



**MINISTER'S
ADVISORY
COUNCIL
ON IMPACT
ASSESSMENT**

Second Report to the
Honourable Steven Guilbeault
Minister of Environment and
Climate Change

JUNE 2023

© His Majesty the King in Right of Canada, represented by the Minister of Environment and Climate Change, 2023

Catalogue number En104-23E-PDF

ISBN 2564-0143

This document is available on the Government of Canada website at www.canada.ca

This document is available in alternative formats upon request

Letter from the Chair

April 17, 2023

Dear Minister Guilbeault,

On behalf of the Minister's Advisory Council on Impact Assessment (MINAC), I am pleased to submit our second report as required by subsection 118(3) of the *Impact Assessment Act*.

Our discussions over the last two years have had two underlying themes, the imperative to develop an effective response to the climate change and biodiversity crises, and the role that impact assessment can and should play in forging new and respectful relationships with Indigenous partners. We know that both of these areas are of central importance to your mandate as Minister.

Two other advisory bodies, the Technical Advisory Committee (TAC) and the Indigenous Advisory Committee (IAC) provide advice directly to the Agency. MINAC member Carl Braun and I have been meeting with the co-chairs of TAC and IAC on a regular basis, and this has resulted in a fruitful sharing of experiences and ideas. It is my hope that the full membership of MINAC, TAC and IAC will be able to sit down together in person next year. I believe that such collaborative initiatives will enrich and strengthen the advice that we provide both to you and to the Agency.

I also wish to mention here our sense of deep sadness and loss at the tragic passing of Dr. Meinhard Doelle, a member of the TAC, an inspirational visionary in the field of impact assessment, and a friend and colleague of many members of MINAC.

I commend the diligence and collegiality of my Council colleagues. We have again worked mostly via video conferencing, but last year were finally able to meet face-to-face in Ottawa and then Calgary. We said goodbye to Keith Storey, Christa Lemelin and Roxanna Benoit and I would like to thank them for their contributions to the work of MINAC. We welcomed the addition of Jocelyn Gosselin.

We have received excellent professional support from the Impact Assessment Agency Secretariat, and benefited from participation by other Agency staff. Your Advisory

Council appreciates this opportunity to work with you in helping to achieve the crucial objectives of the *Impact Assessment Act*.

Sincerely

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style and is underlined with a single, long, sweeping stroke that extends to the left and then curves back under the name.

Lesley Griffiths
Chair, Minister's Advisory Council on Impact Assessment

Minister's Advisory Council on Impact Assessment ([membership](#) as of April 14, 2023)

Lesley Griffiths (Chair)

Pierre Baril

Carl Braun

Kate Darling

Jocelyn Gosselin

Pierre Gratton

Anna Johnston

Dr. Diana Lewis

Martin Olszynski

Somia Sadiq

Facilitation Team

Warren Wilson

René Drolet

Table of Contents

Letter from the Chair	3
Context	6
Minister's Response and Current Priorities	6
How has the Government responded to the Council's first round of recommendations?	6
The Council's Approach to Preparing this Report.....	8
Impact Assessment's Vital Role	10
Upholding Climate Change Commitments and Biodiversity Obligations	12
Introduction.....	12
Consistency and Transparency.....	14
Global Biodiversity Framework (GBF) Target and Mitigation Hierarchy.....	18
Indigenous Health	20
Background	20
How is this important to the Council?	21
Current Issues and Opportunities	21
Indigenous-led Assessments	26
Context	26
Examples of Indigenous-led or co-managed assessments	26
One Project, One Assessment.....	27
Benefits, Opportunities and Challenges	28
The Planning Phase.....	32
Introduction.....	32
Tailored Impact Statement Guidelines (TISG).....	34
Independent Experts and Knowledge Holders	35
Alternatives to Projects	37
Regional Assessments.....	38
Project Designation.....	43
In Conclusion	46
Appendices	48
Appendix A: Mandate Letters.....	48
Appendix B: Implementation of the Recommendations from MINAC First Report.....	50

Context

The Minister of Environment and Climate Change established the Minister's Advisory Council on Impact Assessment (MINAC) in December 2020. The mandate of the Council is to provide the Minister with advice on the implementation of the *Impact Assessment Act*. The Minister sent mandate letters to Council members listing key issues that could benefit from the Council's input and support. The text of the mandate letter can be found in Appendix A. The Council provided its [first report](#) to the Minister in June 2021, containing advice and recommendations on ethical space, regional and strategic assessment, and the implementation of the planning phase.

Minister's Response and Current Priorities

[Minister Wilkinson's response](#) to MINAC's first report was published in August 2021. In his response, the Minister expressed his support for its recommendations. He reiterated the importance of three areas of focus outlined in the mandate letter to Council members (governance, regional and strategic assessments, and the planning phase). The Minister also indicated that he had asked the Agency to ensure that the work of the Indigenous Advisory Committee (IAC), the Technical Advisory Committee (TAC) and MINAC complement each other.

Following the September 2021 general election and the appointment of Steven Guilbeault as the new Minister of Environment and Climate Change, the Council met with him to discuss the Council's priorities. Minister Guilbeault expressed his support for the Council's work and its current focus and confirmed his agreement with Minister Wilkinson's response to MINAC's first report. He indicated that while impact assessment is not specifically mentioned in his mandate letter from the Prime Minister, it is a key tool to support many of the priorities that are part of his mandate, including climate change.

How has the Government responded to the Council's first round of recommendations?

The Council is pleased to note that the Impact Assessment Agency of Canada (the Agency) has taken some initial steps towards the implementation of the recommendations from the Council's first report tabled in June 2021.

While recognizing that much more still needs to be done, actions taken to date demonstrate a willingness from the Minister to consider the advice provided by the Council. Appendix B presents a table prepared by the Agency showing progress on each of the Council's ten recommendations, as well as comments from MINAC on the responses provided by the Agency.

The Council's Approach to Preparing this Report

Since the release of its first report, the Council held several meetings to discuss the Minister's comments, hear from Indigenous parties and external stakeholders on various issues and reflect on which aspects of the impact assessment process the Council should focus, given the directions provided by the Minister. Nine plenary meetings (two in-person meetings held over two days and seven virtual plenaries, each comprised of three individual sessions over separate days) were held, as well as six additional shorter meetings. A number of smaller working group discussions also took place. Council members always strive for consensus in their deliberations, conclusions, and recommendations.

The general purpose of these meetings was to learn more about the implementation of the *Impact Assessment Act*, reflect on the advice already provided in the Council's first report, and identify areas where the Council could focus its next report and recommendations to the Minister. While respecting the broad direction provided by the Minister, Council members also wish to provide advice in areas where concerns and challenges with the implementation of the Act have been raised by interested parties such as Indigenous communities, environmental groups, project proponents and others.

Over the past two years, the Council has heard from a number of organizations in order to better understand various perspectives on specific issues associated with impact assessment processes. Speakers included representatives from the Canadian Mountain Network, the Firelight Group, First Nations Major Projects Coalition, the Impact Assessment Agency of Canada, the Indian Resource Council, the Indigenous Centre for Cumulative Effects, Ring of Fire Metals (formerly Noront Resources), Suncor, Western University, and Wildlife Conservation Society Canada.

Council members benefited tremendously from their interactions with people who have hands-on experience with various aspects of the *Impact Assessment Act* and its implementation. The format of the meetings allowed for extensive presentations followed by an opportunity for questions and a comprehensive discussion.

In the spirit of strengthening collaboration and alignment with other existing advisory bodies, the Chair of the Council also initiated periodic meetings with the co-chairs of the

IAC and the TAC, two committees reporting to the Agency. The purpose of these meetings was to share information and identify potential areas of common interest.

Throughout this report, the Council strives to address all topics in the context of reconciliation and Indigenous rights. This was a central feature of the Council's first report and the Minister's response to the report sent a clear signal it was aligned with the Government's commitment to implementing the Act in a manner that fosters reconciliation.

Impact Assessment's Vital Role

Canada is facing a series of urgent challenges that require both active buy-in from all sectors of society and sound decision-making. These challenges include the need to advance reconciliation by upholding Indigenous and treaty rights and implementing the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the accelerating climate crisis, and the unprecedented loss of our biodiversity. The Council believes that the *Impact Assessment Act* has a vital role to play in mobilizing public support, facilitating Indigenous leadership, and promoting sustainable decisions.

Clearly, impact assessment is not a panacea, but it is widely supported as an important tool to make progress on difficult issues. However, the Council has observed that since the promulgation of the *Impact Assessment Act* in 2019, the narrative dominating media attention has focused inordinately on the length of time required to complete assessments and its potential negative impact on project economics and investment, jurisdictional disputes, and the need to expedite project approval.

This trend has been further fueled by emerging geopolitical risks, including concerns regarding access to many key minerals and metals and Russia's invasion of Ukraine, and persistent concerns about Canada's policies to fight climate change, whether domestically (for example, efforts to increase critical metals production for electric vehicle manufacturing) or abroad (for example, foreign requests for increased energy exports).

The Canadian Critical Minerals Strategy will increase the supply of responsibly-sourced critical minerals and support the development of domestic and global value chains for the green and digital economy, all of which are necessary to support the transition to a low carbon economy. The Council believes that impact assessment is the best tool available for making informed and efficient decisions related to this transition, while avoiding unwanted trade-offs affecting other priorities such as reconciliation and biodiversity.

Impact assessment is not a superfluous "process for process' sake." Because Canada does not have a complete code of thresholds, standards, and mitigation measures for all environmental (and other) impacts, impact assessment is the most effective mechanism by which such impacts can be avoided or mitigated in a manner that is calibrated according to place and context. Equally importantly, when done properly and transparently, including consultation with the public and all interested parties, impact

assessment regimes can build the credibility and legitimacy of what are often complex decisions involving contentious trade-offs. Furthermore, the Council believes that rigour and efficiency do not have to be mutually exclusive.

Federal and provincial governments are also bound by virtue of section 35 of the *Constitution Act, 1982*, to uphold Indigenous and treaty rights and to consult and accommodate Indigenous Peoples where such rights may be impacted by government decision-making, including with respect to major projects. Impact assessment is a key tool for helping to meet these constitutional obligations. Recent litigation in British Columbia involving the Blueberry River First Nation (BRFN) spurred by the cumulative impacts of resource development on the BRFN's treaty rights,¹ and similar litigation now being pursued in Alberta and Saskatchewan are instructive. They suggest to the Council that both federal and provincial governments still have considerable work to do to improve and enhance how they identify and manage cumulative effects, whether through forest management, land use planning, impact assessment or other laws and regulatory instruments. The BRFN example cries out for more systematic regional assessments and a more integrated approach to how different land uses are considered and managed.

Consequently, while timeliness and efficiency are always important considerations, the Council believes that impact assessment laws and policies are as important as they ever were, if not more so. This perspective informs the Council's recommendations throughout this report. Furthermore, the Council hopes that the Minister and the Agency will take every opportunity to build understanding of and support for impact assessment as a vital contributor to environmental sustainability in challenging times and to renewed relationships with Indigenous partners.

¹ See *Yahey v British Columbia*, [2021 BCSC 1287 \(CanLII\)](#).

Upholding Climate Change Commitments and Biodiversity Obligations

Introduction

The Minister and the federal government have been clear that the climate and biodiversity crises are priorities that demand concerted action. From Canada's signing of the Paris Agreement in 2015 to its leadership at the 15th Conference of Parties to the Convention on Biological Diversity (CBD) in December 2022, there has been increased political and public attention on the need to use all available tools to make sure Canada meets its climate and biodiversity targets. Impact assessment is one of those tools.

The two crises are interlinked: climate change is a serious threat to biodiversity, and biodiversity is vital for climate mitigation and adaptation. Both are economy-wide cumulative effects issues, and the vast majority of projects and activities with implications for either are not designated for assessment under the *Impact Assessment Act*.

The federal government has enacted or promised a number of different laws, policies, plans and initiatives towards meeting our climate commitments. Those include the federal carbon tax, the clean fuel standard, methane regulations, a cap on oil and gas emissions, a zero-emissions vehicle mandate, and a Net-Zero Accelerator initiative. Additionally, the provinces play a vital role in national decarbonization efforts because, under Canada's constitution, they have jurisdiction over ownership, management, and control of natural resources.

Biodiversity-related laws include the *Species at Risk Act*, *Fisheries Act* and *Migratory Birds Convention Act*, and the Minister has signalled that the government may enact a biodiversity accountability law. The CBD recognizes impact assessment as an important tool for halting and reversing biodiversity loss, although challenges remain: for example, project-level assessment has proven ill-equipped to effectively address cumulative effects, and much of the responsibility for biodiversity rests with the provinces.

It is within this context and the language of the *Impact Assessment Act* that the Council frames its recommendations. Under the IAA, assessments must consider "the extent to

which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change" (section 22(1)(i)). The Act also requires the Minister or Governor in Council, as the case may be, to determine whether a project's adverse federal, direct and incidental effects are in the public interest (sections 60(1) and 61(1)). That decision must be based on the impact assessment report and five factors, including "the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change" (section 63(e)) and the extent to which the project contributes to sustainability (section 63(a)). Additionally, assessments must consider positive and negative environmental effects, including effects on climate and biodiversity, and the public interest determination must consider the significance of federal, direct and incidental environmental effects.

The Agency's policy, specifically its "[Policy Context: Considering Environmental Obligations and Commitments in Respect of Climate Change under the Impact Assessment Act](#)," defines climate commitments as those that are "set out in legally binding and non-binding domestic and international instruments," which includes "legislation, regulations, policies, targets, plans and frameworks to which Canada is a party." Environmental obligations are defined as "obligations applicable to the Government of Canada in domestic and international law in relation to the protection of the natural environment." While Canada is party to dozens of international instruments that give rise to climate commitments and environmental obligations, perhaps the two most relevant for the purposes of impact assessment are the Paris Agreement and the CBD. To guide Canada's response through impact assessment, Environment and Climate Change Canada (ECCC) initiated the [Strategic Assessment of Climate Change \(SACC\)](#), and prepared a [draft technical guide related to the strategic assessment of climate change](#) and [draft guidance for best-in-class GHG emissions performance by oil and gas projects](#). Together, these documents detail the climate-related information that should inform the climate analysis.

Under the Paris Agreement, Canada has committed to reducing its GHGs by 40-45% below 2005 levels by 2030, to have net-zero emissions by 2050, and to do its fair share towards keeping global temperature rise to within 1.5 degrees Celsius. The [2030 Emissions Reductions Plan](#) outlines the key measures and strategies the federal government intends to use to achieve our 2030 target and breaks down projected emissions throughout this decade by economic sector. This plan provides the basis for a roadmap for better understanding individual projects' contributions to climate change and its mitigation efforts.

Similarly, the [Kunming-Montreal Global Biodiversity Framework](#) sets out four overarching goals and 23 targets, as well as a [monitoring framework](#) for assessing countries' progress towards meeting those targets. Targets that are particularly relevant to impact assessment include (but are not limited to) Target 1 (spatial planning and effective management), Target 2 (restoration), Target 3 (protected areas), Target 4 (species at risk), Target 6 (invasive species), Target 7 (pollution), Target 11 (ecosystem services), Target 14 (integration of biodiversity and its multiple values into policies and programs, including strategic environmental assessment and impact assessment), and Target 22 (Indigenous engagement and knowledge). To date, there has not been guidance published respecting the treatment of biodiversity in impact assessment, but as part of its CBD obligations, Canada must submit an updated national biodiversity strategy and action plan (NBSAP) detailing how it will meet the Targets set out under the Framework. If it contains sufficient detail, Canada's next NBSAP may also provide a helpful roadmap for assessing projects' biodiversity implications.

Consistency and Transparency

Despite existing legal and policy frameworks, challenges remain in assessing the significance of projects' climate and biodiversity effects and the extent to which they help or hinder our ability to meet our climate commitments and environmental obligations. These challenges should be of particular importance to the Minister because they feature so prominently in the public interest determination. The Council believes that to help ensure those decisions are credible and advance sustainability, they should be based on equally credible and transparent analysis by the Agency and review panels. While climate policies like the SACC and other guidance documents set out the information required for assessments and provide some high-level principles, there are no current policies to guide how the Agency and review panels are to draw conclusions or make recommendations respecting climate or biodiversity.

For climate, the challenge of how to effectively assess projects' climate-related impacts, benefits and risks, and in particular the question of how to assess projects' implications on climate mitigation efforts, has been vexing. Past federal environmental assessment legislation did not mention climate or greenhouse gas (GHG) emissions; under it, climate was not always considered and when it was, it was done inconsistently. Assessments determined whether a project's emissions were significant, and if so, whether they were justified in the circumstances, determinations that were highly subjective and inconsistent. For example, in 2011 the joint review panel assessing the Joslyn North oil sands mine project [concluded](#) that the project's projected 26.7

megatonnes of carbon dioxide equivalent (Mt CO_{2e}) per year would be a small (0.0038%) share of global emissions and therefore were not likely to be significant. In 2016, the Canadian Environmental Assessment Agency [concluded](#) that the direct and upstream GHG emissions from the proposed Pacific NorthWest LNG (liquefied natural gas) project, totalling 13.3-13.8 Mt CO_{2e} per year, would be significant, but the Governor in Council [determined](#) that the project's significant adverse effects were justified in the circumstances.

For biodiversity, one key challenge is that federal assessments have tended not to consider biodiversity as a factor, with some exceptions for review panels (most recently, the panels that assessed the Marathon Palladium and Grassy Mountain Coal projects). Biodiversity in Canada tends to be reduced to species at risk, and significant challenges remain respecting the assessment and management of cumulative effects.

Our recommendations are focused on how to better ensure the consistency, transparency and credibility of the climate and biodiversity analysis that should inform the Minister's public interest determination.

To date, tailored impact statement guidelines issued to proponents only list the instruments in which climate commitments and environmental obligations arise, such as the Paris Agreement and the CBD, not the specific commitments and obligations that are contained within these instruments. This lack of up-front clarity about which commitments and obligations the Agency will consider in its analysis makes it difficult, if not impossible, for participants and Indigenous Peoples to meaningfully engage.

Lack of clarity may also occur in the assessment reports on which decisions must be based. In the Cedar LNG assessment report (the first to be issued under the IAA), the section on climate commitments mentions Canada's 2030 and 2050 commitments, but omits Canada's commitment to do its fair share to keeping global temperature rise to within 1.5 degrees. The section on environmental obligations mentions the CBD and various federal laws, but does not specify any specific obligations arising under those, nor does it provide any rationale for choosing some instruments and not others. As a result, it is difficult to understand how the conclusions about the extent to which the project would hinder Canada's ability to meet its environmental obligations were reached, and it is unclear whether the final decision will be based on a sound analysis or reasonable conclusions in that regard. More precision in which obligations and commitments are used in the analysis, why certain obligations and commitments are not considered, and how conclusions are reached would add rigour and credibility to the Minister and Governor in Council's decisions.

Recommendation 1: Climate Commitments and Environmental Obligations in TISGs

The Council recommends that the Minister direct the Agency to specify in Tailored Impact Statement Guidelines (TISG) which climate commitments and environmental obligations are most relevant to the impact assessment and therefore must be addressed by the proponent, and provide a rationale for its decisions respecting which commitments and obligations to consider and how its analysis was conducted.

The Council also acknowledges that projects vary in how much positive or negative impact they would have on Canada's climate change and biodiversity objectives, and the depth of analysis should be proportional.

The Council believes that meaningful assessments must compare projected project outcomes with specific targets and goals. For example, Table 6.6 from the Emissions Reduction Plan's [Annex 5](#), sets out the projected emissions of each economic sector (agriculture, buildings, electricity, heavy industry, oil and gas, transportation, waste and others) in 2030 if the measures and strategies described in the plan are carried out.

Table 6.6: Expected Emission Reductions of the Bottom-Up Analysis in 2030 by Sector

	2005 (Historical)	2010 (Historical)	2015 (Historical)	2019 (Historical)	2020 (Projected Emissions with the Plan)	2030 (Projected Emissions with the Plan)	Change 2005 to 2030
Agriculture	72	68	71	73	72	73	1
Buildings	84	80	83	91	85	60	-24
Electricity	118	95	79	61	52	15	-103
Heavy Industry	87	75	77	77	69	54	-33
Oil and Gas	160	166	190	191	179	118	-42
Transportation	160	167	172	186	165	150	-10
Waste	31	28	27	28	28	16	-15
Others	26	25	23	24	23	14	-12
Total (Excluding LULUCF)	739	703	723	731	674	500	-239
LULUCF, NBCS and agriculture measures	n.a.	10	-4	-8	-10	-30	-30
Total (Including LULUCF)	739	713	719	723	665	470	-269
% Below 2005						-36.4%	

Impact assessments could examine projects' likely emissions in light of the projected 2030 emissions of their sector, rather than Canada's overall 2030 emissions reductions target. For example, a proposed liquefied natural gas facility that would emit 4 Mt CO_{2e} per year could be assessed against the projection that oil and gas sector emissions will need to be 118 Mt CO_{2e} in 2030, rather than against 443 Mt CO_{2e}, which would be Canada's national emissions in 2030 if we achieve a 40% reduction from 2005 levels. That way, the decision about the extent to which a particular project would hinder Canada's ability to meet its climate commitments would have to account for any additional reductions that would be needed in that sector in order to meet the 2030 target.

Recommendation 2: Specific Targets, Goals and Outcomes to Assess Significance of Emissions

The Council recommends that the extent to which projects' effects hinder or contribute to Canada's ability to meet its environmental obligations and climate commitments be assessed considering federal policies that describe more specific targets, goals or expected outcomes, such as the Emissions Reduction Plan and updated national biodiversity strategy and action plan (NBSAP), when it is produced.

Global Biodiversity Framework (GBF) Target and Mitigation Hierarchy

The mitigation hierarchy is the internationally-recognized leading tool for ensuring that projects result in no net biodiversity loss or even net biodiversity gain. All feasible options must be taken to first avoid biodiversity impacts, then minimize them, then restore them, and finally to offset them. The early and ongoing participatory identification and comparative evaluation of alternatives assessment is critical to the proper functioning of the mitigation hierarchy, and only when all feasible options to achieve one step are exhausted should a lower step be taken.

In other words, only if there are no feasible options to avoid biodiversity loss should options to minimize them be explored; only when all feasible options to minimize biodiversity loss are exhausted should restoration be an option, and only when residual biodiversity loss will occur after all feasible options have been exhausted should offsets be relied on.

The CBD Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment set out detailed processes for each step of the assessment to better ensure that biodiversity values are protected through impact assessment. The Akwé: Kon Voluntary Guidelines were developed to help ensure CBD parties comply with Article 8(j) of the CBD respecting Indigenous Peoples and knowledge. Both provide useful guidance to support federal impact assessment.

Recommendation 3: Biodiversity Mitigation Hierarchy

The Council recommends that the Minister ensure that the biodiversity mitigation hierarchy be rigorously applied in accordance with international best practices.

Indigenous Health

Background

In impact assessment processes, Indigenous health is contemplated from a social determinants of health approach as defined by the Public Health Agency of Canada and Health Canada. This approach refers to a specific group of social and economic factors within the broader determinants of health, including factors such as income, employment, education, physical environments, gender, culture and race.

In 2007, the National Aboriginal Health Organization (NAHO) advanced a definition of Indigenous health in which “health is understood as the balance among the physical, mental, emotional and spiritual realms, as well as the environment, culture, family, and community, and that Indigenous well-being flows from balance and harmony among all these elements of personal and collective life”². Reading and Wien (2009)³ expanded our understanding that no assessment of Indigenous health would be complete without a consideration of how the social structures, systems, and institutions of a colonial state, or what they termed ‘distal determinants’ have a profound impact on Indigenous health, and on the social and economic conditions within which Indigenous Peoples exist. Reading (2018)⁴ argues that deeply embedded health determinants -- Indigenous worldviews, spirituality, self-determination -- continue to be harmed by these structures, systems and institutions. Empirical research is furthering our understandings of how environmental dispossession, land displacement, and environmental repossession

² National Aboriginal Health Organization. (2007). *Understanding Health Indicators*. Retrieved from https://achh.ca/wp-content/uploads/2018/07/Guide_Community_FNC_HealthIndicatorsInformationResource.pdf

³ Reading, C.L., & Wien, F. (2009). *Health Inequalities and Social Determinants of Aboriginal Peoples' Health*. Prince George, BC: National Collaborating Centre for Aboriginal Health. Retrieved from <https://www.ccnsc-nccah.ca/docs/determinants/RPT-HealthInequalities-Reading-Wien-EN.pdf>

⁴ Reading, C. (2018). Structural determinants of Aboriginal peoples' health. In Greenwood, M., De Leeuw, S., & Lindsay, N. M. (Eds.). (2018). *Determinants of Indigenous Peoples' health: Beyond the social* (2nd Edition). Canadian Scholars.

factor into the health outcomes of Indigenous populations (Big-Canoe & Richmond, 2014⁵; Lewis et al., 2021⁶; Tobias & Richmond, 2014⁷).

How is this important to the Council?

In its first report to the Minister, the Council recognized that Indigenous rights and culture, knowledge and engagement need to be a major focus of its overall discussions and ongoing work, including how impacts on Indigenous health and culture are profoundly connected to Indigenous identity and can be consistently addressed in impact assessments. Further, the Impact Assessment Act requires the integration of Indigenous knowledge into decision-making processes and consideration of changes to the environment that impact health. In the past year, the Council committed to develop an understanding of the importance of the connection to land as a determinant of Indigenous Peoples health and to explore guidance on how Indigenous knowledge could be woven into the governance and processes under the Act.

Current Issues and Opportunities

Past environmental assessments conducted under CEAA and CEAA 2012 rarely addressed the impacts on Indigenous health. When they did, it has often been as a second thought or in an obscure appendix to the main impact assessment report. Overall, there seems to be a lack of understanding of how Indigenous knowledge systems are place-based, relational, and fundamentally and intimately connected to the health of the land.

A quick review of available information and guidance around impact assessment does not provide significant information on the topic. This could be due to the lack of guidance documents and equally importantly, to the limited accessibility of such documents in the various government websites dealing with impact assessment processes.

⁵ Big-Canoe, K., & Richmond, C. A. (2014). Anishinabe youth perceptions about community health: Toward environmental repossession. *Health & Place, 26*, 127-135.

⁶ Lewis, D., Castleden, H., Apostle, R., Francis, S., & Francis-Strickland, K. (2021). Linking land displacement and environmental dispossession to Mi'kmaw health and well-being: Culturally relevant place-based interpretive frameworks matter. *The Canadian Geographer/Le Géographe canadien, 65*(1), 66-81

⁷ Tobias, J. K., & Richmond, C. A. (2014). "That land means everything to us as Anishinaabe...": Environmental dispossession and resilience on the North Shore of Lake Superior. *Health & Place, 29*, 26-33.

There are several models, however, that could be built upon to inform and develop Indigenous health impact assessments. Many recent initiatives provide examples of best practices and lessons learned. While most of them relate to Indigenous-led assessments, these best practices could be incorporated in all types of assessment. The Council has identified a few examples as relevant processes and initiatives to consider.

For example, the *2015 Inquiry and Public Hearing on Uranium Industry Development in Québec* provides an interesting perspective. The James Bay Advisory Committee (Cree) on the Environment and the Kativik Environmental Advisory Committee co-led the Inquiry with the Bureau d'audiences publiques sur l'environnement (BAPE) and were able to provide their perspectives on the importance of place-based knowledge systems and the connection of land to health and wellbeing. The Cree expressed how “spirituality is tied to their deep and complex relationship with the land and their respect for its ability to heal and meet the needs of the people who live on it (p. 15), that their ‘relationship with the land contributes to the spiritual, physical and psychological well-being of the Cree people”, “the environment is a core element of their vision of health”, and “human health in Cree communities is closely tied to environmental health” (p. 38). For the Inuit, “the land and traditional lifestyle are vital to the health and well-being of the Inuit” (p. 43). These perspectives are useful precedents to look to as best practices.

Another process to consider is the *Boat Harbour Remediation Project*, which is currently undergoing an environmental assessment under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Section 5(1) requires that environmental effects (b)(i) on federal lands, or (c) with respect to Aboriginal peoples’ health and socioeconomic conditions, physical or cultural heritage, current use of lands and resources for traditional purposes, or any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance, have to be taken into account. Nova Scotia Lands Inc. (the proponent) supported Pictou Landing First Nation (PLFN) to determine what data is deemed appropriate to inform the preparation of the Environmental Impact Statement (EIS), including the requirement to integrate Mi’kmaw knowledge, in order to make an assessment of how the Remediation Project impacts the PLFN community and its membership. In 2019, PLFN prepared the *Pictou Landing First Nation Well-Being Baseline Study* (Baseline Study) using well-being indicators that reflect the Mi’kmaw ontological and epistemological way of being in the world, reflecting the Mi’kmaw (w)holistic and relational worldview. The Project team achieved a response rate of 87% (261) based on a target population of 300 in the Baseline Study.

The Council notes that the proponent did not incorporate the Baseline Study into its findings. Instead, the proponent prepared a Human Health and Ecological Risk Assessment based on a Focus Group of eight (8) individuals who were selected to represent hunters, fishers, and cooks from the community and a methodology developed using Health Canada guidance and the University of Ottawa's First Nations Food, Nutrition and Environment Study (FNFNES) traditional foods consumption patterns. This appeared in the EIS as Appendix A. The Baseline Study, which used an Indigenous health approach, appeared in the EIS as Appendix S.

The Council also notes the existence of two relevant documents from the federal government. Health Canada's "*Guidance Document for the Health Impact Assessment of Designated Projects under the IAA*" is a draft document that is still undergoing consultation. It is based on a social determinants approach and the Council is concerned it may not properly embrace the Indigenous meaning of health and well-being. In addition, the Agency has developed a guidance document for the analysis of health, social and economical effects under the *Impact Assessment Act*, as part of the practitioner's guide to federal impact assessments under the Act. This evergreen document recognizes that for Indigenous communities there are distinct determinants of health, such as self-determination, cultural continuity, the legacy of residential schools, and language. It also mentions that the health and well-being of Indigenous communities are influenced by factors (such as land and the impacts of colonization) that intersect with other determinants in ways that are distinct from non-Indigenous Canadians. Despite this acknowledgment of Indigenous-specific determinants of health, the document lacks specific guidance to assess impacts on Indigenous health.

The Council believes there would be benefits to have a guidance document specific to the assessment of impacts on Indigenous health (or a dedicated chapter in a guidance document with a broader scope) that would include an emphasis on the interconnections between the land and the spiritual and cultural determinants of health and well-being. This would allow a better incorporation of Indigenous health assessments into the decision-making process.

Building on the fact that reconciliation is "*central to all aspects of the Government of Canada's relationship with Indigenous Peoples*", on the recommendations from MINAC's first report and the issues identified in the preceding section, the Council offers the following recommendations, which are based on many factors including its concerns about the limitations of the current available guidance. The Council also wants to reiterate the need for the Agency to build on its developing relationships with Indigenous partners to ensure that guidance is rooted in Indigenous knowledge and culture.

Recommendation 4: Best Practice Models for Indigenous Health Assessment

The Council recommends that the Minister ensure that the Agency work with its Indigenous partners and the Indigenous Advisory Committee to develop a guidance document that provides ‘Best Practice’ models on how to incorporate Indigenous health assessments in impact assessment processes. This guidance document must fully reflect understanding of how Indigenous knowledge systems are place-based, relational, and fundamentally and intimately connected to the health of the land.

In addition to the content of guidance documents or other available tools, the Council has identified concerning shortcomings with respect to the accessibility of the information. To that end, the Agency’s website would benefit from being updated in a way that would make it easier to find information on Indigenous health and other Indigenous issues. Difficulty in locating information not only disadvantages all parties looking for it but also does not accurately reflect the efforts of the Agency to build better partnerships.

Recommendation 5: Improved Access to Indigenous-Related Information

The Council recommends that the Minister direct the Agency to make information on how to engage with Indigenous communities and how to assess impacts on their health and well-being, culture and rights more accessible on the Agency website.

The Council also wish to flag the challenges experienced by Indigenous Peoples who have to address requirements from many federal departments and agencies when trying to navigate through the federal impact assessment process. Recognizing the complexity in the emerging policy coming from numerous departments to implement the Act, a better coordination is required from the federal entities involved in the process.

Recommendation 6: Inter-departmental Collaboration on Indigenous Health

The Council recommends that the Minister seek strengthened collaboration between various federal departments, agencies, and advisory committees such as Health Canada and the Canada Energy Regulator, that have responsibilities regarding Indigenous health assessment and may require input from Indigenous advisory bodies.

Indigenous-led Assessments

Context

Much work has been done across Canada in the realm of Indigenous-led assessments (ILAs), by Indigenous governments and organizations, proponents, governments, and practitioners, including building internal capacity within the Agency to better understand ILAs. Indigenous leadership in impact assessment can take many forms within the broad spectrum of engagement, collaboration, and cooperation available under the *Impact Assessment Act*, depending on the context and the interests of a particular community. Indigenous-led assessment can refer to co-managed assessment (for example, through joint review panels), Indigenous assessments independent of Crown assessments, and Indigenous-led issues-based assessments (e.g., Indigenous health assessment, psychosocial impact assessments⁸, cultural impact assessments).

Examples of Indigenous-led or co-managed assessments

Many examples of Indigenous-led or co-managed assessment processes in Canada are described in a report that was done for Gwich'in Council International (GCI) in 2018, that can be accessed [here](#). A more recent report entitled “*Environmental Scan of Indigenous-led Impact Assessments in Canada*”⁹ also provides examples and shows where each assessment fit on a spectrum from low control/low responsibility to high control/high responsibility.

The list below, while not an exhaustive list of all initiatives, illustrates the progress made in recent years in the area of Indigenous leadership in impact assessment.

Co-development with a proponent

- Ktunaxa Nation – BC Hydro Revelstoke Unit 6 Project
- Keeyask Cree Nations – Manitoba Hydro Keeyask Hydroelectric Project

⁸ <https://iaac-aeic.gc.ca/050/documents/p80124/146118E.pdf>

⁹ The Firelight Group Research Inc. (2020). *Environmental Scan of Indigenous-led Impact Assessments in Canada*. Developed for the Impact Assessment Agency of Canada and its Indigenous Advisory Council.

- Nunavik Inuit – Raglan Nickel Mine Sivumut Project
- Cheslatta First Nation – Rio Tinto Alcan Ne Too Hydroelectric Project

Co-managed with the Crown

- Nunavut Impact Review Board – Strategic Assessment of Oil and Gas Development in Baffin Bay and Davis Strait – Delegation of Inuit Qaujamajatuqangit to Qikiqtani Inuit Association (structural case study)
- Mikisew Cree First Nation/CEAA – Teck Frontier Oil Sands Mine Project
- Collaboration Agreement between British Columbia and the Carrier Sekani First Nations and Carrier Sekani Tribal Council (structural case study)
- The New BC Environmental Assessment Act (structural case study)
- Tlicho Government – Fortune Minerals NICO Project
- James Bay Northern Quebec Agreement – Environmental and Social Impact Review Committee (COMEX – structural case study)

Independent Indigenous-led IA

- Tsleil-Waututh – Trans Mountain Pipeline Expansion Project
- Squamish Nation – Woodfibre LNG
- Stk'emlupsemc Te Secwepemc Nation – KGHM Ajax Mine Project

One Project, One Assessment

The Council is aware that a central goal of the *Impact Assessment Act* is to increase regulatory certainty and clarity by supporting the objective of one project, one assessment. The Government of Canada's stated goal is "to secure consent through collaboration with Indigenous Peoples, with the objective of obtaining acceptance of impact assessment outcomes within their communities".

The Council also understands that there may be concerns that a movement towards Indigenous-led and co-managed assessment might move Canada further from that objective, raising the spectre that proponents might be required to engage with multiple Indigenous-led assessments for a single project. The Council appreciates these concerns but is confident that most parties, Indigenous and non-Indigenous, are likely to feel best served by the principle of one project, one assessment, which can still co-exist with the objectives of Free, Prior and Informed Consent set out in UNDRIP.

Indigenous-led and co-management assessments are evolving through implementation of the new planning phase, the development of the *Indigenous Cooperation Regulations*

currently being led by the Agency's Indigenous Advisory Committee, initiatives of a number of relatively new Indigenous-led environmental and economic organizations, and ongoing relationship-building between the federal government and Indigenous governments and communities across Canada. The Council is aware of examples of efficient co-managed assessments that have delivered outcomes beneficial to proponents and communities, such as in northern Quebec. The Council anticipates that support of Indigenous leadership and the incorporation of Indigenous knowledge in carrying out assessments will in fact lead to greater regulatory certainty and efficiency and reduce the risk of project decisions going through lengthy court processes.

Benefits, Opportunities and Challenges

While we are moving in the right direction, the Council believes there is still much room for growth and development of ILAs. MINAC emphasizes the need to increase the use of ILAs in order to build trust, to manifest reconciliation, and respond to the Truth and Reconciliation Commission's Calls to Action No. 43, 44, 47, 92, specifically, and several others that touch on elements of protection of lands and Indigenous rights, culture, and health.

ILAs create opportunities for collaboration, for increased dialogue, and understanding of Indigenous interests. They can be a powerful mechanism to promote more holistic understanding of Indigenous health and bring together different knowledge systems to inform impact assessment processes. ILAs and CMAs can also allow communities to exercise data sovereignty, and proponents to apply the principles of Ownership, Control, Access, and Possession ("OCAP").

ILAs can contribute significantly to the efficiency and predictability of impact assessment processes by reducing the likelihood of legal challenges down the line. Efficiency and predictability require early dialogue, a firm understanding of Indigenous interests and how they specifically relate to the project or area being assessed. It also requires jurisdictional clarity to ensure the assessment process is streamlined and harmonized in a way that does not create multiple authorizing entities (Indigenous, provincial, federal).

To promote ILAs and CMAs, there needs to be recognition of Indigenous laws, Indigenous jurisdiction, respect of Indigenous knowledge systems, and by extension Indigenous experts across the country; this currently varies significantly from one province to another and one federal department to another. The Council also recognizes the need to balance efficiency and timeliness with undertaking a process

that is respectful and honours the Treaty relations the Crown must uphold and believes this can be done by engaging Treaty partners in dialogue to address emerging issues proactively.

Promoting ILAs and CMAs will require deliberate, concerted effort to (1) address current inadequate funding available to communities to participate and undertake the work, (2) build long-term sustainable capacity to conduct ILAs and CMAs, (3) improve government and proponent understanding and recognition of the value of ILAs and CMAs

Any approach taken by the Agency must recognize the sovereignty of Indigenous people, groups, and Nations, Inuit rights holders, communities, and governing organizations, and ensure that Nations, rights holders, communities, and organizations are able to protect their inherent right to self-govern. The Council also recognizes that pan-Indigenous initiatives have not always served all First Peoples equally and therefore, there is a need to develop approaches specific to the needs of the affected Indigenous communities.

It also needs to respect Treaty-based processes already in place that were developed before Canada's impact assessment processes evolved and create space for those processes to continue to occur. In short, it needs to recognize Indigenous jurisdiction (inherent and existing) and lean on guidance from these processes.

The Council met with four Indigenous-led organizations that all have a mandate relevant to impact assessment. These organizations are the Canadian Mountain Network, First Nation Major Projects Coalition, the Indian Resource Council, and the Indigenous Centre for Cumulative Effects. The Council noted that the work of these organizations varies according to their respective mandates, and may include capacity building within Indigenous communities, collection of environmental data, networking and information-sharing, as well as providing support to Indigenous proponents of resource development projects.

Recommendation 7: Joint Capacity Building Plan

The Council recommends that the Minister direct the Agency to collaborate with its Indigenous partners, including existing Indigenous-led organizations working in the area of impact assessment, to jointly prepare a plan to

- a. increase impact assessment capacity within Indigenous communities and Indigenous governments so they can lead their own assessments and/or co-development assessments;*
- b. ensure that Indigenous governments and communities seek, secure, and sustain appropriate funding and technical resources and meaningfully participate in ongoing assessments;*
- c. build capacity within the federal government to understand and engage with ILAs and CMAs, including education in realms of Indigenous laws, Indigenous jurisdiction, Indigenous knowledge, and Indigenous health;*
- d. Identify and support Indigenous experts who can provide technical expertise on assessments.*

The Council believes that the needs of Indigenous communities and Indigenous governments in the impact assessment space are complex, vary across the country, and cannot be filled with a single organization. Community protocols must be followed and to that end, training could be better left to the communities to do themselves. The Council believes that organizations such as the Lands Advisory Board Resource Centre (labrc.com) offer a model that may be worth replicating.

Recommendation 8: Creation of an Indigenous Assessment Resource Centre

The Council recommends that, through the process outlined in Recommendation #7, Indigenous partners be asked to consider the need for and objectives of an Indigenous-led resource centre to promote and support Indigenous leadership in all aspects of impact assessment, including Indigenous-led assessments, co-managed assessments, or responsibility for individual components of assessments. Such a resource centre could provide information, training, and financial resources to Indigenous governments and communities. It will also be important that the resource centre be able to fulfill the needs of First Nations, Métis and Inuit.

The Council believes that in some cases, some Indigenous governments or groups might want to lead parts of an assessment without going through the process of being recognized as a “jurisdiction” under the Act. To allow this, there needs to be flexibility and clear processes to foster Indigenous leadership for smaller elements of an impact assessment so that communities without capacity or desire to take on the whole assessment (e.g., public participation, impacts on non-Indigenous peoples, impacts on Canada’s ability to meet its climate commitments and environmental obligations) could easily take on parts of it (e.g., GBA+, impacts on Indigenous rights, impacts on Indigenous health and culture, impacts within their territories, etc.).

The Planning Phase

Introduction

As discussed earlier in this report, the Council believes that impact assessment can lead to better-informed decisions that foster sustainability, respect Indigenous rights, and help Canada's ability to achieve its climate commitments and biodiversity obligations. The Council also acknowledges the need for processes that are efficient and result in timely decisions. The *Impact Assessment Act* is the first federal assessment law to incorporate a planning phase into assessment processes. The planning phase is intended to help achieve these objectives by:

- Identifying key values and information to focus on in impact assessment;
- Fostering dialogue among jurisdictions, experts, proponents, Indigenous communities and the public early in the process;
- Engaging key players early on in project design so as to shape project planning in a manner that maximizes benefits and minimizes harms; and
- Identifying potential issues and how to avoid them early in the process.

In its first report, the Council made recommendations related to multi-party working groups, the section 16 decision on whether an impact assessment is required, and the capacity of federal expert departments to effectively engage. The Council's second report builds on those recommendations and on the continued observation of the planning phase implementation. The recommendations offered in this chapter focus on how to ensure that assessments consider relevant values and issues, foster inclusivity, dialogue, and transparency, and maximize impact assessment's potential.

At the outset, the Council has three related observations. First, as recognized by the Supreme Court of Canada in the seminal case *Friends of the Oldman River Society v Canada (Minister of Transport)*, impact assessment is a planning tool.¹⁰ At the project level, planning most fundamentally entails looking at different alternative means of carrying out projects (e.g., whether they will be accessed by road, plane, or other mode of transportation; whether worker camps will be needed and, if so, their location; whether they will self-generate electricity or attach to the grid; how and where waste will be disposed of), and in some cases (more typically with public-sector projects),

¹⁰ [1992] 1 SCR 3, 84 Alta LR (2d) 129.

alternatives to the project itself. As such, while impact assessment may inform regulatory decisions, it must also focus on bigger-picture design elements and their alternatives.

Second, while there have been some exceptionally long assessment processes (e.g., the Northern Gateway Pipeline Project), under past legislation much of time between project proposal and shovels in the ground was taken up by post-assessment regulatory reviews. In many cases, regulators were not sufficiently involved in assessments, resulting in a failure to identify information needs early on and duplication of information requirements between assessments and regulatory reviews. The *Impact Assessment Act*, through the planning phase and by requiring expert federal departments with relevant information to be involved in assessments, is aimed at shortening *overall* project assessment and decision-making timelines by facilitating dialogue between assessment and regulatory authorities and by better harmonizing the information needed for each. The Council also recognizes that a requirement under the Act is the development of a “permitting plan” during the planning phase. The purpose of the permitting plan is to provide the proponent, Indigenous groups, the public and other participants in the process with an outline of the permits, licences and authorizations that may be required. As a result, getting the planning phase right sets the stage for both comprehension and efficiency not just in the assessment, but also in post-assessment regulatory processes.

Third, it appears that some of the activities that should occur in the impact assessment phase (such as analysis of alternatives and selection of preferred alternatives) are being uploaded to the planning phase, potentially undermining the objectives of transparency, inclusivity, planning, and tailoring. It appears that the planning phase may currently be aimed at drilling down in a very detailed way on one set of ways to carry out a project, rather than identifying potential issues and the design options to evaluate in the assessment. Deciding to leave potentially feasible alternatives off the table in the planning phase may undermine the Minister and Cabinet’s ability to make informed decisions about how to avoid and mitigate adverse federal effects and maximize benefits so residual effects can be found to be in the public interest.

The Council also acknowledges the constraints inherent in the 180-day timeline imposed on the planning phase, as well as the mandatory timelines for each of the subsequent phases of the assessment. The recommendations respecting the planning phase are aimed at achieving the goals of rigour, efficiency, dialogue and reconciliation in light of the need for timely climate and biodiversity action and reality of the timelines imposed by the Act.

Tailored Impact Statement Guidelines (TISG)

Tailoring can have many benefits. It can focus assessments on key issues of concern, alleviate informational burdens on proponents, help Indigenous Peoples and the public navigate assessments and focus their submissions, and make processes more efficient. At the same time, it is important that the tailoring process does not result in potentially relevant issues being excluded. Currently, the template tailored impact statement guidelines (for general projects as well as those regulated by the Canadian Nuclear Safety Commission and those regulated by the Canada Energy Regulator) are quite lengthy and it appears that the emphasis is expected to be on removing valued components or issues to produce the final TISG.

The planning phase occurs early in the process, before much information-gathering has occurred and before experts, Indigenous Peoples and the public have had a meaningful opportunity to know what the key issues and values might be. Thus, removing values or issues could occur in the absence of important information. Also, once values or issues are removed, there may be a reluctance to add them back in. The Council recognizes that tailoring is not only about removing or reducing. It also involves modifying or adding new information requirements for valued components or adding new valued components based upon the project-specific context. However, the perceived focus on removal could undermine trust and dialogue (e.g., if members of the public or Indigenous Peoples suspect proponents of trying to have important information scoped out).

There are some types of projects for which we have decades of environmental assessment experience, and for which much is known about their common design features, typical alternatives or alternative means, and their typical impacts, risks, and benefits. For these projects, a narrower focus may be beneficial, as a key purpose and benefit of impact assessment for such projects is to examine factors that are unique in the circumstances: e.g., location, local Indigenous and non-Indigenous community needs, proximity of necessary infrastructure, etc.

To achieve the same intent of ‘positive focusing’, the Agency could create template tailored impact statement guidelines that are specific to project subsectors for which much is already known. These subsector guidelines would be shorter and focused on commonly-known information needs and common alternatives. From there, the planning phase would be focused on identifying location and context-specific values, design options and alternatives, and issues to add to the guidelines that are provided to proponents and focused on in the assessment. Given the Minister’s statements

respecting Canada's critical minerals strategy and climate change, as a starting place, specific tailored impact statement guidelines could be developed for each of the categories of critical minerals and large-scale electricity projects anticipated to be proposed in the next decade. In the case of mining, for example, the guidelines could be further delineated by the type of mine (underground or open pit), whether there will be a mill or if the ore is shipped elsewhere for processing, as well as the location and the infrastructure needs, all of which may reduce or increase potential impacts and factors to consider.

Recommendation 9: Subsector-specific Templates for Tailored Impact Statement Guidelines (TISG)

The Council recommends that the Minister ensure that the Agency work with all interested parties to develop subsector-specific templates for TISGs that identify relevant issues, information, and values to scope in to the assessment, in order to facilitate constructive dialogue and information-sharing during the planning phase. While the purpose of the subsector-specific template would be to focus information gathering on relevant issues and valued components, the possibility should remain open to obtain additional information if required during subsequent stages of the assessment. Focusing would be an iterative process that occurs throughout the assessment, with the level of effort required scaled to the importance of each issue.

Independent Experts and Knowledge Holders

The Council notes that it is critical that the planning phase be seen as just the first step in an iterative process of identifying key information and issues, and that as new information comes to light, new issues and information can be brought into focus throughout the assessment process, while at the same time avoiding an endless cycle of information requests that contribute to unwarranted delays. To ensure this, appropriate expertise within the Agency and drawn from outside government is critical.

Effective tailoring, especially within the 180-day timeline, requires having the right expertise at the table. In its last report, the Council recommended that the Agency explore establishing multi-party working groups in the early planning phase that would include, among other players, outside experts.

The importance of identifying who the experts are ahead of time is critical to avoid taking time searching for names during the short timelines mandated for the planning phase. To that end, the Council believes that the Agency would benefit from having a list of individuals they can turn to as needed.

The Council notes the recommendations made by the Multi-Interest Advisory Committee appointed in 2016 to advise on the federal environmental assessment review process that federal agencies “*be given the opportunity to collaborate more with academic institutions... Indigenous governments and community groups*” and that reviewing bodies be provided the time and resources to obtain independent review of project descriptions and impact statements.¹¹ While independent experts may currently choose to participate in impact assessments, the Council believes that proactive engagement of independent expertise at key stages of the assessment with compensation for those experts’ input would be beneficial. As with other information submitted in assessments, any independent expert information and advice would need to be made publicly available on the Canadian Impact Assessment Registry, and Indigenous Peoples must be able to retain ownership and control of any data and information created with or about themselves.

Recommendation 10: Roster of Independent Experts

The Council recommends that the Minister establish a roster of independent experts in a range of subject-matter areas, and draw on this roster (as well as on expert federal departments, Indigenous technical staff and knowledge holders, technical consultants, and provincial experts where applicable and appropriate), to provide advice on tailoring and information requirements early in the planning phase of each assessment. Experts from the roster could also be appointed to multi-party working groups (Recommendation 8 in MINAC’s first report).

It should be emphasized that this roster of experts is not intended to replace expertise retained by participants and Indigenous groups. It is not envisioned to be a permanent body but rather a resource for the Agency, review panels and federal expert

¹¹ Multi-Interest Advisory Committee (MIAC). (2016). *Advice to the Expert Panel Reviewing Environmental Assessment Processes* at 60.

departments, and while it could also be a helpful resource for the public and Indigenous Peoples, they must be able to choose any experts they wish to retain.

Therefore, it does not preclude the engagement of experts or knowledge holders who are not on the roster.

Alternatives to Projects

The Council notes that the analysis of project alternatives has not been done in a systematic nor in a consistent manner in impact assessments conducted in Canada so far. While project proponents may conduct an analysis of alternatives for their own purpose, it is often not part of the impact assessment that is made public, given the absence of a legal requirement to do so.

For example, the Detailed Project Description for the Webequie Supply Road project included four alternatives to the road. The Tailored Impact Statement Guidelines (TISG) issued for the project, however, only require the proponent to describe the “null” alternative. The other three alternatives were not pursued in the TISG, and no rationale was given for leaving them off the table before the assessment phase commenced.

An analysis of project alternatives is important because by the time the Minister makes a decision, it will be about a near-final project design and the Minister needs to know feasible options to avoid, minimize and restore biodiversity loss and other impacts have been explored and that this version of the project is the best.

Recommendation 11: Inclusion of Project Alternatives in Impact Assessment Processes

The Council recommends that project alternatives be identified in the planning phase and further elaborated in the assessment phase. This would contribute to a more comprehensive assessment of potential impacts without overloading the time-constrained planning phase. In addition, if alternatives are not included in the impact assessment, there should be a rationale outlining the reasons why they are not considered.

Regional Assessments

In its first report, the Council's recommendations with respect to regional assessments were in large part about managing expectations: "The Council recommends that in order to avoid confusion, foster trust, and manage expectations, a public policy document should be developed (or the current regional assessment policy and guidance revised), defining different types of regional and strategic assessment according to the purposes and scope of each, and providing indications for when each type may be appropriate."

To date, there has been one regional assessment completed under the IAA, two that are underway, and two currently in the planning phase:

- 1) **Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador** (completed): This regional assessment focused on oil and gas exploration in the region and resulted in the exemption of offshore exploration activities from individual project impact assessment as authorized by paragraph 112(1)(a.2) of the IAA. The Council notes that this assessment and exempting regulation have been through litigation on several grounds, including the applicants' assertion that the assessment contained no actual cumulative effects assessment. This is currently before the Federal Court of Appeal (the Federal Court dismissed the challenge).¹²
- 2) **Ring of Fire Area (Ontario)** (planning): This regional assessment will be conducted in the area centered on the Ring of Fire mineral deposits in northern Ontario, approximately 540 kilometres northeast of Thunder Bay and 1,000 kilometres north of Toronto. The Agency is working with the Province of Ontario, Indigenous groups, federal authorities, non-government organizations and the public to determine the appropriate activities, outcomes and boundaries of the regional assessment. An initial draft terms of reference generated significant opposition from Indigenous Peoples in the area and Minister Guilbeault subsequently agreed to co-develop new terms of reference with affected Nations.
- 3) **St. Lawrence River (Quebec)** (planning): This regional assessment is in the planning phase. The Agency is currently working with the Province of Québec, Indigenous Peoples, federal authorities, non-government

¹² *Ecology Action Centre v Canada (Environment and Climate Change)*, [2021 FC 1367 \(CanLII\)](#)

organizations and the public to determine the appropriate activities, outcomes, and boundaries of the regional assessment. The goal of this assessment is to inform future project-specific federal impact assessments and decisions in this area.

- 4) **Offshore Wind Development in Newfoundland and Labrador and Nova Scotia** (underway): These two regional assessments are being conducted in areas offshore Newfoundland and Labrador and Nova Scotia. The Agency has been working with the Governments of Newfoundland and Labrador and Nova Scotia, Indigenous groups, federal authorities, non-government organizations and the public to plan the regional assessments, including defining their goals, objectives, geographic boundaries, activities, outcomes, and governance structure. The final agreements and Terms of Reference were published on March 23, 2023. The regional assessments will help inform future project-specific federal impact assessments and decisions for offshore wind projects in these areas.

The Agency has recently released a draft policy guidance with respect to regional assessments. This draft guidance describes regional assessments as “allow[ing] the Government of Canada, together with other jurisdictions, to go beyond the scope of project-specific impact assessments to understand the regional context where development occurs (or may occur), and to consider the management of effects from a regional perspective.” The draft guidance goes on to list potential objectives and outcomes, the basic process for regional assessments, the considerations that inform the decision as to whether to conduct a regional assessment, planning and engagement, the different kinds of regional assessments (by the Agency or otherwise), and finally key elements and guiding principles, which include cooperation with other jurisdictions, Indigenous involvement and engagement, public participation, and predictability and transparency.

The Council observes that the Agency appears to be intent on maximizing the flexibility of the regional assessment regime. For example, the draft policy states that “Regional assessment is a flexible tool adaptable to a region’s specific characteristics and circumstances. As a result, the goals and outcomes of individual regional assessments may vary. For example, an assessment may focus on development in one industry sector or in multiple sectors within a geographic region. It may examine a broad range of environmental, health, social and economic effects, or a more limited set of effects of interest.” This flexibility is a dominant theme throughout the draft policy guidance. As another indication, the discretionary term “may” is used 33 times throughout.

The Council remains concerned with the Agency's approach to regional assessments. On the one hand, some manner of regional assessment (or study) provisions has been included in federal impact legislation for decades but withered from disuse, and some members are encouraged to finally see the federal government making use of this tool, which is widely considered as necessary to manage cumulative impacts on landscapes more effectively. These members' support hinges on the learning that they expect will come from actually doing regional assessments. Other members remain concerned that the Agency's decision to maximize flexibility comes at the expense of using assessments to better manage cumulative effects, foster sustainability and advance reconciliation and that, under the current draft policy guidance, regional assessments could potentially do more harm than good. This is especially the case where, as seen with the Newfoundland and Labrador Offshore Exploratory Drilling regional assessment, the completion of a regional assessment is not limited to informing and improving future project assessments but also unlocks the Minister's authority to exempt classes of projects from individual impact assessment. The Council recognizes that such authority is currently limited to offshore exploratory drilling or offshore wind projects, provided regulations are created that impose conditions on such projects which must be met by proponents (per paragraph 112(1)(a.2) of the IAA and s.2(2) of the *Physical Activities Regulation*). However, the Council remains concerned, as this authority could be expanded through Governor in Council amendments.

The Council is of the view that the primary motivation for regional assessments is first and foremost about better managing cumulative impacts. Consequently, they should at a minimum include the hard work of assessing such impacts and offering guidance for their better management and consideration in project-level assessments. As noted at the outset of this report, cumulative impacts are increasingly the site of contention over resource development, including with respect to Indigenous and treaty rights. The Blueberry River First Nation (BRFN) were recently successful in a precedent-setting judgment against British Columbia, which was found to have breached the BRFN's Treaty 8 rights as a result of the cumulative impacts of resource development in their traditional territory. The British Columbia Supreme Court found that the "cumulative effects of industrial development authorized by the Province have significantly diminished the ability of Blueberry members to exercise their rights to hunt, fish and trap in their territory and therefore constitute an infringement of their treaty rights". Similar lawsuits have already been initiated in Alberta and Saskatchewan.

The Council understands that the draft Regional Assessment Policy was opened for a period of public consultation and that this period closed at the end of February 2023. The Council also understands that the Agency received considerable feedback on this

draft policy. This represents an important step in the evolution of regional assessment and the Council encourages the Minister to ensure that regional assessment policy guidance fully reflects the purposes of the IAA and more specifically the drivers for regional assessments. These purposes (at section 6 of the IAA) include the requirements:

- to foster sustainability;
- to protect the components of the environment, and the health, social and economic conditions that are within the legislative authority of Parliament from adverse effects caused by a designated project;
- to encourage the assessment of the cumulative effects of physical activities in a region and the assessment of federal policies, plans or programs and the consideration of those assessments in impact assessments.

In particular, the Council emphasizes the urgent need to address cumulative effects through improved regional assessment processes.

Recommendation 12: Regional Assessments and Cumulative Effects

The Council recommends that the Minister ensure that cumulative effects assessment be positioned as one of the central objectives of every regional assessment process, with the ultimate goal of determining sustainability thresholds that can be used to guide the assessment of individual projects and other related planning initiatives in the region. The Council appreciates that this may take some time to achieve but encourages the Minister to support a program of associated research, practice, and evaluation to move regional assessment towards this goal.

It is worth recalling that, done properly, regional assessments can contribute to more efficient impact assessments at the project level. Proponents have long struggled with cumulative effects assessment. But no such efficiencies are gained if a regional assessment itself does not do the work of assessing cumulative effects and setting out options for their management.

As noted above, the completion of a regional assessment unlocks the power for the Minister to exempt projects from individual assessment (where those project types have been prescribed in regulations). In the Council's view, if the Agency is going to pursue

flexibility as its primary goal, which includes regional assessments that do not actually do the work of assessing cumulative effects, then it seems plain that the power to exempt projects must also be calibrated as a matter of policy. Simply put, the power to exempt projects should be understood as available only where certain minimal conditions of regional assessment have been met, including an actual assessment of environmental effects.

Recommendation 13: Authority to Exempt Classes of Projects from Assessment

The Council recommends that the Minister only use the powers granted to him or her in paragraph 112(1)(a.2) of the IAA to exempt entire classes of projects from individual impact assessment in exceptional circumstances, where a thorough regional assessment has involved a process that is broadly equivalent to that required for individual project assessments in that region. This would include adequate Indigenous engagement, public participation, alternatives analysis, baseline definition and assessment of projected project effects and cumulative effects.

The Council recognizes that it may be reasonable for a regional assessment to reduce the information requirements for individual project assessments in some cases, but remains concerned about the possible repercussions of wholesale exemption on the effectiveness of assessment and on public confidence.

Project Designation

The IAA maintains the approach adopted under CEAA 2012 of applying primarily to “major projects,” capturing only a fraction (less than two dozen annually) of the thousands of projects and activities that impact on areas of federal jurisdiction every year. The [Physical Activities Regulations](#) (SOR/2019-285) describe projects that are subject to the Act and the thresholds at which assessments are triggered.

Like both of its predecessors and most provincial assessment regimes, however, the IAA also gives the Minister the authority (pursuant to subsection 9(1)) to require projects that are not described in the [Physical Activities Regulations](#) to enter the impact assessment process. Since the passage of the IAA, there have been fifty-two (52) project designation requests. Five projects were designated as requiring an impact assessment as of March 21, 2023, and two are pending, which translates into a 10% acceptance rate. This is similar to what was observed under CEAA 2012, under which there were 49 designation requests. Fifteen of these 49 requests were transitioned to the IAA and of the 34 remaining requests, four projects were designated, for a percentage of 12%. There have also been a relatively high number of requests for regional assessments (12) under the IAA so far, with four having been accepted.

Request for Assessments:	65
Requests to Designate Projects	52
<ul style="list-style-type: none"> Projects Designated 	5
<ul style="list-style-type: none"> Designation Requests (Ongoing) 	2
Requests for Regional Assessment (RA)	12
<ul style="list-style-type: none"> Requests Accepted 	4
<ul style="list-style-type: none"> Request for RA (Ongoing) 	0
Request for Strategic Assessment (SA)	1
<ul style="list-style-type: none"> Request for SA (Ongoing) 	0

It is reasonable for Canadians, and for the Council, to consider what is behind this relatively high number of project designation requests, bearing in mind that the use of this power has the potential to undermine the certainty of the IAA regime, with a consequent and inverse impact on investment certainty.

There are several potential explanations, some of which may be working in tandem. First, some consider the *Physical Activities Regulations* to be under-inclusive, *i.e.*, that they do not capture the full range, or a sufficient range, of projects that have the potential to impact areas of the environment that fall under federal jurisdiction, and consequently seek assessments for those projects not listed in the Regulations. Along this vein, the Council has heard concerns about the transparency, or lack thereof, of the analysis that underpins the Regulations, and the manner in which thresholds for certain projects were arrived at in particular. The Council acknowledges that there have been some notable improvements such as the development of a common project registry: <https://common-project-search.canada.ca/> that allows inquiries for project information from multiple federal departments. Nonetheless, the Council believes that the IAA provides greater levels of transparency and opportunities for public participation than other federal regulatory processes (e.g. under the *Fisheries Act* or *Canadian Navigable Waters Act*) that are sometimes invoked as sufficient to address impacts on federal areas of jurisdiction by themselves. Therefore, dissatisfaction with the adequacy of these processes may well lead to requests for a project to go through impact assessment.

On the other hand, few if any of the designation requests made under the IAA would have been captured by CEAA 2012's project list regulation. An alternative explanation is that the current government may have been expected to be more receptive to designation requests.

Provincial environmental assessment regimes are also selective in their applicability and may be considered insufficiently robust by some stakeholders and members of the public, who may be seeking recourse to what they perceive as a more robust federal regime. Still, other stakeholders may be leveraging the designation mechanism to thwart projects they oppose.

The Council is aware that a review of the *Physical Activities Regulations* is scheduled in the near term. In the Council's view, this review provides a timely opportunity to review and improve the *Physical Activities Regulations* in a transparent and evidence-based manner. To support the review process, the Council is recommending preparation of a study to gather relevant information for consideration by all participants.

Recommendation 14: Study to Underpin Review of the Physical Activities Regulations

The Council recommends that the Minister ask the Agency, with support from expert federal departments, to undertake a public, transparent, and evidence-based study of projects and activities in advance of the five-year review of the Physical Activities Regulations. The purpose of such a study would be to provide a base of information to be drawn on by all review participants, including (without necessarily being limited to):

- existing and future projects that could impact on areas of federal jurisdiction;*
- sensitive and ecologically-important areas and areas of concern for Indigenous Peoples;*
- standard mitigation measures and the extent of their efficacy at addressing direct and cumulative impacts;*
- information and knowledge gaps, risks and uncertainties; and*
- an evaluation of whether and how provincial/territorial/federal regulatory regimes can be relied on to manage effects on areas of federal jurisdiction, and identification of situations in which the incremental value of the impact assessment process is needed to fill significant gaps.*

The Council recognizes that ultimately, decisions as to which projects should be designated in the regulations lies with the Governor in Council and will likely include additional considerations to the information described above. It also acknowledges the intention for the IAA to apply only to major projects with potential for significant effects on areas of federal jurisdiction, and that the Act is not designed to apply smaller, screening-style assessments to minor projects. Our intention with this recommendation is for the results of the study to help make evidence-based and transparent decisions about which projects merit impact assessment.

In Conclusion

The Council opened this report by emphasizing the urgency of both the intertwined climate and biodiversity crises, and the truth and reconciliation imperative to develop an equitable relationship between Indigenous and non-Indigenous people in Canada. We concluded that impact assessment can play a vital role in both of these areas. The Council was created by the *Impact Assessment Act* and advises the Minister of Environment and Climate Change Canada. We are well aware that the Act only applies to a limited subset of all the projects and undertakings initiated each year across the country, let alone the ongoing effects of transportation, residential and commercial activities, farming, forestry and so on. Nevertheless, the Council believes that the Minister and the Agency can play a leadership role through the implementation of the Act and build better relationships by supporting Indigenous leadership in decision-making around land management and resource development.

Assessment of individual projects under the Act can only do so much, even though this is important. Ultimately, collaboration is essential, between all Indigenous and non-Indigenous jurisdictions, if climate and biodiversity obligations are to be met and reconciliation achieved. The contribution that the Act can make towards promoting this collaboration is through the practice of regional and strategic assessment. We recognize the challenges of putting regional and strategic assessment into practice and we hope to partner with the Agency and the other advisory bodies (the Indigenous Advisory Committee and the Technical Advisory Committee) in reviewing the progress of policy development in these areas, and providing advice to the Minister.

Shortly before this report was finalized, the Council was made aware that the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools will likely be making recommendations regarding the role of impact assessment processes in identifying and protecting areas of concern. The Council intends to address this issue when it reconvenes in the fall of 2023.

We will begin our next two-year report cycle by welcoming some new members to MINAC and planning those areas we wish to focus on. We will also re-commit ourselves to working within ethical space.

The Council intends to continue the practice of inviting organizations and individuals to share their experiences with us, so we can better understand what impact assessment looks like in practice, and we can benefit from a wide range of views and ideas.

Appendices

Appendix A: Mandate Letters

Dear Council member,

I am pleased to appoint you to serve as a member of my Advisory Council for Impact Assessment (the Council) until August 31, 2023. I believe your contribution will be of great value to the discussions of the Council.

As outlined in the attached Terms of Reference, the mandate of the Council is to provide independent, non-partisan advice on implementation of the new impact assessment, regional and strategic assessment regimes as per the purposes set out in the *Impact Assessment Act* (the Act). The Council's thoughtful study and advice will assist the Government of Canada with the implementation of this new legislative framework.

I look forward to speaking with you during our first meeting, scheduled to take place virtually the week of December 14, 2020. This will be followed by your first report, which is to be produced and submitted to me by June 2021, as required by the Act.

As we enter the second year of implementation of the Act, I would like to highlight for your consideration the following issues that have emerged as key areas that could benefit from your input and support, and allow you to focus your first round of advice to me, while laying the foundation for the Council's future priorities:

1. Governance – Advice and perspectives on the effectiveness of the structures and processes put in place by the Impact Assessment Agency of Canada to support implementation of the Act, including service standards, outreach and engagement activities, and guidance and tools in place to support implementation.
2. Regional and Strategic Assessment – Advice on the considerations developed by the Agency for prioritizing regional and strategic assessments, including perspectives on priority topics for strategic assessments to effectively consider relevant federal policies, plans or programs in impact assessment processes.

3. Early Planning – Advice on how the Council will effectively evaluate implementation of the planning phase for impact assessments, to date, including how implementation is contributing to:
 - a. increased predictability and transparency through effective planning for impact assessments; and
 - b. meaningful public engagement and Indigenous collaboration in the planning process, and a plan for providing advice within one and two years after tabling of the June 2021 report.

David McGovern, President of the Impact Assessment Agency of Canada, and an *ex-officio* member of the Council, will be a resource for you and will provide support, where appropriate, for Council management and the development of the report.

I would like to express my gratitude again for your willingness to be part of the Council and for the critical work that you will do for the continued improvement of Canada's impact assessment regime. I look forward to meeting you in the near future.

Sincerely,
The Honourable Jonathan Wilkinson, P.C., M.P.

Appendix B: Implementation of the Recommendations from MINAC First Report

	Status of IAAC implementation of the recommendation (as provided by IAAC)	Comments from MINAC
<p>MINAC Recommendation 1: The Role of Ethical Space in First Nations, Métis and Inuit Engagement</p> <p>The Council recommends that the Minister consider how to incorporate ethical space objectives into Agency activities, particularly First Nations, Métis and Inuit engagement, to further strengthen its work with Indigenous Peoples.</p>	<p>IAAC’s policies and planning phase activities include guidance and direction to staff on respect for Indigenous world views, governance structures, knowledge and protocols. IAAC also makes continuous efforts for staff to learn from Indigenous speakers, elders and technicians. IAAC will continue to work with the Indigenous Advisory Committee, including on a larger Reconciliation Framework for IAAC, to implement policies and practices that promote ethical space.</p>	<p>The Council commends the Agency for its efforts and believes that these efforts are critical to delivering on the Act’s promise and the government’s commitment to implement the UNDRIP.</p>
<p>MINAC Recommendation 2: Ethical Space Capacity Building</p> <p>The Council recommends that the Agency continue to build its capacity in the area of conducting respectful engagement, including understanding how ethical space as a tool can increase the competency for all members of the</p>	<p>IAAC has offered training to staff on Indigenous culture and relations. IAAC will continue to ensure that all staff have access to mandatory training on cultural awareness. This includes Indigenous cultural awareness training with modules on ethical space, the UN Declaration on the Rights of Indigenous Peoples and reconciliation. IAAC also has multiple advisory bodies with Indigenous members, who share</p>	<p>The Council commends the Agency for its efforts and believes that these efforts are critical to delivering on the Act’s promise and the government’s commitment to implement the UNDRIP.</p>

Agency that may interact with First Nations, Métis and Inuit rights holders.

their knowledge with staff. Efforts are made to hire Indigenous staff and ensure the Agency is welcoming to all.

The IAAC website provides information on the forthcoming Indigenous cooperation agreement regulations and policy approach, including their purpose, how they will be developed, and how to access funding available to support engagement.

MINAC Recommendation 3: Indigenous Cooperation Regulations

The Council recommends that the Agency carry out further work with Indigenous Peoples on the design of Indigenous cooperation regulations that promote Indigenous-led impact assessments and cooperative impact assessments with Indigenous Peoples, including regional and strategic assessments. These regulations should also include requirements to ensure that First Nations, Métis and Inuit Peoples are provided sufficient capacity and assessment funding to meaningfully engage.

IAAC is working with a Circle of Experts to co-develop a discussion paper to support a national engagement initiative for developing the policy and regulatory framework for the Indigenous cooperation agreements. The Circle of Experts is a technical body comprised of subject matter experts who provide First Nation, Métis and Inuit perspectives. The concept and creation of the Circle of Experts was the product of engagement with Indigenous partners, including National Indigenous Representatives and the Indigenous Advisory Committee.

Once the discussion paper is finalized, IAAC will conduct national consultation and engagement in 2023 with Indigenous Peoples. IAAC will also engage directly with provincial and territorial governments, industry and other stakeholders.

As expressed in this report, the Council believes that Indigenous-led and co-managed assessments offer significant opportunities to bring together different knowledge systems to inform impact assessment processes. ILAs and CMAs also allow for communities to exercise data sovereignty, and proponents to apply principles of Ownership, Control, Access, and Possession. The Council has also observed that indigenous leadership in IAs, whether through ILAs or CMAs, has contributed to more timely reviews. The Council encourages the Agency to continue to advance progress in this area and has additional recommendations in this regard.

MINAC Recommendation 4: Approach to Regional and Strategic Assessments

The Council recommends that in order to avoid confusion, foster trust, and manage expectations, a public policy document should be developed (or the current regional assessment policy and guidance revised), defining different types of regional and strategic assessment according to the purposes and scope of each, and providing indications for when each type may be appropriate.

IAAC published a policy framework on strategic assessment in early 2022 and will publish another on regional assessment in 2023. These documents outline the overall purposes and categories of these types of assessments, guiding principles, key elements, general processes for conducting these types of assessments, including participation, and likely outcomes.

As expressed in this report, the Council observes that the Agency appears to be intent on maximizing the flexibility of the regional assessment regime. As a result, the goals and outcomes of individual regional assessments may vary. While the Council is divided on whether the approach to regional assessments to date is positive or negative, the Council fully agrees that the primary motivation for regional assessments – their *raison d'être* – is first and foremost about better managing cumulative impacts. Consequently, they should at a minimum include the hard work of assessing and managing such impacts. The Council encourages the Agency to show more ambition, not less.

MINAC Recommendation 5: Role of the Agency and Potential Committees

The Council recommends that the regional assessment policy be updated to include principles for when a regional assessment may be conducted by the Agency versus a committee, and that a strategic assessment policy be developed that clarifies the role of the Agency in strategic assessments. Both documents should include principles respecting the membership of committees.

The policy frameworks on regional and strategic assessments include considerations to help inform the Minister's decision on whether a committee or IAAC will conduct a regional or strategic assessment. The policy framework on strategic assessments includes information on IAAC's role in supporting strategic assessment processes, which includes supporting committees and funding provision.

MINAC Recommendation 6: Engagement in Regional Assessments and Strategic Assessments

The Council recommends that a policy be established setting out the basic process steps and opportunities for engagement in regional and strategic assessments. The policy should include opportunities for Indigenous and public funding, as well as clarify that all regional and strategic assessment information, including public comments and non-confidential Indigenous comments and knowledge, will be made publicly available on the Agency's registry.

The policy frameworks on regional and strategic assessment describe the requirements, approaches and support for meaningful public participation in these assessment processes, as well as provision of information to the public and funding opportunities.

As expressed in this report, the Council believes that the current policy framework is excessively focused on maximizing flexibility, at the expense of consistency, creating the potential for substandard regional assessments. The Council is encouraged by the Agency's recent decision to revisit its proposal for a regional assessment in the Ring of Fire and to engage directly with affected Indigenous communities on its design.

MINAC Recommendation 7: Evaluation of Regional Assessments and Strategic Assessments

The Council recommends the development of a policy and program to evaluate the process and outcomes of all regional and strategic assessments carried out under the Act in order to learn and document what contribution these assessments are making to the overall goals of the Act.

Regional and strategic assessments are reviewed through institutional evaluation activities of IAAC that came into effect with the coming into force of the *Impact Assessment Act*. Regional assessments that are currently in planning will include consideration of, and recommendations from the RA committee on, the design and implementation of a follow-up plan to keep the information and analyses up to date and track implementation of regional assessment commitments.

The Council appreciates the Agency's commitment to learn from experience but suggests that mechanisms for evaluations of RAs and SAs be more explicit and transparent, and include an opportunity for public review and comment.

MINAC Recommendation 8: Multi-Party Working Group Pilot Project

The Council recommends that the Agency examine the use of a multi-party working group involving the proponent, Indigenous organizations, regulatory departments, members of the public and outside experts as appropriate, to ensure early engagement and to provide guidance to the Agency with respect to tailoring decisions. The Council further recommends that the Agency then carry out a pilot project and evaluate the outcomes.

The manner in which the planning phase is currently implemented provides for participation by various parties, including by attending key meetings made available to the public. IAAC communicates with different participants using different communication techniques so that there are meaningful opportunities provided to participants. Throughout the Planning Phase, IAAC is proactively seeking the views of stakeholder and Indigenous groups to identify the key issues and effects of projects to inform the TISGs of a project.

In 2022-23, IAAC experimented in engaging with multiple parties in the development of Tailored Impact Statement Guidelines (TISG) in relation to the GCT Deltaport Expansion-Berth four Project in British Columbia (referred to as Joint Guidelines for this assessment). For this assessment, IAAC developed guidelines that were a joint document issued with British Columbia's Environmental Assessment Office to meet federal and provincial requirements. Following the proponent's development of an initial draft of the document, IAAC worked with the proponent, federal and provincial experts and Indigenous groups to refine and further develop the guidelines.

In March 2022, IAAC published an [Operational Policy Statement on the Development of TISGs](#), which outlines the process and considerations that guide it in the development project-specific

The Council continues to recommend that the Agency consider piloting this approach. The Council accepts the Agency's explanation and suggests that the factors limiting the adoption of a working group approach should inform a future review of the Act.

TISGs. The statement indicates that in developing the project-specific guidelines, IAAC will focus the assessment on the key issues, effects, and relevant factors, which are identified during the Planning Phase, that are anticipated to be material and relevant to decision-making.

The establishment of formal multi-party working groups to inform scoping in relation to specific projects is nevertheless challenging within current legislative timelines and information requirements. The establishment of such groups requires extensive support from proponents (among others), including their willingness to provide supplementary documentation and to request suspensions to the 180-day timeline.

MINAC Recommendation 9: Agency's Decision under Section 16 of the Act

The Council recommends that the Agency evaluate how to better manage the section 16 decision, in order to maximize the time available within the 180 days and place more emphasis on earlier and more meaningful engagement on tailoring assessments and public engagement.

Experience continues to demonstrate that the planning phase is an intensive period with a legislatively required sequence to be followed for certain steps, including the section 16 decision. IAAC seeks to make its section 16 decision as expeditiously as possible, while following the required process set out in the legislation. While potential changes to the sequencing of specific steps during the planning phase have not been identified, IAAC continues to work with proponents and other parties as early as possible in relation to specific assessments to maximise the time available and to engage meaningfully in relation to key issues and to inform tailoring. IAAC has been communicating

The Council is not surprised that the Agency has acknowledged that meeting the timelines for rendering section 16 is challenging, as this was anticipated. The Agency is encouraged to continue to evaluate its approach to the planning phase to identify potential solutions.

to proponents the importance of providing meaningful responses to the summary of issues, which has in some cases resulted in requests for timeline suspensions, to facilitate improved section 16 decision making.

MINAC Recommendation 10: Capacity of Federal Departments

The Council recommends that the Minister engage in discussions with the Agency and other relevant federal departments to identify and provide the resources needed to participate effectively in project assessments and that steps be taken to ensure that impact assessment responsibilities of government officials are prioritized.

IAAC has no powers over the capacity of federal departments. However, we are leading and finalizing a horizontal renewal ask. Through this process, federal departments report their needs to be able to deliver effectively and efficiently on their environmental assessment and impact assessment obligations.

The Council is pleased to note a renewal in federal funding for IAA, which includes support for both the Agency and federal departments.

