

July 20, 2016

By Email: CEAA.EARReview-ExamenEE.ACEE@ceaa-acee.gc.ca

Environment and Climate Change Canada
351 Saint-Joseph Boulevard
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Attention: The Honourable Catherine McKenna, P.C., M.P
Minister of Environment and Climate Change Canada

Dear Minister McKenna,

We write to provide the City of Vancouver's comments on the proposed Expert Panel's ("Panel") draft *Terms of Reference* for the review of federal environmental assessment processes associated with the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) launched by the Government of Canada on June 20, 2016.

The City of Vancouver has committed to becoming the greenest city in the world by 2020 and, in pursuit of that goal, has undertaken and continues to undertake a range of initiatives that advance environmental protection alongside economic development. The City of Vancouver is also an Intervenor in the hearing that was before the National Energy Board ("NEB") concerning the application by Trans Mountain Pipeline ULC ("Trans Mountain") for a Certificate of Public Convenience and Necessity in respect to the proposed Trans Mountain Expansion Project ("TMEP"). The City filed extensive written evidence and presented written and oral arguments in that hearing opposing the application. Further to our participation as Intervenor, the City will also be providing comments on the NEB Modernization Expert Panel draft *Terms of Reference*.

In this letter of comment, we will focus on the issues and our recommendations for the proposed Panel's draft *Terms of Reference* in respect to the environmental assessment review. We are encouraged by Environment and Climate Change Canada's commitment to Canadians to pursue our environmental goals and assessments with a renewed sense of collaboration and transparency. We are looking forward to this letter of comment being the first of many engagements on this topic over the coming months.

Mandate

The mandate letter directs the proposed Panel, as a top priority, to “immediately review Canada’s environmental assessment processes to regain public trust and help get resources to market and introduce new, fair processes that will:

- Restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with provinces and territories to avoid duplication;
- Ensure decisions are based on science, facts and evidence and serve the public’s interest;
- Provide ways for Canadians to express their views and opportunities for experts to meaningfully participate; and
- Require project advocates to choose the best technologies available to reduce environmental impacts.”

The mandate, as currently proposed, excludes as a top priority the need to **protect and conserve the environment**, including from cumulative effects, **protect public health and safety** and **support sustainable development**. By prioritizing getting resources to market, the Panel’s review process could be compromised as recommendations could be made with the market in mind at the expense of the environment or public safety. This mandate in our view needs amendment. To encourage greater public confidence in the review process and the Government of Canada, the Panel’s priority should be to protect and conserve the environment, protect public health and support the transition to a low carbon economy.

At the COP21 conference, the Government of Canada showed global leadership on the issue of climate change and GHG emission reduction. Canada’s commitment, as set out in Article 2 of the Paris Agreement, is to ensure that the increase in the global average temperature is “well below 2°C” above pre-industrial levels and to “pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels”. It is clear that if the world is to avoid the catastrophic impacts of climate change we must transition away from fossil fuels to renewable energy and must do so quickly. Projects that facilitate the increased production, transport to market and consumption of fossil fuels, with a corresponding increase in global GHG emissions, must be subject to careful scrutiny. The Government of Canada needs robust and thorough environmental assessments that evaluate the true impacts of a project on global GHG emissions, independent of the desire to get resources to market. We suggest that Canada’s revised environmental assessment process include a project’s impacts on GHG emissions in the scope of review to ensure Canada’s commitments to mitigate climate change are adequately considered.

Scope of Review

We recommend the Panel’s scope of review consider the following points of discussion and be expanded and revised to include additional topics.

1. How to restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working with the provinces, territories and local governments to avoid duplication?

Robust oversight and thorough environmental assessments of areas under federal jurisdiction will require the active involvement of local governments working with the provinces, territories and/or federal government to avoid duplication and to increase oversight of

environmental and community impacts. However, local governments currently have a limited role in managing, reviewing and making decisions on environmental assessments by federal agencies or organizations.

For example, the Vancouver Fraser Port Authority (VFPA) is mandated by the *Canada Marine Act* to facilitate Canada's trade in a way that ensures the safe movement of goods. Under *CEAA 2012*, VFPA is enabled to conduct an environmental review of any proposed project on port lands and should a project be approved, set environmental conditions in the permit to mitigate impacts.

VFPA has developed a structured and rigorous Project and Environmental Review Process that considers and makes a determination of potential environmental and community impacts of a proposed physical work or activity. However, often it is the VFPA itself who is the proponent for the project it is reviewing.

Despite the rigour of the VFPA's process, the role of local governments and the public they represent are typically not given the appropriate time, resources or required weight to fully participate in any determinations made. Given local governments are often the first level of government to experience any impact from a project's construction, operations, accident or malfunction, it would be appropriate that the environmental assessments give considerable support and weight to their involvement.

The City of Vancouver depends on a strong port and transportation industry, but that must be balanced with environmental protection at local, national and international levels. Local authorities can be strong partners in ensuring that local economic imperatives are matched by world leading protection of our communities and environment.

In addition, giving the VFPA dual roles as proponent and environmental assessor may create conflicts of interest, or perceived conflicts of interest. The Panel should consider whether this may undermine the public's trust in the transparency, rigour and integrity of this process.

2. How to ensure decisions are based on the best available science, facts and evidence and serve the public interest?

There is a need for robust processes to allow for the testing of science, facts and evidence and regulations that establish criteria that must be met to determine which data constitute the best available scientific data.

Science-based environmental assessments depend on sufficient staff expertise within the federal government to evaluate and test data, information and opinions from project proponents and their consultants. The reduction or loss of critical expertise in ecotoxicology, fish and wildlife populations, cumulative effects and other important topics has reduced the rigour of the federal environmental assessment process. The reduction in federal staff oversight in science may increase the risk proponents manipulate the environmental assessment process through the submission of inappropriate data. The Government of Canada should review the availability of staff with scientific expertise within federal environmental assessment agencies to adequately support the decision-making process.

While it is appropriate that the costs of regulation be borne by industry, the control of expertise should not be wholly given to industry. An alternative arrangement would be to have the authority conducting an assessment commission independent assessments and scientific evaluations, either through Government of Canada scientists or independent third parties. The costs of the assessment could be borne by the project proponent while the research and assessment could be conducted independently.

3. How to ensure comprehensive environmental assessments include review of upstream and downstream effects?

The exclusion of downstream GHG emissions from Environment and Climate Change Canada's methodology for assessing greenhouse gas emissions (the "GHG Methodology") has significant implications on the projects under review, including Trans Mountain's new pipeline infrastructure. Downstream emissions (emissions from further processing and refining, overseas transport and final consumption of the oil) are the largest contributor to GHG emissions from oil pipeline projects.

Canada's current emissions target for 2030 is a 30% reduction of GHG emissions from 2005 levels¹. This translates to a limit on total annual GHG emissions of approximately 516 million tonnes per year. Dr. Mark Jaccard estimated that the production of the 590,000 bbl/day of Alberta oil sands crude that would be transported on the proposed TMEP would have an associated upstream GHG emissions of approximately 7.7 million tonnes per year. By comparison, the downstream emissions associated with the TMEP are ten times higher, estimated at 71.1 million tonnes per year. GHG emissions associated with the TMEP alone could represent a substantial part of the total allowable emissions in Canada by 2030. This data is significant and should be included in environmental assessments and GHG emission calculations to ensure such reviews are holistic.

Thus, we recommend the GHG methodology, as well as all environmental assessments be comprehensive to ensure greater accuracy in assessing true environmental impacts.

4. How to encourage and promote the study of cumulative effects of different energy-related projects across Canada?

We recommend the Government of Canada complete a comprehensive national energy and emissions strategy to determine how our global commitments will be met. Only then can we evaluate the cumulative environmental impacts and emissions of existing and new proposed projects relative to the significant reduction programs that are required as Canada transitions to a low carbon economy.

Consideration for the cumulative risks of projects should also be included. In a densely populated port city, like the City of Vancouver, the risk of impacts from multiple activities can compound. Cumulative effects need to be assessed prior to approving a new or expanded project.

¹ Assuming 2005 emissions of approximately 737 million tonnes.

5. How to make environmental assessments more valid and effective by evaluating the accuracy of the assumptions on which they are based during and at the end of a project, and by assessing the success of mitigation measures in reducing impacts during the life of a project?

Once a project has been approved, the project proponent is responsible for ensuring that mitigations and any other conditions of approval are implemented. The need for follow-up and longer term monitoring of project impacts and success of mitigation measures is critical to determining the accuracy of environmental assessments. Local governments, experts and the public they represent should be engaged in any follow-up, monitoring and evaluation processes as they often have first-hand knowledge of and insight into the operations of a project and its cumulative impacts.

Consideration for the decommissioning of projects (including remediation and reclamation) should also be included as part of the lifetime regulation of a project. This should include industry funding arrangements to ensure that once a project is no longer needed local communities are not left with any negative legacies. This will become more important as existing infrastructure approaches its end of economic life and as global climate regulations and markets reduce the need for large scale fossil fuel infrastructure.

The Panel

To ensure public trust in the Panel and its final recommendations, the Panel's composition should be diverse, have sufficient and diverse expertise in environmental assessments, display no conflicts of interest and reflect national and local public interests. The panel should be chaired by, and have a majority of members who are not from industry. Therefore, we ask that you add to the *Terms of Reference* the Panel's selection process and criteria for appointment and invite the public to make comments on this selection process.

Public Engagement

We are encouraged by the Minister's directive to the Panel to prepare a Public Engagement Plan outlining how and when it will conduct in-person and online engagement with diverse groups to gain an understanding of the issues and opportunities related to federal environmental assessment processes.

Public engagement is a key component of open and transparent governance.

We do ask that the Panel provide clarity on its definition of "public" and its target audiences and consider preparing a Local Government Engagement Plan that considers the unique dynamics and engagement techniques needed for local governments and the public they represent.

As the closest level of government to our citizens, local governments are essential to creating healthy, sustainable communities. Cities are the places where residents build families, careers and homes. It's where people access the natural and built environments that need to be protected through robust environmental assessments.

We ask that the Panel give local governments' tailored and meaningful ways to participate in the review process to reflect their legal jurisdictions, as well as their role as advocates for local public opinions and priorities.

Multi-Interest Advisory Committee

The Multi-Interest Advisory Committee (“Committee”) should represent the social, environmental and economic needs of the public and have representatives, not only from Indigenous governments and organizations, industry associations and environmental groups, but also from other levels of government including provincial, territorial and local governments.

The Panel will identify a select number of issues, which may benefit from discussion by the Committee. The City of Vancouver has concerns that a small Panel may not have the same depth of knowledge as the Committee required to identify and select the right issues for discussion. We recommend that the Panel suggest issues for review, invite the public to comment and allow the Committee to make final decisions on issues for review.

Recommendations for robust and thorough environmental assessments

Once the Panel is formed and begins to assess federal environmental assessments, we recommend the following amendments to the *CEAA 2012* to regain public trust and robust and thorough processes:

1. The Government of Canada should apply environmental assessments to all projects with a federal trigger, not just those pursuant to the annexed *Regulations Designating Physical Activities*, under paragraphs 84(a) and (e) of *CEAA 2012*.
2. The Government of Canada should reinstate consideration of the need for a project and possible alternatives, as well as the capacity of renewable resources in its assessments.
3. The Government of Canada should reinstate the various tiers of environmental assessments previously legislated including but not limited to screening reviews, comprehensive studies, panel reviews, and mediation. *CEAA 2012* limited environmental assessments to a standard assessment or review panel.
4. The Government of Canada should reinstate responsibility to all federal agencies to conduct environmental assessments and not solely to the Canadian Environmental Assessment Agency, the National Energy Board, the Canadian Nuclear Safety Commission, a review panel or other relevant federal authority. It is also important for the Panel to review the role of local governments in assessing environmental impacts and contributing to any decision-making process within their relevant jurisdiction.
5. The Government of Canada should consider removing or providing flexibility to the legislated timelines for completion of environmental assessments, as current legislation may lead to incomplete or non-comprehensive assessments.
6. The Government of Canada should review the allowance for equivalency of federal and provincial reviews. They are no longer coordinated or harmonized.
7. A key feature of the *CEAA 2012* is the broad definition of “environment,” which is defined as including biophysical, socio-economic, and cultural considerations and the interrelationships between them. Accordingly, an environmental assessment should examine all aspects of the environment, including land, air, and water, all living organisms, and all ecological systems, beyond the current list of the physical and meteorological environment, soil, soil productivity and vegetation, wetlands, water quality and quantity, fish, wildlife and their habitat, species at risk or of special status, heritage resources, traditional land and resource use and human health, aesthetics and noise.

8. The Government of Canada should reopen public participation in environmental assessments, allow for all members of the public to express their views and meaningfully participate in assessments, rather than limit participation to "interested parties". In our increasingly interconnected world, all members of the public have a stake in projects that affect our environment, locally, provincially, territorially and nationally.

Thank you for providing the opportunity to comment on the proposed Expert Panel's draft *Terms of Reference* and we look forward to participating in the Panel's engagement process starting in September 2016.

Yours sincerely,



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