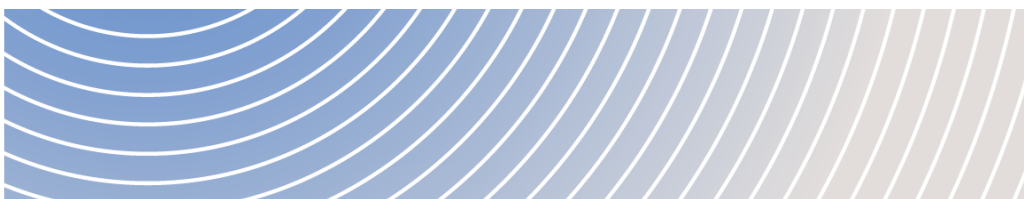




Impact Assessment  
Agency of Canada

Agence d'évaluation  
d'impact du Canada

# **Information for Proponents: Preliminary Consultation Assessment in Impact Assessments under the *Impact Assessment Act***



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Canada 



# Overview

On behalf of the federal government, the Impact Assessment Agency of Canada (the Agency) serves as the Crown Consultation Lead and the one window for Indigenous communities participating in the impact assessment (IA) process under the Impact Assessment Act (IAA). As the lead, consultation obligations require the Agency to identify Indigenous communities that may be impacted by a potential project and decisions taken pursuant to the IAA. To identify Indigenous communities, the Agency conducts a Preliminary Consultation Assessment and shares the results with the proponent to help facilitate early relationship-building between the proponent and Indigenous communities.

By the time that a project first enters the IA process, there should already have been engagement between a proponent and potentially-impacted Indigenous communities through advance planning, provincial regulatory processes, and/or the proponent's corporate policies and standards. Continuing to build on early and meaningful engagement between the proponent and the potentially-impacted Indigenous communities is one of the most effective ways to support an efficient and robust assessment.

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## The following questions are answered below:

- What is a Preliminary Consultation Assessment?
- Why is consultation with Indigenous Peoples required in impact assessments?
- What is the proponent's role in early consultation and engagement?
- How does the Agency undertake its Preliminary Consultation Assessment?
- Will the results of the Preliminary Consultation Assessment change?
- What is expected from proponent as the impact assessment progresses?
- What if the potential project is also being assessed under provincial legislation?
- Where can I go for further information?



## What is a Preliminary Consultation Assessment?

A preliminary consultation assessment is the analysis undertaken by the Agency as early as possible in the IA process to identify the Indigenous communities that may be impacted by a potential project. Available information from multiple sources on the nature and extent of asserted or established rights of Indigenous communities and of the potential extent of project effects are considered to identify where potential project effects could impact these rights.

This assessment is preliminary, as more detailed information gathered through the planning phase will inform deeper understanding of the intersection between proposed project activities and their potential severity of impacts on rights and practices. As this information builds through the assessment process, the Agency can provide additional guidance to proponents on its views of the level of impacts that the proposed project may have on different Indigenous groups.

## Why is consultation with Indigenous Peoples required in impact assessments?

The Agency's obligation and commitment to consult and engage with Indigenous communities is grounded in:

- Government of Canada commitments to achieving reconciliation with Indigenous Peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on recognition of rights, respect, cooperation, and partnership as the foundation for transformative change;
- Government of Canada commitments to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) as the framework for reconciliation;
- The *Principles respecting the Government of Canada's relationship with Indigenous Peoples*, which encourage starting from the objective of deepening understanding and respecting self-determination;
- Constitutional obligations under Section 35 of the *Constitution Act, 1982* and associated case law establishing the duty to consult and the Honour of the Crown. A duty to consult, and where appropriate, accommodate, arises when contemplated Crown conduct (such as a decision under the IAA may adversely impact asserted or established Aboriginal or treaty rights;
- Statutory obligations under the IAA and the commitment to carry out high-quality impact assessments that ensure Indigenous perspectives, concerns, expertise, and Knowledge contribute to informed decision making on proposed projects; and,
- Agency commitments to build and maintain relationships and engage with Indigenous Peoples, beyond the Duty to Consult.

Proponent engagement with Indigenous communities is required to inform the impact assessment, identify measures to avoid, and minimize potential adverse impacts and optimize potential positive impacts on Indigenous Peoples' rights and interests from the potential project. More detailed guidance is provided in the Agency's [Practitioner's Guide to the Impact Assessment Act](#). Please also see the end of this document for links to further information.



The proponent's engagement with Indigenous communities should aim to:

- Begin at the earliest reasonable opportunity and continue to build and maintain relationships and meaningful dialogue throughout the process. In cases where proponents have not engaged with communities prior to contacting the Agency, proponents should take immediate steps to engage with the full list of Indigenous communities identified through the preliminary consultation assessment in a manner that is proportionate to the potential severity of potential project impacts on each Indigenous community;
- Be consistent with the Government of Canada's commitment to the UN Declaration, including seeking free, prior, and informed consent;
- Be consistent with jurisprudence and best practices with respect to implementing the government's common law duty to consult; and,
- Similar to the Agency, support high-quality assessments and ensure Indigenous perspectives, concerns and knowledge contribute to informed decision-making on proposed projects.

## What is the proponent's role in early consultation and engagement?

Proponents are expected to build and maintain good working relationships with Indigenous communities throughout the IA process, ideally beginning before the submission of an Initial Project Description (IPD) and the start of the formal IA. Early engagement supports a robust and efficient planning phase, by supporting a preliminary understanding of how the project may impact Indigenous Peoples and their rights, and further sets up the foundation for subsequent impact assessment phases.

To inform the Agency's preliminary consultation assessment, the proponent provides information about the project, potential project effects and the geographic extent of such effects, and the information gathered through engagement activities with Indigenous communities to date. Proponents are encouraged to work with the Agency to understand what information would best support the assessment of the project, and to present any information that supports an evidence-based preliminary understanding of the extent of potential project effects and how these effects could potentially impact Indigenous Peoples.

Proponents are expected to engage with Indigenous communities meaningfully and respectfully. The Agency requires information from each Indigenous group, including information about how they were engaged and any comments they provided. Records should demonstrate thoughtful, appropriate conduct.

If needed, the Agency can help facilitate early engagement with Indigenous communities by the proponent to help inform IPD and subsequent Detailed Project Description (DPD) development. The Agency is open to early discussions with the proponent about the IA process and to address any questions or concerns on the preliminary consultation assessment or other items to support early engagement. The Agency has an obligation and commitment to consultation and engagement and will provide support and guidance in helping proponents navigate through sensitivities, should they arise.



## How does the Agency undertake its Preliminary Consultation Assessment?

The principles that guide the preliminary consultation assessment include:

- Respecting the inherent rights of Indigenous Peoples and those protected under Treaty;
- Establishing a process that enhances opportunities and removes barriers to Indigenous participation;
- Consistent and transparent consideration of key factors in the analysis, balancing thoroughness and known limitations (e.g. uncertain information early in IA processes);
- Considering the range and diversity of Indigenous voices and an inclusive approach to ensuring these are appropriately and adequately represented in IA processes; and,
- Facilitating an adaptive process to accommodate new information from Indigenous communities and proponents that will lead to updates to the scope of consultation.

The considerations in a preliminary consultation assessment include:

- Ensuring multiple sources of information are reviewed and considered, including information from the proponent and Indigenous communities.
- The approximate geographic extent of the potential project effects for various pathways. This may include the extent of effects on a waterway (upstream or downstream) or watershed, airshed, and lands, as applicable.
- The location of traditional territories, reserve lands, and land claims in relation to the extent of potential project effects.
- Where Indigenous communities have indicated the potential for impacts from the project either to the Agency or to the proponent during early engagement.
- Where Indigenous communities have indicated their interest and/or rights in the region, available in public documents related to previous consultation and engagement activities conducted by the Agency or other federal departments.

This information is considered together to determine if there is a potential intersection, or pathway of effects, between the potential project effects and Indigenous rights. Different spatial and temporal considerations are necessary for different sources of potential impacts. For example, the potential impacts from light or noise will be different than impacts to a river or through the air. A variety of pathways to impacts must be considered, including biophysical, social, economic, and health related pathways. The potential effects will be unique to each project and its geographic location.

The Agency encourages Indigenous communities to provide information to the Agency and the proponent about the potential impacts of the proposed project, their territory and the exercise of their rights, and the overlap of project impacts and rights. This helps to further refine the identification of potentially impacted Indigenous communities early in the assessment process by determining where there is, and is not, a pathway of effects from the project on Indigenous rights.



In addition to information provided by proponents and Indigenous communities, the Agency may use several of the following resources to ensure its use of accurate and up to date information in the IA process:

- [Aboriginal and Treaty Rights Information System \(ATRIS\)](#) for information on some Indigenous communities (note: not all Indigenous communities are on ATRIS) and identifying where some have Aboriginal and/or Treaty rights in areas overlapping the study area of the project;
- Historic or modern treaty maps, maps of traditional territories;
- General mapping resources for the geographic location of the project and potentially impacted communities, as well as biophysical environmental data such as hydrometric, watershed, and air quality maps;
- Consultation protocols established by Indigenous communities and shared with the Agency;
- Texts of historic and modern treaties;
- Broadly applicable and publicly available information from Indigenous organizations and communities (e.g. Tribal Council or community websites);
- Available information from Indigenous communities asserting rights in a specific area, including through litigation;
- Existing and previously completed federal or provincial environmental impact assessments and other related regulatory processes;
- Traditional use or ethnohistorical studies in the Crown's possession;
- Other Federal and Provincial authorities; and,
- Current Consultation Framework Agreements or protocols in place between Canada and an Indigenous group.

## Will the results of the Preliminary Consultation Assessment change?

As the IA process continues, the assessment is refined based on factors including direction from Indigenous communities, information on rights and practices, and information from the proponent, including a further developed understanding of potential project impacts. For example, this refinement could occur in a situation where, through engagement and consultation, it is determined that there are no potential impacts from the project on the rights of an Indigenous community, or if they communicate to the Agency that there is no need for consultation or engagement.

Meaningful engagement of potentially impacted Indigenous communities prior to, and early in the IA process, by the proponent and by the Agency, are required to support a clear understanding of the potential effects from the project. The Agency will work with the proponent to address any questions, receive information, and clarify expectations. Meaningful and informative discussion with potentially impacted Indigenous communities at the outset of, or prior to, the IA reduces unanticipated issues later in the IA process.

The Agency also works with Indigenous organizations and communities from the outset of an assessment process and throughout the Preliminary Consultation Assessment and seeks their involvement in the development of the Indigenous Engagement and Partnership Plan (IEPP) and the Tailored Impact Statement Guidelines (TISG). At the end of the planning phase, the Agency will present the IEPP and the TISG for the project to the proponent and post the documents to the Canadian Impact Assessment Registry. Proponents



are required to engage the Indigenous communities presented in the IEPP and to meet the information requirements outlined in the TISG. If an Indigenous group indicates that they do not want further project engagement, the proponent must provide a record of this direct communication to the Agency.

## **What is expected from proponents as the impact assessment progresses?**

Building on the relationships formed or maintained during early phases, proponents must engage Indigenous communities to support information gathering, shared understanding of potential project effects and explore possible avoidance or mitigation measures.

The Government of Canada has a responsibility to support Indigenous Peoples in strengthening capacity and does so through programs such as the Agency's Indigenous Capacity Support Program and Participant Funding Program. Proponents also play a role in supporting capacity, which may include funding, to allow for Indigenous communities to work with them to gather information and conduct or contribute to the necessary studies and analysis on the impact on rights assessment.

The engagement level or effort given by the proponent to Indigenous communities on the Crown list should be proportionate to the potential severity of proposed project impacts. Regardless of the severity, engagement must always be approached with flexibility and carried out in good faith with the understanding that circumstances may change and new information may become available over the course of the IA process. Working closely with Indigenous communities to understand where information gaps exist and providing clear and transparent information to address these gaps will support the goal of seeking consensus and shared understanding of the potential impacts.

## **What if the potential project is also being assessed under provincial legislation?**

The IAA promotes collaboration with other jurisdictions, whereby all jurisdictions work together to support a single IA process for major proposed projects. The Agency's approach is 'one project, one assessment', with the goals of reduced duplication, increased efficiency, and certainty. The Agency engages with other relevant jurisdictions to exchange information about the proposed project effects and Indigenous Peoples' rights.

As the Agency's obligations and commitments may differ from provincial obligations and commitments under their respective authorities, there may be corresponding differences between the provincial and federal requirements. The Agency encourages proponents to engage with Agency staff early to discuss consultation requirements for potential differences between provincial and federal consultation requirements. Proponents are encouraged to work with all Indigenous organizations and communities required by federal and provincial processes, as well as with federal and provincial assessment authorities, to determine how to best meet all requirements in a respectful, consistent, and effective manner.



## Where can I go for further information?

Proponents are encouraged to contact the Agency as early as is reasonable to discuss potential projects that may be subject to the IAA: [Contact the Impact Assessment Agency of Canada - Canada.ca](#)

The Impact Assessment Agency of Canada home page provides links to information on the IAA and its Regulations, guidance on the IA process, and more: [Impact Assessment Agency of Canada - Canada.ca](#). To support proponents in the IA process, there is information that can be found regarding their roles and responsibilities in Section 5.3 of the: [Practitioner's Guide to the Impact Assessment Act](#). Schedules 1 and 2 of the [Information and Management of Time Limits Regulations](#) outline the information requirements in the Initial and Detailed Project Descriptions, including the required information related to potential impacts on Indigenous Peoples and engagement undertaken.

The Agency continues to develop additional tools and guidance to support proponents and other participants in impact assessment processes and welcomes feedback regarding areas upon which to focus.