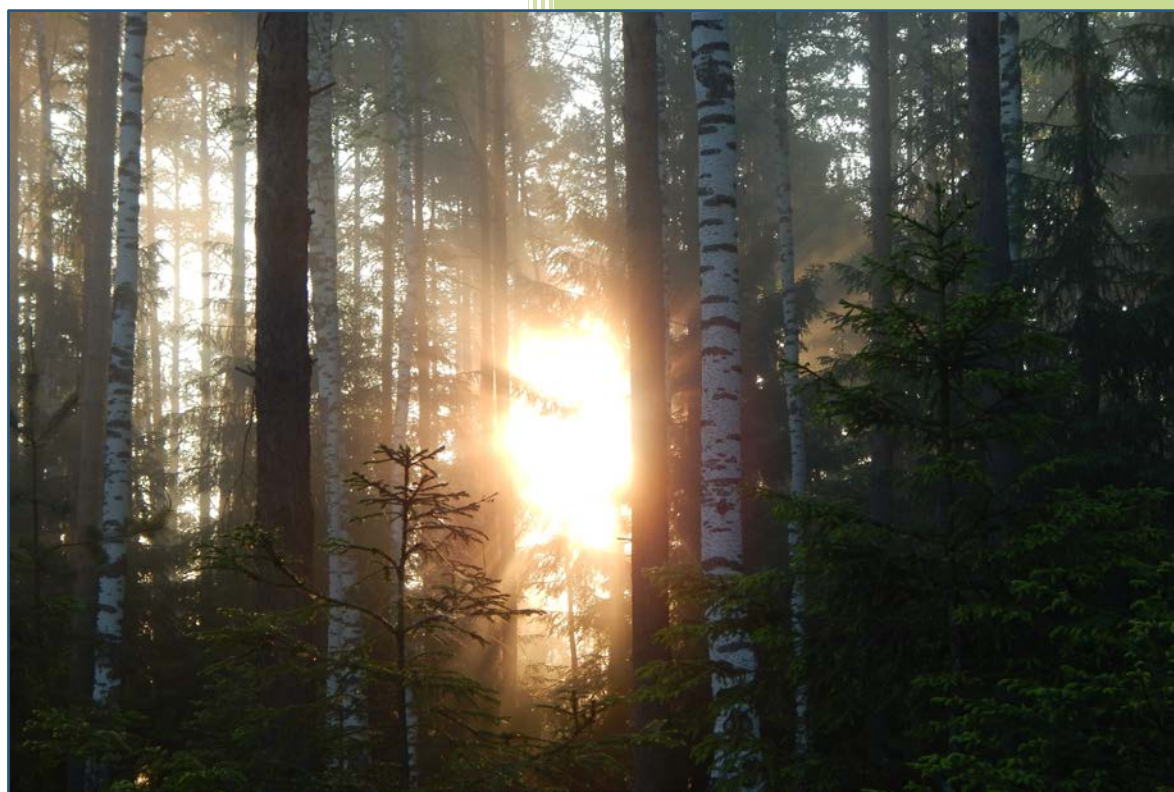


# Municipal Environmental Assessment

*A Model Bylaw for Alberta's Municipalities*



Environmental  
Law Centre

**A Community Conserve Project**  
Building environment and conservation  
capacity for municipalities

January 2018

**Municipal Environmental Assessment  
A Model Bylaw for Alberta's Municipalities**

January 2018

**Brenda Heelan Powell**

**Environmental Law Centre**

410, 10115 – 100A Street

Edmonton, AB T5J 2W2

Telephone: (780) 424-5099

Email: [elc@elc.ab.ca](mailto:elc@elc.ab.ca)

Website: [www.elc.ab.ca](http://www.elc.ab.ca)

Charitable Registration #11890 0679 RR0001

This resource was created as part of **Community Conserve**.



Building environment and conservation capacity for municipalities

---

For more information about Community Conserve, please visit the website ([www.communityconserve.ca](http://www.communityconserve.ca)) or contact one of the partner organizations:



**Miistakis  
Institute**

Room U271  
Mount Royal University  
4825 Mt Royal Gate SW  
Calgary AB T3E 6K6  
P 403 440 8444  
[www.rockies.ca](http://www.rockies.ca)



**Environmental  
Law Centre**

#410,  
10115 - 100A Street  
Edmonton, AB T5J 2W2  
P 780 424 5099  
[www.elc.ab.ca](http://www.elc.ab.ca)

Resources created under Community Conserve are available under a **Creative Commons License** (Attribution-NonCommercial-ShareAlike 4.0 International), which allows use under the following restrictions:

- Attribution is required
- Only non-commercial distribution and reuse is allowed
- Share alike is required (same licensing provisions required in reuse)



<http://creativecommons.org/licenses/by-nc-sa/4.0/>

# Acknowledgements

The **Municipal Environmental Assessment: A Model Bylaw for Alberta's Municipalities** was made possible through the generous support of the Max Bell Foundation and an anonymous foundation, and was produced under the Community Conserve collaboration ([www.communityconserve.ca](http://www.communityconserve.ca)) led by the Environmental Law Centre and the Miistakis Institute, with the support of the Alberta Urban Municipalities Association, and the Alberta Association of Municipal Districts and Counties.

*Photos courtesy [unsplash.com](https://unsplash.com)*

# A Model Bylaw<sup>1</sup>

---

## 1. Bylaw Objectives/Purposes<sup>2</sup>

The objective of this bylaw is to create a positive social, cultural, economic and environmental legacy for current and future generations of [municipality].

Implementation and application of this bylaw is to be guided by several principles:

- (a) The principle of sustainability which requires planning and development that acknowledges the inherent limitations of the environment; that is socially, culturally, economically and environmentally sound; and that meets the needs of the present without compromising the ability of future generations to meet their own needs.
- (b) The precautionary principle which requires that, if there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.
- (c) The principle of intergenerational equity which requires that undertakings to meet the needs of the present do not compromise the ability of future generations to meet their own needs.
- (d) The principle of integration which requires looking for ways to meet human needs while at the same time reducing the environmental impacts of human activities.

---

<sup>1</sup> See Deborah Curran, *The Stewardship Series: Green Bylaws Toolkit for Conserving Sensitive Ecosystems and Green Infrastructure* (Environmental Law Clinic, University of Victoria: April 2016) which provides a model for municipalities in British Columbia (Curran).

<sup>2</sup>See Robert Gibson et al., *Sustainability Assessment: Criteria, Processes and Applications* (London: Earthscan, 2005) at page 147 wherein the authors express the benefit of authoritative purposes being set out in the body of legislation.

- (e) The principle of meaningful and effective public participation.

### **Commentary**

In developing a bylaw, an essential starting point is a clear understanding of what the bylaw is to accomplish and how it relates to other regulations (municipal, provincial and federal).<sup>3</sup> Furthermore, having a policy framework in place expedites the production of the bylaw, its coordination with other bylaws and its acceptance.<sup>4</sup>

## **2. Definitions<sup>5</sup>**

- (i) **Agricultural Land<sup>6</sup>** means land used for food production including crops, grazing livestock, greenhouses, and confined feeding operations.
- (ii) **Cumulative Effects** means the effects on the environment, over a certain period of time and distance, resulting from the effects of a project when combined with those of other past, existing, and imminent projects and activities.
- (iii) **Designated Area** means an area or region within the municipality and identified in an appendix to this bylaw. Any undertaking (planning level or project level) within or close to a designated area is subject to the EA process.
- (iv) **Environment** means the components of the Earth and includes:
  - (a) air, land and water,
  - (b) all layers of the atmosphere,

---

<sup>3</sup> 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.

<sup>4</sup> *Ibid.*

<sup>5</sup> Some definitions are taken from Brenda Heelan Powell, *A Model Environmental and Sustainability Assessment Law: Annotated Version* (Edmonton: 2013, Environmental Law Centre).

<sup>6</sup> See Cindy Chiasson, Kimberly Good, Guy Greenaway and Jason Unger, *Conservation Easements for Agriculture in Alberta: A Report on a Proposed Policy Direction* (2012: Environmental Law Centre and Miistakis Institute).

- (c) all organic and inorganic matter,
  - (d) all living organisms,
  - (e) the interacting natural systems that include the above components, and
  - (f) social, cultural, economic, environmental and interactive features or conditions affecting the lives of individuals or communities.
- (v) **Environmental Effect** means any change to the environment caused by municipal planning, development or a project including short term and long term, direct and indirect, and cumulative changes to:
- (a) human health and socio-economic conditions and trends,
  - (b) physical and cultural conditions and trends, or
  - (c) any structure, site or thing that is of historical, archaeological, paleontological architectural, or aboriginal/First Nations significance.
- (vi) **Environmental Assessment (EA)** means the process set out in this bylaw which may include screening, EIA, public participation, and decision-making.
- (vii) **Environmental Impact Assessment (EIA)** means the detailed assessment of municipal planning, development or a project having regard to social, cultural, economic and environmental components to determine if it will make a positive contribution to sustainability.
- (viii) **Environmentally Sensitive Areas**<sup>7</sup> means and includes but is not limited to all lands within the municipality that are significant ravines, valleys, stream corridors, lakeshores, wetlands and other unique landscape areas. Environmentally sensitive areas also include lands that are significant habitat for species or function as wildlife corridors.

---

<sup>7</sup> Definition adapted from Judy Stewart, *Template of Land Use Bylaw Regulations for the Protection of Natural Environment Features and Water Resources including Wetlands, Riparian Lands and Reserve Lands*, Bow River Basin Council (2008) available at [www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template](http://www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template).

- (ix) **Floodplain**<sup>8</sup> means lands that may be inundated by a 1 in 100 year flood event, as identified through the Canada Alberta Flood Reduction Program or a hydraulic evaluation undertaken by a qualified water resource professional. The flood risk area may include an ice hazard zone, which identifies those areas subject to damage from ice movement.
- (x) **Municipal Plans** means Statutory Plans and Non-Statutory Plans.
- (xi) **Natural Area**<sup>9</sup> means lands in a natural state where buildings and development are prohibited or restricted.
- (xii) **Non-Statutory Plans** include municipal planning tools such as long-range plans, long-range policies, and plans and policies that address, among other things, environmental matters; including but not limited to transportation plans, recreation plans, community plans, business development plans, and corridor and other land use studies.
- (xiii) **Planning Level** means assessment of a proposed Municipal Plan.
- (xiv) **Project Level** means an assessment of a proposed physical work or activity including construction, operation, modification, expansion, decommissioning, abandonment or other endeavor in relation to a physical work.
- (xv) **Qualified Environmental Professional**<sup>10</sup> means a certified expert with training and certification through a professional organization in a

---

<sup>8</sup> Definition taken from Judy Stewart, *Template of Land Use Bylaw Regulations for the Protection of Natural Environment Features and Water Resources including Wetlands, Riparian Lands and Reserve Lands*, Bow River Basin Council (2008) available at [www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template](http://www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template).

<sup>9</sup> Definition taken from Judy Stewart, *Template of Land Use Bylaw Regulations for the Protection of Natural Environment Features and Water Resources including Wetlands, Riparian Lands and Reserve Lands*, Bow River Basin Council (2008) available at [www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template](http://www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template).

<sup>10</sup> Definition taken from Judy Stewart, *Template of Land Use Bylaw Regulations for the Protection of Natural Environment Features and Water Resources including Wetlands, Riparian Lands and Reserve Lands*, Bow River Basin Council (2008) available at [www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template](http://www.brbc.ab.ca/brbc-documents/committees/.../157-land-use-bylaw-template).



particular field of scientific study, and includes all practitioners licensed in the province of Alberta by a recognized agency and providing professional services within their particular area of expertise.

- (xvi) **Statutory Plans** means municipal development plans, area structure plans, neighbourhood structure plans, neighbourhood area structure plans, and area redevelopment plans and intermunicipal<sup>11</sup> development plans.
- (xvii) **Water Body** means rivers, streams, watercourses, lakes and other bodies of water (both natural or manmade, and both permanent or intermittent) within the municipality.
- (xviii) **Wildlife Corridor** means a route of wildlife habitat that allows wildlife to move safely between areas of suitable habitat.

### Commentary

By providing definitions of **environment** and **environmental effect**, the bylaw can outline the scope of the EA process. These definitions help answer the questions of what aspects of the environment and what type of environmental effects are to be considered in the EA process.

The definition of **qualified environmental professional** can be modified to place restrictions on who can complete an EIA Report. In particular, can a company use an in-house environmental professional or is a third party required? Will the municipality maintain a roster of environmental professionals?

---

<sup>11</sup> Changes to the MGA coming into force on April 1, 2018 will significantly increase the importance of intermunicipal planning. Section 631 will be amended to make development of an intermunicipal development plan (IDP) mandatory for those municipalities which are not part of a regional growth management board. An IDP will be required to address, among other things, environmental matters within the area. In addition, adjoining municipalities will be required to develop an intermunicipal collaboration framework (ICF) (of which the IDP is part). The ICF is meant to address issues such as transportation, water and wastewater, solid waste, emergency services, recreation, and other services. The impact of these new requirements upon municipal environmental planning, management and stewardship is an area requiring further research which the ELC intend to pursue.

Consideration could also be given to providing definitions of other terms such as **cumulative effects, environmentally sensitive areas, wildlife corridors, natural park, agricultural land reserve, water body, floodplain** and so forth.

In addition, the bylaw could provide **designated areas** that are to be subject to the EA process (or these could be provided in other instruments such as the LUB or MDP).

### 3. Application of Bylaw

This bylaw will be applicable at both a Planning and Project level:

#### (a) Planning Level

- (i) The development of any new Statutory Plan or Land Use Bylaw shall be subject to the EA process and an EIA shall be required.
- (ii) The amendment of any existing Statutory Plan shall be subject to the EA process and screened to determine whether an EIA is required.
- (iii) The development or amendment of Non-Statutory Plans shall be subject to the EA process and screened to determine whether an EIA is required.

#### (b) Project Level

- (i) Every application to amend community plans, rezone lands and subdivide lands shall be subject to the EA process and screened to determine whether an EIA is required.
- (ii) Every application for a development permit within or in close proximity to select municipal regions (designated in an appendix to this bylaw), water bodies, environmentally sensitive areas shall be subject to the EA process and screened to determine whether an EIA is required.
- (iii) Every application for a development permit for a project that is 500 m<sup>2</sup> or larger shall be subject to the EA process and an EIA shall be required.

## Commentary

One of the key operating principles espoused by the International Association for Impact Assessment (IAIA) is that EA processes be applied “as early as possible in decision making and throughout the life cycle of the proposed activity”.<sup>12</sup> The goal of engaging EA early dictates the planning and decision making stage at which municipal EA will be triggered. Municipal EA could be triggered in two distinct instances:

- (a) Strategic level (municipal and statutory plans), and
- (b) Project level (development permit applications).

Curran suggests that the EA process be applied to applications for permits; to amend community plans, rezone lands and subdivide lands; zoning, development permits, and temporary commercial and industrial use permits.<sup>13</sup> Curran notes, at the project level, some municipalities apply EA requirements based on the size of the development whereas others use geographic location as a trigger. In each case, the application is initially screened to determine if an Environmental Impact Assessment (EIA) is required.

Using EA at strategic levels (i.e. conducting an EA at the stage of statutory planning) will allow for identification of environmentally significant areas (such as water bodies, wildlife corridors, natural areas etc.) and appropriate land use planning. In addition, this can guide the decision-making for future land development proposals including requirements for EA of such proposals.

## 4. Process

This bylaw sets out a multi-stage EA process from determining whether a full EIA is required for a particular undertaking to decision-making upon completion of an EIA.

### Step 1: Determine Applicability

---

<sup>12</sup> International Association for Impact Assessment, *Principles of Environmental Impact Assessment Best Practice* (January 1999) available on-line at [http://www.iaia.org/uploads/pdf/principlesEA\\_1.pdf](http://www.iaia.org/uploads/pdf/principlesEA_1.pdf).

<sup>13</sup> Deborah Curran and Ethan Krindle, *Green Bylaws Toolkit for Conserving Sensitive Ecosystems and Green Infrastructure* (Revised and Updated April 2016) available at [www.greenbylaws.ca](http://www.greenbylaws.ca) at pp.211 to 215.

- Planning Level EA
  - (i) The development of any new statutory plan or land use bylaw shall be subject to the EA process and an EIA shall be required.
  - (ii) The amendment of any existing statutory plan shall be subject to the EA process and screened to determine whether an EIA is required.
  - (iii) The development or amendment of non-statutory planning documents shall be subject to the EA process and screened to determine whether an EIA is required.
  
- Project Level EA
  - (i) Every application to amend community plans, rezone lands, subdivide lands and for a building or development permit shall be subject to the EA process and screened to determine whether an EIA is required.
  - (ii) Every application for a building or development permit within or in close proximity to Designated Areas, water bodies, environmentally sensitive areas shall be subject to the EA process and screened to determine whether an EIA is required.
  - (iii) Every application for a building or development permit for a development that is 500 m<sup>2</sup> or larger shall be subject to the EA process and an EIA shall be required.

### **Commentary**

When designing an EA bylaw, it must be borne in mind that the benefits of conducting EA must be balanced against the costs of EA. As stated by Curran, “[b]ecause impact assessments are an additional cost it may be unreasonable to require them for small projects”.<sup>14</sup>

---

<sup>14</sup> *Ibid.* at p.110.

In order to balance the benefits and costs of EA, the process needs to be designed to be scalable. That is, the level of information and public involvement may vary with the type of assessment (strategic level versus project level) and, in the case of specific development projects, the scale or potential impact of the project. This can be achieved via a combination of trigger points and a multi-stage process involving screening.

Trigger points could be proximity to a water body or environmentally significant area, or could be project size. For example, the Canmore LUB states that all development permit applications for buildings 500m<sup>2</sup> or greater require preparation of a sustainability screening report. The Pincher Creek LUB provides that an environmental impact statement may be required in specific identified areas of the municipality.

In the British Columbia context, Curran recommends that applications be screened to determine whether an EIS should be required.<sup>1</sup> The recommended factors to be considered in screening projects are (1) within 50m of a natural park, the agricultural land reserve, watercourse or a floodplain; (2) within 60m of marine shoreline; (3) outside the urbane containment boundary and involves a rezoning for more uses or density; (4) deemed to be environmentally sensitive. It is also recommended that screening consider the complexity (are there numerous environmental issues raised?) and time & resources (do staff have time and resources to assess project without an EIA?).

### Step 2: Screening

- (i) If Step 1 requires that an EIA be conducted, then skip screening and proceed directly to EIA.
- (ii) Otherwise, the Development Authority must conduct a screening of a proposed project. A proposed Municipal Plan or amendment thereto must be considered by the municipality's environment department or other person designated by this bylaw.
- (iii) A proposed project or Municipal Plan must be accompanied with sufficient information to enable screening of the proposal. The proponent must include

at least the following information:

- a. Provide a description of the proposed project, or Municipal Plan.
- b. Identify whether the proposal applies to or is within 100m of a Natural Area, Agricultural Land, Water Body, Floodplain, or Environmentally Sensitive Area.
- c. Describe the natural environmental features of the area that may be affected by the proposal.
- d. Identify any potential environmental issues raised by the proposal.
- e. Provide an overview of public consultation, if any, conducted in support of the proposal. Identify any public interest or concern that has been raised.

(iv) Factors to be considered in screening:<sup>15</sup>

If at Planning Level:

- a. does the plan apply to an area including a Natural Area, Agricultural Land, Water Body, Floodplain, or Environmentally Sensitive Areas;
- b. if an amendment to an existing plan, is the amendment significant or minor/administrative/clerical change;
- c. are there numerous environmental issues raised by the plan; or
- d. is there public interest or concern with the proposed plan.

If at Project Level:

---

<sup>15</sup> These factors to be considered in screening are recommended by Curran who recommends screening all zoning, development permit and temporary commercial & industrial use permit applications.

- a. is the project within 100m of a Natural Area, Agricultural Land, Water Body, Floodplain, or Environmentally Sensitive Area;
  - b. are there numerous environmental issues raised by the project;
  - c. do staff have time and resources to assess the project without an EIA; or
  - d. is there public interest or concern with the proposed plan.
- (v) Upon completion of the screening, the Development Authority (for a proposed project) or the municipality's environment department or other person designated by this bylaw (for a proposed Municipal Plan or amendment thereto) must decide whether:
- a. the proposed undertaking must undergo an EIA;
  - b. the proposed undertaking may proceed without an EIA;
  - c. additional information is required to complete the screening; or
  - d. the proposed undertaking cannot proceed.

### Step 3: Environmental Impact Assessment

- (i) If a Planning Level undertaking, the EIA is to be prepared at the expense of the municipality.
- (ii) If a Project Level undertaking, the EIA is to be prepared at the expense of the project proponent.

- (iii) The EIA must be completed by a Qualified Environmental Professional.<sup>16</sup>
- (iv) The EIA must define and evaluate Cumulative Effects of the proposed undertaking on the ecological features of the affected area. This includes, but not limited to, impacts on water quality and quantity, hydrology, air quality, aquatic biology, wildlife, trees and vegetation inventory, soils, and micro-climate. In addition, effects on cultural, social and economic components, including First Nations historic use, must be defined and evaluated.
- (v) The negative impacts identified by the EIA require preparation of a management plan to mitigate those impacts.
- (vi) For every Municipal Plan and project that requires completion of an EIA, there must also be preparation of a follow-up plan consisting of:
  - a. plans and mechanisms to collect data to monitor potential impacts;
  - b. plans and mechanisms to evaluate and compare collected data with standards, predictions and expectations identified in the EIA; and
  - c. plans and mechanisms to make decisions and take appropriate action in response to collected data and its evaluation.
- (vii) The EIA report is subject to municipal, provincial and federal agency review and comment as appropriate.
- (viii) Upon acceptance of the EIA report by the municipality, the report is open for public review and comment for a period of 30 days.
- (ix) Once the public comment period is closed, the EIA report and public comments are submitted to council as part of the application report.

---

<sup>16</sup> We recommend that the EIA be completed by a Qualified Environmental Professional. Consideration should be given to whether that professional can be an employee of the project applicant or must be a third party. The municipality may also consider maintaining a "roster" of professionals.



## Commentary

Strategic level EA may provide a mechanism to address both legacy projects and cumulative effects within the municipality.

As stated by Omura, brownfields impact on municipal long-term planning.<sup>17</sup> Municipal planning tools – such as community revitalization plans and area redevelopment plans – can be used to address brownfields within a municipality. According to the Federation of Canadian Municipalities, brownfield redevelopment should be a priority in municipal plans.<sup>18</sup>

In the context of municipal strategic EA (and consistent with the Federation of Canadian Municipalities' approach)<sup>19</sup>, brownfields can be addressed in municipal plans. This requires:<sup>20</sup>

- compiling a brownfield inventory including site location and characteristics; land ownership; land use; redevelopment potential; relevant municipal policies, plans or strategies; municipal contact person; and
- identifying priority sites for redevelopment.

As well, a municipal plan can outline a standard and streamlined approval process for brownfield proposals.<sup>21</sup> The Alberta Urban Municipalities Association has suggested mechanisms such as reducing or forgiving fees for rezoning applications, development permits or building permits to offset the additional costs of developing brownfields.<sup>22</sup>

---

<sup>17</sup> Robert K. Omura, *Strategies for Cleaning Up Contaminated Sites in Alberta*, May 2013, CIRL Occ. Paper #41.

<sup>18</sup> Federation of Canadian Municipalities, *Green Municipal Fund: Leadership in Brownfield Renewal Program: Best Practices Framework* ([www.fcm.ca/brownfields](http://www.fcm.ca/brownfields)) and Federation of Canadian Municipalities, *Green Municipal Fund: Brownfield Roadmaps 2016: Alberta (2016)* ([www.fcm.ca/gmf](http://www.fcm.ca/gmf)).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> See Alberta Urban Municipalities Association recommendations re: brownfields at <https://auma.ca/advocacy-services/programs-initiatives/brownfields/what-auma-doing-address-brownfields>.

In addition to addressing legacy projects in a comprehensive manner, municipal strategic EA is also well suited to consider cumulative effects. The Federal Court of Appeal has provided the following definition of cumulative effects:<sup>23</sup>

“Cumulative effects” are not defined in the [Canadian Environmental Assessment] Act. The Agency has defined cumulative environmental effects as “the effects on the environment, over a certain period of time and distance, resulting from effects of a project when combined with those of other past, existing, and imminent projects and activities.

In another case, the Federal Court of Appeal stated that a finding that a project has insignificant environmental effects does not preclude the need for considering cumulative effects because “[i]t is not illogical to think that the accumulation of a series of insignificant effects might at some point result in significant effects”.<sup>24</sup>

Given its intention to look at the sum total of many activities, the concept of cumulative effects assessment is not well suited for project level EIA.<sup>25</sup> Duinker and Greig suggest that, conceptually, it would be best to eliminate project level cumulative effects assessment to be replaced at the regional level.<sup>26</sup> However, given the practical barriers to doing so, there is need for a long-term shift from cumulative effects assessment within project EA to regional assessment processes.<sup>27</sup>

Given that municipalities have practical and legal requirements for planning, the development of such plans is a natural conduit for cumulative effects assessment. High level plans can assess existing activities and plan for future activities within a municipality. The plan, once completed, can provide guidance and set thresholds for future activities.

#### Step 4: Decision-Making Process

---

<sup>23</sup> *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, [2001] 2 FC 461 (FCA) at paragraphs 40 to 42.

<sup>24</sup> *Friends of West Country Assn. v. Canada (Minister of Fisheries and Oceans)*, [2000] 2 FC 263 (FCA) at paragraph 39.

<sup>25</sup> Peter N. Duinker and Lorne A. Greig, “The Impotence of Cumulative Effects Assessment in Canada: Ailments and Ideas for Redeployment” (2006) 37(2) *Environmental Management* 153 at 155.

<sup>26</sup> *Ibid.* at 158.

<sup>27</sup> *Ibid.*

- (i) Council must consider the EIA report, along with public comments, in making its decision regarding approval of the proposed Municipal Plan or project.
- (ii) Council may approve the Municipal Plan or project as proposed.
- (iii) Council may reject the Municipal Plan or project as proposed.
- (iv) Council may approve the Municipal Plan or project subject to additional conditions or Council may require changes to address concerns raised by the public or by Council.
- (v) With respect to a proposed Municipal Plan, the decision of Council may be subject to Judicial Review.
- (vi) With respect to a proposed project, the decision of Council may be appealed to the Subdivision and Development Appeal Board.

### **Commentary**

In order to be an effective tool for municipal planning and decision making, EA should be utilized in a purposive and relevant manner. As described by the IAIA, purposive EA means that the process “informs[s] decision making and result[s] in appropriate levels of environmental protection and community well-being”.<sup>28</sup> Relevant EA means that the process provides “sufficient, reliable and usable information for development planning and decision making”.<sup>29</sup>

The principles of purposive and relevance speak to the appropriate subject matter and criteria for EA. These raise questions of the types of environmental effects to be considered, the criteria to be used for assessing the project, the appropriate party for conducting the assessment, and the reliance on third party information (such as watershed plans from Watershed Planning and Advisory Councils). The opportunity for public participation and contribution by environmental non-governmental associations also play a role in EA purposiveness and relevance.

---

<sup>28</sup> *Supra* note 12.

<sup>29</sup> *Ibid.*

## **5. EIA Decision by Council and Time Limits**

- (i) If an EIA was required for a Planning Level Undertaking and was approved by Council, the Municipal Plan must be finalized in accordance with Council's decision (including any conditions or changes) within 180 days of that decision.
- (ii) If an EIA was required for a Project Level Undertaking, the EIA forms part of the application package presented to Council. The application to amend community plans, rezone lands, subdivide lands, or for a building or development permit may be:
  - a. rejected as proposed;
  - b. approved as proposed; or
  - c. approved subject to changes or conditions imposed by Council.
- (iii) In the case of approval of a Project Level Undertaking, Council will direct issuance of the necessary licenses, approvals and permits in accordance with [Land Use Bylaw/Development Permit Bylaw/etc] within 60 days of Council's decision.
- (iv) In the case of rejection of a Project Level Undertaking, the project may not proceed as proposed and no subsequent applications for a substantially similar project will be allowed.

## **6. Monitoring and Follow-Up**

- (i) The Municipality shall maintain a registry to facilitate public access to records relating to the Municipal EA process.
- (ii) The registry will maintain the following records and information:
  - a. applications submitted under the Municipal EA process;
  - b. all decisions, including screening decisions, made under the Municipal EA process;

- c. identification of conditions, if any, that were imposed on an approved Municipal Plan or project;
- d. the approved follow up plan for a Municipal Plan or project and any data collected pursuant to such plan;
- e. enforcement actions taken pursuant to the Municipal EA process; and
- f. any other information that the municipality considers relevant to the Municipal EA process.

(iii) The registry must be maintained and operated in a manner that ensures convenient public access.

#### **Commentary**

Following completion of an EA (and subsequent approval of a proposed plan or project), enforcement is essential. As stated by Duinker and Greig,<sup>30</sup> “the very best analysis of cumulative effects will be useless if it is not followed up with a vigorous monitoring program and subsequent mitigative action as warranted.” The same can be said of other matters considered in an EA process.

Recent work by the Canadian Environmental Network sets out several components in effective enforcement of EA (albeit at the federal level):<sup>31</sup>

- need assurance that obligations and commitments made during the hearing process yield expected results after the EA decision is made;
- tracking and reporting of results of EA must be open and transparent;
- future performance to minimize environmental impacts must be tracked, and be transparent and accountable – where necessary, should result in change to management and regulatory responses; and

---

<sup>30</sup> *Supra* note 25 at 159.

<sup>31</sup> Achieving a Next Generation of Environmental Assessment, Environmental Planning and Assessment Caucus of the Canadian Environmental Network (December 14, 2016), see *Theme 4: Post Assessment Decision Tracking, Reporting, and Compliance Assurance*, pp. 22 to 26.

- if development not started within prescribed time, then need new EA (although can reference findings from the first EA).

In designing a municipal EA bylaw, mechanisms to ensure enforcement should be adopted.

## 7. Fees Payable for Project Level Undertakings

- (i) In addition to fees that may be payable under other bylaws, the following EA fees are payable by the project proponent:

	<b>Fee Payable</b>
Screening of application for a building or development permit	
EIA Review of application to amend community plans, rezone lands, subdivide lands	
EIA Review of application for a building or development permit	
EIA Review of application for a building or development permit within or in close proximity to Designated Areas, water bodies, environmentally sensitive areas	
EIA Review of application for a building or development permit for a development that is 500 m <sup>2</sup> or larger	

### **Commentary**

The MGA does provide municipalities with some financial tools for cost recovery and revenue generation. The most significant tool being property taxes, business taxes, and other forms of direct taxation such as local improvement taxes and special taxes (Part 10). These forms of taxation do not likely provide an avenue for municipalities to recover their costs related to environmental assessment.

Other financial tools are tied to planning and development under Part 17 of the MGA. The MGA does have provisions allowing development conditions being imposed via agreements for development permit applications (s. 650) and subdivision applications (s.655); however, these are limited to road construction, pedestrian walkways, parking

facilities, for payment of off-site or redevelopment levies, or for the provision of security. These would not seem to allow recovery of environmental assessment costs incurred by a municipality. Similarly, the provisions for off-site levies (s. 648) and oversized infrastructure (s. 651), are limited in application and would not appear to allow recovery of environmental assessment costs.

However, under section 8(c)(i) of the MGA, council has authority to:

provide for a system of licenses, permits or approvals including establishing fees for licenses, permits and approvals, including fees for licenses, permits and approvals that may be in the nature of a reasonable tax for the activity authorized or for the purposes of raising revenue

in a bylaw made pursuant to its general bylaw power.

This provision has received limited judicial consideration. In *Passutto Hotels (1984) Ltd. v. Red Deer (City of)*,<sup>32</sup> the Court considered an application for certiorari quashing a Bylaw and declaring it void. The application was based on 3 grounds: “the purpose of the Bylaw is ultra vires the [MGA]; the licence fee imposed by the Bylaw is a tax that is not authorized by the MGA; and the Bylaw illegally delegates certain powers to the inspections and Licensing Manager” (para.1). Ultimately, the Court found that “the Bylaw is not ultra vires the MGA, that the licence fee is authorized by the MGA and that the delegation permitted under the Bylaw is administrative and therefore legal” (para. 2).

The impugned Bylaw pertained to licensing of drinking establishments and imposed fees. The fees covered licensing costs but also were intended to cover the costs of enhanced policing (which was required as a direct result of the operation of the drinking establishments) and to cover the cost of the Bylaw officer and other initiatives relevant to the Bylaw including the cost of inspections. The applicant argued that such fees exceed the authority under MGA s. 8(c)(i) by requiring certain businesses to disproportionately bear policing costs.

The Court stated:

[79] Section 8(c)(i) of the MGA specifically allows for the establishment of a fee for the purpose of raising revenue. No limit is placed upon the type of revenue contemplated. The evidence discloses the purpose of the revenue raised by the

---

<sup>32</sup> *Passutto Hotels (1984) Ltd. v. Red Deer (City of)*, 2006 ABQB 641.

fee is in part to defray some of the costs maintaining public order, the need for which arises from the operation of the drinking establishments. *Falardeau* makes it plain that while the purpose of a fee can be to raise revenue, at para 43, "...such a fee must be related to the regulation of trade or business within the municipality and must be incidental or ancillary to the jurisdiction to regulate business or industry within a municipality." The evidence makes plain that the licence fees set by the Bylaw are genuinely related to the operation of the drinking establishments. Further, a precise estimate of the enhanced costs is not necessary as long as the expenses are definable and not colorable. *Lafarge Canada Inc. v. Foothills (Municipal District No. 31)* (1991), 78 D.L.R. (4th) 763, 115 A.R. 342 (C.A.).

[80] I find the licence fee imposed under the Bylaw is authorized under the MGA.

This case follows the reasoning adopted in previous cases (while these decisions considered the predecessor to the current MGA, provisions similar to the current MGA s. 8(c)(i) were considered and, as such, these decisions remain relevant). In *Lafarge Canada Inc. v. Foothills (Municipal District No. 31)*,<sup>33</sup> the Court considered a Bylaw which imposed varying fees upon sand, shale or gravel mine operations according to the scale of the operations. These fees were challenged as an indirect and therefore prohibited tax, as well as being unfairly discriminatory and requiring a business license fee for activities that do not, in themselves, constitute a business. Ultimately, the Court upheld the bylaw in this case. The Court found that the licensing fee regime could be upheld as providing "for the regulation, by direct means, of a business within the regulatory and taxing competence scheme of the [municipality], and not one designed as a mere cloak for ulterior revenue-gathering" (para.19).

In making its decision, the Court noted that there was evidence that the municipality was being exposed to costs peculiar to the appellant's mining operations (such a compliance with permits, road damage, dust and noise suppression). The Court stated that "[w]here the cost problem being addressed by the municipality is real and relatable to a business which is well within the authority of the municipality to regulate" it does not follow that "precise costing studies as a requisite to municipalities moving in these areas" are mandated (para. 15). The Court also states that "even if the licensing scheme proved revenue positive to the Municipal District of Foothills No. 31, it does not necessarily fall" (para. 15). Furthermore, "that a Municipal District can pass bylaws concurrently designed to generate revenue as well as to

---

<sup>33</sup> *Lafarge Canada Inc. v. Foothills (Municipal District No. 31)* (1991), 78 D.L.R. (4th) 763, 115 A.R. 342 (C.A.),



compensate for definable expenses will not bring them down provided the scheme is not wholly colorable” (para.16).

Similarly, in *Falardeau v. Hinton (Town)*,<sup>34</sup> the Court considered a challenge to business licence fees for mobile park operators. The business licence fees were increased with the knowledge that such fees would be passed onto owners or occupants of the mobile homes. Ultimately, the Court upheld the licensing fee scheme, stating:

[6] The appellant’s position is that the by-law imposed a licensing fee designed to raise a revenue and therefore an indirect tax.

[7] In our view the entire issue must be resolved by determining whether the charge is properly characterized as a “tax”. Critical is the trial judge’s finding, based on evidence before her, that this fee, albeit for the purpose of raising money, was incidental to the regulation of the business and reflected costs relating to the provision of services by the town to the residents of mobile homes on licensed mobile home parks.

[8] The town may, of course, regulate the business of mobile home parks. The appellant’s argument amounts to saying that the town cannot, however, recover costs for services it incurs in permitting that particular business. In the light of the express finding of the trial judge, we view the licence fee as reflecting a determination that mobile home parks will only be permitted if they make a reasonable contribution to the costs of services made necessary by allowing those businesses to function.

The Court noted that the costs “which the town seeks to recover here are not costs of administering the scheme but costs incurred as a result of permitting mobile home parks to function” (para. 9). The lower Court noted that the amount of the tax would be unreasonable only if it were to reach the level of being “prohibitive or confiscatory” (para. 30). The Court of Appeal did not comment on this particular point.

These cases provide some guidance on imposing fees pursuant to s.8(c)(i) of the MGA:

---

<sup>34</sup> *Falardeau v. Hinton (Town)*, 1985 ABCA 198 (CanLii).

1. The fee must be related to the regulation of trade or business, and must be incidental or ancillary to the jurisdiction to regulate business or industry.
2. The expenses sought to be recovered must be definable and not a colourable attempt to indirectly tax.
3. However, precise calculation of the expenses sought to be recovered is not necessary.
4. The fees must not be prohibitive or confiscatory.

In setting fees to recover municipal costs associated with environmental assessment, this guidance must be kept in mind. The model bylaw divides fees according to the EA process. It is likely that costs associated with screening will be relatively low as compared to review of an EIA. Similarly costs to screen an application for a building or development permit will likely be lower than the cost to screen an application to amend community plans, rezone lands, or subdivide lands.

## **8. Prohibitions**

- (i) If a proposed project is subject to the EA process, it is an offence to proceed with the project prior to obtaining necessary approval from the Development Authority or Council as the case may be.
- (ii) A person is guilty of an offence where they make use of land or a project in a manner that is not in accordance with an approved development permit including any conditions forming part of that development permit.
- (iii) Any person who is convicted of an offence pursuant to this bylaw is liable on summary conviction to a fine not exceeding \$250,000 and in default of payment of any fine imposed, to a period of imprisonment not exceeding six months.
- (iv) In addition to imposition of a fine, a person may be held liable for removal of the development or project, and for remediation of the environment to the condition it would have been in but for the addition of the project.