

Recommendations for Meaningful Public Involvement in Environmental Impact Assessment

**by EIA Working Group of The NB Environmental Network
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"Democracy is increasingly seen as a continuous and dynamic process in which governments carry ultimate responsibility but with only the most careful public scrutiny."

NBEN consultations indicate that there is considerable dissatisfaction with the current EIA process. Many are looking for a fundamental power shift in environmental decision making from politicians to communities. Innovative ideas were generated to bring about this change, such as a Jury of citizens to oversee the process and make the final decision, and referenda to settle disputes. Such suggestions show that citizens will not be satisfied with a mere tinkering of the present process.

As a Working Group, we have tried to make recommendations that a) reflect the majority view expressed at the NBEN consultation meetings, b) amount to more than tinkering, and c) provide an efficient and functional process.

Concerns Raised at the NBEN Consultations

A major concern repeated at all of the consultation meetings is that Environmental Impact Assessment (EIA) in New Brunswick is weakened by considerable Ministerial discretion, compounded by the final decision being made by Cabinet. The resulting decisions seem to be based on politics rather than environmental concern. It is recommended that the Minister have final decision making authority. However, such authority should be balanced by more comprehensive lists of activities that are subject to EIA, criteria and principles to guide decision making and vigilant scrutiny by the public.

A second underlying concern with the process is that government policy decisions are not assessed for their environmental impacts. Yet it is policy in transportation, energy, waste management, industrial development, or resource extraction which determines the development path taken in the province. Assessing physical undertakings or activities but not government policy is like treating the symptoms and not the cause of a disease.

Specific concerns with the screening phase are: a) many environmentally harmful

activities are not required to be registered including forest management planning, aquaculture, logging road construction, and pesticide spraying b) the lack of public review; c) too many environmentally harmful projects are "screened out" with no recourse for the public; and d) the time period is too short for meaningful public involvement.

The present EIA Review stage is problematic because: a) the government is not required to seriously consider citizens' concerns; b) socio-economic factors and aboriginal knowledge are not meaningfully considered; c) the consultants reports show a lack of scientific rigour and peer review; d) the public meetings come too late in the process to have any effect; e) the Review Committee is not required to be present at the public meetings; f) government representatives defer to consultants instead of answering the public's concerns; and g) alternatives including the null alternative are not seriously considered.

The present EIA process does not have the option of a hearing or inquiry before an independent body. The NB DOE has recommended in *Directions for Change* that a full EIA Review before an independent body be conducted for "major" undertakings. The consultations show that citizens are concerned that the independent review would actually only take place for 1% of the projects registered (following the federal experience under the Canadian Environmental Assessment Act). While recognizing that it is not entirely meaningful to put a quota on the number of projects being reviewed by an independent panel, we would like to see more like 51% be reviewed by an independent panel, to be determined by the method set out below.

A major concern voiced at our consultations is that while industry and government seem to have significant resources to participate in consultation, citizens and public interest groups do not. The result is an imbalanced process where citizens are unable to effectively research and present their views. This hampers what might otherwise be a democratic process, and undermines an essential purpose of the EIA process - to use the knowledge and participation of the community to prevent environmental problems from occurring.

Others criticized the present process for giving the proponent, but not the citizen, informal and formal rights of appeal. In the interest of justice and democracy, citizens who have demonstrated an interest by participating in the process should also have a right of appeal, other than to the courts. A court action is costly and time consuming, and courts tend to defer to decisions of government.

Citizens who have had to live with approvals that they fought, express dissatisfaction that they are dropped out of the process after the final EIA approval is given.

Specific Recommendations

After extensive research into the EIA processes of various jurisdictions, and gathering concerns and suggestions through eight (8) NBEN consultation meetings, we recommend the following.

Environmental Roster

1. A roster of 12 members of the public who combined will bring a broad perspective and experience from environment, conservation, labour, health, science, technology, First Nations, academic or youth shall be appointed by the Minister in consultation with the public.
2. Members of the roster will be called upon to serve on Environmental Appeal Panels (EApP) and Environmental Assessment Panels (EAsP).
3. Members who have served on the Environmental Assessment Panel for a project are not eligible to serve on an Appeal Panel struck for that project.
4. Members of the Environmental Roster should have the powers such as those given to members of Boards of Inquiry to call witnesses, and take testimony / evidence under oath.

Screening

1. The list of projects required to be registered for environmental impact assessment should be broadened to include environmentally harmful activities such as forestry, logging roads, aquaculture and pesticide spraying as well as government programmes and policies.
2. A list of the types of physical projects, policies and programmes that are required to be registered should be developed using public input, and reviewed every three (3) years.
3. Screenings should include regular public workshops to inform citizens of the undertakings that have been registered and to hear citizen's views on the undertakings.
4. The public should be given notice and the opportunity to make oral and written comments and pose questions. The DOE should be required to respond to the public's concerns and questions.
5. The screening decision should be guided by defined screening criteria and principles established in a regulation to be developed with public input and reviewed every three (3) years.

6. The final screening decision should be made by the Minister and each screening decision, and reasons for the decision, should be made public.

7. The public should be given three (3) months to appeal a decision to "screen out" a project to an independent Environmental Appeal Panel, and then to the NB Court of Queen's Bench.

EIA Review

1. The Government Review Committee (GRC) should be comprised of members of the provincial and federal levels of government, First Nations communities, and a member of the public with conservation experience.

2. The GRC members should be encouraged to give anonymous, or identified minority opinions in their report, where appropriate.

3. The public should be notified of a project undergoing EIA review and of EIA workshops, through the newspaper, internet, signs in malls, schools and universities.

4. Informational public workshops (including specific efforts to reach youth and aboriginal communities) should be held as Guidelines are prepared, and while the EIA is being conducted, facilitated by a skilled independent facilitator, with representatives present who have decision making authority from the proponent and government.

5. A formal public meeting, conducted at arms length from any department or a participating party by a skilled examiner, should be held for projects that are not subject to a full EIA hearing. The meeting should be as long as is necessary to give a reasonable opportunity to hear all concerns. The examiner should be granted the power to call witnesses. The public should be able to present oral and written submissions, introduce new information, and be able to ask questions of the government, the consultants and the proponent under oath, in order to expose differences of opinion.

6. The formal public meeting should be recognized as a means through which the citizens and/or the proponent might offer substantial changes, including alternatives, to a proposal which would better ameliorate environmental concerns.

7. A verbatim transcript should record the public comments, questions and responses.

8. The examiner should make recommendations based on the evidence presented, questions and responses, and new proposals introduced at the meeting.

9. The examiner's opinion should be made public.
10. The final decision should be made by the Minister after reading the recommendations of the examiner and the transcript of the public meeting.
11. The Minister's final decision and reasons should be made public .
12. The public or the proponent should be given three (3) months to file a formal objection with the Minister to be heard by an Environmental Appeal Panel with further appeal to the Court of Queen's Bench.

Full EIA Review

1. For each project requiring a full EIA hearing, the Minister shall appoint three (3) members of the Environmental Roster to make up the Environmental Assessment Panel (EAsP).
2. A hearing should be conducted whenever requested by the public through a substantial number of petitions and/or letters.
3. A hearing should also be conducted for projects listed in regulation. The regulation should be reviewed every three (3) years and developed with public input.
4. The EAsP should have the power call witnesses and take evidence and testimony under oath.
5. The EAsP should make recommendations to the Minister.
6. The recommendations of the Environmental Assessment Panel should be made public.
7. The Minister, after considering the recommendations of the EAsP, should make the final decision.
8. The Minister's final decision, with reasons for the decision if contrary to the recommendations of the EAsP, should be made public
9. The public and the proponent should be given a three (3) month period to file an objection to the final decision with an Environmental Appeal Panel with further appeal to the Court of Queen's Bench.

Environmental Appeals

1. A proponent or opponent to a project should be able to file an objection (or appeal) with the Minister within three (3) months of a final decision being made by the Minister.
2. The objection should be heard by an Environmental Appeal Panel.
3. The Environmental Appeal Panel should be comprised of three (3) members of the Environmental Roster.
4. The Appellant, and the Minister should each choose one member to sit on the Appeal Panel; the two chosen should agree on a third member from the Roster to complete the Panel.
5. The Environmental Appeal Panel should have the power to call witnesses and take testimony under oath.
6. The EApP should make recommendations to the Minister.
7. The EApP recommendations should be made public.
8. The Minister should make the final decision.
9. The Minister's decision and reasons for decision, if different from the recommendations of the EApP, should be made public.

Resources for Participation

1. Funding should be available for participation in the EIA process through a CRTC type process, where citizens and public interest groups can apply to the DOE for an award of costs to cover their expenses incurred in participating in the EIA process.
2. An interim costs award should be granted for costs expected but not yet incurred.
3. An award of costs, or interim costs should be provided, upon presentation of a budget, for: independent research, independent experts, writers to prepare briefs, networking activities such as workshops and newsletters, child care, accommodation, travel, telephone, photocopies, fax and internet use.
4. An expedited method of reimbursing travel, accommodation, and child care should be in place for those members of the public who want to attend a workshop or hearing, but do not want to participate more fully in the process.

Follow-up

1. All Approvals, conditions, and regular monitoring results should be made public.
2. An Annual Report outlining whether each project has met its Approval and conditions should be tabled in the Legislature.
3. An Evaluation of the consultation process should be conducted, seeking input of all participants and of those who withdrew along the way.
4. The Evaluation should be made public and its recommendations incorporated into future consultations.
5. Community Environmental Committees comprised of members of the public chosen by the community, and the proponent could be used where appropriate. The Committee would assist the government to oversee implementation of the conditions of approval, monitor the effects on the environment, and ensure that injured parties are compensated.