
West Coast Environmental Law Association: Ensuring Meaningful Public Participation in Assessments

Submission for the British Columbia Environmental Assessment Revitalization Comment Period

30 July 2018

Ensuring meaningful public participation is critical to the success of the provincial government's efforts to revitalize British Columbia's environmental assessment (EA) regime. West Coast Environmental Law (WCEL) has made a number of recommendations in previous submissions for priority legislative changes to ensure that meaningful public participation is a key component of revitalized EA.¹ Given the importance of improving public participation, this submission focuses in greater detail on legislative changes required to bring about meaningful public participation in provincial EAs.

This submission addresses nine key areas for legislative change to ensure meaningful public participation in assessments:

- 1) Legally defining minimum standards for meaningful public participation
- 2) Setting out key issues in assessment for which public participation is required
- 3) Requiring the use of informal, deliberative engagement tools throughout assessment
- 4) Requiring an in-person public participation format
- 5) Providing for a Community Advisory Committee as a default
- 6) Establishing mechanisms for public participation in generating and reviewing evidence
- 7) Establishing a participant funding program
- 8) Providing for public participation in monitoring and follow-up
- 9) Requiring transparent online posting of information

We address each of these areas in turn below. Recognizing that there is no "one size fits all" approach to public participation, WCEL's recommendations seek to maintain flexibility to tailor public participation to the needs of communities and the circumstances of a particular assessment, in particular through the development of a public participation plan as part of the Assessment Plan, with public input. The recommendations therefore address the basic conditions and framework required to ensure meaningful public participation, while allowing the specifics of public engagement to be developed on a case-by-case basis.

The recommendations should be read in the context of WCEL's submissions on the broader suite of reforms needed to revitalize EA in BC.²

1) Legally defining minimum standards for meaningful public participation

In [Why It's Time to Reform Environmental Assessment in BC](#), WCEL details a number of serious shortcomings underlying our conclusion that “[c]urrent EA processes fail to enable or facilitate meaningful participation” by the public.³ As a foundation for improving public participation in EA, a new assessment law must define meaningful public participation in a manner that establishes its basic standards and content, while maintaining flexibility regarding the process and methods used.

This should include a legislative definition of “meaningful public participation,” potentially in combination with a provision establishing key principles for meaningful public participation. What is important is that the key qualitative elements of meaningful public participation are clearly set out for the purposes of accountability and assuring public confidence in assessments. A new assessment Act should specify that meaningful public participation:

- ensures that the needs, values, and concerns of the public inform and influence the process and outcomes of an assessment;
- uses multiple, customized methods of engagement that promote and sustain fair and open dialogue;
- is facilitated and led by the body conducting the assessment, or through other means supported by the public, but in any case is not facilitated or led by a proponent; and
- requires, at minimum, the following:
 - participation begins early and is ongoing throughout assessments, through to decision-making, follow-up and monitoring,
 - participation opportunities, programs or plans are designed to build public confidence, promote learning within and across assessments, and recognize the knowledge and acumen of the public,
 - opportunities for public engagement are open to all interested parties, are varied and flexible, include the option of in-person discussions or hearings, and reflect the ways the public would like to be engaged,
 - any formal processes, such as formal hearings and dispute resolution, are implemented according to principles of natural justice and procedural fairness,
 - adequate and appropriate notice is provided to allow the preparation of public input,
 - the public has full, convenient and ready access to all information received and considered in the assessment, including in local languages, in a manner that may be easily read and understood in affected communities,
 - the public has a reasonable period of time to review and respond to information, and prepare their own information,
 - decision-makers demonstrate fair consideration and weighing of information, comments and evidence provided by the public in all interim and final decisions,
 - the public has access to financial and other support, and capacity building, in order to support informed dialogue and discussion, and
 - participation processes are fair, open and transparent, and designed to ensure public confidence in resulting decisions.

2) Setting out key issues in assessment for which public participation is required

Consistent with the principles above, a new assessment Act should explicitly set out key issues for which meaningful public participation is required, including requirements for meaningful public participation regarding:

- early engagement by the assessment authority, including
 - review of a summary of early engagement conducted by the proponent, as set out in an initial project description, to determine its accuracy and adequacy,
 - identification of key issues related to preparation of a detailed project description, and how those issues will be addressed, and
 - determination of whether a project is ready to proceed to assessment;
- development of an Assessment Plan, including
 - a public participation plan,
 - the identification of key issues to be addressed in the assessment and any assessment-specific sustainability criteria,
 - the requirements for information to be provided by the proponent in its application,
 - a plan for the information, studies and methodologies, analysis and peer-review to be provided or undertaken by parties other than the proponent,
 - assessment timelines, and
 - a plan for cooperation among jurisdictions in the assessment, including whether the assessment will be conducted by an independent or Indigenous-led panel, by the Environmental Assessment Office, or by another approach;
- development and review of information and evidence for the purposes of the assessment, in a manner determined by the Assessment Plan;
- development of the assessment report and recommendations;
- the draft decision, including conditions of approval; and
- development of any follow-up and monitoring plans.

Similar legislative requirements should be established for meaningful public participation in regional and strategic assessments, particularly with regard to development of: an assessment plan; the information and evidence informing the assessment; and the outcomes of the assessment.

3) Requiring the use of informal, deliberative engagement tools throughout assessment

The commitment in BC's Discussion Paper to include more public comment periods in the legislated assessment process is welcome. However, comment periods alone do not suffice as meaningful public participation. Engagement falls on a spectrum from informing at the low end, to consulting, involving and finally collaborating at the high end. For each level of public participation, there are multiple means of involving the public (see e.g. Figure 1). Opportunities for deliberative, reciprocal dialogue are key to securing community-informed decisions and community buy-in.

New EA legislation should require the assessment authority to establish a roster of independent facilitators, and enable it to appoint facilitators from that roster to assist with developing public participation plans and conducting public participation activities. It should also require the assessment authority to establish, in regulations or policy guidance, a toolbox of participation activities for each level of the engagement spectrum, and to draw from that toolbox of participation activities, in addition to comment periods, for each stage of the assessment, based on the public participation plan. Such a toolbox could contain an array of different ways to inform and engage, such as those listed in Figure 1, along with a description of how to use each engagement tool and the circumstances in which it is appropriate.

These mechanisms would provide practical means to implement the commitment in BC’s Discussion Paper to ensure public participation opportunities offer: “...a variety of types and means of engagement beyond traditional comment periods, including more opportunities for dialogue, supported by plain language materials.”⁴ Legislation should enable the Minister to enact regulations providing further direction on public engagement tools and methods, including on the requirement for in-person public participation discussed below.

Matrix of Public Participation Techniques

Activity / Technique	Inform	Consult	Involve	Collaborate
Information				
Advertising	✓			
Briefings / Presentations	✓			
Central Information Contact	✓			
Community Fairs / Events	✓			
E-mail	✓			
Field Offices	✓	✓		
Information Centres / Repositories	✓			
Information Kiosks / Exhibits / Displays	✓			
Open Houses	✓	✓		
Print and Electronic Media	✓			
Print Materials / Mail Outs	✓			
Response Summaries	✓	✓		
Site Tours / Field Trips	✓	✓		
Symposiums / Expert Panels	✓	✓		
Telephone Hotlines	✓	✓		
Web Sites and Other Internet Tools	✓	✓		
Consultation				
Coffee Parties	✓	✓		
Comment Forms		✓		
Focus Groups		✓		
Interviews		✓	✓	
Public Meetings	✓	✓		
Surveys		✓		
Town Meetings	✓	✓	✓	
Involvement				
Charettes			✓	✓
Roundtables			✓	
Small Group Meetings			✓	
Workshops			✓	✓
Collaboration				
Advisory Groups		✓	✓	✓
Consensus-Building Techniques			✓	✓
Study Circles		✓	✓	✓
Task Forces			✓	✓

Figure 1: Matrix of Public Participation Techniques, Canadian Environmental Assessment Agency, Public Participation Guide (May 2008)

4) Requiring an in-person public participation format

[Why It's Time to Reform Environmental Assessment in BC](#) addresses how the current BC EA regime generally lacks in-person public participation, other than discretionary open houses typically led by the proponent.⁵ This is inconsistent with the principles for meaningful public participation above, and a significant factor in lack of public confidence in the current EA process. To help address this shortcoming, a new EA law should require that an Assessment Plan provide for at least one form of in-person public participation during an assessment.

The legislation should set out that the nature of the in-person public participation must be based on public input during the assessment planning stage regarding preferred means of public engagement. The toolbox of potential participation activities discussed above would be a useful mechanism to inform public engagement in this regard. Public input may identify a need for formal public hearings with related procedural requirements such as the right to cross-examination and right to be represented by counsel, or may indicate a preference for more deliberative and informal participation formats such as community roundtables. In some cases it will be appropriate to provide multiple forms of in-person public participation opportunities.

5) Providing for a Community Advisory Committee as a default

The Environmental Assessment Advisory Committee (EAAC), struck by the province to provide advice on EA reform, recommends the establishment of a Community Advisory Committee in assessment to “help in the process of setting information gathering standards and conveying results to the lay public” as well as to “be used as a visible device for gathering public feedback” – all with the intention of increasing public trust.⁶ This is a welcome recommendation and would provide an important tool for deeper public engagement in identifying key issues and values, as well as on such technical aspects as the plan for information, studies, analysis and peer-review to inform an assessment, including the identification of experts to undertake such work.

Having a Community Advisory Committee “in the room” during such discussions would be a useful mechanism for better understanding community concerns and ensuring decisions are informed by local knowledge and values. Furthermore, a Community Advisory Committee could be of assistance in making recommendations regarding experts to peer review evidence, identify potential information gaps and conduct studies, including emphasizing areas where the involvement of public assessment participants in undertaking such analysis is important, as discussed further in Recommendation 6 below.

If the public continues to be excluded from developing the plan for generating and reviewing evidence, then public suspicion regarding the independence of evidence is likely to remain a significant factor in assessments; a Community Advisory Committee is one of the tools that should be used to address this concern in a practical manner.

Consequently, new EA legislation should:

- require the establishment of a Community Advisory Committee early in the assessment process;
- provide for the ability of local governments to recommend members of a Community Advisory Committee;
- provide for the ability of community groups, non-governmental organizations and labour unions to recommend members of a Community Advisory Committee;

- provide that BC may dispense with the requirement to establish a Community Advisory Committee, with reasons, where local governments and the public have not indicated a need for a Community Advisory Committee and the circumstances do not otherwise warrant a Community Advisory Committee; and
- require BC to publicly post all advice and recommendations received from a Community Advisory Committee.

For clarity, Community Advisory Committees have value in regional and strategic assessments as well as project assessments, and should be provided for in a similar manner.

6) Establishing mechanisms for public participation in generating and reviewing evidence

The EAAC aptly observes that “participant acceptance of the veracity of the information matters and is sensitive to who provides it, who pays for it and who verifies its accuracy and relevance.”⁷ Meaningful public participation in the generation and review of evidence is crucial to acceptance of the information upon which an assessment is based. This issue, which is of critical importance to restoring public confidence in BC’s EA regime, is inadequately addressed in BC’s Discussion Paper. Elsewhere in this submission, WCEL has set out a number of recommendations relevant to ensuring meaningful public participation in the generation and review of evidence, particularly that:

- legislation must require meaningful public participation in the development of an Assessment Plan, including the plan for what information, studies, analysis and peer-review will be undertaken, and by whom;
- providing for a Community Advisory Committee is a practical tool for more deeply involving the public in the process of planning how evidence will be generated and reviewed, as well as to help identify where public EA participants should be involved in engaging independent experts to peer review evidence, identify potential information gaps and, where appropriate, conduct studies; and
- participant funding must provide resources for undertaking the necessary analysis and review.

In addition to these recommended changes, new EA legislation should:

- legally require that assessments be based on community knowledge, as well as Indigenous knowledge and the best available scientific information – as is the case in federal Bill C-69, the *Impact Assessment Act*;⁸
- explicitly provide that an Assessment Plan may specify particular studies, analysis or peer review to be undertaken by one or more public EA participants; and
- require that, where a Community Advisory Committee recommends that one or more public EA participants undertake a particular study, analysis or peer review, the Assessment Plan must include a response addressing the Community Advisory Committee recommendation.

These recommended changes, taken together, would not only provide a role for the public in planning how assessment evidence is generated and reviewed, they would actively promote involvement of public EA participants in undertaking analysis and ensure assessments consider important community knowledge. At the same time, the provisions would be flexible enough so as not to be overly burdensome, and would ensure that each assessment can be tailored to the particular circumstances.

7) Establishing a participant funding program

BC's Discussion Paper on EA revitalization makes a welcome commitment to introduce a "public participation funding program."⁹ It is crucial that this program be anchored in legislation to ensure that sufficient public participation funding is consistently distributed, in a manner independent from political interests.

New EA legislation should require the establishment of a participant funding program to facilitate meaningful public participation in:

- the planning and preparation for a project, regional or strategic assessment;
- the conduct of a project, regional or strategic assessment; and
- the development and administration of monitoring and follow-up programs.

The legislation should establish basic requirements for the participant funding program, including that participant funding allocations for an assessment must be:

- awarded sufficiently in advance of each phase of assessment to enable meaningful public participation;
- commensurate with the complexity of assessment and potential implications for sustainability; and
- sufficient to enable meaningful public participation throughout all stages of the assessment, including retaining expert, legal and other assistance to review information and reports, preparing new information, attending participation opportunities and events, and participating in monitoring, follow-up and compliance.

The legislation should provide that any person may apply for participant funding from the program, as well as establish some basic criteria for decisions to award funding, including consideration of:

- the applicant's interest in the assessment or project;
- the scope and type of assessment, and its potential implications for sustainability;
- for a project assessment, the scale of the project;
- any proposed coordination by the applicant with other participants;
- key issues in the assessment, and the information and analysis needs for the assessment, including any information gaps or uncertainties; and
- the public interest.

8) Providing for public participation in monitoring and follow-up

BC's Discussion Paper makes a number of positive commitments regarding monitoring and enforcement, including: modernized compliance and enforcement tools; opportunities for Indigenous nations to co-administer or participate in monitoring, compliance and enforcement (for example through Indigenous guardian programs); continued engagement of EA participants in compliance and enforcement; and opportunities for the public to lodge complaints regarding project operations.¹⁰ To ensure that public participation in monitoring and enforcement is meaningful, new EA legislation should establish at least two tools to support BC's commitments.

First, new EA legislation should provide the Minister with a power to establish follow-up and monitoring committees with regard to any project assessment, regional assessment or strategic assessment, including the power to appoint members to such committees. It would be advisable to provide for co-administration of such committees with Indigenous nations. The legislation should enable an EA participant to request that the Minister establish a monitoring and follow-up committee with regard to an assessment, and set out a period of time within which the Minister must publicly respond to such a request. Furthermore, the legislation should allow the public to propose nominations for membership in a follow-up and monitoring committee.

Secondly, new EA legislation should provide that any person may submit a complaint regarding potential non-compliance with the conditions of an EA certificate or the requirements of a regional or strategic assessment, and set out a period of time within which the Environmental Assessment Office must publicly respond to such a complaint.

9) Requiring transparent online posting of information

Transparent, easy access to information is a cornerstone of meaningful public participation. In this regard, BC's Discussion Paper makes welcome commitments to ensure assessments include plain language materials and to transparently post all EA information and data online (subject to protection of sensitive Indigenous knowledge), including monitoring and compliance information.¹¹ To put these commitments into practice, new EA legislation should:

- require that all information and data from a project assessment, regional assessment or strategic assessment be promptly posted on a searchable online registry;
- require that all information and data from monitoring, compliance and enforcement activities related to a project assessment, regional assessment or strategic assessment be promptly posted on the searchable online registry;
- provide exceptions from posting requirements for sensitive Indigenous knowledge; and
- require, as recommended by the EAAC,¹² that information and data posted on the online registry remain permanently available for study and reference in subsequent assessments.

WCEL has previously recommended that regulatory permitting information under other environmental statutes should also be posted on such a central, online registry, in order to help manage cumulative effects and ensure that all undertakings with impacts on sustainability are tracked in a transparent and easily-accessible manner.¹³ To allow for this, new EA legislation should enable the Minister to enact regulations regarding the posting on the online registry of regulatory permitting information under other statutes.

The provincial government's commitment to revitalize assessments in BC is a significant opportunity to improve British Columbians' involvement in environmental decision-making that affects our lives. WCEL commends BC for its revitalization efforts, and looks forward to further engagement to ensure that meaningful public participation is a defining feature of a new provincial assessment law.

ENDNOTES

¹ For example, see: West Coast Environmental Law, Ecojustice, Environmental Law Centre and Pacific Centre for Environmental Law and Litigation, *A Blueprint for Revitalizing Environmental Assessment in British Columbia* (April 2018), online: <<https://www.wcel.org/publication/blueprint-revitalizing-environmental-assessment-in-british-columbia>> [“Blueprint”], pages 4-5; West Coast Environmental Law, *Achieving the Vision for Next-Generation Environmental Assessment in BC: How Does BC’s Discussion Paper on Environmental Assessment Revitalization Measure Up?* (June 2018), online: <<https://www.wcel.org/sites/default/files/publications/2018-06-bc-ea-backgrounder-vision-dp-comparison-final.pdf>>, pages 6-7.

² See West Coast Environmental Law, *Early Submission for British Columbia’s Environmental Assessment Revitalization Comment Period* (July 2018) and attached documents. In particular, note that this submission is premised on the assumption that the assessment process will be developed and administered in whole or in part by impacted Indigenous jurisdictions as well as BC, as proposed in the Discussion Paper. Recommendations in this submission focus on public participation and do not address the role of Indigenous jurisdictions in assessment.

³ West Coast Environmental Law, *Why It’s Time to Reform Environmental Assessment in British Columbia* (January 2018) [“Why it’s time to reform EA”], pages 18-19.

⁴ British Columbia, *Environmental Assessment Revitalization Discussion Paper* (June 2018), online: <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/environmental-assessment-revitalization/documents/ea_revitalization_discussion_paper_final.pdf> [“Discussion paper”], page 8.

⁵ *Why it’s time to reform EA*, *supra* note 3, pages 7 and 18-19.

⁶ Environmental Assessment Advisory Committee, *Final Report of the Environmental Assessment Advisory Committee* (May 2018), online: <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/environmental-assessment-revitalization/documents/revitalization_eaac_report.pdf> [“EA Advisory Committee report”], pages 24 and 26.

⁷ EA Advisory Committee report, *ibid*, page 23.

⁸ Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2018 (3rd reading), cl 1, ss 6(1)(j), 22(1)(m), 84(1)(c).

⁹ Discussion paper, *supra* note 4, page 8.

¹⁰ Discussion paper, *ibid*, page 24.

¹¹ Discussion paper, *ibid*, pages 8 and 16.

¹² EA Advisory Committee report, *supra* note 6, pages 22 and 26.

¹³ Blueprint, *supra* note 1, page 7.