



The Honourable John P. Manley, P.C., O.C.
President and Chief Executive Officer

L'honorable John P. Manley, C.P., O.C.
Président et chef de la direction

May 4, 2017

The Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change
10, rue Wellington
GATINEAU, Quebec
K1A 0H3

Dear Minister McKenna,

I am writing on behalf of the Business Council of Canada to provide views in response to the report of the Expert Panel Reviewing Federal Environmental Assessment Processes (“the panel”). We commend the panel for its hard work and dedication to the task. There are some useful ideas that will serve to enhance the transparency of the process and provide additional avenues for public input. Nonetheless, we have severe misgivings with respect to certain of the key recommendations put forward in the report.

Undoubtedly there are improvements that can be made to the overall framework for environmental assessment in Canada that would serve to increase Canadians’ confidence that major resource projects meet the test of economic, environmental and social sustainability. Among the positive elements in the report are:

- Measures to ensure greater public accessibility to information generated during the assessment, as well to monitoring data after construction of the project.
- Encouraging more collaboration between project proponents, governments, Indigenous representatives and interested parties at an early stage in the process.
- Increasing the capacity of federal agencies to ensure they are able to participate effectively in the process.

- Greater use of regional and strategic environmental assessments, which help ensure that individual project assessments are focused on the specific impacts of that project. However, completion of regional and/or strategic assessments should not be a prerequisite to project assessments.

At the same time, it is critical that any new framework for environmental assessment increases investor confidence in the ability of the federal government to make timely decisions on major projects. Otherwise, important economic developments, with many spin-off benefits for society, could be lost. Canada is in an intense global competition for capital and talent, and we cannot risk having project proponents conclude that the risks and uncertainties of investing in Canada are too great.

Our primary concern is that several of the recommendations, rather than provide clarity and predictability, will instead add uncertainty and delay to the approval process. We note in particular:

- The report proposes a significant expansion in the types of projects and activities that will require federal assessment. Yet it does not make a compelling case for why such expansion is necessary nor why many of these activities could not be adequately handled under existing provincial processes. Furthermore, the inclusion of any project that has “potential to impact present and future generations in a way that is consequential” gives proponents little guidance as to whether their project would be included.
- The panel recommends a focus on overall impact assessment, enlarging the scope beyond the current “bio-physical environment”. Yet the “sustainability” criteria suggested are so broad as to provide little practical guidance to a project proponent. Again, this would compound uncertainty around the appropriate scope of the review.
- The recommendation to create a quasi-judicial agency appears inconsistent with the other roles that the panel suggests for this new agency, such as consensus building amongst the parties and undertaking the primary role of consultation and accommodation with Indigenous peoples.

- The panel envisages each significant stage of the process proceeding on the basis of “consensus”. While consensus is desirable, it is only rarely achievable where a balance of economic, environmental and social considerations must be found. And the panel offers little indication of whether and how an assessment could continue in the absence of consensus.
- Under these proposals, the proponent would have a much-reduced role in the plan and design of the assessment, any relevant mitigation measures, and the undertaking of specific scientific or environmental analyses. It is unlikely a project proponent would easily cede such control to the government authority. Nor is it likely that the agency would have the resources or the expertise to effectively carry out such functions for the multitude of projects under consideration.
- The report acknowledges the need for more effective inter-jurisdictional cooperation but at the same time several of its proposals come close to advocating unilateral federal intrusion into provincial jurisdiction. As well, the panel’s approach would seek to restrict, rather than expand, the use of equivalency and substitution provisions which currently help to reduce overlap and duplication between federal and provincial processes.
- The panel recommends removing the legislatively mandated timelines for completing project assessments in favour of project-specific timelines. This would be a major step backward in our view, since it leaves proponents without any ability to predict the time required to bring a project to conclusion.
- As noted above, we support the panel’s ideas to improve the availability and clarity of information to the public, and to enhance engagement in the early stages of project development and assessment. But actual participation in the formal hearing process must be limited to those who will be directly affected or who have relevant information and expertise to impart.

In closing, let me reiterate that Canada's business leaders stand ready to work with you and your federal colleagues in the pursuit of a reformed assessment process that meets Canadians' expectations for a healthy environment. However, the end result must be a process that is coherent and efficient and restores investor confidence in the ability of governments to approve major resource projects in a timely manner.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. McKenna', is positioned below the closing text.

c.c. The Honourable Bill Morneau, P.C., M.P.
Minister of Finance

The Honourable Navdeep Singh Bains, P.C., M.P.
Minister of Innovation, Science and Economic Development

The Honourable Marc Garneau, P.C., M.P.
Minister of Transport

The Honourable Carolyn Bennett, P.C., M.P.
Minister of Indigenous and Northern Affairs

The Honourable Dominic Leblanc, P.C., M.P.
Minister of Fisheries, Oceans and the Canadian Coast Guard

The Honourable Jim Carr, P.C., M.P.
Minister of Natural Resources

Mr. Ron Hallman
President, Canadian Environmental Assessment Agency