



Recipient Guide

Housing, Infrastructure and Communities Canada's Guide
to Recipients for Indigenous Consultation



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Introduction

The Government of Canada demonstrates its commitment to reconciliation with Indigenous peoples through engagement and consultation activities.

Appropriate and meaningful engagement with Indigenous peoples promotes collaboration, builds long-term relationships, supports economic opportunities and creates lasting benefits for all Canadians.

As interpretations and application of the duty to consult evolve, and with the Government of Canada's (Canada) commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), there is a greater need to respect and promote the inherent rights of Indigenous peoples based on principles of justice, democracy, non-discrimination, and good faith.

The main purpose of this guide is to assist recipients who are supporting Housing, Infrastructure and Communities Canada (HICC) in fulfilling its legal duty to consult with Indigenous peoples.

This guide is not a legal document and is not intended to provide legal advice. Rather, it provides general best practices when carrying out procedural aspects of consultation, as well as contextual information regarding the roles and responsibilities of the recipient and HICC as it relates to this approach.



Overview

Duty to Consult

The Crown has a duty to consult and, where appropriate, to accommodate, when the Crown has knowledge of the potential existence of an Aboriginal or treaty right protected by section 35 of the *Constitution Act, 1982* and contemplates conduct that might adversely affect it. The duty is variously described as a common law or constitutional duty to consult.

The duty to consult is grounded in the honour of the Crown, and arises when all three of the following elements are present:

1. there is contemplated Crown conduct;
2. the Crown has real or constructive knowledge of potential or established Aboriginal or Treaty rights; and
3. there is the potential for these rights to be adversely affected by the proposed conduct.

Adverse impacts can include, but are not limited to, potential adverse effects on:

- the right to fish, hunt, trap, and gather;
- carrying out of cultural and spiritual practices;
- the capacity to exercise the right to self-determination;
- archeological sites and artifacts.

Housing, Infrastructure and Communities Canada's Duty to Consult

Federal funding of projects can be considered Crown conduct that can potentially trigger the duty to consult.

In situations where there is the potential for adverse impacts on rights, HICC funding for infrastructure projects is made conditional upon HICC's legal duty to consult and accommodate, if applicable, being met.

HICC's approach to consulting Indigenous peoples is informed by the [guidelines for federal officials](#) developed by [Crown-Indigenous Relations and Northern Affairs Canada \(CIRNAC\)](#) and the latest court decisions.



Fulfilling the Duty to Consult and Accommodate Indigenous Peoples

HICC strives to maintain good relationships with all Indigenous communities, partners and funding recipients. In fulfilling the duty to consult, and where appropriate, accommodate Indigenous peoples, HICC retains the ultimate responsibility to determine the adequacy and completeness of the consultation that has occurred. However, as recipients are often in the best position to explain their proposed project, address concerns, or provide accommodation measures, when appropriate, HICC intends to rely on recipients to assist in fulfilling the procedural aspects of consultation. This includes, but is not limited to: sharing project information, discussing concerns with Indigenous peoples regarding potential impacts to rights or interests, proposing measures to address any concerns raised, and documenting all consultation activities and providing that information to HICC.



A stunning sunset view of a suspension bridge spanning a river, with a backdrop of colorful clouds and flying birds



Once HICC reviews and approves the project, the recipient will receive a ministerial approval letter referencing any federal statutory environmental impact assessment requirements and consultation obligations. These requirements must be met before funding can flow to the recipient. Following the ministerial approval letter, the Environmental Assessment and Indigenous Consultation team (EAIC) will send the recipient a determination letter and an email with additional details as specified in the following steps. The annexes of the determination letter will include which Indigenous communities the EAIC team has identified for consultation, as well as their contact information.

Did you know...

The Crown's ability to delegate the procedural aspects of consultation to proponents was affirmed as early as 2004 by the Supreme Court of Canada in *Haida Nation v. British Columbia (Minister of Forests)* [2004] SCC 73.

More information is available at [The Duty to Consult Indigenous Peoples](#).



A panoramic view of a small village by a calm lake, surrounded by mountains under a blue sky with fluffy clouds.



Procedural Aspects of Consultation with Indigenous Peoples

In this section, HICC outlines some best practices for recipients when asked to assist the department in fulfilling the duty to consult.

Incorporating these elements can lead to a more meaningful consultation process and help to establish better relationships with Indigenous communities.

The following image illustrates the consultation process to be undertaken at HICC when recipients have been delegated the procedural aspects of consultation. The respective roles and responsibilities of HICC and recipients within each of the four steps are described in detail on the following page:



Consultation Process

Step 1: Preparation

- Learn about the Indigenous communities
- Prepare the consultation documents
- Get support if needed

Step 2: Consultation with Indigenous peoples

- The consultation process begins
- Recipient initiates consultation activities
- Documenting consultation efforts
- Accommodation

Step 3: Analysis of the Adequacy of Consultation

- Documentation and records
- Adequacy of consultation
- Completion of the consultation

Step 4: Consultation Closure

- Consultation closing

The main areas of focus when a recipient is undertaking the procedural aspects of consultation should be the following:

- Establishing contact and developing **clear lines of communication** with Indigenous communities as early as possible;
- Providing **clear and detailed project information** and how the project could interact with the surrounding environment;
- Providing information regarding the **role or involvement of Federal Authorities**, such as HICC, in the project;
- Providing **a forum for Indigenous communities to express their interests or concerns** about the project and its potential to adversely impact Indigenous rights and interests;



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- Considering **accommodation measures**, where appropriate, in consultation with potentially impacted Indigenous communities, by determining how the project can be modified to address concerns, or how to limit/avoid identified adverse impacts; and
 - Continuing to **follow up or address concerns**, as needed, throughout the project’s lifespan.

Step 1 : Preparation

1.1 Learn about the Indigenous communities.

Every Indigenous community has their own set of priorities, challenges, and resources to respond to consultation requests. HICC recommends that recipients take the time to learn about the respective communities and traditional territories overlapping the project area before consulting about a prospective project. This information can help the recipient to better understand the overlap between the project, the surrounding environment, and the potential for adverse impacts on Indigenous rights and interests.

HICC also recommends that the recipient be aware of any ongoing situations that might prevent the community from having the resources to meaningfully participate in the consultation process. Some examples include natural disasters within the traditional territory (e.g. flooding, forest fires), hunting/fishing season, ceremonial periods, or finding of unmarked graves. These realities may require additional flexibility within the project timeline.

1.2 Prepare the consultation documents.

HICC will supply the recipient with information and template documents that can be used to record Indigenous consultation activities:

- Annex 1 - Contact information for Indigenous communities
- Annex 2 - Template Consultation Letter to notify Indigenous communities of the project
- Annex 3 - Indigenous consultation communication log
- Annex 4 - Indigenous concerns tracking chart



If the recipient wishes to prepare their own documents to support Indigenous consultation (notification letters, project information package, meeting agendas and meeting minutes, detailed communications log, detailed issues tracking table, contact information, etc.), these must be shared with HICC from the outset to ensure all necessary information related to consultation is adequately captured.

1.3 Get support if needed.

At any time, HICC and the recipient may discuss any questions and/or concerns about the Indigenous consultation process.



Vibrant green northern lights swirl over a tranquil lake, framed by dark silhouettes of trees against a starry night sky.

Step 2 : Consultation with Indigenous Peoples

As Indigenous communities each have their own organizational structure, HICC recommends only engaging with those contacts who are authorized to speak on behalf of rights holders, as provided in Annex 1 of the determination letter. Those contacts may then disseminate this information to the rest of their leadership and community members, as needed.



Depending on the nature and scope of the project, HICC may identify consultation requirements with multiple Indigenous communities, including where there are overlapping traditional territories. HICC will also identify a consultation process to follow that is appropriate for each community, unless stated otherwise. This could entail separate consultations for each community or consultation with an established organization identified to represent several communities.

2.1 The consultation process

The consultation process will begin with HICC notifying Indigenous communities of the proposed project, explaining HICC's role in potentially providing funding for the project, its intention to work with the recipient in consulting with Indigenous communities, and describing next steps in the consultation process. HICC will send the Notification letter to Indigenous communities at the same time as it sends the Determination letter to recipients.

2.2 Recipient initiates consultation activities

2.2.1 Consultation Letter

If the recipient has not initiated consultation activities prior to receiving HICC's determination letter, the recipient will initiate the process by sending a Consultation letter to the identified Indigenous communities. This letter should be sent as soon as possible upon receiving the determination letter. It should copy HICC in communications and should state HICC's role in providing funding for the project. The Consultation letter should also include a request to respond within a reasonable deadline, which is typically a minimum of 30 calendar days. A template Consultation letter will be included with the determination letter.

As the consultation process proceeds, the recipient should continue discussing next steps with HICC. Activities undertaken by the recipient may include:

- 1- Providing information about the proposed project to Indigenous communities early in the planning process;
- 2- Obtaining and discussing information with Indigenous communities about specific Indigenous rights and interests that may be impacted by the project;

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- 3- Considering modifications to the project to avoid or mitigate impacts to Indigenous rights and interests; and
 - 4- Documenting engagement efforts related to Indigenous rights and interests, as well as any modifications to address concerns, and provide this record to the Crown decision maker.

2.2.2 Informing HICC

If the recipient has already begun consultation activities prior to HICC's delegation, then all prior communications must be sent to HICC. Based on its determination, HICC will then inform the recipient whether there are any additional Indigenous communities that need to be included in consultation activities and what additional procedures might need to be followed before moving onto step 2.3.

2.3 Indigenous community response scenarios

2.3.1 No interests or concerns

An Indigenous community replies that it does not have interests or concerns regarding the project. The consultation moves to Step 4 of the consultation process.

2.3.2 Interests or concerns

An Indigenous community replies that it has interests or concerns regarding the project. The recipient should continue to engage with the community to address and resolve them and should document all consultation activities with the potentially impacted Indigenous community. The recipient should discuss any potential accommodation measures that can be applied to avoid or reduce potential adverse impacts. These efforts should be documented and an implementation plan should be identified. Once all interests and concerns have been addressed, to the extent possible, the consultation moves to Step 3 of the consultation process.



2.3.3 Requesting additional information/time

An Indigenous community requests additional information and/or time to reply or indicates it will reply at a date later than requested. The recipient should make reasonable efforts to adjust the timeline for the response and continue to engage with the community and document all consultation efforts. Once the Indigenous community responds with interests or concerns regarding the project, then proceed with step 2.4.

2.3.4 No response

An Indigenous community does not reply within the requested/agreed upon timeline. Additional efforts should be made to ensure the Indigenous community has received the initial notification letter, which includes follow-up communications. If the Indigenous community responds with interests or concerns, even if it is outside the initial response date, the recipient should proceed with Step 2.3.2. If there is still no response after follow-up communications have been sent, the recipient should then discuss with HICC about sending a final communication to the Indigenous community, noting all attempts to engage and consult and identifying that it is the final opportunity to provide comments. This should include the recipient's intention to proceed with the project and a final response deadline of a minimum of 5 business days. The number of follow-up communications and next steps should be discussed with the HICC's EAIC team prior to sending a final communication to the Indigenous community and must take into account the scope of consultation required for this project. If a response is still not received, the process can move into Step 3 of Indigenous Consultation.

2.3.5 Requesting financial support

An Indigenous community requests financial support to assist them in participating in the consultation process. In this case, the recipient should provide such support as costs related to consultation with Indigenous peoples can be reimbursed as eligible expenditures. See the 'Consultation Funding' section for more details.



2.4 Documenting consultation efforts

The recipient should send consultation records to HICC's EAIC team once the consultation process is completed or at regular intervals when the consultation process lasts more than 3 months. All efforts to engage and consult should be included in the records, which may include but are not limited to:

- letters (notification and letters of support, etc.);
- emails;
- phone calls;
- meetings & minutes (in person/virtual);
- site visits;
- presentations;
- technical reports (environmental site assessments, etc.);
- a copy of any permits or authorizations.

Project Timeline

HICC encourages recipients to maintain a flexible project timeline throughout the consultation process. This will better allow for Indigenous communities to:

- **fully understand** the project information;
- **consult with members** within their community;
- **conduct internal studies**;
- **provide ample opportunity for feedback and raise any concerns** about potential adverse impacts.

As consultation is an iterative process, these guidelines allow time to address concerns and provide accommodation measures, if required, in relation to the proposed project. Implementing these best practices can help avoid potential delays later on in the project timeline.

Note: These costs, and all others associated with the consultation process, are eligible for reimbursement.

Please see section 'Consultation Funding' (page 17) for more details.



2.5 Accommodation

In certain circumstances, accommodation measures may be required to respond to concerns raised by the Indigenous community and to avoid or reduce the potential adverse impacts of the project. It is the responsibility of the recipient to implement these measures (e.g., reduction of noise pollution, changing of the operating schedule, traditional knowledge study, adapt or modify the project, etc.), to the extent possible, and if not, to provide reasonable explanation for why it was not possible.

The recipient must submit recurring and/or final reports on the implementation of any agreed upon accommodation measures to HICC. Some measures could continue over the lifespan of the project and an agreed upon implementation plan could be used to document the commitment towards following through on these measures by the recipient.



Panoramic view of a lush green forest at sunset, with rolling hills and a vast horizon under a warm, colorful sky.



Communication

Transparency of information can help Indigenous communities better understand how the proposed project could interact with their rights and overall environmental, cultural, social and economic conditions. When sharing project information, it is therefore important to include:

- Contextual information (if relevant);
- Clear maps of the project area, proposed works and effected areas;
- Any authorizations or permits that may be required (at all levels of government); and
- Any proposed measures to avoid or mitigate potential adverse environmental impacts.

Accessibility of information eases the burden on Indigenous peoples when reviewing project information.

- Any shared materials should be clear and in plain language (e.g. summaries of technical reports). If information is shared electronically, it should only require basic software to be read (such as Word or Excel). An Indigenous translator may be necessary in some cases, to ensure all aspects of the project can be understood.

Medium of communication can vary based on the project and the Indigenous community.

- Ask the Indigenous community if they prefer an alternative medium to email, as some may prefer to correspond through established project portals, by mail, through telephone, or by meeting in person.

HICC will review this information, considering the scope of the project, level of consultation, and types of concerns raised by affected Indigenous communities, to assess the adequacy of consultation and accommodation.



Step 3 : Analysis of the Adequacy of Indigenous Consultation

After receiving complete consultation records from the recipient, HICC will assess the adequacy of the consultation that has occurred, determining whether consultation and, where appropriate, accommodation obligations have been met.

3.1 Documentation and records

The recipient ensures it has shared all documentation and records of Indigenous consultation and accommodation efforts with the HICC EAIC team. Examples of documents to be submitted to HICC are listed in section 2.4.

3.2 Adequacy assessment

The EAIC team assesses the adequacy of the consultation process. The recipient may receive a request from HICC for additional information or to conduct additional consultation activities to address any outstanding issues or concerns, or provide further accommodation measures, if appropriate.

3.3 Completion of consultation

Once consultation is considered complete, the EAIC team notifies the recipient that the requirements have been met for the proposed project.

Step 4 : Consultation Closure

4.1 Consultation closing

Recipient will receive notice from HICC once a decision has been made, that the project can proceed, and funding can flow. HICC will send a close out letter to Indigenous communities to inform them that this consultation process has closed and that HICC will be flowing funding to the project.



Regulatory Requirements

Projects submitted to HICC may be subject to the *Impact Assessment Act*, Northern Regulatory Regimes, and/or other federal environmental requirements and other statutory requirements including, but not limited to, the *Fisheries Act*, the *Canadian Navigable Waters Act*, and the *Species at Risk Act*, which are administered by other federal departments.

In some cases, a federal environmental assessment may not be required for a project, but provincial, and/or territorial requirements may exist. Recipients should be aware of what, if any, requirements apply to their project for a given applicable government authorization. Recipients are encouraged to work with the relevant governing body to determine these requirements and ensure HICC is informed as early as possible.



A tranquil wetland scene with lush green grass, a winding river, and trees under a cloudy sky, reflecting a serene natural landscape.



Consultation Funding

Many Indigenous communities, organizations, and governments face capacity challenges and may be unable to dedicate time and resources to respond to consultation requests.

Therefore, to allow them to meaningfully participate in consultation activities, recipients of HICC-funded projects are expected to include consultation funding as part of their project planning. These costs are considered ‘eligible expenditures’ and can be reimbursed, even retroactively, under some programs, to encourage early engagement.

Recipients can submit claims for reimbursement of consultation costs throughout the project after the contribution agreement is signed. Eligible expenses associated with consultation and accommodation activities may include the costs of hosting meetings, consulting experts, carrying out studies, and providing honoraria to elders. Eligible expenses can also include direct payments to Indigenous organizations, which may allow them to participate in recipient-led activities or carry out Indigenous-led activities to determine how the project may have adverse impacts on their Indigenous rights and interests.



Glossary

Aboriginal Rights

See "Indigenous Rights".

Accommodation

Refers specifically to avoidance, minimization/mitigation or compensation measures for potential adverse impacts to established or asserted Indigenous rights. Complementary measures (ex. follow-up and monitoring) can also be considered as accommodation. Accommodation is part of the duty to consult, grounded in the constitutional obligations of the Crown¹.

Avoidance or Mitigation Measures

Measures to eliminate, reduce, control, or offset the adverse effects of a project.

Consultation Protocol

Consultation protocols create a process for Indigenous peoples and governments to follow when addressing the constitutional duty to consult on impacts to Section 35 rights under the *Constitution Act, 1982*. They may also be used to facilitate engagement on other matters of interest and concern to communities. Protocols promote relationship building and clarify the roles and responsibilities between governments and Indigenous communities for future consultation. There are a number of consultation protocols already in place with Indigenous peoples across Canada².

¹ [Impact Assessment Agency of Canada](#)

² [Crown-Indigenous Relations and Northern Affairs Canada](#)



Contribution Agreement

A legal document that set out the terms and conditions to be met by recipients in carrying out projects funded by Housing, Infrastructure and Communities Canada (HICC).

Delegation

Recipients are often in the best position to engage and consult with potentially impacted Indigenous peoples. While the ultimate legal responsibility for consultation and accommodation remains with Canada, the procedural aspects of consultations can be delegated to a project recipient. Consequently, Canada may rely on steps taken by the project recipient to lead consultation activities with Indigenous peoples to help fulfill the legal duty to consult³.

Impacts

For the purposes of this document, unless otherwise specified, "impacts" refers to potential adverse effects on Indigenous rights that may result from a proposed project or physical activity (any activity that involves some degree of physical effort carried out in relation to a physical work) for which federal funding by HICC was approved⁴.

Indigenous Communities or Groups

Refer to Indigenous peoples.

Indigenous Knowledge

Indigenous knowledge represents the knowledge of the Indigenous peoples of Canada. Generally, it is considered as a body of knowledge built up by a group of Indigenous peoples through generations of living in

³ [Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011](#)

⁴ [Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#)

close contact with the land. While the term "traditional knowledge" is often used, the term "Indigenous knowledge" recognizes that the knowledge system evolves and is not set in the past, as the word "traditional" may imply⁵.

Indigenous Peoples

The term "Indigenous peoples" has the same meaning as "aboriginal peoples of Canada" which include First Nations, Inuit and Métis peoples as defined in section 35(2) of the *Constitution Act, 1982*⁶.

Indigenous Rights

Also referred to as "Aboriginal Rights", these are practices, traditions and customs that are integral to the distinctive culture of an Indigenous people. These are inherent rights that some Indigenous peoples in Canada hold as a result of their ancestors' long-standing use and occupancy of the land. These rights are recognized, affirmed and protected by section 35 of the *Constitution Act, 1982*. Indigenous rights under section 35 vary between Indigenous peoples, depending on the customs, practices and traditions that have formed part of their distinctive cultures⁷.

Legal Duty to Consult

The Crown (including federal, provincial, and territorial governments) has a duty to consult, and where appropriate, to accommodate Indigenous communities when it considers conduct that might adversely impact potential or established Indigenous rights or interests. The Crown's duty to consult with Indigenous peoples was affirmed by several landmark court decisions.⁸ It is often described as the common law's obligation to consult and, where appropriate, accommodate.

⁵ [Impact Assessment Act \(S.C. 2019, c. 28, s. 1\)](#)

⁶ [The Constitution Acts, 1867 to 1982](#)

⁷ [Crown-Indigenous Relations and Northern Affairs Canada](#)

⁸ Notably, *Haida* (2004), *Taku River* (2004), *Mikisew Cree* (2018), *Little Salmon/Carmacks* (2010) and *Rio Tinto* (2010) Supreme court decisions.



Meaningful Consultation

A meaningful consultation process is characterized by good faith and an attempt by parties to understand each other's concerns and move to address them. It is a process that is carried out in a timely, efficient and responsive manner; transparent and predictable; accessible, reasonable, flexible and fair; founded in the principles of good faith, respect and reciprocal responsibility; respectful of the uniqueness of First Nation, Métis and Inuit communities; and includes accommodation (e.g. changing of timelines, project parameters, etc.) to address potential impacts, where appropriate⁹.

Recipient

An organization responsible for a project receiving funding from a HICC funding program.

Treaty Rights

Rights that are defined by the terms of a historic or Modern treaty, rights set out in a modern land claims agreement or certain aspects of some self-government agreements. In general, treaties (historic and modern) are characterized by the intention to create obligations, the presence of mutually binding obligations and a measure of solemnity. A treaty right may be an expressed or an implied term within a Treaty¹⁰.

⁹ [Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011](#)

¹⁰ [About Treaties](#)

