

## 9. EA Amendment Process

The DMNP will take approximately 10 to 20 years to construct and will exist in perpetuity as part of the Toronto waterfront. The extended duration of construction may result in changes in circumstances (e.g., availability of funding) that require design or scheduling modifications. The dynamism inherent with naturalization projects (see **Chapter 8**) suggests that there will likely be project modifications (i.e., adaptive measures) between the time of EA approval and the achievement of project objectives.

The AEM approach outlined in **Chapter 8** will identify the need for project modifications where necessary. Adaptive measures and other changes identified during the period between EA approval and detailed design will be screened by TRCA to determine if additional regulatory approval (e.g., EA addendum, public consultation) is required before proceeding. To facilitate this process, a project-specific approach for assessing modifications to design or construction phasing has been established.

This chapter outlines the existing regulatory tools through which post-approval EA modifications can be made, and describes the project specific approach that will be used for post-approval review of modifications proposed for the DMNP.

### 9.1 Regulatory Provisions for Post EA Modifications

#### 9.1.1 The Ontario *EA Act*

The Ontario *EA Act* includes provisions for amending a project in situations where there is a change in circumstances or new information becomes available following EA approvals. Currently, post-approval modifications to a project occur on a project specific basis through amendment provisions included in an EA application or approval documents. The Minister of Environment can approve amendments to an approved undertaking when post-approval modifications are proposed where provisions for amendments have been included in the EA document.

Under the current Ontario *EA Act*, there is no formal process for review and assessment of post-approval modifications to the project. The existing mechanism where amendment provisions are built into the EA will be used to assess AEM measures and other design modifications proposed for the DMNP. **Section 9.2** describes the process through which adaptive measures and design modifications will be submitted for approval.

#### 9.1.2 The *CEAA*

The *CEAA* includes provisions to amend an approved EA when post-approval modifications to the project are proposed. Section 24(1) of the Act identifies the circumstances under which amendments can be made. Section 24 states that “the responsible authority shall ensure that any adjustments are made to the report that are necessary to take into account any significant changes in the environment and in the circumstances of the project and any significant new information relating to the environmental effects of the project.”

Section 9.2 presents a DMNP specific approach to post EA modifications based on these existing regulatory provisions.

### 9.2 DMNP Approach to Post EA Modifications

**Chapter 8** outlines a comprehensive monitoring program that will be implemented to guide the AEM strategy for the DMNP. The AEM strategy may trigger proposed modifications to the project if monitoring results indicate that project objectives are not being achieved. In addition to AEM measures, there may be design modifications that

result from changing circumstances over the extended period between EA approval and the establishment phase for the project. Thus, a clear and detailed method to identify the types of modifications that will trigger further environmental approval is needed.

TRCA is responsible for reviewing monitoring data and identifying opportunities to alter or improve the project management, design and/or construction phasing. TRCA and Waterfront Toronto may also identify modifications to project design or construction scheduling based on other factors such as project funding status. When a need to modify the project is identified, an internal effects assessment will be conducted by TRCA to assess the impact of the modifications on environmental components (as predicted in the EA) and desired project outcomes. Wherever possible, any proposed modifications will minimize adverse environmental effects and/or maximize project benefits. This effects assessment will determine the need (or lack thereof) for further review by the appropriate regulatory body, such as the MOE or the CEA Agency.

When project modifications are identified through the AEM process, the TRCA will prepare a technical memorandum to document the proposed modifications and their potential effects. The technical memorandum will draw upon the appropriate expertise to determine the effects of proposed modifications in relation to the predicted effects outlined in the EA. This will form the basis from which the magnitude (i.e., minor or major) of the proposed modifications can be determined. The technical memorandum will include the following information:

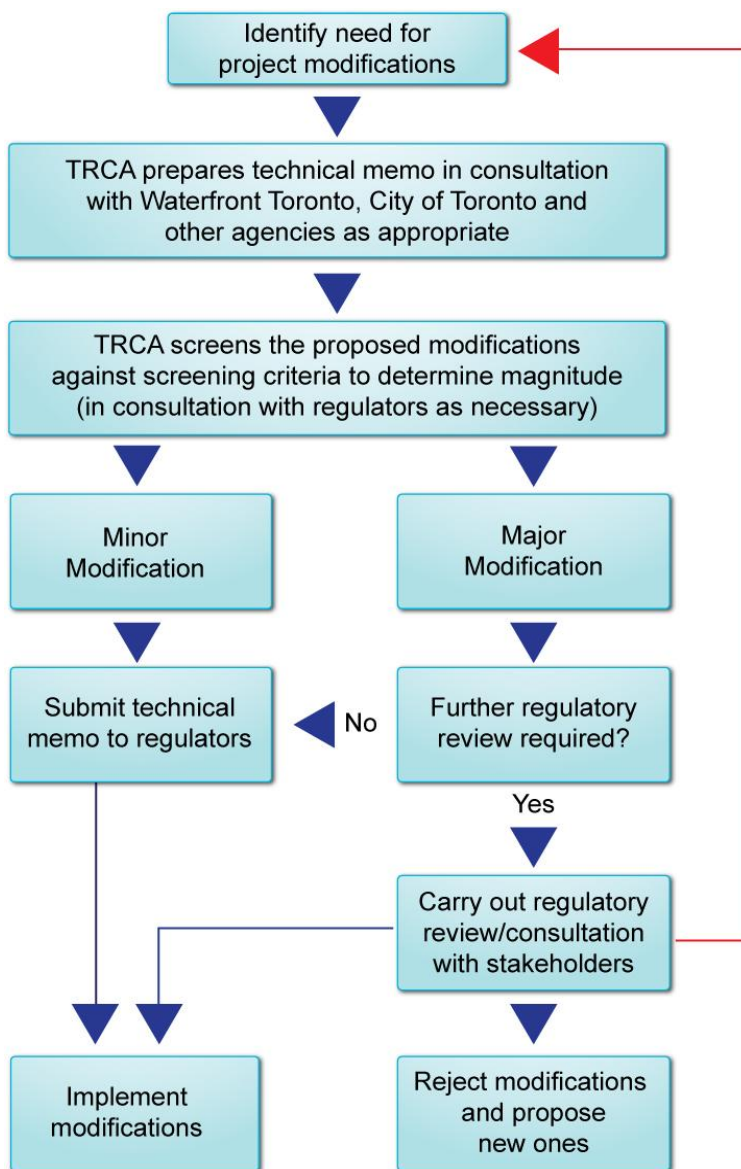
1. The need for modifications (e.g., new information from monitoring program, funding changes, etc.);
2. A description of the design and functions;
3. A description of the proposed modifications;
4. An assessment of how modifications will affect project outcomes;
5. An assessment of the predicted effects on the environment;
6. A comparison of the anticipated effects from proposed modifications to the effects predicted from the original design; and
7. A conclusion on the magnitude of the proposed modification (minor or major).

The technical memorandum will be drafted by the TRCA in consultation with Waterfront Toronto and City of Toronto and will be circulated to appropriate stakeholders, including the MOE for review. For the purposes of this EA, consultation with Waterfront Toronto and the City for the purposes of a DMNP amendment refers to:

1. TRCA's intent is to strive for consensus with WT and City of Toronto regarding proposed amendments to the DMNP EA;
2. However, where consensus is not possible, TRCA will reserve the right to proceed or not to proceed with an amendment in absence of consensus if TRCA deems that the ecological or hydraulic function of the DMNP would be negatively affected or if the proposed amendment is counter to TRCA's regulatory function or role.

The technical memorandum will assess the magnitude of the proposed change in relation to the predicted effects outlined in the EA and the desired project outcomes by screening the proposed modifications against a set of criteria. The final determination of magnitude (major modification vs. minor modification) will be done in consultation with the appropriate regulatory body (e.g., CEA Agency, MOE). If the proposed modification increases the likelihood of achieving desired project outcomes and/or does not change or reduces the environmental effects identified in the EA, then the modification will be considered minor and will not trigger any further action. Where there is the potential to increase the environmental effects identified in the EA, then the modification may be considered major and the appropriate regulatory body will determine the need for any additional regulatory

requirements. In addition there may be the need for additional consultation with the broader stakeholder community. All technical memoranda and/or addenda will be submitted to the MOE for inclusion in the project files as part of the public record. Documentation and compliance with modification procedures and clarification of the assessment of any proposed changes may be subject to MOE review. **Figure 9-1** summarizes the process for approving post-EA modifications.



**Figure 9-1 Approval Process for Proposed Modifications to the DMNP**

### 9.2.1 Screening Criteria for Post EA Modification

Proposed project modifications will be screened against a set of criteria to determine the magnitude (minor or major) of modifications on the environmental effects predicted in the EA and on desired project outcomes. The screening questions that the TRCA will use to determine magnitude relate directly to the project objectives identified in **Chapter 1**. **Table 9-1** includes proposed screening criteria that will be finalized by TRCA prior to detailed design.

**Table 9-1 Proposed Screening Criteria**

|                                                                                                                                                          |                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| <b>Does the change alter the spatial extent of the floodplain, spillway or low flow channel such that flood conveyance may be affected?</b>              |                                                      |
| YES – TRCA in consultation with regulators will determine if further regulatory action is required                                                       | NO – proceed if all other screening criteria are met |
| <b>Does the change alter the type of crossing of the floodplain, spillway or low flow channel such that flood conveyance may be affected?</b>            |                                                      |
| YES – TRCA in consultation with regulators will determine if further regulatory action is required.                                                      | NO – proceed if all other screening criteria are met |
| <b>Does the change reduce the spatial extent of the naturalized area?</b>                                                                                |                                                      |
| YES – TRCA in consultation with regulators will determine if further regulatory action is required.                                                      | NO – proceed if all other screening criteria are met |
| <b>Does the change reduce the anticipated quality and / or function of the naturalized area?</b>                                                         |                                                      |
| YES – TRCA in consultation with regulators will determine if further regulatory action is required.                                                      | NO – proceed if all other screening criteria are met |
| <b>Does the change adversely affect the function of river management controls?</b>                                                                       |                                                      |
| YES – TRCA in consultation with regulators will determine if further regulatory action is required.                                                      | NO – proceed if all other screening criteria are met |
| <b>Does the change affect a condition of approval of the EA or any other approval or permit?</b>                                                         |                                                      |
| YES – TRCA in consultation with regulators will determine if further regulatory action is required.                                                      | NO – proceed if all other screening criteria are met |
| <b>For modifications to construction activities, is the change likely to cause a nuisance to interim uses such as businesses and recreational users?</b> |                                                      |
| YES – TRCA to seek approval from Waterfront Toronto and the City                                                                                         | NO – proceed if all other screening criteria are met |
| <b>Is the change likely to result in adverse effects related to increased turbidity within the Keating Channel or Inner Harbour?</b>                     |                                                      |
| YES – TRCA to seek approval from Waterfront Toronto and the City                                                                                         | NO – proceed if all other screening criteria are met |

This screening process will guide the preparation of a technical memorandum that the TRCA will submit to the appropriate stakeholders for review (in consultation with appropriate regulators). If the desired change results in an increase or worsening of the identified effects, further regulatory action may be required to assess the effects and identify appropriate mitigation. Any further regulatory action may require public consultation and/or broader agency consultation.

**Table 9-2** provides a list of examples of major versus minor modifications. These are only provided as general examples and a final determination of magnitude will follow screening and consultation with regulatory agencies.

**Table 9-2 Examples of Minor vs. Major Project Modifications**

| <b>Minor Modification</b>                                                                                                                                                                                                                                                                                      | <b>Major Modification</b>                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Adjustment or alteration of mechanisms to control water flow into wetlands</li> <li>• Replanting/seeding vegetation in problem areas</li> <li>• Re-grading the floodplain in its existing alignment</li> <li>• Adjusting the layout of recreational trails</li> </ul> | <ul style="list-style-type: none"> <li>• Construction activity required outside anticipated construction footprint of the river valley</li> <li>• Diversion of river floodlines into new areas/channels</li> <li>• Disturbance of contaminated soils below capped fill areas</li> <li>• New property takings</li> </ul> |

Given this information, it is apparent that if modifications to the project do not worsen the predicted impacts/effects and do not represent a major perceived change from the perspective of the public and/or agencies, they can be easily implemented through the existing regulatory process.