

ERO #025-0418 – Proposed Amendments to the *Ontario Heritage Act*

Attawapiskat First Nation Comment

Attawapiskat First Nation (“AFN”) has concerns with certain elements of the proposal to amend the *Ontario Heritage Act* (“OHA”) as part of Schedule 7 of Bill 5: *Protect Ontario by Unleashing our Economy Act*, 2025.

AFN has significant concerns with the proposed amendments, some of which have the potential to eliminate the requirement to identify and assess First Nations archaeological sites which are of significant cultural significance to AFN and all First Nations in Ontario.

AFN is also concerned about the possibility that if the proposed amendments are approved, requirements to undertake archaeological work on sites of former residential schools may be removed, in certain situations.

The proposed amendment which would allow the Lieutenant Governor in Council to exempt property from “a requirement to conduct an archaeological assessment set out in any other Act or regulation, or instrument under any other Act, other than a provision of the *Funeral, Burial and Cremation Services Act, 2002* or a regulation or instrument made under that Act... if in the opinion of the Lieutenant Governor in Council the exemption could advance the following provincial priorities: transit, housing, health and long-term care, other infrastructure or such other priorities as may be prescribed” is extremely concerning for AFN. Development projects such as these should not be moving forward without protection for First Nations rights. The protection of cultural sites such as burial grounds is one of these rights.

Cultural sites that require archaeological work to be done are the historical sites of many First Nations in Canada, they are where the stories of First Nations come from and where many ancestors are buried. Proponents should not be exempt from assessing and protecting these sites in the name of developments.

First Nations Territory has the potential to have cultural, heritage and burial sites throughout. Once these sites have been disturbed, it is too late to protect what is found. Negating the need for an archaeological assessment which exists to ensure that these

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sites are not impacted means that remains of First Nations ancestors or artefacts of First Nations peoples may be found and are highly likely to be desecrated or damaged.

AFN has constitutionally protected Aboriginal rights which includes the protection of cultural sites. To allow development to occur with exemptions for archaeological work would be to go directly under the Constitution Act, 1982 and to undermine the constitutional protections that exist. In addition, the United Nations Declaration on the Rights of Indigenous peoples outlines at Article 11 that Indigenous peoples have the right to maintain, protection, and develop their cultural heritage, including archaeological and historical sites. These proposals to amend the OHA now and any future decisions that would be made with respect to archaeology would be directly in contravention of the requirements of the Constitution, the duty to consult and accommodate and the honour of the Crown.

AFN is also very concerned with the immunity provisions that have been proposed in the amendments, which appear to exempt Ontario from being the subject of any legal action against it. AFN is concerned with the approach being taken by Ontario of trampling and running roughshod over the rights of Indigenous peoples and the attempt to protect itself from these egregious decisions. Ontario is attempting to streamline projects and 'cut red tape' but is putting itself in a situation whereby it will only face further challenge and delay from First Nations such as AFN when decisions are made that continually impact our rights.