

**MAJOR POINTS OF CONCERN FOR
INDUSTRY IN RELATION TO THE PROPOSED
NUNAVUT LAND USE PLANNING AND IMPACT ASSESSMENT ACT**

1. **Preservation of “vested interests”**, notably existing mineral claims, prospecting permits and mining leases, to protect them against any adverse consequences that may result from the establishment of a land use plan for the area in which they are situated.
2. **Grandfathering** of projects that are already subject to the requirements of the Nunavut Land Claims Agreement to ensure that they continue to be adjudicated in accordance with the Agreement and exempt from any different requirements that may be established when the proposed legislation is proclaimed into force.
3. **Increased complexity** resulting from the implementation of new requirements and processes administered by the Nunavut Planning Commission together with need to ensure strict compliance with the provisions of the applicable land use plan, resulting in the need for industry players to expend effort, expense and time in order to conduct their exploration and development activities.
4. The **absence of thresholds** that clearly identify the classes of works and activities that would be exempt from screening on account of the failure to provide a draft of Schedule 5 of the proposed legislation, together with the power of the NPC to direct the NIRB to order the screening of a project that would otherwise be exempt from screening if the NPC “has concerns” about the cumulative impacts of a project.
5. A **lack of accountability** evidenced by the absence of definitive time lines and in some cases the absence of a requirement for the decision-maker to provide written reasons.
6. Concerns regarding **the proposal to grant NTI decision-making power** in relation to the approval of land use plans that would be equivalent to the decision-making power of the federal and territorial governments and therefore at variance with the corresponding provisions of the Nunavut Land Claims Agreement.
7. The manner in which the proposed legislation addresses **cumulative effects**, notably in section 83(1) where the Commission is to consider any cumulative ecosystemic and socio-economic impacts that could result from the impacts of a project **combined with those of any other project**. This requirement differs from the more measured approach taken in the *Canadian Environmental Assessment Act* where consideration must be given to “any cumulative environmental effects **that are likely to result from the project in combination with other projects or activities that have been or will be carried out**”. The major points of difference are the references in the draft legislation to impacts that “could result” versus those that are “likely to result”, and the reference to “any other project” as contrasted with “other projects or activities that have been or will be carried out.”

8. The **broad and sweeping discretion** granted to the Minister to impose terms and conditions, when the Minister accepts the NIRB's determination that a project should proceed without a review. Section 96(2) empowers the Minister to do so of his or her own volition or in order to implement any terms and conditions that the NIRB has recommended in its report to the Minister proposing that the project should proceed without a review. Given that a "project certificate" is only issued after concluding a NIRB review, it is unclear as to where the terms and conditions imposed by the Minister would be set out in written form.
9. The risk that a project could be in **perpetual environmental and socio-economic impact review** by virtue of section 113 that allows NIRB to reconsider the terms and conditions of a project certificate at its own initiative, at the request of a designated Inuit organization or at the instance of any other person (including the proponent itself). In addition, it is unclear as to what impact an amended project certificate would have on permits, licences or other authorizations, for example, a Type "A" water licence duly issued by the Nunavut Water Board pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*.
10. The **absence of definitions for key terms** that are used repeatedly in the legislation, for example, "national interest", "regional interest" and "significant public concern."
11. The absence of provisions that provide for **definitive input from the exploration and mining community** to the development of land use plans and the absence of any apparent requirement for the NPC to **fully evaluate the mineral potential** of areas that are being considered as protected or conservation areas under a draft land use plan.

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