

Municipalities and the Impact Assessment Process



Environmental
Law Centre

What is an Impact Assessment?

An impact assessment was defined by the Supreme Court of Canada (“SCC”) at its simplest as “a planning tool”. Specifically, the SCC found that impact assessments are intended to ensure early identification and evaluation of all potential environmental consequences of a proposed undertaking and to reconcile development with environmental protection and preservation.¹

Impact assessments are already clearly legislated at both the federal and provincial levels. In conjunction with these assessment protocols, a municipality may institute their own impact assessment process. This process can then be used to evaluate projects that are being proposed for their jurisdiction. This can help municipalities set their own standards and can help fill in any gaps that may exist in the federal and provincial assessment processes as these do not cover every activity that may have environmental effects. A municipal impact assessment process would enable municipalities to catch any of these projects that are slated for their jurisdiction.

Further, municipalities can enact bylaws even in the presence of provincial or federal law so long as the bylaw does not conflict or undermine the legislation in question.²

Federal

The federal impact assessment process is set out in the aptly named *Impact Assessment Act* (IAA).³ The IAA sets out the impact assessment process for projects that fall under federal jurisdiction – which are listed in the *Physical Activities Regulations*.⁴ Additionally, if a project is not included in the project list under the Regulations, the Minister retains discretion to direct the project for assessment if it is their opinion that carrying out the physical activity may cause adverse effects within federal jurisdiction or if there are public concerns related to those effects that warrant the designation.⁵

Once a project is slated for assessment, the process is conducted either by the Impact Assessment Agency or by a Review Panel. In some instances, the Minister may also approve substitution of a provincial impact assessment for the federal process.⁶

The federal impact assessment process consists of three phases: the planning phase, the assessment phase, and the decision-making phase. The planning phase, which includes public

¹ *Friends of Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3 at 71.

² 114957 Canada Ltee (Spraytech, Societe d’arrosage) v Hudson (Town), [2001] 2 SCR 241.

³ *Impact Assessment Act*, SC 2019, c 28 [*Impact Assessment Act*].

⁴ *Physical Activities Regulations*, SOR/2019-285.

⁵ *Impact Assessment Act*, *supra* note 3, s 9.

⁶ *Ibid*, s 31.

participation and the involvement of relevant federal authorities, is used to determine whether or not an impact assessment is required.⁷ The assessment phase sets out the factors to be considered⁸ and the specific procedures for both the Impact Assessment Agency⁹ and the Review Panel.¹⁰ Finally, the decision-making phase begins after the Minister or Cabinet receives a recommendation report and then goes on to determine if the project should be approved, pursuant to certain factors and conditions.¹¹

Provincial

In Alberta, the provincial impact assessment process is governed by Part 2 of the *Environmental Protection and Enhancement Act* (EPEA).¹² Relevant regulations under EPEA include the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*¹³ and the *Environmental Assessment Regulation*.¹⁴ In addition to the environmental assessment legislation, the government has also issued numerous guidance documents which are available at <https://www.alberta.ca/environmental-assessment-process.aspx>.

Projects that are subject to an environmental assessment are set out in the Schedule of Activities – which can be found in the EPEA legislation.¹⁵ Then, the *Environmental Assessment (Mandatory and Exempted Activities) Regulation* breaks this down further into activities which must undergo an assessment and those which are exempt from the process.¹⁶ If a project is not included on either the mandatory or exempt project list, it may still be authorized to undergo an assessment at the discretion of the Director.¹⁷

How can municipalities use impact assessments?

Municipalities are statutorily created bodies and derive their authority from the *Municipal Government Act* (“MGA”).¹⁸ It is also the MGA which sets out the purposes of municipalities in, which includes fostering the well-being of the environment.¹⁹

The MGA authorizes municipalities to perform important land use planning processes – processes which may be aided by an impact assessment. Specifically, Part 17 of the MGA governs municipal planning and development and establishes a variety of planning tools for municipalities including land use bylaws, municipal development plans, area structure plans, neighbourhood structure plans, neighbourhood area structure plans, and area redevelopment plans. Under recent amendments, the MGA also mandates the use of intermunicipal development plans for municipalities that have common boundaries (unless an exemption is obtained or where the municipalities are not part of a “growth region”).²⁰

⁷ *Ibid*, ss 10 – 21.

⁸ *Ibid*, s 22.

⁹ *Ibid*, ss 24 – 35.

¹⁰ *Ibid*, ss 36 – 59.

¹¹ *Impact Assessment Act*, *supra* note 3, ss 60 – 74.

¹² *Environmental Protection and Enhancement Act*, RSA 2000, c E-12.

¹³ *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, Alta Reg 111/93.

¹⁴ *Environmental Assessment Regulation*, Alta Reg 112/93.

¹⁵ *Environmental Protection and Enhancement Act*, *supra* note 12, Sched of Activities.

¹⁶ *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, *supra* note 13, Sched 1 & Sched 2.

¹⁷ *Environmental Protection and Enhancement Act*, *supra* note 12, s 44.

¹⁸ *Municipal Government Act*, RSA 2000, c M-26.

¹⁹ *Ibid*, s 3(a.1).

²⁰ *Ibid*, s 631.

Alongside these planning and policy tools, municipalities can choose to perform their own impact assessments for projects under their jurisdiction and control. This can be done through bylaws or other planning policy and would allow municipalities to set their own standards and enforcement measures. For example, a municipality could, through bylaw, designate that all, or some, of these planning tools listed above include an impact assessment process.

Examples of processes similar to an impact assessment can already be found across Alberta. In Calgary, the Environmental Development Review Policy sets out a process for determining site suitability for proposed use with respect to environmental conditions as part of the planning approval process.²¹

Meanwhile, in Edmonton, a number of tools enable some form of impact assessment. The Environmental Site Assessment Guidebook sets out the municipality's requirements for environmental site assessments accompanying land development applications including structure plans, rezoning, subdivision, road closures and development permit applications.²² Additionally, the Municipal Development Plan "The Way We Grow Bylaw 15100" provides the physical growth strategy for the city.²³

Municipalities could also create a dedicated municipal environmental assessment bylaw. Under such a bylaw a municipal impact assessment could be triggered in two overarching instances:²⁴

- (a) at the strategic level (such as in municipal and statutory plans); or
- (b) at the projects level (such as during development permit applications).

What are the advantages?

A municipal impact assessment process provides municipalities with a tool to ensure that projects within their boundaries are assessed for environmental impacts. It also allows municipalities to set their own standards for these projects, including those that may differ from provincial or federal guidelines.

An impact assessment process can also be used to improve statutory planning activities. At the strategic level, it allows for the identification of environmentally significant areas and appropriate land use planning and can help guide future land development proposals.²⁵ At the project level, it can help with development planning and decision making.²⁶

²¹ Environmental Development Review Policy, UEP003, 2005-61 (Effective January 6, 2006).

²² City of Edmonton, "Environmental Site Assessment Guidebook" (March 2016) online: https://www.edmonton.ca/business_economy/documents/ESAGuidebook.pdf.

²³ City of Edmonton, by-law 15100, *The Way We Grow Municipal Development Plan* (26 May 2010).

²⁴ Brenda Heelan Powell, "Alberta's Municipalities & Environmental Assessment: A Primer to the Model Bylaw" *A Community Conserve Project* at 20 online: http://www.communityconserve.ca/wp-content/uploads/2017/06/Pimer_MunicipalEA.pdf.

²⁵ Brenda Heelan Powell, "Alberta's Municipalities & Environmental Assessment: A Primer to the Model Bylaw" *A Community Conserve Project* at 20 online: http://www.communityconserve.ca/wp-content/uploads/2017/06/Pimer_MunicipalEA.pdf.

²⁶ Brenda Heelan Powell, "Alberta's Municipalities & Environmental Assessment: A Primer to the Model Bylaw" *A Community Conserve Project* at 21 online: http://www.communityconserve.ca/wp-content/uploads/2017/06/Pimer_MunicipalEA.pdf.

What are the disadvantages?

Impact assessments can clearly help municipalities with planning and development but are a more intensive process. This means that municipalities must also balance the costs of performing their own impact assessments with the benefits. Further, a municipal level assessment does not necessarily mean that a project will not have to undergo a provincial or federal level assessment if they are otherwise required.

Finally, impact assessments on their own are not always the most effective way to deal with cumulative effects – especially if there is a requirement to take into account municipal, provincial, and federal level assessments. Each level of assessment includes different requirements and may be difficult to compare.

Resources

Brenda Heelan Powell, “Alberta’s Municipalities & Environmental Assessment: A Primer to the Model Bylaw” (January 2018) *A Community Conserve Project*. Website:

http://www.communityconserve.ca/wp-content/uploads/2017/06/Pimer_MunicipalEA.pdf

Brenda Heelan Powell, “Municipal Environmental Assessment: A Model Bylaw for Alberta’s Municipalities” (January 2018) *A Community Conserve Project* online:

http://www.communityconserve.ca/wp-content/uploads/2017/06/Bylaw_MunicipalEA.pdf.

Deborah Curran, “The Stewardship Series: Green Bylaws Toolkit for Conserving Sensitive Ecosystems and Green Infrastructure” (November 2007) Environmental Law Clinic: University of Victoria.

Deborah Curran and Ethan Krindle, “Green Bylaws Toolkit for Conserving Sensitive Ecosystems and Green Infrastructure” (Revised and Updated April 2016) online: www.greenbylaws.ca.

Lanarc Consultants Ltd., “Stewardship Bylaws: A Guide for Local Government” (Revised June 1999), Government of Canada as represented by the Minister of Fisheries and Oceans, and Government of British Columbia Ministry of Environment, Lands and Parks.

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