

**Federal Authority Advice Record (FAAR)****FAAR Response must be submitted by February 6, 2025**

Sussex Region Flood Diversion Project – Town of Sussex.

Registry File: 89179

Department/Agency	Crown Indigenous Relations and Northern Affairs Canada
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1. Is it probable that your department or agency exercise a power, perform a duty or function, or provide financial assistance, related to the project to enable it to be carried out in whole or in part?

As relevant,

- a) Specify the applicable Act of Parliament and that power, duty or function, or describe the financial assistance provided.
- b) Describe any associated Indigenous or public consultation, including timelines.
- c) Describe any associated requirements (e.g., alternative means, offsetting) that may be coordinated with the impact assessment process, if an impact assessment is required, to meet the target of five years or less to complete any required federal impact assessment and permitting.

**CIRNAC does not have a regulatory function relative to the proposed project but can offer subject matter expertise as required of Federal Authorities under the Impact Assessment Act. CIRNAC's MPMO facilitates communication and coordination of subject matter expertise from within the department and provides this expertise to partner departments and agencies involved in the Impact Assessment Process – Horizontal Initiative.**

2. Is your department or agency in possession of specialist or expert information or knowledge with respect to the project beyond what is described in the [Memorandums of Understanding with IAAC](#)?

As relevant,

- a) Specify the specialist or expert information or knowledge that is specifically related to the project and may be relevant to the conduct of an impact assessment of the project, including information on the geographic, environmental, economic or social context of the project

- (e.g. location of protected or sensitive areas, previous history between local communities and proponent or similar projects, local or regional social or economic concerns).
- b) Provide an overview of any information received or exchanged with the proponent or other party in relation to the project (e.g., about methodology, guidance, or data).

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) has expert information, knowledge, and tools that may benefit impact assessment or regulatory processes related to the proposed project. Specifically, CIRNAC can provide guidance and advice related to the federal government's legal obligation to consult and, where appropriate, accommodate when contemplating conduct that may adversely impact asserted or established Aboriginal and/or treaty rights, that are recognised and affirmed by section 35 of the *Constitution Act, 1982*. This duty is supported through related jurisprudence, legislation, policy, and treaties. Additionally, CIRNAC may provide advice and guidance related to specific Indigenous groups' special relationship with the Government of Canada (The Crown), including information related to recognition of Indigenous rights and self-determination (RIRSD) tables, modern treaties or self-government agreements, and other related negotiations and processes.

#### Expert Information and Knowledge

- a) Section 35 Aboriginal and Treaty Rights are recognised and affirmed by Section 35 of the *Constitution Act, 1982*. These are reflected in court decisions, historic treaties, modern treaties, and some self-government agreements. There are elements involving s.35 rights outlined in agreements stemming from recognition of Indigenous rights and self-determination processes and other related agreements:
- CIRNAC provides guidance and advice to federal officials for fulfilling the legal duty to consult and, where appropriate, accommodate, when contemplating conduct, such as project decision-making and federal funding, that may adversely impact upon established and asserted Section 35 rights. CIRNAC continues to work on updating the [2011 Guidelines for Federal Officials to Fulfill the Duty to Consult](#). [Engagement with Indigenous groups to renew the guidelines](#) began in February 2024 and is ongoing;
  - CIRNAC supports the whole-of-government approach to implementing obligations pursuant to modern treaty, self-government and related agreements, including specific consultation-related provisions and protocols. Where project impacts on Modern Treaties have been identified, federal departments and agencies must engage Indigenous Modern Treaty partners on a bilateral basis as early as possible. CIRNAC provides guidance on engagements and tailored contacts for reach out to Modern Treaty partners. [Canada's Collaborative Modern Treaty Implementation Policy](#) (2023) and the [Cabinet Directive on the Federal Approach to Modern Treaty Implementation](#) (2015) provides further guidance to departments and agencies in implementing Modern Treaties; and
  - CIRNAC leads negotiations of modern treaty, self-government, and related agreements (including consultation protocols) on behalf of the Government of Canada.
  - Further to the 2021 Supreme Court of Canada Desautel decision, the legal duty to consult applies to non-resident Indigenous groups who fall into the category of "Aboriginal peoples of Canada" on account of their prior historical residence in what would later become Canada. Per the decision, consultation may operate differently with non-resident groups. CIRNAC can support federal officials by sharing information on CIRNAC's section 35 rights and status related assessments for non-resident groups, providing information about non-resident groups and the Crown's current relationships with those groups if not yet available through the Aboriginal and Treaty Rights Information System (ATRIS), and context-specific duty to consult and engagement guidance.

#### Publicly Available Tools

- b) [The Aboriginal Treaty Rights Information System](#) (ATRIS) is a web-based, geographic information system intended to help users identify the location of Indigenous groups, and to provide users with information pertaining to each Indigenous group's established and/or asserted Section 35 rights. ATRIS provides access to profiles, documents and maps that can be used to assist governments in determining their consultation obligations and other interested parties in carrying out consultation and engagement research. CIRNAC can offer assistance in navigating, and engaging with the ATRIS system.
- c) [The Reporting Centre on Specific Claims](#) is a publicly available tool that can be utilized to search for information about specific claims that are still in process as well as claims that have already been resolved. Specific Claims made by First Nations against the Government of Canada relate to the administration of land and other First Nation assets and to the

fulfilment of historic treaties and other agreements. Settling specific claims is one of the many steps on the journey to reconciliation with First Nations.

#### Additional Considerations

- d) [United Nations Declaration on the Rights of Indigenous Peoples Act \(UNDA\)](#):
- The Government of Canada is implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA), which affirms the Declaration as a universal international human rights instrument with application in Canadian law. Justice Canada is the federal lead on UNDA, and CIRNAC has an important role due to its relationships with Indigenous partners. CIRNAC's advice and actions in relation to the initiative under consideration will be consistent with the rights-based approach endorsed by UNDA.
  - Canada has worked in cooperation and consultation with Indigenous partners to develop the UNDA Action Plan. This Action Plan includes a number of measures which relate directly to Indigenous decision-making and participation and must be taken into account where Indigenous rights may be affected.
- e) Reconciliation: All departments continue to work on implementing all 94 Calls to Action from the [Truth and Reconciliation Commission Final Report](#).

CIRNAC is developing guidance for federal officials on the following matters arising in consultation and engagement processes, and departments or agencies may contact CIRNAC for more detailed information:

Self-Identifying Indigenous Collectives: There has been a rise in self-identifying Indigenous collectives, from within Canada and abroad, who assert Section 35 rights in specific regions within Canada.

- A variety of colonial factors have contributed to these scenarios such as the imposition of *Indian Act* electoral systems, and the definition of interprovincial and international boundaries. In some instances these Indigenous collectives may be owed a duty to consult depending on factors such as the strength of their claim and evidence that the leadership actually represents an Indigenous group that potentially holds Section 35 rights. In situations where Canada is of the view that there is no legal duty to consult, Canada may nevertheless engage with Indigenous groups to support relationship building and foster learning about the group and who they represent. In such case, it is important to convey that consultation is not a rights recognition process.

Accommodation: Accommodations measures seek to reduce, avoid or eliminate the potential impacts of a project on Indigenous people's rights. The principle of accommodation does not apply to engagement. Nevertheless, when engaging, there may be cases in which Canada assesses the circumstances and decides to provide benefits to the relevant groups to support reconciliation.

Assessing Impacts on Rights: During this process, it is important to consider and assess the cumulative impacts of the potential Project on the exercise of Section 35 rights. Recent court decisions have shown the cumulative effects of major projects can impact Indigenous people and their treaty rights.

Information relative to Canada's relationships with Indigenous people: This may include modern treaties or self-government agreements, and Recognition of Indigenous Rights and Self-Determination (RIRSD) tables in the project area.

CIRNAC can also provide information on Indigenous groups that proponent plans to engage on the project including Indigenous groups under the Peace and Friendship Treaties:

- Kingsclear First Nation (Pilick)
- Madawaska Maliseet First Nation (Matawaskiye)
- Oromocto First Nation (Welamukotuk)
- St. Mary's First Nation (Sitanisk)
- Tobique First Nation (Negotkuk)
- Woodstock First Nation (Wotstak)
- Buctouche MicMac First Nation (Tjipögtötjg)
- Eel Ground First Nation (Natoaganeg)
- Eel River Bar First Nation (Ugpi'Ganjig)
- Esgenoôpetitj First Nation

- Fort Folly First Nation (Amlamgog)
- Indian Island First Nation (L’Nui Menikuk)
- Metepenagiag First Nation
- Pabineau First Nation (Oinpegitjoig L’Noiegati)
- Elsipogtog First Nation
- Peskotomuhkati at Skutik First Nation

The [Mi'gmawe'l Tplu'taqnn Incorporated](#) Consultation Protocol provides a preferred choice for consultation for Amlamgog First Nation, Elsipogtog First Nation, Esgenoôpetitj First Nation, L’Nui Menikuk First Nation, Metepenagiag Mi’kmaq First, Natoaganeg First Nation, Oinpegitjoig l’Noiegati, Ugpi’ganjig First Nation, and Tjipôgtôtjig First Nation.

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3. Based on the mandate and expertise of your department or agency as well as information and knowledge in its possession, including the Initial Project Description, are you of the opinion that the project may cause adverse effects within federal jurisdiction or direct or incidental adverse effects?
- a) Identify adverse effects within federal jurisdiction that may be caused by the project.
  - b) Identify any non-negligible adverse effects directly linked or necessarily incidental to a federal authority’s exercise of a power or performance of a duty or function, or to a federal authority’s provision of financial assistance to a person for the purpose of enabling the project to be carried out, in whole or in part.
  - c) Identify any adverse impact that the designated project may have on the rights of Indigenous groups.
  - d) Identify and describe means other than an impact assessment that may address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the project, including how these effects would be addressed. Other means may include any power, duty or function exercised by your department or agency, as well as existing legislations, regulations, standards, processes, or guidelines by any jurisdiction that your department or agency has knowledge of.
  - e) Identify whether and how an impact assessment would provide added value to understand and address adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the project, including supporting federal authorizations that may be required.

**CIRNAC can provide the Impact Assessment Agency of Canada and partner departments and agencies with guidance related to their legal duty to consult and with respect to Canada’s relationships with Indigenous groups. CIRNAC does not facilitate the technical review of proposed projects or administer the legislative or regulatory mechanisms required to manage effects related to projects approved under the *Impact Assessment Act*.**

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4. Based on the mandate, experience and expertise of your department or agency, and on the Initial Project Description, what are the **key issues** related to the project?

Please use Table 1 to respond to this question.

If IAAC decides an impact assessment is required, IAAC will consider the information to develop project-specific draft Tailored Impact Statement Guidelines focused on key issues, establish the scope of the impact assessment, and develop plans.

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5. What additional information the proponent could provide that would give confidence that concerns or uncertainty regarding potential effects can be addressed through means other than an impact assessment, or that available means and evidence can be relied upon to simplify information requirements of the proponent, if an impact assessment is required?

Please use Table 2 to respond to this question.

These clarifications and additional information may be asked of the proponent in the Summary of Issues. The proponent's response on how it intends to address the issues may be used by IAAC to decide if an impact assessment is required and, if so, develop simplified project-specific draft Tailored Impact Statement Guidelines, and develop plans.

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Consultation and Accommodation Unit, Modern  
Treaties, Consultation and Intergovernmental  
Relations Sector Crown Indigenous Relations and  
Northern Affairs Canada

\_\_\_\_\_  
Name of Departmental / Agency  
Responder

Director

\_\_\_\_\_  
Title of Responder

February 6 2025

\_\_\_\_\_  
Date

**Table 1: Key Issues to inform the impact assessment process**

This table should outline key issues to inform the impact assessment process, including whether an impact assessment is required and, if so, the scope of the assessment.

IAAC asks that federal authorities align expert advice with IAAC’s approach to scoping and tailoring to key issues based on the project-specific context, and clearly focus on the prevention and mitigation of significant adverse effects within federal jurisdiction. Measured advice from federal authorities on key issues and solutions — and on the scope and detail of any recommended information and studies — will enable IAAC to focus assessments on issues that are important to participants and to decision-makers.

In identifying key issues, federal authorities should be mindful of the project’s context (size, scope, location), Indigenous Knowledge and perspectives, and public concerns. Key issues that may be relevant and material to decision-making include:

- adverse effects within federal jurisdiction and direct or incidental adverse effects that may be to some extent significant, based on available evidence, including federal experts’ knowledge and experience with past project assessments;
- potential impacts on Indigenous peoples and their rights, based on Indigenous Knowledge and perspectives or experience with past project assessments;
- effects on key species or habitats (e.g. at risk, important to Indigenous communities, commercial importance, provide important ecosystem function);
- issues or adverse effects within federal jurisdiction or direct or incidental adverse effects that may result from novel project activities, components or technology;
- effects within federal jurisdiction or direct or incidental adverse effects with large uncertainties, including in the effectiveness of mitigation measures;
- adverse effects within federal jurisdiction and direct or incidental adverse effects where known and effective mitigation measures are limited or unproven;
- positive effects, including where project may support other governmental priorities, including reconciliation with Indigenous peoples; and
- key concerns raised by Indigenous groups or local communities.

If an impact assessment is required, it will be focused on key federal issues anticipated to be material to decision-making. Potential effects that do not represent key issues, may not be within the scope of the impact assessment or may require simplified information requirements for proponents. In identifying key issues and providing advice on whether additional information or studies are required, federal authorities should consider whether potential effects can be managed using well understood mitigation measures or existing guidance, whether a mean other than an impact assessment exists to address and manage the effects and of any gaps in the existing body of evidence.

Comment ID	Relevant section of the Initial Project Description	Valued Component or Factor to Consider	Description of Key Issue (Context and Rationale)	Advice	Plain language summary that could be included in the Summary of Issues
<p><i>Please identify comments by organization and comment number.</i></p> <p>e.g.: IAAC-01</p>	<p><i>If the comment is related to a specific section of the Initial Project Description, please include that reference.</i></p>	<p><i>Identify valued component(s) or factor to consider—within the mandate of your department or agency—to which the potential effect or issue applies.</i></p>	<p><i>Provide a brief description of the issue and rationale for being a key issue.</i></p> <p><i>Include:</i></p> <ul style="list-style-type: none"> <li>• <i>whether it is an adverse effect within federal jurisdiction, or a direct or incidental adverse effect;</i></li> <li>• <i>the pathway of effects;</i></li> <li>• <i>nature and complexity of the issue</i></li> <li>• <i>rationale and evidence on why it is a key project-specific issue;</i></li> <li>• <i>if applicable, Indigenous or public concerns or perspective;</i></li> <li>• <i>if applicable, potential for differential effects among diverse population groups;</i></li> <li>• <i>scientific evidence or Indigenous Knowledge, including from past project experience, which supports inclusion as a key issue.</i></li> </ul>	<p><i>Where applicable, briefly provide solutions on how to address the potential issue or effects including:</i></p> <ul style="list-style-type: none"> <li>• <i>Any mean, including powers, duties or functions that your department or agency has or any regulatory framework of a jurisdiction that may mitigate, manage, or set conditions related to the issue;</i></li> <li>• <i>Standards, guidance or policies for mitigating effects or any standard and well-understood mitigation measures that would address the effect, including follow-up monitoring activities;</i></li> <li>• <i>Commitments the proponent could make to respond to the issue;</i></li> <li>• <i>Information or studies required to describe and characterize the potential effect; including any guidance for data collection and/or analysis or existing data sources to inform the assessment</i></li> </ul> <p><i>Where available, please refer to existing text in the Tailored Impact Statement Guidelines template.</i></p>	<p><i>Provide a concise, plain language synopsis of the key issue and any questions or directions for the proponent. <del>that</del> IAAC may include in the Summary of Issues.</i></p>

Please insert additional rows as necessary.

**Table 2. Clarifications or additional information the proponent could provide**

This table should outline clarifications or information the proponent could provide to address areas of concerns or uncertainty during the Planning phase to support the decision on whether an impact assessment is required and, if an impact assessment is required, to support simplified information and studies that would be required in the Tailored Impact Statement Guidelines.

Comment ID	Relevant section of the Initial Project Description	Description of concern or uncertainty	Clarification or additional information	Plain language summary that could be included in the Summary of Issues
<p>Please identify comments by organization and comment number.</p> <p>e.g.: IAAC-01</p>	<p>If the comment is related to a specific section of the Initial Project Description, please provide a reference.</p> <p>You may also choose to copy the relevant text here.</p>	<p>Provide a description of the area of concern or uncertainty the proponent could address (e.g. in their response to Summary of Issues, and, if IAAC requires it, in their Detailed Project Description) that would demonstrate or increase confidence that the issue will be addressed through a mean other an impact assessment such as existing regulatory frameworks (from any jurisdiction), clear measures or existing guidelines or tools .</p>	<p>Provide recommended clarification or additional information <del>to be included in their response to the Summary of Issues and, if IAAC requires it, in their Detailed Project Description as to how they intend</del> that could be provided to address the concern or uncertainty, for example:</p> <ul style="list-style-type: none"> <li>• Clarifications to elements of the project description (e.g. components, activities, locations or alternatives);</li> <li>• Proposed project design changes that could avoid effects;</li> <li>• Evidence that could be presented to demonstrate there is no effect pathway of effect or that effects would be negligible;</li> <li>• Evidence that standard mitigation measures will address potential adverse effects within federal jurisdiction and, if applicable, direct or incidental adverse effects;</li> <li>• Commitments the proponent could make to address the issue, including the implementation of federal operational policies or guidance documents.</li> </ul>	<p>Provide a concise, plain language synopsis of the issue and of the question or direction for the proponent <del>that IAAC may include in the Summary of Issues.</del></p>
<p>CIRNAC -TAG-01</p>		<p>Include relevant information of Indigenous groups that are engaged in this project.</p>	<p>Within the province of New Brunswick there are currently four active tables with the following Indigenous groups.</p> <ul style="list-style-type: none"> <li>• Elsipogtog             <ul style="list-style-type: none"> <li>○ ELSIPOGTOG FIRST NATION</li> </ul> </li> <li>• Mi'gmaq of New Brunswick             <ul style="list-style-type: none"> <li>○ BUCTOUCHE MICMAC</li> <li>○ EEL RIVER BAR FIRST NATION</li> <li>○ ESGENOOTITJ FIRST NATION</li> <li>○ FORT FOLLY</li> <li>○ INDIAN ISLAND</li> <li>○ METEPENAGIAG MI'KMAQ NATION</li> <li>○ NATOAGANEG</li> <li>○ PABINEAU</li> </ul> </li> <li>• Peskotomuhkati Nation at Skutik (Formerly Passamaquoddy)             <ul style="list-style-type: none"> <li>○ PESKOTOMUHKATI NATION AT SKUTIK</li> </ul> </li> <li>• Wolastoqey of New Brunswick             <ul style="list-style-type: none"> <li>○ BILIJK</li> <li>○ MADAWASKA MALISEET FIRST NATION</li> </ul> </li> </ul>	

			<ul style="list-style-type: none"><li>○ OROMOCTO FIRST NATION</li><li>○ SAINT MARY'S</li><li>○ TOBIQUE</li><li>○ WOODSTOCK</li></ul>	

*Please insert additional rows as necessary.*