

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*;

**AND IN THE MATTER OF** an application by Hydro One Networks Inc. pursuant to s. 92 of the *OEB Act* for an order or Orders granting leave to construct new transmission facilities ("Lake Superior Link") in northwestern Ontario;

**AND IN THE MATTER OF** an application by Hydro One Networks Inc. pursuant to s. 97 of the *OEB Act* for an Order granting approval of the forms of the agreement offered or to be offered to affected landowners;

**AND IN THE MATTER OF** a motion by NextBridge Infrastructure for an order dismissing Hydro One Networks Inc.'s application for leave to construct.

**EVIDENCE OF THE INTERVENOR**  
**MINISTRY OF THE ENVIRONMENT AND CLIMATE CHANGE ("MOECC")**

MOECC takes no position on this motion or on Hydro One's application.

MOECC has intervened in this motion to provide assistance to the Board on two issues which the Board raised in the notice of hearing for the motion:

- **Issue 1f:** What is the status of discussions between Hydro One and the Ministry of the Environment and Climate Change regarding any exemption to *Environmental Assessment Act* ("EAA") requirements?
- **Issue 2g:** Can NextBridge's environmental assessment work on the East-West Tie line project be used by Hydro One for the purposes of complying with *EAA* requirements?

MOECC's evidence regarding these two issues has been prepared by Annamaria Cross and Andrew Evers, with the assistance of relevant MOECC staff. Ms. Cross and Mr. Evers will both be available to answer questions at the technical conference on May 16-17.

Ms. Cross has been Manager of MOECC's Environmental Assessment Services Section of the Environmental Assessment Permissions Branch since November 2012. She manages a team that works on environmental assessment projects including class

environmental assessments and individual environmental assessments. As manager, one of her duties is to hold pre-submission meetings with proponents. The purpose of these meetings is to gain an understanding of the proposed project so that she and her team can advise potential proponents of *EAA* requirements.

Mr. Evers is a Supervisor with the Environmental Assessment Services Section, Environmental Assessment and Permissions Branch. Mr. Evers joined the MOECC in March 2014. He manages a team that leads the review of individual environmental assessments and provides regulatory guidance to proponents based on the requirements of the *EAA* and its regulations. He is currently the Supervisor for the staff person assigned to NextBridge's proposed East-West Tie project (since September 2017) and Hydro One's proposed Lake Superior Link project (since discussions began in October 2017).

## **ISSUE 1F**

### **What is the status of discussions between Hydro One and MOECC regarding any exemption to *EAA* requirements?**

On November 14, 2017, MOECC advised Hydro One that the proposed Lake Superior Link project is likely a new undertaking for the purpose of the *EAA*. This is because of the extent of the difference in route alignment between NextBridge's preferred route for the East-West Tie line and the route alignment proposed by Hydro One. As such, the *EAA* requires Hydro One to conduct an individual environmental assessment for the Lake Superior Link.

Hydro One also has the option of pursuing an alternative to an individual environmental assessment, either a declaration order or an exempting regulation. The power to issue a declaration order lies with the Minister of Environment and Climate Change, with the approval of the Lieutenant Governor in Council ("LGIC"). The power to issue an exempting regulation lies with the LGIC.

To initiate the individual environmental assessment process for the Lake Superior Link, Hydro One is required to submit a Notice of Commencement of Terms of Reference to the Director of the Environmental Assessment and Permissions Branch. Hydro One submitted a draft Notice of Commencement of Terms of Reference for the Lake Superior Link on May 2, 2018.

MOECC has referred Hydro One to information relating to declaration orders in the event that Hydro One were to choose to pursue an alternative regulatory mechanism, instead of an individual environmental assessment. Hydro One has had discussions with MOECC regarding the possibility of Hydro One pursuing a declaration order, but, to date, Hydro One has not made a request for a declaration order.

Copies of the following MOECC documents relating to environmental assessments are attached:

Attachment number	Document
1.	Environmental Assessment Process Timelines
2.	<i>Code of Practice: Preparing and Reviewing Environmental Assessments in Ontario</i> , January 2014
3.	<i>Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario</i> , January 2014

We have included below, as an appendix, a summary of selected key correspondence and discussions between Hydro One and MOECC regarding the Lake Superior Link. We have also attached copies of key correspondence and meeting minutes.

## **ISSUE 2G**

### **Can NextBridge's environmental assessment work on the East-West Tie line project be used by Hydro One for the purposes of complying with *Environmental Assessment Act* requirements?**

As a preliminary point, we note that we are not offering any opinion whether intellectual property issues might prevent Hydro One from making use of the environmental assessment work conducted by NextBridge. Intellectual property issues are beyond our remit, and we will restrict our evidence to compliance with the *EAA*.

As noted above, because of the extent of the difference in route alignment between NextBridge's preferred route for the East-West Tie line and the route alignment proposed by Hydro One, Hydro One's proposed Lake Superior Link project is a new undertaking for the purpose of the *EAA*. As such, the *EAA* requires Hydro One to conduct an individual environmental assessment for the Lake Superior Link. As an alternative, Hydro One can pursue an alternative regulatory measure, either a declaration order or an exempting regulation.

### **Alternative regulatory measures**

Section 3.2 of the *EAA* allows the Minister of the Environment and Climate Change, with the approval of the LGIC, to issue a declaration order exempting a proponent or undertaking or class of proponents or undertakings from all or certain requirements of the *EAA*. Section 3.2 provides that the power to issue a declaration order may be exercised "if the Minister considers that it is in the public interest to do so having regard to the purpose of this Act and weighing it against the injury, damage or interference that might be caused to any person or property by the application of this Act to the undertaking or

class.” A request for a declaration order can be made to the Director of the Environmental Assessment and Permissions Branch.

Paragraph 39(f) of the *EAA* also allows the LGIC to make a regulation “exempting any person, class of persons, undertaking or class of undertakings from this Act or the regulations or a section or portion of a section thereof and imposing conditions with respect to the exemption”.

Both declaration orders and exempting regulations can impose conditions on the exemption. Conditions can vary from simple conditions to an entirely new process.

Proposed declaration orders and exempting regulations need to be posted for comment on the Environmental Registry. Depending on the circumstances, further public and Indigenous consultation may be conducted before a decision is made to issue a declaration order or proceed with an exempting regulation.

At this time, it is premature to assess whether there are grounds to support the development of a declaration order or an exempting regulation for the Lake Superior Link project.

#### **Status of NextBridge’s environmental assessment**

NextBridge’s environmental assessment report for the East-West Tie project has not yet been reviewed or assessed by MOECC. As such, it is difficult to assess whether and to what extent NextBridge’s environmental assessment work could be used by Hydro One for the purposes of complying with *EAA* requirements, either as part of an individual environmental assessment for Hydro One’s proposed Lake Superior Link, or as part of the basis for an alternative regulatory measure.

On August 28, 2014, the Minister of Environment and Climate Change approved NextBridge’s terms of reference for the preparation of an environmental assessment for the East-West Tie line.

On February 16, 2018, NextBridge submitted an amended environmental assessment report for the East-West Tie project to MOECC. As part of the submission, there was a 30-day comment period. This comment period concluded on March 29, 2018.

MOECC staff are currently reviewing the environmental assessment report for NextBridge’s East-West Tie project. Once the Ministry has reviewed the environmental assessment, the next step in the process is to publish an MOECC review report. The publication will be followed by a five week public comment period. MOECC anticipates that it will publish the review report in the summer of 2018.

Once the MOECC review and consultation is completed, MOECC staff prepare a decision package for the Minister of the Environment and Climate Change. It is anticipated that a

decision package for NextBridge's East-West Tie project would be prepared for the Minister in late fall 2018. At that point, the Minister makes a decision on the environmental assessment and, with the approval of the Lieutenant Governor in Council, the Minister may give approval to NextBridge to proceed with the undertaking, give approval subject to conditions, or refuse to give approval.

## **APPENDIX**

### **Summary of selected key correspondence and discussions between Hydro One and MOECC regarding the Lake Superior Link**

<b>Attachment number</b>	<b>Date</b>	<b>Document/ Event</b>	<b>Summary</b>
4.	October 31, 2017	Letter from Hydro One to MOECC	Hydro One writes to MOECC to advise of its intention to build and operate the East-West Tie Transmission Line, but with an alignment different from NextBridge's proposal. Hydro One indicated that it is of the view that preparing a new environmental assessment is not necessary because of the similarity to NextBridge's proposal. Hydro One seeks input from MOECC regarding whether Hydro One could "adopt" NextBridge's environmental assessment.
5.	November 14, 2017	Letter from MOECC to Hydro One	MOECC indicates that it is unlikely that Hydro One would be able to use NextBridge's environment assessment and that Hydro One's proposed project would likely be considered a new undertaking for the purpose of the <i>EAA</i> .
No attachment	February 2, 2018	Meeting of Hydro One, Energy, MNRF, and MOECC staff	Hydro One outlines the proposed project, indicating that it would consist of a new 398 kilometre, 230 kilovolt double-circuit transmission line that would parallel the existing Hydro One tie between Lakehead Transmission Station and the Wawa Transmission Station, going through Puskwaka Park.
6.	February 16, 2018	Letter from Hydro One to MOECC	Hydro One provides project-related details regarding the proposed project, outlines the benefits, and indicates that Hydro One is planning to host a series of public information drop-in sessions in March 2018 in the project area.
7.	March 14, 2018	Letter from Hydro One	Hydro One indicates that "Hydro One is currently working with the Ministries of

Attachment number	Date	Document/ Event	Summary
		to Common Voice Northwest and copied to other stakeholders	Energy and Environment and Climate Change to finalize a regulatory measure allowing the use of relevant portions of the completed Environmental Assessment work".
8.	March 16, 2018	Letter from MOECC to Hydro One	MOECC requests that Hydro One send a letter of clarification to the recipients of Hydro One's letter of March 14, 2018, indicating that MOECC is not currently working with Hydro One to finalize a regulatory measure to allow the use of the current unapproved NextBridge environmental assessment.
9.	March 26, 2018	Meeting of Hydro One, Energy, and MOECC staff	<p>MOECC advises that based on the information provided to date, the Lake Superior Link Project would be considered a new undertaking and asks if Hydro One intends to submit a Notice of Commencement for a Terms of Reference. Hydro One notes that it does not intend to complete the individual environmental assessment process, and would be looking for a regulatory mechanism, including use of NextBridge's environmental assessment, to supplement environmental assessment requirements.</p> <p>MOECC notes that the NextBridge EA is currently in the issues-resolution phase and, as such, no decision has been made. Consequently, MOECC cannot comment if a regulatory mechanism could be pursued until a decision is made on the current amended environmental assessment for the NextBridge project.</p> <p>The declaration order process is discussed at a high level, including examples of recent projects that have gone through the process</p>

Attachment number	Date	Document/ Event	Summary
			on the basis that emergency circumstances required a declaration order.
10.	April 10, 2018	Letter from MOECC to Hydro One	MOECC provides revisions to the March 26, 2018 meeting minutes prepared by Hydro One and re-iterates that, based on information provided to date by Hydro One, Hydro One would not be able to use NextBridge's environment assessment for its project and that the project would be considered a new undertaking for the purpose of the <i>EAA</i> . MOECC provides details regarding the process to initiate terms of reference for an environmental assessment of the undertaking, and also refers Hydro One to information relating to declaration orders in the event that Hydro One were to choose to pursue an alternative regulatory mechanism, instead of an individual environmental assessment.
11.	April 19, 2018	Letter from Hydro One to Common Voice Northwest, copied to other stakeholders	Hydro One sends a letter clarifying its March 14, 2018 letter.
12.	April 20, 2018	Letter from MOECC to Hydro One, copied to Common Voice Northwest and other stakeholders	MOECC confirms that it is not working with Hydro One to finalize a regulatory measure allowing the use of relevant portions of the environmental assessment work undertaken by NextBridge and emphasizes that Hydro One's proposed Lake Superior Link project is considered a new undertaking for the purpose of the <i>EAA</i> . As such, to initiate the individual environmental assessment process, Hydro One is required to submit a Notice of Commencement for Terms of Reference to the Director of the

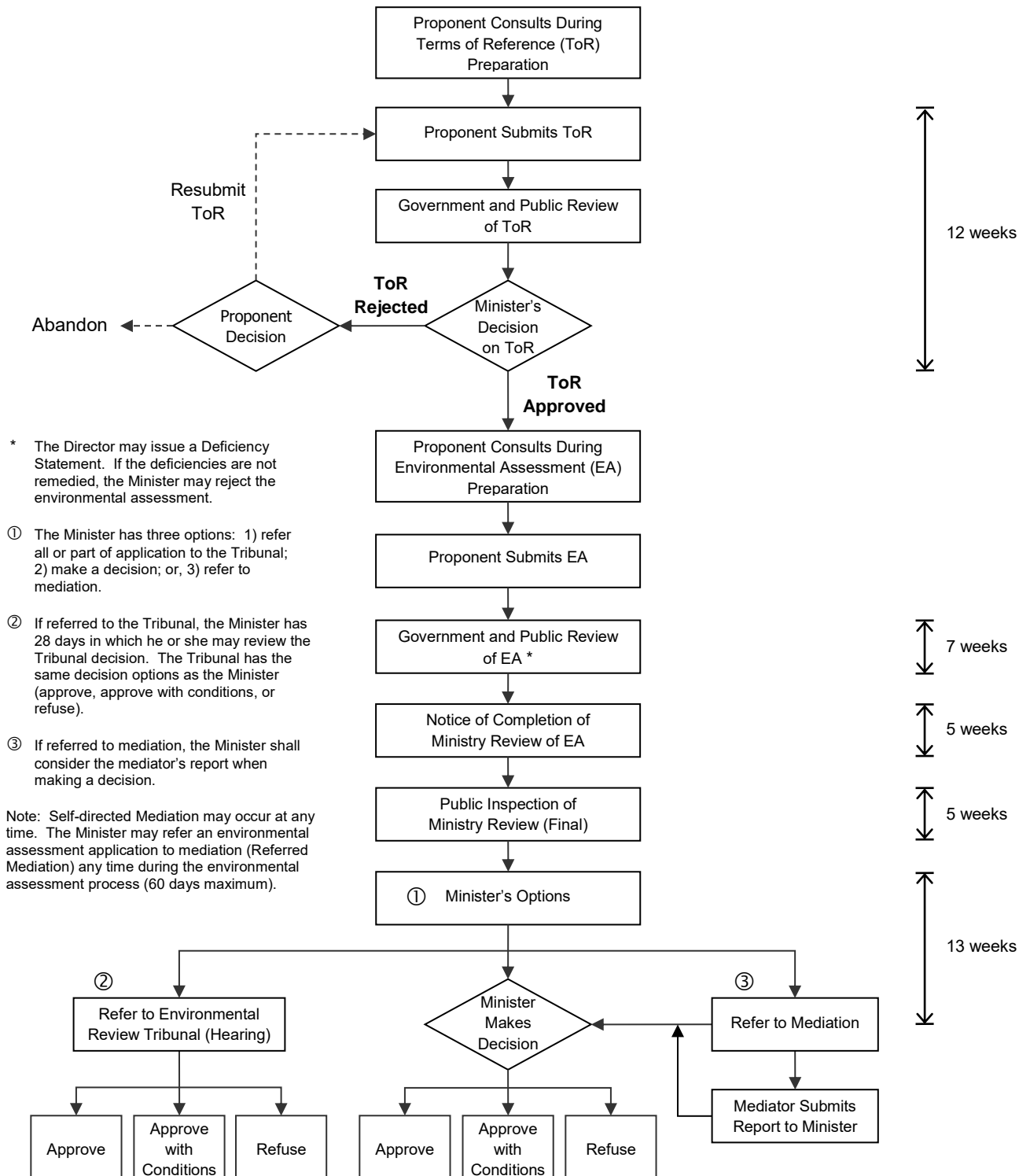


Attachment number	Date	Document/ Event	Summary
			Environmental Assessment and Permissions Branch.
13.	April 25, 2018	Letter from Hydro One to MOECC	<p>Hydro One indicates that it agrees that it is not in a position to finalize a regulatory mechanism for the project, but emphasizes that it has had discussions with MOECC on the option of a declaration order.</p> <p>Hydro One indicates its view that that the project is a strong candidate for a declaration order given the cost savings for the project, the potential environmental effects are expected to be minimal, and that the NextBridge EA would address the majority of the potential effects along the proposed line outside of the park.</p>
14.	May 2, 2018	Email from Hydro One to MOECC	Hydro One sends email attaching a draft Notice of Commencement of Terms of Reference for Hydro One's Lake Superior Link project.



## Appendix A Environmental Assessment Process Timelines

### Prescribed Deadlines (Ontario Regulation 616/98)





## Code of Practice

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# Preparing and Reviewing Environmental Assessments in Ontario

Legislative Authority:

Environmental Assessment Act, RSO 1990, chapter E.18

January 2014

This Code of Practice was developed in consultation with government agencies and other interested persons including academics, environmental assessment practitioners, environmental groups, industry associations, professional associations and proponents. We appreciate the contributions that these individuals and groups have made to finalize this document and look forward to continued input to maintain it as an effective tool for use during the environmental assessment process.

Readers should check the Ministry of the Environment's website or call the Environmental Approvals Access and Service Integration Branch to find out if there have been any revisions.

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This Code of Practice is published as a living document that will be reviewed and revised as necessary. Any comments, suggestions for revision or clarification are welcomed and should be sent to the Director of the Environmental Approvals Access and Service Integration Branch at the address listed above.

Under section 31(1)(e), the Minister of the Environment may gather, publish and disseminate information with respect to the environment or environmental assessments for the purposes of administering and enforcing the *Environmental Assessment Act* and regulations made thereunder. Therefore, the Ministry of the Environment expects that this Code of Practice will be considered by proponents.

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# Glossary

The definitions in this glossary are intended to assist the reader in understanding the terms used in this Code of Practice. To understand these terms completely, the Ministry of the Environment recommends that both the definitions in here and in the legislation be consulted. In all cases, the wording contained in the *Environmental Assessment Act* shall prevail.

## **Aboriginal peoples**

The *Constitution Act, 1982* specifies that Aboriginal peoples include Indian, Inuit and Métis peoples of Canada.

## **alternative methods**

Alternative methods of carrying out the proposed undertaking are different ways of doing the same activity.

Alternative methods could include consideration of one or more of the following: alternative technologies; alternative methods of applying specific technologies; alternative sites for a proposed undertaking; alternative design methods; and, alternative methods of operating any facilities associated with a proposed undertaking.

## **alternatives**

Both alternative methods and alternatives to a proposed undertaking.

## **alternatives to**

Alternatives to the proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity.

## **application**

An application for approval to proceed with an undertaking under subsection 5(1) of the *Environmental Assessment Act*.

## **Branch**

Environmental Approvals Branch, Ministry of the Environment.

### **class environmental assessment**

A document that sets out a standardized planning process for those classes or groups of activities for which the applicant is responsible. It is also known as a “parent” document in some class environmental assessments. A class environmental assessment is approved under the *Environmental Assessment Act* and applies to projects that are carried out routinely and have predictable environmental effects that can be readily managed.

Projects defined within a class environmental assessment require no further environmental approval under section 5 of the *Environmental Assessment Act*, conditional upon being planned according to the procedures set out in the document and not being subject to a Part II Order. All class environmental assessments have a mechanism where the Minister may order that an “individual” environmental assessment be carried out for a particular project, if warranted (Part II Order or “bump-up”).

### **class environmental assessment project**

An undertaking that does not require any further approval under the *Environmental Assessment Act* if the planning process set out in the class environmental assessment document is followed and successfully completed. Any interested person may request the Minister or delegate to order that a class environmental assessment project be bumped up to an “individual” environmental assessment by making a Part II Order.

### **commitment**

Represents a guarantee from a proponent about a certain course of action, that is, “I will do this, at this time, in this way.” Proponents acknowledge these guarantees by documenting obligations and responsibilities, which they agree to follow, in environmental assessment documentation (terms of reference and environmental assessment). Once the Minister and Cabinet approve an application, the commitments within the document are often made legally binding as a condition of approval.

### **conditions**

Conditions of *Environmental Assessment Act* approval are legally binding and may be used as a compliance tool. Conditions can determine the way in which detail design, implementation and operation or closure of an

undertaking will proceed. Conditions of *Environmental Assessment Act* approval will depend on the details of the undertaking and the environmental assessment and may be used to address Government Review Team and public and community concerns.

### **Consolidated Hearings Act**

A hearing under the *Consolidated Hearings Act* allows a decision to be made under more than one statute, including the *Environmental Assessment Act*, *Environmental Protection Act*, *Planning Act*, and others through joint hearings.

### **consultation**

A two-way communication process to involve interested persons in the planning, implementation and monitoring of a proposed undertaking. Consultation is intended to:

- Identify concerns;
- Identify relevant information;
- Identify relevant guidelines, policies and standards;
- Facilitate the development of a list of all required approvals, licences or permits;
- Provide guidance to the proponent about the preparation of the terms of reference and environmental assessment;
- Ensure that relevant information is shared about the proposed undertaking;
- Encourage the submission of requests for further information and analysis early in the environmental assessment process;
- Enable the ministry to make a fair and balanced decision.

### **Deadlines Regulation**

Refers to Ontario Regulation 616/98, which establishes the timing of reviews and decisions for terms of references and environmental assessments by the ministry.

## **Director\***

Director of the Environmental Assessment and Approvals Branch, Ministry of the Environment.

In October 2011, the Environmental Assessment and Approvals Branch underwent a functional reorganization which resulted in the creation of two branches: Environmental Approvals Branch and Environmental Approvals Access and Service Integration Branch. For the purposes of this Code of Practice, the definition of “Director” also refers to the functional position Director, Environmental Approvals Branch.

## **do nothing alternative**

An alternative that is typically included in the evaluation of alternatives that identifies the implications of doing nothing to address the problem or opportunity that has been identified.

## **environment\***

The *Environmental Assessment Act* defines environment to mean:

- (a) Air, land or water;
- (b) Plant and animal life, including human life;
- (c) The social, economic and cultural conditions that influence the life of humans or a community;
- (d) Any building, structure, machine or other device or thing made by humans;
- (e) Any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or,
- (f) Any part or combination of the foregoing and the interrelationships between any two or more of them.

## **environmental assessment**

Environmental assessment is a study, which assesses the potential environmental effects (positive or negative) of a proposal. Key components of an environmental assessment include consultation with government agencies and the public; consideration and evaluation of alternatives; and, the management of potential environmental effects.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

Conducting an environmental assessment promotes good environmental planning before decisions are made about proceeding with a proposal. This is also referred to as an “individual” environmental assessment.

### **Environmental Assessment Act**

The *Environmental Assessment Act* (and amendments and regulations thereto) is a provincial statute that sets out a planning and decision-making process to evaluate the potential environmental effects of a proposed undertaking. Proponents wishing to proceed with an undertaking must document their planning and decision-making process and submit the results from their environmental assessment to the Minister for approval.

### **environmental effect**

The effect that a proposed undertaking or its alternatives has or could potentially have on the environment, either positive or negative, direct or indirect, short- or long-term.

### **Environmental Review Tribunal**

An administrative body that has the authority under the *Environmental Assessment Act* to conduct hearings when they are required by the Minister of the Environment.

The Environmental Review Tribunal is an independent and impartial tribunal established by provincial legislation. The Tribunal functions as a quasi-judicial body, subject to the rules of natural justice and the requirements of the *Statutory Powers Procedure Act*. The Tribunal’s primary role is adjudicating applications and appeals under various environmental and planning statutes.

### **expert federal authority**

A federal authority that has specialist or expert information or knowledge with respect to a project that can be provided to a responsible authority, review panel, or another jurisdiction during an environmental assessment, including expertise on the implementation of mitigation measures and any follow-up program.

### **federal authority**

A federal authority is defined under the *Canadian Environmental Assessment Act, 2012* to mean:

- (a) A Minister of the Crown in right of Canada;
- (b) An agency or other body of the federal government ultimately accountable to Parliament through a federal Minister of the Crown;
- (c) Any department or departmental corporation set out in Schedule I or II of the *Financial Administration Act*; or,
- (d) Any other body that is set out in Schedule 1 of the *Canadian Environmental Assessment Act, 2012*.

### **Government Review Team**

Staff from government ministries and agencies (federal; provincial, including local Conservation Authorities; and, municipal, including local Boards of Health) who contribute to the review of environmental assessment documentation (terms of reference and environmental assessment) by providing comments from their mandated areas of responsibility.

### **impact management measures**

Measures which can lessen potential negative environmental effects or enhance positive environmental effects. These measures could include mitigation, compensation, or community enhancement.

### **interested persons**

Individuals or organizations with an interest in a particular undertaking. Persons with an interest in a particular undertaking often include neighbours and individuals, environmental groups or clubs, naturalist organizations, agricultural organizations, sports or recreational groups, organizations from the local community, municipal heritage committees, ratepayers associations, cottage associations, Aboriginal peoples and communities, Francophones and businesses.

Interested persons are not required to demonstrate that they will personally be affected by a particular undertaking. Interested persons are often called stakeholders.

## **Joint Board**

An administrative body that has the authority under the *Consolidated Hearings Act* to conduct joint hearings under more than one statute, including the *Environmental Assessment Act*, *Environmental Protection Act*, *Planning Act*, and others.

## **mediation**

A dispute resolution process in which a neutral third party (mediator) who is acceptable to all parties assists disputants in reaching a mutually acceptable agreement. The mediator has no authority to impose a settlement and participation in the process is voluntary.

## **Minister\***

Minister of the Environment.

## **ministry\***

Ministry of the Environment.

## **ministry Review**

The ministry Review is a document which is prepared by the ministry during the review and approval process for environmental assessments and class environmental assessments. The ministry Review outlines whether the proponent of a project or class environmental assessment process is in compliance with its approved terms of reference; how the proponent has met the requirements under the *Environmental Assessment Act*, including public consultation; and, the ministry's analyses of the public, Aboriginal, and government agency comments received by the ministry on the environmental assessment or class environmental assessment. Once the ministry Review is published and a notice of completion is issued, all members of the public, Aboriginal communities, and agencies have a final opportunity to submit their comments to the ministry on the ministry Review, the environmental assessment documentation or the proposed undertaking. Requests to the Minister to consider sending the application for a hearing on significant outstanding environmental issues can also be submitted at this time.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.



## **Ministry Technical Reviewers**

Ministry of the Environment staff, other than the Project Officer, who contribute to the review of the draft and final environmental assessment. They form part of the Government Review Team for the proposal.

## **places of public record**

Official locations where interested persons may review the environmental assessment.

## **Project Officer**

The assigned staff person from the Environmental Approvals Branch who manages and coordinates the review of the components of an *Environmental Assessment Act* application (that is, a terms of reference or an environmental assessment) for approval. The Project Officer also provides guidance on the environmental assessment process to proponents, government agencies and other interested persons.

## **proponent\***

A person, agency, group or organization that carries out or proposes to carry out an undertaking or is the owner or person having charge, management or control of an undertaking.

## **public record file**

A public record file will be maintained by the Environmental Approvals Branch for every undertaking for which there is an application for approval under Part II and Part II.1 as well as orders under section 16 and the preparation of Declaration Orders under section 3.2 and Harmonization Orders under section 3.1 of the *Environmental Assessment Act* in accordance with the requirement to maintain a record under section 30 of that act.

In addition, the Environmental Approvals Branch will maintain a public record file for elevation requests under the streamlined environmental assessment process for electricity projects and waste management projects, objections for transit projects and requests for an individual environmental assessment pursuant to Declaration Orders. The purpose of the public record file is to promote transparency and consultation.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

Public record files are only kept for class environmental assessment undertakings where a Part II Order has been requested.

**responsible authority**

In accordance with the *Canadian Environmental Assessment Act, 2012* and in relation to a designated project, a federal authority that is required to ensure that a federal environmental assessment of a designated project is conducted.

**terms of reference**

The approved terms of reference sets out the framework for the planning and decision-making process to be followed by the proponent during the preparation of an environmental assessment. In other words, it is the proponent's work plan for what is going to be studied. The environmental assessment must be prepared in accordance with the approved terms of reference.

**undertaking\***

An enterprise, activity or a proposal, plan, or program that a proponent initiates or proposes to initiate.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

# 1. Introduction

Environmental assessment is a planning and decision-making process used to promote environmentally responsible decision-making. In Ontario, this process is defined and finds its authority in the *Environmental Assessment Act*. The purpose of the *Environmental Assessment Act* is to provide for the protection, conservation and wise management of Ontario's environment. To achieve this purpose, the *Environmental Assessment Act* promotes responsible environmental decision-making and ensures that interested persons have an opportunity to comment on undertakings that may affect them. In the *Environmental Assessment Act*, environment is broadly defined to include the natural, social, economic, cultural and built environments.

The first step in the application for approval to proceed with an undertaking under the *Environmental Assessment Act* is the submission and approval of a terms of reference by the Minister of the Environment (Minister).

An approved terms of reference becomes the framework for the preparation and review of the environmental assessment. The proponent then completes the application by submitting an environmental assessment that has been prepared in accordance with the approved terms of reference. Neither an approved terms of reference nor an environmental assessment prepared in accordance with an approved terms of reference guarantees that the Minister will approve an application to proceed with a proposed undertaking.

The environmental assessment process is not a consensus building exercise. Participants do not have the power to veto an undertaking. They can provide information that will assist the Minister in deciding whether an undertaking can proceed in the public interest while ensuring that the environment is protected. However, it is the intent of the process that all persons interested in a particular proposal (proponent, public, government agency and others) work together as much as possible to address issues.

## 1.1 Purpose of This Code of Practice

This Code of Practice outlines the legislative requirements and the Ministry of the Environment's (ministry) expectations for the preparation and review of an environmental assessment. This Code of Practice focuses on the fulfilment of the requirements of the *Environmental Assessment Act*; however, the proponent should be aware of any requirements for obtaining other necessary approvals while preparing the environmental assessment.

This Code of Practice presents an overview of:

- The roles and responsibilities of interested persons in the environmental assessment preparation and review process;
- The mandatory elements of preparing an environmental assessment;
- The ministry's expectations of what proponents will provide in the environmental assessment;
- The steps involved in, and the timelines associated with, the submission and review of the environmental assessment. (See Appendix A for a timelines chart.)

Unless specified otherwise, this Code of Practice does not apply to undertakings that are subject to the provisions set out in a class environmental assessment. A separate Code of Practice has been prepared for class environmental assessments.

The contents of this Code of Practice should be considered in conjunction with any other relevant guidance materials available from the ministry and should be read in its entirety before proceeding. Where the text refers to a requirement of the *Environmental Assessment Act*, the relevant section from the legislation is usually referenced in brackets. While this Code references and discusses the legal framework of the *Environmental Assessment Act*, in case of any conflict or doubt, the wording of the *Environmental Assessment Act* and its regulations shall prevail.

## 2. Who Should Use This Code of Practice?

This section outlines the roles and responsibilities of the various participants involved in the preparation and review of an environmental assessment. It is important to note that the information outlined herein is not meant to be exhaustive and that other participants' roles and/or responsibilities may apply depending on the nature and complexity of a proposed undertaking.

The participants are:

- Proponents who are responsible for preparing the environmental assessment in accordance with the approved terms of reference and consulting with such persons as may be interested about their proposal;
- Government Review Team members who participate in the preparation and review of the environmental assessment;
- Interested persons who participate in the environmental assessment process by providing comments about the proposal and the environmental assessment;
- Aboriginal peoples and communities who participate in the environmental assessment process by providing comments about the proposal and the environmental assessment;
- The ministry's Environmental Approvals Branch (Branch) staff who coordinate the review of the proponent's environmental assessment.

### 2.1 Proponents

Proponents who initiate undertakings that are subject to the *Environmental Assessment Act* are responsible for preparing the environmental assessment in accordance with the approved terms of reference.

Proponents are required to:

- Consult with Branch staff to discuss preparation, consultation and submission requirements;

- Identify government ministries and agencies, municipalities, members of the public, Aboriginal communities, and other persons who may have an interest in their proposal;
- Engage in meaningful consultation with all interested persons to identify and respond to needs and concerns;
- Establish reasonable time frames for feedback and review during the consultation process;
- Ensure that issues and concerns are identified and considered early in the planning process before irreversible decisions are made;
- Document the results of the consultation process;
- Prepare an environmental assessment in consultation with the ministry, other government ministries and agencies, municipalities, and all interested persons, including Aboriginal peoples;
- Prepare and submit an environmental assessment in accordance with applicable ministry legislation and standards (for example, *Environmental Assessment Act* and its regulations, applicable Codes of Practice).

## 2.2 Government Review Team

Members of the Government Review Team, including ministry technical staff, should be involved from the outset during the preparation of the environmental assessment. They should assist proponents in identifying areas of concern within their mandate. Please refer to Appendix B for a list of the agencies that make up the Government Review Team.

Members of the Government Review Team are responsible for:

- Providing information and guidance in a timely manner within their mandated areas of responsibility that the proponent should consider when preparing the environmental assessment (for example, legislative requirements, standards, potential evaluation criteria, policies such as the Provincial Policy Statement);
- Providing consistent advice in a timely manner throughout the course of the decision-making process, or providing relevant reasons if their position changes;
- Participating in the government review of the environmental assessment after it is submitted to the ministry by reviewing the document based on the agency's mandate, submitting comments to

the ministry by the required deadline, and working with the proponent and the ministry to address any issues.

## 2.3 Interested Persons

The public and other interested persons are encouraged to participate in the preparation and review of the environmental assessment. Generally, their roles are:

- Identifying local issues and areas of concern and how they may be affected during the preparation of the environmental assessment;
- Suggesting modifications to the proposal or documentation that may address concerns;
- Providing comments within the comment periods once the environmental assessment is submitted to the ministry.

## 2.4 Aboriginal Communities

Potentially affected Aboriginal communities are strongly encouraged to participate during the preparation and review of the environmental assessment. Where Aboriginal communities participate in the environmental assessment process, they should:

- Identify for the proponent and the ministry an appropriate contact to maintain consistency throughout the planning process in a timely manner;
- Identify any issues and concerns that may affect the community;
- If applicable, outline their claims with clarity, focusing on the scope and nature of the Aboriginal rights asserted and on the nature of the infringements;
- Suggest modifications to the environmental assessment that may address their concern focusing on matters directly related to the proposal or the planning process;
- Respond to the government's attempts to address their concerns and suggestions, and to try to reach some mutually satisfactory solution during the ministry's review of the environmental assessment;
- Be mindful of prescribed deadlines once the environmental assessment is submitted to the ministry for review and decision.

In addition, the Crown has a duty to consult with and accommodate Aboriginal communities when the Crown has knowledge, real or constructive, of the existence or potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect it. Section 4.1 of this Code describes the steps that will help to set the framework to ensure that:

- The proponent complies with section 5.1 of the *Environmental Assessment Act*.
- The Crown's duty to consult, if it arises, is satisfied with respect to the proposed undertaking.
- The environmental assessment reflects the input of, and is responsive to, potentially affected Aboriginal communities.

## 2.5 Environmental Approvals Branch Staff

The Branch is responsible for providing guidance about the environmental assessment process to assist proponents and interested persons in the preparation and review of the environmental assessment. Staff at the Branch also coordinate the review of the final environmental assessment to enable the Minister to make an informed decision about an undertaking. These roles fall to a Project Officer at the Branch. The Project Officer's other roles are to:

- Provide advice and guidance about the requirements of the *Environmental Assessment Act*, and other ministry legislation or procedures;
- Facilitate coordination with other review processes, such as the federal environmental assessment process, in order to minimize unnecessary duplication and inconsistency;
- Evaluate the draft and final environmental assessments to ensure that all legislative requirements and procedures established by the ministry are followed;
- Coordinate the ministry's technical review of the draft environmental assessment;
- Review the proponent's consultation with interested persons, including Aboriginal peoples and communities, that has occurred during the preparation of the environmental assessment;



- Coordinate the review of the environmental assessment when it is submitted to the ministry for a decision;
- Encourage and facilitate the resolution of outstanding issues during the process as necessary;
- Evaluate the final environmental assessment and the incoming comments and provide a recommendation to the Minister to enable the Minister to make an informed decision about the proposed undertaking;
- Ensure the proponent is in compliance with conditions of approval if approval for the undertaking is granted;
- Maintain a public record file for the proposal.

## 3. Considerations for Good Environmental Planning

### 3.1 Environmental Assessment Principles

There are a number of environmental assessment principles that are key to successful planning and approval under the *Environmental Assessment Act*. These principles form the foundation for the overall guidance of an environmental assessment process and provide direction when challenges present themselves. The proponent should incorporate these principles into its environmental planning process to increase the likelihood that the proposed undertaking will meet the requirements of the *Environmental Assessment Act*. The environmental assessment will be evaluated against these principles, amongst other things. The principles include:

- Consult with potentially affected and other interested persons;
- Consider a reasonable range of alternatives;
- Consider all aspects of the environment;
- Systematically evaluate net environmental effects;
- Provide clear, complete documentation.

#### 3.1.1 Consult with Potentially Affected and Other Interested Persons

**Make the planning process a cooperative venture with potentially affected and other interested persons. Early consultation with interested persons is essential.**

Consultation with interested persons is a cornerstone of the environmental assessment process and is a legal requirement of the *Environmental Assessment Act*. The proponent should seek to involve all interested persons as early as possible in the planning process so that their concerns can be identified and considered before irreversible decisions and commitments are made on the chosen approach or specific proposals. Proponents should present sufficient and varied opportunities for consultation and interested persons should take advantage of the opportunities and become involved in the planning process. The results of the consultation must be documented at the end of the planning process.

Consultation, when done well, can improve the outcome of the planning process. To achieve this, the planning process must be constructed, in part, around the involvement and contribution of potentially affected and other interested persons. The benefits of doing this include:

- Improving the understanding of environmental concerns before the preferred undertaking is selected and focusing the proponent's planning on matters of concern;
- Encouraging the identification and consideration of issues before the environmental assessment is formally submitted to reduce the time required during the formal decision-making process to resolve outstanding issues;
- Promoting mutually acceptable, environmentally sound solutions.

### **3.1.2 Consider a Reasonable Range of Alternatives**

**A reasonable range of alternatives must be considered.**

During the environmental assessment process, proponents should consider a reasonable range of alternatives. This should include examining "alternatives to" the undertaking which are functionally different ways of approaching and dealing with the defined problem or opportunity, and "alternative methods" of carrying out the proposed undertaking which are different ways of doing the same activity. Depending on the problem or opportunity identified, there may be a limited number of appropriate alternatives to consider. If that is the case then there should be clear rationale for limiting the examination of alternatives. Proponents must also consider the "do nothing" alternative.

### **3.1.3 Consider All Aspects of the Environment**

**Identify and consider the potential effects of each alternative on all aspects of the environment.**

The *Environmental Assessment Act* broadly defines environment to include the natural, social, economic, cultural and built environments. During the preparation of the environmental assessment, the proponent must consider not only the potential environmental effects on the natural environment, but also the social, economic, cultural and built environments and how they interrelate for every alternative being

considered. Consideration should also be given to how the project and its alternatives may interrelate with components of the environment, including with potentially changing climatic conditions over time.

The level of detail required will vary depending on the significance of the potential environmental effect and the stage in the environmental assessment process; that is, more detail will be needed once a preferred alternative has been selected.

### **3.1.4 Systematically Evaluate Net Environmental Effects**

**Effectively evaluate alternatives in light of their advantages and disadvantages developed through a net effects analysis.**

Environmental assessment typically includes the evaluation of the alternatives given the advantages and disadvantages of each alternative. During the environmental assessment process, there are distinct points where alternatives are evaluated and the net environmental effects associated with any alternative; that is, the potential environmental effects after impact management measures have been applied, are clearly identified.

Decision-making should be phased, narrowing progressively to a preferred alternative. This results in a process where alternatives will be eliminated from consideration at different points in the planning process. Decisions on what type or combination of alternatives are preferred are generally made earlier in the planning process and more detailed decisions on how to implement the preferred alternative made later.

It must be recognized that the environmental assessment planning and decision-making process is dynamic. When preparing an environmental assessment, the proponent must be sensitive to changing conditions and new information and must provide flexibility in the environmental assessment to deal with changing circumstances. This approach, if carried out effectively, will result in the identification of a preferred alternative which has a rational justification for environmental approval.

### **3.1.5 Provide Clear, Complete Documentation**

**The proponent must ensure that the environmental assessment represents accurately the planning and decision-making process**

**that was followed in a clear and understandable way and must communicate that clearly in the environmental assessment document.**

The environmental assessment document which is submitted to the ministry for approval should explain clearly the environmental planning and decision-making process followed to reach the conclusion of the preferred alternative and its potential impacts after impact management measures have been determined. Any interested person reading the environmental assessment document should be able to easily follow the process used by the proponent in determining the undertaking including the rationale for making certain choices. Clarity, simplicity, completeness and precision are objectives for which to strive when preparing the environmental assessment document.

Information about how these features can be incorporated in the environmental assessment planning process and the preparation of the environmental assessment document is provided in Section 4 in this Code of Practice.

## 3.2 Project Management Principles

In addition to the environmental assessment principles outlined above, there are a number of project management principles that can, when followed, assist a proponent in navigating the environmental assessment process successfully for a specific undertaking. These project management principles, when followed by the proponent should result in better submissions to the ministry and timelier decisions. These project management principles include:

- Timeliness
- Clarity and Consistency
- Openness and Transparency
- Coordination of Approvals
- Best Available Information
- Appropriate Level of Detail
- Minimize Potential Harm and Enhance Benefits to the Environment

### **3.2.1 Timeliness**

The proponent should commence its environmental assessment as early in the planning process as possible. This will allow sufficient time to assess the undertaking implications so that the proposed undertaking can be modified as required. It will also allow for any potential coordination with other approvals where possible.

Timeliness is also important from the perspective of consultation. The proponent should involve interested persons early in the environmental assessment planning process in order to identify and consider issues or concerns.

Expectations for a timely process also apply to interested persons. Members of the public participating in the environmental assessment process should make their submissions about proposed undertakings in a timely manner and by the prescribed deadlines so that there is sufficient time for the proponent to evaluate the submission and incorporate it in its decision-making process.

The ministry should also be timely in its decision-making, following prescribed deadlines outlined in the Deadlines Regulation (Ontario Regulation 616/98) while taking time to thoroughly evaluate applications for environmental assessments.

### **3.2.2 Clarity and Consistency**

The environmental assessment process should be clear and consistent. The *Environmental Assessment Act* should be applied consistently to similar undertakings and the ministry's expectations of all participants in the process should be articulated clearly. Proponents and interested persons should be able to expect generally how the environmental assessment process will be carried out in similar circumstances in a manner that is rational and transparent.

### **3.2.3 Openness and Transparency**

The environmental assessment process should be open and transparent. This will enable all interested persons to follow the process through its various stages of planning and decision-making until a preferred undertaking is selected. Anyone should be able to trace the results of the

environmental assessment planning process using the evaluation approaches set out therein.

Means of achieving transparency can include, but are not limited to:

- Using appropriate, well-established and easily understood evaluation methods;
- Making the process clear, rational and logical;
- Sharing complete information with all interested persons to support conclusions and recommendations at each phase in the process;
- Documenting the process in easy to understand language with explanations of the rationale for making certain choices.

### **3.2.4 Coordination of Approvals**

Often *Environmental Assessment Act* approval is one of many approvals required by a proponent before its undertaking can be implemented. As early as possible in the planning process, proponents should determine whether approvals under other provincial legislation (for example, *Environmental Protection Act*, *Public Lands Act*, *Lakes and Rivers Improvement Act*, *Conservation Authorities Act*) or federal legislation (for example, *Canadian Environmental Assessment Act, 2012*, *Fisheries Act*, *Navigable Waters Protection Act*) are required.

Where an environmental assessment is required by another jurisdiction, to the extent possible, these multiple environmental assessment approvals should be coordinated where appropriate. At minimum, the environmental assessment should identify the other approvals required and address how they will be coordinated where possible. The ministry recognizes the benefits of coordination, but also understands that there are times when differences in approval requirements may make it impossible to coordinate environmental assessment approvals.

### **3.2.5 Best Available Information**

The proponent should provide sufficient information about the potential environmental effects (both positive and negative) of a proposed undertaking in order to demonstrate that the proposed undertaking should proceed. Proponents should prepare technical studies using the best available data; carefully select their assessment and evaluation methods

to analyze their proposal; and use sound scientific, engineering and planning practices in the preparation of the environmental assessment. Consultation with the public may assist the proponent in selecting appropriate analytical tools or information to be included in the planning process.

Proponents should be aware that while available and published data can be used in the earlier steps in the environmental assessment planning process, it is expected that there will be a transition to original field work, surveys, etc. for analysis and evaluation in the later stages of the environmental assessment planning process. The level of detail will increase as the process proceeds.

### **3.2.6 Appropriate Level of Detail**

Each environmental assessment is unique. As a result, the level of detail of required information will vary by undertaking or stage in the planning process. The appropriate level of detail depends on a number of factors such as the number of approvals required; the nature and complexity of the proposed undertaking; the potential for environmental effects; and the level of public interest. The level of detail presented in an environmental assessment should be sufficient to fulfil the requirements of the *Environmental Assessment Act* and to assure interested persons that the proposed undertaking is technically feasible and achieves environmental protection.

### **3.2.7 Minimize Potential Harm and Enhance Benefits to the Environment**

The environmental assessment planning process consists of a systematic evaluation of the potential environmental effects of alternatives, and weighing the advantages and disadvantages of proceeding with the proposed undertaking. In doing so, the proponent should attempt to prevent, avoid or minimize adverse environmental effects through the application of impact management measures. At the same time, proponents should consider societal benefits of the undertaking to the environment in their evaluation process.

Proponents should make every effort to avoid or minimize potential adverse environmental effects through the application of impact management measures; however, it may not be possible to manage all of



them. There will be times when some individuals may be affected by an undertaking that would benefit society as a whole and this will have to be considered during the environmental assessment planning process.

### 3.3 Statement of Environmental Values and Ministry Decision-making

Under Ontario's *Environmental Bill of Rights, 1993*, the public has the right to be informed of environmentally significant decisions the provincial government makes. The *Environmental Bill of Rights, 1993* applies to the ministry and requires that the ministry develop a Statement of Environmental Values. The ministry's Statement of Environmental Values is an important part of the work the ministry does to protect the environment as the Statement sets out important principles to be considered when the ministry makes environmentally significant decisions. The following text appears in the ministry's Statement of Environmental Values in the Guiding Principles section:

1. The ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.
2. The ministry considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.
3. The ministry considers the effects of its decisions on current and future generations, consistent with sustainable development principles.
4. The ministry uses a precautionary, science-based approach in its decision-making to protect human health and the environment.
5. The ministry's environmental protection strategy will place priority on preventing pollution and minimizing the creation of pollutants that can adversely affect the environment.
6. The ministry endeavours to have the perpetrator of pollution pay for the cost of clean-up and rehabilitation consistent with the polluter pays principle.
7. In the event that significant environmental harm is caused, the ministry will work to ensure that the environment is rehabilitated to the extent feasible.

8. Planning and management for environmental protection should strive for continuous improvement and effectiveness through adaptive management.
9. The ministry supports and promotes a range of tools that encourage environmental protection and sustainability (e.g. stewardship, outreach, education).
10. The ministry will encourage increased transparency, timely reporting and enhanced ongoing engagement with the public as part of environmental decision-making.

To see the ministry's Statement of Environmental Values in its entirety, please refer to:

[www.ebr.gov.on.ca/ERS-WEB-External/content/sev.jsp?pageName=sevList&subPageName=10001](http://www.ebr.gov.on.ca/ERS-WEB-External/content/sev.jsp?pageName=sevList&subPageName=10001)

To support the application of the ministry's Statement of Environmental Values in its environmental assessment decision-making, below are some best practices for proponents to consider when conducting an environmental assessment and providing submissions to the ministry. The following information is intended to assist proponents in providing information to the ministry that enables the Minister to fully consider the Statement of Environmental Values before a decision is made under the *Environmental Assessment Act*.

Proponents are encouraged to provide the following information as a separate section in submissions made to the ministry:

- Assess impacts on the environment in the context of an ecosystem approach. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.
- Include information about potential cumulative effects of the project in combination with past, present and reasonably foreseeable future activities where possible. Proponents are advised to consult with government agencies to identify any already-approved projects that will

be built in the future, and to consider their potential cumulative impacts to the extent possible<sup>1</sup>.

- Include information that shows how scientific, social and economic considerations have been taken into account. Proponents are also encouraged to conduct appropriate scoping in time to ensure that all elements of the undertaking's life cycle (commissioning, operations, decommissioning) are assessed, in order to appropriately protect the environment for current and future generations.
- Use quantitative scientific data to draw conclusions whenever possible. The proponent is expected to articulate the level of uncertainty associated with data and conclusions, along with the risk of serious or irreversible environmental harm associated with the project.
- Provide information about proposed pollution prevention or impact mitigation measures that could be used, in accordance with the focus of the environmental assessment program on wise management of the environment and conservation.
- Include information indicating how any potential unforeseen impacts will be remediated by the proponent.
- Include information confirming that the proponent will bear the costs of remediation of any unforeseen environmental impact.
- Make a commitment to review the assessment on an ongoing basis so that any unforeseen environmental impacts can be addressed using an adaptive management approach.
- Use a range of tools to complete the assessment that represent best practice for assessing the environmental components under consideration.
- Document how they have followed ministry guidance on consultation, such that the process is transparent, timely, accessible and represents enhanced ongoing engagement with the public.

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<sup>1</sup> If quantitative information about these projects is unavailable, proponents are encouraged to carry out qualitative assessments of potential cumulative impacts. The federal government has published a practitioners guide that proponents may find useful in conducting cumulative effects assessment: [www.ceaa.gc.ca/default.asp?lang=En&n=43952694-1](http://www.ceaa.gc.ca/default.asp?lang=En&n=43952694-1).

## 4. Environmental Assessment Process

The first step in the application for approval to proceed with an undertaking is receiving approval from the Minister for a terms of reference. The approved terms of reference sets out the proponent's work plan for addressing the legislated requirements of the *Environmental Assessment Act* when preparing the environmental assessment.

For more information about the terms of reference process, please refer to ministry's Code of Practice entitled, *Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario*.

Once the proponent receives approval of the terms of reference, it can start preparing the environmental assessment. The environmental assessment must be prepared in accordance with the approved terms of reference (subsection 6.1(1) of the *Environmental Assessment Act*). As the contents of each terms of reference differ, the environmental assessment that is subsequently prepared will also differ for each proposal.

An environmental assessment prepared in accordance with subsection 6.1(3), will be different than one prepared using the generic requirements laid out in subsection 6.1(2). In these instances, as allowed by the legislation, the proponent has set out in detail what its environmental assessment will contain. The information contained therein will be information other than that required by subsection 6.1(2).

Regardless of under which section of the *Environmental Assessment Act* the environmental assessment is prepared, the important point is that the environmental assessment must be prepared in accordance with the approved terms of reference.

On average, proponents take from 12 to 24 months to prepare the environmental assessment. This timeline is dependent on the scale and complexity of the proposal, the availability of information and the level of public interest.

## 4.1 Initiating the Environmental Assessment Process

To inform interested persons that the proponent is moving on from the terms of reference stage to the environmental assessment stage, the proponent must prepare a Notice of Commencement of Environmental Assessment (Appendix C contains an example template). The Notice will provide information to interested persons about the next steps in the planning process, what is being proposed and how to become involved. The proponent shall make the Notice available in a public forum, such as a newspaper and on the website that is maintained for the proposal. An electronic copy of the Notice should be sent to the Project Officer.

It is the responsibility of the proponent to consult with interested persons during the preparation of the environmental assessment. The approved terms of reference described a plan for consulting with interested persons ("consultation plan"). The proponent should review that consultation plan at the start of the planning process. Modifications to the consultation plan may be possible if the approved terms of reference allowed for it, otherwise the consultation plan must be implemented as described. More opportunities for consultation over and above what was outlined in the approved terms of reference can also be provided. This determination can be made as the proponent proceeds through the environmental assessment process having regard for the level of interest in the proposal. Please refer to the ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process* for further guidance.

At a minimum, and in accordance with the consultation plan, those consulted are those who expressed an interest at the terms of reference stage of being involved at the environmental assessment stage. The Project Officer will give the proponent an updated Government Review Team list to assist in identifying the proper government agency contacts, or additional contacts to be consulted. It is also important to consult any potential municipalities that may be affected by the proposal. It is often the case that council approval may be required for any comments that are provided by a municipality.

The proponent should consult with the Canadian Environmental Assessment Agency early in the process to determine if the *Canadian Environmental Assessment Act, 2012* applies to its proposal. Through the passage of the *Canada-Ontario Agreement on Environmental Assessment*

*Cooperation*, Canada and Ontario have committed to work closely to coordinate their environmental assessment requirements.

At the end of the planning process, the proponent is responsible for documenting its consultation activities and the results of them. This documentation will form part of the environmental assessment when it is submitted to the ministry for a decision.

#### **4.1.1 Consultation with Aboriginal Communities**

Consultation with potentially affected Aboriginal communities is also required. At the terms of reference stage, the proponent was required to prepare a list of Aboriginal communities that may potentially be affected by or are interested in the proposed study. The organizations listed on the environmental assessment page of the ministry's website<sup>2</sup>, such as the Ministry of Aboriginal Affairs and Aboriginal Affairs and Northern Development Canada, likely were consulted to identify which Aboriginal communities should be contacted about the proposal.

Consultation with Aboriginal communities at the environmental assessment stage is intended to allow the proponent to identify and consider potential concerns and issues, and to provide those communities with an opportunity to receive information about and have meaningful input into the development of the environmental assessment. Potentially affected Aboriginal peoples and communities are strongly encouraged to participate during the preparation of the environmental assessment.

Some environmental assessment undertakings have the potential to adversely affect existing and asserted Aboriginal or treaty rights and thereby trigger the Crown's duty to consult under section 35 of the *Constitution Act, 1982*. In such situations, the Crown must determine the level and extent of consultation required and how the consultation should be carried out. The Crown should assess:

- How the proposed undertaking may affect the existing and asserted rights of Aboriginal peoples and communities;
- The nature and strength of these rights;

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<sup>2</sup> The environmental assessment page of the ministry's website can be found at [www.ontario.ca/government/environment-assessments-consulting-aboriginal-communities](http://www.ontario.ca/government/environment-assessments-consulting-aboriginal-communities).

- How concerns may be addressed and accommodated.

This assessment may involve consulting with the affected Aboriginal community and the proponent.

#### *Crown Proponents*

If the proponent of the proposed undertaking is clearly the Crown (for example, Ministry of Natural Resources, Ministry of Transportation), then the consultation efforts should be led by the Crown proponent. Where there is a potential adverse effect on an Aboriginal or treaty right, as early in the planning process as possible, the Crown proponent should advise the Director of the consultation carried out with Aboriginal communities. The Director and Crown proponent will discuss what next steps are required.

#### *Non-Crown Proponents*

If the proponent of the proposed undertaking is not the Crown and an Aboriginal community has asserted that the Crown has a duty to consult based on the potential adverse effect on an Aboriginal or treaty right, then the proponent should notify the Director. The Director will determine what next steps are required.

Proponents can assist the ministry by providing it with correspondence from Aboriginal Affairs and Northern Development Canada and the Ministry of Aboriginal Affairs, the list of the Aboriginal communities that have been consulted and details of what has transpired to date between the proponent and the Aboriginal community(ies). The ministry will determine whether additional Aboriginal communities should be consulted by the Crown. The Director may request that the proponent seek and provide further particulars of the assertion where appropriate.

#### *All Proponents*

When the duty to consult has been engaged, all proponents should realize that:

- The nature, scope, and content of the duty to consult and accommodate varies with the circumstances.

- Meaningful consultation requires the Crown to listen with an open mind to what the Aboriginal communities have to say.
- There may be a requirement to make changes to a proposal based on information obtained through consultations.
- Accommodation requires a process of balancing interests.
- Responsiveness is a key element of both consultation and accommodation.

## 4.2 Planning Process

After the Notice of Commencement is issued, proponents will conduct studies and consult interested persons as they attempt to find a solution to the problem or opportunity that prompted the planning process. At the end of the process, the preparation and submission of an environmental assessment will be required.

Environmental assessments will differ based on the approved terms of reference and the nature of the proposed undertaking.

As each proposed undertaking is unique, the study requirements and the level of detail expected in the environmental assessment will vary depending on the requirements of the approved terms of reference, and the nature and complexity of the issues associated with the proposed undertaking.

The proponent should consult with the Project Officer as needed (for example, to discuss consultation requirements or the evaluation of alternatives) while proceeding through the planning process. In the end, the planning process will be documented in an environmental assessment. It is the proponent's responsibility to submit an environmental assessment prepared in accordance with the approved terms of reference and with enough detail so that the Minister can make an informed decision about a proposed undertaking.

The rest of this subsection outlines some general elements that make up most environmental assessment planning processes. The elements refer to the generic elements outlined in section 6.1(2) of the *Environmental Assessment Act*. Those proponents who stated in their approved terms of reference that they were proceeding under section 6.1(3) of the *Environmental Assessment Act* should make adjustments as required by



the approved terms of reference. The elements that form the generic planning process are:

- Statement of Purpose
- Description of and Rationale for Alternatives
- Description of the Environment
- Assessment and Evaluation
- Identification of the Undertaking

#### **4.2.1 Statement of Purpose**

At the beginning of the planning process, the proponent must revisit the problem or opportunity that prompted the planning process. A preliminary description of this purpose statement appeared in the approved terms of reference. As required, in the environmental assessment proponents will build on the purpose statement that was outlined in the approved terms of reference. In getting to the final purpose statement, a proponent may draw on a previous study or event that may have prompted the proponent to proceed with the proposed undertaking. At the end of the planning process, the proponent will provide a detailed definition of the purpose of the undertaking.

#### **4.2.2 Description of and Rationale for Alternatives**

The *Environmental Assessment Act* refers to two types of alternatives: alternatives to the undertaking, and alternative methods of carrying out an undertaking. Unless a specific type of alternative is being referred to, any general references to alternatives in this Code of Practice include both alternatives to and alternative methods. In the approved terms of reference, the proponent outlined whether both types of alternatives were to be considered at the environmental assessment stage.

Cases may arise where proponents have previously considered alternatives during a separate planning or decision-making process. If the previous planning process had similar provisions to those of the *Environmental Assessment Act* then the proponent may have sought and received approval at the terms of reference stage to limit the discussion of previously examined alternatives.

These provisions may include things such as:

- An examination of alternatives;
- Regard for the environment and environmental effects;
- Public consultation with interested persons such as the public and municipalities;
- Ability for the public to inspect the planning document in its entirety;
- Approval by a recognized decision-making body in a transparent manner such as municipal council resolution or provincial government policy decision<sup>3</sup>.

Relevant information previously considered under provincial transportation network plans, transportation or infrastructure Master Plans, Growth Plans under the *Places to Grow Act, 2005*, Official Plans and business plans could also have been used.

There are also times when proposed undertakings result from a provincial government priority initiative. Provincial government priority initiatives include announcements in throne speeches, budget announcements or initiatives in provincial plans. In these cases it may be difficult to examine the usual range of alternatives as the actual undertaking has been defined by the initiative. If this is the case, the project documentation should outline the rationale for not examining alternatives and the extent to which any previous planning supports the provincial government priority initiative.

If a proponent chooses to rely on previous planning work to limit the discussion of alternatives, then the rationale for doing so must be evaluated for its appropriateness, relevance and accuracy as it relates to provincial plans, policies and interests (for example, Provincial Policy Statement, Growth Plans under the *Places to Grow Act, 2005*).

While the option to rely on previous planning work to limit the discussion of alternatives to is available to proponents, it is not mandatory. Proponents may still choose to examine a broader range of alternatives to, if it is more appropriate to do so in the particular circumstances.

At the terms of reference stage, the proponent was encouraged to build flexibility into the document to account for any changes that may arise

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<sup>3</sup> Approval for a provincial government policy decision could be from an Assistant Deputy Minister, a Deputy Minister or a Minister.

during the preparation of the environmental assessment. It is therefore possible that flexibility in the approved terms of reference will allow a proponent to add to or adjust the alternatives that were identified in the approved terms of reference. The need to adjust alternatives may come about because of consultation with interested persons or the receipt of new information. If there is any doubt about whether additions or adjustments can be made, the proponent should discuss the issue with the Project Officer assigned to the file.

In choosing any further alternatives, the proponent should, at a minimum, consider the following:

- Do they provide a viable solution to the problem or opportunity to be addressed?
- Are they proven technologies?
- Are they technically feasible?
- Are they consistent with other relevant planning objectives, policies and decisions (for example, Official Plan, Provincial Policy Statement, Growth Plans under the *Places to Grow Act, 2005*)?
- Are they consistent with provincial government priority initiatives (for example, waste diversion, energy efficiency, source water protection, reducing greenhouse gas emissions)?
- Could they affect any sensitive environmental features (for example, provincially significant wetlands, prime agricultural area, endangered species habitat, floodplains, archaeological resources, built heritage)?
- Are they practical, financially realistic and economically viable?
- Are they within the ability of the proponent to implement?
- Can they be implemented within the defined study area?
- Are they appropriate to the proponent doing the study?
- Are they able to meet the purpose of the *Environmental Assessment Act*?

In defining alternatives, the do nothing alternative should always be considered. The do nothing alternative represents what is expected to happen if none of the alternatives being considered are carried out. It is a benchmark against which the consequences of the alternatives can be measured in order to determine, amongst other things, the extent to which other alternatives address the problem or opportunity. The do nothing

alternative can also highlight the advantages of proceeding with a particular undertaking.

If both types of alternatives are being considered at the environmental assessment stage, it is not expected that they are identified at the same time. First, the “alternatives to” would be identified. After a systematic evaluation of the alternatives to, one or more may be chosen to be carried forward into the alternatives methods analysis. At that time, the alternative methods would be identified.

In the environmental assessment, the proponent will describe the alternatives (both types, if required) that were considered and the rationale for choosing those alternatives, in accordance with provisions outlined in the approved terms of reference.

#### **4.2.3 Description of the Environment**

The *Environmental Assessment Act* requires a description of the environment that may be affected or reasonably expected to be affected, directly or indirectly, by the alternatives and the undertaking.

In the approved terms of reference, a study area was defined. If the study area defined in the approved terms of reference was preliminary, the proponent will finalize its boundaries before describing the environment.

The proponent will conduct studies/research to provide a final description of the environment within the study area, building upon the description given in the approved terms of reference. The description in the environmental assessment will be more detailed than that provided in the approved terms of reference. The detailed description of the environment must address all components of the environment (natural, social, economic, cultural, built) as it is defined in the *Environmental Assessment Act*. There may be instances where different components of the environment may overlap. The study area for each alternative, or for each component of the environment, may vary depending on the alternatives and the geographic extent of the potential environmental effects. It is important to clearly describe how and why the boundaries of the overall study area and the study area for each alternative and/or effect were chosen. A clear map of the study area(s), suitable for reproduction, is required for the environmental assessment. More than one map may be

provided to give readers a good understanding of the different components of the study area.

The environmental assessment is also to include a list and explanation of the tools (for example, studies, tests, surveys, mapping) used to provide the description of the environment.

#### 4.2.4 Assessment and Evaluation

In order to determine the undertaking for which approval will be sought, the proponent must carry out a systematic evaluation of the alternatives. The table below generally outlines the steps in an evaluation process. In this situation, both types of alternatives are examined. The example given is for illustrative purposes only and proponents are expected to develop a process that is suited to their particular study.

<b>Simplified Generic Assessment and Evaluation Process</b>	
1.	Identify alternatives to.
2.	Collect data (criteria/indicators/data sources).
3.	Evaluate alternatives to (potential effects, impact management, net effects, advantages/disadvantages).
4.	Identify preferred alternative to (one or more could be selected).
5.	Identify alternative methods for the preferred alternative to.
6.	Collect data (criteria/indicators/data sources).
7.	Evaluate alternative methods (potential effects, impact management, net effects, advantages/disadvantages).
8.	Identify preferred alternative method (one or more could be selected).
9.	Describe the proposed undertaking.

In the environmental assessment, the proponent must outline the process it used to arrive at the undertaking.

#### *Criteria, Indicators and Methodology*

The proponent may have developed criteria to assess the effects of the alternatives and the undertaking on the environment at the terms of reference stage. Alternately, the manner in which criteria were to be

developed during the environmental assessment stage may have been outlined in the approved terms of reference.

The environmental assessment must present the final list of criteria. The criteria should be linked to each component of the environment (such as criteria for the natural, social, economic and cultural environments) as a description of the effects of each of the alternatives and the undertaking on the environment is required. The environments may overlap depending on the criteria being used. As required, each criterion will then be followed by indicators that will identify how the potential environmental effects will be measured for each criterion. There is no minimum number of criteria or indicators, as that is dependent on the scale of the proposal and the environment potentially affected.

The criteria developed for the evaluation of alternatives to may be more general than the criteria developed for alternative methods. The criteria tend to get more specific as a proponent moves from the alternatives to evaluation to the alternative methods evaluation. Also, the level of detail at which alternatives are evaluated will normally increase as the proponent proceeds through the planning process. As more information is acquired about the potential environmental effects and the areas of concern to interested persons, it may result in criteria that are more detailed or produce changes in criteria.

Examples of Criteria, Indicators and Data Sources			
Environment	Criterion	Indicator	Potential Data Sources
Natural	Effect on surface water quality	Number of watercourses in study area	Ministries of the Environment and Natural Resources; local Conservation Authority
Social	Effect on local residences	Number of residences displaced	Property owners; ratepayer groups

<b>Examples of Criteria, Indicators and Data Sources</b>			
Economic	Effect on local businesses	Number of businesses disrupted and/or displaced	Business and property owners; municipal agencies; ratepayer groups
Cultural	Effect on built heritage resources and cultural landscapes	Potential presence of cultural heritage resources in or adjacent to the study area	Municipal registers of properties of cultural heritage value; heritage non-governmental organizations; municipal heritage committees
Built	Effect on sensitive land uses	Number of sensitive land uses within the study area	Review of Official Plans, zoning by-laws and other local plans; municipal/regional officials

Assuming that the proponent had built flexibility into its approved terms of reference, it may be possible to make changes to the criteria or indicators from that in the approved terms of reference. If flexibility was built into the process, in the environmental assessment the proponent will provide justification for any change to the criteria or indicators outlined in the approved terms of reference. The reasons for selecting the criteria and indicators should be clearly explained. This will help all interested persons understand the judgments that were made and allow them to participate more effectively in the process. An outline of the data sources for the criteria and indicators is also required in the environmental assessment. The chart above gives examples of potential criteria, indicators and data sources for the different environments.

After identifying criteria and indicators, a method of evaluating the alternatives is required. The approved terms of reference may have identified the evaluation method(s) that is to be used at the environmental assessment stage. Alternatively, the proponent may have elected to determine the evaluation method at the environmental assessment stage in consultation with interested persons.

The *Environmental Assessment Act* does not require a specific method or methods for assessing the potential environmental effects, impact management measures, net effects, and advantages/disadvantages of the alternatives and the undertaking on the environment. It is possible that a different evaluation method may be used for the evaluation of alternatives to than for alternative methods.

The evaluation method(s) chosen must be able to produce an assessment that is clear, logical and traceable. A clear, logical and traceable assessment is one in which anyone with the same information could reach the same conclusion without any additional assumptions. The method(s) selected should clearly identify the relative differences and key impacts to make the trade-offs involved in selecting the undertaking clear.

The environmental assessment must clearly describe the chosen evaluation methods(s).

#### *Description of Environmental Effects*

Once environmental criteria and methods for predicting environmental effects are established, a proponent collects information about the effects to the environment of the alternatives. In evaluating the alternatives and the undertaking, their potential effects on the environment must be identified and described. The proponent will determine all potential positive and negative, and direct and indirect effects of each alternative and the undertaking on the environment and identify these in the environmental assessment. The identification of positive and negative, and direct and indirect environmental effects is necessary to provide a balanced picture of the potential environmental effects. The environmental assessment should also attempt to examine the interrelationships between components of the environment and the undertaking and its alternatives, for example, how the project could interrelate with a changing climate over time.

Where the environmental effects are uncertain, proponents should explain why and fully explain the factors that cause the problem and how it has been addressed in the evaluation. For example, a proponent may not be able to precisely predict an effect because a new process or technology is being proposed. In this case, the proponent should discuss why the effect may vary, identify the expected range of effects, and the level of certainty of these predictions.



The proponent should concentrate on information that is likely to be of key significance keeping in mind that sufficient information to allow the net environmental effects to be described is required. Where it has been determined that one or more components of the environment will not be affected, this conclusion as well as the way in which it was reached, must be documented.

### *Impact Management*

Ultimately, proponents should aim to minimize, prevent or avoid negative environmental effects. A proponent should also aim to enhance any positive environmental effects associated with the alternatives and the undertaking. The steps taken to do these will be discussed in the environmental assessment.

The *Environmental Assessment Act* requires a proponent to describe the actions or potential actions that may be necessary to “prevent, change, mitigate or remedy” the effects or the potential effects to the environment of the alternatives and the undertaking (subsection 6.1(2)(c)(iii) of the *Environmental Assessment Act*). These impact management measures are mainly required for effects which are negative or anticipated to have a negative effect either directly or indirectly on the environment. The impact management measures that will be used to reduce the negative environmental effects must be provided in the environmental assessment. These measures may be either physical (for example, replacing trees which may have to be removed) or non-physical (entering into an agreement with an affected person). The effects remaining after the application of impact management measures are considered the net effects. These net effects must be described in the environmental assessment.

While it is easy to focus on the negative effects of a proposal, proponents should not forget that effects can also be positive. Attempts should also be made to enhance positive effects, not just minimize negative ones. Prevention and avoidance of environmental effects should also be considered.

Impact management measures can be determined in a variety of ways depending on the stage in the planning process and the significance of the expected environmental effect. For example, in the early stage of the planning process or where the effect is common for all the alternatives,

general types of impact management measures can be considered. In later stages of the planning process, the measures to be employed should be more specific.

Where measures are either unnecessary because of the nature of the effect or are not reasonably available, the proponent must discuss how and why this was determined. Where a variety of impact management measures are available, the relative merits of each should be considered through consideration of their cost and effectiveness including any environmental effects to which they may themselves give rise.

### *Advantages and Disadvantages*

The environmental assessment should describe the process for evaluating alternatives and then choosing a preferred alternative, which will become the undertaking for which approval is sought. The evaluation process is a trade-off process in which the advantages and disadvantages to the environment of the alternative courses of action are weighed in terms of their effects, both positive and negative, on the environment. This follows from the determination of net effects.

The *Environmental Assessment Act* does not differentiate between the importance of the different environments (that is, natural, social, economic, cultural, built). It is expected that the effects to one environment may be greater than the effects to another. There may be a need to weight the importance of the different environments. To ensure traceability, this must be done before any evaluation takes place and in consultation with any interested persons.

One alternative is rarely preferred to all others in every respect. Relative advantages in one area may be offset by relative disadvantages in another. A consistent basis for trade-offs is therefore important so that a solid case is made for the selection of the preferred alternative. Generally speaking, the alternative that has the preferred balance of advantages and disadvantages then becomes the undertaking. The proponent will have to determine and clearly articulate the rationale for choosing the preferred alternative, taking into account the relative advantages and disadvantages.

#### **4.2.5 Identification of the Undertaking**

The undertaking is the preferred alternative selected by the proponent, after a systematic evaluation and in consultation with interested persons, as the solution to the problem or opportunity that was earlier determined.

The proponent must thoroughly describe and provide the rationale for the undertaking for which approval will be sought. The preliminary rationale for the undertaking should have been provided in the approved terms of reference but with the selection of the preferred undertaking in the environmental assessment, a more detailed rationale for the preferred undertaking should be provided.

Where the rationale for the undertaking has already been determined through other planning processes outside of the environmental assessment process, or is the result of a provincial government priority initiative, and is provided for in the terms of reference, it is sufficient to briefly indicate this in the environmental assessment. Examples of processes or initiatives include, but are not limited to, Growth Plans under the *Places to Grow Act, 2005*, provincial transportation network plans, transportation or infrastructure Master Plans, provincial government priority initiatives, or Official Plans that have been approved under the *Planning Act*, for which there was public consultation. A brief description of the process or initiative from which the undertaking arises should be provided including information about any associated consultation and any approvals.

If the proposed undertaking is the result of previous planning processes or provincial government priority initiatives, then proponents, during the environmental assessment, can rely on the previous planning process or provincial government priority initiative for the rationale for the proposed undertaking without having to justify their choices again.

The description of the undertaking is more detailed than the description of the alternatives. It is appropriate that the proponent have some flexibility in how it proceeds with the undertaking, especially considering that further technical approvals may be required. However, limits on the flexibility must be included in the description of the undertaking. The description must cover the entire life cycle (for example, establishment, construction, operation, retirement) of the undertaking. The environmental assessment must provide sufficient information so that the Minister can have a clear

understanding about the undertaking about which he or she will be asked to make a decision.

In accordance with Regulation 334 - General, made under the *Environmental Assessment Act*, where the environmental assessment is for an undertaking with a fixed location, at least two unbound well marked and legible maps (215 x 280 millimetres or 8.5 x 11 inches in size) showing the location of the undertaking and the area to be affected by it is required.

After receiving approval to proceed with an undertaking, there may be times when a proponent would like to modify the undertaking. This could occur because the environmental setting has changed since the undertaking was approved or there is a new technology of which a proponent would like to take advantage. In accordance with the *Environmental Assessment Act*, a change to an undertaking after it is approved is considered a new undertaking. Including an amendment procedure in the environmental assessment may allow a proponent to make minor modifications to the approved undertaking without having to fulfil the requirements of the *Environmental Assessment Act* all over again. Before developing an amendment procedure, the proponent should discuss its merits and requirements with the Project Officer.

While the input from interested persons is to be considered in the determination of the undertaking, it is up to the proponent to decide for what it will seek approval. To that end, it is important that the rationale for the undertaking be clearly articulated in the environmental assessment. The proponent must remember that if approval for the undertaking is given, it must be implemented as described in the environmental assessment.

### 4.3 Documentation Requirements

The planning process that has just been completed must be documented in its entirety in the environmental assessment.

The environmental assessment must be clearly written. Use of jargon should be limited. The document needs to contain sufficient information to ensure that the expert and the lay reader can understand the planning process that was followed. The environmental assessment may consist of several volumes, with the first being the main document that lays out the

results of the planning process, followed by technical appendices. If a multiple volume document is prepared, the main document should be sufficiently detailed so that it can stand on its own and provide a complete picture of the planning process and its conclusions. For file retention purposes, it is the ministry's preference that the environmental assessment be printed double-sided on paper that is 215 x 280 millimetres (8.5 x 11 inches) in size and bound securely.

In addition to documenting the planning process, the environmental assessment should also include the following elements:

- Executive Summary
- List of Studies and Reports
- Terms of Reference Requirements
- Identification of the Proponent
- Commitments and Monitoring
- Other Approvals
- Consultation Summary
- Appendices

#### **4.3.1 Executive Summary**

In accordance with Regulation 334, all environmental assessments must contain a brief summary of the main points of the document. It should be consistent with the way in which the environmental assessment is organized. Section headings that appear in the main document should appear in the executive summary followed by a summary of that section and the conclusions reached.

#### **4.3.2 List of Studies and Reports**

In accordance with Regulation 334, the environmental assessment must contain:

- A list of studies and reports, which are under the control of the proponent and were done in connection with the undertaking or matters related to the undertaking.

- A list of studies and reports done in connection with the undertaking or matters related to the undertaking of which the proponent is aware and that are not under the control of the proponent.

#### **4.3.3 Terms of Reference Requirements**

All proponents are required to present in the environmental assessment a tabular summary of the requirements of the approved terms of reference and where in the environmental assessment they are discussed. As the environmental assessment must be prepared in accordance with the approved terms of reference, this table will highlight succinctly how that has been done.

#### **4.3.4 Identification of the Proponent**

All environmental assessments are to include a clear statement identifying the proponent. If there is more than one proponent, the relationship between them and how they have worked together, including their responsibilities, throughout the environmental assessment process should be explained. How they will work together if *Environmental Assessment Act* approval is given should also be explained. If approval to proceed with the undertaking is given, it will be the proponent who is legally responsible for carrying out the undertaking as approved.

#### **4.3.5 Commitments and Monitoring**

As part of a compliance strategy, the environmental assessment is required to include a monitoring framework that will be carried out if the undertaking is approved by the Minister. Monitoring can be used to verify the expected environmental effects of the undertaking and to determine if any additional impact management measures, or adjustments to any measures, are required.

The monitoring framework should consider all phases of the proposed undertaking (for example, planning, detailed design, tendering, construction, operation, closure, decommissioning). This framework must include compliance monitoring, and where appropriate, effects monitoring.

Compliance monitoring is an assessment of whether an undertaking has been constructed, implemented and/or operated in accordance with the

commitments made in the environmental assessment and the conditions of the *Environmental Assessment Act* approval.

The environmental assessment must provide a plan that sets out how and when all commitments, including impact management measures, made in the document and any conditions of approval will be fulfilled and how the proponent will report to the ministry about compliance. This information should be summarized in a single table, with columns for a brief description of all commitments, where in the document the commitment is mentioned and when each commitment will be fulfilled. The information regarding conditions of approval cannot be included as a decision has not yet been made. If approval is granted and conditions imposed, a similar approach to documenting those conditions would be taken as with documenting commitments.

Effects monitoring consists of activities carried out by the proponent after approval to determine the environmental effects of the undertaking. Whether this would be required is determined on a case-by-case basis.

Proponents shall retain either on-site or in another location specified in the environmental assessment, the results of the compliance self-assessment, including the detailed monitoring data. The proponent shall make the documentation available to the ministry upon request in a timely manner when required by the ministry during an on-site inspection, audit, response to a pollution incident report, or when information concerning compliance is requested by the ministry.

#### **4.3.6 Other Approvals**

The environmental assessment should include an outline of what other approvals will be required for the undertaking, and for what component of the undertaking.

If approval is required under several pieces of legislation administered by the ministry, proponents are encouraged to submit documentation that would, as much as possible, fulfil the requirements of all the applicable legislation (for example, a joint *Environmental Assessment Act*, *Environmental Protection Act* and *Ontario Water Resources Act* submission for large landfill applications). Proponents should discuss with the Project Officer the benefits of doing this, such as the potential reduction in time needed to acquire any other approval. Proponents

should be aware that approval under the *Environmental Assessment Act* comes first and that approval under one piece of legislation does not guarantee approval under another.

Proponents should consult other applicable government agencies to explore what opportunities may exist to coordinate documentation requirements for other required approvals.

#### **4.3.7 Consultation Summary**

Consultation with interested persons is a key component of the environmental assessment process. A plan for consulting with interested persons during the preparation of the environmental assessment was included in the approved terms of reference. The proponent was required to carry out that consultation plan, subject to any necessary refinements, while preparing the environmental assessment, and report its results in the environmental assessment.

The consultation summary will:

- Describe the consultation activities that took place (methods, schedule of events, notification that was given about the activity and materials used);
- Identify all persons consulted during the preparation of the environmental assessment (personal names not required) and how they were notified;
- Describe how interested Aboriginal communities were identified and how they were consulted;
- Clearly and accurately summarize the comments and concerns raised during the consultation activities and during the preparation of the environmental assessment;
- Describe the proponent's response to comments and how concerns were considered in the preparation of the environmental assessment;
- Describe any outstanding concerns;
- Include minutes from any meetings held with interested persons;
- Include copies of written comments received from interested persons.

The proponent must provide a comprehensive description of the consultation activities that took place during the preparation of the



environmental assessment. A narrative description of the different activities, rather than just a listing of them, is required.

The summary of any comments received and the proponent's responses should be presented in a table. As appropriate, included in the table should be an indication of where in the environmental assessment the concern is addressed. The proponent can decide in what order the information is presented, however, for comments from the general public, arranging the comments by type (for example, put all air quality comments together) would be appropriate. For the Government Review Team and Aboriginal communities, the comments should be organized by agency and community rather than by issue.

If appropriate, the environmental assessment may also include a plan for ongoing consultation during construction, operation and/or decommissioning/closure, should approval to proceed with the undertaking be given.

#### **4.3.8 Appendices**

A copy of the approved terms of reference should appear in an appendix. In the appendix, the proponent can also place detailed technical studies, such as a social impact assessment or groundwater study. The appendices are meant to support the information provided in the environmental assessment. As such, in the environmental assessment it is important to refer the reader to the corresponding studies in the appendix for further justification to support the claims in the environmental assessment.

## **4.4 Draft Environmental Assessment**

There is no legal requirement in the *Environmental Assessment Act* to prepare and allow review of a draft environmental assessment, but the ministry strongly encourages a proponent to do so. If in the approved terms of reference a commitment was made to provide a draft environmental

Though strongly encouraged, producing a draft environmental assessment is not a legislative requirement. The proponent, taking into consideration the nature, scale and potential interest in the proposal, should determine if a draft document will be prepared and how much time is given to inspect the draft document if one is prepared.

assessment for review, then the proponent is legally required to do so. The rest of this section only applies if the proponent has decided to produce a draft document for review.

If a draft is prepared, the Project Officer will lead the ministry's review of the draft environmental assessment. The proponent will be responsible for consulting the Government Review Team, Aboriginal peoples and communities, local municipalities, the general public and other interested persons.

The proponent is responsible for identifying and resolving (or attempting to resolve) any issues raised before the final environmental assessment is submitted. As required, the proponent will revise the draft environmental assessment to address any issues that were raised during its review before submitting the final document to the ministry. The consultation summary component of the final document will reflect the results of the review of the draft environmental assessment.

#### *Review of Draft Environmental Assessment by Ministry Staff*

Once a copy of the draft environmental assessment is received, the Project Officer will quickly review it to ensure that it is complete and meets the requirements outlined in the approved terms of reference and this Code of Practice before requesting sufficient copies for distribution to the ministry's technical review team. The Project Officer may suggest changes or request that additional work be done before the draft environmental assessment is sent for review by the ministry technical reviewers. The Project Officer will let the proponent know how much time is required for the ministry to conduct a proper review of the draft environmental assessment. Once the ministry technical reviewers complete their review, they will send their comments to the Project Officer who will then pass them on to the proponent.

#### *Non-ministry Review of Draft Environmental Assessment*

The proponent is responsible for consulting non-ministry persons about the draft environmental assessment. This includes the Government Review Team, Aboriginal communities, local municipalities, the general public and other interested persons.

Government reviewers are not obligated to review a draft environmental assessment and will not necessarily respond to an unexpected request to review it by a particular deadline. Proponents should contact (phone, e-mail) each prospective reviewer to discuss the conditions under which a review can be conducted before sending them the draft environmental assessment for review. The proponent should discuss with the reviewer the reasons for requesting a review, what information is needed to do a proper review, and the amount of time that will be needed for the review. As required, a copy of the draft environmental assessment and any other relevant materials should be sent to each interested member of the Government Review Team for their review.

The proponent will send the draft environmental assessment and any other relevant materials to any interested Aboriginal community for its information and comment. Contact should be made with each interested community before the draft document is sent. A process similar to that used for the Government Review Team should be followed, unless discussions with a particular community have determined otherwise.

The proponent will also make sufficient copies of the draft environmental assessment available in publicly accessible locations to allow local municipalities, the general public, Aboriginal communities and other interested persons the opportunity to comment on the document which will then provide the proponent with an early opportunity to respond to any concerns. A copy of the draft environmental assessment and accompanying materials is also to be placed on the project website maintained by the proponent.

It is important that notice of the availability of the draft environmental assessment be given in an accessible forum (for example, newspaper notice, website, direct mail). A minimum of five weeks should be provided for inspection of the draft document. For large-scale undertakings or ones where there is great interest, it is the ministry's expectation that the proponent provide more than five weeks for inspection of the draft environmental assessment. The nature, scale and potential interest in the proposal should be considered in the proponent's determination about the length of the review period.

All comments about the draft environmental assessment are to be sent directly to the proponent with a copy sent to the Project Officer for

information only. Comments sent only to the Project Officer or anyone else in the ministry will be forwarded to the proponent for the proponent to consider.

## 5. Submission of the Environmental Assessment

### 5.1 Preparing for Submission

Once the proponent determines that the environmental assessment is suitable for submission to the Minister of the Environment for a decision, it should discuss submission requirements with the Project Officer.

The proponent must notify the Project Officer at least three weeks before it intends to formally submit its environmental assessment so that a firm submission date and start date of the formal review period can be established. The Project Officer will ask the proponent to prepare an Environmental Assessment Summary Form and a Notice of Submission. Please see Appendix C for a copy of the Summary Form, and a suggested template for the Notice of Submission. The Summary Form is also found electronically on the environmental assessment page of the ministry's website<sup>4</sup>.

#### Preparing for Submission

1. Discuss with Project Officer potential submission dates.
2. Complete Environmental Assessment Summary Form.
3. Prepare Notice of Submission.
4. Arrange for publication of Notice of Submission in local newspaper or other suitable forum.
5. Review and if required, update the Government Review Team list.
6. Prepare required number of copies of the environmental assessment.

The final Environmental Assessment Summary Form must be submitted to the Project Officer (hard and electronic copies) at least two weeks before the start of the review period of the environmental assessment. The Environmental Assessment Summary Form provides information about the proponent and its proposed undertaking. The Project Officer uses the information from this form to create a posting that is placed on the environmental assessment page of the ministry's website.

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<sup>4</sup> The environmental assessment page of the ministry's website can be found at [www.ontario.ca/environmentalassessments](http://www.ontario.ca/environmentalassessments).

Section 6.3 of the *Environmental Assessment Act* requires that the proponent give notice about the submission of the environmental assessment to the public and the clerk of each municipality in which the proposed undertaking is to be carried out. In accordance with the Deadlines Regulation (Ontario Regulation 616/98), the notice must be issued no later than two weeks following the submission of the environmental assessment to the ministry. To meet these requirements, the Project Officer will ask the proponent to prepare a Notice of Submission for his or her review at least two weeks prior to the formal submission date of the environmental assessment. The Notice of Submission shall include a brief description of the undertaking, a location map, places where the environmental assessment can be viewed, and by when and to whom comments about the environmental assessment can be made. Generally, the environmental assessment is available for viewing at the Branch, the local ministry office, municipal offices, public libraries and on the proponent's project website. The comment period for the environmental assessment is seven weeks and any comments are to be submitted in writing directly to the Project Officer.

## 5.2 Submission of the Environmental Assessment

The proponent shall ensure that a sufficient number of copies of the environmental assessment, in hard copy, is received by the Project Officer at least one week before the start of the formal review period. An electronic version of the environmental assessment should also be submitted. A cover letter addressed to the Director (attention Project Officer) stating that the environmental assessment is being formally submitted must be sent with the environmental assessment.

The proponent must ensure that the members of the Government Review Team and the public viewing locations as outlined in the Notice of Submission receive the environmental assessment before the start of the formal review period. A copy of the Notice of Submission should be placed with the environmental assessment at the public viewing locations so it will be clear when, where and to whom comments are to be sent.

Where possible, the Notice of Submission will be posted in a local newspaper in the study area. If there has been significant public interest in the proposal, the proponent may be directed by the Project Officer to post the Notice in a newspaper more than once, or to directly notify all persons who have expressed an interest in the process thus far. If the study area is large, then postings in multiple newspapers may be necessary. Where it is not possible to post the Notice in a newspaper, the proponent should discuss with the Project Officer alternate posting arrangements. The clerk of each municipality in which the proposed undertaking is to be carried out must receive a copy of the Notice. The proponent will also post the Notice and the environmental assessment on the website it has been maintaining for the proposal. As these are minimum requirements, the proponent can provide the Notice in other ways as well (for example, posters placed in a central location, direct mail, media advertisements).

### **Proponent's Submission Tasks**

At least one week prior to start of formal review period:

- ≈ Ensure environmental assessment and cover letter arrives at ministry.

Just before start of formal review period:

- ≈ Ensure Government Review Team and public viewing locations receive copies of the environmental assessment;
- ≈ Ensure municipal clerk receives copy of Notice of Submission.

Start of formal review period:

- ≈ Ensure Notice of Submission posted in local newspaper(s) and on project website;
- ≈ Ensure environmental assessment is on project website and can be accessed.

## 6. Evaluation of the Environmental Assessment

There are several phases in the evaluation of the environmental assessment that take place between the submission of the document and the decision about the application. The phases are discussed in the sections below.

There are regulated timelines associated with the evaluation of the environmental assessment. These are outlined in the Deadlines Regulation (Ontario Regulation 616/98). The timelines are not concurrent but for ease of understanding, it is generally accepted that it takes approximately 30 weeks to go through the process if there are no delays (see Appendix A for a timelines chart). Additional time (from one to three weeks) is required to translate, publish and distribute the ministry Review.

### Phases in the Evaluation Process

- Phase 1: Inspection of environmental assessment (7 weeks)
- Phase 2: Preparation of ministry Review (5 weeks)
- Phase 3: Issue Notice of Completion of ministry Review (no timeline)
- Phase 4: Inspection of ministry Review (5 weeks)
- Phase 5: Final ministry evaluation of environmental assessment period (13 weeks)

The Minister's decision is subject to approval by the Lieutenant Governor in Council, which is not subject to specific timelines.

### 6.1 Phase 1: Inspection of the Environmental Assessment (First Inspection Period)

All interested persons have seven weeks in which to inspect and make comments about the environmental assessment.

Comments about any aspect of the environmental assessment can be made. This is the opportunity for interested persons to provide comments about components of the environmental assessment about which they agree or do not agree. Comments must be specific and relate to a component(s) of the proposed environmental assessment, such as the



range of alternatives or the results of the evaluation and be within the ability of the proponent to address. Any potential solutions to the issues raised should also be outlined.

All comments should be sent directly to the Project Officer identified in the Notice of Submission. Comments must be in writing and can be sent by mail, e-mail or fax. Contact information (clearly state name and address) must be included on the submission so that its receipt can be acknowledged. If the public engages in a write-in campaign or organizes a petition, or there are a large number of submissions, individual acknowledgements from the ministry may not be sent. In the case of a write-in campaign or petition, if there is an organizing body clearly identified, then an acknowledgement may be sent to that body.

Each member of the Government Review Team, including ministry staff, will conduct its own review of the environmental assessment from the perspective of its own mandate. Any comments should be sent directly to the Project Officer.

The Project Officer will examine whether the consultation during the preparation of the environmental assessment appropriately identified and dealt with all interested persons, including Aboriginal peoples and communities. Where it is not clear this has been done adequately, the Project Officer will advise what additional steps may be required by either the proponent or the Crown.

The *Environmental Assessment Act* (subsection 6.4(2)) states that comments must be submitted by the end of the seven-week period if the person wishes the comments to be considered during the

To comply with *Freedom of Information and Protection of Privacy Act* requirements, notices must contain the following statement.

All personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the Ministry of the Environment for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act* or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Project Officer or the Ministry of the Environment's Freedom of Information and Privacy Coordinator at 416-327-1434.

preparation of the ministry Review (see Section 6.2 of this Code for information about the ministry Review). The deadline for comments was set out in the Notice of Submission.

As they are received, the Project Officer will review all the comments about the environmental assessment and then forward them to the proponent for a response. The Project Officer will forward comments from the ministry technical reviewers to the proponent as one set of ministry comments.

The proponent is responsible for responding to all the comments. However, no response is expected for comments that are outside the scope of the undertaking/proposal. Proponents should seek clarification from the Government Review Team if unclear comments/concerns are raised. To seek clarification on any ministry comments, the proponent is to deal directly with the Project Officer rather than the individual ministry reviewer.

The proponent will provide the Project Officer with a summary of the comments received and its responses to those comments in a table. Comments from the general public should be arranged by type (for example, put all water quality comments together). For the Government Review Team and Aboriginal communities, the comments should be organized by agency and community rather than by issue type. The responses should be sufficiently detailed to completely respond to the comment. The Project Officer will review the responses to the comments, sometimes in discussion with the commenter, to determine the adequacy of the response. Where the Project Officer, either on his or her own, or in conjunction with a commenter, has determined that the response to a comment is inadequate, he/she will ask the proponent to review and revise their response.

## 6.2 Phase 2: Preparation of Ministry Review

The ministry is required to prepare a ministry Review of the environmental assessment taking into account any comments received from the public during the first inspection period for the environmental assessment (section 7 of the *Environmental Assessment Act*). Comments from the Government Review Team and Aboriginal communities are also taken into

account during the preparation of the ministry Review. The ministry has five weeks to complete the ministry Review.

The ministry Review is a document written by the Project Officer that:

- Assists in determining whether there is sufficient information to enable a decision to be made about the application;
- Assesses whether the required components of the *Environmental Assessment Act*, including the approved terms of reference, have been met;
- Provides an overview of the technical merits of the environmental assessment and the undertaking;
- Evaluates how well the proponent has consulted with interested persons, and the clarity and completeness of the documentation of such consultations;
- Notes any outstanding concerns with the environmental assessment or proposed undertaking.

The ministry Review is not the ministry's decision-making mechanism. It is one of several things the Minister must consider when making a decision about whether to give approval to proceed with the proposed undertaking. That decision will be made by the Minister, subject to the approval of the Lieutenant Governor in Council, at the end of the final ministry evaluation period.

#### **6.2.1 Amendment or Withdrawal of the Environmental Assessment before Ministry Review Deadline**

Subsection 6.2(2) of the *Environmental Assessment Act* states that a proponent can amend or withdraw its environmental assessment at any time prior to the deadline for completion of the ministry Review. The purpose of an amendment or withdrawal is to address issues that may have arisen with the environmental assessment during the first inspection period and which are too numerous or complex to resolve within the regulated timelines.

When faced with the decision about whether to amend or withdraw its environmental assessment, the proponent will need to use professional judgment. The proponent must notify the Project Officer in writing about its intentions.

Where significant changes to the environmental assessment result from it being amended, the ministry will allow additional time for the amended document to be reviewed by interested persons. How much time is given will be determined on a case-by-case basis.

If the environmental assessment is withdrawn, and the proponent still wishes to proceed with its application, the proponent will need to prepare a new environmental assessment. The new document must be prepared in accordance with the approved terms of reference, and the proponent will need to provide consultation opportunities for the new document before it is submitted to the ministry for a decision. The formal review process will begin anew with the submission of a new environmental assessment.

### **6.2.2 Extension of Deadline for Completion of the Ministry Review**

The Director has the authority to extend the deadline for completing the ministry Review if he or she feels that there is a compelling reason to do so (subsection 7(3) of the *Environmental Assessment Act*). The *Environmental Assessment Act* defines a compelling reason as one which is unusual, unexpected or urgent. The Director shall notify such persons as he or she considers appropriate if the deadline is extended.

The Director has given extensions in certain circumstances where there were many unresolved technical concerns or the level of public interest was higher than expected. The extension gives the proponent more time to resolve as many issues as possible before the publication of the ministry Review.

### **6.2.3 Deficiencies with the Environmental Assessment**

The Project Officer will inspect the environmental assessment to determine whether it is deficient in relation to the approved terms of reference and the purpose of the *Environmental Assessment Act*. For example, the Project Officer will check to see that the environmental assessment been prepared in accordance with the approved terms of reference as required. Any interested person who has inspected the environmental assessment may also point out potential deficiencies.

Where any deficiencies have been found, the Director may give the proponent a statement describing the deficiencies and shall do so at least

14 days before the deadline for completing the ministry Review (subsection 7(4) of the *Environmental Assessment Act*). If the deadline for the ministry Review has been extended then the deadline for issuing a deficiency statement is also extended.

The proponent has seven days from the date of receipt of the deficiency statement to remedy the deficiencies in the environmental assessment. If the Director is not satisfied that the deficiencies have been remedied within the seven-day period, the Minister may reject the environmental assessment. In the case of a rejection, the Director will notify the proponent, the clerk of the local municipality and the public before the deadline for the completion of the ministry Review. These requirements are outlined in subsections 7(5) to 7(7) of the *Environmental Assessment Act*.

Where many deficiencies have been noted that may require more than seven days to remedy, the proponent should consider withdrawing the environmental assessment rather than run the risk of it being rejected by the Minister.

If a proponent intends to submit a new environmental assessment for which a deficiency statement had been issued and the environmental assessment was withdrawn, it should work with the ministry and other applicable persons, to address the items in the deficiency statement. When the new environmental assessment is submitted to the ministry, it should include an indication of how each deficiency was remedied.

If the environmental assessment is rejected, the process would start anew at the terms of reference stage if the proponent wished again to seek approval for its proposed undertaking.

### 6.3 Phase 3: Issue Notice of Completion

To signal that the Project Officer has completed the ministry Review, the Project Officer will prepare a Notice of Completion. The Director will sign this Notice by the deadline for the completion of the ministry Review. Once the Director signs the Notice, the Project Officer will arrange for French translation if required, printing and distribution of the ministry Review. There are no timelines associated with these administrative steps, but they could take from one to three weeks.

Once the ministry Review is ready for distribution, it and the Notice of Completion will be given directly to the proponent, the clerk of the local municipality, Government Review Team members, the local member of provincial parliament, and interested Aboriginal communities. The public will be notified through a posting in a newspaper with circulation in the area of the proposed undertaking (usually the same newspaper(s) where the proponent placed the Notice of Submission). The newspaper notice will let all interested persons know where they can inspect the ministry Review (same public record locations where the environmental assessment is available) and to whom, and by when any comments are to be submitted (section 7.1 of the *Environmental Assessment Act*). The Notice of Completion and the ministry Review will also be posted on the environmental assessment page of the ministry's website.

## 6.4 Phase 4: Inspection of Ministry Review (Second Inspection Period)

This second inspection period is triggered by the issuance of the Notice of Completion and lasts for five weeks. During this period, all interested persons may inspect the ministry Review and make comments about it, the environmental assessment and the proposed undertaking. The comments must be in writing. If the person wishes the Minister to consider the comments when making a decision about the application, the comments must be submitted before the end of the five-week inspection period (subsection 7.2(2) of the *Environmental Assessment Act*).

The Project Officer will make a written request to the Government Review Team and any interested Aboriginal communities to submit any final comments about the proponent's application during this inspection period.

Any comments received during the five-week inspection period will be forwarded to the proponent for a response after the Project Officer reviews them.

### 6.4.1 Hearing Requests

There may be circumstances when, despite everyone's best efforts, some issues cannot be resolved between the proponent and the interested person(s) who raised the issue. In those cases, the interested person(s) may think it is appropriate to request a hearing. A decision to request a

hearing should not be made lightly. It should be considered a last resort after all other avenues to resolve the issues have been exhausted.

During the five-week inspection period following the issuance of the Notice of Completion, any interested person may request that the Minister refer all or part of the proponent's application to the Environmental Review Tribunal for a hearing and decision. Any requests for a hearing must be in writing and be submitted before the end of the five-week inspection period (subsections 7.2(3) and 7.2(4) of the *Environmental Assessment Act*). For greater clarity, the request should include:

- Requester's name, address and telephone number;
- Requester's involvement in the environmental assessment process;
- Attempts made by the requester to resolve the issue with the proponent;
- Details supporting the rationale about the significant outstanding environmental reasons for a hearing;
- Details about what part of the environmental assessment is specifically being referred;
- A single submission clearly indicating that the submitter is making the request.

All personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the Ministry of the Environment for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act* or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential.

Though not common, the proponent may also request that its application, or part thereof, be referred to the Tribunal. Any hearing requests received prior to the issuance of the Notice of Completion will be considered premature by the ministry. The requester will instead be encouraged to work further with the proponent to address issues. Please refer to Section

6.5.4 of this Code for information about what the Minister considers when determining whether to make a referral to the Tribunal.

#### **6.4.2 Amendment or Withdrawal of the Environmental Assessment after Completion of the Ministry Review**

A proponent may amend or withdraw the environmental assessment after the completion of the ministry Review but only under such conditions that the Minister may by order impose. The Minister also has the option of amending or revoking any conditions imposed (subsections 6.2(3) and 6.2(4) of the *Environmental Assessment Act*).

Should the proponent wish to amend or withdraw its environmental assessment, it should make a written request to the Minister who will determine under what conditions the environmental assessment may be amended or withdrawn. Proposed amendments could accompany the request to amend the environmental assessment. In pursuing this course of action, the proponent should have strong reasons for doing so. It may be done because there have been significant concerns raised which require fundamental changes to the documentation or the proponent has changed its mind about its proposal or does not want to run the risk that its application will not be approved.

The *Environmental Assessment Act* allows the proponent to make the request for amendment or withdrawal any time after the deadline for the completion of the ministry Review and before the deadline for the Minister's decision about the undertaking. In accordance with the Deadlines Regulation, that time period spans 13 weeks. Despite that, proponents are encouraged not to wait until the last minute to make a request to amend or withdraw the environmental assessment.

Once the Minister makes a determination about the proponent's request to amend or withdraw its environmental assessment, he/she will notify the proponent and such other persons as may be interested.

### **6.5 Phase 5: Final Ministry Evaluation Period**

Following the end of the ministry Review inspection period, the Project Officer will conduct the final evaluation of the application and prepare a recommendation for the Minister to assist him or her in making a decision.



Thirteen weeks is provided for the ministry evaluation and Minister's decision. The Minister is required by the Deadlines Regulation to make a decision or make a referral to the Tribunal by the end of the 13 weeks. Exceptions to meeting this deadline exist where an application has been referred to mediation or a hearing. Further, while a decision deadline is given, subsection 10(4) of the *Environmental Assessment Act* states that the Minister's decision is not invalid solely on the basis that it was not made by the applicable deadline.

### **6.5.1 Ministry Evaluation**

The Project Officer will review any comments that are received about the ministry Review, the environmental assessment or the proposed undertaking to determine if any new concerns have been raised or if there are any outstanding concerns. Ideally, at this stage in the process no new concerns have been raised. The aim at this point then is to determine if there are any outstanding concerns, and if so, if any mechanisms (for example, *Environmental Assessment Act* conditions of approval, further approvals) exist to address them. The Project Officer will make this determination, subject to the Minister's approval. This may include the drafting of conditions of approval in consultation with interested persons and/or the proponent.

In general, when evaluating the application for the Minister, the Project Officer will consider, at a minimum, the following:

- Did the proponent meet the legislative requirements of the *Environmental Assessment Act*?
- Was the environmental assessment prepared in accordance with the approved terms of reference? Is it consistent with the purpose of the *Environmental Assessment Act*?
- Did the proponent meet the expectations set out in the ministry's Codes of Practice and relevant guidelines?
- Does the environmental assessment contain sufficient information about the consultation that took place during its preparation?
- Is the environmental assessment written in plain language that is clear and concise?
- Does the environmental assessment provide sufficient information and detail to allow the Minister to make an informed decision?

- Have comments received during the review of the environmental assessment been adequately considered by the proponent?

Using this information, the Project Officer will prepare a recommendation for the Minister. The recommendation to the Minister will reflect all the matters the Minister must consider in making a decision (see Section 6.5.3 below for more information about this).

## 6.5.2 Referral to Mediation

Before making a decision about an application, the Minister may refer outstanding issues to mediation (section 8 of the *Environmental Assessment Act*). This is known as Referred Mediation. Please refer to the ministry's Code of Practice entitled, *Using Mediation in Ontario's Environmental Assessment Process* for more information about the mediation process. If a referral to mediation is made, this will be reflected on the environmental assessment page of the ministry's website.

## 6.5.3 Minister's Decision

Once the Minister receives the ministry's recommendation about the application and if applicable, the mediator's report, he or she is in a position to make a decision. The Minister may give approval to proceed with the undertaking, with or without conditions, or refuse to give approval to proceed with the undertaking. The ministry's recommendation is just one matter that the Minister takes into consideration when making a decision. In accordance with subsection 9(2) of the *Environmental Assessment Act*, the Minister must consider the following matters when deciding an application:

The Minister's decision options are:

- ≈ Approve the undertaking;
- ≈ Approve the undertaking with conditions; or
- ≈ Refuse to approve the undertaking.

- The purpose of the *Environmental Assessment Act*.
- The approved terms of reference for the environmental assessment.
- The ministry Review of the environmental assessment.
- The comments submitted during the two inspection periods.
- The mediator's report, if any, given to the Minister.

- Such other matters as the Minister considers relevant to the application.

These different matters are briefly described below.

#### *Purpose of the Environmental Assessment Act*

The purpose of the *Environmental Assessment Act* is the betterment of the people of Ontario by providing for the protection, conservation and wise management of the environment. Undertakings approved under the *Environmental Assessment Act* should be in keeping with its purpose.

#### *Approved Terms of Reference*

The terms of reference serves as a framework and work plan for how the environmental assessment was prepared. The environmental assessment must be prepared in accordance with the approved terms of reference.

#### *Ministry Review*

The conclusions in the ministry Review will be taken into consideration by the Minister. The ministry Review summarizes how the proponent met the requirements of the *Environmental Assessment Act* and notes any outstanding concerns with the environmental assessment and the undertaking.

#### *Incoming Comments*

In accordance with the *Environmental Assessment Act*, written comments about the undertaking, the environmental assessment and the ministry Review received by any person by the prescribed deadline will be taken into consideration in the Minister's decision. The proponent's response to any concerns and the significance of any outstanding concerns will also be taken into account in the Minister's decision.

#### *Mediator's Report*

If a matter related to the application is referred to mediation, a mediator's report is required to be prepared at the end of the process. The Minister will consider that report when making his or her decision about the application.

### *Other Matters*

The Minister may consider any other matter he or she considers relevant to the application when making a decision about it, for example, the ministry's Statement of Environmental Values.

#### **6.5.4 Referral to the Environmental Review Tribunal**

Any person may request that the Minister refer all or part of the proponent's application to the Tribunal for a hearing and a decision. This request must be made during the five-week review period following the issuance of the Notice of Completion of ministry Review (subsections 7.2(3) and 7.2(4) of the *Environmental Assessment Act*). Persons who are considering submission of a hearing request should think very carefully about making a request and should only do so after all other avenues to resolve the issues have been exhausted.

When a hearing request is made, the Minister is required to refer the application or part of it, to a hearing unless, in his or her absolute discretion, he or she feels that the request is frivolous or vexatious, a hearing is unnecessary or a hearing may cause undue delay in determining the application (subsection 9.3(2) of the *Environmental Assessment Act*). In determining whether a request for a hearing is frivolous or vexatious, unnecessary or may cause undue delay in determining the application, the Minister may consider the following things:

- Is the request an attempt to litigate issues that have already been decided outside of the environmental assessment process?
- Does the request have merit and substance in relation to outstanding issues?
- Is the request bringing up issues that have already been dealt with in the environmental assessment (unless there is a material change in law or circumstances)?
- Is the request being pursued to delay the implementation of the undertaking?
- Does the request identify an issue that the Minister would like explored further before a decision is made?
- Will the hearing be a wise use of the Tribunal's, interested person's and proponent's resources?

Further, there are a number of other things that the Minister may consider when determining whether to refer matters to the Tribunal for a hearing. These may include:

- Did the proponent consult adequately with interested persons throughout the environmental assessment and was this consultation properly documented? Were there sufficient opportunities for participation?
- Did the requester participate in the planning process when opportunities to do so were made available?
- Have all other avenues to resolve the issue such as Self-directed Mediation been exhausted?
- Are the issues raised substantive in nature and clearly defined and not addressed in the environmental assessment?
- Are there other significant outstanding issues identified in the ministry Review?
- Would the public interest be served if the issue was sent to the Tribunal for a hearing?
- Would public health and safety be advanced by a matter being referred to the Tribunal for a hearing?
- Is there any funding that has been approved for the undertaking with time limits?
- Is there any urgency to the timing of the approval of the undertaking?
- Is this issue an issue to which the *Environmental Assessment Act* applies or is there other legislation and/or other processes for dealing with the issue?
- Has the issue already been considered in the context of other legislation and processes such as the *Planning Act*?
- Is the Tribunal the appropriate forum to resolve the issues?
- Does the Tribunal have the jurisdiction to deal with the issue?

The Minister may also on his or her own, without a request having been received, decide that a hearing is necessary. In making a referral to the Tribunal, the Minister may give direction to the Tribunal or impose conditions on the referral (such as a deadline to reach a decision), or amend the referral. If only a part of the application is referred to the Tribunal, the Minister shall inform the Tribunal about the decisions that

have been made on matters that were not referred to it. Notice of the referral to the Tribunal, and any decisions made on matters not referred, will be given to the proponent and each person that submitted comments during the second inspection period.

The Tribunal is permitted to make the same decision as the Minister and if relevant, will consider the same matters as the Minister must consider in making the decision. In making its decision, the Tribunal must consider the decisions the Minister proposes to make on any matters not referred to the Tribunal.

Once the Tribunal makes a decision, the Minister may choose to review that decision and with the approval of the Lieutenant Governor in Council, make an order varying the decision or substituting his or her own decision for the Tribunal's decision. The Minister may also issue a notice to the Tribunal requesting that it hold a new hearing and reconsider its decision.

If the entire application was referred to the Tribunal, the Minister has at least 28 days after receiving a copy of the Tribunal's decision to conduct a review and issue an order or a notice. If only a matter related to the application was referred to the Tribunal, the Minister can conduct the review and issue an order or a notice at any time prior to making a decision on the application. Once the review period has expired and no order has been made, or notice issued, the Tribunal's decision is effective. These requirements are all outlined in sections 11.2 and 11.3 of the *Environmental Assessment Act*.

#### **6.5.5 Referral to other Tribunal or Entity**

Section 11 of the *Environmental Assessment Act* gives the Minister the ability to refer a matter related to an application to a tribunal other than the Environmental Review Tribunal if he or she considers it appropriate. The decision of this other tribunal or entity is deemed to be a decision of the Minister. Notice of this referral will be given to the proponent and each person that submitted comments during the second inspection period.

#### **6.5.6 Deferral of a Part of a Decision**

The Minister or the Tribunal may defer making a decision on a matter related to an application (section 11.1 of the *Environmental Assessment Act*). Deferral may be considered appropriate where the matter is being

considered in another forum or for scientific, technical or other reasons. Notice of the deferral, and written reasons for it, must be given to the proponent and each person that submitted a comment during the second inspection period by the deadline for the decision on the application.

## 7. After the Minister's Decision

### 7.1 Lieutenant Governor in Council Approval

Most of the decisions made by the Minister about a proponent's application require the approval of the Lieutenant Governor in Council, or such ministers of the Crown that the Lieutenant Governor in Council may designate. This includes:

- The Minister making a decision about the application without referring it to a hearing;
- Varying the decision of the Tribunal;
- Substituting his or her decision for the Tribunal's;
- Giving notice to the Tribunal to hold another hearing.

There are no timelines associated with this step in the decision-making process. The Deadlines Regulation only considers the time up until the Minister makes a decision on the application (no mediation or hearing).

### 7.2 Decision Notification

After the final decision about the application (by the Minister, the Tribunal or the Lieutenant Governor in Council) is made, the Minister will notify the proponent of the decision. A Notice of Approval or a Notice of Refusal will be issued. Written reasons for the decision and any conditions will be provided in the Notice.

In most instances, those persons who submitted comments during the second inspection period will also be notified of the decision by the Minister. When a large number of submissions are received, the ministry may determine that it is not practical to notify each person individually and will provide some form of community notification, such as a newspaper posting.

The Project Officer will provide notification of the Minister's decision to applicable Aboriginal communities and those members of the Government Review Team who provided comments.



In addition, notice of the decision will be posted on the environmental assessment page of the ministry's website<sup>5</sup>.

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<sup>5</sup> The environmental assessment page of the ministry's website can be found at [www.ontario.ca/environmentalassessments](http://www.ontario.ca/environmentalassessments).

## 8. Post Environmental Assessment Act Decision

### 8.1 Approval to Proceed with the Undertaking Given

If approval to proceed with the undertaking is given, subject to any conditions imposed, the proponent can proceed to acquire any other required approvals and implement the undertaking. In certain cases, further approval from the ministry under the *Environmental Protection Act* or the *Ontario Water Resources Act* may be required.

Receiving *Environmental Assessment Act* approval does not mean that the proponent must implement its undertaking; it just means that if the proponent chooses to proceed with the undertaking it must do so in accordance with the approval. Failure to implement the undertaking as approved is a contravention of the *Environmental Assessment Act*.

#### 8.1.1 Compliance Monitoring and Reporting

During the implementation of the undertaking, the proponent must conduct any monitoring (compliance and/or effects monitoring) outlined in its environmental assessment and the conditions of the approval to proceed with the undertaking. Proponents shall retain either on-site or in another location specified in the environmental assessment, the results of the compliance reporting, including the detailed monitoring data. The proponent shall make the documentation available to the ministry upon request in a timely manner when required by the ministry during an on-site inspection, audit, response to a pollution incident report, or when information concerning compliance is requested by the ministry. Some conditions of approval require that this information be submitted annually to the Director.

### 8.2 Approval to Proceed with the Undertaking Not Given

If approval to proceed with the undertaking is not given, the proponent can choose to either abandon its proposal, or modify it and start the process over again. The process must start from the very beginning with the preparation of a new terms of reference.

## 9. Other Matters

### 9.1 Reconsideration of Decision

The Minister or the Tribunal may reconsider an approval given by the Minister or the Tribunal to proceed with the undertaking if there is a change in circumstances or new information is available and the Minister or the Tribunal considers it appropriate to do so (section 11.4 of the *Environmental Assessment Act*). A decision to amend or revoke an approval can only be made in accordance with such rules and subject to such restrictions as may be prescribed.

### 9.2 Change to an Undertaking

If a proponent wishes to make changes to an undertaking after it has received approval to proceed, the proposed change will be considered a new undertaking for the purposes of the *Environmental Assessment Act* (section 12 of the *Environmental Assessment Act*), unless such change has been accounted for in the environmental assessment or through a condition of approval. This change may require the preparation of a new terms of reference.

### 9.3 Replacement of Environmental Assessment

A proponent may submit a second environmental assessment to replace an environmental assessment that was withdrawn by the proponent or considered deficient by the Director and subsequently rejected by the Minister. This second environmental assessment must be prepared in accordance with the approved terms of reference (section 12.1 of the *Environmental Assessment Act*).

### 9.4 Activities (Not) Permitted Before Approval

Certain activities are permitted, and others not, before a proponent receives approval to proceed with an undertaking (section 12.2 of the *Environmental Assessment Act*).

Before receiving approval under the *Environmental Assessment Act*, a proponent is permitted to:

- Take any action in connection with the undertaking that may be necessary to comply with the *Environmental Assessment Act*;
- Acquire property or rights in property in connection with the undertaking;
- Prepare a feasibility study and engage in research in connection with the undertaking;
- Establish a reserve fund or another financing mechanism in connection with the undertaking.

Any approvals required to proceed with the above activities can be issued before approval under the *Environmental Assessment Act* is granted. A loan, grant, subsidy or guarantee from the Crown or an agency of the Crown may also be given or approved for those specific activities listed above.

In all other cases, no other authorizations (such as *Environmental Protection Act* approval) associated with the undertaking can be issued until approval under the *Environmental Assessment Act* is given. Also, except as specified above, no loan, grant, subsidy or guarantee from the Crown or an agency of the Crown may be given or approved until approval under the *Environmental Assessment Act* is given.

## 9.5 Public Record

According to section 30 of the *Environmental Assessment Act*, the Director must maintain a record for each proposed undertaking for which an application for approval under the *Environmental Assessment Act* is submitted. The record is maintained at the Branch and is usually available within 24 hours of it being requested by any person. Depending on the size of the file, or when the decision was made, more than 24 hours may be required.

The public record file must contain the proposed and the approved terms of reference and environmental assessment, all notices given, the Minister's decision, and such other documents as the Minister or Director considers appropriate. As a matter of practice, the Branch also includes all information submitted by the proponent during the preparation and review of the terms of reference and environmental assessment and all comments received by other interested persons during the preparation

and review of both documents. Post-approval documents such as annual compliance reports are also included.

## 9.6 Considering the Needs of Francophone Communities

The ministry is committed to consulting and communicating in French with Francophone individuals, organizations, municipalities and communities in or near the 25 bilingual areas ([www.ofa.gov.on.ca/en/flsa-mapdesig.html](http://www.ofa.gov.on.ca/en/flsa-mapdesig.html)) designated under the *French Language Services Act*.

While there is no statutory requirement for proponents to specifically engage the Francophone community, the ministry expects all members of the public to be adequately consulted and engaged during the environmental assessment process. The *Environmental Assessment Act* requires that a proponent consult with any person who is interested.

Accordingly, in conjunction with this Code, proponents should:

- Note that the Francophone population is included in the definition of interested persons,
- Follow the guidelines related to consultation and communication with Francophones outlined in the *Code of Practice: Consultation in Ontario's Environmental Assessment Process*.

This Code of Practice is intended to provide proponents and other interested persons with an understanding of how to prepare an environmental assessment and how it is reviewed by the ministry. Specific questions about an environmental assessment for a particular undertaking should be referred to the Project Officer assigned to the proposed undertaking.

Those interested in information about Ontario's environmental assessment process should consult the Ministry of the Environment's website or contact the ministry at the address below to obtain process, consultation and mediation guidance.

Ministry of the Environment  
Environmental Approvals Access and Service Integration Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5 Canada

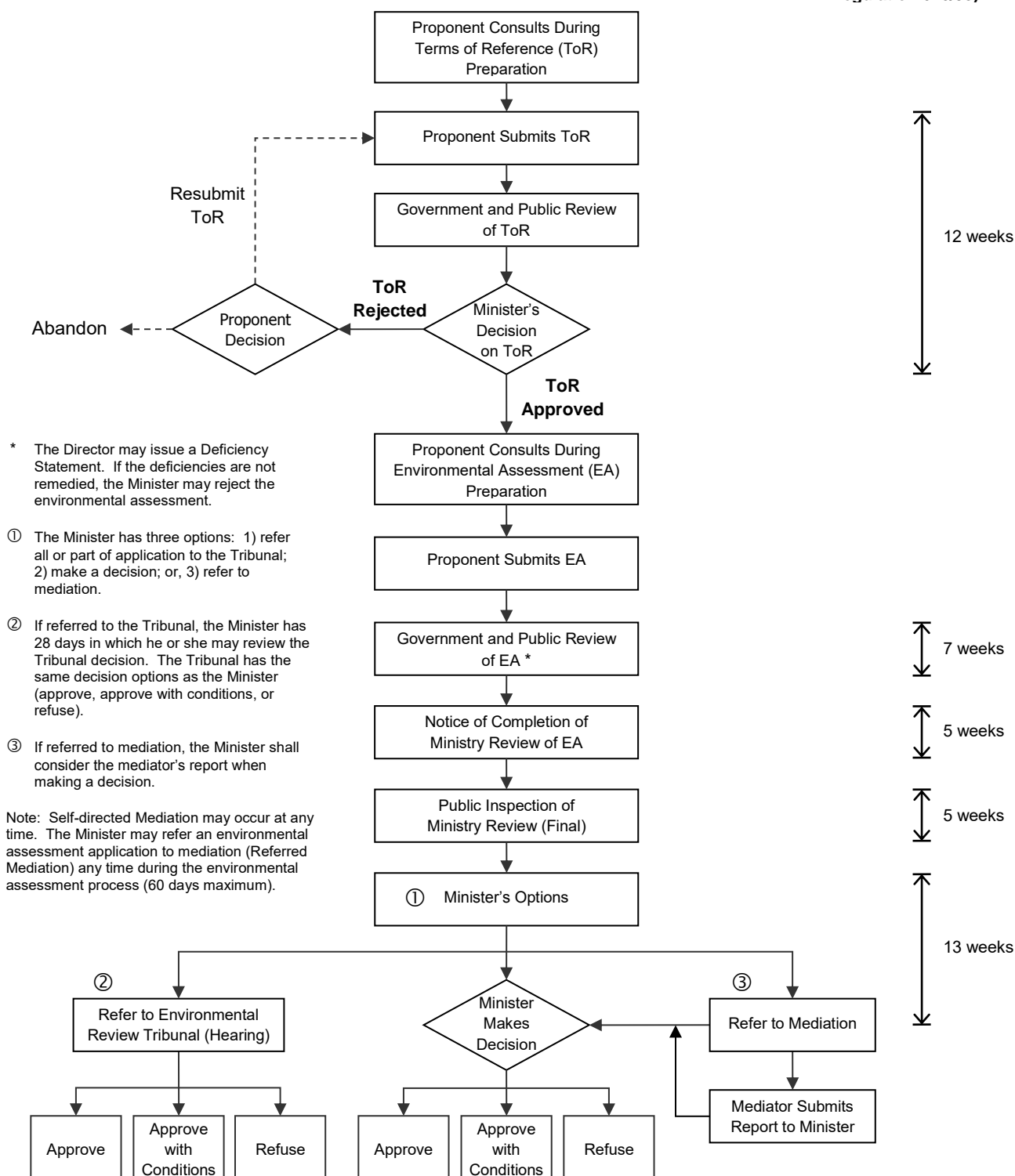
Telephone: 416-314-8001  
Toll Free: 1-800-461-6290  
Fax: 416-314-8452  
E-mail: [EAASIBGen@ontario.ca](mailto:EAASIBGen@ontario.ca)  
Website: [www.ontario.ca/environmentalassessments](http://www.ontario.ca/environmentalassessments)

In addition, the ministry has guidance materials for the following key elements of the environmental assessment process:

- Class environmental assessments
- Climate effects (draft)
- Consultation
- Coordinating federal and provincial environmental assessment requirements
- Electricity projects
- Glossary
- How to make a Part II Order request
- Making a hearing request
- Mediation
- Terms of reference
- Transit projects
- Waste management projects

## Appendix A Environmental Assessment Process Timelines

### Prescribed Deadlines (Ontario Regulation 616/98)



## Appendix B Government Agencies and Their Areas of Interest

This information is a subset of the Government Review Team list that is provided to proponents at the start of their planning process. This is for information only, and the particular agency or ministry must be contacted to determine if they have a mandated interest in the proposal.

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
FEDERAL AGENCIES	
Canadian Environmental Assessment Agency	Undertakings that are listed in the Regulations Designating Physical Activities under the <i>Canadian Environmental Assessment Act, 2012</i> .
Canadian Transportation Agency	Undertakings with the potential to affect railway lines or property.
Aboriginal Affairs and Northern Development Canada	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• Aboriginal communities;</li> <li>• traditional territories, and reserves;</li> <li>• lands/waters surrounding reserves.</li> </ul>
Environment Canada	Undertakings with the potential to: <ul style="list-style-type: none"> <li>• result in the deposit of deleterious substances into fisheries water;</li> <li>• affect migratory birds;</li> <li>• affect federal wetlands;</li> <li>• affect national wildlife areas and national parks;</li> <li>• cause transboundary effects on air or water quality;</li> <li>• endanger or threaten species at risk.</li> </ul>
Fisheries and Oceans Canada	Undertakings in or near water that have the potential to: <ul style="list-style-type: none"> <li>• harmfully alter disrupt or destroy fish or fish habitat;</li> <li>• impact passage of fish around migration barriers;</li> <li>• impact provision of sufficient water flows;</li> <li>• result in the destruction of fish by means other than fishing (blasting);</li> <li>• impact aquatic species at risk.</li> </ul>
Health Canada	Undertakings with human health implications.



AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Transport Canada	Undertakings that: <ul style="list-style-type: none"> <li>• are located in the vicinity of a federal airport and may attract birds;</li> <li>• may cause electrical interference to navigational aids;</li> <li>• may affect a navigable waterway.</li> </ul>
Each federal authority with responsibility for federal lands	Undertakings that are on or abutting federal lands and require federal approvals or financing.
PROVINCIAL AGENCIES & MINISTRIES	
GO Transit	Undertakings with the potential to affect GO Transit service or property.
Infrastructure Ontario	Undertakings whose associated lands are adjacent or proximate to provincial government facilities, lands, and infrastructure.
Niagara Escarpment Commission	Undertakings in or with the potential to affect the Niagara Escarpment Planning Area.
Ministry of Aboriginal Affairs	For identification of Aboriginal communities potentially affected by an undertaking. Also for undertakings with the potential to affect Crown land and resource usage.
Ministry of Agriculture and Food	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• prime agricultural areas (areas of classes 1–3 agricultural soils);</li> <li>• specialty crop areas;</li> <li>• agricultural uses, agriculture-related uses and secondary uses on farms.</li> </ul>
Ministry of Tourism, Culture and Sport	<p>Undertakings with the potential to affect sport/recreational areas or tourist facilities.</p> <p>Undertakings that may affect properties having recognized or potential cultural heritage value or interest, which may include:</p> <ul style="list-style-type: none"> <li>• built heritage resources;</li> <li>• cultural heritage landscapes;</li> <li>• areas of archaeological potential;</li> <li>• undertakings whose associated lands are adjacent or proximate to lands owned by the Royal Botanical Gardens, the McMichael Canadian Collection, or owned or protected by the Ontario Heritage Trust.</li> </ul>

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AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Ministry of Education (consult local school board)  Ministry of Training, Colleges and Universities (consult local institution)	Undertakings with the potential to affect school/institution, building property, or staff and students.
Ministry of Community Safety and Correctional Services	Undertakings with the potential to have a direct physical impact on a Correctional Services correctional centre, jail or a detention centre.
Ontario Provincial Police	Undertakings with the potential to have a direct physical impact on an Ontario Provincial Police correctional centre, jail or detention centre.
Ministry of Economic Development, Trade and Employment	Undertakings which involve investments in large-scale manufacturing facilities or co-generation projects.
Ministry of Energy	Undertakings with energy implications, including renewable energy such as small hydro or wind. Undertakings within an area covered by the Growth Plan for the Greater Golden Horseshoe or the <i>Places to Grow Act, 2005</i> .
Ministry of Health and Long-Term Care (Local Medical Officers of Health)	Undertakings with potential health impacts such as groundwater contamination and air quality impacts.
Ministry of Municipal Affairs and Housing	Undertakings that: <ul style="list-style-type: none"> <li>• relate to municipal services;</li> <li>• involve a municipal proponent;</li> <li>• may have an effect on the Oak Ridges Moraine Conservation Plan Area.</li> </ul>
Ministry of Natural Resources	Undertakings that may have a potential effect on: <ul style="list-style-type: none"> <li>• permanent and intermittent watercourses or water bodies;</li> <li>• rare, vulnerable, threatened, endangered or otherwise significant species;</li> <li>• Areas on Natural and Scientific Interest or an Environmentally Significant Area;</li> <li>• mineral aggregate resources;</li> <li>• Crown land/resources;</li> <li>• provincially significant wetlands.</li> </ul>

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AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Ministry of Northern Development and Mines	Undertakings that may potentially affect: <ul style="list-style-type: none"> <li>• geological and mineral resources;</li> <li>• economic development in northern Ontario;</li> <li>• tourism in northern Ontario.</li> </ul>
Ministry of Transportation	Undertakings within: <ul style="list-style-type: none"> <li>• any study area for a transportation corridor or route planning project;</li> <li>• 800 metres of any existing/designated provincial highway or other provincial transportation facility;</li> <li>• adjacent to Ministry of Transportation property (i.e. patrol yards, carpool lots, etc.).</li> </ul>
OTHER	
Ontario Power Generation	Undertakings that could potentially directly affect an Ontario Power Generation generating site.
Hydro One Networks Inc.	Undertakings that could potentially directly have an impact on Hydro One facilities or plants (includes transmission/distribution lines or transformer/distribution stations).
Local Conservation Authority under the <i>Conservation Authorities Act</i>	Undertakings that: <ul style="list-style-type: none"> <li>• have the potential to affect the control of water based natural hazards or for interfering with a watercourse or wetland in areas prone to water related natural hazards (shorelines, wetlands, floodplains) and as such may require a permit under the <i>Conservation Authorities Act</i>;</li> <li>• require conformity to natural hazard policies (Section 3.1) of the Provincial Policy Statement (PPS) (2005) of the <i>Planning Act</i>;</li> <li>• have the potential to affect areas of interest outlined in the terms of a municipal service contract such as hydrogeology, storm water management, septic system reviews, natural heritage features;</li> <li>• have the potential to affect interests of the Conservation Authority as a local resource management agency or as an adjacent landowner of an undertaking.</li> </ul>

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Source Protection Authority under the <i>Clean Water Act</i>	<p>Undertakings with the potential to affect:</p> <ul style="list-style-type: none"> <li>• a vulnerable area identified in the most recent local assessment report (or source protection plan) prepared for the local source protection area under the <i>Clean Water Act, 2006</i>, where the project involves one or more activities identified as a drinking water threat (The list of prescribed drinking water threats can be found in section 1.1 of O. Reg. 287/07 or the Director may also approve a local drinking water threat activity in addition to those prescribed by regulation);</li> <li>• municipal drinking water sources or other drinking water sources (for example, a drinking water source that serves a First Nation reserve that is prescribed by regulation) as identified in the most recent local assessment report prepared for the local source protection area where the undertaking involves activities identified as prescribed drinking water threats.</li> </ul>
Municipalities	<p>Undertakings with the potential to affect:</p> <ul style="list-style-type: none"> <li>• a vulnerable area as defined by the <i>Clean Water Act, 2006</i> or as identified in the most recent local assessment report prepared for the local source protection area where the undertaking involves activities identified as prescribed drinking water threats.</li> <li>• municipal drinking water sources as identified in the most recent local assessment report prepared for the local source protection area where the undertaking involves activities identified as prescribed drinking water threats.</li> </ul>

Note: Municipalities and Aboriginal peoples, while not formally on the Government Review Team, are consulted about an environmental assessment application if it is located in their municipality or community or if it may affect their municipality or community as required by the *Environmental Assessment Act*.

## Appendix A Notification Templates and Summary Form

### (1) Notice of Commencement of Environmental Assessment Template

#### Notice of Commencement of Environmental Assessment

**<insert Name of Study, Name of Proponent>**

The **<name of proponent>** is beginning an environmental assessment under the *Environmental Assessment Act* to **<purpose of study>**.

**<provide additional pertinent information about the undertaking>**

**<insert study area map>**

#### The Process

In **<insert date terms of reference was approved>**, the Minister of the Environment approved the terms of reference for the **<name of undertaking>**. A copy of the approved terms of reference is available at:

**<provide website address where the terms of reference may be accessed>**

**<identify other locations where the approved terms of reference is available, for example, proponent office, libraries>**

This study will be carried out according to the approved terms of reference and the requirements of the *Environmental Assessment Act*. Results from this study will be documented in an environmental assessment, which will be submitted to the ministry for a review. At that time, the public, Aboriginal communities and other interested persons will be informed when and where the environmental assessment can be reviewed.

#### Consultation

Members of the public, agencies, Aboriginal communities and other interested persons are encouraged to actively participate in the planning of this undertaking by attending consultation opportunities or contacting staff directly with information, comments or questions. Consultation opportunities are planned throughout the planning process **<if known, indicate purpose, number, timing and nature of additional public contacts>** and will be advertised **<identify how – for example, on a project website, local newspapers, direct mail out>**.

**<provide additional relevant information for example, timing for an upcoming consultation event; seeking input, information, knowledge about the local community, environmental conditions; alternatives being investigated>**

If you would like to be added to our project mailing list or have project-related questions, please contact:

**<provide proponent and/or consultant contact information>**

**<provide project website address>**

All personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the Ministry of the Environment for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act* or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Ministry of the Environment's Freedom of Information and Privacy Coordinator at 416-327-1434.

**<insert date this notice is published>**

## (2) Notice of Submission of Environmental Assessment Template

### Notice of Submission of Environmental Assessment

<insert Name of Study, Name of Proponent>

The <name of proponent> has completed the environmental assessment for the <name of study>. As required under section 6.2(1) of the *Environmental Assessment Act* and according to the terms of reference approved by the Minister of the Environment on <insert date terms of reference was approved>, the <name of proponent> has submitted its environmental assessment to the Ministry of the Environment for review and approval.

<briefly describe the undertaking, its purpose, and location>

<insert study area map>

As required under the *Environmental Assessment Act*, the environmental assessment will be available for public review and comment from <insert start date of review period> to <insert last day in the seven-week review period>.

You may review the environmental assessment during normal business hours at the following locations:

1. Ministry of the Environment  
Environmental Approvals Access and Service Integration Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
416-314-8001/1-800-461-6290  
Monday to Friday 8:30 a.m. – 5:00 p.m.
2. Ministry of the Environment regional and/or district office closest to study area
3. Proponent's office
4. Other public viewing locations (for example, municipal offices, libraries)
5. Website address where a copy of the environmental assessment can be accessed

Anyone wishing to provide comments on the environmental assessment must submit their comments in writing and/or by fax to the Ministry of the Environment by <insert last day in the seven-week review period>. All comments must be submitted to:

<name of Project Officer>, Project Officer  
Ministry of the Environment  
Environmental Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
Tel: 416-314-<XXXX>/1-800-461-6290  
Fax: 416-314-8452

A copy of all comments will be forwarded to the proponent for its consideration.


If you have any questions or need further information about this project, please contact:

<insert proponent and/or consultant contact information>

All personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the Ministry of the Environment for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act* or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Project Officer or the Ministry of the Environment's Freedom of Information and Privacy Coordinator at 416-327-1434.

<insert date this notice is published>

### (3) Environmental Assessment Summary Form

 Ontario Ministry of the Environment	<b>Environmental Assessment Summary</b> for the Environmental Assessment Website
<b><u>General Information and Instructions</u></b>	
<p><b>General:</b></p> <p>Information requested by this form is collected under the authority of the <i>Environmental Assessment Act</i>. The project and summary information provided in this form will be posted on the environmental assessment page of the Ministry of the Environment's website.</p> <p>This form requires French translation before it is posted on the website. The Ministry requires 5 to 10 business days for French translation services. Therefore, the completed form should be submitted (electronic copy and hard copy) to the Environmental Approvals Branch at least two weeks prior to the posting date.</p> <p>The proponent is responsible for ensuring that copies of the environmental assessment are delivered to the appropriate government reviewers, other interested persons and the places of public record on or before the posting date.</p> <p>The proponent must contact the Branch to determine an agreed upon <b>posting date</b> for the environmental assessment summary. The posting of the environmental assessment summary information also represents the commencement of the regulated timeline for the review and decision about the proposed undertaking.</p> <p><b>Instructions:</b></p> <ol style="list-style-type: none"> <li>This form must be accurately completed. Questions regarding the completion and submission of this form should be directed to the Project Officer at the Environmental Approvals Branch. <b>AN INCOMPLETE FORM WILL BE RETURNED TO THE PROPONENT.</b></li> <li>Please ensure that you have included a hardcopy and an electronic copy of the proposed distribution list, notice of submission, Environmental Assessment Executive Summary, the study area map and a copy of the proposed environmental assessment with this form.</li> <li>Please send the completed form to:  <div style="text-align: center; margin-left: 150px;">           Director, Environmental Approvals Branch            Attention: Project Officer            Ministry of the Environment            2 St. Clair Avenue West, Floor 12A            Toronto ON M4V 1L5         </div> </li> <li>The summary portion of this form should not exceed two pages.</li> </ol>	
<b>1. Proponent Information</b>	
Proponent Name (region, county, municipality or private sector company)	
Proponent Type <input type="checkbox"/> Crown Corporation <input type="checkbox"/> Federal Government <input type="checkbox"/> Municipal Government <input type="checkbox"/> Provincial Government <input type="checkbox"/> Private Sector <input type="checkbox"/> Other (describe)	
Civic Address – Street Information (includes street number, name, type and direction)	Unit Identifier (suite number)
Delivery Designator If signing authority mailing address is a Rural Route, Suburban Service, Mobile Route or General Delivery (i.e., RR#3)	
Municipality	Postal Station
Province/State	Country
Postal Code	
<div style="display: flex; justify-content: space-between; font-size: small;"> <span>(09/2013) Page 1 of 3</span> <span>PIBS 8264e01</span> </div>	

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**2. Contact Person for Comments/Submissions**

Name		
Address Same as Proponent Address? <input type="checkbox"/> Yes <input type="checkbox"/> No (if no, please provide address information below)		
Delivery Designator <i>If signing authority mailing address is a Rural Route, Suburban Service, Mobile Route or General Delivery (i.e., RR#3)</i>		
Municipality		Postal Station
Province/State	Country	Postal Code
Telephone Number (area code & extension)	Fax Number (area code & extension)	E-mail Address

**3. Attachments** (This is a list of supporting information to this posting – please provide a hardcopy and an electronic copy)

- ☐ Environmental Assessment ☐ Environmental Assessment Executive Summary ☐ Notice of Submission  
☐ Study Area Map ☐ Distribution List

Proponent's Project Website address where documents can be located:

**4. Project Type**

- ☐ Conservation Authority ☐ Electricity ☐ Resource ☐ Sewage Works ☐ Water Works ☐ Transportation ☐ Transit  
☐ Timber Management ☐ Waste ☐ Other (describe)

**5. French Translation of Summary Form** (translation of the environmental assessment is not required)

- ☐ French translation requested to be done by Ministry of the Environment ☐ French translation to be done by proponent

**6. Statement of Proponent**

I, the undersigned hereby declare that, to the best of my knowledge, the information contained herein and the information submitted in support of this form is complete and accurate in every way.

Name (please print)	Title
Signature	Date (yyyy/mm/dd)



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**7. Project Summary - This portion of the form should not exceed two pages.**

**Summary:**

*Should provide a brief project description including the purpose of study (problem or opportunity), undertaking, consultation, and other approvals required.*

## **Appendix D Regional/District/Area Offices of the Ministry of the Environment**

The regional/district/area offices are responsible for delivering programs to protect air quality, protect surface and ground water quality and quantity, manage the disposal of wastes, ensure an adequate quality of drinking water, and control the use of pesticides.

Below is location and contact information for each region and associated district/area offices (see also [www.ontario.ca/environment](http://www.ontario.ca/environment)).

### **Central Region**

Ministry of the Environment  
Central Region Office  
5775 Yonge St.  
8th Floor  
North York ON M2M 4J1  
Toll free: 1-800-810-8048  
Tel: 416-326-6700  
Fax: 416-325-6345

Barrie District Office  
54 Cedar Pointe Dr., Unit 1203  
Barrie ON L4N 5R7  
Toll free: 1-800-890-8511  
Tel: 705-739-6441  
Fax: 705-739-6440

Halton-Peel District Office  
4145 North Service Road, Suite 300  
Burlington ON L7L 6A3  
Toll free: 1-800-335-5906  
Tel: 905-319-3847  
Fax: 905-319-9902

Toronto District Office  
5775 Yonge St., 8th Floor  
North York ON M2M 4J1  
Toll free: 1-800-810-8048  
Tel: 416-326-6700  
Fax: 416-325-6346

York-Durham District Office  
230 Westney Rd. S., 5th Floor  
Ajax ON L1S 7J5  
Toll free: 1-800-376-4547  
Tel: 905-427-5600  
Fax: 905-427-5602

## Eastern Region

Ministry of the Environment  
Kingston Regional Office  
1259 Gardiners Road  
Box 22032  
Kingston ON K7M 8S5  
Toll free from area codes  
613/705/905: 1-800-267-  
0974  
Tel: 613-549-4000  
Fax: 613-548-6908

Belleville Area Office  
345 College St. E.  
Belleville ON K8N 5S7  
Toll free from area code 613: 1-800-860-2763  
Tel: 613-962-9208  
Fax: 613-962-6809

Cornwall Area Office  
113 Amelia St.  
Cornwall ON K6H 3P1  
Toll free from area code 613: 1-800-860-2760  
Tel: 613-933-7402  
Fax: 613-933-6402

Kingston District Office  
1259 Gardiners Road  
Box 22032  
Kingston ON K7M 8S5  
Toll free from area codes 613/705/905: 1-800-267-0974  
Tel: 613-549-4000  
Fax: 613-548-6920

Ottawa District Office  
2430 Don Reid Drive  
Ottawa ON K1H 1E1  
Toll free: 1-800-860-2195  
Tel: 613-521-3450  
Fax: 613-521-5437

Peterborough District Office  
300 Water Street, Robinson Place  
Peterborough ON K9J 8M5  
Toll free from area codes 613/705/905: 1-800-558-0595  
Tel: 705-755-4300  
Fax: 705-755-4321

## Northern Region

Ministry of the Environment  
Thunder Bay Regional  
Office  
435 James St. S.  
Suite 331, 3rd Floor  
Thunder Bay ON P7E 6S7  
Toll free from area codes  
705/807: 1-800-875-7772  
Tel: 807-475-1205  
Fax: 807-475-1754

Kenora Area Office  
808 Robertson St.  
P. O. Box 5150  
Kenora ON P9N 3X9  
Toll free from area code 807: 1-888-367-7622  
Tel: 807-468-2718  
Fax: 807-468-2735

North Bay Area Office  
191 Booth Road, Unit 16 & 17  
North Bay ON P1A 4K3  
Toll free: 1-800-609-5553  
Tel: 705-497-6865  
Fax: 705-497-6866

Sault Ste. Marie Area Office  
289 Bay Street, 3rd Floor  
Sault Ste. Marie ON P6A 1W7  
Tel: 705-942-6354  
Fax 705-942-6327

Sudbury District Office  
199 Larch St., Suite 1201  
Sudbury ON P3E 5P9  
Toll free from area codes 705/807: 1-800-890-8516  
Tel: 705-564-3237  
Fax: 705-564-4180

Thunder Bay District Office  
435 James St. S., Suite 331  
Thunder Bay ON P7E 6S7  
Toll free from area code 705/807: 1-800-875-7772  
Tel: 807-475-1315  
Fax: 807-475-1754

Timmins District Office  
Ontario Government Complex  
Hwy 101 East  
P.O. Bag 3080  
South Porcupine ON P0N 1H0  
Toll free from area codes 705/807: 1-800-380-6615  
Tel: 705-235-1500  
Fax: 705-235-1520

## Southwestern Region

Ministry of the Environment  
London Regional Office  
733 Exeter Road, 2nd Floor  
London ON N6E 1L3  
Toll free from area code  
519: 1-800-265-7672  
Tel: 519-873-5000  
Fax: 519-873-5020

London District Office  
733 Exeter Road  
London ON N6E 1L3  
Toll free from area code 519: 1-800-265-7672  
Tel: 519-873-5000  
Fax: 519-873-5020

Owen Sound District Office  
101 17th Street East, 3rd Floor  
Owen Sound ON N4K 0A5  
Toll free from area code 519: 1-800-265-3783  
Tel: 519-371-2901  
Fax: 519-371-2905

Sarnia District Office  
1094 London Rd.  
Sarnia ON N7S 1P1  
Toll free: 1-800-387-7784  
Tel: 519-336-4030  
Fax: 519-336-4280

Windsor Area Office  
4510 Rhodes Drive, Unit 620  
Windsor ON N8W 5K5  
Toll free: 1-800-387-8826  
Tel: 519-948-1464  
Fax: 519-948-2396

## West Central Region

Ministry of the Environment  
Hamilton Regional Office  
119 King St. W., 12th Floor  
Hamilton ON L8P 4Y7  
Toll free: 1-800-668-4557  
Tel: 905-521-7640  
Fax: 905-521-7820

Guelph District Office  
1 Stone Road W.  
Guelph ON N1G 4Y2  
Toll free: 1-800-265-8658  
Tel: 519-826-4255  
Fax: 519-826-4286

Hamilton District Office  
119 King St. W., 9th Floor  
Hamilton ON L8P 4Y7  
Toll free: 1-800-668-4557  
Tel: 905-521-7650  
Fax: 905-521-7806

Niagara District Office  
301 St. Paul St., 9th Floor  
St. Catharines ON L2R 3M8  
Toll free: 1-800-263-1035  
Tel: 905-704-3900  
Fax: 905-704-4015

Code of Practice: Environmental Assessments

## Code of Practice

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# Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario

Legislative Authority:

Environmental Assessment Act, RSO 1990, chapter E.18

January 2014

This Code of Practice was developed in consultation with government agencies and other interested persons including academics, environmental assessment practitioners, environmental groups, industry associations, professional associations and proponents. We appreciate the contributions that these individuals and groups have made to finalize this document and look forward to continued input to maintain it as an effective tool for use during the environmental assessment process.

Readers should check the Ministry of the Environment's website or call the Environmental Approvals Access and Service Integration Branch to find out if there have been any revisions.

Ministry of the Environment  
Environmental Approvals Access and Service Integration Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5 Canada

Telephone: 416-314-8001  
Toll Free: 1-800-461-6290  
Fax: 416-314-8452  
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This Code of Practice is published as a living document that will be reviewed and revised as necessary. Any comments, suggestions for revision or clarification are welcomed and should be sent to the Director of the Environmental Approvals Access and Service Integration Branch at the address listed above.

Under section 31(1)(e), the Minister of the Environment may gather, publish and disseminate information with respect to the environment or environmental assessments for the purposes of administering and enforcing the *Environmental Assessment Act* and regulations made thereunder. Therefore, the Ministry of the Environment expects that this Code of Practice will be considered by proponents.

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# Glossary

The definitions in this glossary are intended to assist the reader in understanding the terms used in this Code of Practice. To understand these terms completely, the Ministry of the Environment recommends that both the definitions in here and in the legislation be consulted. In all cases, the wording contained in the *Environmental Assessment Act* shall prevail.

## **Aboriginal peoples**

The *Constitution Act, 1982* specifies that Aboriginal peoples include Indian, Inuit and Métis peoples of Canada.

## **alternative methods**

Alternative methods of carrying out the proposed undertaking are different ways of doing the same activity.

Alternative methods could include consideration of one or more of the following: alternative technologies; alternative methods of applying specific technologies; alternative sites for a proposed undertaking; alternative design methods; and, alternative methods of operating any facilities associated with a proposed undertaking.

## **alternatives**

Both alternative methods and alternatives to a proposed undertaking.

## **alternatives to**

Alternatives to the proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity.

## **application**

An application for approval to proceed with an undertaking under subsection 5(1) of the *Environmental Assessment Act*.

## **Branch**

Environmental Approvals Branch, Ministry of the Environment.

### **class environmental assessment**

A document that sets out a standardized planning process for those classes or groups of activities for which the applicant is responsible. It is also known as a “parent” document in some class environmental assessments. A class environmental assessment is approved under the *Environmental Assessment Act* and applies to projects that are carried out routinely and have predictable environmental effects that can be readily managed.

Projects defined within a class environmental assessment require no further environmental approval under section 5 of the *Environmental Assessment Act*, conditional upon being planned according to the procedures set out in the document and not being subject to a Part II Order. All class environmental assessments have a mechanism where the Minister may order that an “individual” environmental assessment be carried out for a particular project, if warranted (Part II Order or “bump-up”).

### **class environmental assessment project**

An undertaking that does not require any further approval under the *Environmental Assessment Act* if the planning process set out in the class environmental assessment document is followed and successfully completed. Any interested person may request the Minister or delegate to order that a class environmental assessment project be bumped up to an “individual” environmental assessment by making a Part II Order.

### **commitment**

Represents a guarantee from a proponent about a certain course of action, that is, “I will do this, at this time, in this way.” Proponents acknowledge these guarantees by documenting obligations and responsibilities, which they agree to follow, in environmental assessment documentation (terms of reference and environmental assessment). Once the Minister and Cabinet approve an application, the commitments within the document are often made legally binding as a condition of approval.

### **consultation**

A two-way communication process to involve interested persons in the planning, implementation and monitoring of a proposed undertaking. Consultation is intended to:

- Identify concerns;
- Identify relevant information;
- Identify relevant guidelines, policies and standards;
- Facilitate the development of a list of all required approvals, licences or permits;
- Provide guidance to the proponent about the preparation of the terms of reference and environmental assessment;
- Ensure that relevant information is shared about the proposed undertaking;
- Encourage the submission of requests for further information and analysis early in the environmental assessment process;
- Enable the ministry to make a fair and balanced decision.

### **Deadlines Regulation**

Refers to Ontario Regulation 616/98, which establishes the timing of reviews and decisions for terms of references and environmental assessments by the ministry.

### **Director<sup>\*</sup>**

Director of the Environmental Assessment and Approvals Branch, Ministry of the Environment.

In October 2011, the Environmental Assessment and Approvals Branch underwent a functional reorganization which resulted in the creation of two branches: Environmental Approvals Branch and Environmental Approvals Access and Service Integration Branch. For the purposes of this Code of Practice, the definition of “Director” also refers to the functional position Director, Environmental Approvals Branch.

### **do nothing alternative**

An alternative that is typically included in the evaluation of alternatives that identifies the implications of doing nothing to address the problem or opportunity that has been identified.

### **environment<sup>\*</sup>**

The *Environmental Assessment Act* defines environment to mean:

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<sup>\*</sup> An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

- (a) Air, land or water;
- (b) Plant and animal life, including human life;
- (c) The social, economic and cultural conditions that influence the life of humans or a community;
- (d) Any building, structure, machine or other device or thing made by humans;
- (e) Any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or,
- (f) Any part or combination of the foregoing and the interrelationships between any two or more of them.

### **environmental assessment**

Environmental assessment is a study, which assesses the potential environmental effects (positive or negative) of a proposal. Key components of an environmental assessment include consultation with government agencies and the public; consideration and evaluation of alternatives; and, the management of potential environmental effects. Conducting an environmental assessment promotes good environmental planning before decisions are made about proceeding with a proposal. This is also referred to as an “individual” environmental assessment.

### **Environmental Assessment Act**

The *Environmental Assessment Act* (and amendments and regulations thereto) is a provincial statute that sets out a planning and decision-making process to evaluate the potential environmental effects of a proposed undertaking. Proponents wishing to proceed with an undertaking must document their planning and decision-making process and submit the results from their environmental assessment to the Minister for approval.

### **environmental effect**

The effect that a proposed undertaking or its alternatives has or could potentially have on the environment, either positive or negative, direct or indirect, short- or long-term.

### **expert federal authority**

A federal authority that has specialist or expert information or knowledge with respect to a project that can be provided to a responsible authority,

review panel, or another jurisdiction during an environmental assessment, including expertise on the implementation of mitigation measures and any follow-up program.

### **federal authority**

A federal authority is defined under the *Canadian Environmental Assessment Act, 2012* to mean:

- (a) A Minister of the Crown in right of Canada;
- (b) An agency or other body of the federal government ultimately accountable to Parliament through a federal Minister of the Crown;
- (c) Any department or departmental corporation set out in Schedule I or II of the *Financial Administration Act*; or,
- (d) Any other body that is set out in Schedule 1 of the *Canadian Environmental Assessment Act, 2012*.

### **Government Review Team**

Staff from government ministries and agencies (federal; provincial, including local Conservation Authorities; and, municipal, including local Boards of Health) who contribute to the review of environmental assessment documentation (terms of reference and environmental assessment) by providing comments from their mandated areas of responsibility.

### **impact management measures**

Measures which can lessen potential negative environmental effects or enhance positive environmental effects. These measures could include mitigation, compensation, or community enhancement.

### **interested persons**

Individuals or organizations with an interest in a particular undertaking. Persons with an interest in a particular undertaking often include neighbours and individuals, environmental groups or clubs, naturalist organizations, agricultural organizations, sports or recreational groups, organizations from the local community, municipal heritage committees, ratepayers associations, cottage associations, Aboriginal peoples and communities, Francophones and businesses.

Interested persons are not required to demonstrate that they will personally be affected by a particular undertaking. Interested persons are often called stakeholders.

**mediation**

A dispute resolution process in which a neutral third party (mediator) who is acceptable to all parties assists disputants in reaching a mutually acceptable agreement. The mediator has no authority to impose a settlement and participation in the process is voluntary.

**Minister<sup>\*</sup>**

Minister of the Environment.

**ministry<sup>\*</sup>**

Ministry of the Environment.

**Ministry Technical Reviewers**

Ministry of the Environment staff, other than the Project Officer, who contribute to the review of the draft and proposed terms of reference. They form part of the Government Review Team for the proposal.

**places of public record**

Official locations where interested persons may review the proposed terms of reference.

**Project Officer**

The assigned staff person from the Environmental Approvals Branch who manages and coordinates the review of the components of an *Environmental Assessment Act* application (that is, a terms of reference or an environmental assessment) for approval. The Project Officer also provides guidance on the environmental assessment process to proponents, government agencies and other interested persons.

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<sup>\*</sup> An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.



**proponent\***

A person, agency, group or organization that carries out or proposes to carry out an undertaking or is the owner or person having charge, management or control of an undertaking.

**public record file**

A public record file will be maintained by the Environmental Approvals Branch for every undertaking for which there is an application for approval under Part II and Part II.1 as well as orders under section 16 and the preparation of Declaration Orders under section 3.2 and Harmonization Orders under section 3.1 of the *Environmental Assessment Act* in accordance with the requirement to maintain a record under section 30 of that act.

In addition, the Environmental Approvals Branch will maintain a public record file for elevation requests under the streamlined environmental assessment process for electricity projects and waste management projects, objections for transit projects and requests for an individual environmental assessment pursuant to Declaration Orders. The purpose of the public record file is to promote transparency and consultation. Public record files are only kept for class environmental assessment undertakings where a Part II Order has been requested.

**Record of Consultation**

A document submitted with the proposed terms of reference that describes the consultation carried out during the preparation of the terms of reference and the results of that consultation.

**responsible authority**

In accordance with the *Canadian Environmental Assessment Act, 2012* and in relation to a designated project, a federal authority that is required to ensure that a federal environmental assessment of a designated project is conducted.

**stand-alone document**

Additional documentation prepared separately from the terms of reference, which provides more information, but is not subject to the

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

approval of the Minister (for example, Record of Consultation and supporting documentation).

### **supporting documentation**

Documentation that is submitted to the ministry, in addition to the proposed terms of reference, which provides further information on issues discussed in the proposed terms of reference. Information contained in the supporting documentation should support the proponent's request that the terms of reference be approved by providing justification for the choices made and details of processes or methodologies to be used. These are routinely submitted as stand-alone documents.

### **terms of reference**

A document prepared by the proponent and submitted to the Ministry of the Environment for approval. The terms of reference sets out the framework for the planning and decision-making process to be followed by the proponent during the preparation of an environmental assessment. In other words, it is the proponent's work plan for what is going to be studied. If approved, the environmental assessment must be prepared according to the terms of reference.

### **undertaking<sup>\*</sup>**

An enterprise, activity or a proposal, plan, or program that a proponent initiates or proposes to initiate.

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<sup>\*</sup> An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

# 1. Introduction

Environmental assessment is a planning and decision-making process used to promote environmentally responsible decision-making. In Ontario, this process is defined and finds its authority in the *Environmental Assessment Act*. The purpose of the *Environmental Assessment Act* is to provide for the protection, conservation and wise management of Ontario's environment. To achieve this purpose, the *Environmental Assessment Act* promotes responsible environmental decision-making and ensures that interested persons have an opportunity to comment on undertakings that may affect them. In the *Environmental Assessment Act*, environment is broadly defined to include the natural, social, economic, cultural and built environments.

The first step in the application for approval to proceed with an undertaking under the *Environmental Assessment Act* is the approval of a terms of reference by the Minister of the Environment (Minister). The public and other interested persons will have an early opportunity to be involved in the terms of reference process to get information about proposals that may affect them, and allow them to decide early on about the level of their concern and their need for continued participation in the planning process. The terms of reference will allow the proponent to produce an environmental assessment that is more direct and easier to review by interested persons. It allows the focus of the environmental assessment to be the identification and management of potential environmental effects. In addition, it can save the proponent time and money.

An approved terms of reference becomes the framework for the preparation and review of the environmental assessment. The proponent then completes the application by submitting an environmental assessment that has been prepared in accordance with the approved terms of reference. If the terms of reference is not approved and the proponent still wishes to proceed with the undertaking, the proponent must submit a new terms of reference for the Minister's approval. Neither an approved terms of reference nor an environmental assessment prepared in

If approved, the terms of reference becomes the framework for the preparation and review of the environmental assessment.

accordance with an approved terms of reference guarantees that the Minister will approve an application to proceed with a proposed undertaking.

A terms of reference is not an environmental assessment and the proponent is not required to demonstrate the feasibility of its proposal at the terms of reference stage. That work is done at the environmental assessment stage using the framework set out in the approved terms of reference.

The terms of reference as part of the environmental assessment process is not a consensus building exercise. Participants do not have the power to veto an undertaking. They can provide information that will assist the Minister in deciding whether an undertaking can proceed in the public interest while ensuring that the environment is protected.

## 1.1 Purpose of This Code of Practice

This Code of Practice outlines the legislative requirements and the Ministry of the Environment's (ministry) expectations for the preparation and review of a terms of reference. This Code of Practice focuses on the fulfilment of the requirements of the *Environmental Assessment Act*; however, the proponent should remain aware of any requirements for obtaining other necessary approvals while preparing the terms of reference.

This Code of Practice presents an overview of:

- The roles and responsibilities of interested persons in the terms of reference preparation and review process;
- The mandatory elements of preparing a terms of reference;
- The ministry's expectations of what proponents will provide in the terms of reference;
- The steps involved in, and the timelines associated with, the submission and review of the terms of reference. (See Appendix A.)

This Code does not apply to undertakings that are subject to the provisions set out in a class environmental assessment. A separate Code of Practice is available for class environmental assessments.

The contents of this Code of Practice should be considered in conjunction with any other relevant guidance materials available from the ministry. Where the text refers to a requirement of the *Environmental Assessment Act*, the relevant section from the legislation is usually referenced in brackets. While this Code references and discusses the legal framework of the *Environmental Assessment Act*, in case of any conflict or doubt, the wording of the *Environmental Assessment Act* and its regulations shall prevail.

## 2. Applicability of the Environmental Assessment Act

Proponents wishing to carry out undertakings in Ontario must determine whether the *Environmental Assessment Act* applies to their proposal as soon as a problem or opportunity is identified, since undertakings subject to the *Environmental Assessment Act* may not proceed until an application to do so has been approved. Making this determination early also assists proponents in developing a planning process in accordance with the requirements of the *Environmental Assessment Act*.

In determining whether approval under the *Environmental Assessment Act* is required for a particular undertaking, proponents must have also regard to regulations made pursuant to the act (for example, Regulations 334, 116/01, 101/07 and 231/08) to see whether any special exemptions or designations are applicable. Where a proponent is uncertain about how regulatory provisions might apply, it may contact the Environmental Approvals Branch (Branch) for advice, but should consider obtaining its own legal or other advice. It is up to the proponent to ensure it has complied with the statute and regulatory requirements.

Generally speaking, section 3 of the *Environmental Assessment Act* states that it applies to undertakings by:

- A Minister of the Crown, a public body or a municipality;
- A private sector proponent that is designated by regulation; or,
- A person who enters into a written agreement with the Minister that the *Environmental Assessment Act* will apply.

### 2.1 Crown, Public Body or Municipality

Undertakings by the Crown, public bodies (for example, Metrolinx, GO Transit, conservation authorities) and municipalities are normally subject to the requirements of the *Environmental Assessment Act*. Regulation 334 defines public bodies.

The regulation states which ministers of the Crown are exempt from the requirements of the *Environmental Assessment Act*. The regulation also defines circumstances under which an undertaking by a municipality, other

public bodies and some private sector proponents would not be subject to the requirements of the *Environmental Assessment Act*. Other general exemptions apply so it is important that the regulation be read in its entirety before deciding how to proceed.

## 2.2 Designating Regulation

Private sector proponents are not automatically subject to the requirements of the *Environmental Assessment Act* but may be made subject by a designating regulation made by the Lieutenant Governor in Council (section 39 of the *Environmental Assessment Act*).

## 2.3 Voluntary Agreement

Section 3.0.1 of the *Environmental Assessment Act* states that any person may enter into a written agreement with the Minister to have the *Environmental Assessment Act* apply to its proposed undertaking. This provision is used by private sector proponents and is an alternative to a designating regulation. Private sector proponents with an undertaking that it feels is likely to be designated, should discuss with the ministry the option of entering into a voluntary agreement. Entering into an agreement could save time as there are fewer procedural requirements than for a designating regulation, for example, a regulation made by the Lieutenant Governor in Council is not necessary.

### 3. Who Should Use This Code of Practice?

This section outlines the roles and responsibilities of the various participants involved in the preparation and review of a terms of reference. It is important to note that the information outlined herein is not meant to be exhaustive and that other participants' roles and/or responsibilities may apply depending on the nature and complexity of a proposed undertaking.

The participants are:

- Proponents who are responsible for preparing the terms of reference and consulting with all interested persons about their proposal;
- Government Review Team members who participate in the preparation and review of the terms of reference;
- Interested persons, including Aboriginal peoples and communities, who participate in the terms of reference process by providing comments about the proposed study and the terms of reference;
- The ministry's Environmental Approvals Branch (Branch) staff who review the proponent's terms of reference.

#### 3.1 Proponents

Proponents who initiate undertakings that are subject to Part II of the *Environmental Assessment Act* are responsible for preparing the terms of reference. Proponents must make judgments and choices with respect to the content of the proposed terms of reference. Proponents are required to:

- Consult with Branch staff to discuss preparation, consultation and submission requirements;
- Identify government ministries and agencies, municipalities, members of the public, Aboriginal communities, and other persons who may have an interest in their proposal;
- Engage in meaningful consultation with all interested persons to identify and respond to needs and concerns;
- Establish reasonable time frames for feedback and review during the consultation process;



- Ensure that issues and concerns are identified and considered early in the planning process before irreversible decisions are made;
- Document the results of the consultation process;
- Prepare a terms of reference in consultation with the ministry, other government ministries and agencies, municipalities and all interested persons, including Aboriginal communities;
- Prepare and submit a terms of reference in accordance with applicable ministry legislation and standards (for example, *Environmental Assessment Act* and its regulations, applicable Codes of Practice).

### 3.2 Government Review Team

Members of the Government Review Team, including ministry technical staff, should be involved from the outset during the preparation of the terms of reference. They should assist proponents in identifying areas of concern within their mandate. Members of the Government Review Team are responsible for:

- Providing information and guidance in a timely manner within their mandated areas of responsibility that the proponent should consider when preparing the terms of reference (for example, legislative requirements, policies, standards, studies, potential evaluation criteria);
- Providing consistent advice in a timely manner throughout the course of the decision-making process, or providing relevant reasons if their position changes;
- Participating in the government review of the proposed terms of reference after it is submitted to the ministry by reviewing the document based on its agency's mandate, submitting comments to the ministry by the required deadline, and working with the proponent and the ministry to address any issues.

### 3.3 Interested Persons

Proponents should identify and discuss their proposal with all interested persons early in the process. Interested persons are encouraged to participate in the preparation and review of the terms of reference. Generally, their roles are:

- Identifying local issues and areas of concern and how they may be affected during the development of the terms of reference;
- Suggesting modifications to the proposal or documentation that may address concerns;
- Providing comments by the required deadline once the proposed terms of reference is submitted to the ministry.

### 3.4 Aboriginal Communities

Potentially affected Aboriginal communities are strongly encouraged to participate in the preparation and review of the terms of reference. Where an Aboriginal community participates in the terms of reference process, they should:

- Identify for the proponent and the ministry an appropriate contact to maintain consistency throughout the planning process in a timely manner;
- Identify any issues and concerns that may affect the community;
- Identify any Aboriginal claims or interests potentially affected by the proposal during the development of the terms of reference (for example, traditional territory, Aboriginal or treaty rights);
- If an Aboriginal or treaty right has been asserted, or potential impact identified, clearly outline the scope and nature of the asserted right(s) and the nature of the alleged infringement;
- Suggest modifications to the environmental assessment that may address their concern focusing on matters directly related to the proposal or the planning process;
- Respond to the government's attempts to address their concerns and suggestions, and to try to reach some mutually satisfactory solution during the ministry's review of the terms of reference;
- Be mindful of prescribed deadlines once the environmental assessment is submitted to the ministry for review and decision.

In addition, the Crown has a duty to consult with and accommodate Aboriginal communities when the Crown has knowledge, real or constructive, of the existence or potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect it.

Section 5.1 of this Code describes the steps that will help to set the framework to ensure that:

- The proponent complies with section 5.1 of the *Environmental Assessment Act*.
- The Crown's duty to consult, if it arises, is satisfied with respect to the proposed undertaking.
- The environmental assessment reflects the input of, and is responsive to, potentially affected Aboriginal communities.

### 3.5 Environmental Approvals Branch Staff

One of the Branch's responsibilities is to provide guidance about the terms of reference process to assist proponents and interested persons in their understanding of the process, and ultimately to allow the Minister to make informed decisions about a proposal. This role mainly falls to a Project Officer at the Branch. The Project Officer's roles are to:

- Provide advice and guidance about the requirements of the *Environmental Assessment Act*, and other ministry legislation or procedures;
- Facilitate coordination with other review processes, such as the federal environmental assessment process, in order to minimize unnecessary duplication and inconsistency;
- Evaluate the draft and final terms of reference to ensure that all legislative requirements and procedures established by the ministry are followed;
- Coordinate the ministry's technical review of the draft terms of reference;
- Review the consultation with interested persons, including Aboriginal peoples, that has occurred during the preparation of the terms of reference;
- Coordinate the review of the proposed terms of reference when it is submitted to the ministry for a decision;
- Encourage and facilitate the resolution of outstanding issues during the process as necessary;

Code of Practice: Terms of Reference

- Evaluate the final terms of reference and provide a recommendation to enable the Minister to make an informed decision about a proposed terms of reference;
- Maintain a public record file for the proposal.

## 4. Considerations for Good Environmental Planning

### 4.1 Environmental Assessment Principles

There are a number of environmental assessment principles that are key to successful planning and approval under the *Environmental Assessment Act*. These principles form the foundation for the overall guidance of an environmental assessment process and provide direction when challenges present themselves. The proponent should incorporate these principles into its environmental planning process in which the first step is planning for, developing and submitting a terms of reference. Incorporating the following principles at the start and throughout will increase the likelihood that the proposed undertaking will meet the requirements of the *Environmental Assessment Act*. The environmental assessment will be evaluated against these principles, amongst other things. The principles include:

- Consult with potentially affected and other interested persons;
- Consider a reasonable range of alternatives;
- Consider all aspects of the environment;
- Systematically evaluate net environmental effects;
- Provide clear, complete documentation.

#### 4.1.1 Consult with Potentially Affected and Other Interested Persons

**Make the planning process a cooperative venture with potentially affected and other interested persons. Early consultation with interested persons is essential.**

Consultation with interested persons is a cornerstone of the environmental assessment process and is a legal requirement of the *Environmental Assessment Act*. The proponent should seek to involve all interested persons as early as possible in the planning process so that their concerns can be identified and considered before irreversible decisions and commitments are made on the chosen approach or specific proposals. Proponents should present sufficient and varied opportunities

for consultation and interested persons should take advantage of the opportunities and become involved in the planning process. The results of the consultation must be documented both at the terms of reference stage and at the end of the planning process. Consultation, when done well, can improve the outcome of the planning process. To achieve this, the planning process must be constructed, in part, around the involvement and contribution of potentially affected and other interested persons. The benefits of doing this include:

- Improving the understanding of environmental concerns before the preferred undertaking is selected and focusing the proponent's planning on matters of concern;
- Encouraging the identification and consideration of issues before the environmental assessment is formally submitted to reduce the time required during the formal decision-making process to resolve outstanding issues;
- Promoting mutually acceptable, environmentally sound solutions.

#### **4.1.2 Consider a Reasonable Range of Alternatives**

**A reasonable range of alternatives must be considered.**

During the environmental assessment process, proponents should consider a reasonable range of alternatives. This should include examining “alternatives to” the undertaking which are functionally different ways of approaching and dealing with the defined problem or opportunity, and “alternative methods” of carrying out the proposed undertaking which are different ways of doing the same activity. Depending on the problem or opportunity identified, there may be a limited number of appropriate alternatives to consider. If that is the case then there should be clear rationale for limiting the examination of alternatives. Proponents must also consider the “do nothing” alternative.

#### **4.1.3 Consider All Aspects of the Environment**

**Identify and consider the potential effects of each alternative on all aspects of the environment.**

The *Environmental Assessment Act* broadly defines environment to include the natural, social, economic, cultural and built environments.

During the preparation of the environmental assessment, the proponent must consider not only the potential environmental effects on the natural environment, but also the social, economic, cultural and built environments and how they interrelate for every alternative being considered. Consideration should also be given to how the project and its alternatives may interrelate with components of the environment, including with potentially changing climatic conditions over time.

The level of detail required will vary depending on the significance of the potential environmental effect and the stage in the environmental assessment process; that is, more detail will be needed once a preferred alternative has been selected.

#### **4.1.4 Systematically Evaluate Net Environmental Effects**

**Effectively evaluate alternatives in light of their advantages and disadvantages developed through a net effects analysis.**

Environmental assessment typically includes the evaluation of the alternatives given the advantages and disadvantages of each alternative. During the environmental assessment process, there are distinct points where alternatives are evaluated and the net environmental effects associated with any alternative; that is, the potential environmental effects after impact management measures have been applied, are clearly identified.

Decision-making should be phased, narrowing progressively to a preferred alternative. This results in a process where alternatives will be eliminated from consideration at different points in the planning process. Decisions on what type or combination of alternatives are preferred are generally made earlier in the planning process and more detailed decisions on how to implement the preferred alternative made later.

It must be recognized that the environmental assessment planning and decision-making process is dynamic. When preparing an environmental assessment, the proponent must be sensitive to changing conditions and new information and must provide flexibility in the environmental assessment to deal with changing circumstances. This approach, if carried out effectively, will result in the identification of a preferred alternative which has a rational justification for environmental approval.

#### **4.1.5 Provide Clear, Complete Documentation**

**The proponent must ensure that the environmental assessment represents accurately the planning and decision-making process that was followed in a clear and understandable way and must communicate that clearly in the environmental assessment document.**

The environmental assessment document which is submitted to the ministry for approval should explain clearly the environmental planning and decision-making process followed to reach the conclusion of the preferred alternative and its potential impacts after impact management measures have been determined. Any interested person reading the environmental assessment document should be able to easily follow the process used by the proponent in determining the undertaking including the rationale for making certain choices. Clarity, simplicity, completeness and precision are objectives for which to strive when preparing the environmental assessment document.

Information about how these features can be incorporated in the environmental assessment planning process and the preparation of the terms of reference document is provided in Section 5 in this Code of Practice.

## **4.2 Project Management Principles**

In addition to the environmental assessment principles outlined above, there are a number of project management principles that can, when followed, assist a proponent in navigating the environmental assessment process successfully for a specific undertaking. These project management principles, when followed by the proponent should result in better submissions to the ministry and timelier decisions. These project management principles include:

- Timeliness
- Clarity and Consistency
- Openness and Transparency
- Coordination of Approvals
- Best Available Information



- Appropriate Level of Detail
- Minimize Potential Harm and Enhance Benefits to the Environment

#### **4.2.1 Timeliness**

The proponent should commence its environmental assessment as early in the planning process as possible. This will allow sufficient time to assess the undertaking implications so that the proposed undertaking can be modified as required. It will also allow for any potential coordination with other approvals where possible.

Timeliness is also important from the perspective of consultation. The proponent should involve interested persons early in the environmental assessment planning process in order to identify and consider issues or concerns.

Expectations for a timely process also apply to interested persons. Members of the public participating in the environmental assessment process should make their submissions about proposed undertakings in a timely manner and by the prescribed deadlines so that there is sufficient time for the proponent to evaluate the submission and incorporate it in its decision-making process.

The ministry should also be timely in its decision-making, following prescribed deadlines outlined in the Deadlines Regulation (Ontario Regulation 616/98) while taking time to thoroughly evaluate applications for environmental assessments.

#### **4.2.2 Clarity and Consistency**

The environmental assessment process should be clear and consistent. The *Environmental Assessment Act* should be applied consistently to similar undertakings and the ministry's expectations of all participants in the process should be articulated clearly. Proponents and interested persons should be able to expect generally how the environmental assessment process will be carried out in similar circumstances in a manner that is rational and transparent.

### **4.2.3 Openness and Transparency**

The environmental assessment process should be open and transparent. This will enable all interested persons to follow the process through its various stages of planning and decision-making until a preferred undertaking is selected. Anyone should be able to trace the results of the environmental assessment planning process using the evaluation approaches set out therein.

Means of achieving transparency can include, but are not limited to:

- Using appropriate, well-established and easily understood evaluation methods;
- Making the process clear, rational and logical;
- Sharing complete information with all interested persons to support conclusions and recommendations at each phase in the process;
- Documenting the process in easy to understand language with explanations of the rationale for making certain choices.

### **4.2.4 Coordination of Approvals**

Often *Environmental Assessment Act* approval is one of many approvals required by a proponent before its undertaking can be implemented. As early as possible in the planning process, proponents should determine whether approvals under other provincial legislation (for example, *Environmental Protection Act*, *Public Lands Act*, *Lakes and Rivers Improvement Act*, *Conservation Authorities Act*) or federal legislation (for example, *Canadian Environmental Assessment Act, 2012*, *Navigable Waters Protection Act*, *Fisheries Act*) are required.

Where an environmental assessment is required by another jurisdiction, to the extent possible, these multiple environmental assessment approvals should be coordinated where appropriate. At minimum, the environmental assessment should identify the other approvals required and address how they will be coordinated where possible. The ministry recognizes the benefits of coordination, but also understands that there are times when differences in approval requirements may make it impossible to coordinate environmental assessment approvals.

#### **4.2.5 Best Available Information**

The proponent should provide sufficient information about the potential environmental effects (both positive and negative) of a proposed undertaking in order to demonstrate that the proposed undertaking should proceed. Proponents should prepare technical studies using the best available data; carefully select their assessment and evaluation methods to analyze their proposal; and use sound scientific, engineering and planning practices in the preparation of the environmental assessment. Consultation with the public may assist the proponent in selecting appropriate analytical tools or information to be included in the planning process.

Proponents should be aware that while available and published data can be used in the earlier steps in the environmental assessment planning process, it is expected that there will be a transition to original field work, surveys, etc. for analysis and evaluation in the later stages of the environmental assessment planning process. The level of detail will increase as the process proceeds.

#### **4.2.6 Appropriate Level of Detail**

Each environmental assessment is unique. As a result, the level of detail of required information will vary by undertaking or stage in the planning process. The appropriate level of detail depends on a number of factors such as the number of approvals required; the nature and complexity of the proposed undertaking; the potential for environmental effects; and the level of public interest. The level of detail presented in an environmental assessment should be sufficient to fulfil the requirements of the *Environmental Assessment Act* and to assure interested persons that the proposed undertaking is technically feasible and achieves environmental protection.

#### **4.2.7 Minimize Potential Harm and Enhance Benefits to the Environment**

The environmental assessment planning process consists of a systematic evaluation of the potential environmental effects of alternatives, and weighing the advantages and disadvantages of proceeding with the proposed undertaking. In doing so, the proponent should attempt to prevent, avoid or minimize adverse environmental effects through the

application of impact management measures. At the same time, proponents should consider societal benefits of the undertaking to the environment in their evaluation process.

Proponents should make every effort to avoid or minimize potential adverse environmental effects through the application of impact management measures; however, it may not be possible to manage all of them. There will be times when some individuals may be affected by an undertaking that would benefit society as a whole and this will have to be considered during the environmental assessment planning process.

### 4.3 Statement of Environmental Values and Ministry Decision-making

Under Ontario's *Environmental Bill of Rights, 1993*, the public has the right to be informed of environmentally significant decisions the provincial government makes. The *Environmental Bill of Rights, 1993* applies to the ministry and requires that the ministry develop a Statement of Environmental Values. The ministry's Statement of Environmental Values is an important part of the work the ministry does to protect the environment as the Statement sets out important principles to be considered when the ministry makes environmentally significant decisions. The following text appears in the ministry's Statement of Environmental Values in the Guiding Principles section:

1. The ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.
2. The ministry considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.
3. The ministry considers the effects of its decisions on current and future generations, consistent with sustainable development principles.
4. The ministry uses a precautionary, science-based approach in its decision-making to protect human health and the environment.

5. The ministry's environmental protection strategy will place priority on preventing pollution and minimizing the creation of pollutants that can adversely affect the environment.
6. The ministry endeavours to have the perpetrator of pollution pay for the cost of clean up and rehabilitation consistent with the polluter pays principle.
7. In the event that significant environmental harm is caused, the ministry will work to ensure that the environment is rehabilitated to the extent feasible.
8. Planning and management for environmental protection should strive for continuous improvement and effectiveness through adaptive management.
9. The ministry supports and promotes a range of tools that encourage environmental protection and sustainability (e.g. stewardship, outreach, education).
10. The ministry will encourage increased transparency, timely reporting and enhanced ongoing engagement with the public as part of environmental decision-making.

To see the ministry's Statement of Environmental Values in its entirety, please refer to: [www.ebr.gov.on.ca/ERS-WEB-External/content/sev.jsp?pageName=sevList&subPageName=10001](http://www.ebr.gov.on.ca/ERS-WEB-External/content/sev.jsp?pageName=sevList&subPageName=10001).

To support the application of the ministry's Statement of Environmental Values in its environmental assessment decision-making, below are some best practices for proponents to consider when conducting an environmental assessment and providing submissions to the ministry. The following information is intended to assist proponents in providing information to the ministry that enables the Minister to fully consider the Statement of Environmental Values before a decision is made under the *Environmental Assessment Act*.

Proponents are encouraged to provide the following information as a separate section in submissions made to the ministry:

- Assess impacts on the environment in the context of an ecosystem approach. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.

- Include information about potential cumulative effects of the project in combination with past, present and reasonably foreseeable future activities where possible. Proponents are advised to consult with government agencies to identify any already-approved projects that will be built in the future, and to consider their potential cumulative impacts to the extent possible<sup>1</sup>.
- Include information that shows how scientific, social and economic considerations have been taken into account. Proponents are also encouraged to conduct appropriate scoping in time to ensure that all elements of the undertaking's life cycle (commissioning, operations, decommissioning) are assessed, in order to appropriately protect the environment for current and future generations.
- Use quantitative scientific data to draw conclusions whenever possible. The proponent is expected to articulate the level of uncertainty associated with data and conclusions, along with the risk of serious or irreversible environmental harm associated with the project.
- Provide information about proposed pollution prevention or impact mitigation measures that could be used, in accordance with the focus of the environmental assessment program on wise management of the environment and conservation.
- Include information indicating how any potential unforeseen impacts will be remediated by the proponent.
- Include information confirming that the proponent will bear the costs of remediation of any unforeseen environmental impact.
- Make a commitment to review the assessment on an ongoing basis so that any unforeseen environmental impacts can be addressed using an adaptive management approach.
- Use a range of tools to complete the assessment that represent best practice for assessing the environmental components under consideration.
- Document how they have followed ministry guidance on consultation, such that the process is transparent, timely, accessible and represents enhanced ongoing engagement with the public.

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<sup>1</sup> If quantitative information about these projects is unavailable, proponents are encouraged to carry out qualitative assessments of potential cumulative impacts. The federal government has published a practitioners guide that proponents may find useful in conducting cumulative effects assessment: [www.ceaa.gc.ca/default.asp?lang=En&n=43952694-1](http://www.ceaa.gc.ca/default.asp?lang=En&n=43952694-1).

## 5. Preparation of a Terms of Reference

The first step in the application for approval to proceed with an undertaking is the submission and approval of a terms of reference. The terms of reference provides a framework for the preparation of the environmental assessment. It sets out the proponent's work plan for addressing the legislated requirements of the *Environmental Assessment Act* when preparing the environmental assessment.

A terms of reference is not an environmental assessment. It outlines what work and studies will be done during the environmental assessment stage. The proponent does not need to do the work or studies at the terms of reference stage.

On average, proponents take from six to nine months to prepare the terms of reference. This timeline is dependent on the scale and complexity of the proposal and the level of public interest.

The specific contents of the terms of reference will vary for each proposal; however, there are general expectations of what should be included in the document. These expectations, which are outlined further in this section of the Code, are consistent with the generic requirements as defined in subsection 6.1(2) of the *Environmental Assessment Act*.

### 5.1 Initiating the Terms of Reference Process

Before starting to prepare the terms of reference, a proponent must contact the Branch to speak to one of the supervisors in the Environmental Assessment Services Section. After that initial discussion, a Project Officer will be assigned to the file who will then contact the proponent. This Project Officer will serve as the one-window ministry contact during the terms of reference process and will offer guidance and advice to the proponent and all interested persons about the planning process and their role in it.

The Project Officer will ask the proponent to develop a program for consulting with interested persons during the preparation of the terms of reference. Proponents should identify key milestones in the development

of the terms of reference, such as the identification of alternatives or evaluation criteria, and consult with interested persons at those times. The proponent will refer to the ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process*, for guidance in developing the consultation program. The Project Officer will give the proponent a copy of the Branch's master Government Review Team list, which will help the proponent identify the government agencies and ministries to be consulted who may have a mandated interest in their proposal. Appendix B contains a truncated version of the master Government Review Team list.

As a tool to keep interested persons informed about the proposal, the proponent is advised to maintain a website with information about their proposal. The website, which is to be kept up-to-date and maintained throughout the life of the project, can be used as a depository for notices (of consultation events, for example), reports and studies, and the terms of reference.

When the proponent submits the terms of reference to the ministry for a decision, it must be accompanied by a description and results of the consultation carried out during the preparation of the terms of reference (section 6(3) of the *Environmental Assessment Act*). The Minister will consider this documentation when making a decision about the terms of reference.

The proponent must prepare a Notice of Commencement of Terms of Reference, an example of which can be found in Appendix C. The Notice will announce the start of the planning process and will provide information to interested persons about what is being proposed and how to become involved. The proponent should discuss with the Project Officer about to whom and how the Notice is to be given. Generally, the Notice should be given in an accessible location, such as a newspaper and on the website that will be maintained for the project. A copy of the Notice is to be sent to the Project Officer.

The proponent should consult with the Canadian Environmental Assessment Agency early in the process to determine if the *Canadian Environmental Assessment Act, 2012* applies to its proposal. Through the passage of the Canada-Ontario Agreement on Environmental Assessment



Cooperation, Canada and Ontario have committed to work closely to coordinate their environmental assessment requirements.

### *Consultation with Aboriginal Communities*

Consultation with potentially affected Aboriginal communities is also required. Proponents should prepare a list of Aboriginal communities that are potentially affected by or interested in an undertaking. In doing so, the proponent shall contact the organizations listed on the environmental assessment page of the ministry's website<sup>2</sup>, such as the Ministry of Aboriginal Affairs and Aboriginal Affairs and Northern Development Canada, to identify which Aboriginal communities should be contacted about the project.

Consultation with Aboriginal communities at the terms of reference stage is intended to allow the proponent to identify and consider potential concerns and issues of Aboriginal communities and to provide those communities with an opportunity to receive information about and have meaningful input into the development of the terms of reference. In addition, it is the intent of such consultation to address situations where the Crown may have a duty to consult with Aboriginal communities.

It should be noted that whether or not the Crown has a constitutional duty to consult with an Aboriginal community, the community may be an interested person for the purposes of consultation about the terms of reference. Any reference to interested persons in this Code should be read to include Aboriginal communities.

Aboriginal rights and treaty rights are protected by section 35 of the *Constitution Act, 1982*. Aboriginal rights stem from the practices, customs and traditions, which are integral to the distinctive culture of the Aboriginal community claiming the right. Treaty rights stem from the signing of treaties by Aboriginal communities with the Crown.

The Crown may have a duty to consult with Aboriginal communities in order to satisfy the Crown's responsibilities with potential adverse impacts of undertakings on asserted or established Aboriginal or treaty rights. In

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<sup>2</sup> The environmental assessment page of the ministry's website can be found at [www.ontario.ca/government/environment-assessments-consulting-aboriginal-communities](http://www.ontario.ca/government/environment-assessments-consulting-aboriginal-communities).

this event, the approach to consultation will vary depending on the specifics of each proposed undertaking.

This Code is not intended to fully describe how any duty, if it is triggered, may be discharged. However, the Crown may delegate the procedural aspects of consultation to proponents, and recognizes a corresponding responsibility of Aboriginal communities to participate in this process, make their concerns known and respond to efforts to address their concerns.

## 5.2 Drafting the Terms of Reference

After developing the consultation program and issuing the Notice of Commencement of Terms of Reference, the proponent can start drafting the terms of reference. The proponent should consult with the Project Officer as needed while drafting the terms of reference. It is the proponent's responsibility to submit a terms of reference that will result in an environmental assessment about which the Minister can make an informed decision.

The content of each terms of reference will differ based on the proposed undertaking, or the problem or opportunity. The content and amount of detail identified in a terms of reference will also differ based on how far in the planning process the environmental assessment process was initiated. While the *Environmental Assessment Act* sets out the generic requirements that must be addressed in the environmental assessment, the Minister may approve, through the terms of reference, exceptions to these requirements. The Minister may require additional information or may determine that some of the generic requirements are not necessary as long as the proposed terms of reference is consistent with the overall purpose of the *Environmental Assessment Act* and in the public interest.

All terms of references will not be the same. They will differ based on the proponent, the problem or opportunity to be dealt with and when the process was initiated.

The *Environmental Assessment Act* does not identify what is to be included in the terms of reference. In addition to meeting the requirements of section 6 of the *Environmental Assessment Act*, it is the

ministry's expectation that the terms of reference discuss the following elements, as applicable:

- Identification of the proponent;
- Indication of how the environmental assessment will be prepared;
- Purpose of the study or undertaking;
- Description of and rationale for the undertaking;
- Description of and rationale for alternatives;
- Description of the existing environment and potential effects of the undertaking;
- Assessment and evaluation;
- Commitments and monitoring;
- Consultation plan for the environmental assessment;
- Flexibility to accommodate new circumstances;
- Other approvals required.

It is the responsibility of the proponent to consult with interested persons during the preparation of the terms of reference. The proponent is responsible for documenting the consultation activities and their results, and submitting the documentation with the proposed terms of reference when it is submitted for approval.

It is mandatory for a proponent to consult all interested persons while it is preparing the terms of reference.

### **5.2.1 Identification of the Proponent**

The terms of reference is to include a brief, clear statement identifying the proponent. If there is more than one proponent, the relationship between them and how they plan to work together, including their responsibilities, throughout the environmental assessment process must be explained. It will be the responsibility of the proponent(s) to prepare the environmental assessment in accordance with the terms of reference if it is approved.

### 5.2.2 Indication of How the Environmental Assessment Is to Be Prepared

According to subsection 6(2) of the *Environmental Assessment Act*, the terms of reference must either:

- (a) Indicate that the environmental assessment will be prepared in accordance with the general requirements in subsection 6.1(2);
- (b) Indicate that the environmental assessment will be prepared in accordance with such requirements as may be prescribed for the type of undertaking the proponent wishes to proceed with; or,
- (c) Set out in detail the requirements for the preparation of the environmental assessment.

Determining under which section the environmental assessment is to be prepared should be discussed with the Project Officer. If a proponent is in the very early stages of the planning process following the requirements of subsections 6(2)(a) and 6.1(2) of the *Environmental Assessment Act* will provide a systematic framework for determining the undertaking for which approval will ultimately be sought. Subsection 6.1(2) outlines the generic requirements of what an environmental assessment should include, such as the identification and evaluation of alternatives.

A proponent should use subsections 6(2)(a) and 6.1(2) if it is early in the planning process and is not sure of the details of its proposal, such as the undertaking, alternatives or potential environmental effects.

Submission under subsection 6(2)(b) is currently not possible as no requirements for any types of undertakings have been prescribed.

Proponents who are further along in their planning may be in a better position to define how they intend to prepare their environmental assessment and may be able to follow subsections 6(2)(c) and 6.1(3) of the *Environmental Assessment Act*. Subsection 6.1(3) states that the environmental assessment can consist of information other than the generic

A proponent should use subsections 6(2)(c) and 6.1(3) if there is a more defined planning process and more details of the proposal are already known (for example, the potential alternatives it wishes to evaluate).

requirements outlined in subsection 6.1(2).

Defining that the environmental assessment is to be prepared in accordance with 6(2)(c) and 6.1(3) of the *Environmental Assessment Act* (that is, including more or less of the generic requirements outlined in subsection 6.1(2)) is commonly known as “focussing” though the term is not used in the legislation. The elements of the environmental assessment that is prepared under subsection 6.1(3) should not differ drastically from the generic elements outlined in subsection 6.1(2), and the proponent must be clear in the terms of reference about what will be different. Justification for following subsection 6(2)(c) must be provided in the proposed terms of reference and is subject to the Minister’s approval.

Think of the purpose as a problem to be solved or an opportunity to be pursued.

Further information about how the subsection under which the environmental assessment will be prepared may be affected by the alternatives that will be considered, can be found on page 29, Section 5.2.5, Description of and Rationale for Alternatives.

### **5.2.3 Purpose of the Study or Undertaking**

The terms of reference should contain a brief description of the purpose of the study to be carried out. The purpose can be as general or specific as warranted; however, it should be general enough to allow a reasonable range of alternatives to be considered. If the proponent already knows some details about the undertaking for which approval will ultimately be sought, the purpose of it can be generally stated in the terms of reference.

What does the proponent wish to achieve by engaging in the environmental assessment process? Why does the proponent need to do this study or pursue a particular undertaking? These are two questions to consider when determining the purpose of the study or the undertaking. The response, that is, the purpose, may be stated in terms of the intended effect on society, the particular problem to be solved or alleviated, or the opportunity which is to be pursued. The possible solutions and criteria for evaluating them must not be included in the purpose statement.

For example, for many waste management undertakings a common purpose is to provide waste disposal capacity for a particular municipality

for a particular number of years. The reasoning behind this is usually that the local landfill is nearing capacity and the environmental assessment process has been initiated to find a solution to the impending waste management problem.

For a transportation undertaking, the purpose may be to provide additional roadway capacity for people and goods between points A and B within a defined study area over a particular number of years.

The proponent will refine the purpose statement if required as it proceeds through the planning process and present the final purpose statement in the environmental assessment. The proponent will state this commitment in the proposed terms of reference.

#### **5.2.4 Description of and Rationale for the Undertaking**

If known, the terms of reference should contain a preliminary description of the undertaking for which approval will be sought. Ultimately, the environmental assessment will contain the detailed description of the undertaking. Proponents may choose to begin the environmental assessment process before an undertaking is defined. In this case, the description of the proposed undertaking will be conceptual until a specific undertaking is selected from the alternatives that are to be considered. Alternately, a proponent may begin the environmental assessment process with a well-defined undertaking that has been identified through previous planning studies.

In the environmental assessment, the rationale for the proposed undertaking will be required. If an undertaking is described in the terms of reference then the rationale for it should also be given. If the proponent is early in the planning process and the proposed undertaking is not yet known, a commitment to provide the description and rationale for the undertaking in the environmental assessment should be stated in the terms of reference.

The proponent can provide in the terms of reference a preliminary description of the undertaking and the rationale for it. Consequently, the proponent can **make** a commitment in the terms of reference to provide both in the environmental assessment.

The description and rationale will evolve during the preparation of the environmental assessment. Therefore, the proponent should state in the

terms of reference that the final description of the proposed undertaking and the rationale for it will be included in the environmental assessment once alternatives have been considered and evaluated.

There may be occasions when the rationale for a proposed undertaking has already been determined through another planning process or results from a provincial government priority initiative outside of the environmental assessment process such as Growth Plans under the *Places to Grow Act, 2005*, provincial transportation network plans, transportation or infrastructure Master Plans, provincial government priority initiatives (announcements in throne speeches, budget announcements or initiatives in provincial plans), or Official Plans which have been approved under the *Planning Act*, for which there was public consultation.

In these cases, it is sufficient to state in the terms of reference that the rationale for the proposed undertaking is the result of another process or initiative which should be identified. Additional information can be provided in the supporting documentation that outlines the other process or initiative which provides the rationale, the decisions made around the process or initiative and the consultation that took place. Proponents, during the environmental assessment, can rely on the previous process or initiative to provide rationale for the proposed undertaking without having to justify their choices again.

### **5.2.5 Description of and Rationale for Alternatives**

At the heart of the environmental assessment planning process in Ontario is the comparative analysis of alternatives, assessing the advantages and disadvantages of the alternatives and determining the best alternative that is appropriate to address the problem or opportunity.

In the terms of reference, it is essential to set out a reasonable range of alternatives to be examined in the environmental assessment or the process by which a reasonable range of alternatives will be determined in the environmental assessment. This should be done in consultation with the ministry, other provincial and federal agencies, and other interested persons.

### *Why Look at Alternatives?*

Subsection 6.1(2) of the *Environmental Assessment Act* requires that proponents consider alternatives in the environmental assessment. The purpose of this requirement is to ensure that the most appropriate means of addressing the identified problem or opportunity is selected. For public sector proponents, one purpose of looking at alternatives may be to justify the expenditure of public dollars in the most environmentally responsible manner. For a private sector proponent, it may be as simple as determining the best way to implement a business plan. Examining alternatives assists in identifying potential environmental effects and illustrates the advantages and disadvantages between various options for solving a problem or taking advantage of an opportunity that provide societal benefits. The documentation of this process is not required for the terms of reference (just the commitment to do so is) but the environmental assessment will need to illustrate why and how the proponent has selected the preferred alternative.

### *Types of Alternatives*

The *Environmental Assessment Act* makes reference to two types of alternatives: “alternatives to” a proposed undertaking and “alternative methods” of carrying out a proposed undertaking. Alternatives to a proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity (what types of activities will address the problem or opportunity). Alternative methods are different ways of performing the same activity (where and how). Any general references to alternatives in this Code include both alternatives to a proposed undertaking or alternative methods of carrying out a proposed undertaking.

For transportation undertakings, alternatives to could include: new or improved public transit, rail service, air service, traffic demand management and new or improved roads. For a road alternative, alternative methods could include: improvements to existing roads, construction of a new road, different road types and different road alignments.

Alternatives to for energy undertakings could include: transmission of energy, new generation and conservation (reduction in demand for



energy). Alternative methods for a transmission line could include: different locations or alignments, line voltages, tower design and ancillary facilities.

These examples are illustrative only and there could be more, less or different alternatives that a proponent may wish to consider. The range of alternatives to be considered is determined by the proponent on a case-by-case basis taking into account specific circumstances, the technical requirements of the Government Review Team, and the views of the public, Aboriginal communities and other interested persons.

### *Range of Alternatives to be Examined*

The consideration of a range of alternatives which is reasonable for the intended study is an important component of an environmental assessment. The ministry refers to this as a reasonable range of alternatives. It is important to consult with interested persons early in the

There is no magic number of alternatives that must be considered. The alternative(s) chosen should address the stated problem/opportunity and be within the proponent's ability to implement.

planning process before decisions are made to include or exclude certain alternatives. The Project Officer can also assist the proponent; however, the decision about what constitutes a reasonable range of alternatives remains the proponent's responsibility, subject to the Minister's approval.

The range of alternatives that will be considered should address the problem or opportunity and be within the scope of the proponent's ability to implement. It should be determined by the significance of potential environmental effects of the proposed undertaking, and the circumstances specific to the proposal (for example, the proponent's situation, timing, financing).

Where appropriate, proponents may conduct an initial screening of alternatives before or at the terms of reference stage to determine the range of alternatives which will be examined in the environmental assessment. Screening criteria need to include considerations of key environmental factors such as the potential impacts to the natural environment, potential cultural and socio-economic impacts and impacts to Aboriginal and Treaty rights. Consultation on scoping should be carried out. Placing a general overview of the screening results in the terms of

reference may help interested persons to understand how alternatives were selected for further study. The detailed screening results should be included in the supporting documentation rather than in the terms of reference itself. This supporting documentation will be subject to public comment and will be considered by the Minister in his decision whether to authorize the scoping.

When determining the alternatives that will be considered in the environmental assessment, the proponent should, at a minimum, consider the following:

- Do they provide a viable solution to the problem or opportunity to be addressed?
- Are they proven technologies?
- Are they technically feasible?
- Are they consistent with other relevant planning objectives, policies and decisions (for example, Official Plan, Provincial Policy Statement, Growth Plans under the *Places to Grow Act, 2005*)?
- Are they consistent with provincial government priority initiatives (for example, waste diversion, energy efficiency, source water protection, reducing greenhouse gas emissions)?
- Could they affect any sensitive environmental features (for example, provincially significant wetlands, prime agricultural area, endangered species habitat, floodplains, archaeological resources, built heritage)?
- Are they practical, financially realistic and economically viable?
- Are they within the ability of the proponent to implement?
- Can they be implemented within the defined study area?
- Are they appropriate to the proponent doing the study?
- Are they able to meet the purpose of the *Environmental Assessment Act*?

It should be noted that these questions can be used to help proponents identify a reasonable range of alternatives; however, these questions are not intended to be used by proponents to identify the preferred alternative to bring forward into an environmental assessment by screening out all other alternatives.

The identification of the preferred alternative should be carried out as part of the environmental assessment and not the terms of reference. Any decisions that lead to the focussing of alternatives need to be documented and demonstrate the consideration of key environmental factors such as potential impacts to the natural environment, cultural and socio-economic impacts, and potential impacts to Aboriginal and treaty rights, including consultation with all interested stakeholders during the decision-making process.

It is important to note that what is reasonable for one proponent to implement may not be reasonable for another when trying to solve a similar problem because the circumstances between proponents may vary widely. A private sector proponent's inability to expropriate land or implement public programs will influence the range of alternatives it may examine. Public sector proponents may be restricted by geographic area, jurisdiction, or broader land use planning decisions (for example, Official Plans, Growth Plans, Provincial Policy Statement). Environmental assessments are often required to implement projects resulting from broader policy decisions for the public sector and therefore may be limited in the number of alternatives that are examined. The ministry recognizes that there may be restrictions on some proponents that will limit the range of alternatives examined. The proponent must provide justification in the terms of reference for limiting the examination of alternatives.

For example, a municipality and a private sector proponent would both like to increase waste disposal capacity in a semi-rural community. The municipality might consider one or more of the following as a reasonable range of alternatives to:

- Waste diversion program;
- Export;
- Landfill; or,
- Thermal technology.

The private sector proponent may only consider landfill or on-site diversion because:

- It cannot implement a municipal waste diversion program such as curbside recycling;

- Export would affect their business; and,
- Thermal technology is not economically viable because waste volumes are too small.

Alternative methods for the municipality could include a site selection process for the alternative chosen, as they have the ability to expropriate land. For a private sector proponent, there may be different designs on one site as they only own one site and cannot expropriate.

Some proponents of undertakings such as resource undertakings, trail development, service area expansions, expansions of existing transit facilities, may not have any alternatives to their proposal or aspects of their proposal, other than the “do nothing” alternative. If this is the case, the proponent should discuss this with the Project Officer. The examination of one alternative compared against the do nothing alternative is acceptable as long as justification is provided for doing so and consultation on that justification has been or will be carried out. However, proponents take a risk that the limited alternative may not be acceptable to the Minister when a decision is made, and that the proposal may not go ahead.

### *Do Nothing Alternative*

The do nothing alternative represents what is expected to happen if none of the alternatives being considered is carried out. The consideration of the do nothing alternative assists all participants. It is a benchmark against which the consequences of the alternatives can be measured in order to determine, amongst other things, the extent to which other alternatives address the problem or opportunity. The do nothing alternative can also highlight the benefits of proceeding with the proposal. A clear presentation of the do nothing alternative also helps the Minister in deciding whether the undertaking should be allowed to proceed. It is generally considered to be good environmental assessment practice to include the do nothing alternative. Proponents can then compare other alternatives with the do nothing alternative.

The “do nothing” alternative should always be considered – it acts as a starting point for the comparison of alternatives.

### *How Alternatives Can Affect the Way in Which the Environmental Assessment Will Be Prepared*

There are three different ways in which a proponent can prepare an environmental assessment. As outlined on pages 26 and 21, Section 5.2.2, Indication of How the Environmental Assessment Is to Be Prepared, the terms of reference must indicate how the environmental assessment will be prepared. Subsection 6(2) of the *Environmental Assessment Act* sets out three different ways in which an environmental assessment can be prepared. As no requirements for any types of undertakings have been prescribed, a proponent cannot currently proceed under subsection 6(2)(b) of the *Environmental Assessment Act*. Proponents are therefore proceeding under either subsection 6(2)(a) or subsection 6(2)(c).

Proponents who are in the early stages of planning and have not identified a potential solution to their problem or opportunity are advised to follow subsection 6(2)(a), which states that the environmental assessment will be prepared in accordance with the generic requirements outlined in subsection 6.1(2) of the *Environmental Assessment Act*.

The alternatives to be considered will most likely affect under which section of the *Environmental Assessment Act* the environmental assessment is prepared. Make sure to read this section in conjunction with Section 5.2.2 of this Code for a full understanding.

Proponents proceeding under subsections 6(2)(a) and 6.1(2) are obligated to include consideration of a reasonable range of both types of alternatives in the environmental assessment. A terms of reference prepared under subsection 6(2)(a) should clearly state which alternatives will be considered in the environmental assessment or the process by which alternatives will be identified and evaluated. Generally proponents would outline the alternatives to in the terms of reference and state that the alternative methods will be identified and evaluated once a preferred alternative to is chosen. If the proponent chooses to also identify alternative methods in the terms of reference, it should identify alternative methods for all the alternatives to so that it is clear that the proponent has not pre-determined what alternative to is preferred.

In the event that the proponent has already done work as part of another process that has similar requirements to the *Environmental Assessment Act*, and can provide justification for the process followed, the

environmental assessment could limit the discussion to alternative(s) that address the specific needs and circumstances of that undertaking. In this case, it may be more appropriate for a proponent to follow subsection 6(2)(c) and set out in detail the requirements for preparing the environmental assessment. The environmental assessment would then be prepared under subsection 6.1(3) of the *Environmental Assessment Act*, which states that the approved terms of reference may provide that the environmental assessment consist of information other than the generic requirements as outlined in subsection 6.1(2).

If proceeding under subsections 6(2)(c) and 6.1(3), the terms of reference must set out detailed requirements for the preparation of the environmental assessment. This approach was designed for proponents who are more advanced in their decision-making and have already identified a specific undertaking for which the consideration of alternatives to is not appropriate (that is, have carried out a planning and decision-making process that has included consultation with interested persons on the criteria and assessment to identify a more limited scope of alternatives to and the proponents have fully documented that process), or for proponents who are relying on another public planning process that has developed alternatives to the preferred alternative. In such cases, the terms of reference may propose that the environmental assessment only need to focus on alternative methods. This is often the case for many private proponents, or Crown ministries or agencies (for example, Ministry of Transportation) who have a specific type of business or a specific mandate. If proponents are limiting the discussion to only look at alternative methods, the terms of reference should identify this and set out the alternative methods to be examined or the process by which they will be identified at the environmental assessment stage.

It should be noted that in some instances, it might not be appropriate to limit the range of alternatives (that is, alternatives to or alternative methods) to be considered. For example, where the impacts of a project may be significant and focussing the alternatives would restrict the proponent's ability to evaluate other alternatives with fewer impacts, a proponent should consider looking at a range of alternatives to ensure the terms of reference will produce an environmental assessment that is consistent with the purpose of the *Environmental Assessment Act* and the public interest. In these cases, the proponent should consult with the ministry before determining what approach it takes.

### *Integrating Previous Planning Work to Reduce Duplication*

Cases may arise where proponents have previously considered alternatives during a separate planning or decision-making process. If the earlier process had similar provisions to those of the *Environmental Assessment Act* such as:

- An examination of alternatives;
- Regard for the environment and environmental effects;
- Public consultation with interested persons such as the public, Aboriginal communities and municipalities;
- Ability for the public to inspect the planning document in its entirety;
- Approval by a recognized decision-making body in a transparent manner such as municipal council resolution or provincial government policy decision<sup>3</sup>,

then the proponent may propose to limit the discussion of previously examined alternatives. Relevant information previously considered under provincial transportation network plans, transportation or infrastructure Master Plans, Growth Plans under the *Places to Grow Act, 2005*, Official Plans approved under the *Planning Act* and business plans are examples of documents that could be submitted with a terms of reference as part of the supporting documentation to support the selection of alternatives for examination in the environmental assessment.

It is possible to use the results of previous planning work where it is done in a manner similar to the *Environmental Assessment Act* as a starting point for the terms of reference planning process.

There are also times when proposed undertakings result from a provincial government priority initiative. Provincial government priority initiatives include announcements in throne speeches, budget announcements or initiatives in provincial plans. In these cases it may be difficult to examine the usual range of alternatives as the actual undertaking has been defined by the initiative. If this is the case, the project documentation should outline the rationale for not examining alternatives and the extent to which

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<sup>3</sup> Approval for a provincial government policy decision could be from an Assistant Deputy Minister, a Deputy Minister or a Minister.

any previous planning supports the provincial government priority initiative.

If a proponent chooses to rely on previous planning work to limit the discussion of alternatives, then the rationale for doing so must be evaluated for its appropriateness, relevance and accuracy as it relates to provincial plans, policies and interests (for example, Provincial Policy Statement, Growth Plans under the *Places to Grow Act*, 2005).

While the option to rely on previous planning work to limit the discussion of alternatives to is available to proponents, it is not mandatory. Proponents may still choose to examine a broader range of alternatives to, if it is more appropriate to do so in the particular circumstances.

Any pre-planning work that focuses alternatives needs to be documented in the terms of reference in a transparent and logical manner, so that it is clear what criteria were used and the nature of the evaluation that was conducted that led to that decision-making and the consultation conducted in respect of this pre-planning. The documentation should clearly identify how similar provisions to those of the *Environmental Assessment Act* were part of this pre-planning process. These details need to be included in the terms of reference itself with appropriate supporting documentation.

The key is that the range and type of alternatives included by the proponent in the terms of reference can vary as long as the justification provided ensures that the terms of reference will produce an environmental assessment that enables the Minister to make an informed decision about the proposed undertaking.

#### *Rationale for Alternatives*

In the terms of reference, the statement of the rationale for the alternatives that will be examined in the environmental assessment should be provided to assist the Minister in determining whether the terms of reference is consistent with the purpose of the *Environmental Assessment Act* and the public interest (protect the environment, provide societal benefits). If the alternatives have not been identified, the terms of reference should make a commitment to provide the rationale for the alternatives in the environmental assessment. In the supporting documentation, more explanation about the rationale behind why certain alternatives were



chosen for further consideration and other possible alternatives were eliminated from consideration can be included.

### **5.2.6 Description of the Environment and Potential Effects**

The terms of reference should contain a brief or preliminary description of the existing environment in order to gain a contextual understanding of the problem or opportunity as well as an understanding of the potential environmental effects that should be examined. Before the existing environment is described, a study area must be defined.

#### *Study Area*

The study area is the area within which activities associated with the undertaking will occur and where potential environmental effects will be studied. While it is preferable that the study area remain the same for all alternatives, it may vary depending on the alternatives being considered. Care should be taken when defining the study area so that a reasonable range of alternatives can be examined. The study area may be further defined in the environmental assessment when more detailed information is known and the alternatives to be considered have been determined. A map of the study area should be included (on its own 8.5 inches by 11 inches page) within the terms of reference. There may be circumstances where because of the nature of the undertaking, its location is already known. If this is the case, the location of the undertaking should be clearly shown on the map.

#### *Description of the Environment*

Once the study area is defined, the environment within that area can be described. The description of the environment will address all components of the environment that are included in the *Environmental Assessment Act* definition.

The “environment” is broadly defined in the *Environmental Assessment Act* – all of its components must be described.

That includes a general description of the social environment, cultural environment, economic environment, built environment and natural environment. Generally, each “environment” is broken down into its component parts, though some overlap between the different environments is possible. For example, in a description of the natural environment, at minimum, geology, hydrogeology and biology will be

described. For the social environment, a proponent may describe the characteristics of people living in the study area, the community and recreation features, and community character. The preliminary description of the environment should be sufficiently detailed to allow the Government Review Team to determine whether the proposed studies will meet the information requirements of the particular agency. A final and more detailed description of the environment is not required for the terms of reference but will be required in the environmental assessment. The requirement to provide the final detailed description in the environmental assessment should be noted in the terms of reference.

The terms of reference should include a list and brief explanation of the tools (for example, studies, tests, surveys, mapping) that will be used to provide a more detailed description of the environment in the environmental assessment. This list will not preclude the proponent from conducting additional or more detailed studies as part of the environmental assessment. If the proponent intends to use or may potentially use existing studies to supplement the description of the environment in the environmental assessment, this intention must be clearly stated in the terms of reference.

### *Potential Effects*

The environment that is described is the environment that is potentially affected by the proposed undertaking and its alternatives. The environmental assessment will need to examine the potential effect of the alternatives and the undertaking on all components of the environment. Potential effects can be positive or negative, direct or indirect, short- or long-term. The actions necessary to change, mitigate or remedy any environmental effects will be required in the environmental assessment. The environmental assessment should also attempt to examine the interrelationships between components of the environment and the undertaking and its alternatives, for example, how the project could interrelate with a changing climate over time.

The requirement to examine potential environmental effects and measures to manage any potential environmental effects must be reflected in the terms of reference. The proponent should also consider whether there could be environmental effects resulting from effects of the proposal combined with effects of other past and future undertakings. The

proponent may wish to include in the terms of reference a preliminary list of the potential environmental effects. However, the actual determination of environmental effects, or the actions necessary to manage any effects, are not needed for the terms of reference, but will be required for the environmental assessment.

### 5.2.7 Assessment and Evaluation

In order to identify the undertaking for which *Environmental Assessment Act* approval will be sought, the proponent must conduct a systematic evaluation of the alternatives. The list below generally outlines the steps in an evaluation process. In this situation, alternatives to and alternative methods will be examined. The example given is for illustrative purposes only and proponents are expected to develop a process, which is suited to their particular study.

Assessment and Evaluation Process	
1.	Identify alternatives to.
2.	Collect data (criteria/indicators/data sources).
3.	Evaluate alternatives to (potential effects, impact management, net effects, advantages/disadvantages).
4.	Identify preferred alternative to (one or more could be selected).
5.	Identify alternative methods for the preferred alternative to.
6.	Collect data (criteria/indicators/data sources).
7.	Evaluate alternative methods (potential effects, impact management, net effects, advantages/disadvantages).
8.	Identify preferred alternative method (one or more could be selected).
9.	Identify the proposed undertaking.

In order to evaluate the alternatives, criteria, indicators and methods must be developed. As much as possible, this should be done in the terms of reference. Detailed reasons for the selection of criteria, indicators and methods are not needed in the terms of reference. Such detail could be included in the supporting documentation, and then provided in the environmental assessment when it is prepared. However, sufficient information about them, or how they will be developed, should be given in

the terms of reference to ensure that they can be understood by interested persons who are then able to provide informed comments.

### *Criteria and Indicators*

The proponent should develop criteria to assess the effects of the alternatives and the undertaking on the environment and present the criteria in the terms of reference.

The preliminary list of criteria is to be linked as much as possible to each component of the environment (such as criteria for the natural, social, economic and cultural environments) as the effects of the alternatives and the undertaking on the environment will need to be described in the environmental assessment. As required, each criterion should have one or more indicators that will identify how the potential environmental effects will be measured for each criterion. There is no minimum number of criteria or indicators, as that is very much dependent on the scale of the proposal and the environment potentially affected.

The criteria developed for the evaluation of alternatives to may be more general than the criteria developed for alternative methods. The criteria tend to get more specific as a proponent moves from the alternatives to evaluation to the alternative methods evaluation. Also, the level of detail at which alternatives are evaluated will normally increase as the proponent proceeds through the planning process. As more information is acquired about the potential environmental effects and the areas of concern to interested persons, it may result in more detailed criteria or produce changes in criteria. The criteria and indicators identified at the terms of reference stage should be considered preliminary and the terms of reference should clearly state that the criteria and/or indicators may change and will be further refined in the environmental assessment. In the environmental assessment, justification for any change to the criteria or indicators outlined in the terms of reference will need to be provided.

There may be circumstances where the proponent is unable to list any criteria in the terms of reference. If this is the case, the reasons why there are no criteria in the terms of reference, the manner in which the criteria will be developed at the environmental assessment stage, and a commitment to develop them in consultation with interested persons at that time, must be stated in the terms of reference.

In the terms of reference, the proponent should also state the potential data sources for the criteria and indicators. Government ministries and agencies should be consulted to determine whether there are any policies, guidelines, standards or methods that should be followed. Local community organizations are also great sources of data. The chart below gives examples of potential criteria, indicators and data sources for the different “environments”.

<b>Examples of Criteria, Indicators and Data Sources</b>			
<b>Environment</b>	<b>Criterion</b>	<b>Indicator</b>	<b>Potential Data Sources</b>
Natural	Effect on surface water quality	Number of watercourses in study area	Ministries of the Environment and Natural Resources; local Conservation Authority
Social	Effect on local residences	Number of residences displaced	Property owners; ratepayer groups
Economic	Effect on local businesses	Number of businesses disrupted and/or displaced	Business and property owners; municipal agencies; ratepayer groups
Cultural	Effect on built heritage resources and cultural landscapes	Potential presence of cultural heritage resources in or adjacent to the study area	Municipal registers of properties of cultural heritage value; heritage non-governmental organizations; municipal heritage committees
Built	Effect on sensitive land uses	Number of sensitive land uses within the study area	Review of Official Plans, zoning by-laws and other local plans; municipal/regional officials

### *Evaluation Method(s)*

The next step in the evaluation process is the identification of a method or methods that will be used to assess:

- The potential environmental effects;
- Impact management measures;
- Net effects;
- Advantages/disadvantages.

of the alternatives (both alternatives to and alternative methods, as applicable) and the undertaking on the environment. The evaluation method(s) chosen must be able to produce an assessment that is clear, logical and traceable. A clear, logical and traceable assessment is one in which anyone with the same information could reach the same conclusion without any additional assumptions. The terms of reference should either identify the method(s) to be used and the reason for its selection or outline the general parameters that will be used to identify the method(s) in the environmental assessment.

### **5.2.8 Commitments and Monitoring**

The proponent will include in the terms of reference a statement that the environmental assessment will include a comprehensive list of commitments made by the proponent during the terms of reference process, and where or how they have been dealt with in the environmental assessment. A commitment will also be made in the terms of reference to include in the environmental assessment a comprehensive list of commitments made by the proponent during the preparation of the environmental assessment. These include all commitments relating to:

- Impact management measures (such as, mitigation measures);
- Additional works and studies to be carried out;
- Monitoring;
- Public consultation and contingency planning;
- Documentation and correspondence.

The terms of reference should include a commitment to develop a monitoring framework during the preparation of the environmental

assessment. The monitoring framework will consider all phases of the proposed undertaking (planning, detailed design, tendering, construction, operation, closure and decommissioning).

Where appropriate, this framework must include the following types of monitoring:

- Compliance monitoring; and,
- Effects monitoring.

Compliance monitoring is an assessment of whether an undertaking has been constructed, implemented and/or operated in accordance with the commitments made in the environmental assessment and the conditions of the *Environmental Assessment Act* approval. The environmental assessment will need to provide a strategy that sets out how and when all commitments made in the environmental assessment will be fulfilled and how the proponent will report to the ministry about compliance.

Effects monitoring consists of activities carried out by the proponent after approval of the undertaking to determine the environmental effects of the undertaking.

### 5.2.9 Consultation Plan for the Environmental Assessment

Consultation with interested persons during the preparation of the environmental assessment is mandatory (section 5.1 of the *Environmental Assessment Act*). The terms of reference shall include a plan that outlines the consultation activities that, at a minimum, will take place during the preparation of the environmental assessment. The persons to be consulted include the Government Review Team, local municipalities and interested persons, including any potentially affected

Do not confuse the **Consultation Plan** with the **Record of Consultation**.

The **Consultation Plan** is for future consultation that will take place during the preparation of the environmental assessment. More information is outlined here in Section 5.2.9.

The **Record of Consultation** is for past consultation that took place during the preparation of terms of reference. See Section 5.3.1 below for more information.

Aboriginal communities. At a minimum, those persons who declared an interest in the proposal during the terms of reference stage should be consulted during the environmental assessment stage.

The consultation plan should outline: the general consultation methods proposed; how input from interested persons will be obtained; a description of key decision-making milestones during the preparation of the environmental assessment when consultation will occur (for example, when the preferred alternative is chosen); and, an issues resolution strategy. It is not recommended that a very specific dated schedule be included in the consultation plan. This schedule can be further developed during the environmental assessment stage when it is clearer how the planning process is progressing.

In choosing the most appropriate level of consultation, the proponent should consider the complexity of the proposed undertaking, the level of potential concerns and controversy, and the extent of the potential environmental effects of the proposed undertaking. The ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process*, will give proponents further guidance in developing a consultation plan.

Applicants should include a consultation plan with their terms of reference outlining the consultation opportunities and with whom they intend to consult during the preparation of the environmental assessment. The consultation plan should also include how consultation is to take place with potentially affected Aboriginal communities. Applicants should consider flexibility, additional time needed to review documents and the unique needs of Aboriginal communities when designing a consultation plan including language, remoteness, communication styles/preferences and access to communication tools.

#### **5.2.10 Providing Flexibility to Accommodate New Circumstances**

Subsection 6.1(1) of the *Environmental Assessment Act* states that the environmental assessment must be prepared in accordance with the approved terms of reference. Proponents should be aware that circumstances may arise that could prevent the commitments in the terms of reference from being met. As the terms of reference cannot be amended after it has been approved by the Minister, it is important that flexibility be incorporated when preparing the terms of reference to



accommodate new circumstances. This is particularly useful when few details about the proposal are known at the terms of reference stage.

The terms of reference can be as flexible or prescriptive as the proponent chooses, provided that the terms of reference is consistent with the purpose of the *Environmental Assessment Act* and the public interest. The purpose of building flexibility into the terms of reference is not to allow proponents to completely change the scope of their study at the environmental assessment stage but rather, to allow proponents to adjust aspects of their proposal without having to start the process over again.

Building flexibility into the terms of reference may assist a proponent in dealing with circumstances that may change between the time of the writing of the terms of reference and the preparation of the environmental assessment.

An example of flexibility is when the terms of reference states that the description of the undertaking provided is preliminary and will be finalized in the environmental assessment. Flexibility in the terms of reference will also allow a proponent to refine such things as the study area, criteria and alternatives as input is provided during the preparation of the environmental assessment.

If the terms of reference does not provide flexibility and the need for significant changes are identified at the environmental assessment stage, a new terms of reference must be prepared. Although a new terms of reference can incorporate some or all of the work done for the earlier terms of reference, it will still require processing in accordance with the *Environmental Assessment Act* before it can be approved and will delay the proponent in moving forward.

#### **5.2.11 Other Approvals Required**

Through consultation with the Government Review Team, the proponent may be able to determine what other approvals may be required for their proposal. If the nature of the undertaking is not known, then the commitment to outline the other required approvals in the

The Government Review Team can assist a proponent in determining what other approvals may be required for their proposal. At the terms of reference stage, the list will be considered preliminary.

environmental assessment should be made in the terms of reference.

If some of the other approvals that will be required to make the proposed undertaking operational is known, these other approvals should be outlined in the terms of reference. For example, a linear facility (highway, transit line, transmission line) that crosses a waterway listed as navigable, may require approval from Transport Canada.

If approval is required for several pieces of legislation administered by the ministry, proponents are encouraged to submit documentation that would fulfil the requirements of all the applicable legislation (for example, a joint *Environmental Assessment Act*, *Environmental Protection Act* and *Ontario Water Resources Act* submission for large landfill undertakings).

Proponents should discuss with the Project Officer the benefits of doing this. Proponents should be aware that approval under the *Environmental Assessment Act* comes first and that approval under one legislation does not guarantee approval under another.

#### *Canadian Environmental Assessment Act*

Another approval that may be required is approval under the *Canadian Environmental Assessment Act, 2012*, if for example the proposed undertaking is a new highway that passes through a national wildlife area or is a new facility that treats hazardous waste. Canada and Ontario have committed to work closely to coordinate their environmental assessment requirements and have signed an agreement stating such. The basic premise for the coordination of projects is “one project – one assessment” in order to address federal and provincial environmental assessment requirements. Proponents should contact the Branch if there is the possibility that the *Canadian Environmental Assessment Act, 2012* may also apply to their proposal.

### 5.3 Other Components

The other components to accompany the terms of reference are a Record of Consultation, and if applicable, supporting documentation. Both of these are stand-alone documents that will be reviewed when determining whether the terms of reference should be approved, but are not specifically subject to approval by the Minister.

### 5.3.1 Record of Consultation

Section 5.1 of the *Environmental Assessment Act* states that consultation with “such persons as may be interested” should take place during the preparation of the terms of reference. Section 6(3) of the *Environmental Assessment Act* also requires a proponent to describe this consultation and the results. The proponent will record this information in a document known as the Record of Consultation.

The Record of Consultation will:

- Identify all persons consulted during the terms of reference preparation (personal names not required) and how they were identified;
- Describe the consultation activities which took place (methods, schedule of events, notification that was given about the activity and materials used);
- Describe how interested Aboriginal communities were identified and how they were consulted;
- Clearly and accurately summarize the comments made by all interested persons during the preparation of the terms of reference;
- Describe the proponent’s response and how concerns were considered in the development of the terms of reference;
- Describe any outstanding concerns;
- Include minutes of any meetings held with interested persons;
- Include copies of written comments received from interested persons.

The proponent will present a summary of the comments received and its responses to those comments in a table.

As appropriate, the table should note where in the terms of reference the comment has been addressed.

Comments from the general public should be arranged by type (for example, put all water quality comments together). For the Government Review Team and Aboriginal communities, the comments should be organized by agency and community rather than by issue type.

The Minister of the Environment does not approve the Record of Consultation or the supporting documentation. However, they are considered by the Minister in making the decision about whether to approve the terms of reference.

### 5.3.2 Supporting Documentation

The purpose of supporting documentation is to provide more detailed information that will assist the Minister and other persons in understanding the planning process that the proponent carried out in order to arrive at the proposal.

Information contained in the supporting documentation should support the proponent's proposal by providing justification for the choices made and details of processes or methods used. For example, the supporting documentation could include:

- A more detailed description of the problem or opportunity that prompted the proposed study;
- Information about studies or events that triggered the proponent's involvement with the proposed study;
- Background information supporting the selection of alternatives for further study;
- Business profiles (for private sector proponents).

This information can be organized by chapters (for each topic) or with tabs separating each topic. Reference to the part of the terms of reference which is being explained in more detail should be made. Likewise, the terms of reference should cite references to the supporting documentation.

## 5.4 Draft Terms of Reference

There is no legal requirement to prepare and allow review of a draft terms of reference, but the ministry strongly suggests that a proponent do so. As the *Environmental Assessment Act* requires consultation with all interested persons, preparation and review of a draft terms of reference is one method that a proponent can use to fulfil its

### Why Prepare a Draft Terms of Reference?

- ≈ It allows potential issues to be identified and considered up front;
- ≈ It allows identification of major gaps and omissions that if not corrected may lead to amendments to the document once it is formally submitted;
- ≈ It provides the proponent with early feedback on its proposal.

consultation obligations.

The draft terms of reference must be clearly written. Use of jargon should be limited. It needs to contain sufficient information so that the expert and the lay reader can understand the planning process to be followed for the environmental assessment. Detailed technical information should be provided in the supporting documentation. It is important to cross-reference information so that all readers can find specific information in the terms of reference and supporting documentation. If available for review, the draft terms of reference should be accompanied by the Record of Consultation and any supporting documentation.

The Project Officer will ask the proponent for a draft terms of reference for the ministry's review. The Project Officer will lead the ministry's internal review of the draft terms of reference. The Project Officer will review the draft terms of reference to ensure that it is complete and meets the requirements outlined in this Code before requesting sufficient copies for distribution to the ministry's technical review team. The Project Officer conducts this preliminary review since the ministry technical reviewers only review one draft so it is important that the version being reviewed is as complete as possible. The Project Officer may suggest changes or request that additional work be done before the draft terms of reference is sent for review by the ministry technical reviewers.

The proponent is responsible for consulting with all other interested persons. Government reviewers are not obligated to review a draft document and will not necessarily respond to an unexpected request to review the draft terms of reference by a particular deadline. Proponents should contact (phone, e-mail) each prospective reviewer to discuss the conditions under which a review can be conducted before sending them the draft terms of reference for review. The proponent should discuss with the reviewer the reasons for requesting a review, what information the reviewer needs to do a proper review, and the amount of time that will be needed for the review. As required, a copy of the draft terms of reference and accompanying materials should be sent to each interested member of the Government Review Team.

The proponent will send copies of the draft terms of reference and any other relevant materials to any interested Aboriginal community for its information and comment. Contact should be made with each interested

community before the draft document is sent (follow similar process to that of the Government Review Team).

The proponent will also make sufficient copies available in hard copy in publicly accessible locations to allow other interested persons the opportunity to comment on the document. This will give the proponent an early opportunity to respond to any concerns. A copy of the draft terms of reference and accompanying materials is also to be placed on the project website maintained by the proponent.

It is important that notice of the availability of the draft terms of reference be given to the general public in an accessible forum (for example, newspaper, direct mail, website). A minimum of thirty days should be provided for inspection of the draft terms of reference. For undertakings where there is great interest, it is the ministry's expectation that the proponent will provide more than thirty days for inspection of the draft terms of reference. Though strongly encouraged, the circulation of a draft terms of reference is not a ministry requirement, therefore, it is up to the proponent to determine how much review time should be given. The nature, scale and potential interest in the proposal should be considered in the proponent's determination.

All comments about the draft terms of reference are to be sent directly to the proponent and copied to the Project Officer for information only. Comments sent only to the ministry will be forwarded to the proponent for the proponent to consider. The Project Officer will forward all ministry comments to the proponent. The proponent is responsible for identifying and resolving (or attempting to resolve) any issues raised. As required, the proponent will revise the draft terms of reference to address issues before a final copy is submitted to the ministry for approval. The Record of Consultation must be updated to reflect the results of the consultation about the draft terms of reference.

## 6. Submission of the Proposed Terms of Reference

### 6.1 Preparing for Submission

Once the proponent determines that the terms of reference is suitable for submission to the Minister of the Environment for a decision, it should discuss submission requirements with the Project Officer.

The proponent must notify the Project Officer at least three weeks before it intends to formally submit its proposed terms of reference so that a submission date can be established. The Project Officer will ask the proponent to prepare a Terms of Reference Summary Form and a Notice of Submission. Please see Appendix C for a copy of the Summary Form, and a suggested template for the Notice of Submission. The Summary Form is also found electronically on the environmental assessment page of the ministry's website<sup>4</sup>.

The final Terms of Reference Summary Form must be submitted to the Project Officer (hard and electronic copies) at least two weeks before the formal submission date of the terms of reference. The Terms of Reference Summary Form provides information about the proponent and its proposed undertaking. The information from this form is used by the Project Officer to create a posting that is placed on the environmental assessment page of the ministry's website.

#### Preparing for Submission

1. Discuss with Project Officer potential submission dates;
2. Complete Terms of Reference Summary Form;
3. Prepare Notice of Submission;
4. Arrange for publication of Notice of Submission in local newspaper, etcetera;
5. Prepare required number of copies of terms of reference, Record of Consultation, and any supporting documentation;
6. Deliver copies of documents to the ministry, Government Review Team, Aboriginal communities, public record locations;
7. Ensure Notice of Submission posted by submission date.

**(More detailed instructions are found in this section of the Code.)**

<sup>4</sup> The environmental assessment page of the ministry's website can be found at [www.ontario.ca/environmentalassessments](http://www.ontario.ca/environmentalassessments).

Sections 6(3.1) to 6(3.4) of the *Environmental Assessment Act* require that the proponent give notice about the submission of the proposed terms of reference to the public and the clerk of each municipality in which the proposed undertaking may be carried out. To meet these requirements, the Project Officer will ask the proponent to prepare and submit the Notice of Submission for his or her review at least two weeks prior to the formal submission date. The Notice of Submission shall include:

- a brief description of the proposal,
- a location map,
- places where the terms of reference can be viewed,
- by when and to whom comments about the terms of reference can be made, and,
- Statements that must be included for example, *Freedom of Information and Protection of Privacy Act* information.

Generally, the terms of reference is available for viewing at the Branch, the local ministry office, municipal offices and public libraries. Thirty days is given for the review of the terms of reference. Comments are to be made directly to the Project Officer.

The Notice shall be given on or just before the start of the formal terms of reference review process. The clerk of each municipality in which the proposed undertaking may take place must receive a copy of the Notice. Where possible, the Notice of Submission will be posted in a local newspaper in the study area. If there has been significant public interest in the proposal, the proponent may be directed by the Project Officer to post the Notice in a newspaper more than once, or to directly notify all persons who have participated in

To comply with *Freedom of Information and Protection of Privacy Act* requirements, notices must contain the following statement.

All personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the Ministry of the Environment for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act* or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Project Officer or the Ministry of the Environment's Freedom of Information and Privacy Coordinator at 416-327-1434.



the process thus far. If the study area is large, then postings in multiple newspapers may be necessary. Where it is not possible to post the Notice in a newspaper, the proponent should discuss with the Project Officer alternate posting arrangements. The proponent will also post the Notice and the complete terms of reference submission on the website it has been maintaining for the proposal. As these are minimum notice requirements, the proponent can provide notice in other ways as well (for example, posters placed in a central location, direct mailing, media advertisements).

The proponent must ensure that the Government Review Team and the public viewing locations as outlined in the Notice of Submission receive the proposed terms of reference submission before the start of the formal review period. A copy of the Notice of Submission should be placed with the proposed terms of reference submission at the public record locations so it will be clear when, where and to whom comments are to be sent.

## 6.2 Terms of Reference Submission

The proponent shall submit a sufficient number of copies of the proposed terms of reference, in hard copy, to the ministry at least one week before the formal review period is to begin. An electronic version should also be submitted. Copies of the proposed terms of reference are distributed by the Project Officer to the ministry's technical review team and interested Aboriginal communities. A cover letter addressed to the Director of the Environmental

The terms of reference submission consists of:

- ≈ A submission letter;
- ≈ The proposed terms of reference;
- ≈ The Record of Consultation;
- ≈ If applicable, supporting documentation.

Approvals Branch (attention Project Officer) stating that the proposed terms of reference is being formally submitted must be sent with the terms of reference. Also, according to subsection 6(3) of the *Environmental Assessment Act*, the proposed terms of reference must be accompanied by the Record of Consultation. Any supporting documentation must also be submitted at the same time. Ideally, the terms of reference, the Record of Consultation and the supporting documentation will be submitted as separate volumes. If they are all submitted as one document, the cover letter to the Director should clearly state that only the terms of reference is being submitted for the Minister's approval.

## 7. Review of the Proposed Terms of Reference

### 7.1 Interested Persons

In accordance with the Deadlines Regulation (Ontario Regulation 616/98), once the proposed terms of reference is submitted, the review and decision period lasts for 12 weeks. The Minister's decision is due at the end of those twelve weeks. All interested persons (general public, Aboriginal peoples, government agencies) may inspect and provide comments about the proposed terms of reference during the first 30 days.

The 30-day review period is an opportunity for interested persons to provide comments about components of the proposed terms of reference with which they agree or do not agree.

Comments must be specific and relate to a component(s) of the proposed terms of reference, such as the proposed study area, range of alternatives to be considered or the evaluation methodology. Any potential solutions to the issues raised should also be outlined.

All comments should be sent directly to the Project Officer identified in the Notice of Submission. Comments must be in writing and can be sent by mail, e-mail or fax. Contact information (clearly state name and address) must be included in the submission so that its receipt can be acknowledged. If the public engages in a write-in campaign or organizes a petition, or there are a large number of submissions, individual acknowledgements may not be sent. In the case of a write-in campaign or petition, if there is an organizing body clearly identified, then an acknowledgement may be sent to that body.

Each member of the Government Review Team, including ministry technical reviewers, will conduct its own review of the proposed terms of

Any person may make comments about the proposed terms of reference. Be very specific with the comments by relating them to a particular aspect of the terms of reference.

It is important to remember that at this stage the Minister will not be making a decision about the final undertaking. What is under review here is a planning process to determine how the environmental assessment will be carried out. Determining the feasibility of the final undertaking is to be done at the environmental assessment stage.

reference submission from the perspective of its own mandate. Any comments should be sent directly to the Project Officer.

The Project Officer will examine whether the consultation during the preparation of the proposed terms of reference appropriately identified and dealt with all interested persons, including Aboriginal peoples. Where it is not clear this has been done adequately, the Project Officer will advise what additional steps may be required by either the proponent or the Crown.

The Project Officer will review any comments received during the 30-day review period then forward them to the proponent for a response. The proponent is responsible for responding to all the comments that were received. The summary of the comments and the proponent's responses should be presented in a table. Comments from the general public will be arranged by type (for example, put all water quality comments together). For the Government Review Team and Aboriginal communities, the comments will be organized by agency and community rather than by issue type.

The comments received, and the proponent's responses to them, will be presented to the Minister by the Project Officer and will be considered when the decision is made about the proposed terms of reference.

If there are substantive issues identified during the review period that have not been adequately addressed in the proposed terms of reference, the Project Officer will inform the proponent that changes to the document may be required. In response, the proponent may choose not to make the changes, withdraw the proposed terms of reference, or make amendments to the proposed terms of reference. The proponent must notify the Project Officer in writing as to its intended course. This notification must be received before the deadline for the Minister's decision. If the proponent chooses not to make changes, the proponent runs the risk that the document may not be approvable. If the proposed terms of reference is withdrawn, the proponent may either make a new submission or abandon the proposal altogether.

## 7.2 Amendments to the Proposed Terms of Reference

The normal course of action for a proponent when the Project Officer suggests that revisions are required is to take the time to amend the proposed terms of reference. Potential amendments may include, but are not limited to:

The proponent has up to eight weeks to amend the terms of reference and consult as appropriate about any changes. Following that amendment period, the Minister is given seven weeks to make a decision.

- corrections to factual information;
- administrative changes;
- altering a method of conducting a component of the undertaking that will not change the purpose or intent of the original submission;
- new study requirements;
- providing additional information;
- the need for additional consultation.

If the proponent plans to amend the proposed terms of reference, written notification must be sent to the Project Officer by a mutually agreed-upon date. Failure to notify the Project Officer will mean that the proposed terms of reference will be processed in its unamended form and submitted to the Minister for a decision.

The Deadlines Regulation allows a proponent up to eight weeks to make amendments to the proposed terms of reference. The date the ministry receives written notification of the intent to amend the terms of reference triggers the start of the eight-week period. The proponent is responsible for making any necessary amendments and consulting only those persons who may be affected by the proposed amendments during the eight-week period. The amended terms of reference and an updated Record of Consultation must be submitted once the process is complete.

The suspension of the timelines comes to an end once the eight weeks has passed or the amended terms of reference is submitted to the Project Officer, whichever occurs first. If the amended terms of reference is not received by the end of the eight-week period, the Minister will proceed to consider the proposed terms of reference as it was originally submitted. If the proponent feels that the amendments, and the consultation about

them, cannot occur within the eight-week period, the proponent should withdraw the proposed terms of reference, rather than run the risk that the document as originally submitted is not approvable.

### 7.3 Ministry Recommendation

Following the end of the 30-day review period, and if applicable, after an amended terms of reference is submitted, the Project Officer will evaluate the proposed terms of reference submission and prepare a recommendation for the Minister. The comments received and the proponent's responses to them will also be reviewed. When evaluating the proposed terms of reference submission, the Project Officer will consider, at a minimum, the following:

- Did the proponent meet the legislative requirements of the *Environmental Assessment Act*?
- Did the proponent meet the expectations set out in the ministry's Codes of Practice?
- Is the proposed terms of reference written in plain language that is clear and concise?
- Does the proposed terms of reference identify under which subsection of the *Environmental Assessment Act* the environmental assessment will be prepared?
- Did the proponent identify and consider the concerns raised during the preparation of the proposed terms of reference?
- Have comments received during the review of the proposed terms of reference been adequately considered by the proponent?
- Does the proposed terms of reference and if applicable, the supporting documentation, provide sufficient information to allow the Minister to approve the terms of reference?
- Does the Record of Consultation contain sufficient information about the consultation that took place during the preparation of the proposed terms of reference?
- Would an environmental assessment prepared in accordance with the proposed terms of reference be consistent with the purpose of the *Environmental Assessment Act* and the public interest?

## 8. Minister's Decision About the Proposed Terms of Reference

### 8.1 Decision Options

Subsection 6(6) of the *Environmental Assessment Act* states that the Minister must notify the proponent about whether the proposed terms of reference is approved and must do so by the prescribed deadline. The deadline for the Minister's decision is 12 weeks from the start of the review period. If there are outstanding issues, the Minister may refer the matter to mediation before making a decision. In that event, the twelve-week decision deadline is no longer applicable. The decision would be due seven weeks after receipt of the mediator's report.

There are three decisions the Minister could make about the proposed terms of reference. The Minister may approve the terms of reference, amend and approve the terms of reference, or reject the terms of reference. In making a decision to approve or amend and approve the terms of reference, the Minister must consider the ministry's Statement of Environmental Values and be satisfied that an environmental assessment prepared in accordance with the approved terms of reference will be consistent with the purpose of the *Environmental Assessment Act* and the public interest (subsection 6(4) of the *Environmental Assessment Act*). In coming to this decision, the Minister will consider the proposed terms of reference, the comments made about the terms of reference and the proponent's responses to them, the staff recommendation, and if applicable, a mediator's report. There is no mechanism available under the *Environmental Assessment Act* to appeal the Minister's decision about the terms of reference.

The Minister's decision options are:

- ≈ Approve;
- ≈ Approve with amendments; or,
- ≈ Reject.

### 8.2 Notification of the Minister's Decision

After the Minister makes a decision about the proposed terms of reference, the proponent will be notified directly by the Minister and provided with written reasons for the decision. While the ministry makes

every effort to render a decision in a timely manner, there may be times when a decision is not made by the prescribed deadline. Subsection 10(4) of the *Environmental Assessment Act* states that the Minister's decision is not invalid solely on the basis that it is not made by the applicable deadline. The proponent is advised not to begin preparation of the environmental assessment until a decision about the proposed terms of reference is made by the Minister.

The Project Officer will notify members of the public, who submitted comments during the comment period and provided a current mailing address, of the Minister's decision. The Project Officer will also provide notification of the Minister's decision to Aboriginal communities and those members of the Government Review Team who provided comments. When a large number of submissions are received, the ministry may determine that it is not practical to notify each person individually and will provide some form of community notification, such as a newspaper posting. In addition, the environmental assessment page of the ministry's website will be updated to reflect the Minister's decision.

### 8.3 Moving on Past the Terms of Reference Stage

If the Minister approves the terms of reference or amends and approves the terms of reference, the proponent can begin preparing an environmental assessment. Proponents should be aware that the environmental assessment must be prepared in accordance with the approved terms of reference, including any amendments made by the Minister.

Approval of the terms of reference does not mean that the final undertaking will be approved. Approval of the terms of reference just gives the proponent the authority to proceed with the environmental assessment to determine the feasibility of its proposal.

An approved terms of reference may become dated if too much time passes between when it was approved and when the environmental assessment is prepared; for example, the environmental features in the study area may have changed or agency requirements may have changed. Although there is no expiry date, the proponent should be aware that an environmental assessment prepared in accordance with an outdated terms of reference may not provide sufficient information for the Minister to grant approval to proceed with an undertaking as presented in the environmental assessment. It is

important that the terms of reference is written with some flexibility in order to accommodate potentially changing circumstances.

If the Minister decides not to approve the terms of reference, the proponent may choose to either abandon the proposal or submit a new terms of reference. As there are reasons given with the Minister's decision, these reasons should be taken into consideration by a proponent in making the decision about whether to restart the environmental assessment process.



## 9. Other Matters

### 9.1 Public Record

According to section 30 of the *Environmental Assessment Act*, the Director must maintain a record for each proposed undertaking for which an application for approval under the *Environmental Assessment Act* is submitted. The record is maintained at the Branch and is usually available within 24 hours of it being requested by any person.

The public record file must contain the proposed and the approved terms of reference, all notices given, the Minister's decision, and such other documents as the Minister or Director considers appropriate. As a matter of practice, the Branch also includes all information submitted by the proponent during the preparation and review of the terms of reference and all comments received by other interested persons during the preparation and review of the terms of reference.

### 9.2 Considering the Needs of Francophone Communities

The ministry is committed to consulting and communicating in French with Francophone individuals, organizations, municipalities and communities in or near the 25 bilingual areas ([www.ofa.gov.on.ca/en/flsa-mapdesig.html](http://www.ofa.gov.on.ca/en/flsa-mapdesig.html)) designated under the *French Language Services Act*.

While there is no statutory requirement for proponents to specifically engage the Francophone community, the ministry expects all members of the public to be adequately consulted and engaged during the environmental assessment process. The *Environmental Assessment Act* requires that a proponent consult with any person who is interested.

Accordingly, in conjunction with this Code, proponents should:

- Note that the Francophone population is included in the definition of interested persons,
- Follow the guidelines related to consultation and communication with Francophones outlined in the *Code of Practice: Consultation in Ontario's Environmental Assessment Process*.

This Code of Practice is intended to provide proponents and other interested persons with an understanding of how to prepare a terms of reference and how it is reviewed by the ministry. Specific questions about a terms of reference for a particular undertaking should be referred to the Project Officer assigned to the proposed undertaking.

Those interested in information about Ontario's environmental assessment process should consult the Ministry of the Environment's website or contact the ministry at the address below to obtain process, consultation and mediation guidance.

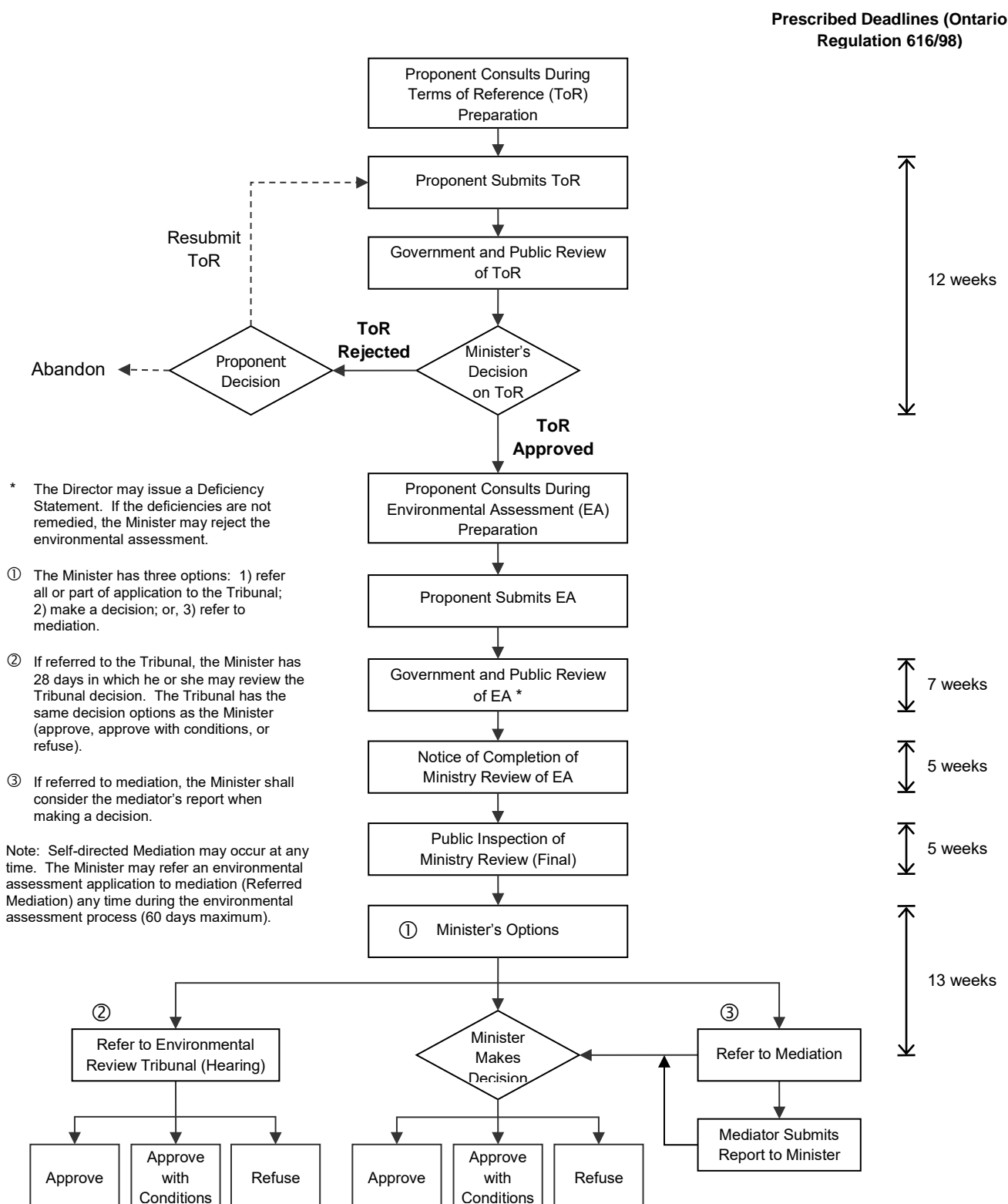
Ministry of the Environment  
Environmental Approvals Access and Service Integration Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5 Canada

Telephone: 416-314-8001  
Toll Free: 1-800-461-6290  
Fax: 416-314-8452  
E-mail: [EAASIBGen@ontario.ca](mailto:EAASIBGen@ontario.ca)  
Website: [www.ontario.ca/environmentalassessments](http://www.ontario.ca/environmentalassessments)

In addition, the ministry has guidance materials for the following key elements of the environmental assessment process:

- Class environmental assessments
- Climate effects (draft)
- Consultation
- Coordinating federal and provincial environmental assessment requirements
- Electricity projects
- Environmental assessments
- Glossary
- How to make a Part II Order request
- Making a hearing request
- Mediation
- Transit projects
- Waste management projects

## Appendix A Environmental Assessment Process Timelines



## Appendix B Government Agencies and Their Areas of Interest

This information is a subset of the Government Review Team list that is provided to proponents at the start of their planning process. This is for information only, and the particular agency or ministry must be contacted to determine if they have a mandated interest in the proposal.

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
FEDERAL AGENCIES	
Canadian Environmental Assessment Agency	Undertakings that are listed in the Regulations Designating Physical Activities under the <i>Canadian Environmental Assessment Act, 2012</i> .
Canadian Transportation Agency	Undertakings with the potential to affect railway lines or property.
Aboriginal Affairs and Northern Development Canada	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• Aboriginal communities;</li> <li>• traditional territories, and reserves;</li> <li>• lands/waters surrounding reserves.</li> </ul>
Environment Canada	Undertakings with the potential to: <ul style="list-style-type: none"> <li>• result in the deposit of deleterious substances into fisheries water;</li> <li>• affect migratory birds;</li> <li>• affect federal wetlands;</li> <li>• affect national wildlife areas and national parks;</li> <li>• cause transboundary effects on air or water quality;</li> <li>• endanger or threaten species at risk.</li> </ul>
Fisheries and Oceans Canada	Undertakings in or near water that have the potential to: <ul style="list-style-type: none"> <li>• harmfully alter disrupt or destroy fish or fish habitat;</li> <li>• impact passage of fish around migration barriers;</li> <li>• impact provision of sufficient water flows;</li> <li>• result in the destruction of fish by means other than fishing (blasting);</li> <li>• impact aquatic species at risk.</li> </ul>
Health Canada	Undertakings with human health implications.

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Transport Canada	Undertakings that: <ul style="list-style-type: none"> <li>• are located in the vicinity of a federal airport and may attract birds;</li> <li>• may cause electrical interference to navigational aids;</li> <li>• may affect a navigable waterway.</li> </ul>
Each federal authority with responsibility for federal lands	Undertakings that are on or abutting federal lands and require federal approvals and/or financing.
<b>PROVINCIAL AGENCIES &amp; MINISTRIES</b>	
GO Transit	Undertakings with the potential to affect GO Transit service or property.
Infrastructure Ontario	Undertakings whose associated lands are adjacent or proximate to provincial government facilities, lands, and infrastructure.
Niagara Escarpment Commission	Undertakings in or with the potential to affect the Niagara Escarpment Planning Area.
Ministry of Aboriginal Affairs	For identification of Aboriginal communities potentially affected by an undertaking. Also for undertakings with the potential to affect Crown land and resource usage.
Ministry of Agriculture and Food	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• prime agricultural areas (areas of classes 1–3 agricultural soils);</li> <li>• specialty crop areas;</li> <li>• agricultural uses, agriculture-related uses and secondary uses on farms.</li> </ul>
Ministry of Tourism, Culture and Sport	Undertakings with the potential to affect sport/recreational areas or tourist facilities.  Undertakings that may affect properties having recognized or potential cultural heritage value or interest, which may include: <ul style="list-style-type: none"> <li>• built heritage resources;</li> <li>• cultural heritage landscapes;</li> <li>• areas of archaeological potential;</li> <li>• undertakings whose associated lands are adjacent or proximate to lands owned by the Royal Botanical Gardens, the McMichael Canadian Collection, or owned or protected by the Ontario Heritage Trust.</li> </ul>

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AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Ministry of Education (consult local school board)  Ministry of Training, Colleges and Universities (consult local institution)	Undertakings with the potential to affect school/institution, building property, or staff and students.
Ministry of Community Safety and Correctional Services	Undertakings with the potential to have a direct physical impact on a Correctional Services correctional centre, jail or a detention centre.
Ontario Provincial Police	Undertakings with the potential to have a direct physical impact on an Ontario Provincial Police correctional centre, jail or detention centre.
Ministry of Economic Development, Trade and Employment	Undertakings which involve investments in large-scale manufacturing facilities or co-generation projects.
Ministry of Energy	Undertakings with energy implications, including renewable energy such as small hydro or wind. Undertakings within an area covered by the Growth Plan for the Greater Golden Horseshoe or the <i>Places to Grow Act, 2005</i> .
Ministry of Health and Long-Term Care (Local Medical Officers of Health)	Undertakings with potential health impacts such as groundwater contamination and air quality impacts.
Ministry of Municipal Affairs and Housing	Undertakings that: <ul style="list-style-type: none"> <li>• relate to municipal services;</li> <li>• involve a municipal proponent;</li> <li>• may have an effect on the Oak Ridges Moraine Conservation Plan Area.</li> </ul>
Ministry of Natural Resources	Undertakings that may have a potential effect on: <ul style="list-style-type: none"> <li>• permanent and intermittent watercourses or water bodies;</li> <li>• rare, vulnerable, threatened, endangered or otherwise significant species;</li> <li>• Areas on Natural and Scientific Interest or an Environmentally Significant Area;</li> <li>• mineral aggregate resources;</li> <li>• Crown land/resources;</li> <li>• provincially significant wetlands.</li> </ul>

Code of Practice: Terms of Reference

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Ministry of Northern Development and Mines	Undertakings that may potentially affect: <ul style="list-style-type: none"> <li>• geological and mineral resources;</li> <li>• economic development in northern Ontario;</li> <li>• tourism in northern Ontario.</li> </ul>
Ministry of Transportation	Undertakings within: <ul style="list-style-type: none"> <li>• any study area for a transportation corridor or route planning project;</li> <li>• 800 metres of any existing/designated provincial highway or other provincial transportation facility;</li> <li>• adjacent to Ministry of Transportation property (i.e. patrol yards, carpool lots, etc.).</li> </ul>
OTHER	
Ontario Power Generation	Undertakings that could potentially directly affect an Ontario Power Generation generating site.
Hydro One Networks Inc.	Undertakings that could potentially directly have an impact on Hydro One facilities or plants (includes transmission/distribution lines or transformer/distribution stations).
Local Conservation Authority under the <i>Conservation Authorities Act</i>	Undertakings that: <ul style="list-style-type: none"> <li>• have the potential to affect the control of water based natural hazards or for interfering with a watercourse or wetland in areas prone to water related natural hazards (shorelines, wetlands, floodplains) and as such may require a permit under the <i>Conservation Authorities Act</i>;</li> <li>• require conformity to natural hazard policies (Section 3.1) of the Provincial Policy Statement (PPS) (2005) of the <i>Planning Act</i>;</li> <li>• have the potential to affect areas of interest outlined in the terms of a municipal service contract such as hydrogeology, storm water management, septic system reviews, natural heritage features;</li> <li>• have the potential to affect interests of the Conservation Authority as a local resource management agency or as an adjacent landowner of an undertaking.</li> </ul>

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Source Protection Authority under the <i>Clean Water Act</i>	<p>Undertakings with the potential to affect:</p> <ul style="list-style-type: none"> <li>• a vulnerable area identified in the most recent local assessment report (or source protection plan) prepared for the local source protection area under the <i>Clean Water Act, 2006</i>, where the project involves one or more activities identified as a drinking water threat (The list of prescribed drinking water threats can be found in section 1.1 of O. Reg. 287/07 or the Director may also approve a local drinking water threat activity in addition to those prescribed by regulation);</li> <li>• municipal drinking water sources or other drinking water sources (for example, a drinking water source that serves a First Nation reserve that is prescribed by regulation) as identified in the most recent local assessment report prepared for the local source protection area where the undertaking involves activities identified as prescribed drinking water threats.</li> </ul>
Municipalities	<p>Undertakings with the potential to affect:</p> <ul style="list-style-type: none"> <li>• a vulnerable area as defined by the <i>Clean Water Act, 2006</i> or as identified in the most recent local assessment report prepared for the local source protection area where the undertaking involves activities identified as prescribed drinking water threats.</li> <li>• municipal drinking water sources as identified in the most recent local assessment report prepared for the local source protection area where the undertaking involves activities identified as prescribed drinking water threats.</li> </ul>

Note: Municipalities and Aboriginal peoples, while not formally on the Government Review Team, are consulted about an environmental assessment application if it is located in their municipality or community or if it may affect their municipality or community as required by the *Environmental Assessment Act*.



## Appendix C Notification Templates and Summary Form

### (1) Notice of Commencement of Terms of Reference Template

#### Notice of Commencement of Terms of Reference

**<insert Name of Proposed Study, Name of Proponent>**

The **<name of proponent>** has initiated a study under the *Environmental Assessment Act* to **<preliminary purpose of study>**.

#### The Process

This study will be carried out in accordance with the requirements of the *Environmental Assessment Act*. The first step in the process is the preparation of a terms of reference. The terms of reference will set out the proponent's framework and work plan for addressing the *Environmental Assessment Act* requirements when preparing the environmental assessment, including such things as the alternatives that will be considered and the public consultation activities that will be carried out. If approved by the Minister, the terms of reference will provide the framework and requirements for the preparation of the environmental assessment.  
**<proponent to insert any more information into the paragraph that it thinks is important>**

#### Consultation

Members of the public, agencies, Aboriginal communities and other interested persons are encouraged to actively participate in the planning process by attending consultation opportunities or contacting staff directly with comments or questions. Consultation opportunities are planned throughout the planning process and will be advertised **<how – for example, website, newspaper, direct mail out>**.

**<insert any more information the proponent thinks is important>**

For further information on the proposed study please contact:

**<insert proponent and/or consultant contact information>**

**<insert project website address>**

All personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the Ministry of the Environment for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act* or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Ministry of the Environment's Freedom of Information and Privacy Coordinator at 416-327-1434.

**<insert date this notice is published>**

## (2) Notice of Submission of Terms of Reference Template

### Notice of Submission of Terms of Reference

<insert Name of Proposed Study, Name of Proponent>

As part of the planning process for the <name of undertaking/problem or opportunity>, a terms of reference was submitted to the Ministry of the Environment for review as required under the *Environmental Assessment Act*. If approved, the terms of reference will serve as a framework for the preparation and review of the environmental assessment for the proposed undertaking.

<briely describe undertaking or purpose of study>

<insert study area map>

You may inspect the proposed terms of reference during normal business hours at the following locations:

1. Ministry of the Environment  
Environmental Approvals Access and Service Integration Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
416-314-8001/1-800-461-6290  
Monday to Friday 8:30 a.m. – 5:00 p.m.
2. Ministry of the Environment regional and/or district office closest to study area
3. Proponent's office
4. Other public viewing locations (for example, municipal offices, libraries)
5. Website address where the terms of reference is posted

Your written comments about the terms of reference must be received before <insert last day in the thirty-day comment period>. All comments should be submitted to:

<name of Project Officer>, Project Officer  
Ministry of the Environment  
Environmental Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
Tel: 416-314-XXXX/1-800-461-6290  
Fax: 416-314-8452

A copy of all comments will be forwarded to the proponent for its consideration.


For further information on the proposed study please contact:

<insert proponent and/or consultant contact information>

All personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the Ministry of the Environment for the purpose of transparency and consultation. The information is collected under the authority of the *Environmental Assessment Act* or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the *Freedom of Information and Protection of Privacy Act*. Personal information you submit will become part of a public record that is available to the general public unless you request that your personal information remain confidential. For more information, please contact the Project Officer or Ministry of the Environment's Freedom of Information and Privacy Coordinator at 416-327-1434.

<insert date this notice is published>

### (3) Terms of Reference Summary Form

 <p>Ministry of the Environment</p>	<p><b>Terms of Reference Summary</b>          for the Environmental Assessment Website</p>																		
<p><b><u>General Information and Instructions</u></b></p>																			
<p><b>General:</b></p> <p>Information requested by this form is collected under the authority of Regulation 334, made under the <i>Environmental Assessment Act</i>. The project and summary information provided in this form will be posted for a minimum 30-day consultation period on the environmental assessment page of the Ministry of the Environment's website.</p> <p>This form requires French translation before it is posted on the website. The Ministry requires 5 to 10 business days for French translation services. Therefore, the completed form should be submitted (electronic copy and hard copy) to the Environmental Approvals Branch at least two weeks prior to the posting date.</p> <p>The proponent is responsible for ensuring that copies of the terms of reference are delivered to the appropriate government reviewers, other interested persons and the places of public record on or before the posting date.</p> <p>The proponent must contact the Branch to determine an agreed upon <b>posting date</b> and <b>terms of reference distribution date</b>. The posting of the terms of reference summary information also represents the commencement of the regulated timeline for the review and decision about the terms of reference.</p> <p><b>Instructions:</b></p> <ol style="list-style-type: none"> <li>This form must be accurately completed. Questions regarding the completion and submission of this form should be directed to the Project Officer at the Environmental Approvals Branch. <b>AN INCOMPLETE FORM WILL BE RETURNED TO THE PROPONENT.</b></li> <li>Please ensure that you have included a hardcopy and an electronic copy of the proposed distribution list, notice of submission, Terms of Reference Executive Summary (maximum 2 pages in length), the study area map and a copy of the proposed terms of reference with this form.</li> <li>Please send the completed form to:  <div style="text-align: center; margin-left: 150px;">             Director, Environmental Approvals Branch              Attention: Project Officer              Ministry of the Environment              2 St. Clair Avenue West, Floor 12A              Toronto ON M4V 1L5           </div> </li> <li>The summary portion of this form should not exceed two pages.</li> </ol>																			
<p><b>1. Proponent Information</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="3" style="padding: 5px;">Proponent Name (region, county, municipality or private sector company)</td> </tr> <tr> <td colspan="3" style="padding: 5px;">           Proponent Type  <input type="checkbox"/> Crown Corporation              <input type="checkbox"/> Federal Government              <input type="checkbox"/> Municipal Government              <input type="checkbox"/> Provincial Government              <input type="checkbox"/> Private Sector  <input type="checkbox"/> Other (describe)         </td> </tr> <tr> <td style="width: 60%; padding: 5px;">Civic Address – Street Information (includes street number, name, type and direction)</td> <td colspan="2" style="padding: 5px;">Unit Identifier (suite number)</td> </tr> <tr> <td colspan="3" style="padding: 5px;">Delivery Designator If signing authority mailing address is a Rural Route, Suburban Service, Mobile Route or General Delivery (i.e., RR#3)</td> </tr> <tr> <td style="width: 60%; padding: 5px;">Municipality</td> <td colspan="2" style="padding: 5px;">Postal Station</td> </tr> <tr> <td style="width: 33%; padding: 5px;">Province/State</td> <td style="width: 33%; padding: 5px;">Country</td> <td style="width: 33%; padding: 5px;">Postal Code</td> </tr> </table>		Proponent Name (region, county, municipality or private sector company)			Proponent Type <input type="checkbox"/> Crown Corporation <input type="checkbox"/> Federal Government <input type="checkbox"/> Municipal Government <input type="checkbox"/> Provincial Government <input type="checkbox"/> Private Sector <input type="checkbox"/> Other (describe)			Civic Address – Street Information (includes street number, name, type and direction)	Unit Identifier (suite number)		Delivery Designator If signing authority mailing address is a Rural Route, Suburban Service, Mobile Route or General Delivery (i.e., RR#3)			Municipality	Postal Station		Province/State	Country	Postal Code
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Municipality	Postal Station																		
Province/State	Country	Postal Code																	
<div style="display: flex; justify-content: space-between;"> <span>(09/2013) Page 1 of 3</span> <span>PIBS 8265e01</span> </div>																			

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**2. Contact Person for Comments/Submissions**

Name		
Address		
Same as Proponent Address? <input type="checkbox"/> Yes <input type="checkbox"/> No (if no, please provide address information below)		
Delivery Designator <i>If signing authority mailing address is a Rural Route, Suburban Service, Mobile Route or General Delivery (i.e., RR#3)</i>		
Municipality		Postal Station
Province/State	Country	Postal Code
Telephone Number (area code & extension)	Fax Number (area code & extension)	E-mail Address

**3. Attachments** (This is a list of supporting information to this posting – please provide a hardcopy and an electronic copy)

- ☐ Terms of Reference ☐ Terms of Reference Executive Summary ☐ Notice of Submission  
☐ Study Area Map ☐ Distribution List

Proponent's Project Website address where documents can be located:

**4. Project Type**

- ☐ Conservation Authority ☐ Electricity ☐ Resource ☐ Sewage Works ☐ Water Works ☐ Transportation ☐ Transit  
☐ Timber Management ☐ Waste ☐ Other (describe)

**5. French Translation of Summary Form** (translation of the terms of reference is not required)

- ☐ French translation requested to be done by Ministry of the Environment ☐ French translation to be done by proponent

**6. Statement of Proponent**

I, the undersigned hereby declare that, to the best of my knowledge, the information contained herein and the information submitted in support of this form is complete and accurate in every way.

Name (please print)	Title
Signature	Date (yyyy/mm/dd)

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**7. Project Summary - This portion of the form should not exceed two pages.**

**Summary:**

*Should provide a brief project description including the purpose of study (problem or opportunity) and the study area location.*

## **Appendix D      Regional/District/Area Offices of the Ministry of the Environment**

The regional/district/area offices are responsible for delivering programs to protect air quality, protect surface and ground water quality and quantity, manage the disposal of wastes, ensure an adequate quality of drinking water, and control the use of pesticides.

Below is location and contact information for each region and associated district/area offices (see also [www.ontario.ca/environment](http://www.ontario.ca/environment)).

### **Central Region**

Ministry of the Environment  
Central Region Office  
5775 Yonge St.  
8th Floor  
North York ON M2M 4J1  
Toll free: 1-800-810-8048  
Tel: 416-326-6700  
Fax: 416-325-6345

Barrie District Office  
54 Cedar Pointe Dr., Unit 1203  
Barrie ON L4N 5R7  
Toll free: 1-800-890-8511  
Tel: 705-739-6441  
Fax: 705-739-6440

Halton-Peel District Office  
4145 North Service Road, Suite 300  
Burlington ON L7L 6A3  
Toll free: 1-800-335-5906  
Tel: 905-319-3847  
Fax: 905-319-9902

Toronto District Office  
5775 Yonge St., 8th Floor  
North York ON M2M 4J1  
Toll free: 1-800-810-8048  
Tel: 416-326-6700  
Fax: 416-325-6346

York-Durham District Office  
230 Westney Rd. S., 5th Floor  
Ajax ON L1S 7J5  
Toll free: 1-800-376-4547  
Tel: 905-427-5600  
Fax: 905-427-5602

## Eastern Region

Ministry of the Environment  
Kingston Regional Office  
1259 Gardiners Road  
Box 22032  
Kingston ON K7M 8S5  
Toll free from area codes  
613/705/905: 1-800-267-  
0974  
Tel: 613-549-4000  
Fax: 613-548-6908

Belleville Area Office  
345 College St. E.  
Belleville ON K8N 5S7  
Toll free from area code 613: 1-800-860-2763  
Tel: 613-962-9208  
Fax: 613-962-6809

Cornwall Area Office  
113 Amelia St.  
Cornwall ON K6H 3P1  
Toll free from area code 613: 1-800-860-2760  
Tel: 613-933-7402  
Fax: 613-933-6402

Kingston District Office  
1259 Gardiners Road  
Box 22032  
Kingston ON K7M 8S5  
Toll free from area codes 613/705/905: 1-800-267-0974  
Tel: 613-549-4000  
Fax: 613-548-6920

Ottawa District Office  
2430 Don Reid Drive  
Ottawa ON K1H 1E1  
Toll free: 1-800-860-2195  
Tel: 613-521-3450  
Fax: 613-521-5437

Peterborough District Office  
300 Water Street, Robinson Place  
Peterborough ON K9J 8M5  
Toll free from area codes 613/705/905: 1-800-558-0595  
Tel: 705-755-4300  
Fax: 705-755-4321

## Northern Region

Ministry of the Environment  
Thunder Bay Regional  
Office  
435 James St. S.  
Suite 331, 3rd Floor  
Thunder Bay ON P7E 6S7  
Toll free from area codes  
705/807: 1-800-875-7772  
Tel: 807-475-1205  
Fax: 807-475-1754

Kenora Area Office  
808 Robertson St.  
P. O. Box 5150  
Kenora ON P9N 3X9  
Toll free from area code 807: 1-888-367-7622  
Tel: 807-468-2718  
Fax: 807-468-2735

North Bay Area Office  
191 Booth Road, Unit 16 & 17  
North Bay ON P1A 4K3  
Toll free: 1-800-609-5553  
Tel: 705-497-6865  
Fax: 705-497-6866

Sault Ste. Marie Area Office  
289 Bay Street, 3rd Floor  
Sault Ste. Marie ON P6A 1W7  
Tel: 705-942-6354  
Fax 705-942-6327

Sudbury District Office  
199 Larch St., Suite 1201  
Sudbury ON P3E 5P9  
Toll free from area codes 705/807: 1-800-890-8516  
Tel: 705-564-3237  
Fax: 705-564-4180

Thunder Bay District Office  
435 James St. S., Suite 331  
Thunder Bay ON P7E 6S7  
Toll free from area code 705/807: 1-800-875-7772  
Tel: 807-475-1315  
Fax: 807-475-1754

Timmins District Office  
Ontario Government Complex  
Hwy 101 East  
P.O. Bag 3080  
South Porcupine ON P0N 1H0  
Toll free from area codes 705/807: 1-800-380-6615  
Tel: 705-235-1500  
Fax: 705-235-1520



## Southwestern Region

Ministry of the Environment  
London Regional Office  
733 Exeter Road, 2nd Floor  
London ON N6E 1L3  
Toll free from area code  
519: 1-800-265-7672  
Tel: 519-873-5000  
Fax: 519-873-5020

London District Office  
733 Exeter Road  
London ON N6E 1L3  
Toll free from area code 519: 1-800-265-7672  
Tel: 519-873-5000  
Fax: 519-873-5020

Owen Sound District Office  
101 17th Street East, 3rd Floor  
Owen Sound ON N4K 0A5  
Toll free from area code 519: 1-800-265-3783  
Tel: 519-371-2901  
Fax: 519-371-2905

Sarnia District Office  
1094 London Rd.  
Sarnia ON N7S 1P1  
Toll free: 1-800-387-7784  
Tel: 519-336-4030  
Fax: 519-336-4280

Windsor Area Office  
4510 Rhodes Drive, Unit 620  
Windsor ON N8W 5K5  
Toll free: 1-800-387-8826  
Tel: 519-948-1464  
Fax: 519-948-2396

## West Central Region

Ministry of the Environment  
Hamilton Regional Office  
119 King St. W., 12th Floor  
Hamilton ON L8P 4Y7  
Toll free: 1-800-668-4557  
Tel: 905-521-7640  
Fax: 905-521-7820

Guelph District Office  
1 Stone Road W.  
Guelph ON N1G 4Y2  
Toll free: 1-800-265-8658  
Tel: 519-826-4255  
Fax: 519-826-4286

Hamilton District Office  
119 King St. W., 9th Floor  
Hamilton ON L8P 4Y7  
Toll free: 1-800-668-4557  
Tel: 905-521-7650  
Fax: 905-521-7806

Niagara District Office  
301 St. Paul St., 9th Floor  
St. Catharines ON L2R 3M8  
Toll free: 1-800-263-1035  
Tel: 905-704-3900  
Fax: 905-704-4015

Code of Practice: Terms of Reference

**Hydro One Networks Inc.**  
483 Bay Street  
South Tower, 12<sup>th</sup> Floor  
Toronto, ON M5G 2P5  
www.HydroOne.com

Tel: 416 345-6880  
Email: Elise.Croll@HydroOne.com



**Elise Croll**  
Director, Environmental Services

**STRICTLY CONFIDENTIAL**

October 31, 2017

Kathleen O'Neill  
Director, Environmental Approvals Branch  
Ministry of the Environment and Climate Change  
135 St. Clair Avenue West, 1st Floor  
Toronto, ON, M4V 1P5

**Re: Environmental Assessment Requirements for Hydro One Proposal for the  
East-West Tie Transmission Line (Wawa to Thunder Bay, Ontario)**

Dear Ms. O'Neill,

We are writing to provide an overview of Hydro One's proposal to build (by retaining the construction services of SNC-Lavalin) and operate the East-West Tie Transmission Line ("EWT") from Wawa to Thunder Bay and to seek input from the Ministry of Environment and Climate Change (MOECC) regarding the Environmental Assessment requirements that would be applicable to the EWT based on Hydro One's proposal. The project is described in the Individual Environmental Assessment ("EA") recently submitted by NextBridge Infrastructure ("NextBridge") for review, which EA we understand is currently under formal Ministerial review.

As you are aware, NextBridge performed the development work for the EWT; but it is open to any Ontario Energy Board ("OEB")-licensed transmitter, including Hydro One, to apply to the OEB to build, own and operate the EWT.

As discussed in two meetings to date between the MOECC, Hydro One and SNC-Lavalin, the project proposed by Hydro One is similar to the project proposed by NextBridge in that the purpose of the undertaking is the same and the project descriptions are similar. The difference relates to proposed alignment deviations at certain locations along the corridor. The first deviation is that the transmission corridor proposed by NextBridge takes a route around the Pukaskawa National Park near Marathon, whereas the corridor proposed by Hydro One traverses the Park within the existing Hydro One right-of-way (ROW), where Hydro One has an existing line. The NextBridge route requires approximately 131 km of new corridor through previously undisturbed, or only marginally disturbed, land and is 42 km longer than the Hydro One route.

The second proposed deviation is in an area between Thunder Bay and Nipigon. NextBridge proposes a route which diverges from the existing Hydro One corridor, traversing north along an approximately 53 km detour through undisturbed lands. Hydro One proposes widening its existing corridor through this area.

A comparison of the NextBridge preferred route and the Hydro One-proposed route is shown in the attached Figure 1. The overall Hydro One route is approximately 45 km shorter than NextBridge. Most significantly, the Hydro One route eliminates cutting approximately 184 km of new corridor, approximately 60 m in width. Both of these proposed deviations would require additional study and consultation as proposed options.

Since the Hydro One undertaking is similar to the NextBridge undertaking, Hydro One is of the opinion that it is not necessary to prepare a new EA because we believe that the net environmental effects of the Hydro One corridor are lower than the net effects of the proposed Nextbridge corridor, and that preparing a second individual EA for a project with the same purpose would be largely duplicative. Further, it would substantially delay the project's in-service date. In our two meetings, MOECC staff have provided some discussion around the overall EA requirements for the EWT undertaking. Discussions have also included the perspective that EA requirements apply to the project, not to the proponent. Hydro One and SNC-Lavalin also clarified for MOECC staff that Hydro One would be the proponent of this undertaking if Hydro One is successful in its Leave to Construct application to the OEB. Hydro One does not contemplate a partnership with NextBridge.

It is Hydro One's view that the overall environmental effects of the Hydro One-proposed corridor are less than those of the NextBridge proposed undertaking. Most of the corridor configuration is the same for both proposals; however, the overall reduction in the significance of environmental effects arises in part from Hydro One's ability to upgrade our existing transmission line through the Park on our existing ROW, rather than creating a "greenfield" corridor and transmission line around the perimeter of the Park, which would cause more significant disturbance. Not only would the NextBridge proposed route around the Park create a larger footprint, but also it would require clearing previously undisturbed, or only marginally-disturbed, land.

The Hydro-One proposed corridor west of Nipigon also avoids traversing previously undisturbed lands. Hydro One is more likely to accommodate additional towers along the existing corridor because required widening is considerably less than would be required by NextBridge.

We are aware that the NextBridge EA addresses environmental effects and mitigation for most of the line, and these effects and mitigation measures would be similar for both proposals for the majority of the corridor. However, in areas outside the Park where NextBridge would parallel the existing Hydro One corridor with a new corridor, Hydro One would need only to widen its existing Hydro-One corridor, again reducing the overall impact. Hydro One will also consult on the positive aspect of overall reduction in corridor widening, and other minor considerations such as tower design.

Hydro One is seeking input from the MOECC to determine the degree to which Hydro One may adopt the NextBridge EA. Given that most of Hydro One's proposal follows the NextBridge proposal (with the exception of some areas where environmental impacts have been significantly reduced by the Hydro One proposal), Hydro One's view is that submission of an amendment or addendum to the existing EA, to address the differences in level and significance of environmental effects, would be most appropriate.

Hydro One would appreciate the opportunity to discuss and establish a process for such an EA amendment with MOECC staff at their earliest convenience. We look forward to working with you to determine an appropriate approach, recognizing Hydro One's proposed reductions in environmental impacts and ensuring an efficient and cost-effective solution for Ontario electricity customers.

Sincerely,



Elise Croll, Director, Environmental Services  
Hydro One Networks Inc.

**Figure 1** Hydro One Proposed Transmission Route (Existing East-West Tie) Compared to “New” Nextbridge Route



Note: Excerpt from NextBridge document. Red lines denote the existing Hydro One East-West Tie. This route would be followed by Hydro One as opposed to the two deviations (solid white lines) around Pukaskwa National Park and west of Nipigon.



Ministry of the Environment  
and Climate Change

Ministère de l'Environnement et de  
l'Action en matière de changement  
climatique



Environmental Approvals  
Branch

Direction des autorisations  
environnementales

135 St. Clair Avenue West  
1<sup>st</sup> Floor  
Toronto ON M4V 1P5  
Tel.: 416 314-8001  
Fax: 416 314-8452

135, avenue St. Clair Ouest  
Rez-de-chaussée  
Toronto ON M4V 1P5  
Tél : 416 314-8001  
Télééc. : 416 314-8452

November 14, 2017

Elise Croll, Director, Environmental Services  
Hydro One Networks Inc.  
483 Bay Street, South Tower, 12<sup>th</sup> Floor  
Toronto ON M4V 1P5

Dear Ms. Croll:

We are in receipt of your October 31, 2017 letter regarding the East-West Tie Transmission Project (the Project) for which NextBridge Infrastructure LP (NextBridge) is currently undertaking an individual environmental assessment (EA). As you know, NextBridge submitted a final EA for the Project for review in July 2017. As a result of the comments received during the review, NextBridge has since expressed its intent to amend its EA.

Your letter outlines Hydro One's intent to apply to the Ontario Energy Board (OEB) to build, own and operate the Project, and detailed changes to NextBridge's proposed project routing that Hydro One would make if successful in its OEB application. I am pleased to respond to your request for input from the Ministry of the Environment and Climate Change (the ministry) as to the degree to which Hydro One may adopt the EA currently being prepared by NextBridge through an amendment to the EA.

As outlined in the *Code of Practice for Preparing and Reviewing Environmental Assessments in Ontario*, unless changes are accounted for in the EA or through a condition of approval, proposed changes to an undertaking made after its approval to proceed has been issued are considered a new undertaking for the purposes of the *Environmental Assessment Act*. As the NextBridge EA is currently being amended by NextBridge and therefore has not been approved by the Minister, the ministry cannot comment on the possible amending procedure that may be in the amended EA or required as a condition of approval, if approved.

Based on the information provided to date, it is unlikely that an amendment provision in the proposed Nextbridge EA would be capable of accommodating Hydro One's proposed changes to the current Project. As such, Hydro One's project would not likely be able to take advantage of the proposed Nextbridge EA and Hydro One's project would likely be considered a new undertaking for the purpose of the *Environmental Assessment Act*.

- 2 -

The ministry encourages Hydro One to work with NextBridge to seek alternative approaches to addressing routing alternatives during the current EA process for the Project.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kathleen O'Neill", with a stylized flourish at the end.

Kathleen O'Neill  
Director  
Environmental Approvals Branch



**Hydro One Networks Inc.**

483 Bay Street  
North Tower, 12<sup>th</sup> Floor  
Toronto, ON M5G 2P5  
www.HydroOne.com

Tel: (416) 345-6880  
Email: Elise.Croll@HydroOne.com



**Elise Croll**

Director, Environmental Services Department

February 16, 2018

Ms. Annamaria Cross  
Manager, Ministry of Environment and Climate Change  
1st Floor, 135 St. Clair Avenue West  
Toronto, ON  
M4V 1P5

Via email: annamaria.cross@ontario.ca

**Re: Hydro One seeks approval to construct new East-West Tie transmission line**

Dear Ms. Cross,

Designing, building, and operating transmission infrastructure has been a core competency of Hydro One for many decades. Our teams bring their best each day and are working to deliver a transmission capital portfolio that has more than 200 projects at any given time.

With this in mind, and given our long history of service and ongoing commitment to northern Ontario, Hydro One has submitted an application to the Ontario Energy Board (OEB) seeking approval to construct a new transmission line between Lakehead Transformer Station (TS) and Wawa TS, as shown on the attached map. This new transmission line is needed to ensure an adequate, safe, and reliable supply of power to enable future growth and development in northwestern Ontario.

Our proposed project, which we are calling the Lake Superior Link, is a 400 kilometre double-circuit 230 kilovolt transmission line that would primarily be built on or adjacent to Hydro One's existing East-West Tie transmission corridor. Hydro One's proposal is the most cost-effective solution for Ontario electricity customers.

By maximizing use of existing infrastructure, our route is approximately 50 km shorter and can be constructed on a narrower corridor than the current proposal. This reduces the amount of undisturbed land that would need to be cleared, thereby minimizing environmental impacts and disturbance to local communities. A major benefit of our project would be realized in Pukaskwa National Park, where Hydro One's existing transmission line can be upgraded without widening the corridor.

We are very excited about our proposal and its ability to maximize value for Ontario electricity customers, and look forward to discussing how this project can deliver tangible benefits to all communities in the project area.

Hydro One and its construction partner, SNC-Lavalin, are also planning to host a series of public information drop-ins in March in communities within the project area. We will advise you once the dates and locations have been booked, and they will be advertised in local newspapers and on our website at:

[www.HydroOne.com/LakeSuperiorLink](http://www.HydroOne.com/LakeSuperiorLink).



I have attached a copy of a newspaper ad that will run in local papers in the coming weeks to let people know about our Lake Superior Link project. In the interim, should you have any questions or comments, please don't hesitate to contact me, Patricia Staite, Manager Environmental Assessments (416-345-6686) or Bruce Hopper, Environmental Planner (416-779-0257).

Sincerely,

A handwritten signature in blue ink, appearing to read "Elise Croll".

Elise Croll  
Director, Environmental Services

Attachments (2)

Cc:

Kathleen O'Neill, Director Environmental Approvals Branch, Ministry of Environment and Climate Change  
Patricia Staite, Manager Environmental Assessments, Hydro One Networks Inc.  
Bruce Hopper, Environmental Planner, Hydro One Networks



483 Bay St 12<sup>th</sup> Floor North Tower  
Toronto ON M5G 2P5  
[www.HydroOne.com](http://www.HydroOne.com)

**Andrew Spencer**  
Vice President, Transmission & Stations

March 14, 2018

Messrs. Iain Angus and Larry Hebert  
Co-Chairs  
Energy Task Force  
Common Voice Northwest  
672 Churchill Place  
Thunder Bay ON P7C 5Y8

Dear Messrs. Angus and Hebert,

Thank you for the letter sent on March 5<sup>th</sup> regarding Hydro One's application to the Ontario Energy Board to construct a bulk transmission line between Lakehead TS and Wawa TS.

As you both know, when concerns were raised in August 2017 by Ontario's Minister of Energy about the increased costs of Nextbridge's East West Tie proposal, Hydro One saw an opportunity to provide a brighter future with a more cost-effective, reliable, environmentally-friendly transmission solution that will truly benefit the people and businesses of Northern Ontario. We believe in advocating for communities and customers first. That is why we introduced our Lake Superior Link project: it is our belief that competition will benefit everyone involved, especially in Northern Ontario. At a difference of over \$100 million in construction costs along with ongoing annual savings of over \$3 million, introducing competition to this market will provide real benefits on electricity costs, as compared to the alternate filed application. We could not ignore this opportunity to provide a better solution.

We are confident in our prospect for success. Together with our Canadian construction partner SNC-Lavalin, we bring more than 200 years of construction, maintenance and operations experience to Northern Ontario. Our proposal was created with our unmatched experience and knowledge of the unique challenges of operating in Ontario's North. Through our Company's history of electrifying the North, living among and working with local communities, elected officials and Indigenous communities in the area, Hydro One is best positioned to deliver the right project at the right price. In addition to this advantage, we offer a Canadian-made solution that will provide an economic benefit to local communities through the project's construction and operation.

While there have been a number of commitments made by the other proponent, the Lake Superior Link will require similar resources and follow the same general path; there is no reason that Hydro One and SNC-Lavalin would not be able to honour those commitments. As mentioned above, Hydro One's Lake Superior Link project offers a cost-effective transmission solution that saves rate payers over \$100 million in construction costs and over \$3 million in annual operating and maintenance costs. These savings translate directly into lower rates for all of Ontario's electricity customers, keeping more money – approximately \$13 million annually – in their pockets to reinvest in their communities. It is our belief that our local advantage, along with the long-term cost

savings of our proposal, more than offset the additional months delay in construction startup. The difference between Hydro One's 2021 in-service date and Nextbridge's 2020 date only result in a few months difference in actual construction startup; a gap that we can bridge to ensure no significant interruptions to economic development plans.

In addition, Hydro One's proposed route is approximately 50 km shorter and requires approximately 50% less corridor area in the overall route than the NextBridge solution, resulting in a far smaller environmental footprint. Our plan eliminates the need to cut a new corridor through relatively undisturbed lands around the Park. As the owner of the existing East-West Tie line which crosses through Pukaskwa National Park, Hydro One has the unique ability to meet the requirements of the *Canada National Parks Act* and Parks Canada policies. No new development is permitted within national parks, but Hydro One has received Parks Canada's conditional support to modify its existing east-west tie line through Pukaskwa National Park by ensuring a project that respects the Park's unique beauty and results in less required maintenance in the coming decades. This contributes significantly to Hydro One's ability to minimize impacts on the environment and deliver the project at a lower cost. Hydro One is currently working with the Ministries of Energy and Environment and Climate Change to finalize a regulatory measure allowing the use of relevant portions of the completed Environmental Assessment work, while addressing required approvals for the revised route through the Park.

The Lake Superior Link proposal is also positioned to be the most reliable solution for the North. While Nextbridge brings much to the table with their experience in Alberta and Florida, Hydro One powers the North and has since the beginning. Our extensive knowledge of the unique equipment and operating needs of Northern Ontario leave us second to none in our ability to provide the most reliable solution. The Lake Superior Link has been designed using a mix of equipment and tower designs to ensure the complex weather and topographical challenges of Northern Ontario are matched to the best possible specifications. You do raise an important question on whether the distance between the existing and proposed lines represent a reliability risk; the answer is no. In fact, in the over 40 years of the current East West Tie's lifespan, there has only been one "tower down" situation which took place during the 2009 ice storm – a weather phenomenon that would have most likely had the same effect on any equipment in the region.

Both Hydro One and SNC-Lavalin have a successful history of partnering with Indigenous communities on other projects and will continue to act as conscientious partners with Indigenous peoples in this endeavour. Hydro One's work with Indigenous communities resulted in the historic partnership on the Bruce to Milton transmission line and reflects well on the Company's commitment to Indigenous partnership, let alone the fact that 129 Ontario First Nations have an ownership stake in Hydro One Limited.

For the Lake Superior Link Project our partnership will actively procure goods and services from Indigenous suppliers and companies with strong relationships with local Indigenous communities and businesses, to participate throughout the life of the project. Similarly, we will seek to maximize employment opportunities for members from local Indigenous communities, including those who have received or are currently enrolled in the Anishinabek Employment and Training Services (AETS) skills training.

Both Hydro One and SNC-Lavalin believe that qualified local Indigenous companies have strategic advantages over other businesses to complete a number of construction activities, including: site clearing, access road construction, camp construction and operation, establishment and management of material storage and assembly facilities along the right-of-way and various other support services throughout the construction period. However, to date we have respected requests from Supercom Industries LP representatives to refrain from contacting and communicating with local Indigenous companies.

Finally, we would like to acknowledge the issues you presented with respect to the level of supply and our operating assets in the Ear Falls, Red Lake, and Greenstone areas. The Independent Electricity System Operator (IESO) is responsible for ensuring that the electricity grid meets provincial standards and is adequately supplied with energy both now and into the future. As you are aware, plans are under way for a new 230 kV transmission line from south of Dryden to Pickle Lake. This project, which has been awarded to Wataynikaneyap Power and expected to be in-service by the end of 2020, will increase the available capacity for both the Pickle Lake and Red Lake areas and improve the reliability for customers connected through the E1C transmission line. With regard to Greenstone, a working group has been setup to assess the options for increased capacity and improve reliability for the Greenstone area. Hydro One presented a number of creative options as a part of that work and continues to advocate for the line's implementation. Meanwhile, Hydro One's improvements in distance-to-fault detection technology for the A4L circuit that feeds Greenstone are expected to considerably reduce the duration of interruptions in the area. Hydro One's near-term investments include refurbishment of long sections of circuits E1C and A4L, in order to maintain and improve their performance.

Although the IESO holds the pen on regional planning, Hydro One plays an active role in advocating in this process and influencing positive outcomes for communities. We respect your position as a key contributor in this valuable exercise, and we see an ongoing opportunity to partner with Common Voice Northwest to develop an integrated and connected plan that goes beyond Hydro One's construction of Lake Superior Link to contemplate the needs and economic opportunities that a renewed focus on electricity infrastructure can bring to the North. We look forward to working together to ensure that our vision is aligned in a way that benefits all communities we commonly serve.

We look forward to further engaging with you both and the Common Voice Northwest membership and would like to arrange a meeting at your convenience to discuss these and other matters in more depth.

Kind regards,



Andrew Spencer  
Vice President, Transmission & Stations  
Hydro One Networks Inc.

cc: Northwestern Ontario Municipal Association  
Northwestern Ontario Associated Chambers of Commerce  
Hon. Michael Gravelle, Minister of Northern Development and Mines  
Hon. Bill Mauro, Minister of Municipal Affairs  
Mayor and Council of the Municipality of Greenstone  
Mayor and Council of the Municipality of Sioux Lookout  
Mayor and Council of the Municipality of Red Lake  
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Chief and Council of Ginoogaming First Nation  
Chief and Council of Long Lake #58 First Nation



Chief and Council of Red Rock Indian Band

Chief and Council of Whitesand First Nation

Bob Chow, Director, Transmission Integration, IESO [Bob.Chow@ieso.ca](mailto:Bob.Chow@ieso.ca)

Carolyn Calwell, ADM, Strategic, Network and Agency Policy Division, Ministry of Energy

[Carolyn.Calwell@ontario.ca](mailto:Carolyn.Calwell@ontario.ca)

Nancy Marconi, Manager, Supply & Infrastructure, Applications, Ontario Energy Board [Nancy.Marconi@oeb.ca](mailto:Nancy.Marconi@oeb.ca)

Jennifer Tidmarsh, President, NextEra Energy Transmission - Canada

**NextEra** Energy Canada, LP

Ministry of the Environment  
and Climate Change

Ministère de l'Environnement et  
de l'Action en matière de  
changement climatique



Environmental Assessment and  
Permissions Division

Direction des évaluations et des  
permissions environnementales

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March 16, 2018

Andrew Spencer  
Vice President, Transmission & Stations  
Hydro One Networks Inc.  
483 Bay St 12<sup>th</sup> Floor North Tower  
Toronto ON M5G 2P5

Dear Mr. Spencer:

The Ministry of Environment and Climate Change (ministry), Environmental Assessment and Permissions Division is writing to respond to your March 14, 2018 letter to Messrs. Angus and Hebert from the Energy Task Force, Common Voice Northwest.

On page two, paragraph one of this letter you state that, *"Hydro One is currently working with the Ministries of Energy and Environment and Climate Change to finalize a regulatory measure allowing the use of relevant portions of the completed Environmental Assessment work, while addressing required approvals for the revised route through the Park."*

The ministry is not currently working to finalize a regulatory measure to allow the use of the current unapproved NextBridge environmental assessment. The initial position of the ministry was discussed with you as well as outlined in our letter of November 14, 2017. Please see attached.

As the ministry is not currently working on a regulatory measure to allow the use of the East West Tie Transmission project environmental assessment, the ministry respectfully requests that a letter of clarification be sent to Messrs. Angus and Hebert as well those copied on the letter.

If you would like to speak further regarding this matter please let me know.

Sincerely,

Dolly Goyette  
Assistant Deputy Minister (Acting)  
Environmental Assessment and Permissions Division

Attachment





## Minutes Hydro One/MOECC/MoE Meeting

**Monday March 26, 2018**  
**135 St. Clair Avenue West, 7<sup>th</sup> Floor, Room 701**  
**Teleconference: 416-212-8013 / 1-866-633-1033    Conference ID: 5863155**

**Participants:**

MOECC - Kathleen O'Neill, Annamaria Cross, Adam Wright, Andrew Evers, Susan Morgan (portion of meeting)  
MoE - Samir Adkar, Lindsey Wright  
Hydro One (H1) - Elise Croll, Patty Staite, Bruce Hopper  
**Regrets:** Christopher Goode (MoE); Daniel Levitan (H1)

**Meeting Objective:**     **Continue discussions regarding meeting EA regulatory obligations on Lake Superior Link**

Item	Description	Notes
1.	Welcome and Introductions	N/A
2.	Summary of Project Status – Section 92 Submission to OEB, current schedule, status of studies etc.	<ul style="list-style-type: none"> <li>H1 provided update on the project, S92 update (Leave to Construct (LTC) application submitted mid-February), outlined its response to NextBridge (Nx) request that H1 LTC was not compliant.</li> <li>H1 described studies it has conducted (Caribou) and those planned.</li> </ul>
3.	Planned/Completed Consultation Activities – notifications, drop-ins, public meetings	<ul style="list-style-type: none"> <li>H1 described “drop in sessions” which were conducted in eight communities between March 18-23, 2018.</li> <li>H1 outlined that sessions were not considered formal Environmental Assessment (EA) consultation, but were to introduce the H1 project to the public; regardless, valuable insight into public priorities and opinions with respect to EA topics to project was gained.</li> <li>At the end of the meeting H1 noted that Duty to Consult delegation was received from the Ministry of Energy (MoE) (for an individual EA); H1 also noted that there has been some engagement with Indigenous Communities, but challenging due to Nx existing agreements.</li> <li>H1 noted that should they be successful in its LTC application, construction tentatively to start in September 2019.</li> </ul>
4.	Discussion of March 16, 2018 MOECC correspondence (Discussed as Agenda Item 2 to ensure all participants could be present)	<ul style="list-style-type: none"> <li>March 16, 2018 correspondence was sent to H1 from MOECC with respect to content of H1 response to Common Voice Northwest letter (March 14, 2018).</li> <li>MOECC requested that H1 correct the letter to stakeholders as the MOECC and Energy are not proceeding with regulatory measures.</li> <li>H1 clarified that intent was to reference meetings and discussions between H1 and MOECC regarding options available to H1 to meet its EA obligations with respect to the Lake Superior Link project.</li> <li>MOECC acknowledged that meetings and discussions had occurred and referred to the November 14, 2018 response which outlined that the proposed Lake Superior Link project would have to follow the Individual Environmental Assessment process.</li> <li>H1 enquired about a possible option available as an exemption / declaration order.</li> <li>MOECC indicated that these are options available to any proponent.</li> </ul>

		<p><b>Action: H1 will send a response to MOECC to clarify the intent of this terminology and also send correspondence to Common Voice as well as those cc'd on the correspondence to correct this statement.</b></p>
5.	Regulatory process – further discussion of options to meet EA regulatory requirements and process, required notifications	<ul style="list-style-type: none"> <li>● MOECC stated they were not prepared to discuss an approach that involves the Nx EA because it is currently in the comment period for the Amended EA and does not currently have any legal standing as no Minister's decision has been made.</li> <li>● MOECC indicated they couldn't presuppose a Minister's decision and cabinet concurrence on the proposed Nx project.</li> <li>● MOECC stated that opinion had been provided in the November 14, 2017 correspondence regarding requirement for an Individual EA; Individual EA is currently the only formal option that has been given to H1 by MOECC.</li> <li>● MOECC asked whether H1 would consider starting an Individual EA and submit a Notice of Commencement for a Terms of Reference (ToR).</li> <li>● Hydro One expressed that it does not intend to redo the EA; the intent of the submission is to save ratepayers money; not practical to redo work done by Nx and recovered through rate base; this is why H1 is requesting a measure to exempt redoing this work;</li> <li>● MOECC noted that on other projects declaration orders have been used and noted that it is open to H1 to pursue these regulatory options (MOECC noted latest Declaration Order was for the Upper York Sewage Solutions EA).</li> <li>● H1 re-iterated they would carry out the project in sections where Nx EA was applicable in accordance with any commitments or conditions on the EA; H1 noted that in its opinion it would not require any additional review by MOECC.</li> <li>● MOECC commented that H1 has not yet submitted any formal notice or process for approval or review. Any proposal at this time put forward by H1 can't include Nx EA.</li> <li>● Discussion regarding timing of LTC:</li> <li>● H1 believed Nx must complete EA to recoup cost and indicated there was no reason Minister should not review Nx EA if it did not receive the LTC.</li> <li>● Discussed further detail on the process for requesting a Declaration order or Exemption.</li> <li>● Further discussions required on EA requirements following outcome of Hydro One, Minister of Energy meeting on March 26, 2018; H1 would need rationale or business case type document for submission.</li> <li>● Confirmed that Adam Wright is assigned to dealing with Hydro One's Proposed Lake Superior Link Project.</li> </ul> <p><b>Action: MOECC to discuss Individual EA requirements with H1 once H1 submits its Notice of Commencement for a Terms of Reference.</b></p> <p><b>Action: MOECC to send link to examples of previous declaration orders and exemptions such as the Upper York Declaration Order.</b></p>
6.	Next steps and any other items	<p><b>Action: H1 to convey to MOECC and MoE the outcome of the meeting with H1 and Ministry of Energy held on March 26, 2018.</b></p>

**Ministry of the Environment  
and Climate Change**

Environmental Assessment and  
Permissions Division

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**Ministère de l'Environnement et  
de l'Action en matière de  
changement climatique**

Direction des évaluations et des  
permissions environnementales

135, avenue St. Clair Ouest  
Rez-de-chaussée  
Toronto ON M4V 1P5  
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Télééc. : 416 314-8452



April 10, 2018

Elise Croll, Director, Environmental Services  
Hydro One Networks Inc.  
483 Bay Street, South Tower, 1<sup>st</sup> Floor  
Toronto ON M4V 1P5

Dear Ms. Croll:

Attached are the Ministry of the Environment and Climate Change's (the ministry) revisions to the meeting minutes provide by Hydro One based on the meeting between Hydro One, Ministry of Energy and this ministry on March 26, 2018.

The ministry would like to emphasize that as outlined in our November 14, 2017 letter to Hydro One and reiterated in the March 16, 2018 correspondence; based on information provided to date, Hydro One's proposed Lake Superior Link project is considered a new undertaking for the purpose of the *Environmental Assessment Act*. As such, to initiate the Individual Environmental Assessment process, Hydro One will need to submit a Notice of Commencement for a Terms of Reference to the Director of the Environmental Assessment and Permissions Branch. For further details regarding this process please visit the Preparing Environmental Assessments website (<https://www.ontario.ca/page/preparing-environmental-assessments>) specifically Section 3 where it outlines the Individual Environmental Assessment process.

Once the ministry receives this Notice of Commencement for the proposed project, ministry staff would be happy to meet with Hydro One to discuss next steps in the development of its Terms of Reference.

If Hydro One chooses to pursue an alternative regulatory mechanism instead of completing the Individual Environmental Assessment process for the proposed project, Hydro One is encouraged to refer to the ministry's website for more information on these processes. Specifically, for information relating to Declaration Orders please visit the Environmental Assessment: Declaration Orders webpage (<https://www.ontario.ca/page/environmental-assessment-declaration-orders>).

- 2 -

Should you have any questions, please feel free to contact Annamaria Cross by email or phone (416-314-7967).

Sincerely,

A handwritten signature in cursive script that reads "Kathleen O'Neill". The signature is written in dark ink and is positioned below the word "Sincerely,".

Kathleen O'Neill  
Director, Environmental Assessment and Permissions Branch

cc: Dolly Goyette, Assistant Deputy Minister (Acting), Environmental Approvals and  
Permissions Division  
Annamaria Cross, Manager, Environmental Assessment Services

Attachment: Nov. 14 2017 response letter



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[www.HydroOne.com](http://www.HydroOne.com)

**Andrew Spencer**  
Vice President, Transmission & Stations

April 19, 2018

Messrs. Iain Angus and Larry Hebert  
Co-Chairs  
Energy Task Force  
Common Voice Northwest  
672 Churchill Place  
Thunder Bay, ON P7C 5Y8

**Re: March 14, 2018, Correspondence to Energy Task Force, Common Voice Northwest**

Dear Messrs. Angus and Hebert:

Hydro One wishes to clarify the following statement included in our March 14, 2018, correspondence: "Hydro One is currently working with the Ministries of Energy and Environment and Climate Change to finalize a regulatory measure allowing the use of relevant portions of the completed Environmental Assessment work, while addressing required approvals for the revised route through the Park".

We understand there has been some misunderstanding regarding this statement. Hydro One would like to clarify that the intent of our statement was with reference to the meetings and discussions that have taken place between Hydro One and Ministry of Environment and Climate Change (MOECC) staff regarding options available to meet Environmental Assessment (EA) obligations for the Lake Superior Link (LSL) project, including discussions with MOECC staff which took place on November 23, 2017, and at a formal meeting on February 2, 2018. These discussions included a discussion of regulatory measures that Hydro One could pursue for certain aspects of the project. We did not intend to suggest that such a measure was approved or in place, and we fully understand that any submission for such a regulatory measure would still be subject to review and decision by the MOECC and Cabinet.

We have been very clear in any public messaging and discussions that we are working to establish an appropriate regulatory option or approach, but we have never claimed that an EA approval or exemption is currently in place. We apologize for any confusion the statement in our correspondence may have caused.

Should you have any questions or comments, please don't hesitate to contact me directly.

Kind regards,



Andrew Spencer  
Vice President, Transmission & Stations  
Hydro One Networks Inc.

cc: Northwestern Ontario Municipal Association  
Northwestern Ontario Associated Chambers of Commerce  
Hon. Michael Gravelle, Minister of Northern Development and Mines  
Hon. Bill Mauro, Minister of Municipal Affairs  
Mayor and Council of the Municipality of Greenstone  
Mayor and Council of the Municipality of Sioux Lookout  
Mayor and Council of the Municipality of Red Lake  
Mayor and Council of the City of Thunder Bay  
SuperCom Development Corporation  
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Chief and Council of Long Lake #58 First Nation  
Chief and Council of Red Rock Indian Band  
Chief and Council of Whitesand First Nation  
Bob Chow, Director, Transmission Integration, IESO [Bob.Chow@ieso.ca](mailto:Bob.Chow@ieso.ca)  
Carolyn Calwell, ADM, Strategic, Network and Agency Policy Division, Ministry of Energy  
[Carolyn.Calwell@ontario.ca](mailto:Carolyn.Calwell@ontario.ca)  
Nancy Marconi, Manager, Supply & Infrastructure, Applications, Ontario Energy Board, [Nancy.Marconi@oeb.ca](mailto:Nancy.Marconi@oeb.ca)  
Jennifer Tidmarsh, President, NextEra Energy Transmission - Canada  
**NextEra** Energy Canada, LP  
Dolly Goyette, Assistant Deputy Minister (Acting), Ministry of Environment and Climate Change  
Kathleen O'Neill, Director Environmental Approvals Branch, Ministry of Environment and Climate Change

**Ministry of the Environment  
and Climate Change**

Environmental Assessment and  
Permissions Division

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**Ministère de l'Environnement et  
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Téléc. : 416 314-8452



April 20, 2018

Andrew Spencer  
Vice President, Transmission & Stations  
Hydro One Networks Inc.  
483 Bay St. 12th Floor North Tower  
Toronto ON M5G 2P5

Dear Mr. Spencer:

Thank you for circulating your April 19, 2018 letter to Messrs. Angus and Hebert clarifying statements made in your March 14, 2018 letter to them and those copied here within.

To confirm, the Ministry of the Environment and Climate Change (ministry) is not working with Hydro One to finalize a regulatory measure allowing the use of relevant portions of the Environmental Assessment work undertaken by NextBridge Infrastructure, while addressing required approvals for the revised route through the Park.

The ministry would like to emphasize, as outlined in our November 14, 2017 letter to Hydro One and reiterated in the March 16, 2018 correspondence, Hydro One's proposed Lake Superior Link project is considered a new undertaking for the purpose of the *Environmental Assessment Act*. As such, to initiate the Individual Environmental Assessment process, Hydro One is required to submit a Notice of Commencement for a Terms of Reference to the Director of the Environmental Assessment and Permissions Branch.

- 2 -

If you have any questions or would like to speak further regarding this matter please contact me at [kathleen.oneill@ontario.ca](mailto:kathleen.oneill@ontario.ca) or 416-314-0934.

Sincerely,



Kathleen O'Neill  
Director  
Environmental Assessment and Permissions Branch

Attachment: Nov. 14 2017 response letter; March 16, 2018 response letter

cc:

Annamaria Cross, Manager, Environmental Assessment Services  
Messrs. Iain Angus and Larry Hebert;  
Northwestern Ontario Municipal Association  
Northwestern Ontario Associated Chambers of Commerce  
Hon. Michael Gravelle, Minister of Northern Development and Mines Hon. Bill  
Mauro, Minister of Municipal Affairs  
Mayor and Council of the Municipality of Greenstone  
Mayor and Council of the Municipality of Sioux Lookout  
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Chief and Council of Whitesand First Nation  
Bob Chow, Director, Transmission Integration, IESO [Bob.Chow@ieso.ca](mailto:Bob.Chow@ieso.ca)  
Carolyn Calwell, ADM, Strategic, Network and Agency Policy Division, Ministry of  
Energy  
[Carolyn.Calwell@ontario.ca](mailto:Carolyn.Calwell@ontario.ca)  
Nancy Marconi, Manager, Supply & Infrastructure, Applications, Ontario Energy  
Board [Nancy.Marconi@oeb.ca](mailto:Nancy.Marconi@oeb.ca)  
Jennifer Tidmarsh, President, NextEra Energy Transmission - Canada  
NextEra Energy Canada, LP





Hydro One Networks Inc.  
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Toronto, ON M5G 2P5  
[www.HydroOne.com](http://www.HydroOne.com)

**Andrew Spencer**  
Vice President, Transmission & Stations

April 25, 2018

Ms. Kathleen O'Neill  
Director, Environmental Assessment and Permissions Branch  
Ministry of Environment and Climate Change (MOECC)  
135 St. Clair Avenue West, 1<sup>st</sup> Floor  
Toronto, ON M4V 1P5

**Re: MOECC April 20, 2018 correspondence regarding Common Voice Northwest clarification**

Dear Ms. O'Neill:

We are in receipt of your correspondence of April 20, 2018 regarding Hydro One's clarification to the Common Voice Northwest letter. Although we acknowledge that Hydro One is not at the stage of finalizing a regulatory option for the Lake Superior Link (LSL) project under the Ontario *Environmental Assessment Act*, your response suggests that we have not been in discussions regarding regulatory options, including the declaration order, which is incorrect. Specifically, your letter omits the fact that Hydro One and the MOECC have been in discussions regarding the process for a declaration order and the MOECC has even assigned an officer to assist Hydro One with that process after the last meeting.

In addition to our discussions regarding the declaration process, your correspondence of April 10, 2018 (attached) also reiterated the declaration process as an option. That reference was a follow-up to the discussions that took place on March 26, 2018 regarding appropriate templates for submission of a declaration order request, and relevant examples of other declaration order submissions.

As you know, declaration orders are usually considered when a proposal is in the public interest; where potential environmental effects are likely to be minimal; and where environmental impacts are already being adequately addressed. Having regard to these guidelines, Hydro One believes that its proposed LSL project is a strong candidate for a declaration order for the following reasons which we would like to discuss further with the MOECC:

- The proposal is in the public interest. The proposed savings of \$100 million in capital costs and additional annual operating costs are of significant benefit to electricity customers and the Province. The avoidance of further costs associated with, in essence, duplicating Environmental Assessment (EA) work already completed is also in the public interest.

- The potential environmental effects of the LSL routing are expected to be minimal. In fact, the Hydro One LSL proposed park route reduces the linear distance of the line proposed by NextBridge by approximately 50 km and reduces the required corridor width by approximately 50%. No widening would be required within Pukaskwa National Park.
- The environmental impacts of the project will already be adequately addressed through the existing EA submitted by NextBridge, which assesses approximately 78% of the proposed Hydro One LSL route. Additional studies and consultation, which are currently being conducted by Hydro One, will address any further differences in the LSL proposal.

We expect that Hydro One's LSL project and associated \$100 million cost savings and smaller environmental footprint will be of interest to the Ontario Energy Board (OEB) during the continuing competitive process, specifically, with respect to the Leave to Construct process, under Section 92 of the *Ontario Energy Board Act, 1998*. It would be in the provincial interest to avoid duplication of effort and cost in the EA process when a publicly-available document, already paid for by Ontario electricity customers, is available. That approach was contemplated in the OEB's 2013 designation order when it was made clear that the development work, which included the EA work and work product, was to be carried out for the benefit of the project and for the ultimate builder designated through the OEB's Leave to Construct process.

We believe that we have been working with the MOECC to establish an appropriate regulatory option or approach that avoids the unnecessary cost and duplication associated with completion of an individual EA and that considers the interest of electricity customers and the Province. We want to be clear, accurate and transparent about the discussions that have taken place to date.

Should you have any questions or comments, please don't hesitate to contact me directly.

Kind regards,



Andrew Spencer  
Vice President, Transmission & Stations  
Hydro One Networks Inc.

Attachment: April 10, 2018 letter from MOECC to Hydro One

cc: Dolly Goyette, Assistant Deputy Minister (Acting), Environmental Assessment and Permissions Branch, MOECC

Annamaria Cross, Manager, Environmental Assessment Services, MOECC

Messrs. Iain Angus and Larry Hebert, Co-Chairs, Common Voice Northwest Energy Task Force  
Northwestern Ontario Municipal Association

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Mayor and Council of the Municipality of Greenstone

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Carolyn Calwell, ADM, Strategic, Network and Agency Policy Division, Ministry of Energy

[Carolyn.Calwell@ontario.ca](mailto:Carolyn.Calwell@ontario.ca)

Nancy Marconi, Manager, Supply & Infrastructure Applications, Ontario Energy Board [Nancy.Marconi@oeb.ca](mailto:Nancy.Marconi@oeb.ca)

Jennifer Tidmarsh, President, NextEra Energy Transmission - Canada

**NextEra** Energy Canada, LP



**From:** [Bruce.Hopper@HydroOne.com](mailto:Bruce.Hopper@HydroOne.com)  
**To:** [Wright, Adam \(MOECC\)](#)  
**Cc:** [Evers, Andrew \(MOECC\)](#); [patricia.staite@HydroOne.com](mailto:patricia.staite@HydroOne.com)  
**Subject:** Hydro One -Lake Superior Link Project -Draft Notice of Commencement of Terms of Reference  
**Date:** May-02-18 6:24:05 PM  
**Attachments:** [LSL-Draft-NoCToR 2018 05 02.docx](#)

---

Hi Adam,

Please find attached a draft Notice of Commencement (NoC) of Terms of Reference for Hydro One's Lake Superior Link project. We would like to request an expeditious review of this draft notice by the Ministry of Environment and Climate Change (MOECC). We will be happy to consider any comments the MOECC may have. Please note that the dates, times and venues of the Community Information Centres may change before finalizing this notice as we are currently securing venues.

Please feel free to contact me with any questions.

Sincerely,

Bruce Hopper  
Environmental Planner  
Environmental Services  
Hydro One Networks Inc.  
416-779-0257  
[bruce.hopper@hydroone.com](mailto:bruce.hopper@hydroone.com)

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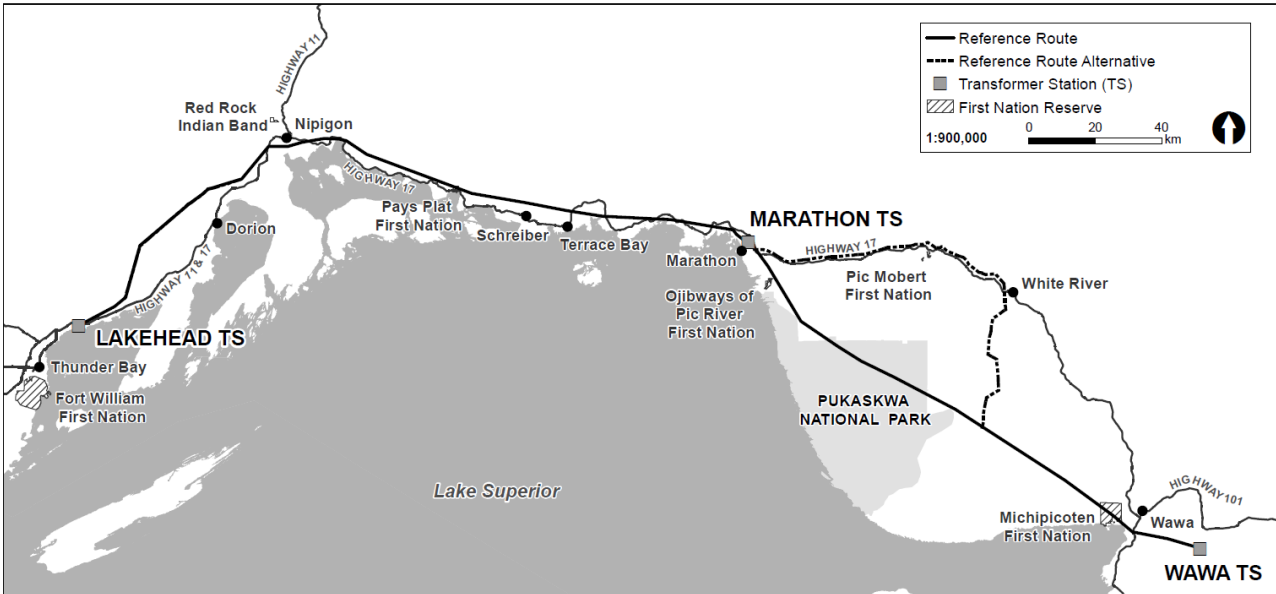


NOTICE OF COMMENCEMENT OF TERMS OF REFERENCE
Lake Superior Link Project
Hydro One Networks Inc.

Filed: 2018-05-07
EB-2017-0364
Attachment 14
Page 3 of 3

Hydro One Networks Inc. (Hydro One) is initiating an Environmental Assessment (EA) under the Environmental Assessment Act for the Lake Superior Link project. The Independent Electricity System Operator's (IESO) Updated Assessment of the Need for the East-West Tie Expansion, 2017 states that a new transmission line "...continues to be the recommended alternative to maintaining a reliable and cost-effective supply of electricity in Northwestern Ontario for the long term."

In March 2018, Hydro One hosted public information drop-ins along the project route to provide initial opportunities for stakeholders to learn more about the project, meet the project team and provide feedback. Hydro One is aware of the extensive consultation already completed on the new line to date, and will make best efforts to streamline consultation wherever possible.



The planning process

This EA will be carried out in accordance with the requirements of the Ontario Environmental Assessment Act. The first step is the preparation of a Terms of Reference (ToR) which will set out the framework and work plan for addressing Environmental Assessment Act requirements when preparing the EA, including an outline of the studies and consultation activities that will be carried out.

The anticipated completion date for the ToR is July 2018, at which point it will be submitted to the Minister of the Environment and Climate Change for review and approval. If approved by the Minister, the EA will proceed as outlined in the ToR.

Consultation

Indigenous communities, government agencies, municipal officials, members of the public and other interested persons are encouraged to actively participate in the planning process, including in the development of the ToR. Consultation and engagement opportunities will be organized throughout the planning process and communicated via community newspapers advertisements, mailings and on the project website.

We will be hosting another round of Community Information Centres as outlined below to provide a project update and continue discussions about delivering tangible benefits to communities in the project area.

Please join us:

Monday, June 11, 2018	Tuesday, June 12	Wednesday, June 13	Thursday, June 14
<b>Red Rock</b> 12 P.M. – 2 P.M. Red Rock Public Library 42 Salls Street	<b>Thunder Bay</b> 5 P.M. – 7:30 P.M. Current River Community Centre 450 Dewe Ave, Thunder Bay	<b>Schreiber</b> 5 P.M. – 7:30 P.M. Schreiber Municipal Gym 204 Alberta Street	<b>White River</b> 5 P.M. – 7:30 P.M. Royal Canadian Legion Branch 169 108 Winnipeg Street
<b>Nipigon</b> 5 P.M. – 7:30 P.M. Royal Canadian Legion Branch 32 102 5th Street	<b>Terrace Bay</b> 5 P.M. – 7:30 P.M. Terrace Bay Cultural Centre 13 Selkirk Avenue	<b>Marathon</b> 2 P.M. – 7 P.M. Marathon Centre Mall 2 Hemlo Drive	<b>Wawa</b> 5 P.M. – 7:30 P.M. Royal Canadian Legion Branch 429 51 Broadway Avenue
<b>Dorion</b> 5 P.M. – 7:30 P.M. Dorion Community Centre 175 Dorion Loop Road			

Information gathered at these Community Information Centres will be used both to complete the ToR and to gather information toward completion of the EA.

For further information about this project, please contact:
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All personal information in a submission - such as name, address, telephone number and property location - is collected, maintained, and disclosed by the Ministry of the Environment and Climate Change for the purpose of transparency and consultation. The information is collected under the authority of the Environmental Assessment Act, or is collected and maintained for the purpose of creating a record that is available to the general public, as described in s. 37 of the Freedom of Information and Protection of Privacy Act.