



Mackenzie Valley
Environmental Impact Review Board

**Environmental Impact
Assessment Guidelines**

OVERVIEW

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Disclaimer:

These guidelines are not a legal authority and are not intended to provide legal advice or directions. These guidelines provide information only, and should not be used as a substitute for the *Mackenzie Valley Resource Management Act* (MVRMA) or regulations. In the event of a discrepancy, the MVRMA or a land-claim agreement prevail.

SECTION I: INTRODUCTION

1.1 Preamble

In the late 1980s, the negotiators for the Dene/Métis Comprehensive Land Claim Agreement-in-Principle wanted aboriginal people to become partners with the territorial and federal governments in managing the land and water resources of the Northwest Territories. They proposed such a partnership in the form of a network of co-management boards that would oversee and guide resource development in the Mackenzie Valley. Each aboriginal land-claim organization and the territorial and federal governments would nominate an equal number of people to serve on each co-management board.

In 1990, Dene and Métis leadership rejected the Dene/Métis Comprehensive Land Claim Agreement-in-Principle. Instead of one claim for the NWT, the Dene and Métis organizations decided to negotiate individual claims for each region. Despite this shift in strategy, the idea of a co-management network remained on the new regional negotiation tables.

Consequently, the 1992 Gwich'in Comprehensive Land Claim Agreement, the 1994 Sahtu Dene and Métis Comprehensive Land Claim Agreement, and the 2005 Tlicho Land Claim and Self Government Agreement, adhere to the co-management principle.

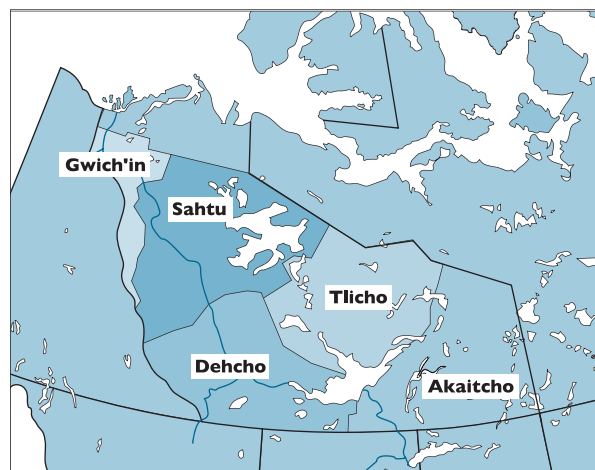
Implementing those regional land claims and making the idea of co-management a reality required new federal legislation. In 1998, the Parliament of Canada approved the *Mackenzie Valley Resource Management Act* (MVRMA or the Act). The MVRMA applies in the Mackenzie Valley.

The Act established a network of co-management boards. Each board has a specific mandate for managing resources in the Mackenzie Valley.

These boards allow Mackenzie Valley residents and communities to participate in managing the region's land and water resources. Sections 1.4 to 1.7 of this document explain the roles of the co-management boards in the Mackenzie Valley.

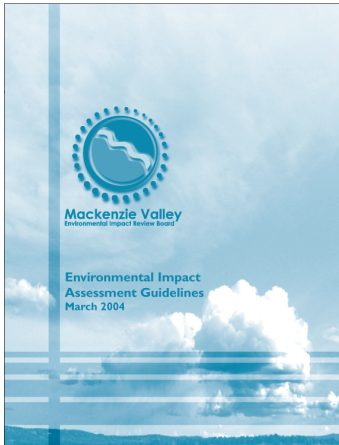
According to the Act, the Mackenzie Valley Environmental Impact Review Board (Review Board) is responsible for environmental impact assessment (EIA) in the Mackenzie Valley. EIA is a process that includes preliminary screening, environmental assessment and environmental impact review.

The Review Board develops guidelines to explain how the EIA process works and how people can participate. To date, the Review Board has developed and approved three sets of guidelines.



Map 1: Regions of the Mackenzie Valley
This map illustrates settlement areas of the Mackenzie Valley, including settled and unsettled claim areas. Boundaries are approximate.

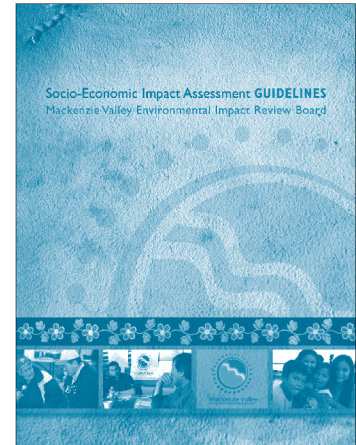
The *Environmental Impact Assessment Guidelines* set out an overall framework that explains how the EIA process works and what to expect when participating in the EIA of a proposed development. Anybody participating in an assessment should read this document.



Environmental Impact Assessment Guidelines



Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment



Socio-Economic Impact Assessment Guidelines

The *Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment* explain how traditional knowledge holders can share their knowledge with the Review Board during the EIA of a proposed development. Traditional knowledge holders, and people working with traditional knowledge during EIA, should familiarize themselves with these guidelines.

The *Socio-Economic Impact Assessment Guidelines* outline the Review Board's expectations for the socio-economic impact assessment of proposed developments that may have socio-economic and cultural impacts. Any party involved in the assessment of a proposed development that could potentially cause socio-economic or cultural impacts should refer to these guidelines.

1.2 About this Overview Document

This "Overview of the EIA Guidelines" (Overview) is a companion to the more detailed *EIA Guidelines*. The Overview is a summary of the EIA process described extensively in the *EIA Guidelines*. The numbering system of the Overview corresponds with the numbering system of the *EIA Guidelines*. If you are interested in a specific section of the Overview, you can find more information under the same heading in the *EIA Guidelines*.

Certain environmental impact assessments may not include every step outlined in the *EIA Guidelines*. Further, the order of each step can change depending on the assessment. The Review Board plans and conducts each environmental assessment and environmental impact review in a manner appropriate to the scope of the proposed development, the scale of the issues, and the information required to complete an EIA in accordance with the MVRMA.

The March 2004 edition of the *EIA Guidelines* does not reflect the current *Mackenzie Valley Resource Management Act* or the current Review Board *Rules of Procedure*. The MVRMA and the *Rules of Procedure* were amended after the Review Board issued the March 2004 edition of the *EIA Guidelines*.

Copies of the current MVRMA and *Rules of Procedure* are available electronically from the Review Board's website at mveirb.nt.ca in the "Reference Library."

1.3 Mackenzie Valley Resource Management Act

The *Mackenzie Valley Resource Management Act* came into effect in 1998. The Act was amended in 2005 to reflect current settled land-claims and self-government agreements in the Mackenzie Valley. The Act establishes a network of co-management boards. Co-management means land-claim organizations nominate half the boards' members, and the territorial and federal governments nominate the other half. Board members typically nominate the chairperson. The Minister of Indian and Northern Affairs Canada appoints the members and the chairperson based on these nominations. The Tlicho Government is authorized to make two direct appointments to the Wek'èezhìi Land and Water Board.

In addition to forming the co-management network, the Act describes the processes for land-use planning, land and water regulations, preliminary screening, environmental assessment, and environmental impact review. The Act also describes the responsibilities related to environmental monitoring and audits.

The recent amendments to the *Mackenzie Valley Resource Management Act* addressing the *Tlicho Agreement* did not establish a Wek'èezhìi Land Use Planning Board. The Tlicho Government legislates land-use in the Tlicho settlement area.

The Dehcho Land Use Planning Committee has prepared a draft Dehcho Land Use Plan, in accordance with the Dehcho First Nations Interim Measures Agreement.

1.4 Regional Land Use Planning Boards

The Gwich'in and Sahtu land use planning boards are responsible for preparing and implementing land use plans for their respective settlement areas. Approved land use plans identify which land, water and other resources may be used in a settlement area. Land and water boards must comply with regional land use plans when issuing permits, licences and other authorizations for land and water use.

1.5 Regional Land and Water Boards

The MVRMA established the Mackenzie Valley Land and Water Board and the following regional land and water boards:

- Gwich'in Land and Water Board
- Sahtu Land and Water Board
- Wek'ëezhìi Land and Water Board

Land and water boards conduct preliminary screenings of proposed developments to determine whether they should be referred to the Mackenzie Valley Environmental Impact Review Board for further study (environmental assessment). Once the environmental impact assessment process is done, the land and water boards are also responsible for permitting and licensing approved developments. Permitting and licensing are regulatory functions.

Each regional board is a component of the larger Mackenzie Valley Land and Water Board. Occasionally, the regional land and water boards are referred to as regional panels of the Mackenzie Valley Land and Water Board. These regional boards regulate land and water uses within their respective settlement areas.

1.6 Mackenzie Valley Land and Water Board

The three regional land and water boards, and members from unsettled areas, comprise the Mackenzie Valley Land and Water Board. The MVLWB is responsible for preliminary screening, and permitting and licensing the following:

- Proposed developments in unsettled claim areas
- Proposed developments that may impact the management area of more than one regional land and water board
- Proposed developments affecting jurisdictions outside the Mackenzie Valley

The Mackenzie Valley Land and Water Board also ensures that the regional panels – the Gwich'in, Sahtu and Wek'ëezhìi land and water boards – are managing land and water use consistently in the Mackenzie Valley.

1.7 Mackenzie Valley Environmental Impact Review Board

If a land and water board, government agency or an aboriginal or local government conclude that a proposed development might have a significant adverse impact on the environment or might be a cause of public concern, they may refer the proposed development to the Mackenzie Valley Environmental Impact Review Board for an environmental assessment.

The Review Board also has the authority to refer a proposed development to environmental assessment. This type of self-referral is known as “calling up.”

1.8 Overview of the Environmental Impact Assessment Process

The environmental impact assessment (EIA) process is designed to prevent significant adverse **impacts on the environment**. The process also ensures that the concerns of aboriginal people and other members of the public are considered.

No permit, licence or authorization can be issued until the EIA process is completed and it is determined that the proposed development is unlikely to cause **significant adverse impacts on the environment or significant public concern**.

Impact on the environment – Any activity, planned or otherwise, that affects the environment. In the Mackenzie Valley, the environment includes the land, water, air, and other parts of the biophysical realm, people and communities.

Significant adverse impact on the environment – A large change that must be minimized because it will probably damage an important part of the environment.

Significant public concern – Public concern that must be eased.

Note: The terms “significant”, “public concern” and “might” are explained further in the Review Board’s Reference Bulletin entitled “Operational Interpretation of Key Terminology in Part Five of the MVRMA.” This document is available electronically at mveirb.nt.ca.

- (b) The protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley; and
- (c) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act*, 1982 applies and who use an area of the Mackenzie Valley.

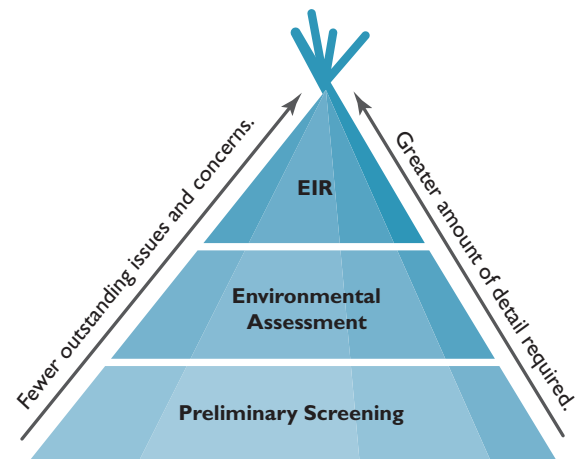


Figure 1: EIA – A Three Tier Process

Guiding Principles (per s.115 of the Act)

115. The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to

- (a) the protection of the environment from the significant adverse impacts of proposed developments;

The following are the three successive stages of EIA:

- Preliminary screening
- Environmental assessment
- Environmental impact review (EIR)

Most proposed developments undergo preliminary screening only. If a proposed development must go through the other stages of an environmental impact assessment, it is because more must be learned about the development before a decision can be made on

whether it should be accepted or rejected. As everybody's understanding of the development increases, the scope of the assessment can become more focused on the main issues and concerns.

The Mackenzie Valley Land and Water Board and the regional land and water boards conduct most of the preliminary screenings in the Mackenzie Valley.

Preliminary screening is a brief examination that takes approximately six weeks. During this time, preliminary screeners and other reviewers must determine whether a proposed development might have a significant adverse impact on the environment, might cause public concern, or might be a cause of public concern. This is commonly referred to as the “**might test**.”

Aboriginal, municipal, territorial and federal governments, and the Review Board are generally reviewers in a preliminary screening. Reviewers may share their concerns about the development with the preliminary screeners. Once all available evidence is collected, the preliminary screener applies the “might test.” If the “might test” is affirmative, a proposed development must be referred to the Review Board for an environmental assessment.

During an environmental assessment – the second stage of environmental impact assessment – the Review Board determines whether a proposed development is likely to have a significant adverse impact on the environment or cause significant public concern. The Review Board determines the scope of an environmental assessment so parties can focus on important issues during the assessment.

If the Review Board determines that a proposed development is likely to have a significant adverse impact on the environment but there are **mitigation measures** available to address the impacts, the Review Board will recommend that the proposed development

proceed provided its mitigation measures are implemented. Once the federal and responsible ministers, and in some instances the National Energy Board, approve the Report of Environmental Assessment (REA), the development proposal will be sent to the regulators for permitting, licensing, and any other required authorizations

Might test – A preliminary screening decision on whether the proposed development may cause environmental impacts or public concern.

Mitigation measures – Actions required to control, reduce, eliminate or avoid an adverse environmental impact.

If the Review Board concludes the impacts and/or public concerns cannot be mitigated, the Review Board may reject the development or order an environmental impact review.

An environmental impact review is the third and final stage of environmental impact assessment. This review is conducted by an independent Review Panel. The Panel members are selected and appointed by the Review Board and can include Review Board members.

An environmental impact review is a higher level of scrutiny that allows the Review Panel, and the parties to the environmental impact review, an opportunity to examine and assess specific details about the proposed development.

1.9 Key EIA Definitions and Terms

The *EIA Guidelines* include a plain language glossary of key EIA terms. For legal definitions, please refer to the *Mackenzie Valley Resource Management Act* and the Review Board's *Rules of Procedure*. These documents are available electronically from the Review Board's website at mveirb.nt.ca in the "Reference Library."

MVRMA and ***Rules of Procedure Update***

Due to changes in the MVRMA and revisions to the Review Board's *Rules of Procedure*, the following definitions in the March 2005 *EIA Guidelines* should be changed to:

Developer – The person or company responsible for a proposed development that is undergoing an environmental assessment or environmental impact review.

Environmental impact review – An examination of a proposed development undertaken by a panel of the Review Board established under s. 132 of the Act.

First Nation – The Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Métis of the North Slave, South Slave or Deh Cho regions of the Mackenzie Valley, but not the Tlicho First Nation or the Tlicho Government.

Impact on the environment – Any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

Parties – An individual or an organization granted standing in an environmental assessment or an environmental impact review according to terms established by the Review Board. Parties may include, but are not limited to the developer, a First Nation affected by a proposed development, the federal or any responsible minister, a designated regulatory agency, or the owner or occupier of any land the proposed development may effect.

There is no longer a distinction made between "directly affected parties," "intervenors" and "technical reviewers." Each is defined as "parties" under the revised Rules of Procedure.

SECTION 2:

PRELIMINARY SCREENING

2.1 Introduction

Approximately 95 percent of proposed developments in the Mackenzie Valley require only a preliminary screening. Preliminary screening is usually the shortest phase of EIA.

Preliminary screening determines whether a proposed development might have a significant adverse impact on the environment or might cause public concern. It is not intended to identify and define the details of significant adverse impacts. If impacts are predicted, the Review Board will identify and define the impacts in an environmental assessment.

Most proposed developments require a land use permit, a water licence or other formal authorizations because any activities that use or affect land, water and other natural resources are regulated.

Generally, if a proposed development requires a land use permit or water licence, one of the land and water boards conducts a preliminary screening of the application. If the proposed development requires some other type of authorization then it is sent to other regulators, often government departments. The Review Board, communities and other interested organizations and individuals are reviewers who provide comments to the preliminary screeners.

2.2 Early Community Engagement

It is important for developers to invite public participation when engaging in environmental impact assessment. Working closely with any affected Mackenzie Valley resident or community when designing the proposed development, predicting any

impacts and making necessary modifications to the design, improves everybody's understanding of the proposed development.

Preliminary screeners require developers to consult with the public before submitting applications. The amount of community engagement varies depending on the issues the public may have with the proposed development. This means the amount of effort to engage the public is not necessarily driven by the size of the proposed development. Each preliminary screener has requirements that developers must follow. Developers and interested parties are expected to get information about such requirements directly from the preliminary screener.

Community engagement includes the following:

- Notifying the community about the proposed development
- Adequate time for the community to prepare its views on the proposed development
- An opportunity for the community to present its views and discuss the project design with the developer

The results of those discussions should be reported to the preliminary screener.

2.3 Application Submission

The *Preliminary Screening Requirement Regulations* list provisions in federal and territorial Acts and regulations that trigger preliminary screening. If a proposed development requires one or more of the listed licenses, permits or authorizations, then no part of the proposed development may proceed to permitting or licensing until preliminary screening is done.

The *Exemption List Regulations* describe developments that do not require preliminary screening because

the impacts of such developments are considered insignificant. The regulations can be found on the Review Board's website mveirb.nt.ca in the "Reference Library."

Other developments may not need an environmental impact assessment if they are in response to an emergency as defined in the MVRMA under section 119 and 124(b), or if the development was authorized before June 22, 1984 as outlined in section 157.1. This last provision is referred to as a **grandfather clause**.

Grandfather clause – A legal exemption from environmental impact assessment given to developments that received a licence, permit or authorization before June 22, 1984.

2.4 Determining Completeness of the Application

The preliminary screener requires a certain level of information about the proposed development in order to evaluate the potential for environmental impacts and public concern. Therefore, the preliminary screener expects a complete and detailed application. If the application is inadequate, the preliminary screener may ask for additional information or the preliminary screener may reject the application and ask the developer to re-submit. The preliminary screening will not proceed until the preliminary screener decides the application is complete.

Please refer to the *EIA Guidelines* for an outline of what preliminary screeners expect in an application.

2.5 Notification of Other Agencies, Review Board and the Public

Once a completed application is accepted, the preliminary screener notifies a wide range of reviewers such as governments, First Nations, communities etc. that may have an interest in the proposed development or that may provide valuable comments about the application. Public notices are published in newspapers and the Internet so the public can participate in the preliminary screening.

Public notices also inform other organizations about the preliminary screening. This is important in case a number of organizations are screening various components of the proposed development as the organizations should coordinate their efforts.

2.6 Listing Potential Impacts and Mitigation Measures

Preliminary screeners determine the possible impacts of the proposed development on the following:

- Land
- Water
- Air
- Any other component of the environment
- Wildlife harvesting
- Socio-economic and cultural environment
- Heritage resources

After considering the evidence presented by the developer, experts, communities and others who have participated in the screening, the preliminary screener lists potential impacts of the proposed development, any mitigation committed to by the developer, and any terms or conditions that can be imposed by the preliminary screener to mitigate potential impacts.

2.7 Performing the “Might Test”

Preliminary screening determines whether a proposed development may cause the following:

- A significant adverse impact on the environment
- Public concern

The significance, or importance, of the potential impact influences the outcome of the “might test.”

Preliminary screeners must consider – at a basic level – the significance of a proposed development’s potential impacts (e.g. the size of the impact, the duration of the impact, how widespread the impact is and the impact’s likelihood).

2.8 Preliminary Screening Decision and Written Reasons

Preliminary screeners are encouraged to provide clear and thorough reasons for their decisions.

When approved, the completed Preliminary Screening Report is signed by a representative of the appropriate preliminary screening body. The final decision of a preliminary screener is released to the developers, the parties involved in reviewing the preliminary screening, including the Review Board, and the public.

2.9 Other Referrals

A preliminary screener may conclude that an environmental assessment is unnecessary, but another organization with referral power may have a different perspective and conclude the proposed development “might” cause significant adverse impacts or public concern. Certain organizations may refer such a proposed development to environmental assessment regardless of a preliminary screener’s conclusion. The following organizations have this “referral” power:

- The Review Board
- A regulatory authority, the National Energy Board, a department or agency of the federal or territorial government
- The Gwich’in Tribal Council, Sahtu Secretariat Incorporated and the Tlicho Government
- A local government in the Mackenzie Valley

If any of these organizations refer a proposed development to environmental assessment, the organization is expected to provide the same level of detail in their reasons for referral as the preliminary screener provides in its Preliminary Screening Report.

SECTION 3: ENVIRONMENTAL ASSESSMENT

3.1 Introduction

Most proposed developments do not require an environmental assessment. However, for those that do, an environmental assessment is a more thorough study of a proposed development's potential to impact the environment and people. The Mackenzie Valley Environmental Impact Review Board must determine whether a proposed development is **likely** to cause significant adverse impacts on the environment or significant public concern.

The Review Board is the only organization in the Mackenzie Valley that conducts environmental assessments.

Likely – A greater than 50 percent chance of happening.

3.2 About the Review Board

The Mackenzie Valley Environmental Impact Review Board is an independent co-management board. The Review Board has staff to assist with its responsibilities. Staff members follow the direction of the Review Board members and they are the main contact for the public and organizations during environmental assessments.

The Review Board conducts its proceedings in accordance with the rules of procedural fairness. Procedural fairness ensures the following:

- There are reasonable opportunities for participants to prepare and present their concerns
- Participants have opportunities to question any information or statements that are contrary to their points of view
- The Review Board does not make decisions until it considers all available evidence
- The Review Board members making the decision must hear the evidence given at a public hearing
- The Review Board members do not have any conflicts of interest (associations with the developer or other parties) that could bias their decisions

3.3 The Roles of Other Organizations

Many groups are involved in every environmental assessment. The following is a quick overview of these groups and their roles and responsibilities:

- **Developer** – Throughout the environmental assessment, the onus is on the developer to convince the Review Board that the proposed development is not likely to cause significant adverse impacts or that any potential impacts can be mitigated. The developer is expected to describe the proposed development and give an initial assessment of potential impacts, answer questions, and participate in hearings.
- **Parties** – They offer advice on how to assess the proposed development, ask questions about the proposed development, provide expertise and opinions about the proposed development's design, answer questions and participate in hearings.

- **Members of the public** – They may provide comments at public meetings or in writing to the Review Board.
- **Regulatory authorities** – When a Report of Environmental Assessment is approved, they incorporate mitigation measures into authorizations, licences and permits for the proposed development.
- **Federal minister** – The Minister of Indian and Northern Affairs Canada.
- **Responsible ministers** – Any federal or territorial government minister who has jurisdiction related to a proposed development under federal or territorial law.
- **Designated regulatory agency** – The only designated regulatory agency at this time is the National Energy Board. The National Energy Board has similar decision making duties as responsible ministers for proposed oil and gas development.

3.4 General Principles of Environmental Assessment

Each proposed development is unique; therefore, the Review Board may tailor each environmental assessment to the size, scale or type of proposed development being proposed.

An environmental assessment may include the following general steps:

- Receiving the application and preliminary screening information from the preliminary screener (environmental assessment start-up)
- Identifying which impact issues are related to the proposed development (scoping)
- Requesting a detailed description from the developer (Terms of Reference and Developer's Assessment Report)
- Asking more questions (Information Requests)

- Predicting impacts, evaluating whether the impacts are significant and recommending mitigation with the help of the public, and community and government experts. (technical analysis and hearings)
- Deciding whether the proposed development should be changed and determining if monitoring is required (decision making)
- Deciding whether the proposed development should be:
 - o Approved
 - o Approved but with mitigation measures and/or monitoring
 - o Rejected
 - o Referred to an environmental impact review panel for further study

3.5 Environmental Assessment Start-up

At the beginning of an environmental assessment, the Review Board notifies the developer and potential participants that the Board has begun an environmental assessment.

Early in the assessment, usually after receiving the Developer's Assessment Report, the Review Board asks people and organizations if they want to become parties to the environmental assessment.

3.6 Transboundary Developments

The Review Board must determine whether a development or its impacts cross the boundaries of the Mackenzie Valley into other jurisdictions, such as in Nunavut, the Inuvialuit Settlement Region, the Yukon Territory, or Alberta. If this is the case, the Review Board will notify the appropriate responsible authorities about the assessment and ask whether they want to participate.

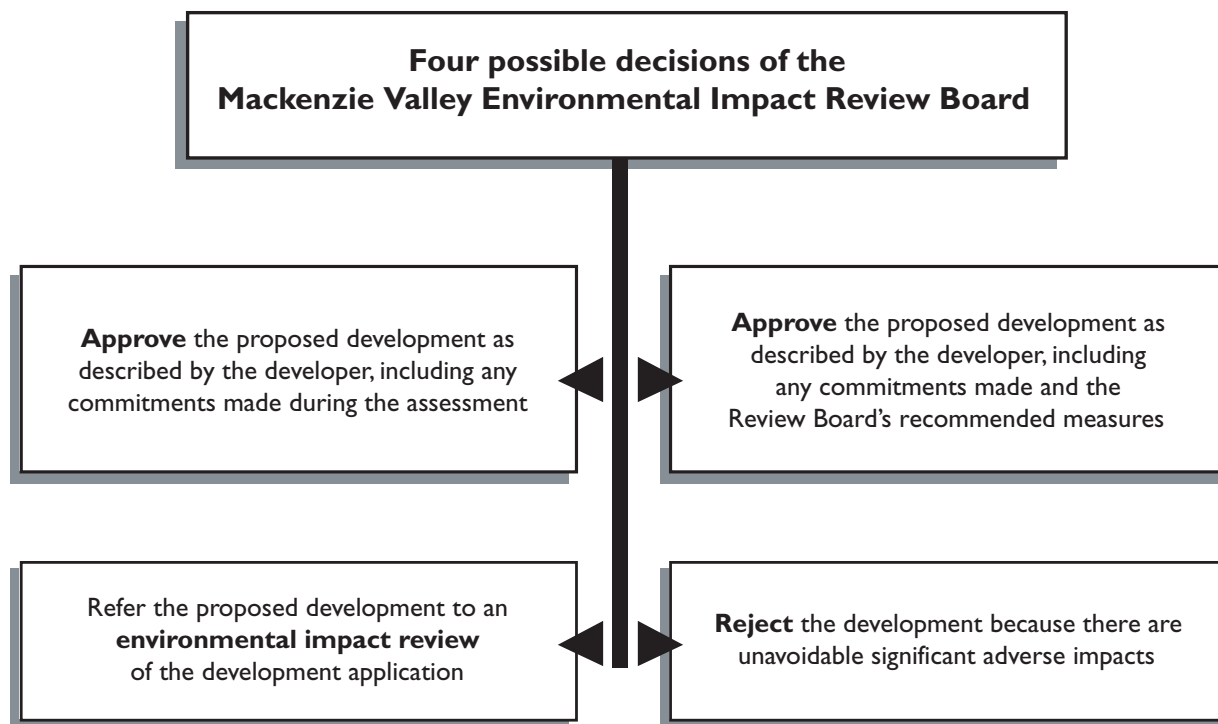


Figure 2: Review Board Decision Options

3.7 Opening a Public Registry

The public registry is the general file for every document submitted to the Review Board about a particular assessment. The public registry may include preliminary screening information, the Terms of Reference and Work Plan for the assessment, Developer's Assessment Report, letters and reports sent by parties and members of the public, Information Requests, records of hearings, Review Board rulings, etc. The public registry is located at the Review Board's office in Yellowknife. The public registry is also available in electronic format on the Review Board's website at mveirb.nt.ca under "Public Registry."

The public record is a smaller part of the public registry because it contains only the documents that the Review Board considers during its decision making. It does not contain documents that may arrive during the deliberation phase or after the decision is made. For example, if documents arrive regarding the assessment after the public record is closed and while the Review Board was making its decision, then the document is placed on the public registry but is not part of the public record. It does not influence the Review Board's decision unless the Review Board re-opens the record. See section 3.7 of the *EIA Guidelines* for more information about the difference between the public registry and the public record.



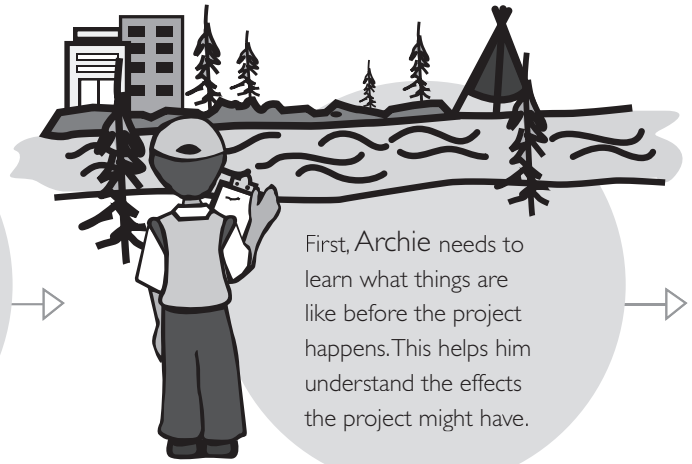
Meet Archie.

He's one of our Environmental Assessment Officers here at the MVEIRB. People ask him about what an environmental assessment is. When a company wants to do something in the Mackenzie Valley, here's what he does to make sure he protects our land, our economy and our culture

The Environmental Assessment Process



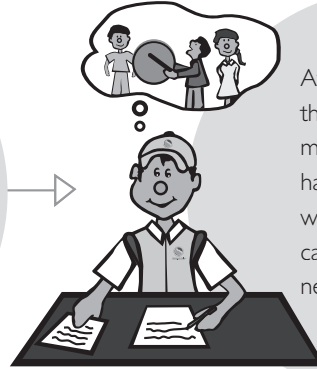
A Land and Water Board, or another authority, gives Archie a project to work on after it has gone through a preliminary screening.



First, Archie needs to learn what things are like before the project happens. This helps him understand the effects the project might have.



The people who live near a project know a lot about what it might do to their environment. Archie needs to talk to them about what should be done.

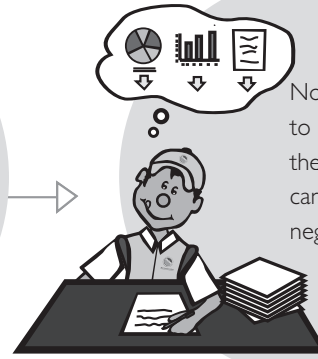


After hearing from all the people about what might happen, Archie has to think of more ways that the developer can reduce these negative effects as well.

by Archie the Environmental Assessment Officer



Archie then needs to determine all the ways that the project might affect the economy, our culture and the environment.



Now Archie has to find ways that the developer can reduce those negative effects.



Archie then writes his environmental assessment report. It includes all his work looking at economic, cultural and environmental effects of the developer's project.



Archie mails his report and recommendations to the Minister of INAC. The project has one of four results:

- project can go ahead
- project can go with changes
- Environmental Impact Review
- project is rejected

A special note about confidential items -

If the Review Board accepts confidential items, such as traditional knowledge studies, patent-sensitive technical details, etc. These items become part of the public record but might not be placed on the public registry. The exact process for handling confidential information is determined on a case-by-case basis according to the Review Board's *Rules of Procedure*. See section 2 of the *Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment* for more information about confidentiality and traditional knowledge.

3.8 Scoping the Development

Development scoping is the term used to describe how the Review Board identifies the components of the proposed development that are subject to environmental assessment. During the environmental assessment, the Review Board examines the main development components and other physical works or activities required for the proposed development to proceed.

3.9 Scoping the Issues

Issues scoping is a method of identifying which issues are most relevant and require the most attention during the assessment; it helps focus the environmental assessment's Terms of Reference. Issues scoping addresses social, economic and cultural issues, in addition to biophysical environment issues.

When the Review Board scopes the issues, it may consider any of the following:

- The Preliminary Screening Report
- Impacts known to result from similar developments
- Sensitive areas in the vicinity of the proposed development
- Issues raised during developer consultations
- Issues raised by interested groups during **issues scoping sessions** or written submissions

Issues scoping session – An informal meeting or workshop that is typically run by Review Board staff members. A summary report of the session is written by the staff and included in the public registry for Review Board consideration.

Process Update – The Review Board has expanded how it scopes proposed developments. This is not included in the current version of the *EIA Guidelines*. However, it is now an important part of recent and future environmental assessments.

3.10 Producing Terms of Reference and a Work Plan

The Terms of Reference specify what information the developer must provide in its Developer's Assessment Report.

The Terms of Reference ask the developer to do the following:

- Describe the development in detail
- Describe the surrounding environment (the environment is not only biophysical – it includes

relevant information about the socio-economic environment of the potentially impacted communities)

- Predict possible impacts
- Identify any mitigation measures that will reduce or avoid the impacts
- Describe the significance of adverse impacts that are unavoidable

A Work Plan describes how the Review Board intends to conduct the environmental assessment of the proposed development. The Work Plan highlights the main steps that will happen in the environmental assessment and it will provide an estimated timeline for each step of the environmental assessment. The Work Plan for each environmental assessment is unique because the Review Board tailors its assessments of developments to each situation. The draft Terms of Reference and Work Plan are circulated to all parties for comment before being finalized.

3.11 Preparing the Developer's Assessment Report

Once the Terms of Reference and Work Plan are finalized so the developer can begin working on the Developer's Assessment Report, the Review Board surveys the interested parties to see if there are enough technical reviewers to analyze the Developer's Assessment Report. If the Review Board feels it is necessary to have more expertise to help assess the project, the Review Board may hire special advisors.

In the meantime, the developer prepares the Developer's Assessment Report and addresses each item in the Terms of Reference. The developer includes a table that cross references the information in the Developer Assessment Report with the Terms of Reference.

The Developer's Assessment Report is meant to show the developer's perspective on the following:

- **Issue identification** – Valued parts of the physical and human environment the proposed development could impact
- **Impact Predictions** – Potential impacts of the proposed development
- **Significance** – The significance of each impact
- **Mitigation or Remedial measure** – What the developer will do to reduce or avoid any impacts on the valued parts of the human and biophysical environment
- **Cumulative Effects Assessment** – How the proposed development's impacts combine with the impacts of other developments that have happened in the past, are currently happening or are reasonably foreseeable

3.12 Conformity Check

Once the developer submits the Developer's Assessment Report, a check is done to make sure everything required by the Terms of Reference is included in the Developer's Assessment Report. If the developer has not answered all the questions, the Review Board can issue a Deficiency Statement and ask the developer to submit additional information before allowing the environmental assessment to proceed.

3.13 Technical Review

During this stage, technical reviewers, including every party to the environmental assessment and any experts hired by the Review Board, look at the contents of the Developer's Assessment Report to see if they agree with the analysis, issues and impacts described by the developer.

In order to ensure the parties agree on the impacts and possible mitigation methods, the Review Board may

host technical sessions or workshops facilitated by Review Board staff. During these sessions, technical reviewers are encouraged to discuss their ideas, evidence and facts that support their opinions and possible conclusions about the development's impacts and mitigation.

During a technical session, parties with differing views are encouraged to talk about their concerns and try to resolve their differences. At the end of this stage, parties are asked to submit technical reports that explain their position and reasons for their opinion. The reports must include a plain language summary.

The Review Board encourages parties to talk outside of the Review Board process in order to resolve issues. When this happens, the Review Board asks parties to submit meeting notes to the public registry.

3.14 Information Requests

Information Requests are formal questions that are sent to the developer and other parties to help understand the proposed development better. The Review Board issues Information Requests, but other parties are also given a chance to submit possible questions for the Review Board to consider. The Review Board has a prescribed format for Information Requests that parties submitting possible questions must follow. The format is included in the *EIA Guidelines*.

The Review Board will not issue proposed Information Requests with the following characteristics:

- Questions unrelated to issues scoped in the assessment
- Questions that are inappropriate
- Questions that are irrelevant to the assessment
- Questions that are repetitive or redundant

During an environmental assessment there may be one or more rounds of Information Requests and they can

happen at various times during the assessment. The Work Plan describes when the Review Board anticipates issuing Information Requests for each environmental assessment.

3.15 Hearings

The Review Board decides on a case-by-case basis whether public hearings are necessary. Some examples of hearings include the following:

- **Issues scoping hearings** – Occasionally held near the start of the assessment; the developer, parties and the public present their initial issues they want to see focused on during the assessment. The Review Board is present during these types of hearings. A common alternative to formal issues scoping hearings are informal issues scoping sessions. The Review Board does not attend informal issues scoping sessions.
- **Public hearings** – Normally held near the end of the assessment, and where the developer and parties present their final conclusions about the proposed development. Public hearings can be a formal hearing or a community hearing. The Review Board is always present during public hearings.
- **Written hearings** – Parties submit written advice and comments to the Review Board.

Formal hearing – An oral hearing that is structured for the participation of all parties. See section 4 of the *Rules of Procedure*.

Community hearing – An informal oral hearing to allow the Review Board to hear directly from the community. See section 5 of the *Rules of Procedure*.

Normally, the Review Board requires anybody wishing to make a formal presentation during a hearing to inform the Review Board in advance. In addition, there is a deadline by which presenters must submit a copy of their presentations in order to give everybody a chance to prepare. Often notices about upcoming dates are posted on the Review Board's website in the public registry.

There is usually a pre-hearing conference to review the logistics of the hearing with the parties or presenters. During the pre-hearing conferences parties are encouraged to discuss and resolve any outstanding issues before the hearing is held.

3.16 Deliberating and Preparing the Report of Environmental Assessment

The public record is closed once the Review Board feels it has sufficient evidence to consider. However, prior to the closure of the record, the Review Board may issue additional Information Requests, such as requests for clarification.

During deliberations, the Review Board must choose one of the following options:

- **Approve** the development as described by the developer, including any commitments made during the assessment
- **Approve** the development as described by the developer, including any commitments made and with additional measures that the Review Board has identified to avoid or reduce significant adverse environmental impacts
- **Order an Environmental Impact Review** of the development application
- **Reject** the development because there are significant impacts that cannot be avoided or mitigated

The Review Board often gives non-binding **suggestions** for good environmental management in its recommendations to the federal and responsible ministers.

Suggestions – Non-binding components of the Review Board's recommendation to the federal and responsible ministers. They provide ideas on ways to further reduce an impact and prevent future impacts of a proposed development.

Once the Review Board makes a decision, the Review Board writes a report called the Report of Environmental Assessment. This report outlines the Review Board's recommendation and how it came to its decision. The Report of Environmental Assessment is sent to the Minister of Indian and Northern Affairs Canada (INAC), the National Energy Board (NEB), if applicable, and the developer. The Report of Environmental Assessment is also placed on the public registry.

3.17 Federal Minister's Decision

The Minister of INAC distributes the Review Board's Report of Environmental Assessment to each responsible minister with jurisdiction over the proposed development.

If the Review Board recommends that the proposed development be approved – sometimes with mitigation – or rejected, the federal and responsible ministers may

decide to do any of the following with the Report of Environmental Assessment:

- Adopt the Review Board's recommendation
- Refer it back to the Review Board for further consideration
- Enter into a **consult-to-modify** process and either:
 - Adopt the recommendation with modification
 - Reject the reasons for decision and order an environmental impact review

Consult-to-modify – A process in which the federal and responsible ministers – and in some instances the NEB – may enter into consultations with the Review Board to amend its recommendations.

3.18 Completing the Environmental Assessment

The environmental assessment is completed when the federal and responsible ministers, and in some instances the NEB, accept the Review Board's Report of Environmental Assessment and reasons for decision or if the federal and responsible ministers, and in some instances the NEB, send the proposed development for an environmental impact review.

SECTION 4: ENVIRONMENTAL IMPACT REVIEW

4.1 Introduction

Environmental impact review is the third and final level of the EIA process in the Mackenzie Valley. It builds on the work done in the environmental assessment stage but is conducted by an independent Review Panel.

Process update – There is currently limited experience with environmental impact reviews. As experience and familiarity with the process is gained by the Review Board, readers can expect modifications to how the process is currently outlined in the *EIA Guidelines*.

4.2 About Review Panels

A Review Panel (Panel) has similar powers to the Review Board. It can hold hearings, require witnesses to appear, determine impact significance and required mitigation, and make rulings.

The Panel members are appointed by the Review Board. There are at least three members appointed to the Review Panel, including a Chairperson. Review Board members may be appointed to the Panel. If there is a new type of development or technology, specific traditional knowledge required or the reason for referral is based on complex issues that need outside expertise, the Review Board may consider appointing experts to the Panel as well.

4.3 General Principles of the Environmental Impact Review

Many aspects of an environmental impact review are similar to aspects of the environmental assessment.

The Review Panel must consider the following:

- The purpose of the proposed development
- Alternatives to the way the proposed development is designed
- Impacts of the proposed development
- Significance of the impacts
- Public comments
- Mitigation measures
- Need for follow-up programs
- Impacts of the development on people's future ability to access renewable resources (e.g. caribou)
- Other topics deemed relevant by the Review Board or the federal and responsible ministers

The Review Panel is committed to the principles of fairness, timeliness and efficiency.

4.4 Environmental Impact Review Start-up

When an environmental impact review is ordered, a public registry is opened.

The public record from the environmental assessment may be included in the environmental impact review's public registry if the Review Board decides that would be valuable to the Panel.

During the start-up of the review, the Review Board will determine if there are any transboundary issues related to the development under review. If there are such issues, section 4.8 outlines the options available.

The Review Board also informs the Minister of INAC of the financial and administrative needs of the Panel. Such needs include a Panel manager and support staff for the Panel. Following this submission to the Minister of INAC, the Review Board appoints the Panel members and Chairperson.

4.5 Terms of Reference for the Review Panel

The Review Board develops the Panel's Terms of Reference. These Terms of Reference are different than the Terms of Reference written for the developer. They guide the Review Panel on its mandate and the procedures to follow during the environmental impact review. The Terms of Reference for the Review Panel are developed after consulting with responsible ministers and potentially affected land claimant organizations.

The Terms of Reference for the Review Panel may include the following:

- How the Review Panel is structured and run
- The scope of the environmental impact review
- Any instructions from the Review Board regarding the Terms of Reference for the developer's Environmental Impact Statement
- Public notification requirements
- Direction on what type of analysis the Review Panel may need to do in the environmental impact review
- Public consultation or hearing requirements
- The roles and responsibilities of the Review Board and the Review Panel
- Direction on the contents of the Report of the Review Panel
- Instructions for submission of the Report of the Review Panel

4.6 Scoping, Conformity Check, Hearings and Deliberation

The following are the main differences between an environmental impact review and an environmental assessment:

- The impact review is conducted by the Review Panel not the Review Board
- The developer produces an Environmental Impact Statement instead of a Developer's Assessment Report
- The final report produced by the Panel is called the Report of the Review Panel not the Report of Environmental Assessment.

The process for an Environmental Impact Review is similar to an Environmental Assessment. In general, the steps include the following:

- Scoping the development and issues
- Producing the Environmental Impact Statement, Terms of Reference and Work Plan
- Developer writes the Environmental Impact Statement
- Conformity check
- Technical review of the Environmental Impact Statement
- Pre-hearing conferences and public hearings
- Rulings if needed
- Review Panel deliberation and production of the Report of the Review Panel

4.7 Environmental Impact Review Decisions

The Review Panel decides what measures to recommend and gives reasons for its conclusions. The Panel may recommend one of the following two actions:

- **Approval** of the proposed development with or without mitigation or remedial measures or a follow up program
- **Rejection** of the proposed development

4.8 Determining Need for Cooperative and Joint Reviews

Joint reviews can happen when a proposed development or its impacts cross the boundaries of the Mackenzie Valley. Other times, the Minister of INAC may decide a project is in the national interest, and in such cases a joint review would be ordered as well.

A Joint Review Panel Agreement may then be negotiated by the Review Board with one or more jurisdictions. An example of a joint review is the joint review of the Mackenzie Gas Project. This review was conducted jointly by the Inuvialuit Game Council, Canadian Environmental Assessment Agency and the Mackenzie Valley Environmental Impact Review Board.

4.9 Undertaking Cooperative and Joint Reviews

This section of the *EIA Guidelines* offers examples of different types of joint reviews available. In order to set up cooperation with other bodies, the Review Board and representatives from the cooperating body will meet to decide the panel structure and the way to conduct the joint panel review. Once the structure and process is chosen, the public and affected parties will be informed about the establishment of the process.

If a project is sent to a joint review because it is deemed to be in the national interest, then the requirements of the *Canadian Environmental Assessment Act* are also applied to the review.

SECTION 5: **CONCLUSIONS AND FUTURE AMENDMENTS**

The *EIA Guidelines* describe the process guiding environmental impact assessment in the Mackenzie Valley and the current thinking and good practices for implementing EIA. The Review Board may amend the guidelines over time when changes occur in the *Mackenzie Valley Resource Management Act* or in the way EIA is conducted in the Mackenzie Valley.

For copies of the *EIA Guidelines* or for more information on the Review Board and its processes please contact:

Executive Director
Mackenzie Valley Environmental Impact Review Board
PO Box 938
Suite 200, 5102-50th Ave
Yellowknife, NT X1A 2N7

Or check the Review Board's website at:

mveirb.nt.ca

Phone: 867-766-7050

Toll Free: 1-866-912-3472

SECTION 6: **APPENDICES**

The following useful tools can be found in the *EIA Guidelines* Appendices.

- Definitions and Abbreviations
- EIA under the MVRMA and CEAA - selected differences
- Sample Preliminary Screening Form
- Format Instructions for Technical Reviewers
- Information Request Guidance and Samples
- Guide to Pre-hearing Conferences
- Additional Cumulative Effects and Guidance
- Roles and Responsibilities in the EA Process
- Deciding the Need for a Preliminary Screening
- Identifying Preliminary Screeners



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