

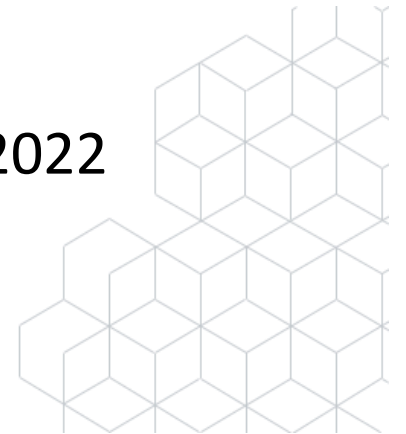


YESAB

Yukon Environmental and
Socio-economic Assessment Board

PRE-SUBMISSION ENGAGEMENT FOR EXECUTIVE COMMITTEE SCREENINGS

Implementation – June 1, 2022



PSE Implementation – June 2022

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- PSE – Framework
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PSE Implementation – June 2022

PSE – Background & Development



PSE Implementation – June 2022

What is Pre-Submission Engagement?

PSE is a proactive, front-end process that occurs before a project proposal is submitted for screening by the Executive Committee (EC).

The purpose of pre-submission engagement is to bring interested and affected parties together to review project requirements well in advance of a detailed proposal being submitted for assessment.

This helps identify gaps and issues of concern, to define values and baseline information requirements and helps ensure a more timely and certain screening process.



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Objectives:

1. To be an effective, proactive opportunity for early engagement
2. To enable early and collaborative identification of issues and information gaps;
3. To provide project-specific guidance to proponents; and
4. To lessen the likelihood of new issues and information requests once a proposal is submitted for a screening.



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PSE Development - Engagement:

PSE has been in development since 2019, in response to requests for better project-specific guidance on preparing project proposals and to meet expectations for earlier involvement of potentially affected First Nations, communities and the public in the assessment of complex to large-scale projects (EC-level screenings)

Key participants in the YESAA process have been involved in the development of PSE from the beginning of the PSE Framework (2019) to providing input on the PSE Rules (2021).

Who? Representatives from federal, territorial, and First Nations governments, proponents, industry groups, consultants and NGOs.

How? Information sessions, meetings, website information, presentations, timelines focus group, teleconferences and panel presentations. Participant input reports and independent research.



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PSE Rules Review – 2021

- Board rules were required to establish the PSE process in amendments to the *Rules for Screenings Conducted by the Executive Committee* (Screening Rules).
- YESAA requires that proposed rules be published in the *Canada Gazette* for a 60-day public review period before the rules can take effect. The public review period took place between July 3 to September 30, 2021.
- Input was received from governments (Federal, Territorial, First Nations), industry groups, proponents and NGOs. YESAB's response to input received was set out in a Participant Input Response Report.
- Amended *Screening Rules* were approved by the Board on March 31, 2022 and published in the *Canada Gazette* on May 28, 2022. Consolidated *Screening Rules* are available on YESAB's website.



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PSE – Framework



PSE Implementation – June 2022

Requirements:

- PSE is mandatory and required in all sectors and for all projects that require an EC screening (it does NOT apply to Designated Office Evaluations)
- The PSE process is publicly accessible via YESAB's Online Registry (YOR) – access to records and ability to provide input
- The PSE process has timelines established in the *EC Screening Rules*.
- In general, the PSE process does NOT apply to projects referred to the EC by a Designated Office under YESAA s. 56(4).



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PSE Participants:

Participants in the PSE process include representatives from:

- Federal, Territorial and First Nations governments
- Proponents
- Industry groups, Consultants
- NGOs and members of the public



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Key PSE Terms:

- EC - Executive Committee
- PD - Project Description
- PPG - Project Proposal Guideline (draft and final)
- PPGR - Project Proposal Guideline Response
- PPR - Project Proposal Report



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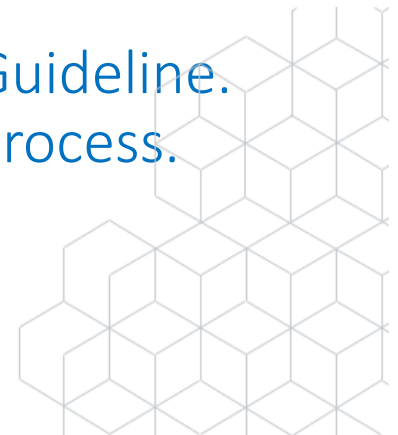
Roles & Responsibilities:

Executive Committee – administers the PSE process:

- Manages notifications, timelines, public comment periods and develops project-specific information requirements for the project proposal (Project Proposal Guideline and Project Proposal Report). Makes determinations under the Rules and provides reasons.

Proponent – proposes the project for assessment:

- Develops a Project Description and a response to the Project Proposal Guideline. Submits a Project Proposal that meets all the requirements of the PSE process.



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Roles & Responsibilities:

Governments – are participants in the PSE process (federal, territorial, First Nations – decision bodies, regulatory bodies, technical & traditional knowledge experts):

- Actively participate, provide input on process and timelines. Review and provide input on key PSE documents. Identify issues, concerns and information requirements. Provide regulatory requirements as required. Work within timelines established by the EC.

First Nations - are participants in the PSE process (Governments, elders, traditional knowledge holders, community residents who may be affected:

- Actively participate, provide input on process and timelines. Review and provide input on key PSE documents. Identify issues, concerns and information requirements. Work within timelines established by the EC.



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PSE & Consultation with First Nations:

Multi-faceted, several consultation obligations that are responsibility of different players during PSE:

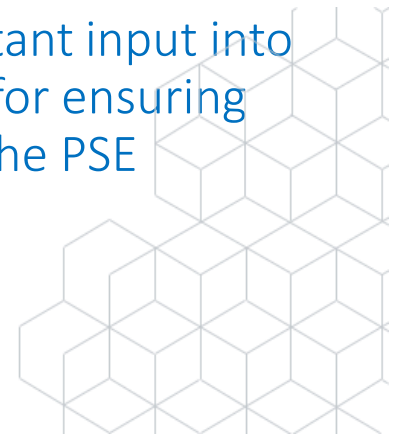
- **Proponent** obligation to consult potentially affected FNs and community residents prior to the screening is set out in YESAA (s50(3)).
- **Crown** (federal and territorial governments) – has a separate and distinct constitutional duty to consult affected First Nations on projects.
- At the outset of the PSE process, the **Executive Committee** must ensure the Proponent has identified the First Nations engagement and consultation requirements in the Project Description. (Project Description Requirements – Section 6)
- After the PSE process concludes and the project proposal is submitted, the **EC** must review the Proponent's consultation record with potentially affected First Nations and community residents as required under s.50(3) of YESAA.



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PSE & Consultation with First Nations: (continued)

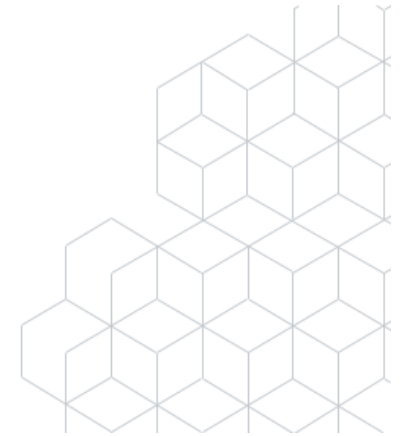
- Neither YESAB or the EC, has the duty or authority to conduct consultation with First Nations affected by a proposed project.
- With respect to the federal and territorial governments' constitutional duty to consult with affected First Nations on projects, governments may consult First Nations during the PSE process. However, their consultation process is separate from PSE.
- Federal and territorial governments may choose to rely on the PSE process to fulfill elements of their constitutional duty to consult with First Nations.
- The proponent may choose to rely on information provided during the PSE process as important input into its own statutory duty to consult with First Nations. The proponent is ultimately responsible for ensuring that it has met the duty to consult under YESAA, which may require consultation outside of the PSE process, prior to the submission of a project proposal to the EC.



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Information Management: YESAB Online Registry (YOR)

- YESAB maintains the online registry (YOR) for participants and the public to access assessment related documents at any time and to facilitate participation in assessments.
- The PSE process is transparent and publicly accessible as it provides opportunities for input on key documents during comment periods.
- In the context of PSE, the YOR contains documents including comments, proposal information, supporting information, and correspondence from the EC to assessment participants.
- The YOR is the primary mechanism for communicating with proponents.



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Information Management: New Provision

Third Party Personal Information in Documents Submitted to the EC:

- YESAB is subject to Federal *Privacy Act* ; governs how YESAB can collect, use and disclose personal information.
- *Screening rules* amended to explicitly stipulate that no one may submit another persons' personal information to the EC unless the submission includes the individual's written consent as well as the individual's agreement to *YESAB's Online Registry Privacy Statement*.
- Examples of personal information include – name, address, personal views or opinions.
- The EC will return submissions that do not meet these requirements to the submitter.
- The EC will not consider or post to the YOR any submission unless it conforms to these requirements.
- Further guidance is forthcoming for proponents and participants.



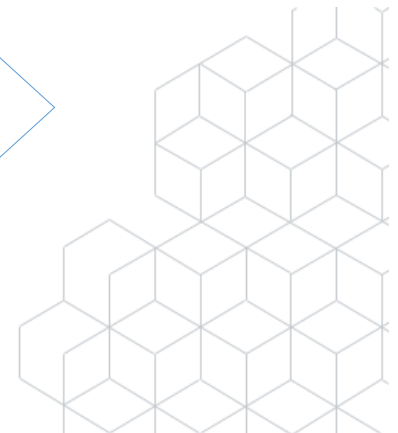
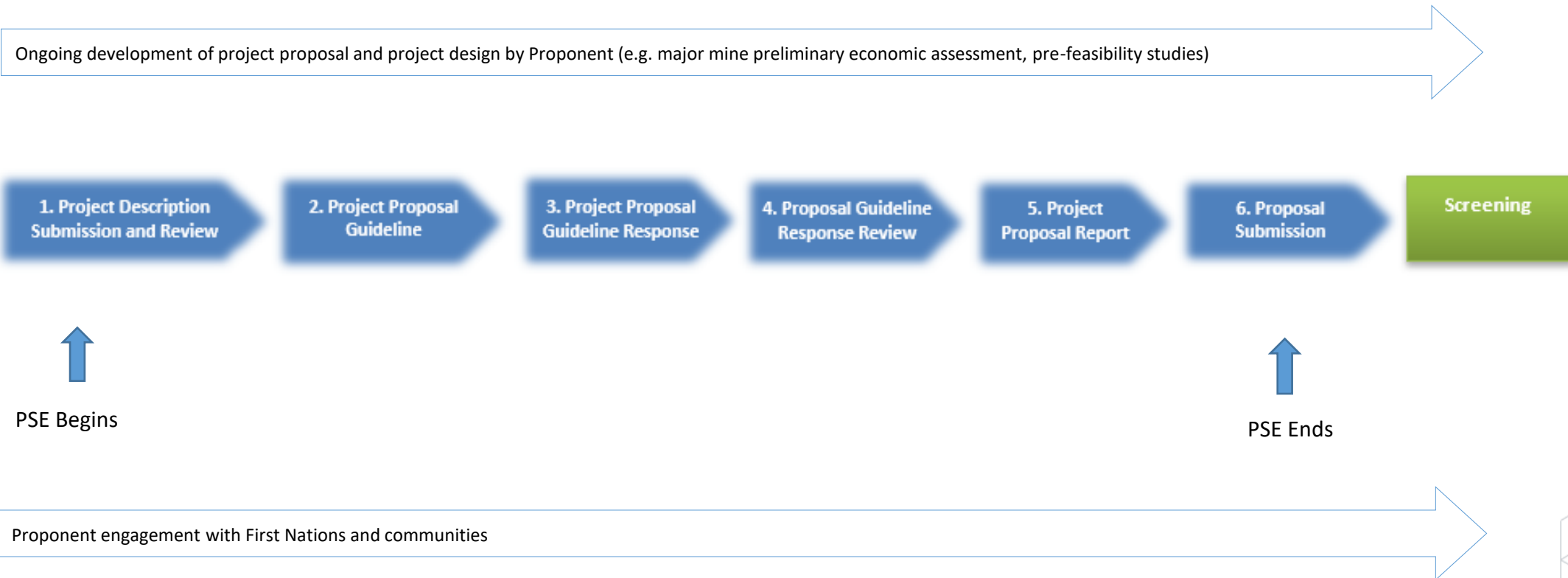
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PSE Process – Overview



PSE Implementation – June 2022

PSE – Overview



PSE – Detailed Overview



Timelines Note:

* The Executive Committee will set a specific timeline for comment periods within the maximum timeline based on project and participant circumstances. Actual timelines may be shorter than the maximum presented. The EC has the ability to extend a timeline beyond the maximum if required.

** The Proponent may take less time than the maximum timeline. Actual timelines may be shorter than the maximum presented.

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PSE Process Modifications - Timelines

- Timelines set out in *Screening Rules* (max. # calendar days) and can apply to actions taken by the EC, proponent or participant.
- EC sets specific timelines based on a contextual analysis of project – its complexity, location, and participant input – some projects may not require max timelines, others may.
- The *Screening Rules* give the EC the ability to modify a timeline for a particular phase of PSE (s.18).
- The rules set out the process for requesting a deadline be postponed and the EC's decision requirements.
- After the EC decides whether to grant postponing a deadline or not it must notify participants of its decision and the reasons for it.



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PSE Process Modifications – Other

Section 18 of the *Screening Rules* allows the EC to supplement the PSE process if it considers that doing so would improve the process or its outcomes.

For example, to allow the EC and participants to further examine key technical issues, the EC may establish a technical review or advisory committee, hold a workshop or technical session, or include an additional comment period to gather further information.

Participants may at any time ask the EC to make these types of process modifications.



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PSE Process Modifications – Project Changes:

Proponent-driven changes to a project are a common occurrence during project design.

The PSE process can accommodate changes to the proposed project in several ways:

- Rules allow the EC to extend a comment period deadline to allow participants more time to review the new or modified information.
- EC can add a comment period to address material changes to the project.

In making a determination to extend a deadline or add a comment period or revise a document (e.g. PPG) the EC must consider:

- the PSE stage at which the change is made,
- relevant participants views, and
- the change's potential effect on baseline information requirements.



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PSE Process Modifications – Withdrawals:

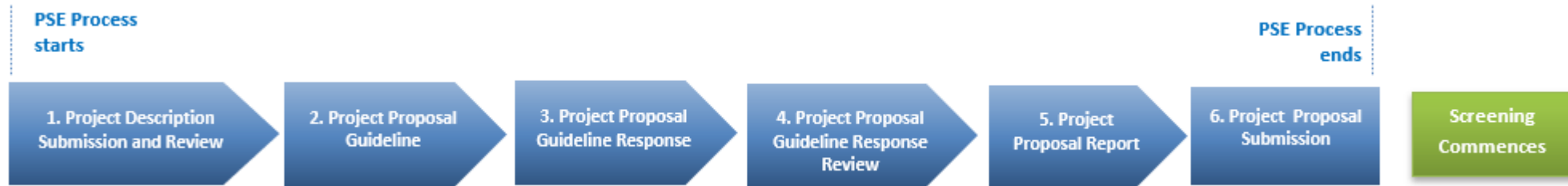
Rules set out circumstances and timelines to withdraw proposed project from PSE process:

- 1) Proponent can withdraw at any time before the end of the process;
- 2) EC can deem project withdrawn if proponent fails to submit:
 - a) Project Proposal Guideline Response (PPGR) within 24 months of the PPG or
 - b) Project Proposal within 24 months of the PPR.



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PSE Process – Detailed



PSE Phases – Detailed

1. Project Description Submission and Review

Phase 1 – Project Description – Requirements, Submission & Compliance Check

- PSE process informally begins with development of **Project Description** (PD) by Proponent.
- **Project Description Requirements** are set out in the *Screening Rules* – Schedule A and in *Project Description Requirements* document.
- PD is NOT a comprehensive proposal but provides enough information about the type and location of project activities for participants to effectively understand and comment in order to identify potential issues, concerns and information requirements.

Steps:

- Proponent gives 30 days notice to EC prior to submitting the PD.
- EC conducts compliance check of PD – whether required information is present or absent.
- If in compliance, PSE process is formally initiated.
- Participants identified, notified, Project Description made available on YOR.



PSE Phases – Detailed

1. Project Description
Submission and Review

Phase 1 Continued – Project Description Review

Steps:

- Participants can provide input on PSE process and timing (e.g. capacity or timing constraints, need for a technical working group)
- EC invites comments on the **Project Description (PD)**. Establishes process and specific time period for reviewing the **PD** (within a **max. of 40 calendar days**)
- Participant review of **PD** and preparation of input – this includes governments and potentially affected First Nations
- Input received on the **Project Description** helps inform the scope of the project and screening and the EC's development of the **Project Proposal Guideline**.

Note: The PD review does not invite comments on the project or assessment at this stage.



PSE Phases – Detailed

1. Project Description Submission and Review

Phase 1 continued – Project Description & Review

Participant input on the Project Description will inform the Project Proposal Guideline and should include identification or comment on:

- Matters listed in s. 42(1)(a) to (j) and if applicable s.42(2.1) of YESAA.
- Asserted and established Aboriginal and treaty rights.
- Valued environmental and socio-economic components that may be adversely effected by the project and why these components are important.
- Applicable legislation, regulatory requirements, standards, plans, policies and best practices associated with valued components.
- The spatial and temporal boundaries of the valued components.
- Baseline fieldwork, data analysis and modelling requirements to understand the current actual and future predicted state of these components.
- Potential ecological or social limits and thresholds for these components.
- Vulnerability and resiliency of social and/or ecological systems and components.
- Political and cultural setting.



PSE Phases – Detailed

2. Project Proposal Guideline

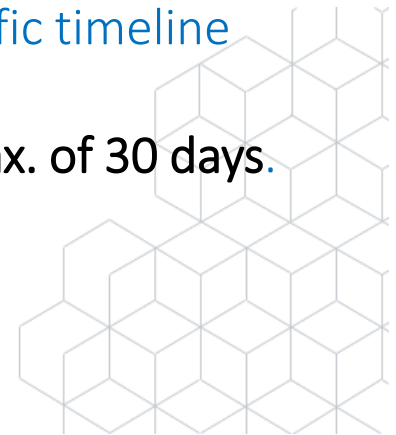
Phase 2 – Project Proposal Guideline (PPG)

Project Proposal Guideline (PPG) is prepared by EC and provides Proponent with project-specific information requirements informed by the participant review of the Project Description.

PPG outlines information required in the Project Proposal as set out in YESAA (s.42 matters to be considered), the *Screening Rules* (s. 25) as well as advice on: form, content, methodologies, baseline information requirements.

Steps:

- A Draft PPG is prepared within a **max. of 60 calendar days**
- Participants and the Proponent review and provide input on the Draft PPG within the specific timeline set by the EC (a **max. of 40 days**)
- EC reviews and must take into account the input received and finalizes the PPG within a **max. of 30 days**.
- PPG is provided to the Proponent and participants via the YOR



PSE Phases – Detailed

3. Project Proposal Guideline Response

Phase 3 – Project Proposal Guideline Response (PPGR)

The **Project Proposal Guideline Response (PPGR)** is a document prepared by the **Proponent** that describes how PPG information requirements have been met and how and when any information gaps will be met prior to the submission of the Project Proposal.

Proponents should identify the approach and methodology for addressing the specified requirements including baseline data collection.

Proponent can include questions or seek clarification on information requirements or methodologies as set out in the PPG as well as other input from participants (e.g. First Nations, government regulators or experts).

Proponent has **up to 24 months** to submit the PPGR from when the PPG is issued. 30 days notice must be given to the EC prior to submission.



PSE Phases – Detailed

4. Project Proposal Guideline Response Review

Phase 4 – Project Proposal Guideline Response Review

The **Project Proposal Guideline Response (PPGR)** is the last requirement of the Proponent before they submit the Project Proposal.

The review of the **PPGR** allows the EC and participants to examine how the **Project Proposal Guideline** requirements have been met, to identify information gaps or additional issues that should be included and provide clear guidance on what information is required in the Project Proposal.

Steps:

- After the Proponent submits the PPGR the EC must notify participants, provide the PPGR on the YOR and establish the process and specific timeline for reviewing the document (within a **max. of 60 calendar days**).



PSE Phases – Detailed

5. Project Proposal Report

Phase 5 – Project Proposal Report (PPR)

The **Project Proposal Report (PPR)** is prepared by the EC for the Proponent. It sets out the requirements for the **Project Proposal** and any outstanding issues or information to be addressed prior to submission. It is the last phase of the PSE process prior to the Project Proposal being submitted.

Steps:

- EC reviews participants input from participants on the PPGR and prepares the **Project Proposal Report** within a **max. of 60 days**.
- PPR outlines information required in the **Project Proposal** as set out in YESAA, the Rules (s.28), the PPG and any additional issues or information that must be included.
- The PPR is released to the Proponent and participants on the YOR.

The Proponent has **up to 24 months** from the issuance of the PPR to submit the Project Proposal.



PSE Phases – Detailed

6. Project Proposal Submission

Phase 6 – Project Proposal Submitted

The PSE process concludes when the Proponent submits the **Project Proposal** as per YESAA and the *Screening Rules*.

The EC **within 60 calendar days** must determine whether:

- a) the the rules have been compiled with; and
- b) the proponent has in the Project Proposal taken into consideration the matters referred to in s.42 of YESAA; and
- c) has consulted first nations and the residents of communities in accordance with s.50(3) of the Act.

A **Project Proposal** complies with the applicable rules only if the EC is of the opinion that it meets all requirements set out in the **Project Proposal Report (PPR)**.

The EC reviews the Proponent's consultation record and makes a determination as to whether it is sufficient.

If all requirements have been met the screening will commence, if they have not, the screening will not commence. Reasons must be provided by the EC.

If requirements have not been met, the proponent can submit another proposal to the EC. Rules allow the EC to waive/modify aspects of the PSE process so as to not require the proponent to start the PSE process over again.



Projects Referred to the EC from a Designated Office

The PSE process as outlined does not apply to a project referred from the Designated Office to the EC under YESAA s.56(4).

Referred projects do not proceed through the PSE phases but enter at the end of the process with the submission of a Revised Proposal.

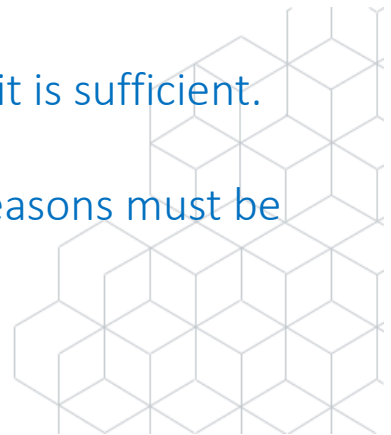
The EC **within 60 calendar days** must determine whether:

- a) the the rules have been compiled with; and
- b) the proponent has in the Revised Proposal taken into consideration the matters referred to in s.42 of YESAA;
- c) has consulted first nations and the residents of communities in accordance with subsection 50(3) of the Act.

A **Project Proposal** complies with the rules only if the EC is of the opinion that it meets all of the requirements.

The EC reviews the Proponent's consultation record (s.50(3)) and makes a determination as to whether it is sufficient.

Based on its determinations the EC commences the screening or does not commence the screening. Reasons must be provided.



Contact Information

For Projects:

Steve Caram, Project Assessment Manager

Steve.Caram@yesab.ca

(867) 668-6420

Suite 200, 309 Strickland St.

Whitehorse, YT Y1A 2J9

For Policy/Process:

Heidi Rumscheidt, Policy Officer

Heidi.Rumscheidt@yesab.ca

(867) 668-6420

Suite 200, 309 Strickland St.

Whitehorse, YT Y1A 2J9

More information on the PSE process can be found on YESAB's website

www.yesab.ca