



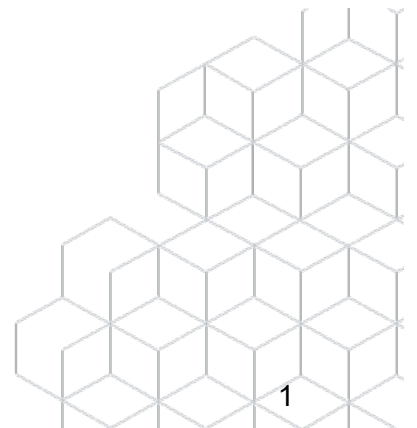
YESAB

Yukon Environmental and
Socio-economic Assessment Board

User Guide

Pre-Submission Engagement for Executive Committee Screenings

October 17, 2022



This User Guide helps proponents and participants in the *Yukon Environmental and Socio-economic Assessment Act (YESAA)* assessment process understand the Pre-Submission Engagement (PSE) process. It sets out information on the PSE process framework and requirements, and on how it was developed. The guide is a working document and will be reviewed and updated periodically. More information on the PSE process can be found on the Yukon Environmental and Socio-economic Assessment Board's (YESAB) website (www.yesab.ca).

Any comments or suggestions on the PSE User Guide can be emailed to yesab@yesab.ca; please include "PSE User Guide" in the subject line.

Disclaimer:

This guide is not intended to provide legal advice or direction and should not be used as a substitute for the *Yukon Environmental and Socio-economic Assessment Act (YESAA)* or its associated regulations and rules as they currently exist. In the event of a discrepancy, the Act, regulations and rules prevail. YESAB retains the discretion to deviate from the procedures described in this guide where appropriate.

For further information on the PSE process please contact YESAB:

Contact Information

Telephone: 867-668-6420

Fax: 867-668-6425

Email: yesab@yesab.ca

Toll-free: 1-866-322-4040

Visit YESAB's [PSE page](#) at www.yesab.ca

Contents

1.0	Pre-Submission Engagement	5
1.1	Purpose	5
1.2	Objectives	5
2.0	Overview of the PSE Process	5
2.1	Roles and responsibilities	5
2.2	Timelines	7
3.0	PSE Process – phase by phase	9
	Phase 1 – Project Description	9
	Compliance check	10
	Review of the Project Description	10
	Phase 2 – Project Proposal Guideline	11
	Considerations for the Draft Project Proposal Guideline	11
	Review of the Draft Project Proposal Guideline	11
	Final Project Proposal Guideline	12
	Phase 3 – Project Proposal Guideline Response	12
	Phase 4 – Review of Project Proposal Guideline Response	13
	Phase 5 – Project Proposal Report	13
	Phase 6 – Submission of Project Proposal	14
	Making a determination	14
	If the project proposal does not meet the requirements	15
3.1	Modifications to the PSE Process	15
4.0	PSE and consultation with First Nations	17
5.0	Referred projects and the PSE process	18
6.0	PSE and information management	22
6.1	YESAB Online Registry	22
6.2	Privacy requirements	22
7.0	Appendices	
	Appendix A – Key Terms	24
	Appendix B – Development of the PSE process	25
	Appendix C – PSE and relevant authority	26
	Appendix D – Considerations for the Project Proposal Guideline and Project Proposal Report	27
	Appendix E – Definition of personal information, <i>Privacy Act</i>	28

Abbreviations

EC	Executive Committee
NGO	Non-governmental organization
PD	Project Description
PPG	Project Proposal Guideline
PPGR	Project Proposal Guideline Response
PPR	Project Proposal Report
PSE	Pre-Submission Engagement
VESEC	Valued Environmental and Socio-economic Component
YESAA	<i>Yukon Environmental and Socio-economic Assessment Act</i>
YESAB	Yukon Environmental and Socio-economic Assessment Board
YOR	YESAB Online Registry

Links to key documents

[Project Description Requirements](#)

[Screening Rules](#)

[YESAA](#)

1.0 Pre-submission engagement

Pre-submission engagement (PSE) is mandatory for all projects that require an Executive Committee screening. The PSE process has specific timelines, which are set out in the *Rules for Screenings Conducted by the Executive Committee (Screening Rules)*. See Appendix B for how the process was developed and Appendix C for the relevant sections of YESAA and the *Screening Rules* that govern the PSE process.

1.1 Purpose

The purpose of PSE is to bring interested and affected parties together to review project requirements well before a proponent submits a detailed project proposal to the Executive Committee (EC) for assessment. The PSE process helps identify gaps and issues of concern, define values and baseline information requirements, and ensure an efficient and effective screening process.

The effectiveness of PSE relies on participation. PSE integrates the interests and information needs of affected First Nations and communities, government regulators, technical and traditional-knowledge experts, assessors, the general public and proponents, and does so early in the assessment process.

1.2 Objectives

The PSE process has four objectives:

- to provide an effective, proactive opportunity for early engagement;
- to enable early and collaborative identification of issues and information gaps;
- to provide project-specific guidance to proponents; and
- to lessen the likelihood that new issues and information requests will arise after a proponent submits a project proposal for screening.

2.0 Overview of the PSE process

The PSE process involves six phases.



The PSE process begins when a proponent submits a Project Description to the EC. The Project Description must meet the requirements set out in the *Screening Rules* and [Project Description Requirements](#). The PSE process ends when the EC makes a determination about whether the project proposal submitted by the proponent meets the requirements set out in the *Screening Rules*. If the EC determines that the project proposal does meet the requirements, it then begins the screening process.

See the description of Phase 6 of this guide for information on what happens if the EC determines that the project proposal has not met the requirements.

See Section 5.0 for information on how the PSE process relates to projects that are referred to the EC from a Designated Office.

2.1 Roles and responsibilities

The specific roles and responsibilities of the Executive Committee, the proponent, governments, First Nations and other participants in the PSE process are described in Table 1.

Table 1. Roles and responsibilities

<p>Executive Committee</p>	<p>The EC administers the PSE process and its responsibilities include:</p> <ul style="list-style-type: none"> • actively participate in the PSE process; • coordinate and facilitate the PSE process, notify participants, establish processes to support the PSE process (e.g. technical working groups) and manage timelines as set out in the <i>Screening Rules</i>; • make information publicly available via the YOR; • establish and manage the review periods and the comments from participants and the public; • establish and guide technical working groups as required; • prepare three key PSE documents: the Project Proposal Guideline (draft and final) and the Project Proposal Report; • review the proponent’s Project Proposal Guideline Response; and • make determinations under the <i>Screening Rules</i> as to whether the Project Description and project proposal submission comply with the requirements under the <i>Screening Rules</i> and YESAA.
<p>Proponent</p>	<p>The proponent proposes the project and must:</p> <ul style="list-style-type: none"> • prepare and submit a Project Description that complies with YESAB’s <i>Project Description Requirements</i>; • review the final Project Proposal Guideline and prepare and submit a Project Proposal Guideline Response; • prepare a project proposal that meets the requirements of the Project Proposal Report, complies with the applicable <i>Screening Rules</i>, takes into consideration the matters noted in s.42(1)(b), (c) and (e) to (h) and if applicable s.42(2.1) of YESAA, and demonstrates that the proponent has consulted First Nations and the residents of communities under s.50(3) of YESAA; and • submit the project proposal to the EC. <p>The proponent also has the ability to:</p> <ul style="list-style-type: none"> • actively participate in the PSE process; • comment on the Draft Project Proposal Guideline and identify any questions or clarifications needed;
<p>Governments</p>	<p>This includes the federal government, the territorial government and First Nation governments. These governments may be decision bodies for the project and their role includes a number of responsibilities listed in YESAA in relation to the EC screening process. Government departments and regulatory bodies are also key participants in the PSE process as they may have relevant expertise in traditional knowledge, technical topic areas and regulatory requirements.</p> <p>Governments have the ability to:</p> <ul style="list-style-type: none"> • actively participate in the PSE process;

	<ul style="list-style-type: none"> • ensure that input is gathered from all potentially affected government departments and regulatory bodies and provided to the EC; • help to differentiate assessment and regulatory requirements for the proposed project; • provide input to the EC on timelines and on processes that may be required during PSE (e.g. technical working groups, workshops or meetings); • review and comment on key PSE documents; specifically, the Project Description , the draft Project Proposal Guideline and the Project Proposal Guideline Response; and • work within the identified timelines and processes established by the EC.
First Nations	<p>In addition to First Nation governments who may be decision bodies (see previous row), First Nations in whose territory the project will be located or may be significantly affected by the project are key participants in the PSE process. First Nations have the ability to:</p> <ul style="list-style-type: none"> • actively participate in the PSE process; • provide input to the EC on capacity to participate, comment-period timelines and processes that may be required during PSE (e.g. technical working groups, workshops or meetings); • review and provide input on key PSE documents; specifically, the Project Description, the draft Project Proposal Guideline and the Project Proposal Guideline Response; • help to differentiate assessment and regulatory requirements for the proposed project; and • work within the identified timelines and processes established by the EC.
Members of the public, groups and organizations	<p>Individual members of the public as well as groups and organizations can participate in the PSE process. These individuals, groups and organizations have the ability to:</p> <ul style="list-style-type: none"> • comment on key documents in the PSE process (Project Proposal Guideline or Project Proposal Guideline Response) via the YESAB Online Registry (YOR) or in writing; and • any person, group, community or entity who has, in the opinion of the EC, a material interest in the proposed project can also become a participant in the PSE process by notifying the EC of its interest in the proposed project or in projects of that kind.

2.2 Timelines

The PSE process contains timelines for each of the six phases. The EC will set a specific number of days for comment periods within these timelines, based on factors such as project details and participant circumstances. The EC sets these specific timelines based on an analysis of the proposed project, its complexity and participant input. Given the wide spectrum of projects, some may require the maximum number of days; others may not.

Timelines apply to actions taken by the EC (e.g. preparing a document such as the Draft Project Proposal Guideline); by the proponent (e.g. developing its Project Proposal Guideline Response); and by participants (e.g. providing comments on the draft Project Proposal Guideline). Establishing timelines is complex; they must simultaneously be efficient while also providing sufficient time for public participation.

Section 18 of the *Screening Rules* gives the EC the ability to modify the timelines for particular phases of the PSE process. The *Screening Rules* set out the process for requesting that a deadline be postponed,

and the procedural implications of such requests. If the EC decides to postpone a deadline it must notify participants of its decision and the reasons for it.

Figure 1 provides details of the PSE process, including timelines.

Figure 1. PSE process, including timelines

Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
Project Description (PD)	Project Proposal Guideline (PPG)	Project Proposal Guideline Response (PPGR)	Project Proposal Guideline Response (PPGR) Review	Project Proposal Report (PPR)	Submission of Project Proposal
The proponent must notify the EC 30 days before submitting its PD	The EC prepares the <u>Draft</u> PPG The EC must do this within 60 days	The proponent prepares and submits its PPGR to the EC The proponent must prepare its response within 24 months The proponent must notify the EC 30 days before submitting the PPGR	The EC provides the proponent's PPGR to participants and the public via the YOR The EC must do this within 7 days	The EC prepares the PPR for the proponent The PPR sets out the requirements for the project proposal and outlines any outstanding issues The EC must do this within 60 days after Phase 4 comment period ends The proponent must submit its project proposal within 24 months	The proponent submits the project proposal to the EC The EC determines whether the project proposal meets the requirements of the PPR and complies with the <i>Screening Rules</i> The EC must make its determination within 60 days The EC must notify the proponent and participants of its determination within 7 days ***
The proponent submits its PD to the EC The EC conducts a compliance check of the PD If the PD is compliant the EC provides the PD to participants via the YOR *	The EC provides the Draft PPG to the proponent, participants and the public via the YOR The proponent, participants and the public may provide comments within 40 days**		The EC, participants and the public review the proponent's PPGR Participants and the public may provide comments within 60 days**		
The EC must do this within 7 days The EC and participants review the PD Participants may provide comments within 40 days**	The EC prepares the <u>Final</u> PPG and provides it to the proponent via the YOR The EC must do this within 30 days				

* YOR = YESAB Online Registry

** This is the maximum period allowed. The EC establishes a specific time period for comments for each project, within this maximum.

*** If the EC determines that the project proposal does not meet the requirements, the proponent can resubmit another proposal for the same project.

A summary flowchart of the PSE process is available on [YESAB's website](#)

3.0 The PSE process: phase-by-phase

The PSE process is set out in the *Screening Rules*. See Appendix C for the relevant authorities that govern the PSE process.

Before the PSE process begins the proponent notifies the Executive Committee (EC) of its potential project. The EC then provides Project Description requirements to the proponent. The EC and the proponent may meet to discuss the PSE process.

Phase 1: Project Description



Phase 1 of the PSE process begins when the proponent submits a Project Description to the EC. The proponent is required to provide **at least 30 days' written notice** to the EC before submitting the Project Description.

Information requirements for the Project Description are established in the *Screening Rules*, Schedule A, and are further elaborated in YESAB's [Project Description Requirements](#).

The Project Description is NOT a comprehensive proposal. Rather, it provides summary information about proposed project activities and components, including where they will take place and how long they will occur for. This enables the EC and participants to identify potential issues and concerns with the proposed project activities, and to identify the information that will be required for the project proposal. This in turn will enable the EC to provide project-specific guidance to the proponent.

Compliance check

The EC conducts a compliance check of the Project Description to determine if it meets the requirements set out in the *Screening Rules*, Schedule A, and in the *Project Description Requirements*. The EC's compliance determination is based on the presence or absence of information required by the *Screening Rules*. If the EC determines that the Project Description is compliant, the PSE process is initiated. If any required information is missing from the Project Description the EC will advise the proponent that the Project Description is non-compliant. The proponent can re-submit the Project Description for another compliance check when it is complete. The proponent does not have to give the EC 30 days' written notice before re-submitting the Project Description.

Once the EC determines that the Project Description is compliant and the PSE process is initiated, the EC is required to take the following actions **within 7 days**:

- identify the project participants, create a participant list and provide this list to the proponent and participants;
- invite the participants to participate in the PSE process for the proposed project (the EC may also establish any other aspect of the process and timing that it considers appropriate);

- provide participants with the Project Description (via the YOR; for more information on the YOR see Section 6.1 of this guide);
- invite participants to make comments on the PSE process and timelines (other than those which the EC has already established) — this gives participants the opportunity to identify any specific requirements or timing needs at the outset of the PSE process;
- invite participants to make comments on the Project Description ; and
- establish the process and the specific time period for reviewing the Project Description and notifying participants — a variety of methods may be used, such as meetings, written comments, workshops or technical working groups as required, based on the complexity of the proposed project.

Review of the Project Description

Participants review the Project Description and submit their comments to the EC within the process and timeline set by the EC.. The time period for comments from participants on the process and timing of PSE and on the PD is **within 40 days**. See Box 1.

Box 1. Review of the Project Description

Participants are asked to review the Project Description to identify information gaps with the proposed project and to identify what matters to people in the proposed project area. In particular, participants may consider the following when reviewing and commenting on the Project Description :

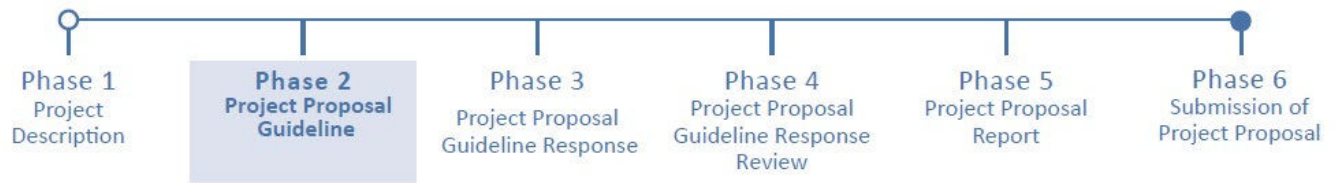
- matters listed in s.42(1)(a) to (j) and, if applicable, s.42(2.1) of YESAA;
 - valued environmental and socio-economic components that may be adversely effected by the project and why these components are important;
 - the spatial and temporal boundaries of the valued components;
 - the baseline fieldwork, data analysis and modelling required to understand the current actual and future predicted state of these components;
 - applicable legislation, regulatory requirements, standards, plans, policies and best practices associated with valued components;
 - the potential ecological or social limits and thresholds for these components;
 - the vulnerability and resiliency of social and/or ecological systems and components;
 - asserted and established Aboriginal and treaty rights; and
 - the political and cultural setting.
-

Comments on the Project Description will inform the development of the proposed project, the EC's development of the Project Proposal Guideline and Project Proposal Report, and any eventual screening.

This review also allows government regulators to identify the major regulatory or approval instruments required to authorize the project. Regulators should include these requirements in their comments to the Project Description.

The EC reviews the participant input received and clarifies any initial questions with participants or the proponent, as necessary.

Phase 2: Project Proposal Guideline



In Phase 2 the EC prepares the Project Proposal Guideline, first in draft form and then in final form. The Project Proposal Guideline provides the proponent with project-specific information requirements. These requirements are informed by the EC's review of the Project Description (in Phase 1) and by input from federal and territorial governments, affected First Nations and communities and other participants.

Considerations for the Draft Project Proposal Guideline

In preparing the Draft Project Proposal Guideline the Executive Committee must consider the matters noted in s.42(1)(a) to (j) and, if applicable, s.42(2.1) of YESAA, any comments received on the Project Description and any other information that it considers relevant. See [Appendix D](#) for more information.

Section 25(3) of the *Screening Rules* states that the Draft Project Proposal Guideline may include requirements for the proposed project in relation to the following:

- (a) valued environmental and socio-economic components and corresponding baseline information;
- (b) the manner in which the proponent acquires, analyzes and presents information;
- (c) cumulative effects considerations; and
- (d) any other topic or consideration that the Executive Committee considers relevant to the pre-submission engagement or to its screening of the proposed project.

The EC must prepare the Draft Project Proposal Guideline **within 60 days** after the comment period on the Project Description (in Phase 1) closes.

Review of the Draft Project Proposal Guideline

After the EC completes the Draft Project Proposal Guideline it is required to take the following actions:

- provide the Draft Project Proposal Guideline to the proponent and participants via the YOR;
- if the EC has not already done so, establish the process and the time period for the proponent, participants, and the public to comment on the Draft Project Proposal Guideline, and notify participants. The EC establishes the period of time for providing comments **within 40 days**;
- review the comments to the Draft Project Proposal Guideline from the proponent, participants, and the public;
- take into account any comments received on the Draft Project Proposal Guideline; and
- prepare the Final Project Proposal Guideline.

See Box 2.

Box 2. Reviewing the Draft Project Proposal Guideline

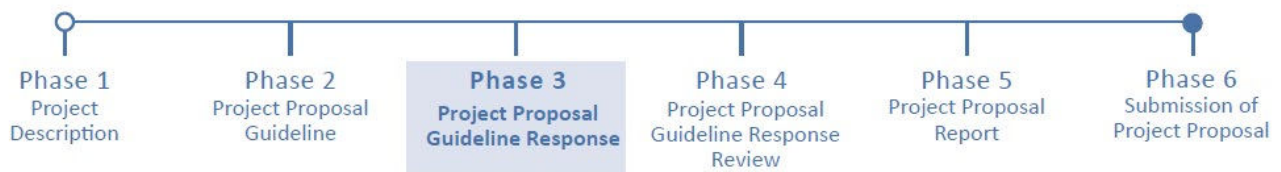
Participants and the public should consider these questions when reviewing the Draft Project Proposal Guideline (PPG):

- Are the information requirements in the Draft PPG sufficient?
- Is there any information missing from the Draft PPG?
- Do the information requirements reflect the input previously provided to the EC?
- Are the baseline information requirements (fieldwork, data collection and analysis and modelling of baseline conditions) appropriate?

Final Project Proposal Guideline

The EC must prepare the final Project Proposal Guideline **within 30 days** after the comment period on the Draft Project Proposal Guideline has closed.

Phase 3: Project Proposal Guideline Response



The proponent prepares the Project Proposal Guideline Response (PPGR). The response describes how the proponent has met the information requirements outlined in the Project Proposal Guideline. The proponent must prepare the Project Proposal Guideline Response **within 24 months** from when the Project Proposal Guideline is issued. During this period, the proponent collects baseline and other information, continues its engagement and consultation activities, refines and finalizes the project design, and determines how it will deal with any outstanding information requirements.

If there are any information gaps, then the response will explain why the proponent has not provided that information, and describe how and when the proponent intends to provide that information before submitting the Project Proposal (in Phase 6).

The Project Proposal Guideline Response is an opportunity for the proponent to solicit feedback on whether it is on track in satisfying information requirements and any other outstanding requirements. The proponent should identify its approach and methodology for meeting the specified requirements, including baseline data collection. The response also provides an opportunity for the proponent to ask questions or seek clarification on the information and methodological requirements as set out in the Project Proposal Guideline, and to obtain other input from participants on these matters.

The proponent submits the Project Proposal Guideline Response to the EC. The proponent must give written notice to the EC **at least 30 days** before it does so.

Phase 4: Review of Project Proposal Guideline Response



After the proponent submits its Project Proposal Guideline Response, the EC and participants review it.

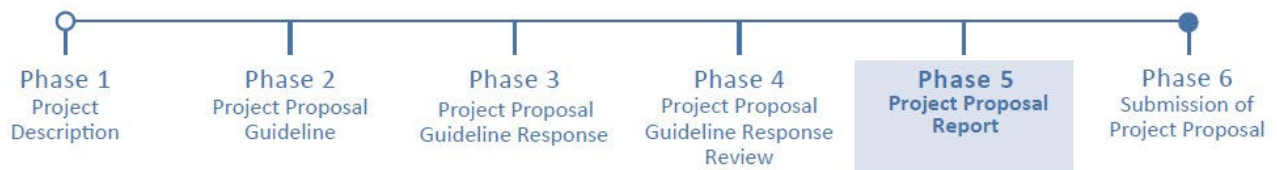
The Executive Committee is required to take the following actions **within 7 days** of receiving the Project Proposal Guideline Response from the proponent:

- provide the Project Proposal Guideline Response to participants via the online registry; and
- if the EC has not already done so, establish the process and the time period for participants and the public to comment on the response, and provide notification.

The time period for participants and the public to comment on the Project Proposal Guideline Response is **within 60 days**.

The review of the Project Proposal Guideline Response allows the EC and participants to examine how the proponent has addressed the Project Proposal Guideline requirements, to identify any new information gaps and/or additional issues that should be included, and for participants and the public to provide detailed input to the EC as to what information should be required in the project proposal.

Phase 5: Project Proposal Report



After the EC reviews the proponent’s Project Proposal Guideline Response and the comments from participants and the public (in Phase 4) it prepares the Project Proposal Report for the proponent. The Project Proposal Report sets out the requirements for the project proposal (Box 3) and outlines any outstanding or additional issues and information that the proponent must address before submitting the project proposal in Phase 6.

The EC must prepare the Project Proposal Report **within 60 days** after the comment period on the Project Proposal Guideline Response closes.

See Box 3.

Box 3. Requirements for the Project Proposal Report

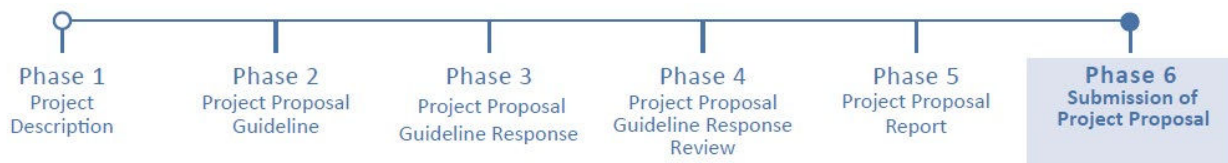
Under s.28(2) of the *Screening Rules* the requirements for the Project Proposal Report include:

- (a) that the proponent demonstrate in the project proposal that it has:
 - (i) taken into the consideration the matters noted in s.42(1)(b), (c) to (e) to (h) and, if applicable, s.42(2.1) of YESAA (see Appendix D for more information),
 - (ii) consulted First Nations and the residents of communities in accordance with s.50(3) of YESAA, and
 - (iii) met all of the requirements of the Project Proposal Guideline, including, if the Executive Committee has changed or added to those requirements, the changed or additional requirements;
- (b) any additional issues that the proponent must address, and any additional information the proponent must include, in the project proposal; and
- (c) any requirements as to the form of the project proposal that the EC considers appropriate.

After the EC completes the Project Proposal Report, it shares it with the proponent and participants via the YOR.

The proponent has **within 24 months** from when the Project Proposal Report is issued to prepare and submit the project proposal.

Phase 6: Submission of Project Proposal



In Phase 6 the proponent submits its project proposal to the Executive Committee.

Within 60 days of receiving the project proposal the EC must determine whether, in its opinion:

- a) the proponent has complied with the applicable *Screening Rules*; and
- b) the proponent has taken into consideration the matters noted in s.42(1)(b), (c), and (e) to (h) and if applicable, s.42(2.1) of the Act; and has consulted First Nations and the residents of communities in accordance with s.50(3) of the Act.

Making a determination

The EC determines that a project proposal complies with the *Screening Rules* only if the proposal meets all the requirements set out in the Project Proposal Report.

The EC also reviews the proponent's consultation record for the project and determines whether it is sufficient.

Within 7 days after the EC makes a determination in relation to a proposed project, it must do the following:

- a) if it determines that the requirements have been met, notify the proponent and participants that it intends to commence a screening of the proposed project; or
- b) if it determines that the requirements have not been met, notify the proponent and participants that it will not carry out a screening of the project proposal.

The EC must include the reasons for its determination per the *Screening Rules*.

The Executive Committee will begin the screening only if it determines that the project proposal meets all the requirements.

If the project proposal does not meet the requirements

If the EC determines that the project proposal does not meet the requirements, and the proponent still wishes to pursue the project, the proponent can submit another proposal for the same project to the EC. The EC can facilitate this by allowing the proponent:

- a) to make, revise or replace any submission; or
- b) to redo any other aspect of the PSE process.

This enables the EC to not require the proponent to start the PSE process again. For example, the proponent could revise the Project Proposal Guideline Response (Phase 3) with updated information and the EC could initiate a review of the revised response by participants.

3.1 Modifications to the PSE process

The EC can modify the PSE process if it considers that doing so would improve the process or its outcomes. For example, to allow the EC and participants to further examine key technical issues, the EC may establish a technical review or advisory committee, hold a workshop or technical session, or include an additional comment period to gather more information. Participants may at any time ask the EC to make these types of process modifications.

Project changes

Proponent-driven changes to a project are a common occurrence during project design. The PSE process accommodates changes to the proposed project in several ways. The *Screening Rules* allow the EC to extend a comment period to allow participants more time to review any new or modified information. The EC can also add a public comment period to address any material changes to the proposed project made by the proponent. In addition, the EC can revise or replace the final Project Proposal Guideline or the Project Proposal Report.

The proponent must notify the EC in writing if the proposed project has materially changed. Examples of material changes include the following:

- adding new components and/or activities;
- revising existing components and/or activities;
- removing existing components and/or activities;
- modifying the footprint of components and/or activities;

- modifying the existing schedule for the project, components and/or activities;
- including a third party as co-proponent for the project; and
- providing new information that is relevant to the process and/or interests of participants.

In deciding whether to extend a deadline or add a public comment period, or to revise or replace any of the Project Proposal Guideline, Project Proposal Guideline or the Project Proposal Report, the EC must consider the following:

- the phase of the PSE during which the change has been made;
- any relevant views or information provided by participants; and
- the implication of the change for baseline information requirements for the proposed project.

Withdrawal from the PSE process

The *Screening Rules* set out the circumstances and timelines for withdrawing a proposed project from the PSE process. A proponent may withdraw the proposed project at any time during the PSE process.

Alternately, the proposed project can be deemed withdrawn by the EC if the proponent:

- a) fails to submit the Project Proposal Guideline Response to the EC **within 24 months** of the Project Proposal Guideline being issued; or
- c) does not submit a Project Proposal that meets all of the requirements of the Project Proposal Report **within 24 months** of the Project Proposal Report being issued.

4.0 PSE and consultation with First Nations

Consultation with First Nations on proposed projects is multi-faceted. There are several consultation obligations that are the responsibility of various participants during the PSE process. The proponent has an obligation to consult with First Nations:

- s.3 of YESAA defines the elements of the duty to consult under YESAA;
- s.50(3) requires the proponent, before submitting a project proposal to the Executive Committee (in Phase 6 of the PSE process), to consult any First Nation in whose Traditional Territory, and the residents of any community in which the project will be located or might have significant environmental or socio-economic effects; and
- s.57(2) states that “the EC shall commence a screening of a project as soon as possible after it notifies that the proponent affirmatively under subsection (1) and advises the proponent that, in its opinion, the proponent has... consulted first nations and residents of communities in accordance with subsection 50(3).” The EC makes this determination before beginning a screening.

Separate and distinct from this, the federal and territorial governments have a constitutional duty to consult with affected First Nations on a project.

YESAB has additional detail for proponents in its [Consultation Guidance for Proponents](#).

At the outset of the PSE process, in Phase 1, the Executive Committee ensures that the proponent’s Project Description contains the requisite information regarding initial engagement and consultation, as set out in Section 6 of the [Project Description Requirements](#). The EC requires the proponent to provide the following, in respect of its consultation with potentially affected First Nations and communities:

- A list of each First Nation and each community where residents may be affected by the proposed project, components or activities.
- A summary description of the proponent’s efforts to date to engage with or consult each potentially affected First Nation in whose Traditional Territory, or the residents of any community in which the project will be located or might have significant environmental or socio-economic effects.
- A summary overview of the proponent’s proposed process for future (or ongoing) engagement and consultation activities with each potentially affected First Nation in whose Traditional Territory, or with the residents of any community in which the project will be located or might have significant environmental or socio-economic effects.

In Phase 6 of the PSE process, after the proponent submits the project proposal, the EC reviews the proponent’s consultation record for the project (as included with the project proposal) with potentially affected First Nations and community residents, and determines if the proponent has satisfied the consultation obligations set out in s.50(3) of YESAA.

Neither YESAB nor the EC has the duty or authority to conduct consultation with First Nations affected by a proposed project. Federal and territorial governments may choose to rely on the PSE process to fulfill aspects of their constitutional duty to consult with First Nations. The proponent may likewise choose to rely on information provided during the PSE process as important input into its own statutory duty to consult. The proponent is ultimately responsible, however, for ensuring that it has met the duty to consult under YESAA (which may require consultation outside of the PSE process) before submitting a project proposal to the EC.

5.0 Referred projects and the PSE process

A referred project is one that is referred from a Designated Office (DO) to the EC.

YESAB's six Designated Offices (DOs) carry out evaluations of projects and conduct the majority of assessments under YESAA. The Executive Committee assesses larger projects that are submitted to it directly or are referred to it by a Designated Office.

A DO refers a project to the EC if the DO has not been able to determine whether the project is likely to have significant adverse environmental or socio-economic effects. The DO notifies the proponent that it has referred the project.

When a DO refers a project to the EC the proponent of the referred project is required to submit a proposal — known as a revised proposal — to the EC. This revised proposal is submitted in Phase 6 of the PSE process; revised proposals do not go through Phases 1–5 of the PSE process.

Within **60 days** of receiving the revised proposal for a referred project the EC must determine whether, in its opinion:

- a) the proponent has complied with the rules; and
- d) the proponent has taken into consideration the matters referred to in paragraphs 42(1)(b), (c), and (e) to (h) and if applicable, s.42(2.1) of YESAA and has consulted First Nations and the residents of communities in accordance with s.50(3) of YESAA.

Under the *Screening Rules* the EC may gather any information that it believes relevant to the screening of the referred project (s.31(4)). The EC may at any time extend the time period within which it must make its determination under s.31(3) regarding the revised proposal.

Within **7 days** after the EC makes a determination under s.31(3) in relation to a referred project, it must:

- a) if it has determined that the requirements referred to in s.31(3) have been met, notify the proponent that it intends to commence a screening of the referred project; or
- e) if it has determined that those requirements have not been met, notify the proponent that it does not intend to carry out a screening of the revised proposal.

The EC must include the reasons for its determination (s.32(2)).

If the proponent has not met the requirements, but still wishes to pursue the project, it can submit another revised proposal for the same referred project to the EC. The EC can facilitate the process by allowing the proponent to make, revise or replace any submission.

6.0 PSE and information management

6.1 YESAB Online Registry

The PSE process is transparent and publicly accessible. Participants have opportunities for input on key documents during comment periods throughout the process. Participants have access to public documents through the Yukon Online Registry ([YOR](#)).

The YOR provides access for participants and the public to assessment-related documents and facilitates participation in assessments. The YOR contains a range of documents related to the PSE process, including comments, proposal information, supporting information, and correspondence from the EC to assessment participants. It is not a repository of all documents associated with an assessment, however, since certain draft content, administrative material or internal notes may not be published to the registry.

The YOR notifies participants when documents are added to the registry or when there is a stage change during PSE and the screening.

The online registry is YESAB's primary mechanism for communicating with proponents. All project notifications will come directly from the registry to the proponent. The proponent can upload some documents in the PSE process (e.g. the Project Proposal Guideline Response) directly to the YOR or can submit them to the EC (e.g. the Project Description).

Note: YESAB strongly encourages participants to set up a YOR account in order to stay informed and to be able to submit comments online. Any individual can set up a notification profile to receive project updates and notification of comment periods.

6.2 Privacy requirements

YESAB is subject to the federal *Privacy Act*. That Act governs how YESAB can collect, use and disclose personal information. YESAB's obligations under the *Privacy Act* dictate that, among other things,

1. a person can submit another person's personal information to YESAB only if the latter has consented to this; and
2. YESAB can collect, use or disclose personal information submitted to it only if the information is relevant to the assessment, or to directly related activities.

In order to help enable the organization to meet the first of these obligations YESAB amended the *Screening Rules* to explicitly stipulate that no one may submit another person's personal information to the EC, unless the submission includes that person's written consent to this, as well as that person's written agreement with YESAB's Online Registry Privacy Statement.

Documentation of consent is not published on the YESAB Online Registry and is used by YESAB only to confirm that the proponent has complied with requirements under the federal *Privacy Act* and the *Screening Rules*.

As to the second obligation, YESAB collects personal information only for the purpose of assessment. That information is generally restricted to the name and contact information of the person making the submission.

The EC will return any submission that contains personal information that does not meet these requirements to the submitter. Submitters can re-submit information that does conform with privacy obligations.

The EC will not consider or post any submission to the online registry unless it conforms to these requirements.

The definition of personal information in the *Privacy Act* can be found in Appendix E.

7.0 Appendices

Appendix A. Key Terms

Assessment: a screening by the Executive Committee.

Participant: a participant in the pre-submission engagement process as defined in s.16 of the *Screening Rules*. It means:

- (a) each decision body in relation to the proposed project,
- (b) each person who would be an interested person in respect of a screening of the proposed project,
- (c) each First Nation in whose Traditional Territory the proposed project will be located or might have significant environmental or socio-economic effects,
- (d) the local government of any area in which the proposed project will be located or might have significant environmental or socio-economic effects,
- (e) any First Nation, government agency or independent regulatory agency that has notified the Executive Committee of its interest in the proposed project or in projects of that kind,
- (f) any person (including any group, community or entity) that
 - (i) has notified the Executive Committee of its interest in the proposed project or in projects of that kind, and
 - (ii) in the opinion of the Executive Committee, has a material interest in the proposed project, and
- (g) where the context requires, the proponent of the proposed project.

Personal information: means information about an individual who is described in any of paragraphs (a) to (i) of s.3 of the federal *Privacy Act*, RSC 1985, c. P-21. The full text of the legislation can be found on Justice Canada's website [here](#).

Project Description: is submitted by the proponent to the Executive Committee in Phase 1, this must include the information listed in Schedule A to the PSE rules and be consistent with the [Project Description Requirements](#).

Project Proposal Guideline: is provided by the Executive Committee in Phase 2 in relation to the proposed project.

Project Proposal Guideline Response: is submitted by the proponent to the Executive Committee in Phase 3.

Project Proposal Guideline Response Review: the review of the proponent's response by the Executive Committee, including comments from participants and the public, in Phase 4.

Project Proposal Report: is provided by the Executive Committee in Phase 5.

Proposed Project: is submitted by the proponent to the Executive Committee in Phase 6, under s.50(1)(a) of YESAA.

Referred Project: is one that a Designated Office refers to the Executive Committee under s.56(1)(d) of YESAA.

Revised Proposal: a proposal for a project referred to the EC from a Designated Office that a proponent submits to the Executive Committee under s.56(4) of YESAA.

Appendix B. Development of the PSE process

The Pre-Submission Engagement (PSE) process has been in development since 2016. Screenings that the Executive Committee (EC) carries out under the YESAA are governed by the *Screening Rules*. In January 2020, the Yukon Environmental and Socio-Economic Assessment Board (YESAB) directed that the *Screening Rules* be reviewed and amended to include the PSE process. A consolidated version of the *Screening Rules* can be found [here](#).

The PSE process aims to support earlier, proactive involvement by potentially affected First Nations, communities and the public in the assessment of large-scale projects that are subject to an Executive Committee screening.

The process was developed in response to requests for better project-specific guidance on preparing project proposals. These requests have come from industry and consultants, and reflect longstanding concerns with the EC screening process that have been voiced by a range of participants in the assessment process. The PSE process is also in line with approaches in other jurisdictions and entities such as British Columbia and the Government of Canada that incorporate early engagement in their assessment process.

Key participants in YESAA assessments have been involved in the development of the PSE process from the beginning. They include representatives from federal, territorial and First Nation governments, proponents, industry groups, consultants and non-governmental organizations (NGOs).

During the PSE development process YESAB engaged with these participants through information sessions and meetings, providing information on its website, presentations (in-person and video), a focus group on timelines, email updates and notifications, teleconferences, industry forums, and panel presentations. (Due to COVID-19, YESAB was restricted from having in-person sessions or travelling to Yukon communities in 2020–21.)

Table A1 shows the development of the PSE process. (See Appendix A for a description of the key terms in the PSE process.) For more information on engagement input and reports go to YESAB's PSE webpage.

Table A1. Development of the PSE process

December 2018	PSE framework approved
January – February 2019	External engagement #1
August 2019	Summary report on PSE engagement
November 2019 – January 2020	External engagement #2 and research report
February 2020 – June 2021	Drafting of PSE rules
October – November 2021	External engagement #3 and focus group
June 3 – September 20, 2021	Review of PSE rules; public input
March 31, 2022	Report on public input response
	PSE rules approved
June 1, 2022	PSE comes into effect

Appendix C. PSE and relevant authorities

PSE Phase	Description	Screening Rules Reference
Phase 1	Proponent submission Project Description and review	<i>Screening Rules</i> , Schedule A <i>Project Description Requirements</i>
Phase 2	EC prepares the Project Proposal Guideline and review	s.25(2) and 25(3) of the <i>Screening Rules</i> s.42(1)(a) to (j) and, if applicable, s.42(2.1) of YESAA
Phase 3	Proponent develops Project Proposal Guideline Response	s.26(2) of the <i>Screening Rules</i>
Phase 4	Review of Project Proposal Guideline Response	s.27(1) of the <i>Screening Rules</i>
Phase 5	EC prepares the Project Proposal Report	s.28(2) and 29 of the <i>Screening Rules</i> s.42(1) and 42(2) ; and s.50(3) of YESAA
Phase 6	The proponent submits the project proposal to the EC	s.30(1), 30(2) and 30(3) of the <i>Screening Rules</i> s.32(1) and 32(2) of the <i>Screening Rules</i> s.31(3) of the <i>Screening Rules</i> (referred projects) s.42(1)(a) to (j) and if applicable s.42(2.1); and s.50(3) of YESAA <i>Filing Requirements for Project Proposals Submitted to the Executive Committee for Screening</i>
Timelines for the PSE process		s.24 of the <i>Screening Rules</i>
Modifications to the PSE process by the EC		s.18 of the <i>Screening Rules</i>
Adding or modifying a comment period (EC)		s.20(1) of the <i>Screening Rules</i>
Withdrawing a proposed project from the PSE process		s.20(3) of the <i>Screening Rules</i>
Consultation with affected First Nations by the proponent		s.3 and 50(3) of YESAA <i>Consultation Guidance for Proponents</i>
Consultation with affected communities by the proponent		s.3 and 50(3) of YESAA <i>Consultation Guidance for Proponents</i>
Referred projects		s.31 and s.32 of the <i>Screening Rules</i>
Document registry		Records Retention and Disposition Schedule s.118 and s.119 of YESAA
Online Registry Privacy Statement		s.8.1(2) of the <i>Screening Rules</i>

The *Screening Rules* can be found on YESAB's website www.yesab.ca

Appendix D. Considerations for the Project Proposal Guideline and Project Proposal Report

D.1 – Considerations for the Draft Project Proposal Guideline

1. As set out in s.25(2) of the *Screening Rules*, in preparing the Draft Project Proposal Guideline (Phase 2) the Executive Committee:

(a) must have regard to the matters referred to in s.42(1)(a) to (j) and, if applicable, s.42(2.1) of YESAA.* This includes:

- a) the purpose of the project,
- b) all stages of the project,
- c) the significance of any environmental or socio-economic effects of the project that have occurred or might occur in or outside Yukon, including the effects of malfunctions or accidents,
- d) the significance of any adverse cumulative environmental or socio-economic effects that have occurred or might occur in combination with other projects,
 - d.1) any studies or research undertaken under s.112 of YESAA that are relevant
 - d.2) the need for effects monitoring,
- e) alternatives to the project or alternative ways of undertaking or operating it,
- f) mitigative measures,
- g) the need to protect the rights of Yukon Indian persons under final agreements, the special relationship between Yukon Indian persons and the wilderness environment of Yukon, and the cultures, traditions, health and lifestyles of Yukon Indian persons and other residents of Yukon,
 - g.1) the interests of First Nations.
- h) the interests of residents of Yukon and of Canadians outside of Yukon,
- i) any matter that a decision body has asked it to take into consideration, and
- j) any matter specified by the regulations.

(b) must take into account any comments received on the Project Description ; and

(c) may take into account any other information that it considers relevant.

*Note: For exact wording see YESAA. Under s.42(2.1) of YESAA, if the proponent is a government agency or First Nation and the project or existing project concerns planning activities related to timber harvesting, the Executive Committee shall take into consideration any potential activities of third parties that, if proposed to be undertaken, would be subject to an assessment under s.47 or 48.

2. As set out in s.25(3) of the *Screening Rules*, the Draft Project Proposal Guideline (Phase 2) may include requirements for the proposed project in relation to the following:

- (a) valued environmental and socio-economic components and corresponding baseline information;
- (b) the manner in which the proponent acquires, analyzes and presents information;
- (c) cumulative effects considerations; and

- (d) any other topic or consideration that the Executive Committee considers relevant to the pre-submission engagement or to its screening of the proposed project.

3. As set out in s.25(7) of the *Screening Rules*, in preparing the final Project Proposal Guideline (Phase 2) the Executive Committee must take into account any comments on the Draft Project Proposal Guideline that it has received.

D.2 – Considerations for the Project Proposal Report

As set out in s.28(2) of the *Screening Rules*, in the Project Proposal Report (Phase 5), the Executive Committee must set out the requirements for a Project Proposal for the proposed project, including:

- (a) that the proponent demonstrated in the Project Proposal that it has
 - (i) taken into consideration the matters referred to in paragraphs 42(1)(b), (c) and (e) to (h) and, if applicable, subsection 42(2.1) of the Act.* This includes:
 - b) all stages of the project,
 - c) the significance of any environmental or socio-economic effects of the project that have occurred or might occur in or outside Yukon, including the effects of malfunctions or accidents,
 - e) alternatives to the project or alternative ways of undertaking or operating it,
 - f) mitigative measures,
 - g) the need to protect the rights of Yukon Indian persons under final agreements, the special relationship between Yukon Indian persons and the wilderness environment of Yukon, and the cultures, traditions, health and lifestyles of Yukon Indian persons and other residents of Yukon,
 - g.1) the interests of First Nations.
 - h) the interests of residents of Yukon and of Canadians outside of Yukon,

*Note: For exact wording see YESAA. Under s.42(2.1) of YESAA, if the proponent is a government agency or First Nation and the project or existing project concerns planning activities related to timber harvesting, the Executive Committee shall take into consideration any potential activities of third parties that, if proposed to be undertaken, would be subject to an assessment under s.47 or 48.

- (ii) consulted first nations and the residents of communities in accordance with subsection 50(3) of the Act, and
 - (iii) met all the requirements of the Project Proposal Guideline, including, if the Executive Committee has changed or added to those requirements, the changed or additional requirements;
- (b) any additional issues that the proponent must address, and any additional information the proponent must include, in the Project Proposal, and
 - (c) any requirements as to the form of the Project Proposal that the Executive Committee considers appropriate.

Appendix E. Definition of personal information, *Privacy Act*

This means information about an individual that is described in any of paragraphs (a) to (i) of s.3 of the federal *Privacy Act*. It does not include information described in any of paragraphs (j) to (m) of that definition. The full text of the legislation can be found on Justice Canada's website [here](#).

Section 3, a–i, of the federal *Privacy Act* defines Personal Information as:

- (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
- (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual,
- (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and
- (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual.

