



Concept Paper



Environmental Assessment Initiation Guidelines

Information Required to Initiate Environmental Assessment



2018



Overview

The Mackenzie Valley Environmental Impact Review Board (the Review Board or the Board) would like to develop draft EA Initiation Guidelines (draft Guidelines) to describe the information needed to begin an EA. Once fully developed, these guidelines would set clear expectations for the type of information and level of detail required from developers to begin an EA. Ultimately, the goal of these guidelines is to facilitate a good understanding of a project proposal at the beginning of an EA to support efficiency and effectiveness during EA scoping, and throughout the entire EA process.

The Review Board is providing this concept paper to:

- **Provide an early opportunity for parties to familiarize themselves with the concept of environmental assessment (EA) initiation guidelines; and**
- **Gauge parties' interest in participating in a guideline development workshop.**

To enter the regulatory process in the Mackenzie Valley, developers must submit land or water authorization applications to the land and water boards. Although these applications usually trigger a preliminary screening (part of the overall environmental impact assessment process), they typically have information requirements focussed on land and water. The EA process builds on this focus and takes a broader view of the whole environment, including the socio-economic and cultural environment, wildlife, and more. Unlike land and water applications, there is no specific guidance for information required to initiate an EA in the Mackenzie Valley.

The result is that developers do not have clear guidance and the Review Board does not consistently receive the information needed to support an efficient start to the EA process. This can delay the EA process, lead to confusion and uncertainty in EA scoping, result in more exhaustive terms of reference, and generally makes the EA process more difficult for developers, parties, and the Board. Having experienced some of these problems, the Review Board's aim is to draft EA initiation guidelines to ensure sufficient information is available at the outset of an EA. By setting clear guidance and content expectations for major projects (that typically go through a full EA), the EA initiation guidelines should help developers of major projects prepare the necessary information in advance, to support an efficient start to the EA.

The Review Board is proposing to host a one-day workshop in Yellowknife on June 20, 2018 to discuss the concept and development of draft EA Initiation Guidelines in more detail. If you are interested in participating in the workshop, please tell us as soon as possible. If your organization would like to participate but cannot due to a major scheduling conflict, please advise the Board immediately.

The Review Board will carefully consider all feedback from the workshop when preparing a complete draft of the Guidelines for consultation and public review. During the review period for the draft Guidelines, Board staff will again be available to meet with interested parties.

Draft EA Initiation Guidelines Development Schedule

Please find below the proposed draft EA Initiation Guidelines development schedule. Following distribution of this Concept Paper, the Review Board will host a workshop to present and discuss the proposed format and content of the draft Guidelines. Considering feedback from parties, the Review Board will complete draft Guidelines for consultation, public review, and comment. Feedback from the public review will inform the Review Board's consideration of next steps, such as finalizing and implementing the EA Initiation Guidelines. Please note, these steps are subject to change pending feedback from parties.

| Draft EA Initiation Guidelines Development Schedule | Date |
|---|-------------|
| 1. Distribution of Concept Paper (with invitation to workshop) <ul style="list-style-type: none">▪ via email | May 7 |
| 2. Party confirmation for participation in workshop <ul style="list-style-type: none">▪ via email | ASAP |
| 3. Draft Guidelines Workshop in Yellowknife <ul style="list-style-type: none">▪ date TBD | June 20 |
| 4. Distribution of draft Guidelines for 90-day consultation, public review and comment period <ul style="list-style-type: none">▪ via email | TBD |

Introduction

Under the *Mackenzie Valley Resource Management Act* (MVRMA), the Mackenzie Valley Environmental Impact Review Board (Review Board or Board) is responsible for conducting environmental assessments (EA) and environmental impact reviews (EIR) in the Mackenzie Valley. The environmental impact assessment (EIA) process is designed to prevent significant adverse impacts from proposed developments, and to ensure the views of Aboriginal people and the general public are considered in project planning.¹

After consultation with First Nations, the Tłı̨chǫ Government, and the federal and territorial Ministers, the Review Board may establish guidelines for the EIA process in the Mackenzie Valley under section 120 of the MVRMA. The Review Board's *Environmental Impact Assessment Guidelines* set out an overall framework that explains how the EIA process works from preliminary screening to EAs and EIRs.² The Review Board has also published *Socio-Economic Impact Assessment Guidelines* and *Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment* to reflect its expectations related to socio-economic impact assessments and the use of Traditional Knowledge during the EIA process.³

The Review Board is now working towards the development of draft EA Initiation Guidelines (draft Guidelines) to be implemented at the beginning of an EA to set clear information requirements to support an efficient and effective EA process. These EA initiation guidelines will be expected to work together with the Review Board's existing guidelines, noted above, as many of the planning and consultation strategies discussed in the existing guidelines are also relevant for EA initiation.

This discussion paper presents the background to the concept of EA initiation guidelines and discusses the intended purpose, goals, and proposed content themes of the draft Guidelines.

Background

The Environmental Impact Assessment process in the Mackenzie Valley

The EIA process in the Mackenzie Valley begins when a developer submits an application for a water licence, land-use permit, or other regulatory authorization. Most applications undergo preliminary screening, which is an initial review of a development proposal for potential significant adverse environmental impacts and potential public concern.^{4,5} Preliminary screenings are conducted by the regulatory authority or government

¹ EIA refers to the overall environmental assessment process under the MVRMA, including preliminary screening, environmental assessment, and environmental impact review.

² Available at www.reviewboard.ca.

³ Available at www.reviewboard.ca.

⁴ See exemptions pursuant to section 119 and subsection 124(1) of the MVRMA.

⁵ For more information regarding preliminary screening, see the Review Board's *Environmental Impact Assessment Guidelines* at www.reviewboard.ca.

department that receives the application, such as the Mackenzie Valley Land and Water Board.

The majority of development proposals (about 95%) only require preliminary screening and are not referred to EA or EIR.⁶ However, most major projects, such as new mines, hydroelectric projects, oil and gas production, or major changes to existing projects, are likely to trigger an EA either as a result of a preliminary screening decision or direct referral pursuant to section 126 of the MVRMA.

After referral, major steps of the EA process that are typically followed in the Mackenzie Valley consist of the following:^{7,8}

- Startup;
 - Notification to parties and public
 - Opening the Public Registry
 - Developer's submission of project description and related information (EA Initiation Package - see [EA Initiation Guidelines](#) below)⁹
- Scoping;
 - Developer's proposed terms of reference
 - Community and technical scoping sessions hosted by Review Board staff
 - Identification and prioritization of issues to investigate during EA
- Terms of Reference and Work Plan;
 - Finalization of scope of development and assessment, and publication of reasons by the Review Board
 - Establishment of terms of reference setting out information requirements for a developer's assessment report (DAR)
- Developer's Assessment Report, Technical Review, and Information Requests;
 - Prediction and assessment of impacts and proposed mitigation measures, based on the terms of reference
 - Conformity or adequacy review of DAR by Review Board
 - Review of the DAR and examination of the developer's predictions and conclusions
 - Technical, cultural, and/or community sessions hosted by Review Board staff
- Interventions and Public Hearing;
 - Written submission of parties' positions and supporting rationale (technical reports)
 - Presentations to the Review Board (from parties and the public) and questioning of parties at a public hearing (e.g., community and technical hearings)

⁶ Environmental Impact Review is a similar process to EA, but is the highest level of scrutiny for a proposed development under the MVRMA. See the Review Board's *Environmental Impact Assessment Guidelines* available at www.reviewboard.ca.

⁷ As per the Review Board's *Rules of Procedure*, the Board has discretion to vary its *Rules* and the EA process, and may do so to facilitate procedural efficiency, effectiveness, and fairness.

⁸ See the Review Board's *Environmental Impact Assessment Guidelines* for further explanation, available at www.reviewboard.ca.

⁹ EA Initiation Packages submitted during preliminary screening processes would be transferred from the screening organization to the Review Board.

- Closing arguments
- Board deliberation and issuance of a report of EA and reasons for decision; and
- Decision by final decision maker(s)¹⁰

Following the completion of an EA, assuming the development proposal is not referred to EIR or rejected, the developer typically submits an updated project description to the land and water board to proceed with the permitting/licencing process.¹¹ The updated project description incorporates any modifications to the project that came about during the EA process through, for example, changes to the project design, commitments made by the developer, or measures set out by the Review Board.

The MVRMA also allows for follow-up programs to evaluate the soundness of an EA or EIR and the effectiveness of mitigation measures. Further, the MVRMA includes provisions (not yet in force) for enforceable development certificates to be issued by the Review Board that will include mitigation measures as conditions, will be in effect for the life of the development, and may be amended by the Board.

The Review Board's Policy Framework

The Review Board's overall policy framework is based on the MVRMA, which creates the Board and sets out its jurisdiction, mandate, and authority, and is itself based on the Gwich'in, Sahtu, and Tłı̨chǫ agreements.¹² The MVRMA gives the Review Board authority to make rules about practice and procedure (section 30), as well as guidelines (section 120). As summarized in Figure 1, these tools are used to provide clarity and to support effective participation by parties, and the public in Board processes.

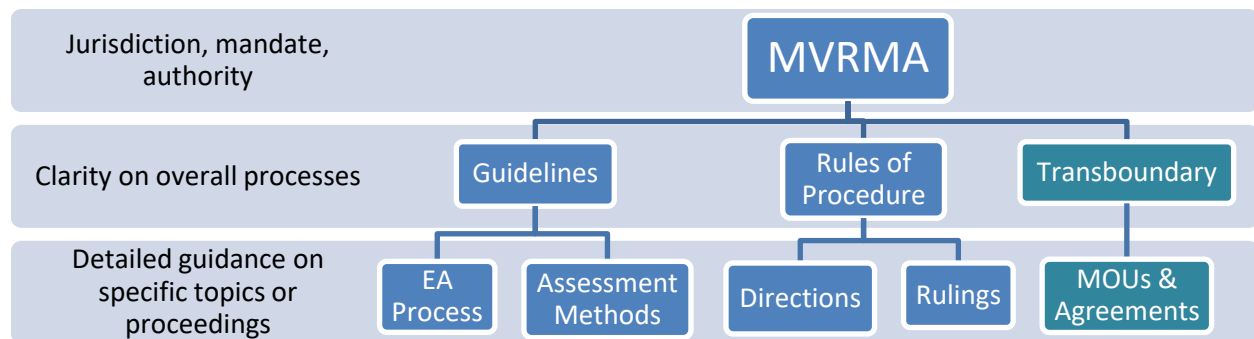


Figure 1: Review Board policy framework

¹⁰ Ministerial decisions for EA are made under to section 130 of the MVRMA. Through the Delegation Instrument brought into effect on April 1, 2014 pursuant to subsection 4(1) of the MVRMA, the federal Minister and the responsible ministers make EA decisions for developments wholly or partly in a federal area; the territorial Minister of Lands and the responsible ministers make EA decisions for developments wholly outside a federal area. Where applicable, final decision-makers also include the Tłı̨chǫ Government and designated regulatory agencies.

¹¹ Developers are encouraged to contact the land and water boards to discuss the detailed information requirements for permitting/licensing.

¹² Gwich'in Comprehensive Land Claim Agreement, Sahtu Dene and Metis Comprehensive Land Claim Agreement, and the Tłı̨chǫ Land Claims and Self Government Agreement.

EA Initiation Guidelines

Why “EA Initiation Guidelines”?

The Review Board has always required project-related information to begin an EA and to undertake EA scoping, however, information received by the Board in the past at the beginning of an EA has been variable. To reduce this variability and to ensure developers provide clear and complete information at the outset of an EA, **the Board would like to establish standardized information requirements and provide better up-front guidance to project proponents earlier in the EA process.** The guidelines would be a single document describing the requirements (e.g., type of information and level of detail) and overall process for preparing the information needed to begin an EA.¹³

The Review Board currently envisions that the EA Initiation Package would include the following information:

- a comprehensive project description;
 - plain language summary
 - project and developer overview
 - project components, alternatives, and plans
- a description of the biophysical and human environments;
 - e.g., land, water, wildlife
 - e.g., socio-economic, cultural
- identification of potential impacts and proposed mitigation measures; and
 - conceptual model of how the project will interact with the environment
 - initial description of potential impacts
 - identification of relevant mitigation measures and management strategies
- an engagement record and engagement plan.

Some of this information is already required as part of land and water applications. In some cases, developers that prepare comprehensive information packages for preliminary screening may already include most or all of the information required for EA initiation. However, the draft Guidelines will go further to provide clear expectations for the information needed to begin an EA, especially regarding information that is not the focus of land and water applications: socio-economic, cultural, wildlife, etc.

Together, this information will allow the Review Board, Aboriginal Governments and organizations, government departments, and the public to thoroughly understand a project proposal and develop a preliminary understanding of its potential impacts on the environment. This information will also clearly identify how early public engagement was considered and informed project planning, design considerations, and management plans. Having this information consistently available for public review at the beginning of an EA will contribute to several positive outcomes during the EA process:

¹³ The EA Initiation Guidelines would in no way limit the Review Board’s authority to require information beyond what is described the guidelines.

- Parties will be better able to make informed and timely decisions about their desired level of participation in the EA process, and plan accordingly;
- The status of conformity with other processes, such as land use plans, will be clearer during early stages of assessment;
- The EA scoping phase, which results in a terms of reference that prioritizes issues to investigate and sets out instructions for the DAR, will be more effective;
- The DAR and subsequent information requests can focus on the assessment of impacts and mitigations and, if applicable, the investigation of alternatives specified in a terms of reference;
- The Review Board and parties in the EA process can focus their efforts on issues related to significant adverse impacts, and mitigation measures that may be needed to avoid such impacts; and
- Potential delays resulting from information requests related to a lack of understanding of the project itself can be minimized.

How the draft Guidelines are being developed

Content for the Review Board’s draft Guidelines is being developed using several resources. This includes relevant resources from other EA organizations, information requirements from past EAs, feedback from parties, resource co-management workshops, and information requested through relevant guidelines developed by the Mackenzie Valley Land and Water Board (MVLWB) including:

- MVLWB Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits;
- MVLWB Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories; and
- MVLWB Guidelines for Developing a Waste Management Plan.

Wherever appropriate, the draft Guidelines will use existing information requirements and developers’ best practices to form the basis of the EA initiation requirements.

Next Steps

In general, the Review Board is seeking feedback on the draft Guidelines initiative from Aboriginal governments/organizations, departments of the federal and territorial governments, industry, regulators, other organizations, and the public. **As the next step, the Review Board would like to hear from parties who are interested in participating in a draft Guidelines development workshop on June 20, 2018.** The Review Board envisions this workshop functioning as a collaborative opportunity for the Board to introduce more details related to the proposed format and content of the draft Guidelines, and to hear and incorporate feedback from parties.

The workshop will be followed by a formal and comprehensive public review opportunity prior to the Review Board moving forward with EA initiation guidelines.¹⁴

Implementation

The Review Board would eventually apply the guidelines in accordance with its mandate and legislative responsibilities under the MVRMA. When development proposals are referred to EA the relevant information requirements set out in the guidelines would need to be met for the Review Board to proceed with the EA process. Developers of major projects would also have the opportunity to consider the EA initiation guidelines when carrying out project planning and early engagement, preparing a project description, etc. The Review Board would maintain the authority to deviate from the guidelines when determining the information requirements for any specific EA.

¹⁴ Under section 120 of the MVRMA, following consultation with first nations, the Tłıchǫ Government and the federal and territorial Ministers and subject to any regulations made under paragraph 143(1)(a), the Review Board may establish guidelines respecting the process established under Part 5.