

Input to the Yukon Mineral Development Strategy Panel

Yukon Heritage Resources Board

The Yukon Heritage Resources Board (YHRB) is an independent advisory and decision-making body with mandates under the Yukon First Nation Final Agreements, the Yukon's *Historic Resources Act*, and the Yukon First Nation Heritage Acts. The Board is mandated to make recommendations to the governments of Yukon, Canada, and Yukon First Nations regarding the management, stewardship, and commemoration of a wide range of heritage resources and sites in the Yukon, and to make final determinations related to ownership of certain heritage resources.

The YHRB recognizes that the Yukon Mineral Development Strategy Panel's engagement process is inclusive and comprehensive, ensuring broad government, industry, and public input on development of the Strategy, and that the Panel's recommendations will reflect a wide scope of issues, concerns, and objectives. The Panel's engagements with heritage professionals and staff from all governments will ensure that heritage matters and relevant legislation are well understood and incorporated in the final recommendations and Strategy. The Board appreciates the opportunity to provide its input to the Panel, and looks forward to learning more about plans for the Strategy as it moves ahead.

Recognition, conservation, management, and stewardship of heritage and cultural sites and resources in the Yukon are vital to the territory, its people, and its future. Approaching these issues in a responsible way is also significant in upholding the integrity of the Final Agreements and the cooperative heritage stewardship they envisioned.

The Final Agreements and Yukon and Yukon First Nations heritage legislation provide a broad scope for what is to be considered as significant from a heritage perspective, including historic and heritage sites, artifacts, archaeological and palaeontological resources, cultural landscapes, cultural and traditional knowledge, relationships, records and documents, burial sites, languages, trails, and place names, as well as associated cultural and traditional activity use sites. They also recognize connections between ecological systems and both tangible and intangible heritage, emphasizing the interconnectedness of natural and heritage considerations.

For a variety of reasons, heritage and cultural resources, sites, and uses are particularly susceptible to impacts of mineral development activities, from exploration to reclamation. The threats are compounded by a fragmented system of legislation and regulation that does not reflect the importance of heritage considerations to Yukoners, or their cross-disciplinary nature.

The creation of a territory-wide Mineral Development Strategy provides an opportunity to address some of these concerns through the development of collective policy that incorporates heritage as a significant value and a driver of policy. The document and its implementation

should strive to ensure that the mandates and guidance of the Final Agreements is adequately reflected in planning for mineral development. The Strategy has the potential to help more fully realize the guidance of the Final Agreements to equitably incorporate different approaches to heritage stewardship, working across governments and disciplines to ensure appropriate heritage recognition, protection, and perpetuation in parallel with mineral development activities.

The YHRB has several recommendations on specific aspects of the Strategy that may help contribute to its utility and anticipate future heritage stewardship contexts.

Legislation: Existing legislation, regulations, and related policies and procedures do not always provide adequate protection for known and potential heritage impacts, particularly in the face of activities related to mineral development. Heritage considerations cross many disciplinary boundaries, making them difficult to address with legislation arising from different departments and without coordinated goals, approaches, or tools for protection. This fragmentation results in considerable gaps in the tools necessary for comprehensive heritage protection and a system that does not reflect the guidance of the Final Agreements. The Strategy could help ensure heritage protections across legislation by addressing gaps currently found among legislation within governments, discrepancies between legislation of different governments, and the failures resulting from the patchwork approach current of legislation and regulations.

In some cases, problems result from the compartmentalization of legislation in departments, which does not allow for cross-disciplinary or cross-departmental tools. One example is that of regulations for Off-Road Vehicles which, as they arise from Lands legislation, can account only for ecological impacts, and not those to heritage sites and resources. Having mineral development legislation and regulation, or that specific to heritage, arise from only one department would pose similar threats. One strength of a comprehensive Strategy will be the development of tools that can cut across departmental boundaries to ensure heritage protection.

Improvements may involve changing existing legislation, such as the Yukon's *Historic Resources Act*. Amending or rewriting the Act to modernize its language and harmonize with the Final Agreements would address implementation responsibilities, while strengthening its enforcement and compliance tools would help further ensure better overall protection for a wide range of heritage sites and resources in the territory, as set out in the Final Agreements.

In some cases, new legislation may best be able to address concerns, particularly if it is able to work across disciplinary or departmental constraints in reflection of the scope of heritage considerations. Recommendations on development of the Strategy should identify priorities for both legislative harmonization and development of new legislation.

Additionally, the Strategy should address the development of regulations that may be required to ensure enforceability of legislation, such as those related to palaeontological resources, and any other legal, policy, permitting, and outreach tools that will facilitate and strengthen implementation and enforcement.

Existing legislation, regulation, and associated practices can also, however, provide direction to help shape the Strategy in its approaches to protecting heritage and culture, and to facilitating the necessary intra- and intergovernmental structures to ensure viability. The language of the Final Agreements and existing heritage acts of all governments illustrates what is valued from a heritage perspective and how it may best be protected and perpetuated.

Various intergovernmental agreements and efforts, from research Memoranda of Understanding to the Heritage Working Group, provide models for the kind of cooperative planning, decision making, and long-term monitoring that will help ensure the success of the Strategy with respect to heritage considerations. They also highlight the invaluable work and contributions of heritage professionals across a variety of disciplines; their knowledge and expertise will be vital to developing and implementing a Strategy that effectively addresses intersections between mineral development activity and heritage. The Strategy should reference the relevant guiding documents and projects that will help determine how best to integrate mineral development with ongoing heritage protections.

Information documentation, management, and use: The Board suggests that the Panel recommend that the Strategy include planning for development of a comprehensive database or other information resource, the use of which should be mandatory for assessing and providing direction on proposed mineral development projects, as well as identifying cumulative impact concerns. This would involve integration of all existing heritage data sources, including archaeological, palaeontological, historic site, traditional use, policy, geological, and other information data sets and sources, supplemented with additional ongoing research and input by all governments, as well as development of appropriate new protocols for information protection. Such information documentation will be particularly important for areas with high mineral development potential, but should eventually include the entire territory.

Given the Yukon's wide scope of what is to be considered as heritage, it can be difficult to adequately account for all heritage considerations in assessing impacts of mineral development activity. While current databases contain this information for specific types of sites, information is neither centralized nor complete. Historic and Heritage Site designation help identify and recognize sites of significance, but do not capture all sites of heritage value, many of which have not yet been formally identified or, for reasons of confidentiality, do not appear in current databases.

Comprehensive, ongoing inventories and development of a centralized, appropriately protected information and data resource would help account for all important heritage places, objects, sites, and uses, facilitating better, more relevant planning and assessment that addresses all potential heritage impacts. Such a data source need not and should not specifically identify confidential site-specific information or locations; information could be included in a way not accessible to the public or project proponents, but that would flag mandatory additional consultation or even preclusion of a proposed project.

Additionally, the Yukon's current patchwork of heritage and related legislation and policy make it difficult to determine what applies to specific proposals; even when these are harmonized across governments and departments, their inclusion in a centralized information source will assist in determining relevant mandates and necessary actions.

Mandatory use of an updated database or information source would ensure better representation of heritage values that require protection, improve assessment for individual projects, provide better direction for planners on both project and regional scales, and allow for continual incorporation of research and information to ensure ongoing functionality.

Assessment tool and processes: It is the understanding of the YHRB that current assessment tools and processes do not adequately account for or protect heritage considerations relevant in the Yukon context. YESAB processes are limited both in terms of what is being considered as heritage to be protected and in the scope of engagement around identifying actual concerns and prevention or mitigation options. Timelines, capacity challenges, and the limited scope of information sources consulted further constrain the process, and the resulting decisions do not adequately reflect heritage protections in line with community concerns and Final Agreement direction.

Although YESAB is an advisory body, strengthening and widening the scope of its internal and consultation requirements for assessing heritage impacts will help ensure that its recommendations provide comprehensive direction on these matters. Strengthening heritage legislation and policies, alongside assessment, will help ensure that the resulting Decision Documents are appropriate to heritage protection and reflect the related guidance of the Final Agreements.

Instituting a more cooperative, inclusive process would help pre-empt concerns and allow for development activity that receives sanction by Parties and communities for the way in which is approaching heritage protection. The Board encourages the Panel to recommend that the Strategy identify and plan for the creation of any new assessment-related tools or mandates that may be required, as well as financial or other resourcing to ensure success.

Climate change: Climate change will bring considerable change to the Yukon over the coming years, including both anticipated and unknown impacts to heritage sites and resources. The Strategy should incorporate adaptive protection and mitigation strategies that will help safeguard heritage sites, resources, and values from mining development activity as the climate changes.

Cumulative impacts: Without completed, coordinated, and enforceable land use planning that incorporates heritage and cultural impacts, there exist few tools to adequately address potential cumulative impacts. Mining and other development activities are often assessed and permitted as distinct projects, without considering overall or cumulative impacts of multiple projects. These impacts are compounded by the potential of mining activities to spread beyond their own footprint, whether through environmental or socio-economic impacts, or impacts on adjacent places of heritage or cultural significance. A future Strategy should identify and provide for the development of tools for and mandates around cumulative impact assessment and mitigation.