

Review of environmental assessment processes: Expert Panel Draft Terms of Reference

Context

Environmental assessment informs government decision-making and supports sustainable development by identifying opportunities to avoid, eliminate or reduce a project's potential adverse impact on the environment before the project is undertaken, and by ensuring that mitigation measures are applied when a project is constructed, operated and decommissioned.

The mandate letter of the Minister of Environment and Climate Change (the Minister) directs her, 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.”

In carrying out this review, the Minister is to be supported by the Minister of Fisheries, Oceans and the Canadian Coast Guard, the Minister of Natural Resources, the Minister of Indigenous and Northern Affairs and the Minister of Science.

The Minister is establishing an Expert Panel (the Panel) to conduct a review of environmental assessment processes associated with the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). The Panel will engage and consult with Canadians, Indigenous peoples and key stakeholders and develop recommendations on ways to improve federal environmental assessment processes.

Mandate

The Panel shall conduct a review of the environmental assessment processes associated with CEAA 2012 in a manner that is consistent with these Terms of Reference.

The Panel shall prepare a report that sets out:

- The approach employed to carry out its Mandate including but not limited to: the provision pre-engagement materials; the timeframes provided to interested stakeholders for input; and the methodology for engagement, consultation and consideration of input. The Panel will append the Engagement Plans developed to its report to the Minister.
- The conclusions, recommendations and rationale of the Panel, and
- A summary of the input received from the public, Indigenous peoples and any other interested group or organization and from a Multi-Interest Advisory Committee or other experts.

The Panel shall submit the report to the Minister, and on request of the Minister, clarify any of the conclusions and recommendations set out in its report.

Complementary Mandates

In addition to the Minister's mandate to review environmental assessment processes, other Ministers have also been mandated to carry out reviews and propose reforms to matters that intersect with environmental assessment. These include:

- Minister of Fisheries and Oceans and the Canadian Coast Guard— review changes to the *Fisheries Act*, restore lost protections and incorporate modern safeguards;
- Minister of Natural Resources – modernize the National Energy Board to ensure that its composition reflects regional views and has sufficient expertise in fields such as environmental science, community development and Indigenous traditional knowledge, and
- Minister of Transport – review changes to the *Navigable Waters Protection Act*, restore lost protections and incorporate modern safeguards.

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The Panel shall focus on those relevant matters that intersect with environmental assessment. For example, this will include the roles of federal expert departments

in supporting the Canadian Environmental Assessment Agency as it conducts assessments and carries out compliance and enforcement activities. If matters are raised that are outside the scope of environmental assessment, but are related to the other mandated reviews, the Panel will receive the information and forward it to the appropriate secretariat or department supporting the mandated review.

The Minister of Indigenous and Northern Affairs has launched a process to amend northern environmental assessment regimes. As CEAA 2012 has limited application in the north, matters related to northern environmental assessment regimes will be redirected as appropriate to the process launched by the Minister of Indigenous and Northern Affairs to amend northern regimes. Matters relating to northern environmental assessment regimes are outside the mandate of this Panel.

Scope of Review

In carrying out the review, the Panel shall consider the following matters raised in the Minister's mandate letter and the mandate letter of the Minister of Indigenous and Northern Affairs (Question 5):

- 1 *How to restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while working concurrently with the provinces and territories to avoid duplication yet uphold the more stringent requirement standards?*
- 2 *How to ensure decisions are based on science, including traditional/aboriginal ecological knowledge, facts and evidence, and serve the public's interest, the latter which shall be transparently defined and measured (e.g. consideration of national, regional, and local interests including Constitutional obligations and adoption of the UN Declaration of the Rights of Indigenous Peoples, as well as environmental, economic, social, and cultural factors)?*
- 3 *How to provide ways for Canadians to express their views and opportunities for experts to meaningfully participate?*
- 4 *How to require project advocates to choose the best technologies available to reduce environmental impacts?*
- 5 *How to ensure that environmental assessment legislation is amended to: enable CEAA jurisdiction before, during and after the application process and approval; expand the type and definition of large projects to include*

in review under CEAA; require climate change considerations; -follow consultation triggers used by the Crown, and enhance the earliest and equitable consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects, or others with potential significant project-specific or cumulative impact on Indigenous groups?

In doing so, the Panel shall consider how environmental assessment processes are conducted by the three responsible authorities under CEAA 2012, namely the Canadian Environmental Assessment Agency, the Canadian Nuclear Safety Commission or the National Energy Board. This will include the timing, schedule, methodologies, practices and procedures associated with the conduct of environmental assessment, such as Indigenous consultation, public participation, the role of science, the role of indigenous knowledge and harmonization with other orders of government. In assessing the practices and procedures associated with the conduct of environmental assessments, the Panel shall consider the relationship between environmental assessment processes and the Aboriginal and treaty rights of Indigenous peoples and reflect the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples, and the Convention on Biodiversity, particularly Article 8(j). The Panel shall also consider how to enhance regulatory certainty in the development of major projects in Canada. The Panel shall explicitly and broadly seek input into these considerations, in addition to the form and content of the applicable legislation.

The Review Process

The Panel

The Minister will appoint individuals to the Panel that have knowledge or experience relevant to environmental assessment processes and are free of any conflict of interest relative to the review process or its outcomes.

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The Minister may consider candidate names put forward by Indigenous Groups or members of the public.

The Panel will consist of at least three members, including one Chairperson. In the event that a Panel member resigns or is unable to continue to work, the

remaining members shall constitute the Panel unless the Minister determines otherwise. In such circumstances the Minister may choose to replace the Panel member to ensure balance and timeliness.

By way of letter from the Chairperson, the Panel may request clarification of its Terms of Reference from the Minister. The Panel shall continue with its review to the extent possible while waiting for a response in order to comply with the timelines of these Terms of Reference.

The Panel shall issue a notice to the public regarding any clarifications to its Terms of Reference and shall make those clarifications available on its website within 2 business days of receipt from the Minister.

By way of letter from the Chairperson, the Panel may request an amendment to its Terms of Reference from the Minister. The Panel shall continue with its review to the extent possible while waiting for a response from the Minister in order to comply with the timelines of these Terms of Reference.

The Panel shall issue a notice to the public regarding any amendments to its Terms of Reference and shall make those amendments available on its website within 2 business days of receipt from the Minister.

The Panel Secretariat

The Panel Secretariat will provide administrative, technical and procedural support as requested by the Panel and shall be comprised of staff from the federal public service, under the direction of an Executive Director. The Secretariat will report to the Panel and will be structured to allow the Panel to conduct its review in an efficient and cost-effective manner. The Secretariat will liaise and facilitate the flow of information with the relevant bodies supporting the other related mandated reviews. Members of the Secretariat shall be guided in their work and professional conduct by the *Values and Ethics Code for the Public Service*.

Conduct of the Review

Timeline

The Panel shall commence its review no later than August 15, 2016.

The Panel shall complete its review and provide its report with recommendations to the Minister by January 31, 2017.

The report shall be made available by the Minister on Panel website within 2 business days of receipt of the report.

Public Access to Information

The Panel shall create and maintain a website which makes public the information it receives during the course of the review.

The Panel Secretariat shall be responsible for maintaining the website beyond the completion of the Panel's term, including to register any and all submissions by interested Parties to the Panel Report and leading up to any Ministerial decisions to fulfill the Ministers' mandate letter with regard to the Scope of Review as detailed above.

Public Engagement

The Panel shall communicate directly with a broad cross-section of interested groups, organizations and individuals during its review to gain an understanding of issues and opportunities related to federal environmental assessment processes.

The Panel shall prepare a Public Engagement Plan outlining how and when it will conduct in-person events and receive written submissions. In preparing the Plan, the Panel shall take into account the activities associated with the other mandated reviews. This plan shall be posted on the Panel's website.

The Panel shall also include any procedures necessary for the timely and efficient notice of, and conduct of the events. The procedures will allow for the events to be open to the public and be conducted in a manner that offers all participants an opportunity to participate. The Panel shall ensure that a record of any in-person engagement event is created and posted on the Panel's website.

The Panel shall, where practicable, hold in-person engagement events, with

sufficient advance notification for participants' travel, in regions or communities where project environmental assessments have been recently conducted or where interest has been expressed in the review.

The Panel shall take into account the timing of traditional activities in the local regions and communities when setting the time and location of in-person engagement events.

The Panel shall also conduct online engagement with Canadians and provide procedures for sending in submissions. Any submissions received shall be posted on the Panel's website.

The Panel will allow 30 days for comment on the Public Engagement Plan before it is finalized. Any feedback received will be considered and posted on the Panel's website.

Indigenous Engagement and Consultation

The Panel will conduct its review in a manner that will facilitate the meaningful and equitable participation of Indigenous Groups and in particular, those Indigenous groups where project environmental assessments, whether as a designated project under the Act or not, have been recently conducted or where interest has been expressed in the review.

The Panel shall directly engage and consult with Indigenous organizations, groups, communities and individuals during its review in order to gain an understanding of issues and opportunities related to federal environmental assessment processes.

The Panel shall prepare an Indigenous Engagement and Consultation Plan, outlining how and when it will conduct Indigenous in-person consultation activities and receive written submissions. The Panel shall meet with the leadership of National Indigenous Organizations or their duly appointed representatives in the preparation of the Plan. In preparing the Plan, the Panel shall take into account the activities associated with the other mandated reviews. This Plan shall be posted on the Panel's website. The Panel shall work with regional and/or local Indigenous organizations in the planning and hosting of

Indigenous in-person consultation activities.

The Panel shall also include any procedures necessary for the timely and efficient conduct of these activities. The procedures will allow for the events to be open and to be conducted in a manner that offers all participants an opportunity to participate. The Panel shall ensure that a record of any Indigenous in-person engagement event is created and posted on the Panel's website.

The Panel shall, where practicable, hold Indigenous in-person consultation activities in regions or communities where project environmental assessments whether as a designated project under the Act or not, have been recently conducted or where communities have expressed interest in the review.

The Panel shall take into account the timing of traditional activities in the local regions and communities when setting the time and location of Indigenous in-person consultation activities.

The Panel shall also conduct online engagement with Indigenous Groups and provide procedures for sending in submissions. Any submissions received shall be posted on the Panel's website.

The Panel will allow 30 days for comment on the Indigenous Engagement and Consultation Plan before it is finalized. Any feedback received will be considered and posted on the Panel's website.

Multi-Interest Advisory Committee

A Multi-Interest Advisory Committee with representatives of Indigenous organizations, industry associations and environmental groups that have knowledge or experience relevant to environmental assessment processes will be established by the Minister to provide advice to the Panel.

The Panel will identify a select number of issues which may benefit from discussion by the Multi-Interest Advisory Committee. Identification of issues will also be guided by key issues raised during engagement and consultation activities.

The Panel will, by way of a letter to the Canadian Environmental Assessment Agency, as convener of the Multi-Interest Advisory Committee, describe the

issues for which it seeks advice and provide any relevant context to support the discussions by the Multi-Interest Advisory Committee.

The Multi-Interest Advisory Committee will meet as required in order to discuss the issues and will provide its consensus advice, to the extent possible, for the Panel's consideration and in accordance with any timeline provided by the Panel.

This issue and aAny advice provided to the Panel will be posted on the Panel's website. The Panel will include a summary of the issue and of any advice provided in its Report.

Expert Advice

Where expertise cannot be provided by the Multi-Interest Advisory Committee, the Panel may retain the services of independent non-government experts to provide advice on certain subjects within its mandate. This issue and aAny advice provided to the Panel will be posted on the Panel's website. The Panel will include a summary of the issue and of any advice provided in its Report.

EA Review Report

The report shall include:

- An executive summary of the report;
- A description of the approach employed to carry out its Mandate including but not limited to: the provision pre-engagement materials; the timeframes provided to interested stakeholders for input; and the methodology for engagement, consultation and consideration of input. The Panel will append the Engagement Plans developed to its report to the Minister.
- The conclusions, recommendations and rationale of the Panel with respect to the relevant issues within the mandate provided to the Panel; and
- A summary of any comments received
- The Report shall reflect the views of each member of the Panel.

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Upon receiving the report of the Panel, the Minister will make the report available to the public.

Participant Funding

The Canadian Environmental Assessment Agency will offer participant funding to Indigenous organizations, groups, communities and individuals to support their participation in the review.

This funding will be made available for all phases of the review including up to any Ministerial decisions to fulfill the Ministers' mandate letter with regard to the Scope of Review as detailed above.

Deliverables

- Public Engagement Plan
- Indigenous Engagement and Consultation Plan
- Report

Official Languages

All deliverables and any other documents produced by the Panel for the purpose of communicating information to the public must be produced and made publicly available in both official languages. Where necessary, translation into an Indigenous language required by a community will be provided. Documents provided to the Panel will be made publicly available in the language that they were received.

Confidentiality

All information gathered by the Panel in the course of its work is subject to the provisions of the *Access to Information Act* and the *Privacy Act*.

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