

# **Environmental Impact Assessment**

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## **Practice and Participation**

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level of detail (Senécal et al. 1999). It is here that it is determined whether will entail larger public hearings, an internal agency-based panel review, or a full administrative assessment. Many EIA systems apply to a broad range of projects and many of these will be routine and their environmental impacts minimal. At the screening stage, such undertakings might be quickly reviewed and given a cursive review to insure that no larger impact issues are likely. In some jurisdictions the majority of actions subject to EIA do not require comprehensive assessment and do not warrant the use of EIA resources. If it is well designed and conceptually sound, the system can ensure that important and relevant proposals are subject to the scrutiny they require, without subjecting small projects to needless delay. Screening criteria typically include legal requirements (is the undertaking subject to EIA legislation?), scale (does it fall within a size or cost threshold?), the proponent of the project (is it public or private—in some places all projects are subject to EIA? are certain permits required?), the nature of the project (may be that all hydroelectric or chemical facilities are subject to EIA in a particular jurisdiction), or a combination of these.

It is determined that an EIA will be conducted, *scoping* begins. Scoping is where the issues and impacts that are likely to be addressed by the EIA are identified, and terms of reference for the EIA may be established. Since the EIA is conducted under considerable time and resource limitations, this stage is of particular importance (Harrop and Nixon 1999). Scoping frames the impact assessment. Existing baseline data supports scoping, but the system also help decide what additional or new baseline information is needed. Stakeholder consultation, methods of assessing and predicting impacts, and additional consideration of alternatives begin with scoping. Some systems provide relatively precise lists of what the scope of an EIA will be; others are more fluid and discretionary advice, allowing the EIA to be tailored to the needs, which for some projects may be largely biophysical and for others social. Public participation should be an integral part of determining the scope of the EIA. It is through such consultation that the EIA system can identify the issues and impacts that are likely to be affected by the proposed undertaking. As with all of EIA practice, there is variation in how the scope of assessment is applied.

Once the scope of the EIA is complete, *assessment of the proposal* begins. It is here that data collection, and evaluation occur. Baseline data may already exist in some cases, but commonly it must be expanded and new data collected. Baseline data on the current environmental (physical, social, and economic) conditions of the area and the likely impacts of the proposed project. Baseline information provides the basis for assessment and prediction of impacts. Impact prediction also occurs

at this stage, and as the term implies, it involves the forecasting of the likely impacts and outcomes of the proposal. Such prediction may address a range of project design and operating scenarios. Likely impacts are also assessed for their significance. As Baker and Rapaport outline in chapter 3, specific methods that have been refined within EIA have become synonymous with the science of assessing impacts.

Significance is a subjective notion determined by the importance that the stakeholders—the proponent, the regulators, and the decision makers—attach to specific impacts. It is also during the assessment stage that mitigation measures are identified and a monitoring or compliance program is outlined. The process of mitigation involves outlining the measures that can be taken to reduce or eliminate the impacts identified. It also provides the proponent with the opportunity to make the project better, to respond to the concerns of those affected, and to improve the likelihood that the proposal will be favourably received by the EIA and other approval agencies. Effective mitigation measures can make a project more likely to be accepted and perhaps even ensure that it is more efficiently implemented.

### Stage 5

The task of *preparation, submission, and review* follows assessment, though in practice preparation of the submission should occur throughout the EIA process. At this point, the information that has been collected and analysed is brought together and placed in the EIA report; in essence, this is where the findings of assessment are presented. The contents of the report are usually determined by the regulating EIA agency. In some jurisdictions there will be clear expectations of what the report will contain and how this information will be organized; these expectations may be communicated through agency publications, such as a *Guide to the EIA Process*, through pre-consultation with the proponent where the agency's expectations are made clear, or through the formal provision of terms of reference. The report is then tendered to the EIA agency for review and a decision.

### Stage 6

While the *decision* may appear to be a simple matter, in practice decision making is more complex. The decision in EIA might be better seen as a recommendation. The recommendation might be to approve a proposal, as it is or with conditions, reject it in its present form, or reject the concept outright. The decision/recommendation flows from the review, and in some instances it may appear to be the last part of the review. As outlined above, EIA is a tool in the planning process. It contributes knowledge that is used in decision making. Initially, environmental impact assessment was not intended to be the point at which the formal decision about whether or not to proceed with a proposal would occur; instead it was about assessing impacts and communicating such knowledge to decision makers. The issue of whether a decision to approve a proposed project is seen to be part of EIA or separate from it is problematic, but perhaps it is no longer terribly relevant—some would now hold that EIA has become the place where the decision is in fact made, and some EIA processes now provide formal approvals.



is also another jurisdictional error, as the JRP failed to follow the parameters set out in the legislation.

<sup>141,138.</sup> Robert Connelly, of Connelly Environmental Assessment Consulting, Inc., points out at paragraph 17 of his Report for Canada that:

There are certain factors in section 16(1)(a)-(e) that must be considered in every type of environmental assessment (emphasis in original). One of these mandatory factors is “(d) measure that are technically an economically feasible and that would mitigate any adverse environmental effects of the projects”.<sup>137</sup>

<sup>142,139.</sup> Here the WPQ Panel simply did not consider mitigation measures, contrary to the mandatory requirement to do so, as was acknowledged by Mr. Connelly.

<sup>143,140.</sup> In paragraph 83, Mr. Connelly cites Professor Hanna with respect to mitigation measures:

The process of mitigation involves measures that can be taken to reduce or eliminate the impacts identified. It also provides the Proponent with the opportunity to make the project better, to respond to the concerns of those affected, and to improve the likelihood that the proposal will be favorably received by the EIA [environmental impact assessment] and other approval agencies. Effective mitigation measures can make a project more likely to be accepted and perhaps even ensure that it is more efficiently implemented.<sup>138</sup>

<sup>144,141.</sup> In my view, in the words of Professor Hanna, the failure to consider mitigation measures deprived Bilcon of:

... the opportunity to make the project better, to respond to the concerns of those affected and to improve the likelihood that the proposal [would] be favorably received by the EIA and other approval agencies.<sup>139</sup>

<sup>137</sup> Expert Report of Robert Connelly at para. 72 (Emphasis added).

<sup>138</sup> K. Hanna, “Environmental Impact Assessment: Process, setting and efficacy” in K. Hanna (Ed) Environmental Impact Assessment Practice and Participation, (Oxford: Oxford University Press, 2009), chapter 1 page 11.

<sup>139</sup>