

**Yukon Mineral Development Strategy and Recommendations Final Draft
Comments Submitted by:
The Yukon Environmental and Socio-economic Assessment Board (YESAB)**

February 22, 2021

General

- YESAB appreciates the opportunity to comment on the *Yukon Mineral Development Strategy and Recommendations – Final Draft*. The Panel is to be commended for the open, inclusive and transparent approach that it took in developing the Strategy. This is a comprehensive body of work containing many challenging and crosscutting recommendations. It is not YESAB’s role to articulate positions on the issues and opportunities identified in the Strategy. Rather YESAB has focused its comments on the operational implications of recommendations and offered clarification in respect to the characterization of the assessment process and how it is situated and interfaces with other elements of the regulatory framework for mining in Yukon.
- The Panel recommends implementing the recommendations contained in both the Gowling WLG and Pricewaterhouse Coopers (PwC) reports. While many of the recommendations may have merit and warrant careful consideration, it should be acknowledged that these reports were only made public through the Panel’s efforts and were not the products of inclusive engagement. Consequently, the analysis and conclusions in these reports were not in all instances based on sound or accurate information. Our comments focus on the recommendations rather than a critical review of the reports.
- The Panel’s report refers to “environmental assessment” throughout. To be accurate and consistent with the *Yukon Environmental and Socio-economic Assessment Act (YESAA)*, the report should refer instead to “environmental and socio-economic assessment” or simply “assessment” to properly reflect the breadth of the function and YESAB’s responsibilities.

Strategic Priority No. 2

Create substantive and sustained Yukon socio-economic returns from resource development that benefit Yukon First Nations, local communities and all Yukoners today and in the future.

Encouragement and strengthening of early engagement pathways between industry and Yukon First Nation governments (Recommended interim measure p. 15)

- This recommendation parallels objectives of the pre-submission engagement (PSE) process that YESAB is currently developing and expects to implement in 2021. PSE is specifically referenced under Strategic Priority No. 3. There may be some merit in bridging these ideas.

As part of the socio-economic baseline studies, evaluate the readiness of individual Yukon communities to benefit from resource development activities by assessing... (Recommendation p.17)

- Socio-economic baseline studies should be planned with multiple objectives in mind. Studies to date have not included the metrics or produced the kind of data that would support an understanding of community well-being relevant to the assessment process. The absence of such information is an impediment to advancing the assessment of socio-economic and socio-cultural effects of projects. Involving a range of parties and interests in the design of baseline studies will help to inform a functional view of what information is needed to serve the fullest range of purposes and objectives.

Strategic Priority No. 3

Establish effective, efficient and transparent environmental and regulatory processes.

Borne of the modern treaties with Yukon's First Nations, the Yukon's environmental assessment process was intended to be a one window approach to resource regulation. As the Yukon Water Board is not a Decision Body under provisions of the Yukon Environmental and Socio-economic Assessment Act, the Yukon continues to feature a dual-window approach to resource regulation. (Context, p.21)

- That the assessment process under YESAA was intended to be a one-window process is a popular misconception and an incorrect assertion. The governance structure in place in Yukon and established through the UFA does not provide for such a one-window approach. Framing the discussion around this incorrect statement confuses and detracts from the important message the Panel is trying to communicate through Strategic Priority No. 3. The wording of this recommendation needs to be changed to correctly reflect the design and intent of YESAA.
- While PSE will facilitate a collaborative interface between project proponents, potentially affected parties, YESAB and regulators, the assessment and regulatory functions are still separate and distinct functions carried out by different agencies with different mandates. There is no single window, though there are opportunities to improve coordination and collaboration in assessment and regulatory review.
- YESAB has learned through experience that assessment proceeds most efficiently when proponents first engage regulators, in addition to potentially affected parties, before submitting a proposal for assessment. YESAB actively encourages early engagement and pre-submission contact with regulators. A project coordination function within government and as recommended by the Panel can reinforce this early contact and help to attain some approximation of a single window.

The Yukon Government should designate the Yukon Water Board as a Decision Body under the Yukon Environmental and Socio-economic Assessment Act to create a true single window approach to the environmental assessment of Yukon mineral exploration and development projects. (Recommendation, p. 22)

- It is unclear how designating the Yukon Water Board (YWB) as a decision body will establish a ‘true single window’. The YWB would still be required to fulfil its responsibilities under the *Waters Act* and delegated responsibilities under the *Placer Mining Act*. Under the *Umbrella Final Agreement* (UFA), a decision body is defined as a “government” or a First Nation, where a “government” is understood to mean the Government of Canada or the Government of Yukon. It is unclear if an independent regulatory body would fall within the ambit of the definition of a decision body as set out in the UFA or YESAA.

The Yukon Government implement the recommendations in the recent PricewaterhouseCoopers report on regulatory duplication prepared for the Yukon Minerals Advisory Board. Key recommendations consider clarified project scoping by the Yukon Environmental and Socio-economic Assessment Board to reduce the potential for overlap and duplication between assessment and regulatory processes. (Recommendation, p. 22)

- This issue pertains to the breadth of project scoping. The scope of a project is informed by a full understanding of the likely future activities directly related to the project. These likely future activities must be defined in a project proposal and a proponent’s responses to information requests. It must be acknowledged, however, that the broader the project scope, the more information that will be required of the proponent. The onus rests largely with the proponent to clarify the scope of a project.
- YESAB is bound by section 51 of YESAA and follows best practices in impact assessment in determining the scope of a project. It does not have the discretion to tailor project scoping to regulatory mandates.
- YESAB and YWB are currently working together to understand the overlap in their respective mandates, better align their processes, and explore ways and means of reducing unnecessary duplication.

The Yukon Government implement the recommendations in the recent PricewaterhouseCoopers report on regulatory duplication prepared for the Yukon Minerals Advisory Board. Key recommendations consider clarified adequacy requirements for project proposals by establishing clear guidelines as to what is required for an “adequate proposal” and clear guidance on when environmental and socio-economic effects are to be considered significant. (Recommendation, p. 22)

- In 2017, YESAB sought the views of proponents and consultants familiar with Executive Committee screenings on the type of guidance necessary to support the development of project proposals that meet the information requirements of a robust assessment process. What we heard was that projects and the environmental and socio-economic contexts in

which they are situated are so diverse and variable that the development of universally applicable guidance is an unachievable objective. Instead, proponents sought project-specific guidance based on a terms of reference-like model and supported by early engagement. This was the impetus for the development of a pre-submission engagement process.

The Yukon Government implement the recommendations in the recent PricewaterhouseCoopers report on regulatory duplication prepared for the Yukon Minerals Advisory Board. Key recommendations consider improved communication opportunities between project proponents and staff from the Yukon Environmental and Socio-economic Assessment Board and the Yukon Water Board, including possible amendments to the Waters Act to remove restrictions on Yukon Water Board members and staff to communicate directly with project proponents. (Recommendation, p. 22)

- For larger or more complex projects, there is always communication and normally a series of meetings with proponents at the outset and during the course of the adequacy review. The records on the YOR will bear evidence to this fact. Nonetheless, early communication between affected communities and First Nations, regulators, assessors and proponents to provide better guidance on the expectations for a project proposal and indeed project design is a central objective of Pre-submission engagement.

The Yukon Government address the effects of having delegated decision-making authority to more than 12 departments and branches for purposes of Designated Office evaluations. Greater clarity of roles and responsibilities among the Yukon Government's delegated Decision Bodies, the Yukon Environmental and Socio-Economic Assessment Board and the Yukon Water Board is required if assessment efficiency is to be improved. To help achieve greater clarity, the Yukon Government, Yukon Environmental and Socio-Economic Assessment Board and the Yukon Water Board should create project charters and swim lane diagrams at the start of every mine project assessment that define roles, responsibilities and timelines for each agency and the proponent to follow. (Recommendation, p. 23)

- PSE could serve as a foundation for project charters and a vehicle through which “swim lanes” could be defined. This would of course depend on the full and active participation of regulators and decision bodies as well as potentially affected and interested parties.
- While clarifying roles and responsibilities and effectively managing the intersection of responsibilities between the assessment and regulatory review functions on a broader scale represents the ideal, the concepts presented in this recommendation may have considerable merit on an individual project level. Experience in Yukon and elsewhere, however, has shown that project charters can take considerable time and effort to negotiate across multiple mandates and may not always be a practical solution. Successful charters are also dependent on a strong mutual understanding of the different mandates involved and the requirements of those mandates.

Upon completion of a project, the swim lane diagram and decision documents should be audited by the Yukon Government to identify and prevent mandate creep among Yukon's assessment and regulatory authorities. (Recommendation, p.23)

- The concept of the Government of Yukon carrying out such audits is suggestive of an oversight role that is not within the purview of the Government of Yukon and that could undermine the independence of the boards. Any audit function would need to be undertaken by an independent third party based on mutual agreement and jointly established terms of reference.
- Timelines for each step of the assessment process are already set out in rules under YESAA.

The Yukon Environmental and Socio-Economic Assessment Board should complete and implement the "pre-submission engagement" process currently under development, in part to help surface any competing priorities. Annual independent audits of the efficacy of the "pre-submission engagement" process should also be conducted to assist both government regulators and project proponents to achieve best-practice standards. (Recommendation, p.23)

- YESAB welcomes this recommendation and the support of the Panel in completing and implementing the PSE process for projects subject to screenings by the Executive Committee. We are, however, unclear about what is meant by "to help surface any competing priorities". We also suggest that an evaluation framework and cyclical independent program evaluations may be a more effective means of determining the efficacy of the PSE process.

The Yukon Environmental and Socio-Economic Assessment Board and proponents should adopt the Gowling WLG 2020 recommendation to broaden the scope of a proposed project to include likely future minor modifications in order to reduce reassessment possibilities for minor project amendments. (Recommendation, p.23)

- Toward realizing an objective of broader scoping, there is a larger role for both proponents and regulators. YESAB can only assess what is proposed and any other accessory activities (those activities sufficiently related to the proposed project) that it considers likely to be undertaken. Ideally, a project proposal would define the scope of the project, including accessory activities and future phases if the project, in sufficient detail to enable a thorough assessment consistent with the requirements of YESAA. Through early engagement (PSE), regulators can encourage proponents to define their proposals accordingly to capture a broader scope of activities.
- YESAB is working with the proponent community to encourage broader scoping. Multiple iterative assessments necessitated by poorly defined or narrowly scoped proposals represents a significant burden on the assessment process and inhibits the ability to consider properly cumulative effects.

- There are a number of practical implications of broader scoping that were overlooked in the work undertaken through the Gowling Report:
 - Broader scoping would demand more information and more consultation. Junior mining companies, which dominate the sector in frontier regions such as Yukon operate on narrow margins and likely cannot afford to provide the necessary information to support broader scoping. Broader scoping may exclude smaller players relying on flow-through capital. As such, imposed broader scoping principles may have implications for Yukon's competitive position, at least within the junior mining sector.
 - If future phases of a project or future accessory activities were to be included in the scope of a project, there is a risk that the nature or design of these activities may evolve over time, such that they would need to be assessed anew prior to authorization. That, of course, would be a matter to be considered by decision bodies.

In conjunction with the Yukon Environmental and Socio-Economic Assessment Board and the Yukon Water Board, the Yukon Government should undertake a legislative and regulatory review of the feasibility of establishing a mining district or zone approach to mining development project assessments and permitting... (Recommendation, p. 23/24)

- This is an interesting and valuable concept that, in the form of regional and strategic assessment, has been advocated by YESAB. While individual projects would still be subject to project-level assessment under YESAA, such assessments would be significantly informed by consultation and the baseline information gathered at a regional or district scale. Fundamentally, this would represent a form of tiered assessment as successfully practised elsewhere. There are some relevant tools within YESAA (sections 112 and 105) that have yet to be exercised; their application being dependent on a request by one or more of the Parties. More broadly, though, regional and strategic assessment programs are gaining currency in other jurisdictions, though they tend to be the purview of government, as they fall outside the ambit of most project-level assessment legislation. This was a subject of considerable interest and discussion at the recent YESAA Forum on Cumulative Effects Assessment Management and Monitoring (January 26-29, 2021).

The positive and negative socio-economic impacts of major mining projects should be addressed by including a requirement for improved assessment of cumulative effects and heritage impacts, either by the Yukon Environmental and Socio-Economic Assessment Board or by Decision Bodies. (Recommendation, p. 24)

- This recommendation conflates and confuses two intersecting, but different challenges – cost-benefit analysis and cumulative effects assessment. These two distinct areas warrant separate attention before exploring the intersection between them. The YESAA Forum held January 26-29, 2021 examined cumulative effects assessment management and monitoring in considerable detail.
- While there can be little argument that a full-cost accounting framework inclusive of both the positive and negative socio-economic (and environmental) effects of proposed mining developments is necessary and desirable, further attention will need to be paid to clarifying

roles and responsibilities in this respect. YESAB, for example, is mandated to make recommendations to government decision makers based on whether a project is likely to result in significant *adverse* effects after taking measures to mitigate those effects into account. In determining whether a project's adverse effects are likely to be significant, YESAB must consider the cumulative effects of other projects and activities.

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The establishment and enforcement of performance standards that apply across Yukon and First Nation governments and require regular, timely and transparent inspections and monitoring of mine operations. Introduce in-field digital data collection and reporting technologies to support the achievement of the performance standards and real-time web-based reporting to the public. (Recommendation, p.24)

- This would be an important initiative that should be considered in a system-wide context. Assessments could benefit greatly from the information gathered through enhanced follow-up monitoring to evaluate the effectiveness of mitigative measures and to inform the implementation of adaptive management strategies. The development of the recommended performance standards should take into consideration the needs of assessment and regulatory review processes.