

Decisions, disagreements, public involvement, and transparency

There are numerous decisions made across the current mining regime, from the approval of licences for exploration and the licensing of placer and quartz mines, to the amount of security that should be held for different activities. Decision-making mechanisms and processes seek to support many factors, including transparency and public input, accountability, certainty, impartiality and efficiency.

We're considering different approaches to decision-making in the new regime, including how the public might be involved, and how disagreements might be dealt with.

Interests

Decision makers

Determining who makes decisions should consider transparency, accountability, impartiality, and efficiency.

Factors and information to be considered when making decisions

The suite of factors to be considered by decision-makers should support transparency, certainty, impartiality, and efficiency.

Involvement of Indigenous governments in decision making

Indigenous governments' role in decision-making should respect Aboriginal and treaty rights and reconciliation, while promoting certainty and efficiency.

Public involvement in decision-making

The public's role in decision-making should be clear and enhance transparency, public input, and efficiency.

Transparency and public access to information and decisions

Public access to information should be certain and, where possible, coordinated and centralized.

Dispute resolution

An efficient dispute resolution process should be available in appropriate circumstances.



Appeals

An efficient appeals process should be available in appropriate circumstances.

Potential approaches

Many of the approaches we're considering may be characterized as modifications or improvements to the current regime, while other approaches we're considering would be a more significant change from the current regime. More significant changes would require more detailed analysis to understand the implications and consequences before pursuing such approaches, as well as carefully thought-out transition plans.

Decision makers

Currently, most decisions in the mining regime are made either by government officials or by the responsible minister. We're contemplating whether there is a role for a third-party entity in the new regime for informing or making certain decisions. This entity could have a recommendation function or a decision-making function.

Factors and information to be considered when making decisions

Some legislation sets out factors that should be considered when making a decision. These are often social, economic and environmental in nature. We could use this approach in new minerals legislation. We could also require decision-makers to consider input from independent experts or a technical advisory committee when making certain decisions.

Involvement of Indigenous governments in decision making

Indigenous governments have an interest in developing a new regime that advances reconciliation, respects Aboriginal and treaty rights, furthers implementation of Final Agreements and transboundary land claim agreements, and that is efficient and reduces uncertainty for governments and stakeholders. It is important that a new regime's approach to decision-making reflects the unique, overlapping and shared responsibilities of Indigenous governments and the Yukon government.

Currently, Yukon government makes decisions following consultation with affected Indigenous governments. The scope and content of consultation varies depending upon the decision to be made. These decision points are throughout the mining life cycle, from issuing licences for exploration and production to determining security requirements.

The new regime may have a different set of decision points and these have yet to be determined. In our work, we're considering different ways to involve Indigenous governments



in future decisions, ranging from the existing consultation approach, to legislated joint decision-making, to a requirement for consent in some instances.

Public involvement in decision making

Opportunities for public involvement in the current regime are not frequently utilized, unlike companion processes under the Yukon Environmental and Socio-economic Assessment Act and the Waters Act where public involvement is built in by law. One approach we're considering is to stick with the status quo with minimal public involvement during the regulatory phase, and continuing to rely on the assessment process as the main opportunity for public involvement. Another approach could be to include a public involvement step for certain decisions during the regulatory phase, such as licensing a major mine or approving a closure plan. We could also require public reporting of the reasons for certain decisions, such as the determination of security amounts.

Transparency and public access to information and decisions

Public access to information about mining is also important. We know that sometimes the public and Indigenous governments don't always have easy access to information about who is licensed to be doing what on the land. Currently, information about some licences is available, but it isn't centralized and some information is not available. We're considering different approaches to expanding the scope of information available to the public. One approach is to create a public registry to house information on licences and other matters. Another approach is to require public reporting of certain types of information. It's important to note that other related processes like YESAA assessment and water licencing have their own public information systems and practices.

Dispute resolution

When parties cannot come to agreement to resolve a dispute, a dispute resolution mechanism can provide solutions outside of the court. Currently, disputes between proponents are addressed largely by the mining recorder through processes set out in policy. One example of disputes that could be resolved through a legislated dispute resolution process is disagreements about claim boundaries. A new regime could establish a formal dispute resolution mechanism for certain types of disputes. The mechanism could be internal to Yukon government, as it is now, or external.

Appeals

When a party is dissatisfied with a decision, an appeals process can provide a solution outside of the court system. Under the current regime, some enforcement decisions (e.g., an inspector's order to complete reclamation) can be appealed. Proponents can also appeal a decision to not



renew their claim or a decision that the proponent should not be able to stake new claims due to an alleged offence (e.g., misrepresentation or disturbance of claim posts). Some appeals go to the minister but others are heard by other government officials, and can take a long time to resolve. For proponents, an appeals process is an important tool for challenging decisions that might have significant consequences for them or their operations. On the flip side, a lengthy appeals process could still fail to resolve the issues in a timely way, and long delays could even result in environmental harm.

The new regime may or may not include an appeals process. If it does, it could specify which decisions are appealable, keeping in mind that proponents could still bring issues to the court system regardless of whether there is an appeals process or not. Should there be an appeals process, it could be internal to Yukon government (e.g., a minister or an official) or decisions could be appealable to a third party.

Background

Here is an overview of the types and number of decisions made across the Yukon each year in the current regime. It's important to note that the number and type of decisions may be different in a new regime.

Mineral tenure – new claims

There are no decision points currently associated with staking a claim. There are about 4,000 claims staked in a given year, though this is highly variable.

Mineral tenure – renewing claims

There are no decision points currently associated with renewing a claim. There are about 100,000 claims renewed each year.

Quartz and placer exploration – early/low level

There are about 400 Class 1 or 2 approvals issued each year

Quartz exploration – intermediate

There are about 15 Class 3 approvals issued each year

Quartz exploration – advanced

There are about 5 Class 4 approvals issued each year

Placer mining



There are about 70 Class 3 or 4 approvals issued each year

Quartz (major) mining

There are very few quartz mine licences issued each year (less than one on average)

Plans that are part of other authorizations

Licences for placer mining, quartz exploration, or quartz mines can include a requirement for reclamation, wildlife management, water management, and access control. There may be up to 15 to 20 plans for a single quartz mine and about 100 plans of all types issued each year.

Security – how much and what form

Security may be required for any mining or exploration project. When security is required, it is reassessed throughout the life of the project. Currently, security is held for 6 quartz mine sites and about 20 placer mining and quartz exploration projects.

Compliance, monitoring and enforcement

There are over 300 inspections of placer operations each year, and about 70 inspections of quartz operations each year.

Royalties

Currently, the rules associated with royalties are set out such that the amount of royalties to be paid are pre-determined.



Questions

11.1 Do you think the approaches we're considering will help to:

- help resolve disagreements
- provide adequate opportunities for public involvement
- improve transparency

Please explain.

11.2 Do you have any thoughts or concerns about the approaches we're considering, or additional things that you think we should consider?

11.3 How important are the following to you:

- having a third party make certain decisions
- additional public input in the new regime
- making information on decisions available to the public
- a dispute resolution and/or an appeal process

Please explain.

