the new authority in the act.
 - It’s possible that the RPR could have a linkage to REA in the future – however, it will take time to get there. Upon the Act coming into force, it’s unlikely there would be a REA element.
- The RPR has the consequence of either encouraging or discouraging investment. How do we balance having good projects in BC with ensuring we don’t drive investment to other jurisdictions? Want to spend the time to get this right.

RPR Review - Next Steps

- EAO will engage industry associations to talk about sector proposals.
- EAO will also engage the public on the draft sector models.

Closing Remarks – Bruce Fraser

- Perceive two gaps after today’s discussion:
 - 1) Local government involvement
 - Local government is not mentioned in the Act or Intentions Paper. Official community plans, growth strategies, watershed strategies, zoning bylaws all have major implications in land use planning.
 - If we are talking about direct engagement with Indigenous nation governments, why are we not talking about direct engagement with local governments? This discrepancy is

going to become increasingly evident, as the sovereignty of Indigenous nations increases.

2) Separation of Stakeholder and Indigenous Implementation Committees

- Indigenous representatives were involved in last year's EA Advisory Committee which provided an Indigenous perspective.
- Mutual informing between the two groups will be a critical function that needs to be built in and structured, especially when we talk about what it means to seek consensus.