

Planning Nord

Aboriginal, environmental and regulatory issues in Québec

BY CHARLES KAZAZ



WITH a long history of mining, Québec has significant deposits of minerals such as gold, silver, copper and iron ore. However, the vast majority of mining in Québec has occurred in the southern portion of the province.

Many mineral deposits located in the north remain untapped due, in large part, to a lack of energy and transportation infrastructure and historical commodity prices being insufficient to support mineral development in an area that is difficult to access.

In the spring of 2011, Québec's Premier Jean Charest launched the Plan Nord. The plan's objective is to develop Québec's territory north of the 49th parallel over the next 25 years.

The territory covered by the Plan Nord is immense. It covers 72% of the territory of Québec, which is equivalent to approximately 1.2Mkm² – an area twice the size of France. The plan calls for a development project that is integrated socially, economically and environmentally and seeks to encourage the development of a vast territory that is rich in natural resources.

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There is no doubt that the mining industry will be the driving force behind the plan's implementation. The success of the Plan Nord will hinge on many factors, including creating partnerships with local communities, the ability to access energy, housing and transportation infrastructure in a cost-effective manner and obtaining approvals for mineral developments projects in a predictable and timely fashion.

Although it seeks to encourage project and infrastructure development in the territory, it is important to note that these projects will require permitting, consultation and negotiation with Aboriginals, and other regulatory considerations.

This article will provide an overview of the issues that should be taken into account in project development in the Plan Nord territory.

PARTNERSHIPS WITH COMMUNITIES

One of the underlying principles of the Plan Nord is to ensure that local and regional communities are the main beneficiaries of wealth that is generated from the development of the territory.

It has also been made clear by the First Nations and Inuit of Northern Québec that their views and

concerns relating to economic and social development and consideration of their culture and traditions need to be taken into account in the development.

The territory covered by the plan is sparsely populated and comprises of three regions that are distinguished by their inhabitants:

- The James Bay Region (Eeyou Istchee) to the east where Cree communities are located;
- Nunavik to the north where Inuit communities are located; and
- The North Shore and the Labrador Trough, where the Naskapi Nation and Innu communities are located. There are approximately 125,000 inhabitants in the territory.

However, the Aboriginal population in the area is growing; nearly 45% of the population is under 25 years of age. The government has indicated that it intends to adapt its programmes to reflect the demographic reality of the north by prioritising access to education, employee training and housing, as well as social, cultural and health services.

The plan's first five-year's (2011-2016) commits over US\$382 million for social housing and other social projects in the territory.

It is important to note that a large portion of the Plan Nord territory is governed by treaties and modern agreements between the governments of Québec and Canada and Aboriginal communities that have been concluded over the past 30 years.

For example, the James Bay and Northern Québec Agreement (JBNQA) was concluded in 1975, the Northeastern Québec Agreement was concluded in 1978; and the Agreement concerning a new relationship between the Cree Nation and government of Québec (known as the "Paix des Braves") was concluded in 2002.

These agreements provide for Aboriginal involvement in the process that leads to government decisions on project permitting.

As a result, contrary to other Canadian jurisdictions, a contractual framework exists between Québec, the federal government and its Aboriginal communities that is adapted to 21st century realities. The Aboriginal communities' support for Plan Nord is based on compliance with these agreements.

Mining companies that seek to develop projects in Northern Québec must establish and maintain relationships early on in the process with a view to concluding agreements with the Aboriginal communities.

For example, agreements have been entered into between Xstrata plc and the Inuit in 1998, between New Millenium Iron Corp and the Naskapi Nation in 2010, and recently between Goldcorp Inc and the Cree Nation.

Establishing these relationships is often motivated by principles of corporate social responsibility (CSR) including free, prior and informed consent.

In addition, there are other practical considerations for establishing a relationship and concluding an agreement with local Aboriginal



groups. In particular, it is important to understand that First Nations and Inuit are an integral part of the environmental and impact assessment process that forms part of a project approval.

First Nations and Inuit concerns relating to land use and the environmental and social impact of a project need to be considered and reasonably accommodated given their direct involvement in the approval process.

If a developer fails to establish a dialogue with local communities so as to address their concerns directly, there is a high probability that First Nations' concerns will be brought to the table and addressed as part of the project permitting process.

ENVIRONMENTAL PROTECTION

Sustainable development and environmental protection are core principles of the Plan Nord.

Both the provincial and federal government have adopted detailed environmental protection legislation and regulations that must be complied with when building and operating a mine.

Generally, these regulations set standards dealing with the protection and quality of water, air and land and the management of waste.



are unique in that they require participation by local Aboriginal groups to varying degrees in the review or decision-making process.

For example, in the James Bay region, mining projects will be generally subject to a two-step process whereby an evaluation committee known as the COMEV, a tri-partite body (with representation from the Cree, Québec and Canada), will first determine the scope of the ESIA and subsequently a review committee known as the COMEX, a body comprised of Cree and Québec government representatives will proceed with the review process.

In Nunavik, the evaluation and assessment of projects proceeds through an impact assessment process carried out by the Kativik Environmental Quality Commission.

In addition, a portion of the Plan Nord territory is covered by the general environmental impact assessment process that is managed by the MSDEP. Finally, projects may also be subject to a federal environmental assessment process under the Canadian Environmental Assessment Act, which is currently being reviewed by the federal Parliament under Bill C-38.

It is important to note that projects in the north will need significant transportation and energy infrastructure, which result in developments having a very large footprint.

Consequently, given the permitting requirements there is often the possibility that several ESIA processes will be triggered for a given project. In order to manage timelines, it will be important to co-ordinate and synchronize these processes in order to avoid undue delay.

Moreover, the territory is particularly sensitive and the northern ecosystems are complex due to the vastness of the territory and the dynamics of the changing climate.

Given the particularities of the local environment, assessing the impacts of the project will require specific expertise in the area. In addition, because of the sensitive nature of the environment in the north, the timing of studies required for the impact assessment must be thought out in advance in order to avoid seasonal delays.

An additional aspect that needs to be considered is that many projects have been announced in the Plan Nord territory and there is a real concern that the MSDEP does not have sufficient resources to properly analyse these projects in a timely fashion. Proposals have been put forward to address this issue including a fee for service.

PROTECTED AREAS

As part of the plan, the government of Québec announced that certain measures for the protection of the territory would be put in place.

These measures include a commitment by the government to devote 50% of the Plan Nord territory for non-industrial purposes by 2035 by reserving these lands for purposes of environmental protection and safeguarding biodiversity.

To do so, the government stated that it would withdraw from industrial activity Québec public lands in the Plan Nord territory and adopt a framework statute to attain this objective.

Earlier this year, the government set an interim

objective of creating a network of protected areas over 20% of the Plan Nord territory by 2020. As of December 31, 2010, 9.4% of the Plan Nord territory was considered protected.

In April 2012, the Québec minister of sustainable development, environment and parks, Mr Pierre Arcand, presented Bill 65, titled An Act respecting natural heritage conservation and the sustainable development of the area covered by the Plan Nord (the Bill).

The Bill seeks to create the legal framework required to implement the government's undertaking to protect 50% of the Plan Nord territory by 2035.

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The Bill proposes to update the process for the recognition of protected areas and to create a legal framework for the establishment of:

- Aquatic reserves (areas established to protect aquatic environment and any terrestrial areas and wetlands associated with them);
- Biodiversity reserves (areas established to protect terrestrial environment and any aquatic areas and wetlands associated with them);
- Ecological reserves (areas established to preserve, as integrally as possible, in their natural state distinctive, outstanding or representative examples of biodiversity);
- Marine reserves (areas established to protect salt water or brackish water environments); and
- Man-made landscapes (areas established to protect the biodiversity of an inhabited terrestrial or aquatic area having biophysical features that warrant conservation as a result of human activities performed over time in harmony with nature and whose preservation depends on the continuation of those activities by the community).

Once these areas are designated, certain activities will be prohibited in these areas. For example, mining and oil and gas exploration and development, energy production and transmission facilities and forestry development will be prohibited in aquatic biodiversity and marine reserves.

Because ecological reserves seek to preserve areas as integrally as possible in their natural state, it will be prohibited for any person to have access or travel in or carry on any activity in these reserves unless an authorization is obtained.

The location of these reserves will be very important in that it will affect access routes for energy and transportation infrastructure. Given that a large portion of the territory will be protected, there is a potential impact on project costs if these infrastructures need to be routed around these areas. As a result, it will be very important to understand the location of these areas and projected areas as part of planning for any project.

In addition to these regulatory standards, mining projects must be permitted by way of a Certificate of Authorization (CofA) issued by either the minister of sustainable development, environment and parks (MSDEP) or by the provincial cabinet depending on the nature and location of the project.

Before a CofA can be issued, a rigorous environmental and social impact assessment (ESIA) process must be completed. This requires the preparation of an impact assessment, project review and some form of public consultation.

Part of the complexity of the project development in the Plan Nord territory relates to the fact that there are several ESIA regimes that can apply. Distinct ESIA regimes were created as part of the treaties concluded with the First Nations and Inuit in the territory.

A specific ESIA process was created under the JBNQA for the portion of the JBNQA territory located south of 55th parallel and another for Nunavik located north of the 55th parallel.

In addition, a distinct ESIA process exists in the northeastern portion of the province, where the Naskapi nation is located. Each of these processes