

## Assessment of Potential Impacts on Rights: Operational Guidelines for Project Proponents

### 1. Purpose of these Guidelines

The Indigenous Advisory Committee to the Impact Assessment Agency of Canada developed these guidelines to advise proponents as they build relationships with Indigenous Peoples during the federal impact assessment process. They are designed to be clear, practical, and ready to operationalize. They build on – and should be used in conjunction with – the [Principles to Guide the Assessment of Impacts to Indigenous Inherent and Treaty Rights](#) previously developed by the Indigenous Advisory Committee.

While these guidelines are based on what has worked well in the past, they also advance new practices that – if implemented – will help ensure that the impact assessment process establishes the conditions through which the free, prior, and informed consent (FPIC) of Indigenous Peoples may be provided. They will also help ensure that the impact assessment process meaningfully aligns with the:

- Truth and Reconciliation Commission (TRC) of Canada’s [Calls to Action](#), particularly Calls to Action 45, 46, 47, and 92.
- National Inquiry into Missing and Murdered Indigenous Women and Girls’ (MMIWG) [Calls for Justice](#), particularly Calls to Justice 13.1, 13.2, 13.3, 13.4, and 13.5.
- [United Nations Declaration of Rights for Indigenous Peoples](#) (UNDRIP), particularly articles 3, 26, and 32.
- Historic treaties, modern treaties, land claim agreements, and self-government agreements signed between Indigenous Peoples and Crown governments across Canada.

These guidelines are just that: guidelines. They are not intended to be implemented exactly as written; rather, they should be used as a framework by proponents to inform their efforts to build relationships with Indigenous Peoples. These efforts must always be deeply rooted in the approaches, values, and needs of the Indigenous Peoples who are part of the process.

### 2. Assessment of Potential Impacts on the Rights of Indigenous Peoples

The assessment of potential impacts on the rights of Indigenous Peoples (the ‘assessment of impacts on rights process’) is required under the common law duty to consult, which flows from the Honour of the Crown, the Crown’s role as fiduciary, and the rights recognized and affirmed under s.35 of the *Constitution Act, 1982*. One of the ways the Crown discharges this duty is through the impact assessment of a designated project under the [Impact Assessment Act](#) (IAA).

Under the IAA, the Impact Assessment Agency of Canada (‘the Agency’) is responsible for the actual assessment of impacts on rights process on behalf of the Crown. In this role, the Agency helps streamline the process and reduce capacity demands on Indigenous Peoples by coordinating federal authorities and acting as a “one window” point of contact. Under federal law, the final determination of impact rests with the Minister of Environment and Climate Change Canada as the Minister responsible for the IAA (or, some cases, the Governor in Council).

Indigenous Peoples assess potential impacts to their rights and choose whether to provide FPIC based on their own laws, customs, and governance processes. Indigenous laws are a manifestation of

Indigenous rights and are derived from a range of legal traditions across the country. Like Canadian law, which is derived from a common law system, Indigenous laws are changed and adapted on an ongoing basis. The guidance in this document is part of this continually shifting legal landscape and will be updated as needed.

The Agency has developed a [methodology](#) for assessing potential impacts on the rights of Indigenous Peoples, an explanation of the broader [policy context](#), and an [overview](#) of Indigenous participation in impact assessment. Proponents should familiarize themselves with these documents to develop an in-depth understanding of the assessment of impacts on rights process. This document provides guidelines to help proponents understand their role in the process.

### **3. Defining Indigenous Rights**

There is no single definition of Indigenous rights because they are interpreted differently by different rights-holders. Broadly speaking, they are collective rights held by Indigenous Peoples that flow from original occupation of the territory<sup>1</sup> that now comprises Canada. Indigenous rights are inherent in Indigenous law and form the foundation of treaties, land claim agreements, self-government agreements, and other agreements that describe how the land is shared.

In addition to these agreements, Indigenous rights are recognized under Canadian law in s.35 of the *Constitution Act, 1982* and robust case law that affirms and operationalizes s.35 rights. More recently, Indigenous rights were further recognized under Canadian law in the *United Nations Declaration on the Rights of Indigenous Peoples Act*, which commits the Government of Canada to ensure all federal laws are consistent with UNDRIP. It is important to emphasize that Canadian law only provides sources of *recognition*, not the source of the rights themselves; Indigenous rights are inherent, inalienable, and derived from Indigenous Peoples' relationship with their territory.<sup>2</sup>

The protection of Indigenous rights is the fundamental objective of the assessment of impacts on rights process.

### **4. Role of the Proponent**

While the assessment of impacts on rights process takes place in the third phase of the Agency's five-phase impact assessment process,<sup>3</sup> proponents should begin the process of working with Indigenous Peoples well before the third phase. Early and meaningful outreach, focussed on deep relationship building, must begin at the earliest stage of project conceptualization and continue throughout all phases of project planning and development. This is critical to ensure the success of the assessment of impacts on rights process and the overall impact assessment.

Proponents are the experts on their projects, but they are not experts on Indigenous rights that might be potentially impacted by their projects. While proponents are best positioned to explain their

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<sup>1</sup> The term 'territory', as it is used in this document, encompasses a holistic understanding of the environment. Territory includes all our relations: land, water, air, plants, and animals. It speaks to the spirituality of the natural world and the interconnectedness of all animate and inanimate objects.

<sup>2</sup> See the [Principles to Guide the Assessment of Impacts to Indigenous Inherent and Treaty Rights](#) for a more detailed explanation of Indigenous rights.

<sup>3</sup> See the process here: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview.html>

projects, they must work with Indigenous Peoples to identify potential impacts on rights and co-develop solutions to avoid or minimize those impacts. This requires commitment, trust, and respect, which take time to develop. **The earlier this work begins, the better.**

***\*A graphic will be developed and inserted here that shows each stage of the relationship-building process. The graphic will demonstrate a longer and more in-depth process than the Agency's five-step process (seen [here](#)).*\***

Once the impact assessment process reaches the third phase, it is the Agency's obligation to carry out the assessment of impacts on rights process and fulfill the Crown's common law duty to consult. This formal process required under the IAA – making a substantive assessment and a final decision regarding the project's impact on rights – is solely the purview of the Crown. The Crown's decision should hinge on whether FPIC has been provided by impacted Indigenous Peoples. The Agency uses a range of information to make its decision, including the information it receives from the proponent based on its dialogue with Indigenous Peoples. To properly fulfill its role, the proponent must commit time and effort as early as possible in the impact assessment process (particularly in the pre-planning and planning phases) to develop relationships with potentially impacted Indigenous Peoples. Without these early and ongoing efforts, the assessment of impacts on rights process cannot be meaningfully undertaken.

The remainder of this document describes the proponent's role in the impact on rights process in greater detail. It provides high-level guidance, but ultimately the Indigenous Peoples who are part of each assessment of impact on rights process must dictate the pace and approach.

## 5. Overarching Guidance

The guidelines in subsequent sections of this document are organized by the different phases of the impact assessment process. This section, however, contains overarching guidance that the proponent must integrate across all activities as they build relationships with Indigenous Peoples. This guidance should be considered alongside the [Principles to Guide the Assessment of Impacts to Indigenous Inherent and Treaty Rights](#).

### Principles to Guide the Assessment of Impacts on Rights Process

The principles summarized below provide guidance to proponents during the assessment of impacts on rights process. They are described in greater detail [here](#).

**UNDERSTANDING OF RIGHTS:** The assessment of potential impacts to rights must be inclusive of all Indigenous rights and interests.

**PROTECTION OF RIGHTS:** The assessment of potential impacts to rights must be focused on the protection of Indigenous rights and interests.

**UNDERSTANDING GOVERNANCE:** The assessment of potential impacts to rights must include a recognition of specific Indigenous governance structures.

**ROLE OF INDIGENOUS KNOWLEDGE:** The assessment of potential impacts to rights must be guided by Indigenous Knowledge systems and Indigenous ways of knowing.

**ENGAGEMENT AND CONSULTATION:** The assessment of potential impacts to rights must be collaborative and create opportunities to foster relationships with Indigenous rights holders.

**ASSESSMENT PROCESS:** The assessment of potential impacts to rights must foster reciprocal understanding of the impacts and options to avoid or mitigate them.

**RECONCILIATION:** The assessment of potential impacts to rights must advance and support reconciliation at all stages of the process.

### **5.1 Protect Indigenous Rights**

The protection of Indigenous rights is the fundamental objective of the assessment of impacts on rights process and should be focused in such a way as to minimize or avoid potential impacts whenever possible. While the duty to consult rests with the Crown, proponents also have an important role in helping to protect Indigenous rights during the assessment process. A central tenet of the assessment of impacts on rights process should be that proponents aim to protect Indigenous rights now and for future generations. Proponents must frame their approach through the protection of rights.

### **5.2 Adopt a Relationship-based Approach**

Proponents should seek to partner with Indigenous Peoples to create long-term, lasting relationships that can result in better understanding on both sides and a more robust project design. Developing such relationships requires a commitment from proponents to spend time in communities, engage openly, explore shared values and interests, undertake joint initiatives, co-develop processes for working together, and, most importantly, be willing to explore accommodation alternatives presented by Indigenous Peoples. However, Indigenous Peoples may not always be interested in developing a long-term relationship with the proponent; it is up to their leadership whether to invite proponents into the community. Ultimately, Indigenous Peoples will dictate their depth of participation in an impact assessment process based on factors such as their needs, the scope of their rights, and the potential impacts on those rights.

### **5.3 Adopt a Distinctions-based Approach**

Indigenous Peoples in Canada comprise First Nations, the Métis Nation, and Inuit peoples, each of whom has specific rights and unique cultures, histories, laws, and governments. Proponents must be aware of these distinctions and incorporate them into their approach with different Indigenous Peoples, which could result in different strategies and/or outcomes. Proponents must also maintain a high-level perspective to ensure that they are considering how the interests of different Indigenous Peoples can be accommodated alongside one another, and how, if there are competing interests, they may be reconciled.

### **5.4 Be Prepared to Accommodate**

A meaningful process seeks to achieve the free, prior, and informed consent (FPIC) of Indigenous Peoples as a prerequisite of moving forward with a project. FPIC is a high standard of consent, enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, that recognizes the self-

determination of Indigenous Peoples. Only Indigenous Peoples can provide FPIC based on whether their rights have been sufficiently accommodated. On the Crown side, only the Agency (and sometimes the courts) has the authority to determine whether the impact assessment process has met the standard of FPIC and accommodation has been sufficient from the Crown’s perspective. The depth of the proponent’s efforts with Indigenous Peoples is an important factor in making these decisions.

These efforts must go far beyond merely informing or even engaging Indigenous Peoples regarding a proposed project. Rather, proponents must recognize that Indigenous Peoples are the source of knowledge regarding potential impacts on their rights and they can only make this assessment if they have full information and trust its quality. Involving Indigenous Peoples in the generation of information is therefore a key part of trust and relationship-building. Proponents must be prepared to trust what the information is saying from Indigenous perspectives and provide accommodations within their power, such as altering project design. Accommodations negotiated between the proponent and Indigenous Peoples – which includes measures to avoid, minimize, or compensate Indigenous Peoples for potential adverse impacts that may result from a project – must be treated as a necessary (and desirable) part of the impact assessment process. However, the proponent is just one part of the accommodation process; it is ultimately the Agency’s responsibility to consider the broader suite of accommodation that may be necessary.

### **5.5 Be Prepared to Not Proceed with the Project**

While proponents must be prepared to accommodate, they must also be prepared to pause or cancel a project if they are unable to secure FPIC from impacted Indigenous Peoples. Upholding FPIC means accepting the reality that some project impacts may be too significant for any amount of accommodation. It is solely up to Indigenous Peoples whether they are willing to provide free, prior, and informed consent for a project. Good faith engagement and genuine relationship-building requires the proponent to recognize Indigenous authority from the outset.

### **5.6 Prioritize Indigenous Knowledge Systems**

Indigenous Knowledge, where it has been shared by Indigenous Peoples, is a mandatory component of the impact assessment process and must be included in all relevant aspects of project design and assessment, not just the assessment of impacts on rights process. Proponents have an important role to play ensuring that Indigenous Knowledge is prioritized from the very outset of project planning, throughout the impact assessment process, and beyond. The term ‘Indigenous Knowledge’ refers to a diverse set of knowledge systems, each of which is unique to the specific Indigenous People in which it is based and their relationship to their territory. For the purposes of impact assessment, the Agency defines Indigenous Knowledge as “holistic body of knowledge built up by a group of Indigenous people through generations of living in close contact with the land”.<sup>4</sup> Indigenous Knowledge belongs to Indigenous Peoples, and it is solely their decision regarding if and how it should be included in the impact assessment process. Proponents must prioritize the inclusion of Indigenous Knowledge while always following the lead of Indigenous Peoples. This includes following existing consultation protocols, respecting Indigenous control and ownership over their own knowledge, co-developing processes for including Indigenous Knowledge in project design and assessment, an openness to diverse information

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<sup>4</sup> See: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/section-22-factors-considered-descriptions.html>

sources (such as oral histories), and offering sufficient financial support to assist with the collection of Indigenous Knowledge (in addition to funding provided by the Agency).<sup>5</sup>

### **5.7 Design Flexible and Appropriate Timelines**

Flexibility is an important part of the assessment process: proponents should expect and prepare for changes to timelines as the process progresses. There are numerous factors that might impact timelines, including new and unexpected information that arises during assessment, the timing of cultural events and harvesting seasons in a community, overstretched capacity within the proponent organization and/or an Indigenous community, election cycles, and the time required to move decisions – on either side – through governance processes. Proponents should work with Indigenous Peoples to co-develop expected timelines at the outset but must also be prepared for changes and delays. Above all else, timelines must be dictated by consultation protocols that a community may hold.

### **5.8 Recognize the Proponent’s Role**

The Agency is responsible for carrying out the substantive assessment of impacts on rights process and fulfilling the Crown’s legal duty to consult. Proponents, as has been emphasized above, play a critical role in providing the information that the Crown needs to fulfill these duties, but they are not decisionmakers and they do not have the authority to determine if the accommodation measures regarding Indigenous rights and interests are sufficient. Further, they may not be able to address all accommodations; some may require solutions only the Crown can implement. It is the proponent’s responsibility to ensure clarity around this distinction and communicate this distinction with Indigenous Peoples. In these instances, proponents must know the limitations of their role but also be prepared to work with Indigenous Peoples and Crown governments to help co-develop solutions. A proponent’s knowledge of the project and its impacts can allow it to play a constructive role even if it does not have the authority to implement a solution.

The remainder of this document is divided into three sections that focus on the pre-planning, planning, and impact statement phases of the impact assessment process. These are the three phases where the proponent has the most substantive role to play in the assessment of impacts on rights process. The proponent’s role in the subsequent phases of the impact assessment process will be discussed in a future document.

## **6. Pre-Planning Phase**

The Pre-Planning Phase builds the foundation for a truly effective impact assessment process. The work undertaken by proponents during this phase will help ensure they are adequately prepared and will set the right tone for future dialogue.

### **6.1 Build Internal Capacity**

It is the proponent’s responsibility to ensure that they have adequate internal capacity to engage in meaningful processes with Indigenous Peoples. Key considerations include:

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<sup>5</sup> Detailed procedures for working with Indigenous Knowledge in the impact assessment process can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/indigenous-knowledge-under-the-impact-assessment-act.html>

- **Cross-cultural competency:** at a high level, proponents – including all levels of management and staff – must be knowledgeable about and respect the experiences of Indigenous Peoples in Canada. This includes, at a minimum, an understanding of the history (and ongoing impacts) of colonization, treaties and other agreements governing the relationship between Indigenous Peoples and the Crown, the TRC Calls to Action, MMIWG Calls to Justice, and UNDRIP. Proponents should undertake cross-cultural training to ensure competency in these areas. This baseline understanding is only a starting point; proponents will need to learn much more about specific Indigenous Peoples and their histories as they began engaging in a region (see section 6.3).
- **Sufficient personnel:** the scale of the project and the scope of activities between the proponent and Indigenous Peoples will dictate the personnel needed. Proponents should assess and address internal capacity considerations early on. At a minimum, proponents should designate one staff person to act as the lead community or regional liaison on a project, and this person must be skilled in cross-cultural relations, knowledgeable about Indigenous contexts, and be able to bridge the gap between technical project descriptions and community needs. Although not always possible, it is preferable if the liaison is based in or has experience working in the region where Indigenous partners are located.

## 6.2 Identify Potentially Impacted Indigenous Peoples

One of proponents' first tasks is to work alongside the Agency to identify Indigenous Peoples who may be impacted by the project. There is no single definitive source to identify potentially impacted Indigenous Peoples because (a) Indigenous Peoples have complex and intimate relationships with their lands and waters and (b) Canada's colonial history of dispossession, genocide, and marginalization have distorted the concept of Indigenous territory. Therefore, proponents must take a multifaceted and expansive approach. Key considerations include:

- **Use a broad scope:** potentially impacted Indigenous Peoples are not limited to those who live in or near the project area. Other Indigenous Peoples located much further away may, for instance, have ancestral sacred sites or use the project area as a seasonal hunting ground. Proponents must use a very broad scope in their initial scan to ensure that potentially impacted Indigenous Peoples are not missed.
- **Recognize different types of Indigenous territory:** under Canadian law, there are many different types of territory that may be subject to Indigenous authorities. This authority is derived from Indigenous Peoples' relationship with and care for their territory. While Canadian law is *not* the determining factor in what constitutes Indigenous territory, the different types of Indigenous territory described by the Crown can provide a starting point:
  - Land occupied by and/or used for traditional purposes by Indigenous Peoples.
  - Indigenous title lands.
  - Reserve land as defined in subsection 2(1) of the *Indian Act*.
  - First Nation land as defined in subsection 2(1) of the *First Nations Land Management Act*.
  - Land that is subject to a comprehensive land claim agreement or a self-government agreement.

- Any other land set aside for the use and benefit of Indigenous Peoples of Canada.
- **Consult a broad range of sources to build knowledge base:** proponents must consult a broad range of sources to try to build a baseline understanding of potentially impacted Indigenous Peoples and their rights. These sources include, but are not limited to, the following:
  - Indigenous governing and representative bodies, including tribal councils, treaty organizations, and leadership associations such as the Assembly of First Nations, Métis National Council, Manitoba Métis Federation, and Inuit Tapiriit Kanatami.
  - Indigenous treaty research organisations (such as Treaty and Aboriginal Rights Research Centre).
  - Maps produced by the federal government, including [Crown-Indigenous Relations and Northern Affairs Canada](#) and the [Aboriginal and Treaty Rights Information System](#).
  - The Impact Assessment Agency of Canada.
- **Indigenous Peoples themselves determine whether they are impacted by a project:** Indigenous Peoples themselves determine how a project might impact their rights and interests. Proponents must do the groundwork outlined in the points above, but ultimately, with the assistance of information provided by the proponent, the potential impacts are determined by Indigenous Peoples.

### **6.3 Undertake a Preliminary Study**

Proponents must work to gain a general understanding of the Indigenous Peoples they intend to partner with *prior* to reaching out. This is fundamental to showing respect. Undertaking this work helps ensure that proponents are not relying solely on Indigenous Peoples to educate them. A preliminary study of an Indigenous group may cover:

- Basic social, cultural, and economic characteristics.
- Governance structures.
- Indigenous and natural laws.
- Information pertaining to the Indigenous Peoples' use of their territory (e.g., traditional use studies).
- Existing agreements with other levels of government, including treaties.
- Ongoing negotiation processes, such as land claims or modern treaties.
- Affiliations with Indigenous governing and representative bodies.
- Community consultation protocols and processes.

### **6.4 Engage Early**

Once preparatory work is complete, proponents must seek to engage with Indigenous Peoples as early as possible. In general, the earlier the better. This initial contact may look different in each instance, but key considerations include:

- **Follow established protocols:** some Indigenous governing bodies and communities have protocols for managing project requests and communicating with proponents. Proponents must ascertain, respect, and abide by protocols, including by communicating with the established contact person and following provisions regarding information access and confidentiality.



- **Clearly communicate intentions:** proponents must be clear and transparent regarding their intentions for the process of working with Indigenous Peoples. This includes clearly communicating the scope of the project, potential impacts, and planned timelines, as well as sharing information about ongoing discussions they may be having with other groups. Proponents should also indicate their intention to seek FPIC throughout the impact assessment process and that they seek to understand how different Indigenous Peoples provide consent.
- **Develop shared expectations:** early in the process, proponents and Indigenous Peoples should begin to establish shared expectations regarding their relationship, including methods and frequency of communication, potential capacity constraints and how to address them, and the responsibilities of each party. The development of formal documents detailing Indigenous involvement in the impact assessment process – including the Indigenous Engagement and Partnership Plan and the Tailored Impact Statement Guidelines – will be led by the Agency in the Planning Phase. These early discussions can contribute to these documents and set the right tone for the process.

## **7. Planning Phase**

The Planning Phase is the first of five phases in the formal impact assessment process. Proponents have three main responsibilities during this phase:

- Prepare the Initial Project Description
- Prepare the Detailed Project Description
- Prepare a Response to the Summary of Issues (the Summary of Issues is provided by the Agency)

Once a proponent submits the Initial Project Description and it is accepted by the Agency, the Planning Phase commences and lasts for up to 180 days. Importantly, this is also the point at which the Agency begins its formal consultation with Indigenous Peoples, including incorporating input from Indigenous Peoples to prepare a Summary of Issues (although, as noted above, both the Agency and the proponent should begin this process well before this stage). During the Planning Phase, the Agency will also decide whether an impact assessment is required, including assessing possible adverse impacts the project may have on Indigenous rights. If an impact assessment is required, the Agency will continue working with Indigenous Peoples to develop additional documents in the Planning Phase, including the Indigenous Engagement and Partnership Plan and Tailored Impact Statement Guidelines.

Proponents must be very familiar with the broader impact assessment process and integrate these milestones into their planning.

### **7.1 Continue Building Relationships**

After initiating discussions in the Pre-Planning Phase, proponents should continue to build good working relationships with Indigenous Peoples in the Planning Phase. The scope and depth of the relationship will depend on the level of interest shown by potentially impacted Indigenous Peoples, but good practices include:

- **Provide financial support:** Indigenous Peoples may require funding to participate in the impact assessment process. The Agency's [Participant Funding Program](#) supports limited Indigenous involvement in Agency-led aspects of the process, but funding from proponents is typically

needed to support additional capacity that will help ensure Indigenous Peoples are fully able to assess their rights and interests in relation to the project and participate in a dialogue with the proponent. These activities could include Indigenous-led studies, joint Indigenous-proponent studies, and community meetings. Proponents should initiate funding discussions early in the planning process and work with Indigenous Peoples to co-develop a funding model. Proponents and Indigenous Peoples may want to consider entering into a capacity funding agreement to structure this work.

- **Spend time in the community:** in-person meetings are generally the most effective way to build relationships and communicate a project to community members. As well, visiting a community provides proponents an opportunity to be on the land and experience firsthand a community's connection with their territory. Spending time in a community may not be possible or desirable in every instance, but proponents should be willing to do so if invited by the Indigenous Peoples with whom they are working. It is also important that the proponent's key executive decision makers are available to meet, when appropriate. If a meeting is taking place with the Chief of a community, the proponent should offer to send someone in the highest leadership position in their organization.
- **Look for partnership opportunities:** relationships can be strengthened by undertaking joint initiatives together, including initiatives not directly related to the proposed project. These initiatives could include youth programming, environmental monitoring, community gatherings, and so on.

## **7.2 Tailor Communications**

Indigenous Peoples may each have different communication needs. Proponents must structure their communication activities accordingly by building on discussions initiated in the Pre-Planning Phase. Key considerations include:

- **Provide accessible and comprehensive project descriptions:** project descriptions must be written in plain language and translated into Indigenous languages if desired by the Indigenous Peoples. They must be comprehensive, providing a full description of the project and the proponent's predictions of potential impacts of the project (see below). They should also include maps showing the project footprint and visuals accompanying the text.
- **Community engagement:** information sessions and other community engagement activities must be structured according to what works well in a particular community, including timing, venue, format, and cultural protocols.

## **7.3 Developing the Initial Project Description**

Requirements for the Initial Project Description are clearly detailed in [guidelines](#) published by the Agency. A number of these requirements ask the proponent to explain potential impacts on Indigenous Peoples, including the proximity of the project to Indigenous lands, potential impacts on physical and cultural heritage, potential impacts on health, social, or economic conditions, and other considerations. Key considerations for ensuring a strong Initial Project Description include:

- **Conduct groundwork in the Pre-Planning Phase:** the work undertaken by the proponent in the Pre-Planning Phase will largely dictate the strength of their Initial Project Description. Early, transparent engagement and relationship building with Indigenous Peoples – as described in section 6 of this document – will help ensure potential impacts to Indigenous rights are adequately captured in the document.
- **Co-draft the document:** an ideal process involves a proponent working with Indigenous peoples to co-draft the Initial Project Description. This may not be possible in all instances – if, for example, impacted Indigenous Peoples are not interested in this level of involvement – but proponents must make this option available. Working with Indigenous peoples to co-draft the Initial Project Description will help ensure that their rights and interests are accurately reflected.
- **Interconnected impacts:** potential impacts on Indigenous Peoples stemming from a project will be complex and interconnected, reflecting Indigenous Peoples’ close connection with their territory. Proponents must be prepared to commit time and effort to understanding and capturing these interconnected impacts in their Initial Project Description. This may include impacts related to culture, economy, health, social wellbeing, and other areas. For instance, a pollutant discharged into a lake may not only impact the environment, but also human health (through the consumption of wild foods), sense of wellbeing, and cultural activities that rely on the lake.
- **Cumulative impacts:** cumulative impacts – the combination of impacts from the proposed project and impacts from past, existing, and future projects or activities – are a key consideration in the Agency’s assessment of impacts on rights. By including Indigenous Peoples’ perspectives on cumulative impacts in the Initial Project Description, proponents can help ensure cumulative impacts considerations are captured in the earliest stages of the impact assessment process.
- **Practice good documentation:** proponents are required to document their engagement efforts with Indigenous Peoples and report on these efforts in the Initial Project Description. However, simply recording basic information – such as number of emails sent and number of meetings held – can be misleading without proper context. Proponents must ensure that documentation is as robust and detailed as possible, including documenting the nature of the correspondence, issues raised, how the issues were addressed, and other details that provide substance to the record. Additionally, proponents must share their documentation with the Indigenous Peoples who participated in the process to ensure transparency. These measures help ensure that documentation carries meaning and is not treated as a checkbox activity.

#### **7.4 Developing the Detailed Project Description and Response to the Summary of Issues**

Once the proponent submits an Initial Project Description, the Agency conducts engagement on the document with Indigenous Peoples, governments, and other participants. Based on this engagement, the Agency produces the Summary of Issues. The proponent then responds to the Summary of Issues as part of its Detailed Project Description (see Agency [guidelines](#) for more detail). The Detailed Project Description provides the Agency with the information that it needs to determine whether an impact assessment is required. If required, the Agency prepares a number of documents, including: Public

Participation Plan, Indigenous Engagement and Partnership Plan, Cooperation Plan, Permitting Plan, and Tailored Impact Statement Guidelines (TIS Guidelines).

The TIS Guidelines, in particular, are very important for the proponent. The TIS Guidelines provide direction to the proponent in their preparation of the Impact Statement. They provide guidance on the factors that must be considered, the methodology to be followed, and information requirements. The Agency's preparation of the TIS Guidelines is informed through engagement with a wide range of interested parties, including Indigenous Peoples. The work that the proponent has done to this point that will help ensure the TIS Guidelines are robust, closely attuned to the project, and reflect the needs of potentially impacted Indigenous Peoples.

A proponent's approach to the Detailed Project Description must largely mirror its approach to the rest of the Planning Phase described above. Finetuning the Detailed Project Description and Response to the Summary of Issues is an opportunity for proponents to continue dialogue and relationship building with Indigenous Peoples. This will help ensure that potential adverse impacts are being identified and documented early on and that a strong foundation is in place to collaboratively explore ways to avoid, minimize, or compensate for impacts, and ultimately to ensure that FPIC is the standard throughout the impact assessment process.

## **8. Impact Statement Phase**

If the Agency determines that an impact assessment is required during the Planning Phase, the proponent is required to develop an Impact Statement that adheres to requirements set out in the TIS Guidelines. During the Impact Statement Phase, all aspects of project planning and assessment – including those involving Indigenous Peoples – intensify. Impact Statements will look different depending on the TIS Guidelines for a particular project, but the Agency's [TISG template](#) provides a detailed outline of what proponents can expect. This section provides guidance on how proponents should work with Indigenous Peoples during the Impact Statement Phase.

### **8.1 Collecting Information**

Developing the Impact Statement requires proponents to collect and synthesize large amounts of information. During this phase, ongoing information collection will intensify, including the need to support the collection and integration of Indigenous Knowledge. Guidance mentioned above – such as prioritizing Indigenous Knowledge and providing financial support for Indigenous-led studies – should continue and be scaled up as needed. Other key considerations include:

- **Diverse methods:** proponents must be open and flexible in their approach to collecting information and should seek to partner in this regard with Indigenous Peoples. A diverse range of methods is often effective, including interviews, community information sessions, storytelling, mapping sessions, and on-the-land site visits. Indigenous Peoples know best what works in their context and supporting Indigenous involvement in these methods is critical to successful collection.
- **Information management:** Indigenous Peoples must retain full control over their information and may choose to withhold sensitive or confidential information. Proponents must ensure that they are following Indigenous Peoples' lead on information management and abiding by

established protocols where they exist. Where protocols don't exist, the First Nations principles of ownership, control, access, and possession (OCAP) provide a good starting point.<sup>6</sup>

## **8.2 Assessing and Addressing Potential Impacts**

Assessing and addressing potential impacts on Indigenous rights is a key part of the Impact Statement. Proponents are required to identify how Indigenous perspectives, input, and knowledge were considered across a broad range of project design elements. Where potential impacts on rights are identified, proponents must provide a description of how each impact would be avoided, managed, mitigated, or accommodated. The best way for proponents to properly assess and address potential impacts is to offer to work closely with Indigenous Peoples to co-draft relevant portions of the Impact Statement. Proponents must also recognize that, in some instances, no amount of avoidance, management, mitigation, or accommodation will lead to Indigenous Peoples providing FPIC. Some projects are simply untenable from the perspective of impacted Indigenous Peoples; this reality must be part of the discussion.

Constructive solutions for addressing potentially impacted rights are developed in dialogue between proponents and Indigenous Peoples. Solutions must be discussed alongside impacts, and proponents must be open to a wide range of solutions proposed by Indigenous Peoples, including altering the design of the project. Solutions that cannot be addressed by proponents (because they are a Crown responsibility, for example) must be clearly identified.

## **8.3 Finalizing the Impact Statement**

Before the Impact Statement is finalized and submitted to the Agency, proponents must work with Indigenous Peoples to ensure that their perspectives and knowledge systems are accurately represented. Once the Impact Statement is submitted, it is the Agency's responsibility to carry out the Impact Assessment, including consultation with Indigenous Peoples. A robust Impact Statement is critical to the success of the Impact Assessment.

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<sup>6</sup> For more information on the OCAP principles, see the [First Nations Information Governance Centre](#).