

# **Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the *Canadian Environmental Assessment Act***

## **Table of Contents**

- [1.0 Purpose of the Guideline](#)
- [2.0 Legal Authority for the Guideline](#)
- [3.0 Application of the Guideline](#)
- [4.0 Objectives of Public Participation](#)
- [5.0 Criteria for Determining When Public Participation Is Appropriate in the Circumstances](#)
- [6.0 Key Elements of Meaningful Public Participation](#)
- [7.0 Roles and Responsibilities](#)
- [8.0 Evaluation of the Guideline](#)
- [Annex A - Additional Background & Context to the Guideline](#)

## **Guideline**

### **1.0 Purpose of the Guideline**

1.1 This guideline is intended to contribute to improved public participation in a screening by establishing criteria for responsible authorities to consider when determining, on a case by case basis, whether public participation in a screening is appropriate.

1.2 When a responsible authority determines that public participation in a screening is appropriate, it is important that this public participation be meaningful.

1.3 For the purposes of this guideline, meaningful public participation reflects the principles of accessibility, impartiality, transparency, consistency, efficiency, accountability, fairness and timeliness, and recognizes that all parties have responsibilities in meeting these principles.

1.4 This guideline may also be useful to federal authorities, as defined in section 2 of the *Canadian Environmental Assessment Act* (the Act), other levels of government, proponents and the public in understanding what factors may influence the exercise of discretion by a responsible authority in determining whether public participation in a screening is appropriate.

1.5 This guideline applies to the potential involvement in a screening of all members of the public, including Aboriginal peoples.

1.6 With respect to Aboriginal participation, the Act requires that all environmental assessments consider the effects of any environmental change arising from a project on the current use of lands and resources for traditional purposes by Aboriginal peoples. In addition, the Act allows for the use of community knowledge and Aboriginal traditional knowledge in conducting environmental assessments. Accordingly, the participation of Aboriginal peoples in the conduct of environmental assessments will often be appropriate and these guidelines may assist in this regard.

1.7 Although not a specific requirement of the environmental assessment process under the Act, responsible authorities should note that Aboriginal peoples may have established or potential Aboriginal or treaty rights, as well as entitlements and interests arising out of settled and unsettled land claims, or self-government agreements. Responsible authorities may have a common law duty, in the context of federal action that triggers the Act, to consult with Aboriginal peoples in order to satisfy federal government responsibilities regarding potential impacts on these rights and interests. This guideline is not intended to describe these federal government responsibilities or to provide guidance on how to fully discharge them; although it may assist in this regard.

1.8 In addition to this guideline, more guidance material on public participation will be developed by the Canadian Environmental Assessment Agency. Once developed, this guidance material should also be considered by responsible authorities in the development of public participation programs for projects subject to a screening under the Act. Responsible authorities are encouraged to seek out and consider other relevant information, advice and guidance on the need for, or delivery of, a public participation program.

1.9 Additional background and context for this guideline can be found in Annex A.

## **2.0 Legal Authority for the Guideline**

2.1 This guideline is issued under the authority of paragraph 58(1)(a) of the Act which states that "For the purposes of this Act, the Minister may issue guidelines and codes of practice respecting the application of this Act. . .".

## **3.0 Application of the Guideline**

3.1 This guideline applies to all screenings conducted pursuant to section 18 of the Act, with the exception of those for which a model class screening report is used. The guideline also applies to the development of model and replacement class screening reports pursuant to section 19 of the Act. As well, when making the decision as to whether a project falls within the class of projects described in a declared model class screening report, responsible authorities should consider the need for public participation in the assessment of that project.

3.2 Any body that has to conduct a screening pursuant to the Act should consider this guideline when making a determination as to whether or not public participation in a screening is appropriate in the circumstances.

3.3 This guideline does not limit nor is it limited by any other public participation initiatives that may be conducted or required outside of the application of the Act by federal authorities, other jurisdictions or the proponent with respect to a project. Ideally, all public participation activities should be complementary, rather than duplicative.

3.4 This Guideline does not apply to the assessment of projects carried out outside Canada and any federal lands because the foreign operational environment and the laws and policies of the Foreign State may influence the exercise of discretion by responsible authorities under the Act and regulations with respect to public participation. Consequently, consultation methods used outside Canada and any federal lands may differ from domestic methods and may differ between engaging Canadians and engaging the public outside of Canada for a particular project.

#### **4.0 Objectives of Public Participation**

4.1 To promote good decision making by the responsible authority, public participation in a screening has the following objectives:

- to encourage early information sharing by all participants;
- to identify public support or concerns in regard to the project;
- to promote transparency and accountability in government decision making;
- to inspire confidence in the environmental assessment process;
- to improve the environmental assessment process and the project by incorporating community knowledge, Aboriginal traditional knowledge and public ideas and opinions where appropriate;
- to identify and share various viewpoints on the project;
- to contribute to the conservation and enhancement of the environment by supporting development that is environmentally and economically sustainable; and
- to provide opportunities for the public to influence the planning of a project and its design before irrevocable decisions are made.

4.2 In addition, public participation in a screening could, in the appropriate circumstances, have the benefit of contributing towards the fulfillment of any legal responsibilities that the government may have in respect of Aboriginal peoples where federal action that triggers the Act may have an impact on established or potential Aboriginal or treaty rights, settled or unsettled land claims, or self-government agreements.

## **5.0 Criteria for Determining When Public Participation Is Appropriate in the Circumstances**

5.1 The following criteria should be considered on a case by case basis by responsible authorities when deciding whether public participation is appropriate in the circumstances:

- there is an indication of an existing or likely public interest in (i) the type of project, (ii) the location of the project, or (iii) the ways the project might affect the community;
- those who may be interested have a history of being involved;
- the project has the potential to generate conflict between environmental and social or economic values of concern to the public;
- the project may be perceived as having the potential for significant adverse environmental effects (including cumulative environmental effects and effects of malfunctions and accidents);
- there is potential to learn from community knowledge or Aboriginal traditional knowledge and, thereby, improve the environmental assessment and the project;
- there is uncertainty about potential direct and indirect environmental effects or the significance of identified effects; or
- the project has been, or will be, subject to other public participation processes of appropriate scope and coverage that would meet the objectives of this guideline.

5.2 As described in section 1.7, responsible authorities may need to consult with Aboriginal peoples if there is the possibility of the project affecting established or potential Aboriginal or treaty rights, settled or unsettled land claims, or self-government agreements. If this need to consult is identified, responsible authorities may want to consider whether there are any linkages that could be drawn between the Aboriginal consultation process and any public participation process undertaken under the Act.

## 6.0 Key Elements of Meaningful Public Participation

6.1 The public should have an opportunity to have a say in decisions that affect their lives through a meaningful public participation process. For a public participation program to be meaningful, it should exhibit all of the following elements:

- **Early notification** - Where notification is to be given, it needs to be done early enough to allow the public to have the opportunity to influence the planning of a project and its environmental assessment process before any irrevocable decisions are made.
- **Accessible information** - The responsible authority should ensure that all participants are provided with the information they need to participate effectively on a timely basis. Consideration should be given to the appropriate language for this information and the need to use culturally sensitive means of communication. Access to information should only be limited in accordance with the laws relating to access to information and privacy.
- **Shared knowledge** - A project should be developed on the basis of both technical and scientific knowledge and community and Aboriginal traditional knowledge. Knowledge, concerns, values and viewpoints should be shared in an open, respectful and timely manner. This includes information on the potential consequences of a project. Any rights flowing from the ownership of information that participants may have need to be respected.
- **Sensitivity to community values** - Public participation processes need to be carried out in a manner that respects different community values and needs.
- **Reasonable timing** - A public participation process should provide the public with a fair and reasonable amount of time to evaluate the information presented and to respond to project proposals and to proposed decisions by proponents and responsible authorities.
- **Appropriate levels of participation** - A public participation process should provide for levels of participation that are commensurate with the level of public interest.
- **Adaptive processes** - Public participation processes should be designed, implemented and revised as necessary to match the needs and circumstances of the project and to reflect the needs and expressed preferences of participants. This process may be iterative and dynamic in keeping with the reasonable expectations of participants.
- **Transparent results** - Public participation is based on the premise that the public's contribution will be considered in the decision-making process. A public participation process should, at its conclusion, provide information and a rationale on whether or how the public input affected the decision.

## **7.0 Roles and Responsibilities**

### **7.1 Responsible Authority**

7.1.1 As defined in the Act, the term responsible authority, in relation to a project, means “a federal authority that is required pursuant to subsection 11(1) to ensure that an environmental assessment of the project is conducted.”

7.1.2 The responsible authority is expected to use this guideline in a consistent manner in deciding whether public participation is appropriate in the circumstances.

7.1.3 The responsible authority, in its screening report, is expected to document the basis on which it made the determination of whether or not to consult the public.

7.1.4 Where the responsible authority has made a decision that public participation is appropriate in the circumstances, it is expected to ensure and demonstrate that any information generated through public participation has been considered in its decision-making process under subsection 20(1) of the Act. The Act specifies requirements for posting information on the Canadian Environmental Assessment Registry (the Registry) Internet site in order to solicit public input and for providing the public an opportunity to comment on the screening report. Furthermore, both the screening report and the comments received on the assessment must be considered by the responsible authority in arriving at its decision on a course of action under subsection 20(1) of the Act. In addition, any report on the screening of the project should clearly demonstrate how public input received to that point contributed to the environmental assessment conclusions in the report, or explain why the conclusions were not affected by public input.

7.1.5 The responsible authority has an obligation under the Act to ensure that the public is informed in a timely manner about the proposed environmental assessment of a project. Under the Act, the responsible authority is required to post a notice of the commencement of an environmental assessment on the Internet site of the Registry (except where a class screening report is used). The responsible authority should consider whether additional mechanisms are appropriate to provide adequate public notification and to ensure the implementation of these mechanisms when appropriate.

7.1.6 Except as may be required in circumstances involving impacts to established or potential Aboriginal or treaty rights, settled or unsettled land claims, or self-government agreements, the responsible authority need not deliver the public participation program itself; but is expected to ensure the adequacy of any program delivered on its behalf (e.g., by the proponent). When delegating the conduct of a public participation process, the responsible authority should consider whether an ongoing role for itself may improve the process.

7.1.7 The responsible authority should encourage:

- proponents to consider public participation as an ongoing process and part of the way in which they do business;
- participants to be accountable for reporting back to the groups they represent in a fair, timely and accurate manner;
- participants to commit and consent to sharing, fully and on a timely basis, information that would not otherwise be protected by laws relating to access to information and privacy; and
- participants to demonstrate respect for other participants and for the process by acting honestly and ethically, declaring their own interests and perspectives, and respecting other perspectives, values and cultures.

7.1.8 The responsible authority should demonstrate cultural sensitivity and proper protocols when using community or Aboriginal traditional knowledge.

## **7.2 Canadian Environmental Assessment Agency**

7.2.1 The Canadian Environmental Assessment Agency (the Agency) is responsible for including the evaluation of the effectiveness of public participation processes for screenings in its ongoing quality assurance program.

7.2.2 The Agency is responsible for providing advice and guidance on the application of this guideline.

7.2.3 The Agency is responsible for establishing and maintaining the Internet site of the Registry.

## **7.3 Federal Environmental Assessment Coordinator**

7.3.1 The Federal Environmental Assessment Coordinator (the FEAC) is established pursuant to section 12.4 of the Act.

7.3.2 The FEAC is expected to consider this guideline in ensuring that federal authorities fulfill their obligations in a timely manner.

7.3.3 When a responsible authority determines that public participation is appropriate, the FEAC, in consultation with federal authorities who are or may be responsible authorities, determines the timing of any public participation.

7.3.4 The FEAC should ensure that this guideline is considered in discussions with non-federal jurisdictions in the case of multi-jurisdictional screenings.

## **8.0 Evaluation of the Guideline**

8.1 The Agency will include an evaluation of the effectiveness of this guideline in its ongoing quality assurance program and report publicly on its application.

8.2 The quality assurance program should include elements which will assess whether the approaches to public participation used by responsible authorities in screenings are in keeping with this guideline.

8.3 It is recognized that public participation processes are dynamic and will continue to evolve; therefore, the Agency will periodically evaluate the guideline and propose amendments to reflect changing practices and to reflect the results documented in the quality assurance program.



## Annex A - Additional Background and Context to the Guideline

### A.1 The Five Year Review

A.1.1 In "*Strengthening Environmental Assessment for Canadians*", the March 2001 report of the Minister of the Environment to the Parliament of Canada on the mandatory five-year review of the Act, the Minister proposed three goals for a renewed and revitalized federal environmental assessment process. These goals related to the broad themes of:

- a certain, predictable and timely process;
- high-quality environmental assessments; and
- more meaningful public participation.

With respect to the third goal, the review confirmed the fundamental value of public participation in environmental assessment. The Minister proposed to work toward the goal of more meaningful public participation through actions in three priority areas:

- making sure Canadians have the information they need to participate in assessments involving the federal government;
- better incorporating Aboriginal perspectives in environmental assessment; and
- providing expanded opportunities for Canadians to participate.

A.1.2 One specific initiative identified by the Minister to expand opportunities for Canadians to participate is to clarify opportunities for public participation in screenings. The report to Parliament states:

The review identified the need to promote greater consistency of public participation opportunities in screenings . . . . The Minister proposes to amend the Act to clarify that a responsible authority may establish opportunities for public participation at any stage in the screening of a project, in addition to consultation on the draft report. . . . In addition, ministerial guidelines would be developed to establish criteria to be considered by responsible authorities in making a determination as to whether public participation in a screening is warranted. Under the guidelines, a responsible authority also would indicate, in its screening report, the basis on which it made the determination on whether to consult the public.

A.1.3 The specific amendment referred to in the Minister's report (section 9(2) of Bill C-9, *An Act to Amend the Canadian Environmental Assessment Act*) as given royal assent states:

Subsection 18(3) of the Act is replaced by the following: (3) Where the responsible authority is of the opinion that public participation in the screening of a project is appropriate in the circumstances - or where required by regulation - the responsible authority (a) shall, before providing the public with an opportunity to examine and comment on the screening report, include in the Internet site a description of the scope of the project, the factors to be taken into consideration in the screening and the scope of those factors or an indication of how such a description may be obtained; (b) shall give

the public an opportunity to examine and comment on the screening report and on any record relating to the project that has been included in the Registry before taking a course of action under section 20 and shall give adequate notice of that opportunity; and (c) may, at any stage of the screening that it determines, give the public any other opportunity to participate. (4) The responsible authority's discretion under subsection (3) with respect to the timing of public participation is subject to a decision made by the federal environmental assessment coordinator under paragraph 12.3(c).

A.1.4 These proposed changes reinforce and augment the already existing elements in the preamble and section 4 of the Act that establish public participation as central to environmental assessment. The preamble states, ". . . Whereas the Government of Canada is committed to facilitating public participation in the environmental assessment of projects to be carried out by or with the approval or assistance of the Government of Canada and providing access to the information on which those environmental assessments are based; . . . ". Section 4 states, "The purposes of this Act are . . . (d) to ensure that there be opportunities for timely and meaningful public participation throughout the environmental assessment process."

## **A.2 Other Government Policies and Directions**

A.2.1 This guideline is intended to supplement other related legislation, policies and responsibilities that are relevant to public participation, such as:

- policies on consultation and citizen engagement adopted by federal departments or central agencies;
- policies on involving stakeholders adopted by the Canadian Council of Ministers of the Environment, such as their "Guidelines for Consultations and Partnerships";
- the government's commitment that its decisions will support economically and environmentally sustainable development;
- federal statutes, such as the *Access to Information Act*, *Official Languages Act* and the *Privacy Act*; and
- consultation obligations regarding impacts to established or potential Aboriginal or treaty rights, settled or unsettled land claims, or self-government agreements.