

Comments on the treatment of sustainability-based evaluations in the draft Tailored Impact Statement Guidelines (TISGs) for the Heartland bitumen upgrader/refinery expansion project (Value Chain Solutions - Heartland Complex Expansion Project)
<https://iaac-aeic.gc.ca/050/evaluations/document/138611?&culture=en-CA>

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Focus

Draft TISGs, section 18, Description of the Project’s contributions to sustainability (p.96), and related matters in section 4.3 and 4.4 (pp.10-12) on considering alternatives.

Summary

The draft TISGs document needs revision to clarify how the proponent, Agency or Panel assessors, and other assessment participants are to address expectations concerning contributions to sustainability throughout the assessment process. Particular recommendations are as follows:

- i. Revise section 18 to clarify how the Act’s definition of sustainability and the four sustainability principles established in IAAC policy guidance are to be applied through all phases of the assessment process, including post-approval follow-up.
- ii. In particular, clarify in section 18 how the Act’s definition of sustainability and the four sustainability principles are to be used as a foundation for specifying criteria for analyses, evaluations and decisions that also incorporate attention to case-specific ecological, health, social and economic considerations.
- iii. Clarify in sections 4.3, 4.4 and 16, how the specified criteria mentioned in point ii, above, are to be used in the identification and comparison of alternatives (alternatives to and alternatives means) and the selection of the preferred alternative and in the design of monitoring, management and reporting systems.
- iv. Cover more consistently the positive and adverse effects that, taken together, provide the basis for identifying and evaluating trade-offs as well as determining net contributions to sustainability.

The *Appendix* provides a revised version of section 18 illustrating how some of the recommended revisions may be incorporated.

Specifics:

- i. The draft text of section 18 on application of the four sustainability principles begins by suggesting that initial application of the principles is to happen long after the assessment process has commenced – “[o]nce the analysis on potential effects of a project is conducted, ...”. That message clearly contradicts a point several lines below in the list of additional requirements related to application of the sustainability principles.

In that list, the first point requires consideration of the sustainability principles “in all phases” of the planning and design of the project, presumably including in the early steps of identifying issues and valued components, as is noted in the IAAC policy document, “Framework: Implementation of the Sustainability Guidance” (*Practitioner’s Guide*, part 2.3).

- ii. The second point in the section 18 draft list of additional requirements related to application of the sustainability principles requires the Impact Statement to “describe the process in selecting the preferred alternative means and alternatives to the Project and how the sustainability principles were considered.”

Section 4.4 on considering alternative means of carrying out the project is much clearer and more direct. It requires

- comparative evaluation of the alternatives, including identification of methods and criteria used “to determine the preferred alternative means and the unacceptability of excluded alternative means,”
- recognition that the criteria are to be used to “examine the environmental, health, social and economic effects” of the potentially viable alternative means, and
- use of the criteria to examine “the trade-offs associated with the preferred and other alternative means.”

However, section 4.4 fails to mention application of the four sustainability principles in drafting the criteria. In return, section 18 fails to mention specification or application of criteria and fails to mention trade-offs.

Clearly, the guidance in these two sections should be consistent and set out the same essential expectations.

The requirements of section 4.4 and section 18 are at least potentially compatible. Evidently, the Impact Statement is expected to apply both the four sustainability principles in section 18 and the criteria required in section 4.4.

Some form of combination, perhaps integration, would be sensible. But in the draft document, sections 4.4 and 18 are not linked. The need to apply the principles and the criteria together is not mentioned in either section. Guidance to do that is needed.

- iii. The third point on the list is on application of the principles in post-approval follow-up. If one of the purposes of the list is to demonstrate the consistent application of the principles through the successive phases of assessment, this point would be more logically placed at the end of the list.

Also, the requirement to integrate attention to the principles in post-approval follow-up planning and decision making ought to be set out in the relevant parts of section 16 on follow-up.

- iv. The fourth point requires description of the project’s “ecological, health, social and economic benefits” for various interests and authorities. The four sustainability principles are not mentioned. The substance of the four principles is also missing – for example, there is no reference to interconnections among the listed effects, or the interests of future generations or attention to uncertainties and risks.

There is no equivalent requirement to describe the project's predicted adverse effects. There is no mention of describing net contributions to sustainability or identifying or assessing trade-offs.

In other words, most of what is needed for an informed evaluation of contribution to sustainability is missing, along with the four sustainability principles that are the foundations of the current policy guidance on application of the contribution to sustainability consideration.

- v. The final point on the draft list requires description of engagement with Indigenous groups and “measures and commitments to ensuring the sustainability of Indigenous livelihood, traditional use, culture and well-being.” Ensuring sustainability is an attractive idea. But “contributing to sustainable Indigenous livelihoods, traditional uses, culture and well-being” would be more realistic.

Recommendations concerning s.18:

- i. *Set out the Act's definition of sustainability at the beginning, rather than expect readers to look it up. The actual definition is important because it contains fundamental requirements of about protecting the environment and preserving health that are not reproduced in the principles.*
- ii. *Move the four sustainability principles, and the requirement to apply them in all phases of the assessment, to the beginning of the section, following the definition of sustainability.*
- iii. *Follow that introduction with a revised version of the list of requirements for attention to contributions to sustainability in the Impact Statement. The revised version should be ordered at least roughly to follow the phases of the planning and design of the project. All of the points should incorporate applications of the four sustainability principles, including through integration with case-specific considerations to establish comprehensive criteria for evaluations and decisions, including identification and comparison of trade-offs.*
- iv. *Begin the list with an initial point about applying the principles in the initial stage of early consultations, including identifying issues, potential alternatives and valued components.*
- v. *Add a point clarifying that the requirements established in the Act's definition of sustainability and the four sustainability principles established in IAAC policy guidance are to be applied, including in integrated criteria sets incorporating attention to context-specific ecological, health, social and economic considerations and their interactions, as elaborated by the other factors set out in IAAct, s 22(1) and associated policy guidance, and as specified for the Heartland project case and its context. The revised point should emphasize that the principles and criteria are to guide deliberations and analyses through all phases of the assessment process reported in the Impact Statement. That is to ensure more consistently and explicit basis for identifying the positive and adverse effects*

that, taken together, provide the basis for determination of net contributions to sustainability and identification of associated trade-offs.

- vi. *Revise the point about application of the principles in the analysis of potential effects to avoid implying that it would be the first application of the principles, and to reiterate the combination of the principles and more specific criteria.*
- vii. *Revise the point concerning application of the principles in the analysis of alternatives (the second point on the draft list) to require the Impact Statement to describe how the sustainability principles and criteria were applied in the processes for identifying potentially reasonable alternatives to and alternative means, for comparative evaluation of these options and for identifying the trade-offs associated with the evaluated options. (See recommendation for sections 4.3 and 44, below.)*
- viii. *Move the point on application of the principles in post-approval follow-up (the third point on the draft list) to the end.*
- ix. *Revise the draft fourth point now limited to describing project benefits to require description of*
 - *the project's positive and adverse effects,*
 - *its net contributions to sustainability,*
 - *the trade-offs involved, and*
 - *how these effects, contributions and trade-offs compare with those of the potentially reasonable alternatives.*

The point should specify that the analyses are

 - *to be based on application of the Act's definition of sustainability, the four sustainability principles, and case-specific criteria addressing ecological, health, social and economic factors and their interrelations, potential impacts on Indigenous groups and rights, environmental obligations and climate change commitments, and other factors identified in section 21(1) of the Act; and*
 - *to give particular attention to the distribution of positive and adverse implications among and within the communities, groups and authorities listed in the draft point (local communities within the study area, potentially affected Indigenous groups, regional, provincial, territorial and/or federal governments), plus other groups, GBA+ identities, and communities likely to be affected, and future generations.*
- x. *Revise the draft fifth point on engagement with Indigenous groups and contributions to sustainability, to refer to "contributing to sustainable Indigenous livelihoods, traditional uses, culture and well-being."*

Recommendations concerning sections 4.3, 4.4 and 18:

- i. *Revise sections 4.3 and 4.4 on considering alternatives to and alternative means of carrying out the project to require application of the Act's definition of sustainability, the four sustainability principles and the sustainability criteria specified for the case in the identification of potentially reasonable options and in their comparative evaluation, and in the identification of the trade-offs associated with the evaluated options. (Section 18 of*

the Practitioner's Guide, part 1.2 base template for TISGs already requires application of the principles in identifying the preferred alternative.)

- ii. *Revise section 16 on follow-up to set out where and how to apply the Act's definition of sustainability, the four sustainability principles and the sustainability criteria specified for the case in the design of monitoring, management and reporting systems (Section 18 of the Practitioner's Guide, part 1.2 base template for TISGs already requires application of the principles in the design of monitoring, management and reporting systems.)*

Appendix: An illustration of how section 18 could be revised to address the concerns and recommendations set out above

The following text provides an illustrative version of section 18 incorporating the recommended revisions.

The Impact Statement must characterize the Project's anticipated contribution to sustainability. The Impact Statement must consider the positive and adverse sustainability-related effects in light of the IAAc's definition of sustainability:

the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations (IAAc, s 2).

and the following four sustainability principles:

- consider the interconnectedness and interdependence of human-ecological systems;
- consider the well-being of present and future generations;
- maximize overall positive benefits and minimize adverse effects of the designated project; and
- apply the precautionary principle by considering uncertainty and risk of irreversible harm.

The Impact Statement must describe how the IAAc's definition of sustainability and these sustainability principles were applied throughout the planning and design of the Project, in all phases. It must also identify the conclusions drawn from these analyses, and the criteria and methodology used to reach the conclusions.

The Impact Statement must describe engagement with potentially affected Indigenous groups, report Indigenous groups' conclusions about how the Project could contribute to and/or detract from sustainability as they specify it, and describe measures and commitments to ensure positive contributions to sustainable Indigenous livelihoods, traditional uses, culture and well-being.

The Impact Statement must describe how application of the definition of sustainability and the four sustainability principles throughout the planning and design of the Project was combined with attention to the specific context of case. The context includes specific considerations related to

- ecological, health, social and economic factors and their interactions, any potentially affected Indigenous group and Indigenous rights, and environmental obligations and climate change commitments; and
- specific considerations related to other factors set out in IAAct, s 22(1); associated policy guidance; and
- considerations raised by Indigenous groups whose rights, authority and/or interests may be affected.

In the planning and design process, the relevant context includes the context of the alternatives examined, as well as the context of selected preferred alternative (the Project).

Recognition of important contextual matters includes attention to the issues of importance to participants, the diversity of views expressed, implications for future generations, and the selection of valued components. Concerning all these matters, the Impact Statement must report how the data were collected, analysed and summarized.

The key contextual considerations should be integrated into criteria that help to clarify and specify application of the sustainability definition and four sustainability principles to the case. The specified criteria should facilitate attention to contributions to sustainability that are especially important, given the character and context of the potentially viable alternatives to and alternative means from which the preferred options will be selected.

Recognizing the sustainability definition, the sustainability principles and the specific criteria for the case and context, the Impact Statement should give particular attention to the distribution of positive and adverse effects and implications among and within local communities within the study area, other potentially affected groups, communities and GBA+ identities, potentially affected Indigenous groups and jurisdictions, regional, provincial, territorial and/or federal governments), and future generations. Some or all of the relevant data collection and analysis may be more appropriately led by Indigenous groups, communities GBA+ identities and/or independent experts. The Impact Statement should indicate how the proponent worked with affected Indigenous groups and key communities to ensure these studies reflect their interests.

The Impact Statement must describe how the sustainability definition and sustainability principles were applied in identifying the more specific sustainability considerations. Throughout the discussion of all subsequent phases of planning and design, the Impact Statement must describe how application of the sustainability definition and principles provided the foundation for establishing the context-specific sustainability criteria and how these criteria guided deliberations and analyses. For each phase of planning and design, the Impact Statement must describe how these criteria were applied and identify the conclusions drawn from the analyses. Summaries of the analyses in each phase should be qualitative in nature, but may draw on quantitative data as necessary.

The applications to be described include the following:

- identifying the alternatives to and alternative means to be considered;
- identifying the particular, interactive and cumulative positive and adverse ecological, health, social and economic effects, uncertainties and trade-offs of the alternatives;
- comparing the anticipated effects, uncertainties and trade-offs of the alternatives and selecting the preferred alternatives for designing the Project;
- identifying the positive and adverse effects, uncertainties and trade-offs that, taken together, provide the basis for determining the net contributions to sustainability of the Project as proposed; and
- preparing plans for follow-up monitoring, management and reporting systems that attempt to ensure continuous progress towards sustainability.

The Proponent should refer to Agency guidance on this topic: *Guidance: Considering the Extent to which a Project Contributes to Sustainability* and the *Framework: Implementation of the Sustainability Guidance*.