

ERO #025-0396 - *Addressing Changes to the Eagle's Nest Mine Project*

Attawapiskat First Nation Comment

Attawapiskat First Nation ("AFN") has serious concerns with the Ontario government proposal to remove the requirement for a comprehensive environmental assessment ("EA") of the proposed Wyloo Metals Eagle's Nest mine project ("Project"). This Project falls squarely within Attawapiskat First Nation Territory.

By removing the comprehensive EA requirement under provincial law, the Project is now not guaranteed to undergo a fulsome assessment of all impacts on the environment as well as the rights of Indigenous peoples, including AFN.

Under the IAA, the Project is not automatically subject to an impact assessment ("IA"). In order to undergo a federal IA, the Project must be in the *Physical Activities Regulations* ("Project List") or be designated by the Minister. The Project does not currently meet the requirements of a mine outlined in section 18 of the Project List. In any event, even if the Project were to be designated by the Minister under the IAA, the federal assessment that would occur would be narrow in scope and would only address "adverse effects within federal jurisdiction" and/or "direct or incidental adverse effects" which relate specifically to federal heads of power. An IA undertaken to assess these effects would be limited in scope and could result in an assessment that does not properly assess all possible areas of impact, and worse, a project that is significantly impactful on these areas.

The region where the Project is being proposed is an area of immense environmental, biodiversity and cultural significance for the Indigenous peoples that are the majority of the population that reside in the region but also for the country as a whole. The area of the James Bay Lowlands is the 2nd largest peatlands ecosystem that remains intact in the world. This area is critical for global efforts to curb climate change. These peatlands absorb more carbon than any other ecosystem and we do not at this point know the level of disturbance that the peatlands can undergo before they would collapse. Having a proposed project in an area of such critical importance, not undergoing both a federal IA and provincial EA, to provide a fully comprehensive assessment of any and all effects, is dangerous and reckless.

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Proposing to remove the requirements for a comprehensive EA for the Project would remove the requirement for and ability to ensure decisions made regarding the Project and more broadly, development within the Ring of Fire is made based on comprehensive information and involvement of many impacted parties including Indigenous communities. There is a significant amount at stake with respect to Indigenous rights and values as well as environmental interests such as climate change, species and biodiversity protection.

Further, the removal of the requirement for an EA would eliminate a significant mechanism for and procedural right to public engagement and Indigenous consultation and engagement, the latter of which is required under the *Constitution Act, 1982*.

AFN has embedded and deep connections with its homelands which includes the region known as the Ring of Fire, and have been using them to survive and thrive for many years. AFN asserts a right to continuing its way of life on its homeland territory. This right includes the right to decision-making governance authority over land (“jurisdiction”), including under water and natural resources on, in and from the land. This right is well known to Ontario and has been asserted in a claim against the Governments of Canada and Ontario by multiple Treaty 9 First Nations (Court File No CV-23-00701700-0000).

Given the assertion of a right to jurisdiction, the duty to consult and accommodate must be carried out to at the absolute highest level, which means achieving the free, prior and informed consent of AFN. As such, any development in AFN territory requires the free, prior and informed consent of AFN. Any engagement and consultation with AFN should occur in accordance with the requirement to meet this standard. The removal of this EA would remove a critical opportunity for Ontario to properly consult with AFN, in line with UNDRIP, and acquire the free, prior, and informed consent of AFN, which Ontario must do.

In addition to the rights of jurisdiction and governance and a continued way of life, members of AFN also have, since time immemorial, and continue to, exercise many other constitutionally protected aboriginal rights including hunting, fishing, trapping and gathering, directly within and around the vicinity of the proposed Project.

AFN requires that the Crown withdraw the proposed amendment to the Environmental Assessment Act that would remove the requirement for a comprehensive EA of the Eagle’s Nest Project. Any proposal to remove the requirement for an EA requires a robust and proper consultation and accommodation process with First Nations. No substantive consultation has occurred as it relates to this proposal, and this must happen before the any decision to cancel the EA is made. AFN could potentially provide consent for the cancellation of the EA as proposed, if Ontario was to agree to a different assessment that is in keeping with AFN laws and requires and seeks AFN’s free, prior

and informed consent. At present, the comprehensive EA that was voluntarily agreed to is the only process to ensure AFN's concerns are considered and consent acquired.

The EA process is a crucial, mandatory mechanism to share information with AFN with the goal of protecting the environment and Indigenous rights. It is antithetical to the honour of the Crown to just wholesale remove this important venue for understanding and discussing impacts to our rights, without consulting with us. The courts have guided the Crown, including Ontario to deal with First Nations fairly, properly, and early in the development process – not remove such opportunities.

If the Government of Ontario is truly interested in proposals moving forward expeditiously, the way to do that is to seek the free, prior and informed consent of AFN on this project. Removing the EA for this project, removes a venue for coming to a mutually agreeable arrangement on the project. Doing so makes it more likely that AFN and others will have to resort to the lengthy court-processes to protect their rights, which does not accord with the purpose of Bill 5 or the honour of the Crown. We strongly urge Ontario to reconsider their approach and to reinstate the EA requirements for this project.