

# Final Strategic Assessment on Climate Change: Zero Net Effect?

By: David V. Wright

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The federal government recently released the final version of its Strategic Assessment of Climate Change (SACC). This represents a potentially important step in the implementation of the new federal Impact Assessment Act, SC 2019, c 28, s 1 (IAA or the Act). This post builds on my previous posts (here and here) by setting out key differences between the final and draft SACC and providing associated commentary. Overall, the final SACC does take steps in the right direction in several ways, such as integrating the new 2050 net-zero emissions commitment throughout all phases of the assessment. However, as further discussed below, there are several features that are problematic or ambiguous, particularly the persisting lack of detail regarding how the Impact Assessment Agency of Canada (IACC or the Agency) will assess projectspecific emissions information against Canada's climate change commitments and how such an assessment will inform final decisions under the new Act. Further, the entire SACC initiative represents a relatively narrow approach to using the new federal impact assessment (IA) regime as a tool for achieving Canada's climate change commitments. Ultimately, it is unclear whether the path the SACC sets for implementation of the new IAA regime's climate change requirements will have any net effect on Canada achieving its commitments in respect of climate change.

# Background

The final SACC marks the end of a slow-moving two-year process. The government published a discussion paper soliciting views from the public in July 2018, then issued terms of reference for the SACC in March 2019, and then released the draft SACC in August 2019. While the government did a reasonably good job of providing time and opportunities for input from the public and interested parties (for example – see these submissions regarding the initial discussion paper), and while the COVID-19 pandemic surely caused delays in recent months, it remains unclear why the final version took so long to be released, especially given that the government had been indicating that it would be released in "early 2020", which would have been before the virus turned life upside down. In any event, the final version is now here.

As I've suggested in previous posts, the SACC is a "strategic assessment" in name only. It does not resemble what typically constitutes a strategic assessment, which would, for example, include a comprehensive review of Canada's existing and future policies, plans, and programs with respect to climate change and greenhouse gas (GHG) emissions reductions (for an in-depth discussion of what the SACC might have looked like under a broader approach, see this article by Robert Gibson, Karine Peloffy and Meinhard Doelle). Rather, the SACC process was simply an exercise in developing guidance for implementing the provisions of the IAA that explicitly mention climate change (ss 22(1)(i) and 63(e)). This narrow scope is evident in the opening description in the SACC executive summary (at i):

"This strategic assessment of climate change:

- describes the greenhouse gas (GHG) and climate change information that project proponents need to submit at each phase of a federal impact assessment;
- requires proponents of projects with a lifetime beyond 2050 to provide a credible plan that describes how the project will achieve net-zero emissions by 2050; and
- explains how the Impact Assessment Agency of Canada (IAAC) or lifecycle regulators, with support from expert federal authorities, will review, comment on and complement the climate change information provided by proponents."

In other words, the SACC *does not*:

- take stock of Canada's existing climate change laws, policies, plans and programs;
- review and assess what additional measures need to be put in place to achieve Canada's Paris Agreement Commitment (30% below 2005 levels by 2030) and the goal of net-zero emissions by 2050;
- recommend or dictate what projects or types of projects ought to be assessed under the IAA (e.g. those that are most likely to have high GHG emissions);
- set out any kind of explicit 'climate test' that a project must satisfy in order to be approved;
- consider tools of integrating the monetized costs of GHG emissions into the assessment process (for a discussion of this point, see this UBC Law Review paper by myself and Meinhard Doelle).

To be fair, the 2016 Pan-Canadian Framework on Clean Growth and Climate Change does include a relatively thorough inventory of emission reduction measures across the country. However, that framework is already outdated, did not offer a satisfactory roadmap for future policies and tools, and included no mention at all of federal impact assessment, let alone the role it is expected to play. In any event, whatever view one takes regarding what constitutes a proper strategic assessment, the Minister of Environment and Climate Change has now spoken. Pursuant to the deeming provision in section 95(2) of the IAA, Minister Wilkinson has deemed the SACC to be a strategic assessment under section 95(1) of the Act, meaning it must be taken into account at certain stages of the IA process, including Ministerial designation of a project (s 9(2)), agency screening decisions (s 16(2)(e)) and in the assessment itself (s 22(1)(p). This clears up any ambiguity that may have arisen due to the SACC being commenced prior to the IAA coming into force.

While I remain hopeful that the government may yet commit to a phase two of the SACC that would include broader dimensions, it appears that this window has closed for now. The final SACC does include an explicit commitment to a "review and update" every five years (at 1), but what direction such a review will take is unpredictable and this first iteration of the SACC will

no doubt create a precedent for future iterations. Having said this, the review period will provide an opportunity to align implementation of the climate change provisions of the IAA with the "legally-binding, five-year emissions reduction milestones" that the federal government has committed to putting in place.

The remainder of this post sets aside these high-level concerns and focuses on key differences between the final and draft SACCs, offering commentary along the way.

#### Net-Zero by 2050

The Trudeau government has set a target of <u>net-zero carbon emissions by 2050</u>, a target pledged by <u>numerous jurisdictions</u> around the world, including New Zealand, the United Kingdom, the EU, Japan and others. The government made this commitment several months after the draft SACC was released. It now figures prominently in the final SACC, building on reference to Canada's Paris Agreement commitments and Canada's Mid-Century Long-Term Low-Greenhouse Gas Development Strategy (see e.g. 3, 17).

This new high-level requirement obliges "proponents of projects with a lifetime beyond 2050 to provide a credible plan to achieve net-zero emissions by 2050" (at 1). This requirement is then integrated throughout key stages of the IAA process. Specifically, the tailored impact assessment guidelines, which are issued at the end of the planning phase, will direct "[p]roponents of projects with a lifetime beyond 2050" to "provide a credible plan for the project to achieve netzero emissions by 2050" (at 11). In the impact statement phase, proponents of such projects will be required to "provide a credible plan that describes how the project will achieve net-zero emissions by 2050" and that plan "will need to demonstrate how the net GHG emission[s]... will equal 0 kt CO<sub>2</sub>e / year by 2050 and thereafter for the remainder of the lifetime of the project" (at 16). Interestingly, the SACC provides a basis for proponents to "identify any supportive actions" by the Government that they would need in order to be able to achieve net-zero emissions... for example, identifying the need for the construction of a grid intertie to enable access to clean electricity" (at 15). In the assessment phase, the "IAAC or the lifecycle regulator will review the proponent's plan to achieve net-zero emissions by 2050 and will also consider the supportive government actions identified by the proponent in order for the project to be able to achieve netzero emissions" (at 17). In the decision-making phase, the SACC clarifies that conditions attached to a project approval "may also include a reporting program in which the proponent would demonstrate progress towards implementing these mitigation measures and the plan for reaching net-zero emissions by 2050 for projects with a lifetime beyond 2050" (at 19). Similarly, in the post-decision phase, a proponent may be required "to report progress in implementing these GHG mitigation measures and in implementing the plan for reaching net-zero emissions by 2050 for projects with a lifetime beyond 2050" (at 19).

Taken together, these new requirements represent improvements over the draft SACC in several ways. First, they clarify which project proponents need to provide information in relation to the 2050 commitment - only proponents of projects with a lifetime beyond 2050. Second, they also describe in general terms what information such proponents must provide, though there is significant ambiguity in the "credible plan" standard. Third, the requirements provide a formal basis upon which this information will be considered in the assessment and decision-making

phases. As discussed below, however, it remains unclear precisely how the assessment and final decision-making will relate the project information to Canada's ability to meet its commitments in respect of climate change (e.g. is there some detailed carbon budget to be developed?), but the SACC at least articulates the basis for doing so. Fourth, by indicating a link between reporting programs in project approval conditions and a proponent's plan for reaching net-zero emissions, the SACC sets out a basis for ongoing monitoring and accountability that could ensure proponents follow through. Fifth, the SACC clarifies that the "commitments in respect of climate change" language in the IAA includes the new 2050 net-zero commitment. Finally, the SACC reveals that the federal government will, at least to some extent, use the IAA as a tool to pursue longer term emission reductions by requiring that designated projects have a plan in line with the net-zero commitment.

Notwithstanding these improvements, in the near term these requirements may do very little to influence projects' emissions given that it will only apply to projects with lifetimes beyond 2050, proponents can rely heavily on offset credits (see below), and the standard of "credible plan" is inherently toothless.

#### **Offset Credits**

While the draft SACC set out preliminary information regarding the role of offset credits in the IAA regime, the final SACC includes further detail and several significant changes. At the details level, the SACC makes explicit the requirement that credits must be "sourced from a project that is registered in a Canadian regulatory offset program that aligns with the best practices outlined in the Canadian Council of Ministers of the Environment Pan-Canadian Offsets Framework" (at 7). This should provide proponents with a reasonably clear methodology for generating, using and calculating offset credits, and presumably further details will be provided in forthcoming technical guidance (forthcoming technical guides are listed and described on page 4). Unsurprisingly, the SACC explicitly requires that offset credits must be verified "to a reasonable level of assurance" (at 7). The SACC also clarifies that credits must not be more than five years old, and must be issued on the basis that the GHG reductions and removals have already occurred (at 7).

The SACC also sets parameters on where the credits come from, and, in so doing, it explicitly speaks to the linkage between the IAA regime and the Paris Agreement. Specifically, the guidance indicates that offset credits must be sourced from offset projects within Canada unless the offsets "fully comply with rules for Internationally Transferred Mitigation Outcomes (ITMOs) established under Article 6 of the Paris Agreement, and applicable decisions adopted by the Conference of the Parties" and any further criteria developed by Environment and Climate Change Canada (at 7). As flagged in my previous post on the draft SACC, having a clear linkage between the IAA regime and the Paris Agreement rules is critical, and this part of the SACC fills that gap to some extent. In short, it sets a basis for avoiding double-counting. While Article 6 rules are still fluid and under development, this is a welcome explicit clarification in the SACC that presumably will be fleshed out further as the international rules and further IAA guidance are finalized.

Further on the point of double-counting, the SACC also clarifies that offset credits must not have been used for compliance with any other regulatory requirement, nor any other voluntary or compliance purposes (at 7). This seems to be a broader way of clarifying a point in the draft SACC that has now been removed: the prohibited use of credits issued under the *Greenhouse Gas Pollution Pricing Act* or any provincial or territorial regime that issues credits. As such, it would appear that any credits generated under other federal or sub-national regimes can now be used by proponents of designated projects so long has those credits have not been used for other compliance or voluntary programs.

The most surprising feature of the SACC regarding offsets comes from what is not included: limits on use. The SACC includes no limits on the degree or amount of credits a project proponent can use to calculate net emissions. Where the draft SACC left some ambiguity around whether offset credits could be applied in calculating net emissions or whether they were confined to just mitigation measures (the text of the draft SACC was rather confusing on this point, but seemed to confine to only the latter, at 8), the final SACC provides clarity by opening the door wide open to unlimited use of offset credits in calculating net emissions. Under the final guidance, a proponent could theoretically use credits to offset all project GHG emissions, thus achieving net-zero emissions today without actually changing the physical project as proposed. This is in part facilitated by the final guidance no longer including reference to ISO-14064 and The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard (GHG protocol), which were included in the draft SACC. This removal may be because those standards would not actually permit such broad and unlimited reliance on offset credits in netemissions calculations. For example, the GHG protocol states, "[t]he uncertainties that surround GHG project accounting make it difficult to establish that an offset is equivalent in magnitude to the internal emissions it is offsetting... This is why companies should always report their own internal emissions in separate accounts from offsets used to meet the target, rather than providing a net figure" (at 82).

Deep discussion of this aspect is best left to another post, but it is important to note that the unrestricted access to offsets in the IAA regime is likely to raise long-standing concerns around use of GHG offsets, particularly with respect to credibility and verification of the emission reductions (does the credit actually represent real emission reductions?), fairness between regions that continue to emit and those that host the offset, and a perception that offsets allow jurisdictions and firms to carry on with carbon-intensive behavior (see this explainer for succinct discussion of these general concerns). To some extent the SACC's requirements regarding Best Available Technologies / Best Environmental Practices (BAT/BEP), discussed below, may counterbalance this latter concern.

In any event, offset programs are taking root in Canada – see discussion in this federal document outlining options for a federal GHG offset system. In this context, the offset credit aspect of the IAA stands to have a significant impact both in terms of supply and demand for credits. For example, a large renewable energy project reviewed under the IAA could likely generate credits by demonstrating emission reductions that are additional to what would have occurred in the absence of the project, and large conventional energy projects may well seek to use offset credits to reduce net emissions. Again, there will be many devilish details to work out in future guidance and rules, but this is a significant change.

#### **Emissions Intensity**

At first blush, the final SACC's coverage of emissions intensity closely tracks the content of the draft SACC. However, a closer look reveals two notable changes – one big and one small. A relatively minor but positive change is that in addition to the requirement of calculating "the emissions intensity estimate for each year of the operation phase of the project", under the final guidance proponents must also report emissions intensity and units produced "separately for each year of the operation phase of the project." While this requirement may increase the reporting burden on proponents, it should provide a more robust basis for the Agency to track the accuracy of operator forecasts and actual emissions throughout the operations phase.

A more significant change – so significant that it may well be a serious oversight on the part of the SACC drafters – is in the final SACC "equation" for calculating emissions intensity ("Equation 2", at 8). That equation states: Emissions intensity equals net GHG emissions divided by units produced. The problem here is that, as discussed above, the final SACC allows for unlimited use of offset credits for the purposes of calculating net GHG emissions. This could render the emission intensity calculation meaningless because the GHGs per units produced would not actually represent the performance of the project itself. Instead, Equation 2 should be as follows: Emissions intensity equals net GHG emissions (*not including offset credits*) divided by units produced. This calculation would generate figures that allow for meaningful comparison of "the project to similar high-performing, energy-efficient project types in Canada and internationally" (at 8). At the very least both calculations (i.e. with and without offsets) ought to be required.

# **Upstream Emissions Assessment**

The final SACC changes the thresholds that trigger the requirement to conduct an upstream GHG assessment. Under the draft SACC, no upstream assessment was required if upstream emissions were likely to be below 500 kt/CO<sub>2</sub>e per year (500 kt threshold). That has been replaced in the final SACC with thresholds that change each decade (Table 1, p. 8). The 500 kt threshold still applies in 2020-2029, but this lowers to 300 in 2030-2039, 200 in 2040-2049, and 100 in 2050 and beyond. Whether an upstream assessment is required will be definitively set out in the Tailored Impact Statement Guidelines issued by the IAAC at the end of the planning phase (at 11). Logic would suggest that the revised thresholds will mean more projects will be required to conduct upstream assessments in decades to come. Presumably, this information will be helpful to the government as it monitors progress toward the 2050 commitment. Again, further guidance is forthcoming on upstream GHG emissions (at 4). It should be noted that a proponent's plan to achieve net-zero emissions does not need to include upstream emissions (at 16), and the final SACC confirms that downstream emissions analyses are not required (at 5).

# **Carbon Sinks**

The final SACC provides more detail on what information project proponents must provide regarding carbon sinks in the impact statement phase (at 12). What was just a few words in the draft SACC is now several detailed points (at 12). In addition to these informational requirements, the final SACC also includes a new reference to a forthcoming ECCC

methodology: "ECCC is developing an approach to estimate losses or gains to carbon sinks. ECCC will provide that approach in the technical guide on GHG Quantification. Once the methodology is published in the technical guide, proponents will be required to provide a quantitative and qualitative description of the project's positive or negative impacts on carbon sinks" (at 13). This is another example of the SACC providing further but not complete clarity about the requirements. Technical guides will hopefully fill in the rest of the picture.

### Impact of the Project on Federal Emission Reduction Efforts and Global GHG Emissions

Under the draft SACC, only projects with potential for impacts on sinks and for net and upstream GHG emissions above the 500 kt threshold were required to provide information regarding how the project may impact global GHG emission reductions and Canada's efforts to reduce GHG emissions. This information is now required of all projects, though the final SACC acknowledges that "[f]or some projects, there will be nothing to add in this section" (at 13). As an aside, this is another example of the SACC generally moving away from using the rigid 500 kt threshold that was quite prominent in the draft SACC. This general change is most notable in the removal of the process chart in Figure 1 of the draft SACC, in which the 500 kt threshold triggered many of the impact statement phase requirements.

Beyond requiring this information for all projects, there is no material change in the final SACC. This means one problematic dimension persists: the invitation for proponents to discuss how a project "may displace emissions internationally." As I explained in the previous post on the draft SACC, this creates dissonance by on one hand scoping out analysis of downstream emissions (at 5) while on the other hand providing a basis for a proponent to cherry-pick data about a project's downstream impacts. For a proponent to comment on displacement of emissions internationally, they must engage in some degree of downstream emissions analysis with respect to their own products' emissions and with respect to the other jurisdiction's emissions. Further, given that this part of the SACC is framed as optional ("Impact statement *could* describe..." at 13, emphasis added), information generated under this part of the regime is likely to be lopsided because proponents of projects that are likely to increase emissions internationally would logically choose to not comment on this aspect. Granted, the core requirement of the guidance here is neutrally phrased to require "a discussion on how the project could impact global GHG emissions." Given that articulation of the requirement, one would hope that the IAAC will apply this part of the requirement equally to projects that do and do not have potential to displace emissions internationally, notwithstanding the tilted nature of the framing in the SACC.

# Best Available Technologies / Best Environmental Practices (BAT/BEP) Determination

Under the final SACC *all* project proponents must conduct a BAT/BEP determination (at 14). In the draft SACC this was only required of projects above the 500kt threshold. As such, this is another instance of the final SACC relying less on the 500 kt threshold that was central in the draft guidance. Beyond this change, the final SACC closely tracks the draft guidance with respect to BAT/BEP determination requirements. Further details are to come when the government publishes a technical guide to "help project proponents conduct their BAT/BEP determination by providing additional information on technical, economic, social and environmental considerations" (p.15). Overall, this is a change for the better as it will provide the

government with more information to understand and track projects' performance. It may also play a technology-forcing role that encourages proponents to adopt lower emissions technologies.

#### Assessment, Decision-Making, and Post-Decision Phase

The content of these parts of the guidance is substantively the same as in the draft guidance with one exception: the 2050 net-zero commitment is now integrated throughout. For example, in the assessment phase the guidance indicates that "[f]or projects with a lifetime beyond 2050, IAAC or the lifecycle regulator will review the proponent's plan to achieve net-zero emissions by 2050 and will also consider the supportive government actions identified by the proponent in order for the project to be able to achieve net-zero emissions" (at 17). Similarly, for the decision-making phase the guidance indicates that "[d]ecision-makers will be provided with analysis, including but not limited to, the project's GHG emissions in the context of Canada's emissions targets and forecasts, such as Canada's 2030 emissions targets, Canada's Mid-Century Long-Term Low-Greenhouse Gas Development Strategy, and Canada's goal for achieving net-zero emissions by 2050" (at 18). And, as described above, the guidance also indicates that project approval conditions may include requirements regarding GHG mitigation measures and follow-up programs, including reporting requirements, that relate to plans for reaching net-zero emissions by 2050.

What stands out in reviewing these parts of the final SACC is the lack of detail. The guidance explains in quite general terms what is going to be done – i.e. review of the project's GHG information, including mitigation measures, and relating of that information to the Canada's emissions "targets and forecasts" (at 17 and 18). However, there is minimal information about *how* this will be done. Given that it is during these stages of the assessment process that Agency and decision-makers will really be considering the core requirement of the IAA – i.e. "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" - it is disappointing to see such thin coverage, particularly with respect to the assessment phase.

Regarding the assessment phase, it is unclear how the assessment will conclude and formulate a recommendation to decision-makers on the extent to which any particular project contributes to or hinders Canada achieving commitments with respect to climate change. While there are analytical approaches available (e.g. carbon budgets and decarbonization pathways – see this report for detailed discussion) these are not mentioned in the guidance beyond reference to "Canada's emissions targets and forecasts, such as Canada's 2030 emissions targets, Canada's Mid-Century Long-Term Low-Greenhouse Gas Development Strategy, and Canada's goal for achieving net-zero emissions by 2050" (at 17 and 18) and an indication that the analysis "may include considering, for example, whether the project's emissions are built into the sector projections in ECCC's national forecast in Canada's National Communications and Biennial Reports submitted to the United Nations Framework Convention on Climate Change" (at 17). This dimension is also not listed as the focus of future technical guides (at 4). Furthermore, there is little additional detail provided in the new "policy context" document published by the Agency: Policy Context: Considering Environmental Obligations and Commitments in Respect of Climate Change under the Impact Assessment Act. This document does explain that the

Agency analysis will look at "*whether* a project's effects could hinder or contribute to the Government of Canada's ability to meet an environmental obligation or climate change commitment" and "*the extent to which* these effects could hinder or contribute to the Government of Canada's ability to meet the applicable obligation or commitment." However, it fails to meaningfully explain what parameters would be applied in such an analysis.

Regarding final decision-making, the thin detail is disappointing but, as noted in my previous post regarding the draft SACC, perhaps not surprising given considerations such as Cabinet confidentiality, the polycentric nature of the IAA public interest determination, and the associated broad discretion granted by the Act. The Agency has also released the document Policy Context: Public Interest Determination under the Impact Assessment Act; however, discussion of climate change in that document simply refers one back to the SACC and the other climate change policy context piece. While this lack of detail may make it challenging for the public, industry, and interested parties to understand how project-specific GHG information affects project approvals (or rejections) and associated approval conditions, over time these concerns should be addressed through the requirement under IAA section 65 for "detailed reasons" to accompany public interest determinations.

#### **Concluding Comments**

The final SACC includes several improvements over the draft SACC. For example, removal of the 500 kt threshold as a trigger for several informational requirements (e.g. BAT/BEP determination, later-decade upstream analyses) means more projects will have to provide more information. Given a key purpose of impact assessment is generating information for informed decision-making, this is a step in the right direction. It will better position the federal government to have a full view of projects individually and, over time, collectively. It is also positive to see the 2050 net-zero commitment integrated throughout. This represents a small step in building coherence between the IAA regime and Canada's broader policy framework.

However, several shortcomings and problematic features of the SACC seriously undermine the contribution the IAA will make to Canada achieving its climate commitments. First and foremost, it remains unclear precisely how the proponent's GHG information will be assessed by the Agency (or other federal agencies, as the case may be) and then used in final decisionmaking. The framework for such assessment, to the extent it is articulated in the SACC and other policy context documents, contains an enormous amount of room for the assessment to maneuver toward recommending that a project will not hinder achievement of Canada's climate change commitments. This is even more true given the flexibility provided through unlimited use of offset credits in net emissions calculations. And this is even more true again given that the equation for calculating emissions intensity allows for offsets to be baked into the net emissions figure. Additionally, the exclusion of downstream emissions analysis while allowing for discussion of how a project "may displace emissions internationally" further expands the broad basis set by the SACC for approval of carbon-intensive projects well into the future. And all of this is in a context where the IAA is premised on a relatively short list of major projects that doesn't necessarily include the most climate-significant projects being pursued (see this post by my colleague, Sharon Mascher, on this project list concern).

Putting all this in real terms, aside from generating additional GHG information (which, granted, may have value on its own) and feeding forthcoming domestic and international offset markets, the SACC structures the entire regime to more or less facilitate business as usual. As such, implementation of this part of the IAA appears to be on track to have virtually zero net effect in helping Canada meet its climate change commitments. Granted, project-level impact assessment was never likely to have the primary role in Canada's climate change action (see comment above noting no mention in the Pan-Canadian Framework), but the new Act and the explicit climate change provisions raised expectations and provided a basis for the IAA to potentially play a significant part. It is now clear that much of this potential will go unrealized.

One can still hope that the forthcoming technical guidance and the first five-year review of the SACC, coupled with federally legislated five-year emissions reduction milestones, may yet leverage the role that the IAA could play in helping Canada achieve its climate change commitments. As jurisdictions around the world work to implement the Paris Agreement, which is premised on a "managerial" approach to compliance that is rooted in trust and good faith efforts by all parties (see discussion here), the stakes are high and Canada needs to lead by example.

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