

Mackenzie Valley
Review Board



REFERENCE BULLETIN ON GOVERNMENT PARTICIPATION IN ENVIRONMENTAL ASSESSMENT

*How and why government departments provide
information and expertise in Review Board
proceedings*

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Mackenzie Valley
Environmental Impact Review Board
Phone (867) 766-7050
Fax: (867) 766-7074

www.reviewboard.ca

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About the Review Board

The Mackenzie Valley Environmental Impact Review Board (the Review Board) is an administrative tribunal that was established through the *Mackenzie Valley Resource Management Act* (the Act) that resulted from the *Gwich'in Comprehensive Land Claim Agreement*, the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, and the *Tłıchǫ Land Claims and Self-Government Agreement*.

The Review Board conducts environmental assessments and environmental impact reviews in the Mackenzie Valley under subsection 114(a) of the Act. The Review Board's mandate is broad and comes from Part 5 of the Act. As per section 115 of the Act, the Review Board must consider in its proceedings:

- *the protection of the environment from significant adverse impacts,*
- *the social, cultural and economic well-being of residents and communities in the Mackenzie Valley, and,*
- *the importance of conservation to the well-being and way of life of Indigenous peoples to whom section 35 of the Constitution Act, 1982 applies and who use an area of the Mackenzie Valley.*



1. Introduction

The Mackenzie Valley Environmental Impact Review Board (Review Board) relies on information provided by participants in environmental assessments (EA) including relevant Indigenous, federal, and territorial governments to make informed decisions in relation to the Review Board’s mandate.¹ Government information—including specialist or expert advice or knowledge—is essential for helping the Review Board understand potential impacts of proposed developments, and what mitigation may be needed to avoid or lessen those impacts.

This reference bulletin describes the Review Board’s views on the important role that government information plays in Review Board proceedings and suggests how government departments² can provide that information.

Key message

The Review Board may request information from departments and agencies of the federal and territorial governments, and the Tłı̨ch̨o Government, or the Délı̨ne Got’ine Government to help fulfill its responsibilities under Part 5 of the *Mackenzie Valley Resource Management Act*.

2. Legislative basis for obtaining information from government departments during an EA

Under section 22 of the *Mackenzie Valley Resource Management Act* (the Act), the Review Board may obtain information from any department or agency of the federal or territorial government, the Tłı̨ch̨o Government, or the Délı̨ne Got’ine Government when conducting its proceedings. Government information may include specialist or expert advice, information or knowledge, as well as the participation of government department experts.³

The Review Board has authority under section 25 of the Act to compel the provision of government information, as well as to mandate the attendance and examination of witnesses from government departments. If necessary, the Review Board may use an order of the court pursuant to section 23, to fulfill the requirements of section 25.

In exercising its authorities under sections 22 and 25 of the Act, the Review Board will consider the specific context of an EA and identify explicitly in writing:

- what information, knowledge or expertise is required;
- which government department’s expertise is required; and,
- when and how the above-mentioned information and expertise should be provided to the Review Board.

¹ This reference bulletin focuses on EA, but the legislative provisions described here apply to all aspects of Review Board proceedings under Part 5 of the *Mackenzie Valley Resource Management Act*, including environmental impact reviews which are conducted by a review panel as per section 132.

² This reference bulletin uses the term “government department” to mean any department or agency of the federal or territorial government, the Tłı̨ch̨o Government or the Délı̨ne Got’ine Government per section 22.

³ This reference bulletin uses the term “information and expertise” to mean *government information* per s. 22.



In all cases, the Review Board encourages relevant government departments to participate fully and actively in EAs, as described in Section 3 of this document.

2.1 Special considerations for Traditional Knowledge

The Review Board respects and recognizes that First Nations, Indigenous Governments, and respective knowledge-holders control, own and provide access to their Traditional Knowledge.⁴ The provision of Traditional Knowledge is at the discretion of the respective Indigenous Governments and/or knowledge-holders. The Review Board encourages, but will not compel, the provision of Traditional Knowledge in its proceedings, and has provisions in place to protect confidentiality if necessary. Please see the Review Board's *Rules of Procedures*⁵ and *Traditional Knowledge Guidelines*⁶ for more information.

3. How and when government departments can participate to provide information in EA

Government departments should make use of the Review Board's guidelines and other guidance documents⁷ for information about how to participate effectively in EA proceedings. The Review Board decides what type and level of information it requires from government departments that is relative to the scope of an EA.⁸ The Review Board will issue *Notices of Proceeding* throughout the course of an EA that specify how all parties, including government departments, can participate in ways that help the Review Board get the information it needs to make informed decisions.

In all cases, government departments can actively participate in EAs by:

- identifying the information and expertise they have that is relevant to the scope of the EA;
- engaging responsively with the Review Board, the developer and other parties;
- asking and responding to questions and information requests; and,
- adhering to the Review Board's *Rules of Procedure*.

Government departments possess information and expertise that relate to their overall mandates. Government departments should provide any relevant information and expertise that they hold, and not limit the information and expertise they provide to just the scope of their regulatory mandate on a proposed development.

⁴ In alignment with the Review Board's guidelines and principles of OCAP®. OCAP® is a registered trademark of the First Nations Information Governance Centre (FNIGC). For more information, see FNIGC's [website](#).

⁵ The [Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings](#) is available online on the Review Board's website.

⁶ [Guidelines for Incorporating Traditional Knowledge in EIA](#) is available online.

⁷ See the [Review Board's website](#).

⁸ The scope of assessment and scope of development are decided by the Review Board in a *Terms of Reference* for the EA.



Government departments can identify to the Review Board and potentially affected Indigenous groups whether a proposed development triggers a duty to consult, and if they will be relying on the Review Board's process to help fulfill their duty to consult.⁹

Some ways in which government departments can participate to provide information over the course of an EA are further described below.

EA Start up and Scoping

When participating as technical and/or subject matter experts, government departments can review technical and design information relative to a proposed development submitted by the developer to help identify potential impacts of a proposed development that merit special consideration in an EA, and provide advice and technical input to the Review Board relative to the department's mandate during scoping.

Government departments should also describe what information and expertise they hold that may be relevant to the scope of an EA determined by the Review Board.

Analysis

Government departments should ask and answer questions within the scope of an EA that are relevant to their areas of expertise. Government departments can contribute to an EA in many ways including:

- **provide a better understanding of local and regional contexts** by providing information and knowledge gathered in government-funded research and programs¹⁰, environmental and regional studies or cumulative impact monitoring programs.
- **take a comprehensive approach to understanding issues and predicting impacts.** Government departments can help assess whether the developer's conclusion and predictions are accurate and assess if the data and analysis is credible.
- **assess and evaluate if mitigations proposed by a developer will be effective** to minimize or avoid adverse impacts.
- **evaluate how mitigation that may become measures can be implementable and enforceable.** Government departments have experience with measures from past EAs, including compliance and enforcement, and can provide valuable insights based on this real-world experience.

Taken together, the information and expertise provided by government departments during the analysis phase will help the Review Board and all participants in an EA to better understand the likely potential impacts of a proposed development, and what mitigations might be necessary to prevent

⁹ Federal and territorial governments may be aware of any changing or new assertions or claims regarding Aboriginal and Treaty rights (as recognized and affirmed under section 35 of the *Constitution Act, 1982*) in the Mackenzie Valley, and could help identify relevant information for the Review Board to ensure all potentially affected Indigenous groups are properly notified about a proposed development and its related EA process.

¹⁰ For example, the [Open Science and Data Platform](#) by the Government of Canada and the [GNWT Open Data Portal](#) housed by the Government of the Northwest Territories.



significant adverse impacts. This will help everyone taking part in an EA to participate in an informed and effective way in the hearing phase.

Hearings

Government departments may choose to intervene at hearings if their mandates are relevant to the scope of issues for the assessment, and should do so if requested by the Review Board.¹¹ Government departments can provide their views on the significance of project-specific and cumulative impacts from a proposed development and required mitigation.¹² If necessary and relevant, government departments should have representatives at hearings (including community hearing) who can participate effectively—to make presentations, speak to matters relevant to their areas of expertise, and respond to any questions or undertakings directed to them.

4. Government participation in EA supports Crown Consultation

When federal and territorial government departments take part and provide information in EA proceedings, it helps promote informed participation of potentially affected Indigenous Governments or Organizations and rights-holders. A better understanding of a proposed development and its potential impacts can enable these groups to more effectively describe how the proposed development might affect the exercise of Aboriginal and Treaty rights, and how these impacts could be meaningfully mitigated. The Crown can use this information to better understand:

- the views, concerns and interests of Indigenous Governments or Organizations and rights-holders;
- potential impacts to established or asserted Aboriginal and Treaty rights protected under section 35 of the *Constitution Act, 1982* raised by potentially impacted rights-holders to whom the Crown may owe a duty to consult; and,
- if and/or how measures recommended by the Review Board are adequate to address those impacts.¹³

5. Other benefits to governments

In addition to helping support the Crown's consultation process, government department participation in Review Board proceedings yields other benefits including helping final decision-makers¹⁴. The ability of decision-makers to make informed decisions relies on the quality of information provided by all participants in the EA process, and how that information was assessed by the Review Board. All

¹¹ See *Part 3: Public Hearings* in the Review Board's *Rules of Procedure* for information about how to prepare and intervene.

¹² The Review Board makes its determination of significance based on evidence, which includes interventions from government departments. The Review Board's determination is set out in a *Report of Environmental Assessment and Reasons for Decision* at the end of an EA.

¹³ For more information, please see our [Reference Bulletin on consultation and engagement in environmental impact assessment](#) available online.

¹⁴ Decision-makers in Part 5 of the Act include the federal and responsible ministers, designated regulatory agencies or the Tłı̨chǫ Government.



government departments with relevant information and expertise should provide their specialist or expert advice, information or knowledge in the EA process. This will ensure that government information and expertise can be used in many ways—by all participants in the EA process, the Review Board in its determinations, and decision-makers for a proposed development.

6. Conclusion

The Review Board relies on information provided by EA participants, including government departments, to make good decisions. Government participation and the provision of information in Review Board proceedings is critical to the review and approval of responsible development in the Mackenzie Valley. Additionally, government department participation during an EA supports more effective government involvement in all aspects of their respective authorities throughout the life of the project. We recognize and value the expertise of government departments and key roles that governments play in EA proceedings. We look forward to continued collaboration with all levels of governments in pursuit of our respective mandates.

This reference bulletin may be updated from time to time as necessary, or when required by changes in legislation, best practice or Review Board's *Rules of Procedure*.

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