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Review of Environmental Assessment Processes
Canadian Environmental Assessment Agency
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Sent via email

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Dear EA colleagues,

Comments on the 23 June 2016 consultation document, “Review of environmental assessment processes: expert panel draft terms of reference”

The government’s initiation of a public review of federal environmental assessment (EA) processes is most welcome as is the decision to assign the first stages of the review to an independent expert panel.

Such a review is timely and important. Some immediate pressures for the review arise from the evidently inadequate credibility of the current processes in certain big project reviews (e.g., concerning the proposed Northern Gateway pipeline), and some of those problems may be blamed on ill-advised changes introduced by CEAA 2012. However, the key issues and opportunities for EA reform involved are bigger and more profoundly

crucial topics for the review.

These issues and opportunities include

- how to understand and ensure due attention Aboriginal rights and interests, which extend beyond the confines of narrowly defined environmental assessment and beyond the effects of individual projects;
- how to assess and consider suitable responses to the potential cumulative effects of multiple undertakings and other influences on a region or sector, etc.;
- how to extend assessment to the strategic level of policies, plans and programs – recognizing the broad influence of strategic level undertakings, and needs for better guidance from the strategic level for project and other EA decisions;
- how to give serious attention to the practical implications of Canada's climate change commitments in EA;
- how to enhance prospects for meaningful public engagement and associated process credibility;
- how to foster continuous institutional learning through EA, including through effective monitoring and reporting;
- how to build the foundations for much more successful collaboration with other jurisdictions that have overlapping responsibilities and a wide diversity of assessment processes;
- how to design efficient routes to effectiveness and fairness; and
- how to move from legislated commitments to serious contributions to sustainability through EA.

All of these topics involve concerns and openings for significant improvements that cannot be addressed effectively or credibly through adjustments to how current EA processes consider mitigation of the significant adverse effects of major projects.

We recommend the following:

1. *The Terms of Reference for the expert panel review should be revised to include an explicitly open mandate for the panel*
 - *to cover the broad public interest purposes of EA and its frequent role as the main public venue for engagement in decision making on major undertakings;*
 - *to address the full suite of major issues and opportunities for EA reform at the federal level in Canada; and*
 - *to recognize that these major issues and opportunities are interrelated and that responses to them in changes to law, policy and administration, etc., should be designed and implemented as a package.*
2. *Without compromising the overall mandate and scope of the review, the revised terms of reference should give the expert panel an initial indication that long-standing big EA law and process topics, including those listed above, are within the ambit of the review.*
3. *Recognizing the need for timely action to improve federal EA law and processes but also the scale and complexity of the issues and opportunities to be addressed by the Panel in its public review, the Terms of Reference should include a public comment*

period after submission of the initial report on 31 January 2017 with opportunity for the Panel to revised the report in light of comments received.

Specific points related to these recommendations and their implications are included as tracked comments in the attached copy of the draft terms of reference.

We also attach in support of our recommendations a copy of our recent paper on the basic components of next generation EA law and processes. The paper is not specifically directed to application at the federal level and does not include all considerations relevant to the expert panel review. It does, however, provide an integrated depiction of what is needed to bring the current versions of first generation EA processes up to a level that incorporates what we have learned from experience in EA and adjacent fields in the 40 some years since government commitments to EA were introduced.

Thank you for the opportunity to comment of the draft terms of reference. Please contact us if there are questions or needs for clarification.

Sincerely,



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