

June 28, 2019

Kevin Jardine, Associate Deputy Minister
Environmental Assessment Office
Government of British Columbia
P.O. Box 9426
Station Provincial Government
Victoria, BC, V8W 9V1
Submitted by email: kevin.jardine@gov.bc.ca

Re: Environmental Assessment Act Revitalization Process

As you know, representatives of the Business Council of British Columbia and relevant industry sectors, academia, local governments, and environmental groups and consultants are working with your staff as part of a Multi-Stakeholder Implementation Committee for the new *B.C. Environmental Assessment Act*. The mandate of this Committee is to provide technical advice and input on proposed process and regulations accompanying the new *Act*. We appreciate the opportunity to participate in this process, and are pleased with the constructive, professional, and collegial approach of your staff and other participants.

Collectively, the signatories to this letter represent companies and sectors involved in the bulk of provincial environmental reviews over the last several decades. We are also active participants in the development of evolving policy and regulations that help to support efficient and transparent environmental assessment legislation. Our mutual goal is good public policy and a focus on the practical execution of the *Act*. As such, we wish to go on record with some concerns that have arisen through our participation in the Committee and the review process:

1. **Indigenous Alternative Dispute Resolution (ADR):** We are aware that government-to-government discussions between the Crown and Indigenous groups on the form and substance of the forthcoming ADR process have only just started. We are concerned that your important and necessary conversations with Indigenous groups are lagging the discussions with the Implementation Committee. Getting the ADR process right is critical to the integrity and smooth functioning of the entire environmental assessment process. We are particularly concerned that the ADR regulation is not planned to come into force with the *Act*. We are also troubled by the apparent lack of opportunities for the business community to provide advice and input into the design of an ADR regulation. Given the extensive experience of companies working with Indigenous communities on the implementation of project agreements, this is problematic. Project proponents play a central role in environmental assessment. Transparency is critical. And while the Business Council and the other organizations listed below respect the government-to-government nature of the ADR process,

the unintended consequence of delayed engagement and a design that does not consider the input of proponents is elevated non-technical risk, resulting in more uncertainty about timelines. A key consideration for the Business Council and other allied associations in assessing the draft legislation was an assurance from government of meaningful business engagement in the development of the ADR regulations. The current direction is not consistent with that understanding.

2. **Regulated Projects:** We understand that refinements to the primary project criteria and thresholds are underway. We are concerned with the addition of secondary criteria for determining reviewability, which in our view risks turning the list into an “all in” screening regulation and contradicts the intention of the revitalization process to streamline rather than expand the types of projects subject to assessment. Thus, the secondary threshold concept is in direct opposition to the principles that we understand the EAO/B.C. Government is trying to reflect within the EA process, specifically creating certainty and avoiding duplicative regulation and incentives for project splitting.
3. **Factors to Consider:** We appreciate the considerable work your staff have done to “scope” the factors that proponents must consider when gathering information and undertaking analysis as part of their filing. We are concerned about two factors in the Act: “effects on current and future generations,” and “greenhouse gas emissions.” The former ultimately shapes and determines “public interest” decisions made by Ministers and government. It currently lacks definition and is too open-ended. Further, key considerations the Minister and government will consider may not be based on specific information that a proponent provides. This could also lead to unintended consequences such as unbounded requirements for information-gathering and speculation by proponents about the trade-offs that ultimately are the responsibility of governments to make. In terms of greenhouse gas emissions, climate change is a global phenomenon. This factor requires a much more precise definition and guidance before its use in the assessment process is acceptable to the business community. It must also be linked to the work currently underway with the Low Carbon Economy Initiative.
4. **Fees:** The initiation of fees within the environmental assessment process was accepted by industry in recent years with the quid pro quo being a more efficient and effective application review process for proponents. This purpose and commitment now seem forgotten. We are concerned that government is on a path toward full cost recovery, without any consideration for the risks taken by proponents to advance through the process, capital requirements, or the myriad of taxes, royalties, fees, and levies paid by proponents to all levels of government. We acknowledge efforts to pare

down the application fee structure. However, the Business Council and our colleagues in the wider business community are firmly opposed to the introduction of any annual “operating fee” on a per certificate basis, especially for smaller projects. Such a fee is a form of taxation, without providing incremental benefits to proponents (or other stakeholders); it is well beyond what is reasonable in terms of service provided and will add to the erosion of both competitiveness and the attractiveness of British Columbia as a place for industrial investment. The Environmental Assessment Office should meet the Auditor General’s direction regarding monitoring compliance with certificate conditions without becoming a “permitting and compliance agency.”

5. **Local Government Participation Funding:** We recognize the need for local government participation in the environmental assessment process. But we see no case for levying new fees on industry to pay for local governments’ participation, should this be something the Province is considering. Local governments have budgets, a budget process and taxation functions, and can reallocate resources for a variety of community priorities. Staffing and funding for participation in the environmental assessment process is one of those choices. There must be no off-loading of these local government costs to proponents or to business in general. The Business Council and the other signatories to this letter have highlighted, repeatedly, the negative effects of the mounting financial burdens faced by the business sector because of successive tax increases, new fees, and other levies introduced by all levels of government. The issue of how local governments participate in environmental assessment requires a government-to-government solution, particularly since the environmental assessment process is driven by government legislation and policies. Government costs associated with administrative functions and the normal activities of government agencies are not the responsibility of proponents.

The Business Council and the other signatories to this letter are committed to working constructively with your staff to make the new *Act* and regulations workable, despite reservations about the new process and these fundamental contradictions and concerns. We urge you not to rush the *Act* into force. Well thought out ADR and RPR regulations are critical elements impacting the long-term success of environmental assessment and sustainable economic development. Taking more time will help build increased investor and public confidence.

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If you have any questions or wish to discuss this matter further, we would welcome the opportunity to meet with you.

Sincerely,



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President and CEO
Business Council of B.C.



Tim McMillan
President and CEO
Canadian Association of Petroleum Producers



Michael Goehring
President and CEO
Mining Association of B.C.



Chris Gardner
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Martin Mullany
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Chris Bloomer
President and CEO
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Kendra Johnston
President and CEO
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cc: Dave Nikolejsin, Deputy Minister, Ministry of Energy, Mines and Petroleum Resources
John Allan, Deputy Minister, Ministry of Forests, Lands and Natural Resource Operations
Paul Jeakin, CEO, Oil and Gas Commission
Wes Shoemaker, Deputy Minister, Ministry of Agriculture
Doug Caul, Deputy Minister, Ministry of Indigenous Relations and Reconciliation
Mark Zacharias, Deputy Minister, Ministry of Environment and Climate Action Strategy