



Submission from Ecology Action Centre regarding the Environmental Assessment Modernization

October 2023

The following submission is in response to the Province's [call for public comments](#) on the proposed "modernization" of Nova Scotia's Environmental Assessment (EA) process.

The Ecology Action Centre (EAC) is an environmental charity based in Mi'kma'ki/Nova Scotia. We take leadership on critical environmental issues from biodiversity protection to climate change to environmental justice. Grounded in over five decades of deep environmental change work and fueled by love and grief, EAC takes a 50-year perspective on what is needed to build towards a time of thriving and flourishing. We work to equip human and ecological communities for resilience and build a world where ecosystems and communities are restored not just sustained.

Over the last several years, staff members at the Ecology Action Centre have gained extensive knowledge around the current Nova Scotian EA process. We have a very strong understanding of the different stages projects go through during the EA process and beyond, including EA registration documents and subsequent documents requested by government, approvals, operations, and permitting. We have also learned about adjacent processes such as the Industrial Approval process and wetland alterations. We are well positioned to make recommendations on modernization of EA process.

Many of the underlining issues we have identified with the current EA process are systemic and cannot be solved with small tweaks and updates. The EA process needs transformative change, done in a meaningful way that with properly prioritize long-term environmental, social and economic well-being. We need to create and implement a system that goes beyond minimizing harms to the environment; we need approved projects that will provide a net benefit to the environment and do so through a justice oriented and anti-oppressive lens. A new process would be based on a recognition that we live in a degraded environment that cannot withstand more devastation. We have seen no indication from the Province that they are ready or committed to going in a new direction for the whole of the EA process. So, if the level of openness is only to small changes, please consider our comments below as the minimum of what needs to be addressed right away.

EAC has worked closely with East Coast Environmental Law on their report on recommended changes to the EA process (Northrup, T. 2023. *Moving Towards Next-generation Environmental Assessment in Nova Scotia: A Report Supporting Engagement in the “Modernization” of Nova Scotia’s Environmental Assessment Process*). This report responds to the 5 topics the Department is committed to working on, but goes beyond that, based on best practices and academic research for “next generation” environmental impact assessment. EAC endorses the excellent research and recommendations in the attached report by ECEL. We are also providing comments in addition to what is provided in ECEL’s report.

Regarding the topics NSECCC has asked about during the public consultation, we support the recommendations in the ECEL report. Essentially:

1. For the topics of **climate change, cumulative impacts, and diversity, equity, and inclusion** – We are in agreement with the ECEL review and recommendations that it should be required that proponents complete analyses on these topics, AND THAT the Minister make decision based on these topics.
2. For **independent review**, at minimum government should provide a publicly available final report for each project that goes through the EA system before the Minister’s final decision (similar to the federal IAA EA reports). We also encourage the Province to examine the value of having an independent assessment agency (as is done in British Columbia).
3. **netukulimk**– We recommend that government read, understand, and implement the recommendations made in the ECEL report. These recommendations echo what we have also learned at EAC from our experiences hearing from and learning from Mi’kmaq people. Bringing *netukulimk* into decision-making will likely go beyond just considering Mi’kmaq bio-cultural knowledge. Working with Mi’kmaq worldview, laws and governance, addressing Mi’kmaq rights and sovereignty, and following their leadership, may be required by the Province to truly move in the direction of understanding and living *netukulimk*.

The following are our recommendations that are beyond the topics asked about by NSECC, and separate from the ECEL report.

1. Overarching changes above the EA process

Mi’kmaq Rights and the EA process

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) has yet to be implemented in law or practice in Nova Scotia. Ecology Action Centre recognizes that sub-national governments, including the Province of Nova Scotia, should be cooperating in good faith with First Nations in Nova Scotia to make room for

(and support) First Nations to “*determine and develop priorities and strategies for the development or use of their lands or territories and other resources*” (UNDRIP). This could include First Nations developing and implementing their own consultation processes for proponents proposing projects in Mi'kmaki, and/or, developing and implementation their own environmental assessment processes. Importantly, Mi'kmaq leadership on this topic must be prioritized; this is an important step in reconciliation. Mi'kmaq communities have a deep knowledge and understanding of the local land management. Indigenous led leadership is an effective and equitable way to safeguard the environment, promote biodiversity, and protect against the impacts of climate change.

Impacts of the EA process on people and communities

Resource development and infrastructure projects tend to benefit some people and marginalize others depending on their identities, including gender, age, race or ethnicity, disability and socio-economic status. The EA modernization should give proper attention to the ways in which the EA process and the projects that are approved through the EA process impact different groups of people. The negative impacts of some projects approved through the EA process disproportionately affect marginalized people and communities. For example, projects can negatively impact Indigenous communities by reducing the size of territories for hunting, fishing and gathering plants and medicines needed for cultural rituals and/or food security, and/or negatively impact species critical to cultural identify. In the case of projects that involve an influx of workers into communities, overworked health infrastructure associated with this influx may also disproportionately affect men and women with special health needs or disabilities. This inflow of workers, who are often young cis-gendered men, is also associated with increased rates of crime, alcoholism, drug abuse, and violence against women (particularly against Indigenous women).

Furthermore, while economic development and opportunities may be associated with some of these projects, reports have shown that across Canada, “cis-gendered, non-Indigenous men, often from outside of host communities, tend to have more access to high-paying industry jobs.”¹ In addition, the lack of local affordable child care can serve as a major barrier to women working in resource development projects.

In addition to the impacts of the actual projects, the barriers to participating in the assessment processes across Canada, and around the world, have historically been particularly profound for marginalized groups.

The EA modernization is an important opportunity for Nova Scotia to address these issues, and improve the process and the projects approved through the process. The Province should actively consult with researchers, experts and scholars in this field

¹ Oxfam Canada’s Report titled “Inspiring Change A community and activist guide to intersectional gender-based analysis and impact assessments in Canada”

throughout the EA modernization process in order to make meaningful changes in this area.

2. Changes to the EA process

Digital equity and public engagement activities

In order to provide accessible and attainable public engagement opportunities in the EA process, digital equity plays an important role. Digital equity refers to equal access to the same opportunities and resources online regardless of socioeconomic status or location. Currently, in Nova Scotia, and across Canada, there exists a digital divide, especially in rural areas. Given that many projects that are approved through the EA process are located in rural communities, this issue is particularly relevant. The digital divide creates a division and inequality around access to information and resources. There are many reasons why a digital divide may exist: lack of access to affordable, reliable and sufficient internet; lack of access to digital devices; low levels of digital literacy; and/or applications and services are not designed to be used by diverse audiences. Therefore, the Province should use the opportunity in the EA modernization to actively work to close the gap of the digital divide by ensuring there are a variety of avenues for Nova Scotians to learn about projects and engage in the EA process (both online and offline), and that information concerning projects and public engagement opportunities are designed and presented in a way that can be accessed and used by diverse audiences.

Public engagement before project is fully designed

Proponents should be required to engage with communities earlier on in the EA process. NSECC has been encouraging companies to engage early about their proposed projects, however, the Department should require evidence of early engagement. Early engagement can surface community concerns, led to modifications to the project, and build understanding and potentially trust with communities. However, engagement is done differently by different companies and at different times with what seems like very little involvement of the Department. If the Department is truly interested in improving diversity, equity, and inclusion in engagement, they should incorporate this more into how companies engage early with communities.

EA project website

On the NSECC website about projects going through the EA process, the documents are only for the assessment stages, and only certain documents appear here. These webpages for projects should include ALL documents and links related to the project, including documents provided by the proponent at community engagement sessions (before EA first submission), and links to the next documents for projects that are approved (e.g., Industrial Approval). Improving this website to include related

documents would be a meaningful step in NSECC providing more transparency around the EA process and related processes.

Scope creep in projects throughout EA process and beyond

EAC has observed scope creep when proposed or existing projects expand beyond what was originally proposed, sometimes through multiple aspects of the engagement and permitting process, and sometimes without a lot of transparency. Communities are sometimes brought a proposed project which is then made larger, lengthier, or otherwise different when it reaches the EA process. A project may go through the EA process and then end up having a different scope after it is approved. Projects are modified once again through the Industrial Approval system, which does not have engagement with community and sometimes lacks transparency. And there are other ways in which projects end up more impactful than originally described.

The Department should examine where scope creep is happening already, and implement ways in which projects can be appropriately described upfront, or can change down the line in a way that is fair and transparent including for communities.

Please see the attached report (Carnevale et al. 2022. *Evaluating Industrial Approvals and the Potential for Post-Assessment Mining Amendments in Nova Scotia*) that examines just a few examples of “scope creep” and inconsistencies between EA Terms and Conditions and IA.

Quality of EA submissions from proponents

Over a number of years now, Ecology Action Centre has seen some very poor quality work by proponents and the consultants they have hired to conduct studies and produce EA documents. The quality of this work must be improved for so many reasons including accuracy of predictions around impacts, communicating with the public about what to expect about a project, and, very importantly, for government staff to be able to evaluate projects adequately. It has been baffling and disturbing that the Minister has approved projects that have left so many questions unanswered, and with flaws in proponents' work which were pointed out to government. We all rely on the expertise of staff within government to be able to properly assess the risk posed by proposed projects, yet we see government staff replying to comment periods citing that they do not have enough time to evaluate projects, that there are information gaps in projects, and that they have not received information from proponents that they have already requested. Staff in federal government departments, whose expertise is different from provincial knowledge, and is also valuable, also communicate regularly that key information is missing from EA documents. Just as an example, one of the poorest quality EA we have ever seen was for the proposed Canso spaceport. Here are just a few of the outstanding issues that remained when the project was Approved with conditions:

- Staff from **Nova Scotia Environment** stated in their comments about the Focus Report that there were still: “significant gaps in the information on how most dangerous goods will be stored on the proposed site,” and that the “response for additional information regarding protected areas does not provide adequate content to assess potential impacts.”
- Staff from Health Canada were unable to evaluate the results of the noise model “because the proponent did not provide enough information.”
- Staff from Environment and Climate Change Canada found that “many areas of the Focus Report do not include sufficient information to address the questions,” but found enough information to raise concern that no mitigation measures were proposed to avoid harm of migratory birds during launches.

EA Approvals – Duration

Projects that are Approved (with Terms & Conditions) must commence within 2 years of approval, but proponents often ask for infinite extensions on this. The Province should have a limit for how many times an extension can be granted. An extension could be granted once, with a valid reason from the proponent for the request (the Province has approved requests for extensions based on some very questionable reasons). Limits to extensions requests exist in British Columbia’s EA process.

EA Approvals – Terms and Conditions

Understandably, there is some overlap between the Terms and Conditions of projects so that they are carried out in a way that is streamline and defensible for the Province and the proponent. However, especially since 2022, Ecology Action Centre has seen fairly direct copy and paste of Terms and Conditions by the Department into multiple projects, without including specific Terms & Conditions that were recommended by Department staff. In their comments on project, government staff are recommending suitable conditions that do not appear in the EA Approval or the IA. Ecology Action Centre recommends strongly to listen to government staff with regards to Terms and Conditions and to include project-specific Terms and Conditions that government staff describe.

3. Post-EA processes that need to be modernized

Care and maintenance

The care and maintenance time period that many mining projects enter into is has been problematic. There is almost no information in the public sphere about this time

period for mines, including how mines are still being regulated, and the conditions under which a project can get in and out of the care maintenance. Again, there is a lack of community engagement about this stage. If care and maintenance could be a life stage of a mine, the Department should provide more transparency around how care and maintenance works, including the expectations on the Department and on the company. The Department should figure out a way for communities to be involved at this stage. Care and maintenance does not seem to have an end date in Nova Scotia, which is problematic in a number of ways. The Province should create an end date for how long a mine can stay in care and maintenance stage.

Closure, reclamation, and long-term monitoring and maintenance plans

So much of what happens at the end of a mine's life is not co-created with the community that will live with the site forever. There is a disturbing level of secrecy around mine closure and reclamation plans with the Province; this needs to be rectified. Communities should be involved in consultations around closure and reclamation plans. Everyone stands to benefit from communities involvement in long-term monitoring and maintenance plans for site, especially because care and maintenance is the time when companies substantially withdraw from the area and communities and the Province are left caring for the site in order to reduce its impacts.

Industrial Approvals (IA)

There are several ways transparency around the IA process should be improved:

- The website for Industrial Approvals should be more closely linked to, or be the same as, the website for EA projects
- Applications as well as updated IA should be on the online database
- Past versions of the IA should be on the online database
- IA should be required to reflect all conditions from the EA approval conditions relevant to the IA in the IA
- A contact list for people interested in updates about a specific project, including changes to the IA, should be created

Some of these features are already enabled for projects going through the federal impact assessment system on the federal page about joint federal-provincial EA projects.

Community Liaison Committees (as per EA requirements)

Community Liaison Committees (CLC) are not working well in some communities. After projects receive their Approval from NSECC, many CLC disappear because the

proponent no longer initiates or attends CLC meetings, or proponents stop communicating with the community entirely. There should be a requirement for proponents to continue CLC through the lifetime of the project.

CLC can also become dysfunctional because of the community members involved. Community-based members of the CLC will sometimes not communicate to their neighbours about what is going on with a project, or will share only information that is in favor of the project. The responsibility of CLC members should be defined, and a feedback mechanism to government should be created for when CLCs aren't working.

Crown Land Use Planning

EAC has repeatedly recommended to government that a holistic approach to Crown land use planning should be undertaken to consider all the competing demands for Crown land (most of which are listed in the updated purpose of the *Crown Lands Act*). We reiterate this advice again here. The potential to overwhelm our limited Crown land base with one-off projects that are considered in isolation from one another and from other responsibilities including wildlife habitat protection and connectivity is very real and very concerning. We recommend that the Province conduct Crown land use planning that considers all the values and purposes for which the Provinces is committed to stewarding public (Crown) land.

Public engagement

EAC and the public have said repeatedly to the Department that the 30 day time period for commenting on a proposed project is too short. It's too short a time for anyone, working on EA full time or in their spare time, to understand the long, technical documents associated with proposed projects. It is not enough time to understand these documents analyze them, and in some cases get outside or contracted help to understand some of the technical aspects of the proposal. It is not enough time to write constructive comments that would make the project safer. Government staff routinely convey that their comment period is too short. **We implore you to increase the public comment period on EA projects to 60 days.** The public comment period on proposed Wilderness Areas (the public comment process is also managed by NSECC) is already 60 days, for example. We are also deeply concerned that helpful comments from the public are not being considered or acted upon. In the times where we have seen requests by the Minister for Additional Information or Focus Reports, these come from comments made by the Minister's department staff, or rarely, other departments. We know of no evidence where any comments by the public made during the comment period have ever affected a project (this includes our own multitude of comments over the years). The Department should create a tracking table to demonstrate where comments by other departments and the public were considered, and how the Department or the proponent responded to them. This is already done by the federal Impact Assessment

Agency. It has been deeply disturbing to see comments made by staff in various provincial departments, comments that are valid, intelligent, and actionable, not reflected in even the Terms and Conditions of projects. This calls into question the validity of the EA process.

Office of the Auditor General audit

We note that some of the deficiencies and issues brought up by the Office of the Auditor General in the [2017 audit of aspects of the EA process](#) are still coming up in the EA process today (despite the follow-up report by the OAG in 2022 that compliance with OAG recommendations are 100% complete).

