

Code of Practice

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# **Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario**

Legislative Authority:

Environmental Assessment Act, RSO 1990, Chapter E.18

October 2009



This Code of Practice was developed in consultation with government agencies and other interested persons including academics, environmental assessment practitioners, environmental groups, industry associations, professional associations and proponents. We appreciate the contributions that these individuals and groups have made to finalize this document and look forward to continued input to maintain it as an effective tool for use during the environmental assessment process.

Readers should check the Ministry of the Environment's website or call the Environmental Assessment and Approvals Branch to find out if there have been any revisions.

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This Code of Practice is published as a living document that will be reviewed and revised as necessary. Any comments, suggestions for revision or clarification are welcomed and should be sent to the Director of the Environmental Assessment and Approvals Branch at the address listed above.

Ce document est aussi disponible en français.

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## **Glossary**

The definitions in this glossary are intended to assist the reader in understanding the terms used in this Code of Practice. To understand these terms completely, the Ministry of the Environment recommends that both the definitions in here and in the legislation be consulted. In all cases, the wording contained in the *Environmental Assessment Act* shall prevail.

### **Aboriginal Peoples**

The *Constitution Act, 1982* specifies that Aboriginal peoples include Indian, Inuit and Métis peoples of Canada.

### **Alternative Methods**

Alternative methods of carrying out the proposed undertaking are different ways of doing the same activity.

Alternative methods could include consideration of one or more of the following: alternative technologies; alternative methods of applying specific technologies; alternative sites for a proposed undertaking; alternative design methods; and, alternative methods of operating any facilities associated with a proposed undertaking.

### **Alternatives**

Both alternative methods and alternatives to a proposed undertaking.

### **Alternatives To**

Alternatives to the proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity.

### **Application**

An application for approval to proceed with an undertaking under subsection 5(1) of the *Environmental Assessment Act*.

### **Branch**

Environmental Assessment and Approvals Branch, Ministry of the Environment.

### **Class Environmental Assessment**

A document that sets out a standardized planning process for those classes or groups of activities for which the proponent is responsible. A class environmental assessment is approved under the *Environmental Assessment Act* and applies to projects that are carried out routinely and have predictable environmental effects that can be readily managed. Projects defined within a class environmental assessment are pre-approved, conditional upon being

planned according to the document and not being elevated to a higher level of study. All class environmental assessments have a mechanism where the Minister may order that an individual environmental assessment be carried out for a particular project, if warranted (Part II Order or “bump-up”).

### **Class Environmental Assessment Project**

An undertaking that does not require any further approval under the *Environmental Assessment Act* if the planning process set out in the class environmental assessment document is followed and successfully completed. Any interested person may request the Minister or delegate to order that a class environmental assessment project be bumped up to an “individual” environmental assessment by making a Part II Order.

### **Commitment**

Represents a guarantee from a proponent about a certain course of action, that is, “I will do this, at this time, in this way.” Proponents acknowledge these guarantees by documenting obligations and responsibilities, which they agree to follow, in environmental assessment documentation (terms of reference and environmental assessment). Once the Minister and Cabinet approve an application, the commitments within the document are often made legally binding as a condition of approval.

### **Consultation**

A two-way communication process to involve interested persons in the planning, implementation and monitoring of a proposed undertaking. Consultation is intended to:

- Identify concerns;
- Identify relevant information;
- Identify relevant guidelines, policies and standards;
- Facilitate the development of a list of all required approvals, licences or permits;
- Provide guidance to the proponent about the preparation of the terms of reference and environmental assessment;
- Ensure that relevant information is shared about the proposed undertaking;
- Encourage the submission of requests for further information and analysis early in the environmental assessment process;
- Enable the ministry to make a fair and balanced decision.

### **Deadlines Regulation**

Refers to Ontario Regulation 616/98, which establishes the timing of reviews and decisions for terms of references and environmental assessments by the ministry.

## **Director\***

Director of the Environmental Assessment and Approvals Branch, Ministry of the Environment.

## **Do Nothing Alternative**

An alternative that is typically included in the evaluation of alternatives that identifies the implications of doing nothing to address the problem or opportunity that has been identified.

## **Environment\***

The *Environmental Assessment Act* defines environment to mean:

- (a) Air, land or water;
- (b) Plant and animal life, including human life;
- (c) The social, economic and cultural conditions that influence the life of humans or a community;
- (d) Any building, structure, machine or other device or thing made by humans;
- (e) Any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or,
- (f) Any part or combination of the foregoing and the interrelationships between any two or more of them.

## **Environmental Assessment**

Environmental assessment is a study, which assesses the potential environmental effects (positive or negative) of a proposal. Key components of an environmental assessment include consultation with government agencies and the public; consideration and evaluation of alternatives; and, the management of potential environmental effects. Conducting an environmental assessment promotes good environmental planning before decisions are made about proceeding with a proposal.

## **Environmental Assessment Act**

The *Environmental Assessment Act* (and amendments and regulations thereto) is a provincial statute that sets out a planning and decision-making process to evaluate the potential environmental effects of a proposed undertaking. Proponents wishing to proceed with an undertaking must document their planning and decision-making process and submit the results from their environmental assessment to the Minister for approval.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

**Environmental Effect**

The effect that a proposed undertaking or its alternatives has or could potentially have on the environment, either positive or negative, direct or indirect, short- or long-term.

**Government Review Team**

Staff from government ministries and agencies (federal; provincial, including local Conservation Authorities; and, municipal, including local Boards of Health) who contribute to the review of environmental assessment documentation (terms of reference and environmental assessment) by providing comments from their mandated areas of responsibility.

**Impact Management Measures**

Measures which can lessen potential negative environmental effects or enhance positive environmental effects. These measures could include mitigation, compensation, or community enhancement.

**Interested Persons**

Individuals or organizations with an interest in a particular undertaking. Persons with an interest in a particular undertaking often include neighbours and individuals, environmental groups or clubs, naturalist organizations, agricultural organizations, sports or recreational groups, organizations from the local community, municipal heritage committees, ratepayers associations, cottage associations, Aboriginal peoples and businesses.

Interested persons are not required to demonstrate that they will personally be affected by a particular undertaking. Interested persons are often called stakeholders.

**Mediation**

A dispute resolution process in which a neutral third party (mediator) who is acceptable to all parties assists disputants in reaching a mutually acceptable agreement. The mediator has no authority to impose a settlement and participation in the process is voluntary.

**Minister\***

Minister of the Environment.

**Ministry\***

Ministry of the Environment.

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## **Ministry Technical Reviewers**

Ministry of the Environment staff, other than the Project Officer, who contribute to the review of the draft and proposed terms of reference. They form part of the Government Review Team for the proposal.

## **Places of Public Record**

Official locations where interested persons may review the proposed terms of reference.

## **Project Officer**

The assigned staff person from the Environmental Assessment and Approvals Branch who manages and coordinates the review of the components of an *Environmental Assessment Act* application (that is, a terms of reference or an environmental assessment) for approval. The Project Officer also provides guidance on the environmental assessment process to proponents, government agencies and other interested persons.

## **Proponent\***

A person, agency, group or organization that carries out or proposes to carry out an undertaking or is the owner or person having charge, management or control of an undertaking.

## **Public Record File**

A record of every undertaking for which there is an application for approval under the *Environmental Assessment Act* which is maintained by the Environmental Assessment and Approvals Branch in accordance with section 30 of the *Environmental Assessment Act* for the purpose of creating a record that is available to any interested persons.

## **Record of Consultation**

A document submitted with the proposed terms of reference that describes the consultation carried out during the preparation of the terms of reference and the results of that consultation.

## **Stand-alone Document**

Additional documentation prepared separately from the terms of reference, which provides more information, but is not subject to the approval of the Minister (for example, Record of Consultation and supporting documentation).

## **Supporting Documentation**

Documentation that is submitted to the ministry, in addition to the proposed terms of reference, which provides further information on issues discussed in the

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proposed terms of reference. Information contained in the supporting documentation should support the proponent's request that the terms of reference be approved by providing justification for the choices made and details of processes or methodologies to be used.

### **Terms of Reference**

A document prepared by the proponent and submitted to the Ministry of the Environment for approval. The terms of reference sets out the framework for the planning and decision-making process to be followed by the proponent during the preparation of an environmental assessment. In other words, it is the proponent's work plan for what is going to be studied. If approved, the environmental assessment must be prepared according to the terms of reference.

### **Undertaking \***

An enterprise, activity or a proposal, plan, or program that a proponent initiates or proposes to initiate.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

# 1. Introduction

Environmental assessment is a planning and decision-making process used to promote environmentally responsible decision-making. In Ontario, this process is defined and finds its authority in the *Environmental Assessment Act*. The purpose of the *Environmental Assessment Act* is to provide for the protection, conservation and wise management of Ontario's environment. To achieve this purpose, the *Environmental Assessment Act* promotes responsible environmental decision-making and ensures that interested persons have an opportunity to comment on undertakings that may affect them. In the *Environmental Assessment Act*, environment is broadly defined to include the natural, social, economic, cultural and built environments.

The first step in the application for approval to proceed with an undertaking under the *Environmental Assessment Act* is the approval of a terms of reference by the Minister of the Environment (Minister). The public and other interested persons will have an early opportunity to be involved in the terms of reference process to get information about proposals that may affect them, and allow them to decide early on about the level of their concern and their need for continued participation in the planning process. The terms of reference will allow the proponent to produce an environmental assessment that is more direct and easier to review by interested persons. It allows the focus of the environmental assessment to be the identification and management of potential environmental effects. In addition, it can save the proponent time and money.

An approved terms of reference becomes the framework for the preparation and review of the environmental assessment. The proponent then completes the application by submitting an environmental assessment that has been prepared in accordance with the approved terms of reference. If the terms of reference is not approved and the proponent still wishes to proceed with the undertaking, the proponent must submit a new terms of reference for the Minister's approval. Neither an approved terms of reference nor an environmental assessment prepared in accordance with an approved terms of reference guarantees that the Minister will approve an application to proceed with a proposed undertaking.

If approved, the terms of reference becomes the framework for the preparation and review of the environmental assessment.

A terms of reference is not an environmental assessment and the proponent is not required to demonstrate the feasibility of its proposal at the terms of reference stage. That work is done at the environmental assessment stage using the framework set out in the approved terms of reference.

The terms of reference as part of the environmental assessment process is not a consensus building exercise. Participants do not have the power to veto an undertaking. They can provide information that will assist the Minister in deciding whether an undertaking can proceed in the public interest while ensuring that the environment is protected.

## **1.1 Purpose of This Code of Practice**

This Code of Practice outlines the legislative requirements and the Ministry of the Environment's (ministry) expectations for the preparation and review of a terms of reference. This Code of Practice focuses on the fulfilment of the requirements of the *Environmental Assessment Act*; however, the proponent should remain aware of any requirements for obtaining other necessary approvals while preparing the terms of reference.

This Code of Practice presents an overview of:

- The roles and responsibilities of interested persons in the terms of reference preparation and review process;
- The mandatory elements of preparing a terms of reference;
- The ministry's expectations of what proponents will provide in the terms of reference;
- The steps involved in, and the timelines associated with, the submission and review of the terms of reference. (See Appendix A.)

This Code does not apply to undertakings that are subject to the provisions set out in a class environmental assessment. A separate Code of Practice will be prepared for class environmental assessments.

The contents of this Code of Practice should be considered in conjunction with any other relevant guidance materials available from the ministry. Where the text refers to a requirement of the *Environmental Assessment Act*, the relevant section from the legislation is usually referenced in brackets. While this Code references and discusses the legal framework of the *Environmental Assessment Act*, in case of any conflict or doubt, the wording of the *Environmental Assessment Act* and its regulations shall prevail.

## **2. Applicability of the Environmental Assessment Act**

Proponents wishing to carry out undertakings in Ontario must determine whether the *Environmental Assessment Act* applies to their proposal as soon as a problem or opportunity is identified, since undertakings subject to the *Environmental Assessment Act* may not proceed until an application to do so has been approved. Making this determination early also assists proponents in developing a planning process in accordance with the requirements of the *Environmental Assessment Act*.

In determining whether approval under the *Environmental Assessment Act* is required for a particular undertaking, proponents must have also regard to regulations made pursuant to the act (for example, Regulations 334, 116/01 and 101/07) to see whether any special exemptions or designations are applicable. Where a proponent is uncertain about how regulatory provisions might apply, it may contact the Environmental Assessment and Approvals Branch (Branch) for advice, but should consider obtaining its own legal or other advice. It is up to the proponent to ensure it has complied with the statute and regulatory requirements.

Generally speaking, section 3 of the *Environmental Assessment Act* states that it applies to undertakings by:

- A Minister of the Crown, a public body or a municipality;
- A private sector proponent that is designated by regulation; or,
- A person who enters into a written agreement with the Minister that the *Environmental Assessment Act* will apply.

### **2.1 Crown, Public Body or Municipality**

Undertakings by the Crown, public bodies (for example, Ontario Realty Corporation, GO Transit) and municipalities are normally subject to the requirements of the *Environmental Assessment Act*. Regulation 334 defines public bodies.

The regulation states which ministers of the Crown are exempt from the requirements of the *Environmental Assessment Act*. The regulation also defines circumstances under which an undertaking by a municipality, other public bodies and some private sector proponents would not be subject to the requirements of the *Environmental Assessment Act*. Other general exemptions apply so it is important that the regulation be read in its entirety before deciding how to proceed.

## **2.2 Designating Regulation**

Private sector proponents are not automatically subject to the requirements of the *Environmental Assessment Act* but may be made subject by a designating regulation made by the Lieutenant Governor in Council (section 39 of the *Environmental Assessment Act*).

## **2.3 Voluntary Agreement**

Section 3.0.1 of the *Environmental Assessment Act* states that any person may enter into a written agreement with the Minister to have the *Environmental Assessment Act* apply to its proposed undertaking. This provision is used by private sector proponents and is an alternative to a designating regulation. Private sector proponents with an undertaking that it feels is likely to be designated, should discuss with the ministry the option of entering into a voluntary agreement. Entering into an agreement could save time as there are fewer procedural requirements than for a designating regulation, for example, a regulation made by the Lieutenant Governor in Council is not necessary.

### **3. Who Should Use This Code of Practice?**

This section outlines the roles and responsibilities of the various participants involved in the preparation and review of a terms of reference. It is important to note that the information outlined herein is not meant to be exhaustive and that other participants' roles and/or responsibilities may apply depending on the nature and complexity of a proposed undertaking.

The participants are:

- Proponents who are responsible for preparing the terms of reference and consulting with all interested persons about their proposal;
- Government Review Team members who participate in the preparation and review of the terms of reference;
- Interested persons, including Aboriginal peoples, who participate in the terms of reference process by providing comments about the proposed study and the terms of reference;
- The ministry's Environmental Assessment and Approvals Branch (Branch) staff who review the proponent's terms of reference.

#### **3.1 Proponents**

Proponents who initiate undertakings that are subject to Part II of the *Environmental Assessment Act* are responsible for preparing the terms of reference. Proponents must make judgments and choices with respect to the content of the proposed terms of reference. Proponents are required to:

- Consult with Branch staff to discuss preparation, consultation and submission requirements;
- Identify government ministries and agencies, municipalities, members of the public, Aboriginal communities, and other persons who may have an interest in their proposal;
- Engage in meaningful consultation with all interested persons to identify and respond to needs and concerns;
- Establish reasonable time frames for feedback and review during the consultation process;
- Ensure that issues and concerns are identified and considered early in the planning process before irreversible decisions are made;
- Document the results of the consultation process;
- Prepare a terms of reference in consultation with the ministry, other government ministries and agencies, municipalities and all interested persons, including Aboriginal peoples;

- Prepare and submit a terms of reference in accordance with applicable ministry legislation and standards (for example, *Environmental Assessment Act* and its regulations, applicable Codes of Practice).

### **3.2 Government Review Team**

Members of the Government Review Team, including ministry technical staff, should be involved from the outset during the preparation of the terms of reference. They should assist proponents in identifying areas of concern within their mandate. Members of the Government Review Team are responsible for:

- Providing information and guidance in a timely manner within their mandated areas of responsibility that the proponent should consider when preparing the terms of reference (for example, legislative requirements, policies, standards, studies, potential evaluation criteria);
- Providing consistent advice in a timely manner throughout the course of the decision-making process, or providing relevant reasons if their position changes;
- Participating in the government review of the proposed terms of reference after it is submitted to the ministry by reviewing the document based on its agency's mandate, submitting comments to the ministry by the required deadline, and working with the proponent and the ministry to address any issues.

### **3.3 Interested Persons, including Aboriginal Peoples**

Proponents should identify and discuss their proposal with all interested persons early in the process. Interested persons are encouraged to participate in the preparation and review of the terms of reference. Generally, their roles are:

- Identifying local issues and areas of concern and how they may be affected during the development of the terms of reference;
- Suggesting modifications to the proposal or documentation that may address concerns;
- Providing comments by the required deadline once the proposed terms of reference is submitted to the ministry.

#### Aboriginal Peoples

In addition to the actions listed above, where an Aboriginal community participates in the terms of reference process, it should:

- Identify an appropriate contact to maintain consistency throughout the planning process;



- Identify any Aboriginal claims or interests potentially affected by the proposal during the development of the terms of reference (for example, traditional territory, Aboriginal or treaty rights);
- If an Aboriginal or treaty right has been asserted, or potential impact identified, clearly outline the scope and nature of the asserted right(s) and the nature of the alleged infringement.

### **3.4 Environmental Assessment and Approvals Branch Staff**

One of the Branch's responsibilities is to provide guidance about the terms of reference process to assist proponents and interested persons in their understanding of the process, and ultimately to allow the Minister to make informed decisions about a proposal. This role mainly falls to a Project Officer at the Branch. The Project Officer's roles are to:

- Provide advice and guidance about the requirements of the *Environmental Assessment Act*, and other ministry legislation or procedures;
- Facilitate coordination with other review processes, such as the federal environmental assessment process, in order to minimize unnecessary duplication and inconsistency;
- Evaluate the draft and final terms of reference to ensure that all legislative requirements and procedures established by the ministry are followed;
- Coordinate the ministry's technical review of the draft terms of reference;
- Review the consultation with interested persons, including Aboriginal peoples, that has occurred during the preparation of the terms of reference;
- Coordinate the review of the proposed terms of reference when it is submitted to the ministry for a decision;
- Encourage and facilitate the resolution of outstanding issues during the process as necessary;
- Evaluate the final terms of reference and provide a recommendation to enable the Minister to make an informed decision about a proposed terms of reference;
- Maintain the public record file for the proposal.

## 4. Preparation of a Terms of Reference

The first step in the application for approval to proceed with an undertaking is the submission and approval of a terms of reference. The terms of reference provides a framework for the preparation of the environmental assessment. It sets out the proponent's work plan for addressing the legislated requirements of the *Environmental Assessment Act* when preparing the environmental assessment.

A terms of reference is not an environmental assessment. It outlines what work and studies will be done during the environmental assessment stage. The proponent does not need to do the work or studies at the terms of reference stage.

On average, proponents take from six to nine months to prepare the terms of reference. This timeline is dependent on the scale and complexity of the proposal and the level of public interest.

The specific contents of the terms of reference will vary for each proposal; however, there are general expectations of what should be included in the document. These expectations, which are outlined further in this section of the Code, are consistent with the generic requirements as defined in subsection 6.1(2) of the *Environmental Assessment Act*.

### 4.1 Initiating the Terms of Reference Process

Before starting to prepare the terms of reference, a proponent must contact the Branch to speak to one of the supervisors in the Environmental Assessment Project Coordination Section. After that initial discussion, a Project Officer will be assigned to the file who will then contact the proponent. This Project Officer will serve as the one-window ministry contact during the terms of reference process and will offer guidance and advice to the proponent and all interested persons about the planning process and their role in it.

The Project Officer will ask the proponent to develop a program for consulting with interested persons during the preparation of the terms of reference. Proponents should identify key milestones in the development of the terms of reference, such as the identification of alternatives or evaluation criteria, and consult with interested persons at those times. The proponent will refer to the ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process*, for guidance in developing the consultation program. The Project Officer will give the proponent a copy of the Branch's master Government Review Team list which will help the proponent identify the government agencies and ministries to be consulted who may have a mandated interest in their proposal. Appendix B contains a truncated version of the master Government Review Team list.

As a tool to keep interested persons informed about the proposal, the proponent is advised to maintain a website with information about their proposal. The website, which is to be kept up-to-date and maintained throughout the life of the project, can be used as a depository for notices (of consultation events, for example), reports and studies, and the terms of reference.

When the proponent submits the terms of reference to the ministry for a decision, it must be accompanied by a description and results of the consultation carried out during the preparation of the terms of reference (section 6(3) of the *Environmental Assessment Act*). The Minister will consider this documentation when making a decision about the terms of reference.

The proponent must prepare a Notice of Commencement of Terms of Reference, an example of which can be found in Appendix C. The Notice will announce the start of the planning process and will provide information to interested persons about what is being proposed and how to become involved. The proponent should discuss with the Project Officer about to whom and how the Notice is to be given. Generally, the Notice should be given in an accessible location, such as a newspaper and on the website that will be maintained for the project. A copy of the Notice is to be sent to the Project Officer.

#### Consultation with Aboriginal Communities

Consultation with potentially affected Aboriginal communities is also required. Proponents should prepare a list of Aboriginal communities that are potentially affected by or interested in an undertaking. In doing so, the proponent shall contact the organizations listed on the environmental assessment page of the ministry's website<sup>1</sup>, such as the Ontario Secretariat for Aboriginal Affairs and Indian and Northern Affairs Canada, to identify which Aboriginal communities should be contacted about the project.

Consultation with Aboriginal communities at the terms of reference stage is intended to allow the proponent to identify and consider potential concerns and issues of Aboriginal communities and to provide those communities with an opportunity to receive information about and have meaningful input into the development of the terms of reference. In addition, it is the intent of such consultation to address situations where the Crown may have a duty to consult with Aboriginal communities.

It should be noted that whether or not the Crown has a constitutional duty to consult with an Aboriginal community, the community may be an interested person for the purposes of consultation about the terms of reference. Any reference to interested persons in this Code should be read to include Aboriginal communities.

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<sup>1</sup> The environmental assessment page of the ministry's website can be found at [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm)

Aboriginal rights and treaty rights are protected by section 35 of the *Constitution Act, 1982*. Aboriginal rights stem from the practices, customs and traditions, which are integral to the distinctive culture of the Aboriginal community claiming the right. Treaty rights stem from the signing of treaties by Aboriginal communities with the Crown.

The Crown may have a duty to consult with Aboriginal communities in order to satisfy the Crown's responsibilities with potential adverse impacts of undertakings on asserted or established Aboriginal or treaty rights. In this event, the approach to consultation will vary depending on the specifics of each proposed undertaking.

This Code is not intended to fully describe how any duty, if it is triggered, may be discharged. However, the Crown may delegate the procedural aspects of consultation to proponents, and recognizes a corresponding responsibility of Aboriginal communities to participate in this process, make their concerns known and respond to efforts to address their concerns.

## 4.2 Drafting the Terms of Reference

After developing the consultation program and issuing the Notice of Commencement of Terms of Reference, the proponent can start drafting the terms of reference. The proponent should consult with the Project Officer as needed while drafting the terms of reference. It is the proponent's responsibility to submit a terms of reference that will result in an environmental assessment about which the Minister can make an informed decision.

The content of each terms of reference will differ based on the proposed undertaking, or the problem or opportunity. The content and amount of detail identified in a terms of reference will also differ based on how far in the planning process the environmental assessment process was initiated. While the *Environmental Assessment Act* sets out the generic requirements that must be addressed in the environmental assessment, the Minister may approve, through the terms of reference, exceptions to these requirements. The Minister may require additional information or may determine that some of the generic requirements are not necessary as long as the proposed terms of reference is consistent with the overall purpose of the *Environmental Assessment Act* and in the public interest.

All terms of references will not be the same. They will differ based on the proponent, the problem or opportunity to be dealt with and when the process was initiated.

The *Environmental Assessment Act* does not identify what is to be included in the terms of reference. In addition to meeting the requirements of section 6 of the *Environmental Assessment Act*, it is the ministry's expectation that the terms of reference discuss the following elements, as applicable:

- Identification of the proponent;
- Indication of how the environmental assessment will be prepared;
- Purpose of the study or undertaking;
- Description of and rationale for the undertaking;
- Description of and rationale for alternatives;
- Description of the existing environment and potential effects of the undertaking;
- Assessment and evaluation;
- Commitments and monitoring;
- Consultation plan for the environmental assessment;
- Flexibility to accommodate new circumstances;
- Other approvals required.

It is the responsibility of the proponent to consult with interested persons during the preparation of the terms of reference. The proponent is responsible for documenting the consultation activities and their results, and submitting the documentation with the proposed terms of reference when it is submitted for approval.

It is mandatory for a proponent to consult all interested persons while it is preparing the terms of reference.

#### 4.2.1 Identification of the Proponent

The terms of reference is to include a brief, clear statement identifying the proponent. If there is more than one proponent, the relationship between them and how they plan to work together, including their responsibilities, throughout the environmental assessment process must be explained. It will be the responsibility of the proponent(s) to prepare the environmental assessment in accordance with the terms of reference if it is approved.

#### 4.2.2 Indication of How the Environmental Assessment Is to Be Prepared

According to subsection 6(2) of the *Environmental Assessment Act*, the terms of reference must either:

- Indicate that the environmental assessment will be prepared in accordance with the general requirements in subsection 6.1(2);
- Indicate that the environmental assessment will be prepared in accordance with such requirements as may be prescribed for the type of undertaking the proponent wishes to proceed with; or,
- Set out in detail the requirements for the preparation of the environmental assessment.

Determining under which section the environmental assessment is to be prepared should be discussed with the Project Officer. If a proponent is in the very early stages of the planning process following the requirements of subsections 6(2)(a) and 6.1(2) of the *Environmental Assessment Act* will provide them with a systematic framework for determining the undertaking for which approval will ultimately be sought. Subsection 6.1(2) outlines the generic requirements of what an environmental assessment should include, such as the identification and evaluation of alternatives.

A proponent should use subsections 6(2)(a) and 6.1(2) if it is early in the planning process and is not sure of the details of its proposal, such as the undertaking, alternatives or potential environmental effects.

Submission under subsection 6(2)(b) is currently not possible as no requirements for any types of undertakings have been prescribed.

Proponents who are further along in their planning may be in a better position to define how they intend to prepare their environmental assessment and may be able to follow subsections 6(2)(c) and 6.1(3) of the *Environmental Assessment Act*. Subsection 6.1(3) states that the environmental assessment can consist of information other than the generic requirements outlined in subsection 6.1(2).

A proponent should use subsections 6(2)(c) and 6.1(3) if there is a more defined planning process and more details of the proposal are already known (for example, the potential alternatives it wishes to evaluate).

Defining that the environmental assessment is to be prepared in accordance with 6(2)(c) and 6.1(3) of the *Environmental Assessment Act* (that is, including more or less of the generic requirements outlined in subsection 6.1(2)) is commonly known as "focussing" though the term is not used in the legislation. The elements of the environmental assessment that is prepared under subsection 6.1(3) should not differ drastically from the generic elements outlined in subsection 6.1(2), and the proponent must be clear in the terms of reference about what will be different. Justification for following subsection 6(2)(c) must be provided in the proposed terms of reference and is subject to the Minister's approval.

Further information about how the subsection under which the environmental assessment will be prepared may be affected by the alternatives which will be considered can be found on page 14, Section 4.2.5, Description of and Rationale for Alternatives.

### 4.2.3 Purpose of the Study or Undertaking

The terms of reference should contain a brief description of the purpose of the study to be carried out. The purpose can be as general or specific as warranted; however, it should be general enough to allow a reasonable range of alternatives to be considered. If the proponent already knows some details about the undertaking for which approval will ultimately be sought, the purpose of it can be generally stated in the terms of reference.

What does the proponent wish to achieve by engaging in the environmental assessment process? Why does the proponent need to do this study or pursue a particular undertaking? These are two questions to consider when determining the purpose of the study or the undertaking. The response, that is, the purpose, may be stated in terms of the intended effect on society, the particular problem to be solved or alleviated, or the opportunity which is to be pursued. The possible solutions and criteria for evaluating them must not be included in the purpose statement.

Think of the purpose as a problem to be solved or an opportunity to be pursued.

For example, for many waste management undertakings a common purpose is to provide waste disposal capacity for a particular municipality for a particular number of years. The reasoning behind this is usually that the local landfill is nearing capacity and the environmental assessment process has been initiated to find a solution to the impending waste management problem.

For a transportation undertaking, the purpose may be to provide additional roadway capacity for people and goods between points A and B within a defined study area over a particular number of years.

The proponent will refine the purpose statement if required as it proceeds through the planning process and present the final purpose statement in the environmental assessment. The proponent will state this commitment in the proposed terms of reference.

### 4.2.4 Description of and Rationale for the Undertaking

If known, the terms of reference should contain a preliminary description of the undertaking for which approval will be sought. Ultimately, the environmental assessment will contain the detailed description of the undertaking. Proponents may choose to begin the environmental assessment process before an undertaking is defined. In this case, the description of the proposed undertaking will be conceptual until a specific undertaking is selected from the alternatives that are to be considered. Alternately, a proponent may begin the environmental assessment process with a well-defined undertaking that has been identified through previous planning studies.

In the environmental assessment, the rationale for the proposed undertaking will be required. If an undertaking is described in the terms of reference then the rationale for it should also be given. If the proponent is early in the planning process and the proposed undertaking is not yet known, a commitment to provide the description and rationale for the undertaking in the environmental assessment should be stated in the terms of reference.

The proponent can provide in the terms of reference a preliminary description of the undertaking and the rationale for it. Consequently, the proponent can **make** a commitment in the terms of reference to provide both in the environmental assessment.

The description and rationale will evolve during the preparation of the environmental assessment. Therefore, the proponent should state in the terms of reference that the final description of the proposed undertaking and the rationale for it will be included in the environmental assessment once alternatives have been considered and evaluated.

There may be occasions when the rationale for a proposed undertaking has already been determined through another planning process or results from a provincial government priority initiative outside of the environmental assessment process such as Growth Plans under the *Places to Grow Act, 2005*, provincial transportation network plans, transportation or infrastructure Master Plans, provincial government priority initiatives (announcements in throne speeches, budget announcements or initiatives in provincial plans), or Official Plans which have been approved under the *Planning Act*, for which there was public consultation.

In these cases, it is sufficient to state in the terms of reference that the rationale for the proposed undertaking is the result of another process or initiative which should be identified. Additional information can be provided in the supporting documentation that outlines the other process or initiative which provides the rationale, the decisions made around the process or initiative and the consultation that took place. Proponents, during the environmental assessment, can rely on the previous process or initiative to provide rationale for the proposed undertaking without having to justify their choices again.

#### 4.2.5 Description of and Rationale for Alternatives

At the heart of the environmental assessment planning process in Ontario is the comparative analysis of alternatives, assessing the advantages and disadvantages of the alternatives and determining the best alternative that is appropriate to address the problem or opportunity.

In the terms of reference, it is essential to set out a reasonable range of alternatives to be examined in the environmental assessment or the process by which a reasonable range of alternatives will be determined in the environmental



assessment. This should be done in consultation with the ministry, other provincial and federal agencies, and other interested persons.

### Why Look at Alternatives?

Subsection 6.1(2) of the *Environmental Assessment Act* requires that proponents consider alternatives in the environmental assessment. The purpose of this requirement is to ensure that the most appropriate means of addressing the identified problem or opportunity is selected. For public sector proponents, one purpose of looking at alternatives may be to justify the expenditure of public dollars in the most environmentally responsible manner. For a private sector proponent, it may be as simple as determining the best way to implement a business plan. Examining alternatives assists in identifying potential environmental effects and illustrates the advantages and disadvantages between various options for solving a problem or taking advantage of an opportunity that provide societal benefits. The documentation of this process is not required for the terms of reference (just the commitment to do so is) but the environmental assessment will need to illustrate why and how the proponent has selected the preferred alternative.

### Types of Alternatives

The *Environmental Assessment Act* makes reference to two types of alternatives: "alternatives to" a proposed undertaking and "alternative methods" of carrying out a proposed undertaking. Alternatives to a proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity (what types of activities will address the problem or opportunity). Alternative methods are different ways of performing the same activity (where and how). Any general references to alternatives in this Code include both alternatives to a proposed undertaking or alternative methods of carrying out a proposed undertaking.

For transportation undertakings, alternatives to could include: new or improved public transit, rail service, air service, traffic demand management and new or improved roads. For a road alternative, alternative methods could include: improvements to existing roads, construction of a new road, different road types and different road alignments.

Alternatives to for energy undertakings could include: transmission of energy, new generation and conservation (reduction in demand for energy). Alternative methods for a transmission line could include: different locations or alignments, line voltages, tower design and ancillary facilities.

These examples are illustrative only and there could be more, less or different alternatives that a proponent may wish to consider. The range of alternatives to be considered is determined by the proponent on a case-by-case basis taking into account specific circumstances, the technical requirements of the

Government Review Team, and the views of the public and other interested persons.

### Range of Alternatives to be Examined

The consideration of a range of alternatives which is reasonable for the intended study is an important component of an environmental assessment. The ministry refers to this as a reasonable range of alternatives. It is important to consult with interested persons early in the planning process before decisions are made to include or exclude certain alternatives. The Project Officer can also assist the proponent; however, the decision about what constitutes a reasonable range of alternatives remains the proponent's responsibility, subject to the Minister's approval.

There is no magic number of alternatives that must be considered. The alternative(s) chosen should address the stated problem/opportunity and be within the proponent's ability to implement.

The range of alternatives that will be considered should address the problem or opportunity and be within the scope of the proponent's ability to implement. It should be determined by the significance of potential environmental effects of the proposed undertaking, and the circumstances specific to the proposal (for example, the proponent's situation, timing, financing).

Where appropriate, proponents may undertake an initial screening of alternatives before or at the terms of reference stage to determine the range of alternatives which will be examined in the environmental assessment. Screening criteria must be developed and the screening process must be logical and traceable. Placing a general overview of the screening results in the terms of reference may help interested persons to understand how alternatives were selected for further study. The detailed screening results should be included in the supporting documentation rather than in the terms of reference itself.

When determining the alternatives that will be considered in the environmental assessment, the proponent should, at a minimum, consider the following:

- Do they provide a viable solution to the problem or opportunity to be addressed?
- Are they proven technologies?
- Are they technically feasible?
- Are they consistent with other relevant planning objectives, policies and decisions (for example, Official Plan, Provincial Policy Statement, Growth Plans under the *Places to Grow Act, 2005*)?
- Are they consistent with provincial government priority initiatives (for example, waste diversion, energy efficiency, source water protection, reducing greenhouse gas emissions)?

- Could they affect any sensitive environmental features (for example, provincially significant wetlands, prime agricultural area, endangered species habitat, floodplains, archaeological resources, built heritage)?
- Are they practical, financially realistic and economically viable?
- Are they within the ability of the proponent to implement?
- Can they be implemented within the defined study area?
- Are they appropriate to the proponent doing the study?
- Are they able to meet the purpose of the *Environmental Assessment Act*?

It is important to note that what is reasonable for one proponent to implement may not be reasonable for another when trying to solve a similar problem because the circumstances between proponents may vary widely. A private sector proponent's inability to expropriate land or implement public programs will influence the range of alternatives it may examine. Public sector proponents may be restricted by geographic area, jurisdiction, or broader land use planning decisions (for example, Official Plans, Growth Plans, Provincial Policy Statement). Environmental assessments are often required to implement projects resulting from broader policy decisions for the public sector and therefore may be limited in the number of alternatives that are examined. The ministry recognizes that there may be restrictions on some proponents that will limit the range of alternatives examined. The proponent must provide justification in the terms of reference for limiting the examination of alternatives.

For example, a municipality and a private sector proponent would both like to increase waste disposal capacity in a semi-rural community. The municipality might consider one or more of the following as a reasonable range of alternatives to:

- Waste diversion program;
- Export;
- Landfill; or,
- Thermal technology.

The private sector proponent may only consider landfill or on-site diversion because:

- It cannot implement a municipal waste diversion program such as curbside recycling;
- Export would affect their business; and,
- Thermal technology is not economically viable because waste volumes are too small.

Alternative methods for the municipality could include a site selection process for the alternative chosen, as they have the ability to expropriate land. For a private

sector proponent, there may be different designs on one site as they only own one site and cannot expropriate.

Some proponents of undertakings such as resource undertakings, trail development, service area expansions, expansions of existing transit facilities, may not have any alternatives to their proposal other than the “do nothing” alternative. If this is the case, the proponent should discuss this with the Project Officer. The examination of one alternative compared against the do nothing alternative is acceptable as long as justification is provided for doing so. However, proponents take a risk that the alternative may not be acceptable to the Minister when a decision is made, and that the proposal may not go ahead.

### Do Nothing Alternative

The do nothing alternative represents what is expected to happen if none of the alternatives being considered is carried out. The consideration of the do nothing alternative assists all participants. It is a benchmark against which the consequences of the alternatives can be measured in order to determine, amongst other things, the extent to which other alternatives address the problem or opportunity. The do nothing alternative can also highlight the benefits of proceeding with the proposal. A clear presentation of the do nothing alternative also helps the Minister in deciding whether the undertaking should be allowed to proceed. It is generally considered to be good environmental assessment practice to include the do nothing alternative. Proponents can then compare other alternatives with the do nothing alternative.

The “do nothing” alternative should always be considered – it acts as a starting point for the comparison of alternatives.

### How Alternatives Can Affect the Way in Which the Environmental Assessment Will Be Prepared

There are three different ways in which a proponent can prepare an environmental assessment. As outlined on pages 11 and 12, Section 4.2.2, Indication of How the Environmental Assessment Is to Be Prepared, the terms of reference must indicate how the environmental assessment will be prepared. Subsection 6(2) of the *Environmental Assessment Act* sets out three different ways in which an environmental assessment can be prepared. As no requirements for any types of undertakings have been prescribed, a proponent cannot currently proceed under subsection 6(2)(b) of the *Environmental Assessment Act*. Proponents are therefore proceeding under either subsection 6(2)(a) or subsection 6(2)(c).

Proponents who are in the early stages of planning and have not identified a potential solution to their problem or opportunity are advised to follow subsection 6(2)(a) which states that the environmental assessment will be prepared in accordance with the generic requirements outlined in subsection 6.1(2) of the *Environmental Assessment Act*. Proponents proceeding under

subsections 6(2)(a) and 6.1(2) are obligated to include consideration of a reasonable range of both types of alternatives in the environmental assessment. A terms of reference prepared under subsection 6(2)(a) should clearly state which alternatives will be considered in the environmental assessment or the process by which alternatives will be identified and evaluated. Generally proponents would outline the alternatives to in the terms of reference and state that the alternative methods will be identified and evaluated once a preferred alternative to is chosen. If the proponent chooses to also identify alternative methods in the terms of reference, it should identify alternative methods for all the alternatives to so that it is clear that the proponent has not pre-determined what alternative to is preferred.

The alternatives to be considered will most likely affect under which section of the *Environmental Assessment Act* the environmental assessment is prepared. Make sure to read this section in conjunction with Section 4.2.2 of this Code for a full understanding.

In the event that the proponent has already done work as part of another process that has similar requirements to the *Environmental Assessment Act*, and can provide justification for the process followed, the environmental assessment could limit the discussion to alternative(s) that address the specific needs and circumstances of that undertaking. In this case, it may be more appropriate for a proponent to follow subsection 6(2)(c) and set out in detail the requirements for preparing the environmental assessment. The environmental assessment would then be prepared under subsection 6.1(3) of the *Environmental Assessment Act* which states that the approved terms of reference may provide that the environmental assessment consist of information other than the generic requirements as outlined in subsection 6.1(2).

If proceeding under subsections 6(2)(c) and 6.1(3), the terms of reference must set out detailed requirements for the preparation of the environmental assessment. This approach was designed for proponents who are more advanced in their decision-making and have already identified a specific undertaking for which the consideration of alternatives to is not appropriate, or for which another planning process has developed alternatives to the preferred alternative and the environmental assessment will only need to focus on alternative methods. This is often the case for many private proponents, or Crown ministries or agencies (for example, Ministry of Transportation) who have a specific type of business or a specific mandate. If proponents are limiting the discussion to only look at alternative methods, the terms of reference should identify this and set out the alternative methods to be examined or the process by which they will be identified at the environmental assessment stage.

## Integrating Previous Planning Work to Reduce Duplication

Cases may arise where proponents have previously considered alternatives during a separate planning or decision-making process. If the earlier process had similar provisions to those of the *Environmental Assessment Act* such as:

- An examination of alternatives;
- Regard for the environment and environmental effects;
- Public consultation with interested persons such as the public and municipalities;
- Ability for the public to inspect the planning document in its entirety;
- Approval by a recognized decision-making body in a transparent manner such as municipal council resolution or provincial government policy decision<sup>2</sup>,

then the proponent may propose to limit the discussion of previously examined alternatives. Relevant information previously considered under provincial transportation network plans, transportation or infrastructure Master Plans, Growth Plans under the *Places to Grow Act, 2005*, Official Plans approved under the *Planning Act* and business plans are examples of documents that could be submitted with a terms of reference as part of the supporting documentation to support the selection of alternatives for examination in the environmental assessment.

It is possible to use the results of previous planning work as a starting point for the terms of reference planning process.

There are also times when proposed undertakings result from a provincial government priority initiative. Provincial government priority initiatives include announcements in throne speeches, budget announcements or initiatives in provincial plans. In these cases it may be difficult to examine the usual range of alternatives as the actual undertaking has been defined by the initiative. If this is the case, the project documentation should outline the rationale for not examining alternatives and the extent to which any previous planning supports the provincial government priority initiative.

If a proponent chooses to rely on previous planning work to limit the discussion of alternatives, then the rationale for doing so must be evaluated for its appropriateness, relevance and accuracy as it relates to provincial plans, policies and interests (for example, Provincial Policy Statement, Growth Plans under the *Places to Grow Act, 2005*).

While the option to rely on previous planning work to limit the discussion of alternatives to is available to proponents, it is not mandatory. Proponents may still choose to examine a broader range of alternatives to, if it is more appropriate to do so in the particular circumstances.

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<sup>2</sup> Approval for a provincial government policy decision could be from an Assistant Deputy Minister, a Deputy Minister or a Minister.

The key is that the range and type of alternatives included by the proponent in the terms of reference can vary as long as the justification provided ensures that the terms of reference will produce an environmental assessment that enables the Minister to make an informed decision about the proposed undertaking.

#### Rationale for Alternatives

In the terms of reference, the statement of the rationale for the alternatives which will be examined in the environmental assessment should be provided to assist the Minister in determining whether the terms of reference is consistent with the purpose of the *Environmental Assessment Act* and the public interest (protect the environment, provide societal benefits). If the alternatives have not been identified, the terms of reference should make a commitment to provide the rationale for the alternatives in the environmental assessment. In the supporting documentation, more explanation about the rationale behind why certain alternatives were chosen for further consideration and other possible alternatives were eliminated from consideration can be included.

#### 4.2.6 Description of the Environment and Potential Effects

The terms of reference should contain a brief or preliminary description of the existing environment in order to gain a contextual understanding of the problem or opportunity as well as an understanding of the potential environmental effects that should be examined. Before the existing environment is described, a study area must be defined.

#### Study Area

The study area is the area within which activities associated with the undertaking will occur and where potential environmental effects will be studied. While it is preferable that the study area remain the same for all alternatives, it may vary depending on the alternatives being considered. Care should be taken when defining the study area so that a reasonable range of alternatives can be examined. The study area may be further defined in the environmental assessment when more detailed information is known and the alternatives to be considered have been determined. A map of the study area should be included (on its own 8.5 inches by 11 inches page) within the terms of reference. There may be circumstances where because of the nature of the undertaking, its location is already known. If this is the case, the location of the undertaking should be clearly shown on the map.

#### Description of the Environment

Once the study area is defined, the environment within that area can be described. The description of the environment will address all components of the environment that are

The "environment" is broadly defined in the *Environmental Assessment Act* – all of its components must be described.

included in the *Environmental Assessment Act* definition. That includes a general description of the social environment, cultural environment, economic environment, built environment and natural environment. Generally, each "environment" is broken down into its component parts, though some overlap between the different environments is possible. For example, in a description of the natural environment, at minimum, geology, hydrogeology and biology will be described. For the social environment, a proponent may describe the characteristics of people living in the study area, the community and recreation features, and community character. The preliminary description of the environment should be sufficiently detailed to allow the Government Review Team to determine whether the proposed studies will meet the information requirements of the particular agency. A final and more detailed description of the environment is not required for the terms of reference but will be required in the environmental assessment. The requirement to provide the final detailed description in the environmental assessment should be noted in the terms of reference.

The terms of reference should include a list and brief explanation of the tools (for example, studies, tests, surveys, mapping) that will be used to provide a more detailed description of the environment in the environmental assessment. This list will not preclude the proponent from conducting additional or more detailed studies as part of the environmental assessment. If the proponent intends to use or may potentially use existing studies to supplement the description of the environment in the environmental assessment, this intention must be clearly stated in the terms of reference.

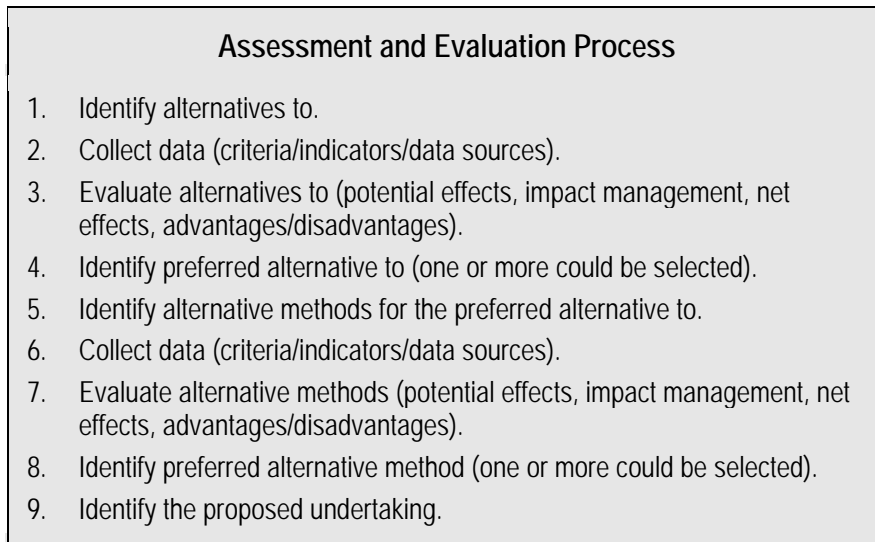
### Potential Effects

The environment that is described is the environment that is potentially affected by the proposed undertaking and its alternatives. The environmental assessment will need to examine the potential effect of the alternatives and the undertaking on all components of the environment. Potential effects can be positive or negative, direct or indirect, short- or long-term. The actions necessary to change, mitigate or remedy any environmental effects will be required in the environmental assessment. The requirement to examine potential environmental effects and measures to manage any potential environmental effects must be reflected in the terms of reference. The proponent should also consider whether there could be environmental effects resulting from effects of the proposal combined with effects of other past and future undertakings. The proponent may wish to include in the terms of reference a preliminary list of the potential environmental effects. However, the actual determination of environmental effects, or the actions necessary to manage any effects, are not needed for the terms of reference, but will be required for the environmental assessment.



#### 4.2.7 Assessment and Evaluation

In order to identify the undertaking for which *Environmental Assessment Act* approval will be sought, the proponent must undertake a systematic evaluation of the alternatives. The list below generally outlines the steps in an evaluation process. In this situation, alternatives to and alternative methods will be examined. The example given is for illustrative purposes only and proponents are expected to develop a process which is suited to their particular study.



In order to evaluate the alternatives, criteria, indicators and methods must be developed. As much as possible, this should be done in the terms of reference. Detailed reasons for the selection of criteria, indicators and methods are not needed in the terms of reference. Such detail could be included in the supporting documentation, and then provided in the environmental assessment when it is prepared. However, sufficient information about them, or how they will be developed, should be given in the terms of reference to ensure that they can be understood by interested persons who are then able to provide informed comments.

#### Criteria and Indicators

The proponent should develop criteria to assess the effects of the alternatives and the undertaking on the environment and present the criteria in the terms of reference.

The preliminary list of criteria is to be linked as much as possible to each component of the environment (such as criteria for the natural, social, economic and cultural environments) as the effects of the alternatives and the undertaking on the environment will need to be described in the environmental assessment. As required, each criterion should have one or more indicators which will identify how the potential environmental effects will be measured for each criterion.

There is no minimum number of criteria or indicators, as that is very much dependent on the scale of the proposal and the environment potentially affected.

The criteria developed for the evaluation of alternatives to may be more general than the criteria developed for alternative methods. The criteria tend to get more specific as a proponent moves from the alternatives to evaluation to the alternative methods evaluation. Also, the level of detail at which alternatives are evaluated will normally increase as the proponent proceeds through the planning process. As more information is acquired about the potential environmental effects and the areas of concern to interested persons, it may result in more detailed criteria or produce changes in criteria. The criteria and indicators identified at the terms of reference stage should be considered preliminary and the terms of reference should clearly state that the criteria and/or indicators may change and will be further refined in the environmental assessment. In the environmental assessment, justification for any change to the criteria or indicators outlined in the terms of reference will need to be provided.

There may be circumstances where the proponent is unable to list any criteria in the terms of reference. If this is the case, the reasons why there are no criteria in the terms of reference, the manner in which the criteria will be developed at the environmental assessment stage, and a commitment to develop them in consultation with interested persons at that time, must be stated in the terms of reference.

In the terms of reference, the proponent should also state the potential data sources for the criteria and indicators. Government ministries and agencies should be consulted to determine whether there are any policies, guidelines, standards or methods that should be followed. Local community organizations are also great sources of data. The figure below gives examples of potential criteria, indicators and data sources for the different "environments".

<b>Examples of Criteria, Indicators and Data Sources</b>			
<b>Environment</b>	<b>Criterion</b>	<b>Indicator</b>	<b>Potential Data Sources</b>
Natural	Effect on surface water quality	Number of watercourses in study area	Ministries of the Environment and Natural Resources; local Conservation Authority
Social	Effect on local residences	Number of residences displaced	Property owners; ratepayer groups
Economic	Effect on local businesses	Number of businesses disrupted and/or displaced	Business and property owners; municipal agencies; ratepayer groups

Examples of Criteria, Indicators and Data Sources			
Environment	Criterion	Indicator	Potential Data Sources
Cultural	Effect on built heritage resources and cultural landscapes	Potential presence of cultural heritage resources in or adjacent to the study area	Municipal registers of properties of cultural heritage value; heritage non-governmental organizations; municipal heritage committees
Built	Effect on sensitive land uses	Number of sensitive land uses within the study area	Review of Official Plans, zoning by-laws and other local plans; municipal/regional officials

### Evaluation Method(s)

The next step in the evaluation process is the identification of a method or methods that will be used to assess:

- The potential environmental effects;
- Impact management measures;
- Net effects;
- Advantages/disadvantages,

of the alternatives (both alternatives to and alternative methods, as applicable) and the undertaking on the environment. The evaluation method(s) chosen must be able to produce an assessment that is clear, logical and traceable. A clear, logical and traceable assessment is one in which anyone with the same information could reach the same conclusion without any additional assumptions. The terms of reference should either identify the method(s) to be used and the reason for its selection or outline the general parameters that will be used to identify the method(s) in the environmental assessment.

#### 4.2.8 Commitments and Monitoring

The proponent will include in the terms of reference a statement that the environmental assessment will include a comprehensive list of commitments made by the proponent during the terms of reference process, and where or how they have been dealt with in the environmental assessment. A commitment will also be made in the terms of reference to include in the environmental assessment a comprehensive list of commitments made by the proponent during the preparation of the environmental assessment. These include all commitments relating to:

- Impact management measures (such as, mitigation measures);
- Additional works and studies to be carried out;
- Monitoring;
- Public consultation and contingency planning;
- Documentation and correspondence.

The terms of reference should include a commitment to develop a monitoring framework during the preparation of the environmental assessment. The monitoring framework will consider all phases of the proposed undertaking (planning, detailed design, tendering, construction, operation, closure and decommissioning).

Where appropriate, this framework must include the following types of monitoring:

- Compliance monitoring; and,
- Effects monitoring.

Compliance monitoring is an assessment of whether an undertaking has been constructed, implemented and/or operated in accordance with the commitments made in the environmental assessment and the conditions of the *Environmental Assessment Act* approval. The environmental assessment will need to provide a strategy that sets out how and when all commitments made in the environmental assessment will be fulfilled and how the proponent will report to the ministry about compliance.

Effects monitoring consists of activities carried out by the proponent after approval of the undertaking to determine the environmental effects of the undertaking.

#### 4.2.9 Consultation Plan for the Environmental Assessment

Consultation with interested persons during the preparation of the environmental assessment is mandatory (section 5.1 of the *Environmental Assessment Act*). The terms of reference shall include a plan that outlines the consultation activities that, at a minimum, will take place during the preparation of the environmental assessment. The persons to be consulted include the Government Review Team, local municipalities and interested persons, including any potentially affected Aboriginal peoples. At a minimum, those

Do not confuse the **Consultation Plan** with the **Record of Consultation**.

The **Consultation Plan** is for future consultation that will take place during the preparation of the environmental assessment. More information is outlined here in Section 4.2.9.

The **Record of Consultation** is for past consultation that took place during the preparation of terms of reference. See Section 4.3.1 below for more information.

persons who declared an interest in the proposal during the terms of reference stage should be consulted during the environmental assessment stage.

The consultation plan should outline: the general consultation methods proposed; how input from interested persons will be obtained; a description of key decision-making milestones during the preparation of the environmental assessment when consultation will occur (for example, when the preferred alternative is chosen); and, an issues resolution strategy. It is not recommended that a very specific dated schedule be included in the consultation plan. This schedule can be further developed during the environmental assessment stage when it is clearer how the planning process is progressing.

In choosing the most appropriate level of consultation, the proponent should consider the complexity of the proposed undertaking, the level of potential concerns and controversy, and the extent of the potential environmental effects of the proposed undertaking. The ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process*, will give proponents further guidance in developing a consultation plan.

#### 4.2.10 Providing Flexibility to Accommodate New Circumstances

Subsection 6.1(1) of the *Environmental Assessment Act* states that the environmental assessment must be prepared in accordance with the approved terms of reference. Proponents should be aware that circumstances may arise that could prevent the commitments in the terms of reference from being met. As the terms of reference cannot be amended after it has been approved by the Minister, it is important that flexibility be incorporated when preparing the terms of reference to accommodate new circumstances. This is particularly useful when few details about the proposal are known at the terms of reference stage.

The terms of reference can be as flexible or prescriptive as the proponent chooses, provided that it is consistent with the purpose of the *Environmental Assessment Act* and the public interest. The purpose of building flexibility into the terms of reference is not to allow proponents to completely change the scope of their study at the environmental assessment stage but to allow proponents to adjust aspects of their proposal without having to start the process over again.

Building flexibility into the terms of reference may assist a proponent in dealing with circumstances that may change between the time of the writing of the terms of reference and the preparation of the environmental assessment.

An example of flexibility is when the terms of reference states that the description of the undertaking provided is preliminary and will be finalized in the environmental assessment. Flexibility in the terms of reference will also allow a proponent to refine such things as the study area, criteria and alternatives as input is provided during the preparation of the environmental assessment.

If the terms of reference does not provide flexibility and the need for significant changes are identified at the environmental assessment stage, a new terms of reference must be prepared. Although a new terms of reference can incorporate some or all of the work done for the earlier terms of reference, it will still require processing in accordance with the *Environmental Assessment Act* before it can be approved and will delay the proponent in moving forward.

#### 4.2.11 Other Approvals Required

Through consultation with the Government Review Team, the proponent may be able to determine what other approvals may be required for their proposal. If the nature of the undertaking is not known, then the commitment to outline the other required approvals in the environmental assessment should be made in the terms of reference.

The Government Review Team can assist a proponent in determining what other approvals may be required for their proposal. At the terms of reference stage, the list will be considered preliminary.

If some of the other approvals that will be required to make the proposed undertaking operational is known, they should be outlined in the terms of reference; for example, a linear facility (highway, transit line) that crosses a navigable waterway, may require approval from Transport Canada.

If approval is required for several pieces of legislation administered by the ministry, proponents are encouraged to submit documentation that would fulfil the requirements of all the applicable legislation (for example, a joint *Environmental Assessment Act*, *Environmental Protection Act* and *Ontario Water Resources Act* submission for large landfill undertakings). Proponents should discuss with the Project Officer the benefits of doing this. Proponents should be aware that approval under the *Environmental Assessment Act* comes first and that approval under one legislation does not guarantee approval under another.

#### Canadian Environmental Assessment Act

Another approval that may be required is approval under the *Canadian Environmental Assessment Act*, if for example the proposed undertaking will cross provincial boundaries (such as a bridge), or federal funding is provided (such as for transit initiatives). Canada and Ontario have committed to work closely to coordinate their environmental assessment requirements and have signed an agreement stating such. The basic premise for the coordination of projects is "one project – one assessment" in order to address federal and provincial environmental assessment requirements. Proponents should contact the Branch and refer to the document entitled *Federal/Provincial Environmental Assessment Coordination in Ontario: A Guide for Proponents and the Public* if there is the possibility that the *Canadian Environmental Assessment Act* may also apply to their proposal.

### 4.3 Other Components

The other components to accompany the terms of reference are a Record of Consultation, and if applicable, supporting documentation. Both of these are stand-alone documents that will be reviewed when determining whether the terms of reference should be approved, but are not specifically subject to approval by the Minister.

#### 4.3.1 Record of Consultation

Section 5.1 of the *Environmental Assessment Act* states that consultation with “such persons as may be interested” should take place during the preparation of the terms of reference. Section 6(3) of the *Environmental Assessment Act* also requires a proponent to describe this consultation and its results. The proponent will record this information in a document known as the Record of Consultation.

The Record of Consultation will:

- Identify all persons consulted during the terms of reference preparation (personal names not required) and how they were identified;
- Describe the consultation activities which took place (methods, schedule of events, notification that was given about the activity and materials used);
- Describe how interested Aboriginal communities were identified and how they were consulted;
- Clearly and accurately summarize the comments made by all interested persons during the preparation of the terms of reference;
- Describe the proponent’s response and how concerns were considered in the development of the terms of reference;
- Describe any outstanding concerns;
- Include minutes of any meetings held with interested persons;
- Include copies of written comments received from interested persons.

The proponent will present a summary of the comments received and its responses to those comments in a table. As appropriate, the table should note where in the terms of reference the comment has been addressed. Comments from the general public should be arranged by type (for example, put all water quality comments together). For the Government Review Team and Aboriginal communities, the comments should be organized by agency and community rather than by issue type.

#### 4.3.2 Supporting Documentation

The purpose of supporting documentation is to provide more detailed information that will assist the Minister and other persons in understanding the

planning process that the proponent underwent in order to arrive at the proposal.

Information contained in the supporting documentation should support the proponent's proposal by providing justification for the choices made and details of processes or methods used. For example, the supporting documentation could include:

- A more detailed description of the problem or opportunity that prompted the proposed study;
- Information about studies or events that triggered the proponent's involvement with the proposed study;
- Background information supporting the selection of alternatives for further study;
- Business profiles (for private sector proponents).

The Minister of the Environment does not approve the Record of Consultation or the supporting documentation. However, they are considered by the Minister in making the decision about whether to approve the terms of reference.

This information can be organized by chapters (for each topic) or with tabs separating each topic. Reference to the part of the terms of reference which is being explained in more detail should be made. Likewise, the terms of reference should reference the supporting documentation.

#### 4.4 Draft Terms of Reference

There is no legal requirement to prepare and allow review of a draft terms of reference, but the ministry strongly suggests that a proponent do so. As the *Environmental Assessment Act* requires consultation with all interested persons, preparation and review of a draft terms of reference is one method that a proponent can use to fulfil its consultation obligations.

The draft terms of reference must be clearly written. Use of jargon should be limited. It needs to contain sufficient information to ensure that the expert and the lay reader can understand the planning process to be followed for the environmental assessment. Detailed technical information should be provided in the supporting documentation. It is important to cross-reference information so that all readers can find specific information in the terms of reference and supporting

##### Why Prepare a Draft Terms of Reference?

- ≈ It allows potential issues to be identified and considered up front;
- ≈ It allows identification of major gaps and omissions that if not corrected may lead to amendments to the document once it is formally submitted;
- ≈ It provides the proponent with early feedback on its proposal.



documentation. If available for review, the draft terms of reference should be accompanied by the Record of Consultation and any supporting documentation.

The Project Officer will ask the proponent for a draft terms of reference for the ministry's review. The Project Officer will lead the ministry's internal review of the draft terms of reference. The Project Officer will review the draft terms of reference to ensure that it is complete and meets the requirements outlined in this Code before requesting sufficient copies for distribution to the ministry's technical review team. The Project Officer conducts this preliminary review since the ministry technical reviewers only review one draft so it is important that the version being reviewed is as complete as possible. The Project Officer may suggest changes or request that additional work be done before the draft terms of reference is sent for review by the ministry technical reviewers.

The proponent is responsible for consulting with all other interested persons. Government reviewers are not obligated to review a draft document and will not necessarily respond to an unexpected request to review the draft terms of reference by a particular deadline. Proponents should contact (phone, e-mail) each prospective reviewer to discuss the conditions under which a review can be conducted before sending them the draft terms of reference for review. The proponent should discuss with the reviewer the reasons for requesting a review, what information the reviewer needs to do a proper review, and the amount of time which will be needed for the review. As required, a copy of the draft terms of reference and accompanying materials should be sent to each interested member of the Government Review Team.

The proponent will send copies of the draft terms of reference and any other relevant materials to any interested Aboriginal community for its information and comment. Contact should be made with each interested community before the draft document is sent (follow similar process to that of the Government Review Team).

The proponent will also make sufficient copies available in hard copy in publicly accessible locations to allow other interested persons the opportunity to comment on the document. This will give the proponent an early opportunity to respond to any concerns. A copy of the draft terms of reference and accompanying materials is also to be placed on the project website maintained by the proponent.

It is important that notice of the availability of the draft terms of reference be given to the general public in an accessible forum (for example, newspaper, direct mail, website). A minimum of thirty days should be provided for inspection of the draft terms of reference. For undertakings where there is great interest, it is the ministry's expectation that the proponent will provide more than thirty days for inspection of the draft terms of reference. Though strongly encouraged, the circulation of a draft terms of reference is not a ministry requirement, therefore, it is up to the proponent to determine how much review

time should be given. The nature, scale and potential interest in the proposal should be considered in the proponent's determination.

All comments about the draft terms of reference are to be sent directly to the proponent and copied to the Project Officer for information only. Comments sent only to the ministry will be forwarded to the proponent for its consideration. The Project Officer will forward all ministry comments to the proponent. The proponent is responsible for identifying and resolving (or attempting to resolve) any issues raised. As required, the proponent will revise the draft terms of reference to address issues before a final copy is submitted to the ministry for approval. The Record of Consultation must be updated to reflect the results of the consultation about the draft terms of reference.

## 5. Submission of the Proposed Terms of Reference

### 5.1 Preparing for Submission

Once the proponent determines that the terms of reference is suitable for submission to the Minister of the Environment for a decision, it should discuss submission requirements with the Project Officer.

The proponent must notify the Project Officer at least three weeks before it intends to formally submit its proposed terms of reference so that a submission date can be established. The Project Officer will ask the proponent to prepare a Terms of Reference Summary Form and a Notice of Submission. Please see Appendix C for a copy of the Summary Form, and a suggested template for the Notice of Submission. The Summary Form is also found electronically on the environmental assessment page of the ministry's website<sup>3</sup>.

The final Terms of Reference Summary Form must be submitted to the Project Officer (hard and electronic copies) at least two weeks before the formal submission date of the terms of reference. The Terms of Reference Summary Form provides information about the proponent and its proposed undertaking. The information from this form is used by the Project Officer to create a posting that is placed on the environmental assessment page of the ministry's website.

Sections 6(3.1) to 6(3.4) of the *Environmental Assessment Act* requires that the proponent give notice about the submission of the proposed terms of reference to the public and the clerk of each municipality in which the proposed undertaking may be carried out. To meet these requirements, the Project Officer will ask the proponent to prepare and submit the Notice of Submission for his or her review at least two weeks prior to the formal submission date. The Notice of

#### Preparing for Submission

1. Discuss with Project Officer potential submission dates;
2. Complete Terms of Reference Summary Form;
3. Prepare Notice of Submission;
4. Arrange for publication of Notice of Submission in local newspaper, etcetera;
5. Prepare required number of copies of terms or reference, Record of Consultation, and any supporting documentation;
6. Deliver copies of documents to the ministry, Government Review Team, Aboriginal communities, public record locations;
7. Ensure Notice of Submission posted by submission date.

**(More detailed instructions are found in this section of the Code.)**

<sup>3</sup> The environmental assessment page of the ministry's website can be found at [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm).

Submission shall include a brief description of the proposal, a location map, places where the terms of reference can be viewed, and by when and to whom comments about the terms of reference can be made. Generally, the terms of reference is available for viewing at the Branch, the local ministry office, municipal offices and public libraries. Thirty days is given for the review of the terms of reference. Comments are to be made directly to the Project Officer.

The Notice shall be given on or just before the start of the formal terms of reference review process. The clerk of each municipality in which the proposed undertaking may take place must receive a copy of the Notice. Where possible, the Notice of Submission will be posted in a local newspaper in the study area. If there has been significant public interest in the proposal, the proponent may be directed by the Project Officer to post the Notice in a newspaper more than once, or to directly notify all persons who have participated in the process thus far. If the study area is large, then postings in multiple newspapers may be necessary. Where it is not possible to post the Notice in a newspaper, the proponent should discuss with the Project Officer alternate posting arrangements. The proponent will also post the Notice and the complete terms of reference submission on the website it has been maintaining for the proposal. As these are minimum notice requirements, the proponent can provide notice in other ways as well (for example, posters placed in a central location, direct mailing, media advertisements).

The proponent must ensure that the Government Review Team and the public viewing locations as outlined in the Notice of Submission receive the proposed terms of reference submission before the start of the formal review period. A copy of the Notice of Submission should be placed with the proposed terms of reference submission at the public record locations so it will be clear when, where and to whom comments are to be sent.

## 5.2 Terms of Reference Submission

The proponent shall submit a sufficient number of copies of the proposed terms of reference, in hard copy, to the ministry at least one week before the formal review period is to begin. An electronic version should also be submitted. Copies of the proposed terms of reference are distributed by the Project Officer to the ministry's technical review team and interested Aboriginal communities. A cover letter addressed to the Director of the Environmental Assessment and Approvals Branch (attention Project Officer) stating that the proposed terms of reference is being formally submitted must be sent with the terms of reference. Also, according to subsection 6(3) of the *Environmental Assessment Act*, the proposed

The terms of reference submission consists of:

- ≈ A submission letter;
- ≈ The proposed terms of reference;
- ≈ The Record of Consultation;
- ≈ If applicable, supporting documentation.

terms of reference must be accompanied by the Record of Consultation. Any supporting documentation must also be submitted at the same time. Ideally, the terms of reference, the Record of Consultation and the supporting documentation will be submitted as separate volumes. If they are all submitted as one document, the cover letter to the Director should clearly state that only the terms of reference is being submitted for the Minister's approval.

## 6. Review of the Proposed Terms of Reference

### 6.1 Interested Persons

In accordance with the Deadlines Regulation (Ontario Regulation 616/98), once the proposed terms of reference is submitted, the review and decision period lasts for twelve weeks. The Minister's decision is due at the end of those twelve weeks. All interested persons (general public, Aboriginal peoples, government agencies) may inspect and provide comments about the proposed terms of reference during the first thirty days.

The thirty-day review period is an opportunity for interested persons to provide comments about components of the proposed terms of reference with which they agree or do not agree. Comments must be specific and relate to a component(s) of the proposed terms of reference, such as the proposed study area, range of alternatives to be considered or the evaluation methodology. Any potential solutions to the issues raised should also be outlined.

All comments should be sent directly to the Project Officer identified in the Notice of Submission. Comments must be in writing and can be sent by mail or fax. Contact information (clearly state name and address) must be included in the submission so that its receipt can be acknowledged. If the public engages in a write-in campaign or organizes a petition, or there are a large number of submissions, individual acknowledgements may not be sent. In the case of a write-in campaign or petition, if there is an organizing body clearly identified, then an acknowledgement may be sent to them.

Any person may make comments about the proposed terms of reference. Be very specific with the comments by relating them to a particular aspect of the terms of reference.

It is important to remember that at this stage the Minister will not be making a decision about the final undertaking. What is under review here is a planning process to determine how the environmental assessment will be carried out. Determining the feasibility of the final undertaking is to be done at the environmental assessment stage.

Each member of the Government Review Team, including ministry technical reviewers, will conduct its own review of the proposed terms of reference submission from the perspective of its own mandate. Any comments should be sent directly to the Project Officer.

The Project Officer will examine whether the consultation during the preparation of the proposed terms of reference appropriately identified and dealt with all interested persons, including Aboriginal peoples. Where it is not clear this has been done adequately, the Project Officer will advise what additional steps may be required by either the proponent or the Crown.

The Project Officer will review any comments received during the thirty-day review period then forward them to the proponent for a response. The proponent is responsible for responding to all the comments that were received. The summary of the comments and the proponent's responses should be presented in a table. Comments from the general public will be arranged by type (for example, put all water quality comments together). For the Government Review Team and Aboriginal communities, the comments will be organized by agency and community rather than by issue type.

The comments received, and the proponent's responses to them, will be presented to the Minister by the Project Officer and will be considered when the decision is made about the proposed terms of reference.

If there are substantive issues identified during the review period that have not been adequately addressed in the proposed terms of reference, the Project Officer will inform the proponent that changes to the document may be required. In response, the proponent may choose not to make the changes, withdraw the proposed terms of reference, or make amendments to the proposed terms of reference. The proponent must notify the Project Officer in writing as to its intended course. This notification must be received before the deadline for the Minister's decision. If the proponent chooses not to make changes, the proponent runs the risk that the document may not be approvable. If the proposed terms of reference is withdrawn, the proponent may either make a new submission or abandon the proposal altogether.

## **6.2 Amendments to the Proposed Terms of Reference**

The normal course of action for a proponent when the Project Officer suggests that revisions are required is to take the time to amend the proposed terms of reference. Potential amendments may include, but are not limited to:

- corrections to factual information;
- administrative changes;
- altering a method of conducting a component of the undertaking that will not change the purpose or intent of the original submission;
- new study requirements;
- providing additional information;
- the need for additional consultation.

If the proponent plans to amend the proposed terms of reference, written notification must be sent to the Project Officer by a mutually agreed-upon date. Failure to notify the Project Officer will mean that the proposed terms of reference will be processed in its unamended form and submitted to the Minister for a decision.

The Deadlines Regulation allows a proponent up to eight weeks to make amendments to the proposed terms of reference. The date the ministry receives written notification of the intent to amend the terms of reference triggers the start of the eight-week period. The proponent is responsible for making any necessary amendments and consulting only those persons who may be affected by the proposed amendments during the eight-week period. The amended terms of reference and an updated Record of Consultation must be submitted once the process is complete.

The proponent has up to eight weeks to amend the terms of reference and consult as appropriate about any changes. Following that amendment period, the Minister is given seven weeks to make a decision.

The suspension of the timelines comes to an end once the eight weeks has passed or the amended terms of reference is submitted to the Project Officer, whichever occurs first. If the amended terms of reference is not received by the end of the eight-week period, the Minister will proceed to consider the proposed terms of reference as it was originally submitted. If the proponent feels that the amendments, and the consultation about them, cannot occur within the eight-week period, the proponent should withdraw the proposed terms of reference, rather than run the risk that the document as originally submitted is not approvable.

### **6.3 Ministry Recommendation**

Following the end of the thirty-day review period, and if applicable, after an amended terms of reference is submitted, the Project Officer will evaluate the proposed terms of reference submission and prepare a recommendation for the Minister. The comments received and the proponent's responses to them will also be reviewed. When evaluating the proposed terms of reference submission, the Project Officer will consider, at a minimum, the following:

- Did the proponent meet the legislative requirements of the *Environmental Assessment Act*?
- Did the proponent meet the expectations set out in the ministry's Codes of Practice?
- Is the proposed terms of reference written in plain language that is clear and concise?
- Does the proposed terms of reference identify under which subsection of the *Environmental Assessment Act* the environmental assessment will be prepared?
- Did the proponent identify and consider the concerns raised during the preparation of the proposed terms of reference?
- Have comments received during the review of the proposed terms of reference been adequately considered by the proponent?



- Does the proposed terms of reference and if applicable, the supporting documentation, provide sufficient information to allow the Minister to approve the terms of reference?
- Does the Record of Consultation contain sufficient information about the consultation that took place during the preparation of the proposed terms of reference?
- Would an environmental assessment prepared in accordance with the proposed terms of reference be consistent with the purpose of the *Environmental Assessment Act* and the public interest?

## 7. Minister's Decision About the Proposed Terms of Reference

### 7.1 Decision Options

Subsection 6(6) of the *Environmental Assessment Act* states that the Minister must notify the proponent about whether the proposed terms of reference is approved and must do so by the prescribed deadline. The deadline for the Minister's decision is twelve weeks from the start of the review period. If there are outstanding issues, the Minister may refer the matter to mediation before making a decision. In that event, the twelve-week decision deadline is no longer applicable. The decision would be due seven weeks after receipt of the mediator's report.

There are three decisions the Minister could make about the proposed terms of reference. The Minister may approve the terms of reference, amend and approve the terms of reference, or reject the terms of reference. In making a decision to approve or amend and approve the terms of reference, the Minister must be satisfied that an environmental assessment prepared in accordance with the approved terms of reference will be consistent with the purpose of the *Environmental Assessment Act* and the public interest (subsection 6(4) of the *Environmental Assessment Act*). In coming to this decision, the Minister will consider the proposed terms of reference, the comments made about the terms of reference and the proponent's responses to them, the staff recommendation, and if applicable, a mediator's report. There is no mechanism available under the *Environmental Assessment Act* to appeal the Minister's decision about the terms of reference.

The Minister's decision options are:

- ≈ Approve;
- ≈ Approve with amendments; or,
- ≈ Reject.

### 7.2 Notification of the Minister's Decision

After the Minister makes a decision about the proposed terms of reference, the proponent will be notified directly by the Minister and provided with written reasons for the decision. While the ministry makes every effort to render a decision in a timely manner, there may be times when a decision is not made by the prescribed deadline. Subsection 10(4) of the *Environmental Assessment Act* states that the Minister's decision is not invalid solely on the basis that it is not made by the applicable deadline. The proponent is advised not to begin preparation of the environmental assessment until a decision about the proposed terms of reference is made by the Minister.

The Project Officer will notify members of the public, who submitted comments during the comment period and provided a current mailing address, of the Minister's decision. The Project Officer will also provide notification of the Minister's decision to Aboriginal communities and those members of the Government Review Team who provided comments. When a large number of submissions are received, the ministry may determine that it is not practical to notify each person individually and will provide some form of community notification, such as a newspaper posting. In addition, the environmental assessment page of the ministry's website will be updated to reflect the Minister's decision.

### **7.3 Moving on Past the Terms of Reference Stage**

If the Minister approves the terms of reference or amends and approves the terms of reference, the proponent can begin preparing an environmental assessment. Proponents should be aware that the environmental assessment must be prepared in accordance with the approved terms of reference, including any amendments made by the Minister.

An approved terms of reference may become dated if too much time passes between when it was approved and when the environmental assessment is prepared; for example, the environmental features in the study area may have changed or agency requirements may have changed. Although there is no expiry date, the proponent should be aware that an environmental assessment prepared in accordance with an outdated terms of reference may not provide sufficient information for the Minister to grant approval to proceed with an undertaking as presented in the environmental assessment. It is important that the terms of reference is written with some flexibility in order to accommodate potentially changing circumstances.

Approval of the terms of reference does not mean that the final undertaking will be approved. Approval of the terms of reference just gives the proponent the authority to proceed with the environmental assessment to determine the feasibility of its proposal.

If the Minister decides not to approve the terms of reference, the proponent may choose to either abandon the proposal or submit a new terms of reference. As there are reasons given with the Minister's decision, these reasons should be taken into consideration by a proponent in making the decision about whether to restart the environmental assessment process.

## **8. Other Matters**

### **8.1 Public Record**

According to section 30 of the *Environmental Assessment Act*, the Director must maintain a record for each proposed undertaking for which an application for approval under the *Environmental Assessment Act* is submitted. The record is maintained at the Branch and is usually available within twenty-four hours of it being requested by any person.

The public record file must contain the proposed and the approved terms of reference, all notices given, the Minister's decision, and such other documents as the Minister or Director considers appropriate. As a matter of practice, the Branch also includes all information submitted by the proponent during the preparation and review of the terms of reference and all comments received by other interested persons during the preparation and review of the terms of reference.

This Code of Practice is intended to provide proponents and other interested persons with an understanding of how to prepare a terms of reference and how it is reviewed by the ministry. Specific questions about a terms of reference for a particular undertaking should be referred to the Project Officer assigned to the proposed undertaking.

Those interested in information about Ontario's environmental assessment process should consult the Ministry of the Environment's website or contact the ministry at the address below to obtain process, consultation and mediation guidance.

Ministry of the Environment  
Environmental Assessment and Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5 Canada

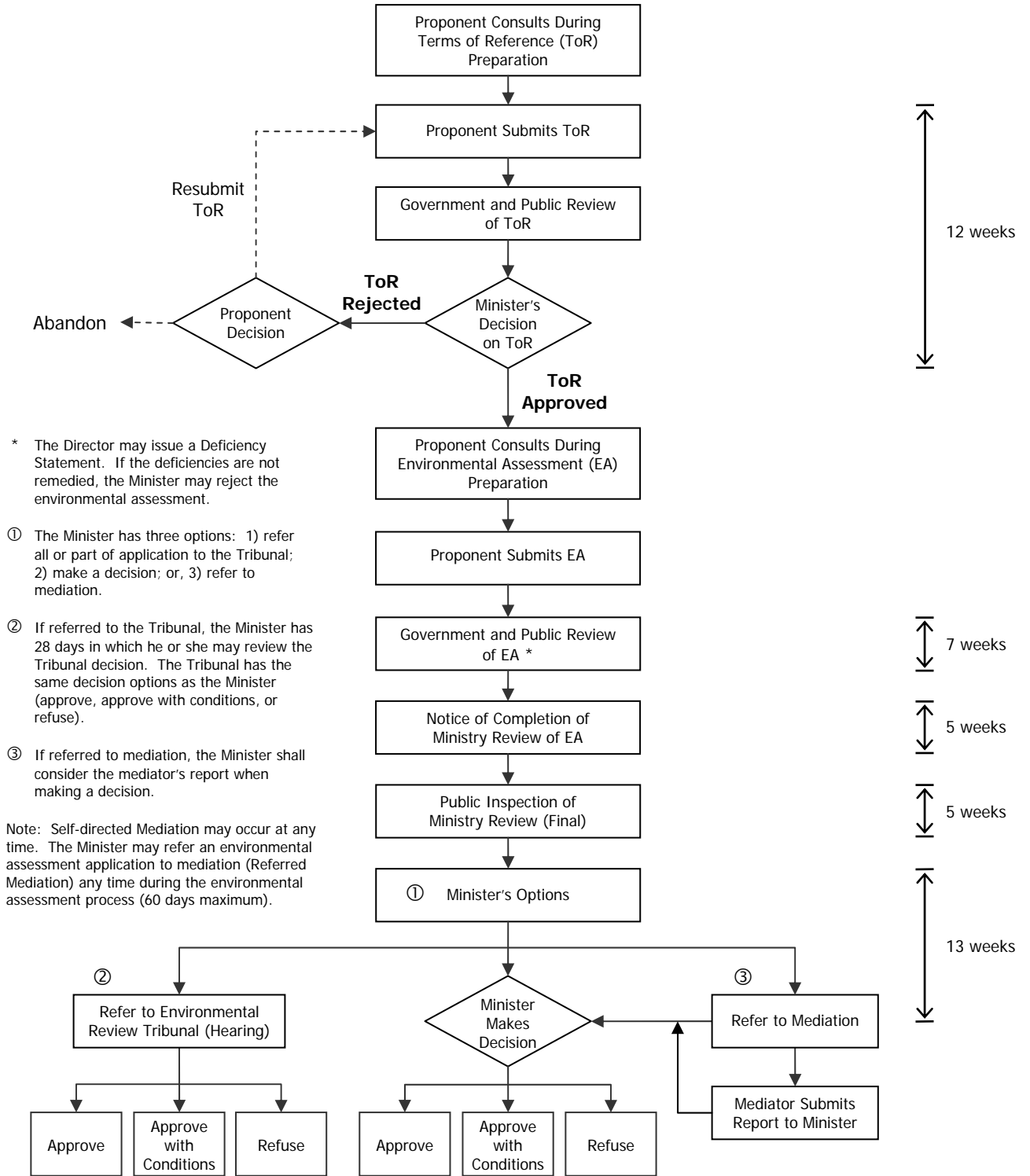
Telephone: 416-314-8001  
Toll Free: 1-800-461-6290  
Fax: 416-314-8452  
E-mail: [eaabgen.moe@ontario.ca](mailto:eaabgen.moe@ontario.ca)  
Website: [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm)

In addition, the ministry has developed guidance materials for the following key elements of the environmental assessment process:

- Consultation (*Code of Practice: Consultation in Ontario's Environmental Assessment Process*).
- Mediation (*Code of Practice: Using Mediation in Ontario's Environmental Assessment Process*).
- Environmental assessments (*Code of Practice: Preparing and Reviewing Environmental Assessments in Ontario*).
- Class environmental assessments (*Code of Practice: Preparing, Reviewing and Using Class Environmental Assessments in Ontario*).
- Coordinating federal and provincial environmental assessment requirements (*Federal/Provincial Environmental Assessment Coordination in Ontario: A Guide for Proponents and the Public*).
- Electricity projects (*Guide to Environmental Assessment Requirements for Electricity Projects*).
- Waste management projects (*Guide to Environmental Assessment Requirements for Waste Management Projects*).

# Appendix A Environmental Assessment Process Timelines

Prescribed Deadlines  
(Ontario Regulation 616/98)



\* The Director may issue a Deficiency Statement. If the deficiencies are not remedied, the Minister may reject the environmental assessment.

- ① The Minister has three options: 1) refer all or part of application to the Tribunal; 2) make a decision; or, 3) refer to mediation.
- ② If referred to the Tribunal, the Minister has 28 days in which he or she may review the Tribunal decision. The Tribunal has the same decision options as the Minister (approve, approve with conditions, or refuse).
- ③ If referred to mediation, the Minister shall consider the mediator's report when making a decision.

Note: Self-directed Mediation may occur at any time. The Minister may refer an environmental assessment application to mediation (Referred Mediation) any time during the environmental assessment process (60 days maximum).

## Appendix B Government Agencies and Their Areas of Interest

This information is a subset of the Government Review Team list that is provided to proponents at the start of their planning process. This is for information only, and the particular agency or ministry must be contacted to determine if they have a mandated interest in the proposal.

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
FEDERAL AGENCIES	
Canadian Environmental Assessment Agency	Undertakings that: <ul style="list-style-type: none"> <li>• will require federal approvals, financing;</li> <li>• are on or abutting federal lands;</li> <li>• will require federal funding.</li> </ul>
Canadian Transportation Agency	Undertakings with the potential to affect railway lines or property.
Indian and Northern Affairs Canada	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• Aboriginal communities;</li> <li>• traditional territories, and reserves;</li> <li>• lands/waters surrounding reserves.</li> </ul>
Environment Canada	Undertakings with the potential to: <ul style="list-style-type: none"> <li>• result in the deposit of deleterious substances into fisheries water;</li> <li>• affect migratory birds;</li> <li>• affect federal wetlands;</li> <li>• affect natural wildlife areas and national parks;</li> <li>• cause transboundary effects on air or water quality;</li> <li>• endanger or threaten species at risk.</li> </ul>
Fisheries and Oceans Canada	Undertakings in or near water that have the potential to: <ul style="list-style-type: none"> <li>• harmfully alter disrupt or destroy fish or fish habitat;</li> <li>• impact passage of fish around migration barriers;</li> <li>• impact provision of sufficient water flows;</li> <li>• result in the destruction of fish by means other than fishing (blasting);</li> <li>• impact aquatic species at risk.</li> </ul>
Health Canada	Undertakings with human health implications.
Transport Canada	Undertakings that: <ul style="list-style-type: none"> <li>• are located in the vicinity of a federal airport and may attract birds;</li> <li>• may cause electrical interference to navigational aids;</li> <li>• may affect a navigable waterway.</li> </ul>

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
PROVINCIAL AGENCIES & MINISTRIES	
GO Transit	Undertakings with the potential to affect GO Transit service or property.
Ontario Realty Corporation	Undertakings whose associated lands are adjacent or proximate to lands owned by the Ministry of Energy and Infrastructure.
Niagara Escarpment Commission	Undertakings in or with the potential to affect the Niagara Escarpment Planning Area.
Ministry of Aboriginal Affairs	For identification of Aboriginal communities potentially affected by an undertaking. Also for undertakings with the potential to affect Crown land and resource usage.
Ministry of Agriculture, Food and Rural Affairs	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• prime agricultural areas (areas of classes 1–3 agricultural soils);</li> <li>• specialty crop areas;</li> <li>• agricultural uses, agriculture-related uses and secondary uses on farms.</li> </ul>
Ministry of Culture	Undertakings that may affect properties having recognized or potential cultural heritage value or interest, which may include: <ul style="list-style-type: none"> <li>• built heritage resources;</li> <li>• cultural heritage landscapes;</li> <li>• areas of archaeological potential;</li> <li>• undertakings whose associated lands are adjacent or proximate to lands owned by the Royal Botanical Gardens, the McMichael Canadian Collection, or owned or protected by the Ontario Heritage Trust.</li> </ul>
Ministry of Tourism	Undertakings with the potential to affect sport/recreational areas or tourist facilities.
Ministry of Education (consult local school board)  Ministry of Training, Colleges and Universities (consult local institution)	Undertakings with the potential to affect school/institution, building property, or staff and students.
Ministry of Community Safety and Correctional Services	Undertakings with the potential to have a direct physical impact on a Correctional Services correctional centre, jail or a detention centre.
Ontario Provincial Police	Undertakings with the potential to have a direct physical impact on an Ontario Provincial Police correctional centre, jail or detention centre.
Ministry of Economic Development and Trade	Undertakings which involve investments in large-scale manufacturing facilities or co-generation projects.



AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Ministry of Energy and Infrastructure	Undertakings with energy implications, including renewable energy such as small hydro or wind. Undertakings within an area covered by the Growth Plan for the Greater Golden Horseshoe or the <i>Places to Grow Act, 2005</i> .
Ministry of Health and Long-Term Care (Local Medical Officers of Health)	Undertakings with potential health impacts such as groundwater contamination and air quality impacts.
Ministry of Municipal Affairs and Housing	Undertakings that: <ul style="list-style-type: none"> <li>• relate to municipal services;</li> <li>• involve a municipal proponent;</li> <li>• may have an effect on the Oak Ridges Moraine Conservation Plan Area.</li> </ul>
Ministry of Natural Resources	Undertakings that may have a potential effect on: <ul style="list-style-type: none"> <li>• permanent and intermittent watercourses or water bodies;</li> <li>• rare, vulnerable, threatened, endangered or otherwise significant species;</li> <li>• Areas on Natural and Scientific Interest or an Environmentally Significant Area;</li> <li>• mineral aggregate resources;</li> <li>• Crown land/resources;</li> <li>• provincially significant wetlands.</li> </ul>
Ministry of Northern Development, Mines and Forestry	Undertakings that may potentially affect: <ul style="list-style-type: none"> <li>• geological and mineral resources;</li> <li>• economic development in northern Ontario;</li> <li>• tourism in northern Ontario.</li> </ul>
Ministry of Transportation	Undertakings within: <ul style="list-style-type: none"> <li>• any study area for a transportation corridor or route planning project;</li> <li>• 800 metres of any existing/designated provincial highway or other provincial transportation facility;</li> <li>• adjacent to Ministry of Transportation property (i.e. patrol yards, carpool lots, etc.).</li> </ul>
<b>OTHER</b>	
Ontario Power Generation	Undertakings that could potentially directly affect an Ontario Power Generation generating site.
Hydro One Networks Inc.	Undertakings that could potentially directly have an impact on Hydro One facilities or plants (includes transmission/distribution lines or transformer/distribution stations).

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Local Conservation Authority	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• area in and adjacent to watercourses (including valley lands), wetlands, shorelines of inland lakes and the Great Lakes-St. Lawrence System and other hazard lands;</li> <li>• fish and fish habitat;</li> <li>• drinking water sources;</li> <li>• sensitive natural features;</li> <li>• hydrology and storm water.</li> </ul>

Note: Municipalities and Aboriginal peoples, while not formally on the Government Review Team, are consulted about an environmental assessment application if it is located in their municipality or community or if it may affect their municipality or community as required by the *Environmental Assessment Act*.

## Appendix C Terms of Reference Forms and Notices

### (1) Notice of Commencement of Terms of Reference Template

Notice of Commencement of Terms of Reference  
<insert Name of Proposed Study, Name of Proponent>

The <name of proponent> has initiated a study under the *Environmental Assessment Act* to <preliminary purpose of study>.

The Process

This study will be carried out in accordance with the requirements of the *Environmental Assessment Act*. The first step in the process is the preparation of a terms of reference. The terms of reference will set out the proponent's framework and work plan for addressing the *Environmental Assessment Act* requirements when preparing the environmental assessment, including such things as the alternatives that will be considered and the public consultation activities that will be carried out. If approved by the Minister, the terms of reference will provide the framework and requirements for the preparation of the environmental assessment.  
<proponent to insert any more information into the paragraph that it thinks is important>

Consultation

Members of the public, agencies and other interested persons are encouraged to actively participate in the planning process by attending consultation opportunities or contacting staff directly with comments or questions. Consultation opportunities are planned throughout the planning process and will be advertised <how – for example, website, newspaper, direct mail out>.

<insert any more information the proponent thinks is important>

For further information on the proposed study please contact:

<insert proponent and/or consultant contact information>  
<insert project website address>

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, any personal information such as name, address, telephone number and property location included in a submission will become part of the public record files for this matter and will be released, if requested, to any person.

(2) Notice of Submission of Terms of Reference Template

**Notice of Submission of Terms of Reference  
<insert Name of Proposed Study, Name of Proponent>**

As part of the planning process for the **<name of undertaking/problem or opportunity>**, a terms of reference was submitted to the Ministry of the Environment for review as required under the *Environmental Assessment Act*. If approved, the terms of reference will serve as a framework for the preparation and review of the environmental assessment for the proposed undertaking.

**<briefly describe undertaking or purpose of study>**

**<insert study area map>**

You may inspect the proposed terms of reference during normal business hours at the following locations:

1. Ministry of the Environment  
Environmental Assessment and Approvals Branch  
St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
416-314-8001/1-800-461-6290  
Monday to Friday 8:30 am – 5:00 pm
2. Ministry of the Environment regional and/or district office closest to study area
3. Proponent's office
4. Other public viewing locations (for example, municipal offices, libraries)
5. Website address where the terms of reference is posted

Your written comments about the terms of reference must be received before **<insert last day in the thirty-day comment period>**. All comments should be submitted to:

**<name of Project Officer>**, Project Officer  
Ministry of the Environment  
Environmental Assessment and Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
Tel: 416-314-**<XXXX>**/1-800-461-6290  
Fax: 416-314-8452

A copy of all comments will be forwarded to the proponent for its consideration.


For further information on the proposed study please contact:

**<insert proponent and/or consultant contact information>**

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, any personal information such as name, address, telephone number and property location included in a submission will become part of the public record files for this matter and will be released, if requested, to any person.

(3) Terms of Reference Summary Form

This form can be accessed from the ministry's website at [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm)

	<h2 style="margin: 0;">Terms of Reference Summary for the Environmental Assessment Site</h2>
<p><b>General Information and Instructions</b></p>	
<p><b>General:</b></p> <p>Information requested by this form is collected under the authority of Regulation 334, made under the <i>Environmental Assessment Act</i>. The project and summary information provided in this form will be posted for a minimum 30-day consultation period on the environmental assessment page of the Ministry of the Environment's website.</p> <p>This form requires French translation before it is posted on the website. The Ministry requires 5 to 10 business days for French translation services. Therefore, the completed form should be submitted (electronic copy and hard copy) to the Environmental Assessment and Approvals Branch at least two weeks prior to the posting date.</p> <p>The proponent is responsible for ensuring that copies of the terms of reference are delivered to the appropriate government reviewers, other interested persons and the places of public record on or before the posting date. The proponent must contact the Branch to determine an agreed upon <b>posting date</b> and <b>terms of reference distribution date</b>. The posting of the terms of reference summary information also represents the commencement of the regulated timeline for the review and approval of the terms of reference.</p>	
<p><b>Instructions:</b></p> <ol style="list-style-type: none"> <li>1. This form must be accurately completed. Questions regarding the completion and submission of this form should be directed to the Project Officer at the Environmental Assessment and Approvals Branch. <b>AN INCOMPLETE FORM WILL BE RETURNED TO THE PROPONENT.</b></li> <li>2. Please ensure that you have included the proposed <b>distribution list</b>, the <b>study area map</b> and a copy of the proposed <b>terms of reference</b> with this form.</li> <li>3. Please send the completed form to:             <div style="margin-left: 40px;">                 Director, Environmental Assessment and Approvals Branch                  Attention: Project Officer                  Ministry of the Environment                  2 St. Clair Avenue West, Floor 12A                  Toronto ON M4V 1L5             </div> </li> <li>4. The summary portion of this form should not exceed two pages.</li> </ol>	
<p><b>Proponent Information</b></p> <hr/> <p>Proponent Name <i>(region, county, municipality or private sector company)</i></p> <hr/> <p>Proponent Type</p> <p> <input type="checkbox"/> Crown Corporation                <input type="checkbox"/> Federal Government                <input type="checkbox"/> Municipal Government                <input type="checkbox"/> Provincial Government                <input type="checkbox"/> Private Sector  <input type="checkbox"/> Other <i>(describe)</i> </p>	
<p>Civic Address – Street Information <i>(includes street number, name, type and direction)</i></p> <hr/> <p>Delivery Designator</p> <p> <input type="checkbox"/> Rural Route                <input type="checkbox"/> Suburban Service                <input type="checkbox"/> Mobile Route                <input type="checkbox"/> General Delivery         </p>	<p>Unit Identifier <i>(identifies type of unit, such as suite and number)</i></p> <hr/> <p>Delivery Identifier <i>(a number identifying a Rural Route, Suburban Service or Mobile Route delivery mode)</i></p>
<p>Municipality</p> <hr/> <p>Province/State</p>	<p>Postal Station</p> <hr/> <p>Country</p>
<p>Postal Code</p>	
<p style="font-size: small;">0020 (07/2008) Page 1 of 3 <span style="float: right;">PIBS 5364e</span></p>	

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**Summary** - should identify project type (*transportation, electricity, waste management*); provide a brief description of purpose of study (*problem or opportunity*), study area, alternatives, consultation, contact person, and where the documents may be reviewed. (*Further use of subheadings may be appropriate for the specific terms of reference.*)

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**Summary** - continued.

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**French Translation of Summary Form** (translation of the terms of reference is not required)

French translation requested to be done by Ministry of the Environment  French translation to be done by proponent

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**Statement of Proponent**

I, the undersigned hereby declare that, to the best of my knowledge, the information contained herein and the information submitted in support of this form is complete and accurate in every way.

Name (*please print*)

Title

Signature

Date (*yyyy/mm/dd*)