

Opportunities for Local Government and Public Participation in Provincial Regulatory Processes for Independent Power Producers' Projects

March 2007



Opportunities for Local Government and Public Participation in Provincial Regulatory Processes for Independent Power Producers' Projects

1. Purpose

Local governments and the general public have an important role to play in providing input and identifying issues that are of interest to communities. Provincial regulators encourage independent power producers (IPPs) to consult with local governments and First Nations early; even at the conceptual stage of the project.

The following information describes the different opportunities available to local governments and the general public for participating in provincial IPP regulatory processes for water licensing (under the provincial Water Act), Crown land tenuring (under the provincial Land Act) and environmental assessment certification (under the provincial Environmental Assessment Act).

2. Provincial Energy Policy

In February, 2007, the Government released its new Energy Plan, "The BC Energy Plan: A Vision for Clean Energy Leadership", a copy of which may be viewed at: www.energyplan.gov.bc.ca. This plan has four main themes: environmental leadership; a strong commitment to energy conservation and efficiency; energy security; and, investing in innovation. Several policy actions are relevant to IPP projects, and these are:

- Policy Action 10: Ensure self-sufficiency to meet electricity needs, including "insurance".
- Policy Action 11: Establish a standing offer for clean electricity projects up to 10 megawatts.
- Policy Action 21: Ensure clean or renewable electricity generation continues to account for at least 90 per cent of total generation.
- Policy Action 26: Work with BC Hydro and parties involved to continue to improve the procurement process for electricity.

In 2006, BC Hydro released a report entitled "Challenges and Choices" in which the electricity needs of the province are forecasted to increase by 25% to 45% over the next 20 years. These needs will be met through new IPP projects, upgrades to existing BC Hydro facilities, and conservation programs. A copy of the report is available at: http://www.bchydro.com/rx_files/info/info43492.pdf

3. Types of Independent Power Producers' Projects

IPP projects encompass the full range of electricity generation, including run-of-river, wind, ocean energy, geothermal, natural gas and coal-fired thermal, biomass, biogas, solar, and heat recovery.

Between 1988 and 2006, 44 IPP projects with BC Hydro electricity purchase agreements (EPAs) have been constructed within this province, consisting of 25 run-of-river, eight waterpower with supporting storage, six biomass, three biogas and two gas-fired thermal plants.

4. Regulatory Decision-Making – Opportunities for Local Government and Community/Public Involvement

IPP projects require a number of federal and provincial authorizations before construction may commence. The procedural requirements for adjudicating an application are detailed in the relevant statute, attendant regulations or supporting operational policies.

Provincial regulators are required to make decisions which are transparent and objective, comply with the requirements of the relevant statute, and satisfy the principles of natural justice and administrative law.

The gathering of sufficient accurate information is fundamental to sound decision-making. The gathering of information may be accomplished through a variety of methods, all of which require some form of notification and feedback from interested and potentially affected persons. These persons include federal and provincial agencies, local governments, First Nations, existing water licence and Crown land tenure-holders and applicants, property owners, recreational users, and the general public.

These regulatory processes require some form of notification to potentially affected persons. Notification may include posting, advertising or providing copies of the application. Regulatory agencies may also refer the application for review and comment to other agencies, local governments, and non-governmental organizations. The potential for public meetings and hearings also exists.

5. Water Act

The Water Act is the provincial statute which provides for the orderly allocation of surface water in British Columbia, via a system of licences, approvals and orders. Adjudication of applications for water licences is a responsibility of the Water Stewardship Division of the Ministry of Environment.

As part of the adjudication process, the applicant may be required to place signed copies of the application at locations specified by the comptroller or regional water manager.

A typical adjudication process flowchart is shown in Appendix 1.

continued

Opportunities for Local Government and Community Participation in Provincial Regulatory Processes for Independent Power Producers' Projects

5. Water Act (continued)

During consideration of an application, notice of the application shall be given to appropriate licensees and applicants, to any riparian (waterfront property) owner whose rights may be prejudiced by the granting of the application, any owner whose property may be physically affected by the applicant's works, and any other person, agency or minister of the Crown whose input the comptroller or regional manager considers advisable.

The comptroller or regional water manager may, in an appropriate case, require the applicant to publish notice of the application for a water licence in a newspaper approved by the comptroller or regional manager.

Applications are also listed on the following website: http://www.elp.gov.bc.ca:8000/pls/wtrwhse/water_licences_input Applications are differentiated from licences by the prefix "Z" (e.g., Z116088).

A licensee, riparian (waterfront property) owner or applicant who considers that his or her rights would be prejudiced by the granting of an application may, within the prescribed time, file an objection to the granting of the application. The comptroller or regional water manager has the authority to decide whether or not the objection warrants the holding of a hearing.

Referrals are a formal mechanism to solicit written comments on an application from recognized agencies, organizations and special interest groups. Referrals are initiated as per legislated responsibilities and formal federal/provincial agreements, and may also be used to address the interests of local governments and First Nations.

A Project Review Team is an advanced referral method which may be used for complex applications. It is a team chaired by the Ministry of Environment (or the Integrated Land Management Bureau for Crown land tenure applications) and comprised of recognized agencies and groups which meets to review and comment on specific applications.

Local government and non-governmental organizations may be represented. For further information see the provincial Guide for Waterpower Projects at: http://www.env.gov.bc.ca/wsd/water_rights/waterpower/application.html

5(a) Information Requirements

Section 10 of the Water Act states, in part, that "...a person who applies for a licence must...(c) provide the plans, specification and other information the comptroller or the regional water manager requires.

The application package includes a Preliminary Project Definition which contains the following information:

- Executive summary
- Proponent identification
- Project description
- Capacity of project
- Linkages with other projects
- Market for electricity from project, and
- Schedule for completion of project.

Following acceptance of the application, proponents are required to prepare a development plan containing a detailed project description and an impact assessment which summarizes and proposes mitigation measures for the following issues:

- Instream flow for fish and fish habitat
- Wildlife and habitat
- Instream flow for recreation
- Flood control
- Water quality
- Bridges and ferries
- Roads
- Crown-owned resources
- Existing rights
- First Nations
- Aesthetics
- Mineral claims
- Navigable Waters Protection Act
- Hazard to the public
- Hazard to the environment
- Public access

Typically, the proponent contacts other parties regarding the impacts of the project. The other parties may provide specific information in their possession or provide general advice regarding their interest. These other parties may include agencies, local governments, First Nations, interested parties such as special interest groups, and the general public. Following preparation of the development plan, it is distributed for review and feedback from the other parties.

Opportunities for reviewing the development plan, providing input and collaborating on resolving issues include working committees, direct contact between the proponent and an interested party, and public meetings, with representation from local governments.

Occasionally the public interest in values potentially impacted by a project may be so extensive that a formal inquiry or hearing is necessary for the proper adjudication of the matter. Section 89 of the Water Act states "If it appears to the comptroller, a regional water manager or an engineer that the proper determination of a matter within his or her jurisdiction requires a public or other inquiry, he or she may hold that inquiry, and for that purpose has the power, privileges and protection of a commissioner under sections 12, 15 and 16 of the Inquiry Act."

continued

Opportunities for Local Government and Community Participation in Provincial Regulatory Processes for Independent Power Producers' Projects

5(a) Information Requirements (continued)

When sufficient information has been gathered, a report is prepared summarizing the technical adequacy of the proposal, objections, First Nations issues, other concerns and mitigation proposals. This report is conveyed to the decision-maker, and a decision is rendered on the conditions he or she deems advisable.

5(b) Appeals

The Water Act also provides an opportunity for certain persons to appeal a decision of the comptroller or regional water manager. Section 92 states, in part, "an order of the comptroller, the regional water manager or an engineer may be appealed to the [environmental] appeal board by... (b) an owner whose land is or is likely to be physically affected by the order, or (c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order." An order includes a decision or direction, whether given in writing or otherwise.

6. Land Act

The regulatory process for adjudicating applications for Crown land tenures under the Land Act is very similar to that for water licences. The statutory decision-maker referred to in this statute is the Minister of Agriculture and Lands. Certain authorities, including decision-making on land applications, are delegated to specific staff positions within the Integrated Land Management Bureau, an agency for which the Minister is responsible.

Notification is an important part of the adjudication process and may occur by two methods. The applicant may be required to post a copy of the application form on the land being applied for.

Additionally, if it is considered advisable in the public interest, the applicant may also be required to publish a notice of the application in the Gazette or a newspaper circulating in the land recording district where the land is located, or both.

Applications and project details are posted at: <http://www2.lwbc.bc.ca/ApplicationPosting/index.jsp>
The public has opportunity to provide input via email by clicking onto the application of interest.

The applicant may also be required to obtain and file with the Minister (or his delegate), at the applicant's expense, feasibility studies, environmental assessments, timber cruises, land valuation appraisals, or other information about the application as required by the Minister.

A typical adjudication process flowchart is shown in Appendix 2. Preliminary referrals are sent to agencies, local governments, non-governmental agencies and First Nations once an application has been accepted. Feedback is not anticipated at that time. When a development plan has been received, it is referred to other parties and responses are requested. Please refer back to the Water Act section for information on development plans.

The process by which the proponent obtains input, identifies issues, and develops mitigation strategies is the same as that for a water licence. If the proponent proposes to develop a waterpower project, the development plan will address both Water Act and Land Act requirements.

Section 63 of the Land Act states, in part:

- (1) At any time before a disposition is made on an application, any person may object to the application by filing a notice of objection, setting out the particulars of the objection, in the office of the commissioner for the land recording district in which the land applied for is located.
- (2) If a notice of objection is filed under subsection (1), the minister has the absolute discretion to decide whether or not the objection warrants a hearing, and if in the minister's opinion it does, the minister
 - (a) must appoint a person, who the minister considers to be qualified, to hold a hearing inquiring into that objection,...
- (4) After the hearing into an objection filed under subsection (1), the person appointed to hold the hearing must submit to the minister a report containing recommendations that the person considers just respecting the disposition of the Crown land involved.
- (5) The minister must review the report submitted under subsection (4) and, after taking into account the recommendations contained in the report, may make any order that the minister considers just respecting the disposition of the Crown land involved.

At the conclusion of the adjudication process, a report is prepared summarizing the relevant information, objections, concerns and mitigation measures. This report is conveyed to the appropriate decision-maker and forms the basis for the decision.

The resulting "Reasons for Decisions" are also posted on the same website Crown land "Applications" are listed on as noted above.

6(a) Appeals

Section 64 of the Land Act states, in part:

- (1) A person affected by an order of the minister under section 63 (5) respecting the disposition of Crown land may appeal the order to the Supreme Court on a question of law.
- (2) An appeal under subsection (1) must be commenced within 60 days after the order of the minister.

Opportunities for Local Government and Community Participation in Provincial Regulatory Processes for Independent Power Producers' Projects

7. Environmental Assessment Act

IPP projects which are 50 megawatts (MW) or greater require an environmental assessment certificate under the Environmental Assessment Act (EAA). Responsibility for administering the EAA and conducting environmental assessment reviews rests with the Environmental Assessment Office (EAO). The Minister of Environment is responsible for this agency.

Where an energy project does not constitute a reviewable project under the EAA regulations (i.e., is less than 50 MW), it may still be reviewed under the EAA. Project proponents may request that a project be designated reviewable under Section 7 of the EAA, and Section 6 of the EAA authorizes the Minister to designate a project, by order, as a reviewable project. The Minister may do so if he/she is satisfied that the project may have a significant adverse environmental, economic, social, heritage or health effect and the designation is in the public interest, and he/she believes, on reasonable grounds, that the project is not substantially started at the time of the designation. A typical process flowchart is shown in Appendix 3.

If a local government or other interested party feels that a specific IPP project satisfies the criteria in Section 6, it may request that the Minister designate the project as reviewable under that section.

The EAA and accompanying regulations establish the framework for delivering environmental assessments. However, the scope, procedures and methods of each assessment are tailored specifically to the circumstances of the proposed project. This allows for each assessment to focus on the issues relevant to that project.

7(a) BC's Environmental Assessment Process

In general, BC's environmental assessment process includes four main elements:

1. opportunities for all interested parties, including First Nations and local governments, to identify issues and provide input;
2. technical studies of the relevant environmental, social, economic, heritage and health effects of the proposed project;
3. identification of ways to prevent or minimize undesirable effects and enhance desirable effects; and
4. consideration of the input of all interested parties in compiling the assessment findings and making recommendations about project acceptability.

A project may be subject to both the province's EAA and the Canadian Environmental Assessment Act. In these instances, the EAO works closely with the Canadian Environmental Assessment Agency and other federal agencies to ensure the environmental assessment requirements of Canada and BC are met and integrated through a coordinated work plan and process.

Although environmental assessments are customized for each project, in a typical review process, proponents are expected to undertake early and ongoing consultation with federal, provincial and local governments, First Nations and the general public in order to develop Terms of Reference for the project Application. The Terms of Reference, which must be approved by the EAO, includes all of the information requirements that must be provided for in the project Application for an environmental assessment certificate.

Once the EAO has accepted an Application for review, it has up to 180 days to complete that review. At the conclusion of the review, the EAO prepares an assessment report which is referred to the Minister of Environment and, in the case of energy projects, the Minister of Energy, Mines and Petroleum Resources, for a decision on whether or not to grant an EA certificate. The Ministers have 45 days in which to make their decision.

Information on the review process and individual projects, including related documents, are available at the electronic Project Information Centre which is accessed through the EAO website: www.eao.gov.bc.ca

7(b) Concurrent Approvals

A project proponent may request that some applications for provincial approvals be processed concurrently with the environmental assessment review. With concurrent approval, applications for statutory authorizations such as provincial licenses, permits and certificates are reviewed while the environmental assessment process is ongoing. However, no authorizations may be issued until the assessment is completed and an environmental assessment certificate is issued.

To be eligible for concurrent review, the approval must be required to construct, operate, modify, dismantle, abandon or otherwise undertake part or all of the reviewable project that is the subject of the environmental assessment. Any such authorization is eligible for concurrent review except a Certificate of Public Convenience and Necessity (CPCN) under the Utilities Commission Act.

When the concurrent approval provisions apply, the responsible regulatory authority reviews the approval application expeditiously, and must notify the proponent and the EAO in writing, to the extent practicable at that stage of review, of any additional information requirements. The responsible regulatory authority must provide such notice within 75 days of the date that the EAO notified the proponent of acceptance of the Application for an environmental assessment certificate.

continued

Opportunities for Local Government and Community Participation in Provincial Regulatory Processes for Independent Power Producers' Projects

7(b) Concurrent Approvals (continued)

If an environmental assessment certificate is issued, the regulatory authority must, within 60 days after issuance of the certificate, either:

- issue the approval;
- refuse to issue the approval, indicating the reasons for the refusal; or
- specify a later date on which the proponent may expect a decision, indicating the reasons for the postponement.

Regulatory authorities responsible for issuing the approvals are involved in the environmental assessment. Therefore, if there is doubt about whether or not an approval will be issued, that information would be included in the assessment report and taken into consideration in the ministers' decision.

7(c) Local Government Involvement in Environmental Assessment

The EAA recognizes the unique interests that local governments may have with respect to a reviewable project, given their specific areas of authority and responsibility. When a project has been designated as reviewable under the EAA, the environmental assessment process provides for local government involvement at the project Advisory Working Group level. The Advisory Working Group, a technical and advisory working group which includes federal and provincial agencies, First Nations, local governments and other local authorities in its membership, has the key role of helping the EAO establish the parameters for the project review, including the Terms of Reference for the project Application. The Advisory Working Group establishes baseline study requirements for the Application, and advises the proponent on baseline requirements and potential mitigation measures for the project. Local governments bring to the Advisory Working Group a strong understanding of the local area and community issues, including socio-economic considerations.

7(d) Community/Public Involvement in Environmental Assessment

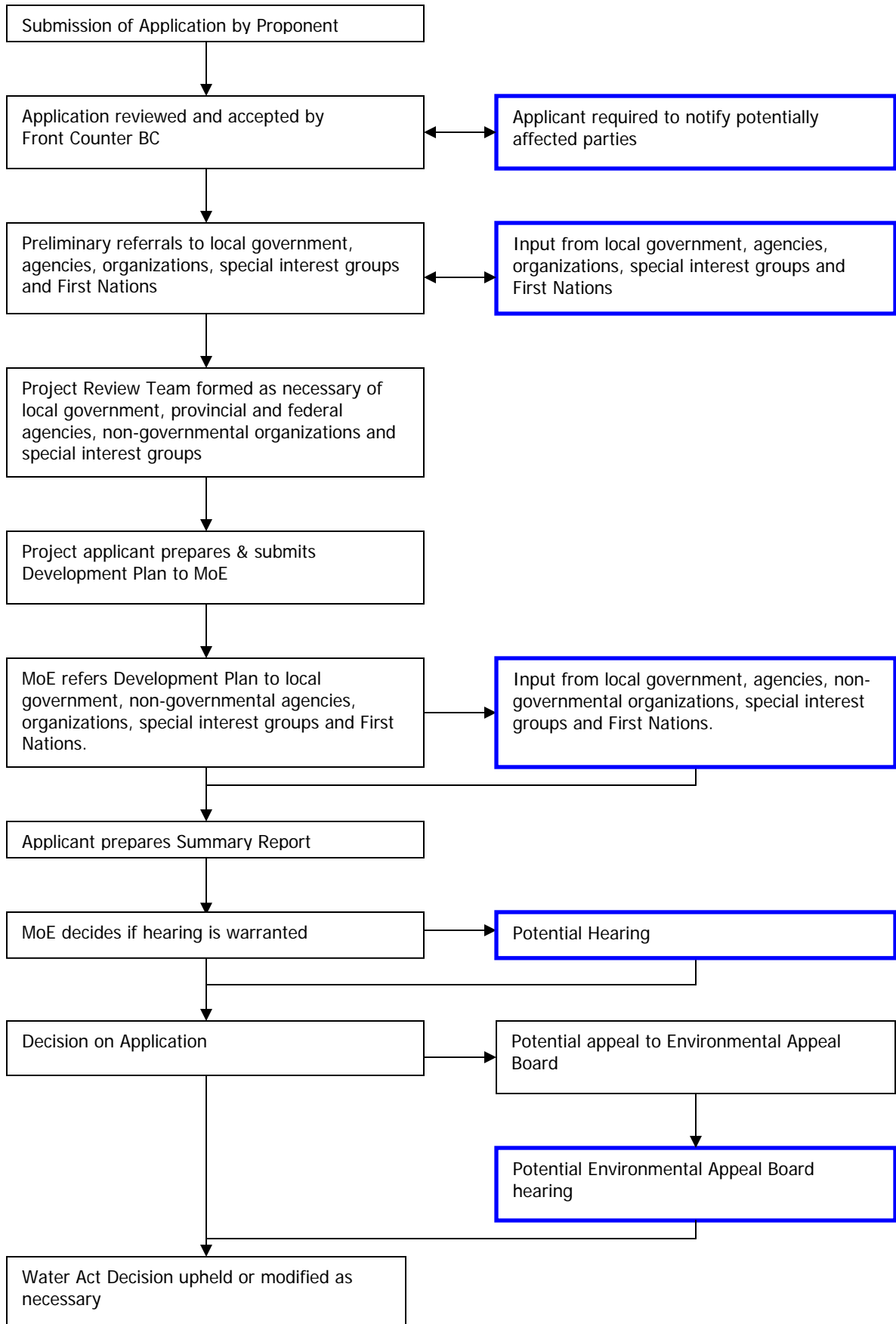
Environmental assessment is an open process that provides for participation by all interested members of the public, including individuals, community organizations, and special interest groups (e.g., business, environmental, outdoor recreation, trade, residents' and women's groups, etc.). While there are separate obligations to consult with First Nations, aboriginal people may also participate as part of the general public. Public consultation during an environmental assessment contributes to the gathering and sharing of all relevant information related to the potential effects of a proposed project. This may include not only environmental effects, but also economic, social, heritage and health effects. **Emphasis is placed on beginning consultations early.** Proponents are encouraged to identify potentially affected members of the public and undertake consultation activities as early as possible to facilitate effective issue identification and resolution.

The EAA includes provisions for public notification, access to information and consultation. The EAA's Public Consultation Policy Regulation sets out general policy requirements that the EAO must adhere to when determining the public consultation requirements for an environmental assessment. Additional consultation requirements and opportunities for participation are determined on a project-by-project basis, to best suit the characteristics of the project as well as the communities and interests which may be affected. In general, each assessment includes:

- information sharing: providing information to the public on the project, the assessment process, the consultation process, and the requirements placed on the proponent;
- notification: providing public notice about key steps in an assessment, such as when an Application is accepted for review;
- participation and consultation: providing opportunities for the public to identify interests and potential impacts related to the project, and to submit comments;
- issue resolution: ensuring public issues that are relevant to the assessment are addressed, which may include opportunities for the public to participate in issue resolution; and
- reporting of public issues: ensuring any reports on public consultation activities, as well as comments submitted by the public, are taken into consideration in preparing the assessment report and in developing any recommendations.

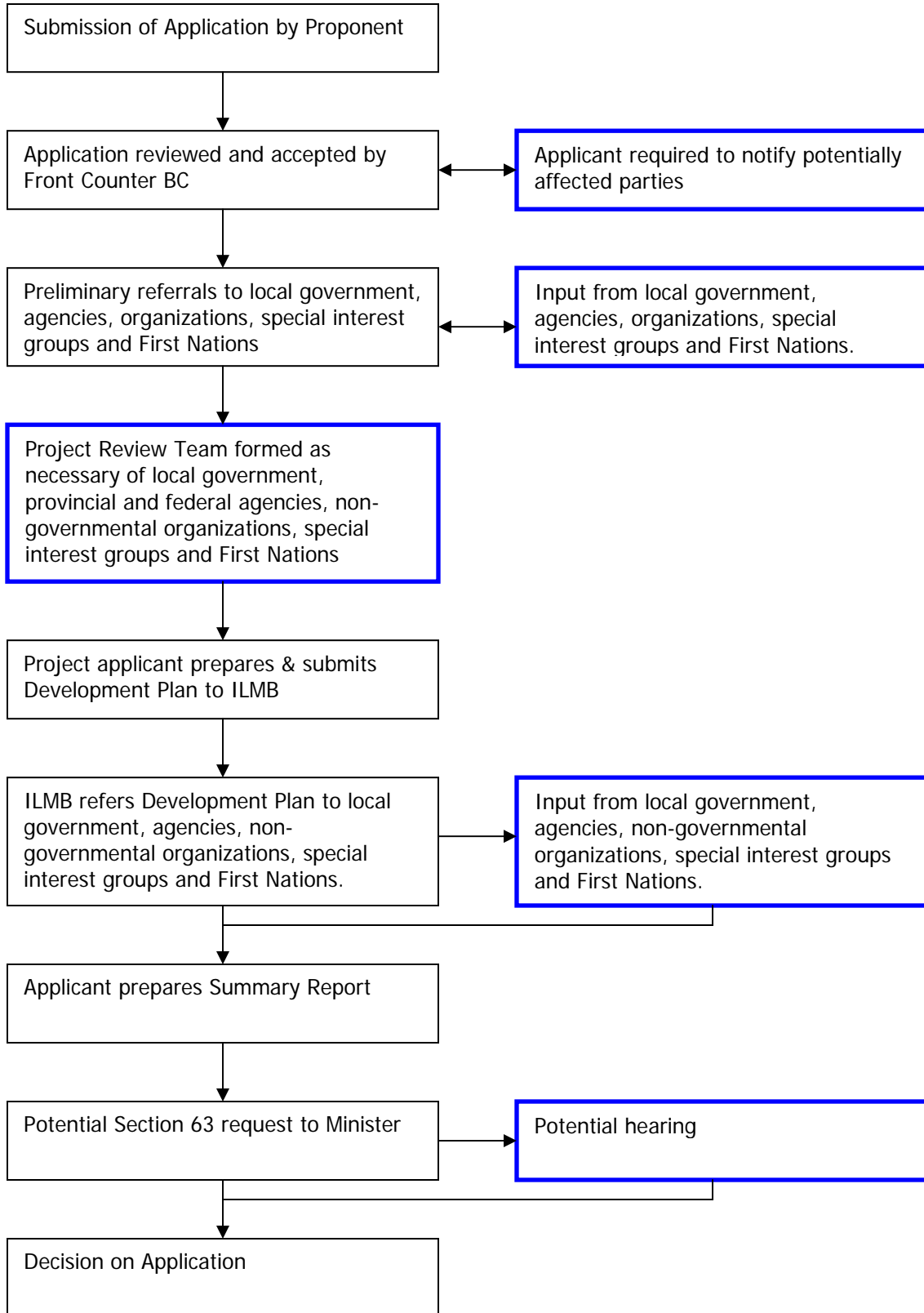
At the end of each assessment, public issues are reported on, so they can be taken into consideration by Ministers in making their decision on whether or not to certify the project.

APPENDIX 1 - WATER LICENCE PROCESS



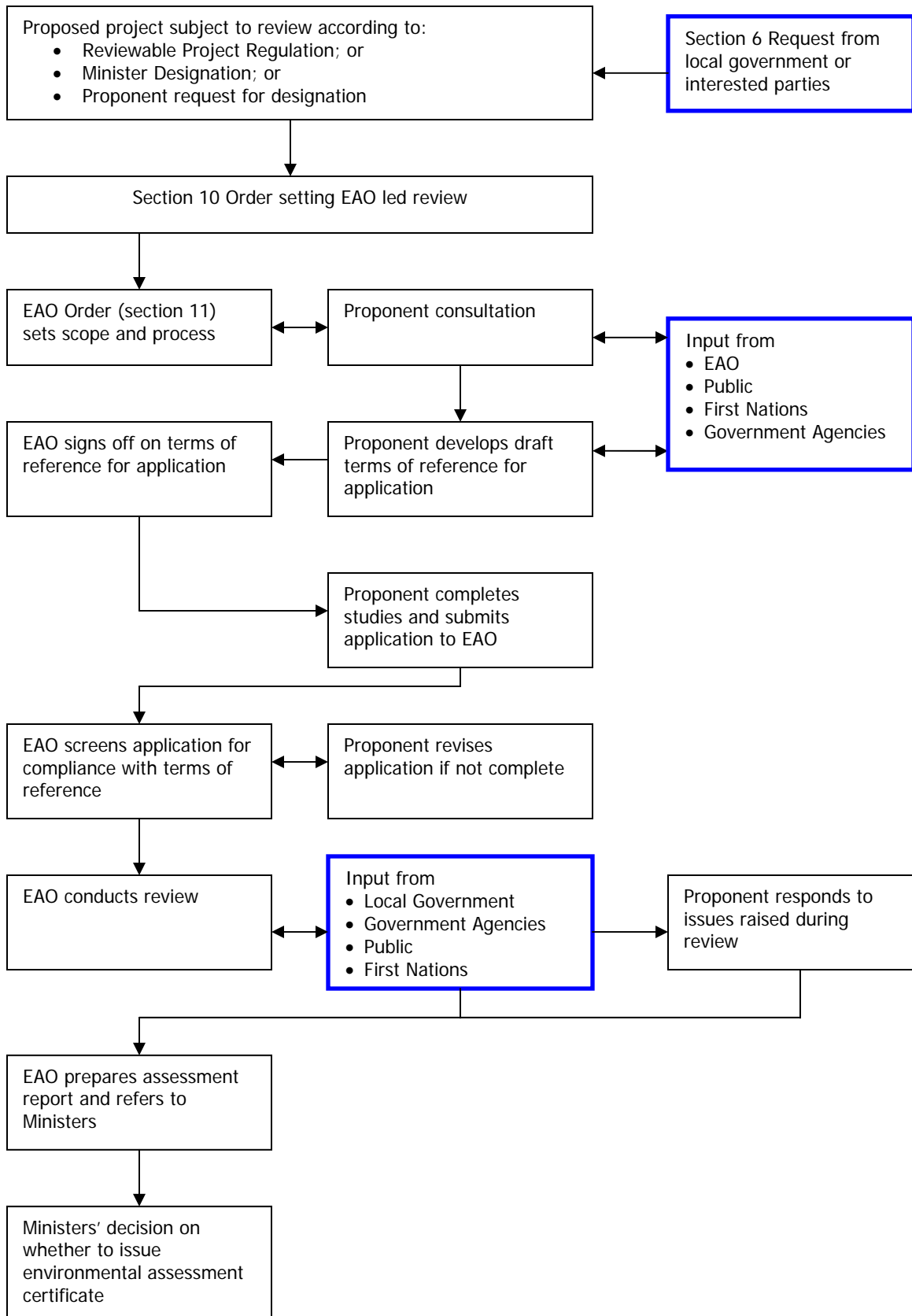
Opportunities for local government and public participation are shown in blue

APPENDIX 2 - CROWN LAND TENURE PROCESS



Opportunities for local government and public participation are shown in blue

APPENDIX 3 - ENVIRONMENTAL ASSESSMENT CERTIFICATE PROCESS



Opportunities for local government and public participation are shown in blue



BRITISH
COLUMBIA

Ministry of Energy, Mines
and Petroleum Resources