



FUTURE UNBUILT

SUMMARY FOR
POLICY MAKERS

Transforming Canada's Regulatory Systems to
Achieve Environmental, Economic, and Indigenous
Partnership Goals

From the Task Force on Major Project
Development and Regulatory Excellence

JUNE 2023



BUSINESS COUNCIL
OF ALBERTA

Copyright

© Business Council of Alberta 2023

Report Citation

"Future Unbuilt: Transforming Canada's Regulatory Systems to Achieve Environmental, Economic, and Indigenous Partnership Goals: Summary for Policy Makers." Business Council of Alberta. June 2023.

About the Business Council of Alberta

The Business Council of Alberta is a non-partisan, for-purpose organization dedicated to building a better Alberta within a more dynamic Canada. Composed of the chief executives and leading entrepreneurs of the province's largest enterprises, Council members are proud to represent the majority of Alberta's private sector investment, job creation, exports, and research and development. The Council is committed to working with leaders and stakeholders across Alberta and Canada in proposing bold and innovative public policy solutions and initiatives that will make life better for Albertans.

Land Acknowledgement

In the spirit of truth, reconciliation, and respect, we honour and acknowledge the lands upon which we live and work as guests, including the traditional territories of the First Nations in Treaties 6, 7, and 8 and the citizens of the Metis Nation of Alberta. We thank the First Peoples of this land, which we now call Alberta, for their generations of stewardship of the land, and we seek to walk together in the spirit of truth and reconciliation to build a shared future for all in Alberta.

This document reflects the views of the Business Council of Alberta based on our own research and on engagement with members and stakeholders. Alberta is a diverse place. In many cases, there are a range of views on an issue within the Council membership. This piece may not necessarily reflect the perspective of all BCA member companies, and should not be read as the position of any one member.

Historically, we set up our systems to stop bad things from happening.

Now we need them to make good things happen —and make them happen fast.

THANK YOU ★

The Business Council of Alberta (BCA) would like to thank the members of the Task Force on Major Project Development and Regulatory Excellence for their participation in this report from project design through to completion. BCA and Task Force members would also like to give additional thanks to the Canada West Foundation and Business Council of British Columbia for their contributions above and beyond the work laid out for the Task Force.

Furthermore, BCA would like to acknowledge the input provided by the Impact Assessment Agency of Canada (IAAC) and the Canada Energy Regulator (CER), whose staff have been available to answer questions throughout the process of drafting this paper. Thank you.

Principal Authors

Dylan Kelso	Policy Analyst
Mike Holden	Vice President of Policy & Chief Economist

Task Force Members

Sarah Schwann	Vice President of External Affairs, Pembina Pipeline Corp.—Task Force Chair
Robert Bourne	Associate General Counsel, Enbridge—Task Force Vice Chair
Cale Runions	Manager of Regulatory Affairs - External Relations, TC Energy
Dale Friesen	Senior Vice President of Corporate Affairs & Chief Government Affairs Officer, ATCO Ltd.
Dale Swampy	President, National Coalition of Chiefs / Special Advisor, Business Council of Alberta
Denise Mullen	Director of Environment, Sustainability & Indigenous Relations, Business Council of British Columbia
Greg Krauss	Regulatory Affairs Lead, Corporate Relations, Shell Canada
Hal Kvisle	Chair, ARC Resources / Past Chair, Business Council of Alberta
Ian Anderson	Former CEO of Trans Mountain Corp.
Ken Faulkner	Director of Government Relations, NOVA Chemicals
Marla Orenstein	Director of the Natural Resources Centre, Canada West Foundation
Ron Wallace	Fellow of the Canadian Global Affairs Institute / Former Permanent Member of the National Energy Board

TABLE OF CONTENTS



Future Unbuilt: At-A-Glance	6
The Problem	7
The Task Force on Major Project Development and Regulatory Excellence	8
The Goal	8
One Report; Two Chapters	8
Chapter One: A Model for Long-Term Major Project Regulatory Excellence	9
Principles	9
Vision	10
Chapter Two: Short-Term Challenges and Policy Recommendations	11
Four Key Needle Movers	11
Nine Challenges Across Three Themes	12
<i>Participation</i>	13
Challenge 1: Expectations around Indigenous engagement	13
Challenge 2: Repetitive third-party interventions	13
<i>Process</i>	14
Challenge 3: Cumulative impact of small issues	14
Challenge 4: Inefficient internal coordination	14
Challenge 5: Expanded scope for review and compliance	14
Challenge 6: Overlapping processes & jurisdictional tensions	14
<i>Predictability</i>	15
Challenge 7: Long—and expanding—approval timelines	15
Challenge 8: Uncertainty from political & policy preferences	15
Challenge 9: Disruption to construction windows	15

Canada has a future currently unbuilt.

Future Unbuilt focuses on short-term steps that work toward a long-term vision.

**One
Goal**

A model regulatory system in Canada that enables us to meet environmental targets and becomes part of our competitive advantage.

**Three
Priorities**

Participation

Process

Predictability

**Nine
Challenges**

Indigenous engagement expectations

Cumulative impact of small issues

Long—and expanding—approval timelines

Repetitive third-party interventions

Inefficient internal coordination

Uncertainty from political & policy preferences

Overlapping processes & jurisdictional tensions

Disruption to construction windows

Expanded scope for review and compliance

**Four
Needle
Movers**

Clarify Minister's designation criteria

Create a body to oversee permitting

Shorten and scale review timelines

Financial support for Indigenous participation

THE PROBLEM

The federal government has set ambitious environmental and emissions reduction targets, including a goal to achieve net zero by 2050. Alberta businesses support contributing to these ambitions. However, to meet these targets, we need to invest in technology, facilities, and other major infrastructure at a scale never before seen in Canadian history.

Those investments include new mines for critical minerals; pipelines to transport carbon dioxide, hydrogen, or liquefied natural gas; carbon capture facilities; and an electricity capacity buildout 2.2 to 3.4 times the size of its current level. The federal government's own estimates suggest that Canada needs to invest between \$125-\$140 billion every year until 2050 if we are to reach net zero by then. Right now, we're investing less than one-fifth that amount.

And with our current project review and permitting processes, we're not going to make up that gap.

Canada has a reputation as a place where major projects can't get built. Review and permitting processes are slow, expensive, and fraught with uncertainty. And, according to companies that have gone through them, these processes are becoming more so with time. This is one reason why business investment in Canada has been lagging for years.

That investment record needs to turn around quickly if Canada is to have any hope of meeting its emissions targets. We need billions of dollars of new investment as soon as possible, but we face stiff global competition for that scarce capital. In particular, the United States' Inflation Reduction Act is a game-changer, threatening to attract investment and talent from around the world (and out of Canada) because of the generosity and simplicity of the incentives it offers. Canada has been trying to close the incentives gap, but we can't compete with the deep pockets of the US.

That's another reason why we need to take a hard look at our regulatory system. If we can't compete with investment incentives in the US, our project review and permitting processes need to become part of our competitive advantage.

As it stands now, they are a disadvantage.

Canadians believe in responsible and sustainable development. But our processes to achieve that are complex, fractured, and frustrating. We simply cannot accept the status quo.

The bottom line is this: unless significant improvements are made, it will be virtually impossible to approve, let alone build, all the projects we will need to meet Canada's ambitious 2030 and 2050 emissions targets.

Only by making pragmatic and thoughtful changes that result in more predictable, timely, and transparent project review and permitting processes can we meet our environmental ambitions and sustainably expand the economy.

Right now, Canada has a **future unbuilt**. That's what this project is about.

The Task Force on Major Project Development and Regulatory Excellence

In the fall of 2022, the Business Council of Alberta (BCA) assembled a Task Force on Major Project Development and Regulatory Excellence (“the Task Force”) with a membership of people, organizations, and Indigenous representatives with significant experience in building major projects and regulatory system expertise. The Task Force identified specific challenges, barriers, and impediments to existing project review processes, and BCA developed recommendations to solve them.

Most importantly, the Task Force believes in the importance of robust government regulation and oversight. Businesses want their projects to be built but not by cutting corners on government oversight. That means safeguarding a healthy environment and adequately addressing community impact and health concerns while also allowing well-designed projects to move forward.

All our recommendations are offered in that context.

The Goal

The goal of *Future Unbuilt* is to improve the efficiency, certainty, and predictability of the processes within Canada’s existing systems for reviewing and permitting major projects. Improvement is critical to attracting the investment needed to meet our emissions reduction targets and sustainably grow the Canadian economy.

Regulatory systems have been set up to keep bad things from happening. Now, we need them to also enable good things to happen. This report can help.

The federal government shares this goal and has created action and urgency around it. Notably, that includes the following commitment in the 2023 Federal budget:

"By the end of 2023, the government will outline a concrete plan to improve the efficiency of the impact assessment and permitting processes for major projects, which will include clarifying and reducing timelines, mitigating inefficiencies, and improving engagement and partnerships."

One Report; Two Chapters

Time is of the essence if we are to build the projects needed in time to meet Canada’s emissions targets. That’s why *Future Unbuilt* focuses on short-term solutions to existing problems.

But at the same time, short-term solutions within existing project review frameworks need to be in service of a broader goal—creating a model regulatory system in Canada that becomes part of our competitive advantage.

For that reason, Chapter 1 of *Future Unbuilt* provides a North Star for where we want to go. It articulates our long-term vision and principles for what a model regulatory system in Canada should look like.

Chapter 2, the meat of our report, begins the process of getting there. It identifies nine broad categories of challenges that businesses experience when they put forward major projects, organized across three general themes. Chapter 2 then offers recommendations for how those issues can be addressed.

Action in these areas will help improve investor confidence in the short term and help create the conditions to attract the capital needed for Canada to achieve its emissions reduction and economic targets.

CHAPTER ONE

A Model for Long-Term Major Project Regulatory Excellence

The recommendations in *Future Unbuilt* (discussed below) are about short-term solutions to existing challenges in project review and permitting processes. But we can't just focus on quick fixes. Broad, systemic changes to Canada's review and permitting processes are necessary if we are to attract the investment we need to meet our emissions targets and generate economic prosperity.

With that in mind, the Task Force has developed a series of principles to guide the creation of a better regulatory system in the long term; and offers a vision for what major project regulatory excellence in Canada should look like.

This is what we are working towards.

Principles

The following five principles guide our long-term vision of regulatory excellence:

Impartiality

Review processes and final decisions should be free from political interference, conducted by independent reviewers and decision-makers. They should be evidence-based and expert-driven.

Comprehensiveness

Major projects should be developed under the guidance of world-class regulatory reviews that address important risks and reflect Indigenous and community concerns. By addressing all major concerns, review processes should be a key part of Canada's brand as a responsible place to invest.

Trust

Review processes should be trusted by both the public and the businesses advancing projects. Without that trust, investment will not happen, and public confidence will evaporate.

Efficiency

Regulatory reviews should be as cost- and time-efficient as possible without sacrificing integrity and intended policy objectives.

Predictability

The many moving parts involved in project reviews must all coordinate to ensure project risks are assessed and mitigated through simple, understandable processes along predictable timelines. Proponents need a line of sight to a return on investment.

Vision

Guided by these five principles, Task Force members developed a vision for what an ideal regulatory system should look like. Achieving this vision won't happen overnight. It will take time and hard work. But the system we envision—the one towards which our recommendations are moving—would include the following elements:



An Early Signal: Governments should clearly define their policy preferences and the basic conditions projects must meet for regulators to decide if they are in the public interest. That way, proponents can know early on if it's worth expending time and effort to start the project review process.



Independent Reviews: Regulators should have the authority to approve projects within established policy guidelines. If the guidance and criteria are clear and well-defined, then the need for political decisions is limited. Reviews could then be conducted by technical experts who balance established benefits and risks and determine if projects are in the public interest.



Clear Requirements: Regulators should be clear about the types of studies and the level of detail they require from proponents at each stage of a regulatory review—and not deviate from these expectations. At the same time, regulators need to be agile and responsive to proponents that apply for review with highly detailed proposals.



Prioritized Focus: Regulators should spend their time and effort reviewing the most important and unique risks of a project proposal—not on standard or common risks that are mitigated through established practices. Canada has a long history of reviewing and developing major projects. That institutional knowledge is an asset that should be leveraged.



Indigenous Partnerships: Governments should ensure that project reviews advance reconciliation and enable Indigenous participation and engagement. Major projects should create opportunities for Indigenous Peoples as full partners in development. But regulatory processes need to enable—not hinder—economic reconciliation and address systemic barriers to Indigenous engagement and access to capital.



Strong Leadership: Project review processes should have a single lead agency in charge that manages the roles and expectations of other government departments. That regulator should work cooperatively with proponents and be accountable for keeping review processes on track and respecting established timelines. In cases where federal and provincial jurisdiction overlap, governments should avoid unnecessary duplication and adopt a 'one project, one review' process. But review standards should be developed cooperatively, not dictated by the federal government.



Championed Outcomes: The federal government should be confident in its regulatory systems, stand behind its final decisions, and champion the projects that get approved. If a project was approved after undergoing a thorough and objective process, it should have the support of the government that established that process.

THE BOTTOM LINE FOR BUSINESS

A CEO must be able to stand in front of their Board and say with reasonable confidence how long it will take, and how much it will likely cost, to go through the review and permitting process on a given project in Canada.

CHAPTER TWO

Short-Term Challenges and Policy Recommendations

The main goal of *Future Unbuilt* is to identify and address immediate pain points that will improve the efficiency and predictability of processes within existing regulatory systems and, by so doing, accelerate the investment needed for Canada to meet its emissions reduction targets and enable national economic growth.

That said, identifying problems with existing review processes is challenging. For one, there are several federal government lead agencies that could review projects. The Impact Assessment Agency of Canada (IAAC) is at the top of the list but, depending on the size and nature of the project, the Canada Energy Regulator (CER), the Canadian Nuclear Safety Commission or any one of several others may be involved.

On top of that, the *Impact Assessment Act* (IAA) process is relatively new and untested. Only one major project—Cedar LNG—has gone all the way through it from beginning to end. But even in that case, it was done primarily through a substitution agreement with BC’s environmental assessment process.

Future Unbuilt is based on the experience of Task Force member companies that have put forward major projects in the past. Unavoidably, that means that the case studies and pain points they identify tend to focus on projects approved by the CER or the predecessors to the IAAC.

Furthermore, the recommendations below are not intended to address a comprehensive inventory of the challenges businesses face in getting major projects approved. That said, they are intended to address several specific issues identified by the kinds of businesses that invest in large-scale infrastructure projects. Addressing these issues—even if it means clarifying or better defining existing processes—will go a long way toward creating the certainty and predictability needed to kick-start investment in Canada.

Four Key Needle Movers

These four Needle Movers are our immediate priorities. These recommendations are relatively easy to implement and will have the biggest impact with the least effort. Taking these steps will help restore certainty and predictability in Canada’s project review and permitting processes. They will help start to change perceptions about Canada’s investment climate and restore business confidence.

Our four Needle Movers are that the federal government should:

CLARIFY MINISTER’S DESIGNATION CRITERIA

Publish the criteria used by the Minister to designate projects under the IAA

CREATE A BODY TO OVERSEE PERMITTING

Create a government oversight body to manage and coordinate federal permitting

SHORTEN AND SCALE REVIEW TIMELINES

Shorten existing review timelines and scale them according to project complexity

FINANCIAL SUPPORT FOR INDIGENOUS PARTICIPATION

Expand financial supports for Indigenous participation in project development

Nine Challenges Across Three Themes

Our four Needle Movers are just the beginning.

BCA has developed dozens of recommendations for improving existing review processes. These are articulated in detail in Chapter 2 of *Future Unbuilt*, organized according to nine broad challenge categories that Task Force members told us they face. These nine categories, in turn, fit into three general themes:

PARTICIPATION ●

Canada needs to clarify roles, responsibilities, and requirements around Indigenous engagement, while also increasing Indigenous inclusion and partnership in decision-making. It must also streamline and refine community engagement to avoid unnecessary delays.

PROCESS ●

Friction points need to be removed from existing review processes by empowering lead agencies; setting and enforcing service standards on supporting government departments; addressing jurisdictional overlap with other orders of government; and creating avenues for greater collaboration between government(s), industry, Indigenous Peoples, and stakeholders.

PREDICTABILITY ●

Clear timelines are needed for review and permitting processes, with accountability mechanisms introduced when governments fail to meet those timelines. Those timelines need to scale with project complexity and respect construction windows. Canada's overall policy environment needs to be more stable and predictable.

In this summary document, we present a select (and simplified) number of those recommendations organized by challenge and theme.

As stated earlier, these problems—and proposed solutions—are not a comprehensive inventory of all challenges businesses face in putting forward major projects. But action in these nine areas will make a significant difference in attracting the investment Canada needs to meet its emissions-reduction targets and generate economic growth.

PARTICIPATION

1

Challenge 1: **Expectations around Indigenous engagement are unclear, and capacity improvements are needed**

Major project development requires both Indigenous consultation and a sharing of economic benefits. However, there is a lack clarity about what constitutes sufficient Indigenous consultation, and the role of proponents in assisting the government in discharging the Crown's duty in this area. Moreover, the quality of federal Indigenous consultation varies considerably depending on the department or individual involved. Importantly, industry supports Indigenous leaders' calls for additional capacity funding to enhance their technical expertise and access to capital when being consulted on project impacts.

Key Recommendations:

- The federal government needs to co-develop with Indigenous Peoples a clear and broadly-accepted definition and approach to free, prior and informed consent.
- The federal government should develop clear and consistent criteria that clarify which Indigenous communities should be engaged with on a given project type. These criteria should be harmonized with provincial standards, and proponents should be assured that they will not be exposed to legal challenges resulting from them following federal guidance.
- The federal government should develop clear guidance on Indigenous engagement and what constitutes appropriate consultation and accommodation.
- The federal government should create an Indigenous Consultation Office (ICO) to centralize Indigenous engagement on major projects. The ICO would replace duplicative functions across other departments and agencies. It would create and maintain relationships with Indigenous communities and lead the nation-to-nation consultation responsibilities that are currently scattered across individual agencies and departments.

- If the federal government is found by the courts not to have met its duty to consult, it should compensate the proponent for all financial losses incurred as a result of associated delays.
- Modelled after the Alberta Indigenous Opportunities Corporation (AIOC), the federal government should make financial mechanisms such as loan guarantees available to Indigenous Peoples to participate in project development or equity partnerships.

2

Challenge 2: **Third-party interventions can be repetitive or not pertinent**

Public participation is critically important for project development, but reviews are hampered by growing and excessive third-party interventions at too many points throughout the process. Proponents are spending more and more time addressing common, repetitive, or minor intervenor concerns.

Key Recommendations:

- The IAA should re-introduce the legal concept of standing for third parties looking to intervene or make information requests.
- Federal lead agencies should develop reasonable criteria to determine which individuals and communities are directly impacted by a project and which are not. A separate, less onerous standard for responding to the latter group should be implemented.
- When considering information requests or issues raised during public consultations, federal lead agencies should have the authority to screen requests for relevance. They should also work with proponents to develop a shared bank of answers to standard or repetitive questions from intervenors.

PROCESS

3

Challenge 3: **Governments and regulators have difficulty seeing how small issues add up to affect overall processes**

Many small impediments in project reviews can accumulate, leading to more unpredictable processes. Better communication channels between the federal government and industry are needed.

Key Recommendations:

- The mandate of the Treasury Board of Canada Secretariat's Targeted Regulatory Reviews should be expanded to include conducting post-review interviews with project proponents to understand what worked well and what didn't. Recommendations from those interviews should be used to continually improve existing processes.
- The federal government should create a Major Project Partnership Council (MPPC) modelled after the Canadian Automotive Partnership Council. An MPPC would include senior government officials, Indigenous groups, industry leaders, and labour unions. It would work collaboratively to advancing projects and economic development, and would proactively address hurdles to capital deployment and regulatory efficiency.

4

Challenge 4: **Federal internal coordination is inefficient**

Many government departments play a role in project reviews and permitting. However, they do not always act in a coordinated manner or apply their practices consistently. These problems can undermine the predictability and timeliness of reviews and unnecessarily increase the compliance burden on project proponents.

Key Recommendations:

- When working with other government departments during a project review, lead agencies should establish and enforce defined procedures, timelines, and service standards across the entire project review process.

- The national leadership at the Department of Fisheries and Oceans should establish consistent and predictable processes, timelines, and service standards across the entire country. The performance of the most efficient office should be the minimum standard for all others.

5

Challenge 5: **Review and compliance requirements are expanding and not always in scope**

Project reviews are seldom as short as already-lengthy legislated target timelines suggest. Proponents note a growing tendency for delays to occur at stages of review processes where there are no prescribed timelines. Similarly, the conditions attached to successful reviews have ballooned in number and complexity, adding to construction costs and timelines.

Key Recommendations:

- The CER should limit project assessment activities from taking place in its application completeness determination stage.
- Proponents should have access to rapid adjudication if they think a government review agency is acting outside of established processes.
- Lead agencies should proactively help reduce the complexity of the conditions attached to project approvals.
- When reviewing whether companies have met their pre-construction conditions, regulators should act under clear decision-making timeframes that respect seasonal construction windows.

6

Challenge 6: **Interjurisdictional tensions and overlapping processes are impeding project reviews and construction**

In many cases, the federal and provincial governments share responsibility for aspects of regulating environmental matters, including the permitting and licensing of various components of a project, as well as establishing conditions associated with project approval. On projects impacting areas of responsibility of the two jurisdictions, this can create challenges when there is a misalignment of review and permitting processes, timelines, and/or political goals at play.

Key Recommendations:

- Whenever the federal government has primary authority over a project and other levels of government obstruct timely development, it should seek legal resolution at the earliest opportunity.
- To avoid misalignment or duplication, when projects require both federal and provincial environmental impact assessments, the federal government should be required to:
 - substitute its conditions-creation process for the provincial jurisdiction's process; or
 - jointly agree with a province on a single process for conditions-creation.

PREDICTABILITY

7

Challenge 7:

Project review timelines are long, expanding, and not proportional to project risk

Project review timelines, as legislated, are too long. Moreover, for various reasons, actual timelines often extend well beyond legislated limits. And the length of time it takes to review a project is not proportionate to its risk or complexity.

Key Recommendations:

- Lead agencies should shorten existing review timelines and scale them according to project complexity. Only the largest and most complex projects should be subjected to maximum review timelines.
- Political leaders should not be allowed to request extensions to existing timelines when they are making a final decision on whether a project should go ahead.
- Federal lead agencies should focus their reviews on the most important, project-specific risks, and not on common issues that have a history of being successfully addressed.
- Federal lead agencies should use a 'trust-but-verify' assessment and auditing model for standard, well-understood risks that are covered by existing regulation or that can easily be addressed by well-established industry best practices.

8

Challenge 8:

Political and policy preferences are creating uncertain processes

The policy and regulatory environment in which companies are trying to invest is highly uncertain. The federal government has made several significant policy changes that affect the potential return on investment of a proposed major project. And uncertainty remains about the types of projects the federal government intends to subject to the IAA process.

Key Recommendations:

- The federal government should stop adding and layering new regulation on top of existing regulation and allow businesses and government officials to determine how to work within existing rules.
- The federal government should publish clear, logical, and consistently applied rules about the conditions under which the Minister of Environment and Climate Change can designate a project as falling under the IAA.

9

Challenge 9:

Construction windows are too easily disrupted

Project construction can be easily disrupted for relatively minor instances of environmental and species disturbance. Every project has impacts, but when it comes to mitigation, the regulatory standard appears to be 100% perfection rather than genuine efforts that balance cost and benefit. Furthermore, permitting processes lack the oversight needed to establish timeline and service standards, both within the federal government and across jurisdictions.

Key Recommendations:

- Federal inspectors should not have the power to unilaterally shut down construction or revoke a permit unless there is an imminent safety risk or major environmental impact that cannot be mitigated through existing environmental protection plans.
- The Privy Council Office should, either itself or by assignment to an appropriate department, create a body that oversees and coordinates the permitting stage of project development. That role should include developing and enforcing timelines and service standards, coordinating required consultations, and minimizing duplication.



1600, 635 8th Ave SW
Calgary, AB T2P 3M3

BusinessCouncilAB.com
info@businesscouncilab.com



**BUSINESS
COUNCIL
OF ALBERTA**