

# YESAB

Yukon Environmental and  
Socio-economic Assessment Board

## **POLICY GUIDANCE DOCUMENT**

### **Determining the Primary Location of Effects for Panel Reviews Under YESAA**

June 2024

## **Yukon Environmental and Socio-economic Assessment Act and the Umbrella Final Agreement**

This policy guidance includes references to the *Yukon Environmental and Socio-economic Assessment Act* (“YESAA”). Where applicable, the corresponding provisions of the *Umbrella Final Agreement* are also identified.

YESAA was enacted to meet a commitment in the Umbrella Final Agreement between the Government of Canada, the Council of Yukon First Nations and the Government of Yukon

The *Umbrella Final Agreement* (“UFA”), and Chapter 12 in particular, sets out an over-arching framework for a development assessment process in Yukon. The agreement required and contemplated that elements of this process would be further developed through legislation enacted by Canada or Yukon.

In 2003, ten years after the UFA was signed, YESAA was given Royal Assent. YESAA specifies that in the event of an inconsistency or conflict between a final agreement and YESAA, the agreement prevails to the extent of the inconsistency or conflict.

YESAB has a special relationship with the UFA and the unique environmental and socio-economic assessment legislation that it created. We recognize that we are one of many organizations with a role to play in meeting its spirit, intent and purpose.

As the Government of Canada works towards the implementation of the *United Nations Declaration of the Rights of Indigenous Peoples Act*, YESAB will continue to incorporate many of the principles underlying UNDRIP and the Truth and Reconciliation Commission’s calls to action via YESAB rules and organizational initiatives.

**Disclaimer: This bulletin is not intended to provide legal advice or direction. It is for information purposes only, and should not be used as a substitute for the Act or its associated regulations and rules. In the event of a discrepancy, the Act, regulations, and rules prevail. YESAB retains the discretion to deviate from the procedures described in this Bulletin where appropriate.**

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## Glossary of Key Terms

**Non-Settlement Land** – means land other than Settlement Land; water lying on or flowing through land, including Settlement Land; or mines and minerals, other than specified substances, in category B or fee simple Settlement Land or Tetlit Gwich'in Yukon land.

**Panel of the Board** – A Panel established under the Act to conduct a review of a project.

**Primary/ Primarily** – Principally, first in importance or chiefly.

**Project** – An activity or interrelated group of activities, for which one of the activities requires an assessment under the Yukon Environmental and Socio-economic Assessment Act (YESAA).

**Project Effect(s)** – A change in the condition of a value or valued environmental and socio-economic component caused either directly or indirectly by a project.

**Settlement Land** – means land that is category A Settlement Land, category B Settlement Land or fee simple Settlement Land under a final agreement or under section 63 of the *Yukon Surface Rights Board Act*, or land that is to be treated as such by virtue of a self-governing agreement, and includes Tetlit Gwich'in Yukon land, but does not include water or miners and minerals defined to be non-Settlement Land.

**Valued Environmental and Socio-economic Components (VESECs)** – Components of the physical and socio-economic environment that are viewed as important in the setting of a given project (i.e. for environmental, scientific, social, traditional, or cultural reasons), and are predicted to be adversely affected by the proposed project and warrant consideration in an assessment.

**Yukon Environmental and Socio-economic Assessment Act (YESAA)** - Chapter 12 of the Yukon First Nations Final Agreements called for the establishment by federal legislation of an assessment process that would apply to all lands within Yukon: federal, territorial, First Nation and private. The Yukon Environmental and Socio-economic Assessment Act (YESAA) was given Parliamentary Royal Assent on May 13, 2003. The federal legislation outlines the assessment process for Yukon.

**Yukon Environmental and Socio-economic Assessment Board (YESAB)** - YESAB is an independent arms-length body, responsible for the assessment responsibilities of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) legislation and regulations.

## Introduction

The intent of this policy guidance is to communicate the procedure that the Yukon Environmental and Socio-economic Assessment Board (YESAB)'s Executive Committee (EC) will use to determine the primary location of effects (PLE) of projects subject to a Panel of the Board review process. The result of this determination is only being used to determine the composition of a Panel of the Board, as per YESAA. The determination of PLE is based upon information available to the EC at this early stage in the process and will not bind the panel in their subsequent assessment of the project.

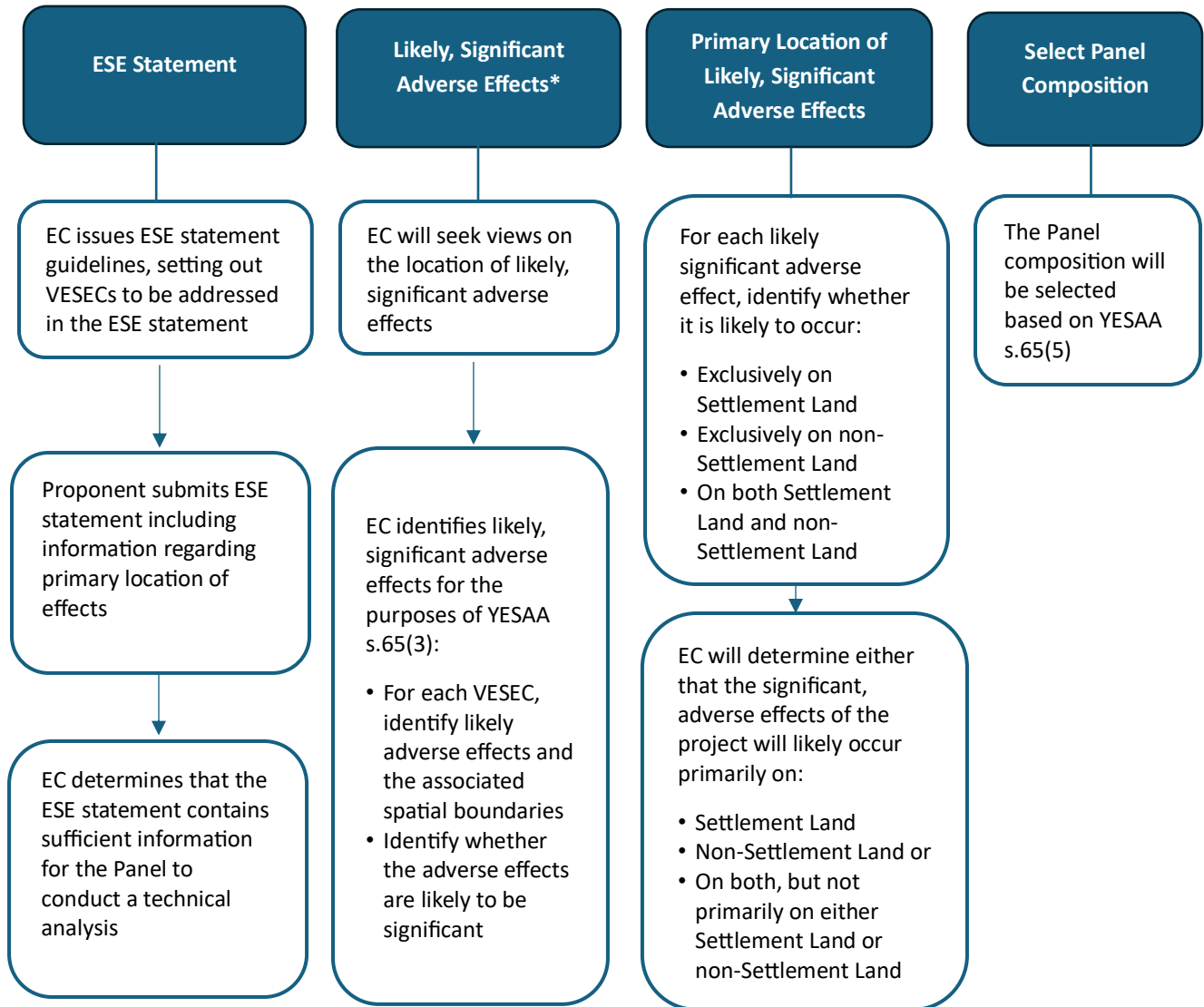
The Executive Committee is responsible for supporting and managing the establishment of a Panel, including making such determinations as the PLE and panel composition, developing the Terms of Reference (TOR) for the panel, and modifying or clarifying the TOR upon request of the Panel. Once a Proponent has submitted the Environmental and Socio-economic Effects Statement (ESE Statement), the EC has a short period of time to determine the PLE and establish a Panel of the Board:

The main stages of this determination are graphically illustrated in Figure 1 and can be summarized as follows:

1. Environmental and socio-economic (ESE) statement
2. Identify likely significant adverse effects
3. Determine likely primary location of effects
4. Select Panel composition

Once the Panel is established, it will assume authority of the panel review process.

**FIGURE 1. OVERVIEW OF EC PROCESS FOR DETERMINING PRIMARY LOCATION OF EFFECTS AND PANEL COMPOSITION**



\*The EC is making a preliminary identification of likely, significant adverse effects. These findings will not bind the Panel in its review of the project.

# Primary Location of Effects Process

## 1. Environmental and Socio-economic Statement

The Environmental and Socio-economic Statement (ESE Statement) provides the EC with the information which will assist them to determine the PLE.

### 1.1. Executive Committee issues the ESE Statement Guidelines

The ESE Statement Guidelines are issued by the EC to the Proponent and set out the requirements for preparing an ESE Statement.

### 1.2. Proponent Submits ESE Statement

Within 60 days of the ESE Statement Guidelines being issued, the Proponent must provide the EC with a written schedule of the time it will take to prepare and submit its ESE Statement. The Proponent prepares its ESE statement in accordance with the ESE guidelines and files it with the EC based on a pre-determined schedule. The Proponent will include in the ESE statement the following information for each VESEC:

- The spatial extent of effects to that VESEC; and
- Based on that: whether those effects were likely to be exclusively on non-Settlement Land, Settlement Land, or on both non-Settlement Land and Settlement Land.

### 1.3. ESE Statement Compliance Check

Within 60 days of the ESE statement being filed, the EC must determine whether the ESE statement contains sufficient information for a Panel to proceed with a technical analysis. If the EC decides that the ESE statement does not contain sufficient information, it may require that the Proponent provide supplementary information. The EC may also extend the review period by up to 60 days.

## 2. Identify Likely, Significant Adverse Effects

Within 60 days of EC providing notice that the ESE Statement is sufficient to proceed to a Panel review, a Panel of the Board must be established. Before the Panel can be established, a determination of the PLE must be made. This determination begins with a preliminary identification of significant adverse effects that are likely to occur, and their spatial boundaries.

### 2.1. Executive Committee to Seek Views

The EC will seek views from:

- the Proponent;
- any First Nation consulted under subsection 50(3) of YESAA or identified as per subsection 66(3) of YESAA; and

- any government agency, independent regulatory agency, or First Nation that has notified the EC of its interest in the project or in projects of this kind, on whether the significant adverse effects of the project are likely to be primarily on Settlement Land, primarily on non-Settlement Land, or are likely to be on both but not primarily on either settlement or non-Settlement Land.

## **2.2. Confirm the Location of Likely Adverse Effects**

EC will review and consider all information provided in the ESE statement, all information that was submitted in response to the EC seeking views in the previous step, and spatial boundaries that will account for the scale and spatial extent of likely adverse effects. Spatial boundaries are delineated to encompass the biophysical and human or socio-economic environment that could reasonably be expected to be directly or indirectly affected by the project. Only those effects which are both likely and adverse are carried through to step 2.3.

## **2.3. Identify Likely Significance of Adverse Effects**

For each VESEC, EC will use its assessment methodology to identify which of the adverse effects are likely to be significant based on the information available to the EC at the time.

Note: this is a preliminary identification of likely significant adverse effects is not for the purpose of making a determination on the final outcome at the conclusion of the assessment.

# **3. Determine Primary Location of Likely Effects**

As in identifying the likely significance of adverse effects, this is a preliminary identification of the likely primary location of effects. It is for the purpose of determining the Panel composition only and will not be binding in any way on the Panel, once it is established.

## **3.1. Location of Likely Significant Adverse Effects**

For each significant adverse effect identified in the previous step, the EC will identify whether that effect is likely to be either:

- Exclusively on Settlement Land;
- Exclusively on non-Settlement Land; or
- On both Settlement Land and non-Settlement Land.

## **3.2. Primary Location of Effects**

Based on the location of likely significant adverse effects, the EC will determine the primary location of the project effects as per subsection 65(3) of YESAA. The final determination will be either of the following:

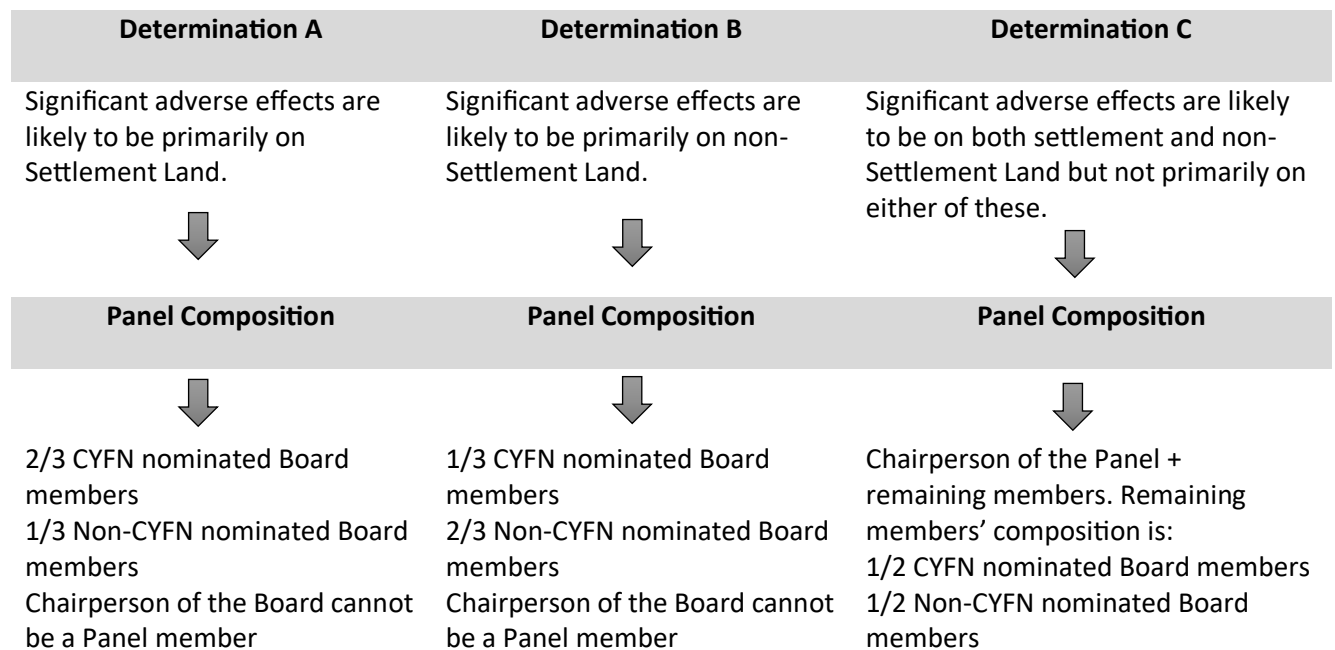


- That the significant adverse effects of the project will likely be primarily on Settlement Land, OR
- That the significant adverse effects of the project will likely be primarily on non-Settlement Land, OR
- That the project is likely to have significant adverse effects on both settlement and non-settlement, but not primarily on either of these.

#### 4. Select Panel Composition

Based on the final determination of PLE, the EC will select the Panel composition outlined in Figure 2.

Figure 2 - Determination of Primary Effects Location and Panel Composition



# Appendix 1. Relevant Clauses from the UFA

Provisions in the [Umbrella Final Agreement](#) relevant to the process set out under s.65(3) and (5) of YESAA include, but are not limited to:

## **Chapter 1: Definitions**

## **Chapter 12: Development Assessment**

- Section 9.1.4
- Section 10.0