



Regional Assessment in the Ring of Fire Area
Impact Assessment Agency of Canada
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October 14, 2024

Re: Comments from the Friends of the Attawapiskat River regarding the Draft Terms of Reference for the Ring of Fire Regional Assessment

Legal Advocates for Nature's Defence (LAND) is legal counsel to the Friends of the Attawapiskat River.¹ We provide these comments on their behalf to the Impact Assessment Agency of Canada ("Agency") in response to the Draft Terms of Reference ("TOR") for the Regional Assessment ("RA") in the Ring of Fire Area.²

About the Friends

The Friends is an Indigenous, grassroots advocacy group dedicated to protecting the health of the waters, people and communities living downstream of the proposed Ring of Fire. The Friends is comprised of community members from Attawapiskat, Peawanuck, Kashechewan, Fort Albany, Neskantaga and Moose Factory in Treaty 9 territory. Together, they have a shared responsibility to protect their lands from exploitation and degradation. This means safeguarding the integrity of the boreal and muskeg of the Hudson Bay-James Bay lowlands, its significant contribution to mitigating climate change, and the health of their grandchildren and those not yet born.

As we share on behalf of Mike Koostachin, founder of the Friends of the Attawapiskat River:

We are the ancestral people of the lands where the Ring of Fire is proposed. We the Oji-cree, Ojibway, and Omushkegowuk people have lived in harmony with these lands given to us by the

¹ Online: <https://friendsoftheattawapiskatriver.ca/>

² IAAC, [Regional Assessment in the Ring of Fire Area](#), Registry No. 80468

Creator since time immemorial. We are the Water People. The water gives us life and we take care of the water in return. This is our duty to the Creator.

We are the ancestors of the Headmen who signed Treaty 9 with the Crown to peacefully share the lands. Our Natural Laws teach us to respect the land and to maintain our relationship with the Creator. Our traditional ways do not involve greed or violence to these lands, but love, harmony and an ongoing commitment to each other.

We have seen what these developments and broken promises can do to our people and our lands. Many of our communities have not had clean drinking water for years. Our housing crisis is only getting worse which has taken a toll on our young generation, often living with no hope and in quiet desperation.

Our communities rely on openness to thrive and all community members must be involved in any process on our lands. Our community members are often left in the dark over these issues. Our tribal council leaders accept developments without our knowledge, and we pay the price. Our suffering is a testament to that.

Comments on the draft TOR

In this submission, the Friends propose a series of targeted amendments to the TOR that if adopted, would enable the Agency and its First Nation partners to signal a willingness to equitably and fully include the grassroots and community members from Treaty 9 in the RA. We also propose a group of targeted recommendations that would enable the RA to proceed in a manner that complies with domestic and international obligations regarding climate change, biodiversity loss and Indigenous rights.

We also direct the Agency to a number of supporting references which we ask to be taken into account as part of our comments. This includes:

- Comments made by the Friends in Cree during a live radio discussion on Wawatay News on October 11, 2024
- Comments made by the Friends on the [draft Policy Framework for RA](#)
- Comments made by the Friends on the [draft Agreement to conduct an RA](#)
- Short film produced by the Friends titled '[We Are the River](#)' showcasing community voices, concerns about the Ring of Fire and critical need to pause decision-making until community members are meaningfully informed and aware about the RA and the proposed Ring of Fire
- Comments made the Friends to the Agency during our in-person gathering in Thunder Bay, remotely attended by the Agency, on October 31 - November 1, 2023

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Requested Action

While the Friends welcome the opportunity to provide its views and recommendations on the draft TOR, our position remains unchanged: this ought to have been a first of its kind Indigenous-led RA, conducted *within* Indigenous legal traditions and knowledge frameworks. Instead, a co-led RA is proposed wherein Indigenous laws and knowledge are guiding principles within the RA process and ultimately, considered secondarily as a *component* of the Crown's framework. The Friends submit a co-led process falls short of the government's treaty promises to Indigenous people.

We also reiterate our request – echoed by many community members and organizations – for the Agency to extend the comment period on the draft TOR. The Agency ought to be active in meeting, in community, to discuss this RA, the process and potential ways forward. None of these critically important first steps have occurred and instead, the majority of community members, who will be directly affected should the proposed Ring of Fire development proceed, are in the dark about this process and the proposed Ring of Fire.

Timing the comment window during the fall hunting season further prevents the inclusion of community members and from the Friends' perspective, choosing to close the comment period on Thanksgiving Monday is yet another illustration of the Agency's assertion of Crown dominance. Given the importance of the Terms of Reference document to the development and conduct of the so-called "co-led" Regional Assessment, providing an extension based on community requests falls squarely within the Agency's stated commitments regarding Indigenous participation. Failure to provide this extension has impeded community members' capacity to participate.

We look forward to seeing our comments reflected in the TOR and reiterate our calls for an Indigenous-led RA, resourced to ensure the capacity and inclusion of the grassroots. We hope the Agency will reconsider our request to extend the current comment period until community members are informed, engaged and given the chance to actively participate.

Sincerely,



Kerrie Blaise, Legal Counsel
Legal Advocates for Nature's Defence



Michel Koostachin, Founder
Friends of the Attawapiskat River

Detailed Recommendations

Provision	Recommendations
Introduction and Guiding Principles	
<p>“First Nations communities and the Government of Canada have come together to conduct a regional assessment of the Ring of Fire area. These terms of reference are intended to provide overall clarification on the purpose of the Regional Assessment in the Ring of Fire area and provide the collective common understanding of the Regional Assessment Working Group’s background, duties, and overall mandate.”</p>	<p><i>Add a sentence stating:</i> “The Ring of Fire area is located on the ancestral lands of Indigenous peoples, including the Ojibway, Oji-Cree, and Omushkegowuk who have inhabited these lands since time immemorial and whom pursuant to Treaty 9, continue to exercise treaty rights affirmed by the spirit and intent of treaties. While these Terms of Reference will refer to the region as the Ring of Fire, it is acknowledged that this term comes from Industry and is not reflective of the significance or origin of the land.”</p>
<p>“Be collaborative, co-led and undertaken in an interdisciplinary and holistic approach that uses both Indigenous knowledge systems and western science; This process will be driven by the communities along with the guidance of IAAC. The combining of traditional values and teachings, along with western perspectives, will enrich the processes and give understanding of community processes.”</p>	<p><i>Amend to read:</i> “Be independent, Indigenous-led, and undertaken in a holistic approach that uses Indigenous knowledge systems and legal principles. This process will be driven by the communities. Western science and perspectives may be used at the discretion of the Indigenous communities to enrich or translate the findings of community processes.”</p>
1. Background	
<p>“The James Bay Lowlands are located in Ontario’s far north, approximately 400 kilometers northeast of Thunder Bay, Ontario”</p>	<p><i>Amend to read:</i> “The James Bay Lowlands are located on the ancestral lands of Indigenous peoples, including the Ojibway, Oji-Cree, and Omushkegowuk who have inhabited these lands since time immemorial and whom pursuant to Treaty 9, continue to exercise treaty rights affirmed by the spirit and intent of treaties.”</p>
2. Overview	
<p>General Comments</p> <ul style="list-style-type: none"> ● Section 2 must include a written commitment by the Minister that mineral development absent consent will not move forward if Canada does not meet its Treaty obligations to provide long term solutions and support to Indigenous peoples which have lacked clean drinking water or have housing and mental health crises. ● Section 2 must include a written commitment by the Minister to respect the moratorium many First Nations and community members have called for on activities in the Ring of Fire including mineral exploration, resource development and project-specific decision-making and that this moratorium remain in place until meaningful Indigenous engagement has been undertaken to meet the Crown’s obligations towards Indigenous peoples, the Regional Assessment process has been completed and 	

<p>protection plans for sensitive wetlands and watersheds are in place.</p> <ul style="list-style-type: none"> Section 2 must include a written commitment by the Minister and Agency representatives in the Working Group to personally educate themselves about Indigenous realities by experiencing the land and culture of the people affected by development proposal, recognizing that this has led to successful collaboration in the past (according to the Indigenous Advisory Committee’s Report on Indigenous Collaboration in Impact Assessment). 	
<p>Section 2.2: “This is a region-specific assessment in accordance with subsection 93(1) of the Impact Assessment Act, and the Minister’s commitment to a co-lead regional assessment process with Indigenous peoples within the Treaty No. 9 territory; and”</p>	<p><i>Amend to read: “This is ... No. 9 territory. The Regional Assessment is to be co-developed in a manner that complies with Indigenous rights, advances Indigenous priorities and furthers the right to self-determination, consistent with Measure 67 of the 2023-2028 Action Plan under the <i>United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act</i>, which requires that co-development processes are led by priorities and strategies determined by Indigenous peoples and result in initiatives that comply with Indigenous rights, advance Indigenous priorities and further Indigenous self-determination. The co-development process must facilitate the active involvement of First Nation Partners <i>and</i> community members, recognizing that Indigenous peoples, as collectives and as individuals, are rights holders (Articles 1 & 2 of UNDRIP).”</i></p> <p><i>Please see Annex 3 for our proposed definitions of ‘active involvement’ and ‘community members’.</i></p>
<p>Section 2.3: “The Regional Assessment applies to an area described as the Ring of Fire, also known as Kawana ‘bi ‘kag by Matawa First Nations, and the traditional territories of the First Nation Partners (Matawa and Mushkegowuk) who may be impacted by development in the Ring of Fire area. This area lies entirely within Treaty No. 9 territory, which has been home to the people of the land and used by the communities since time immemorial. It is the First Nation communities of these areas and their members who hold and exercise Aboriginal and Treaty rights protected by section 35 of the Constitution Act, 1982; and”</p>	<p><i>Amend to read: “The Regional Assessment applies to an area described as the Ring of Fire, which is located on the ancestral lands of Indigenous peoples, including the Ojibway, Oji-Cree, and Omushkegowuk who have inhabited these lands since time immemorial and whom pursuant to Treaty 9, continue to exercise treaty rights affirmed by the spirit and intent of treaties. It is the Indigenous people of these lands who hold and exercise Aboriginal and Treaty rights protected by Section 35 of the <i>Constitution Act, 1982</i>. The signing of Treaty 9 signaled an ongoing relationship based on kindness, honesty and sharing and requires the Regional Assessment to be developed in accordance with Indigenous laws and values.”</i></p>
<p>Section 2.8</p>	<p><i>Add a new section to read: “The co-developed terms of reference will set out mechanisms to ensure accountability in decision-making, information sharing and transparency throughout the development of and carrying out of the Regional Assessment to ensure commitments made herein (including the guiding principles) are applied equitably to all community members.”</i></p>

	<p><i>The inclusion of accountability mechanisms is consistent with Articles 28 and 32 of UNDRIP, which codify Indigenous peoples' right to redress.</i></p>
<p>Section 2.9</p>	<p><i>Add a new section to read: "The co-developed terms of reference will contain the following specific elements, as recommended by the Indigenous Advisory Committee in their Report on Indigenous Collaboration in Impact Assessments:</i></p> <ul style="list-style-type: none"> ● Confidentiality of Indigenous knowledge and information shared by communities; ● Transparency, openness and the mutual accountability of parties; ● Direct and cooperatively conducted working relationships between parties; ● Agency fully fund processes and the conduct of assessments; ● Ensuring at the outset that the Agency commits to respect Indigenous laws and legal traditions; ● Providing training in this area to employees working with Indigenous communities; ● Establishing autonomous complaint mechanisms for Indigenous communities; ● Identifying criteria and indicators to allow monitoring of potential rights violations; and ● Establishing and legally empowering effective enforcement measures and sanctions.
<p>3. What is a Regional Assessment?</p>	
<p>Regional Assessments:</p> <ul style="list-style-type: none"> ● Are a planning tool used to assess the positive and negative effects of multiple existing and future developments and activities in a specific geographic region, including cumulative effects. ● Encourage decision makers to take actions that promote sustainable development and thereby achieve or maintain a healthy environment, healthy communities and a healthy economy. ● Do not assess a specific project. They look broader than a single project to understand impacts at the regional level and provide more comprehensive analyses to help inform future impact assessments decisions, and other decision-making processes 	<p><i>Add a bullet point that states:</i></p> <ul style="list-style-type: none"> ● "Are neither a replacement nor substitute for project-specific impact assessment and cumulative effects assessments undertaken therein."

<p>related to development in the region.</p> <ul style="list-style-type: none"> ● Focus on bigger effects which are often challenging to address during individual project-level assessments and decisions. 	
<p>4. Where will the Regional Assessment take place?</p>	
<p>General comments</p> <ul style="list-style-type: none"> ● We strongly oppose the Regional Assessment’s focus on the so-called Development Area. While we understand that this is an area where some 30,000+ mining claims are clustered, it makes little sense to define a study’s boundaries, whose purpose is to assess impacts to the environment and Indigenous rights, by their mining potential and value to mining companies. Instead, the Regional Assessment Area of Focus must be comprehensive and include the Attawapiskat, Kapiskau, Albany, Ekwan, Opinnagau and Winisk Rivers watersheds and the thousands of streams that flow into Hudson Bay and James Bay. Only then can we truly assess the cumulative impacts to the biodiversity of this region, and the lands and waters of directly affected and downstream Indigenous communities. ● The Regional Assessment threatens to leave out legacy impacts of current mineral exploration and developments in the Ring Fire given its future-centric approach. It also fails to include any requirement to study the health and air impacts of ferrochrome smelter - which would process the ore from the Ring of Fire. Splitting the Ring of Fire project up into smaller parts means we’ll lose sight of the project’s actual cumulative impacts. We submit legacy impacts and all activities ancillary to the proposed Ring of Fire project be included within the Area of Focus. 	
<p>Section 4.1: Given the known mineral resources and mining potential of the Ring of Fire area, which is the ancestral home of the Matawa and Mushkegowuk member communities, the Regional Assessment will focus on existing and future development activities in this area (development area), as well as any associated infrastructure and induced development that may occur in the region (assessment area).</p>	<p><i>Amend to read: “The Regional Assessment’s Area of Focus will include the Attawapiskat, Kapiskau, Albany, Ekwan, Opinnagau and Winisk Rivers watersheds and the thousands of streams that flow into Hudson Bay and James Bay. The Area of Focus will also include proposed induced development and associated infrastructure such as road projects and ancillary projects (ex. Ferrochrome smelter).”</i></p> <p><i>We submit that the terms ‘Development Area’ and ‘Assessment Area’ must be replaced with ‘Area of Focus’ throughout the Terms of Reference, as defined in Annex 3.</i></p>
<p>Bullet point under section 4.1:</p> <ul style="list-style-type: none"> ● The assessment area includes the communities and traditional territories of the First Nation Partners and is the region most likely to experience the extent of positive and negative effects as a result of activities in the development area, as well as any associated infrastructure and induced development that may occur in the region. 	<p><i>Add to Section 4.1 to read:</i></p> <ul style="list-style-type: none"> ● Any road project, including those undergoing project-level impact and environmental assessments, are necessary inclusions in the Area of Focus. ● To assess intergenerational and distributional impacts to land and water, as well as impacts to climate and cumulative effects, the downstream areas (including the muskeg of the Hudson-James Bay Lowlands and its many watersheds) will be included in the Area of Focus. This includes the watersheds of the Attawapiskat, Albany, Ekwan and Winisk.

<p>Section 4.2: “The Regional Assessment will be structured in a way that provides First Nation Partners the flexibility to collect information and knowledge within their communities and traditional territory and that prioritizes their own unique surroundings and circumstances. The Working Group maintains the ability to set specific study areas as needed to better capture the possible effects on assessment priorities (e.g. watershed boundaries, caribou ranges).”</p>	<p><i>Amend to read:</i> “The Regional Assessment will be structured in a way that provides First Nations flexibility to collect information and knowledge within their communities and traditional territory, supports and enhances their ability to work within Indigenous legal traditions and knowledge frameworks, and prioritizes their own unique surroundings and circumstances. The spatial and temporal boundaries of the Regional Assessment will be determined with the active involvement of community members, with the goal of ensuring a cumulative approach, to prevent against project splitting.”</p>
<p>5. What is the purpose of the Regional Assessment?</p>	
<p>General comments</p> <ul style="list-style-type: none"> ● We remain deeply committed to pushing for an Indigenous-led process, recognizing this ought to have been a first of its kind Indigenous-led RA, conducted within Indigenous legal traditions and knowledge frameworks. Instead, a co-led RA is proposed wherein Indigenous laws and knowledge are guiding principles within the RA process and ultimately, considered secondarily as a component of the Crown’s framework. The Friends submit a co-led process falls short of the government’s treaty promises to Indigenous people. ● Per our prior comments on RA policy, regional assessments must be aimed at strengthening understandings of a region’s cumulative impacts and the threats it poses to Indigenous lands, water and future generations. We know that continuing with a fragmented and piecemeal approach to the review of infrastructure projects means we are proceeding without first knowing the consequences to the environment, human health and Indigenous rights. Cumulative effects assessment that considers Indigenous values, criteria, objectives, and scenarios together with scientific components is fundamental for credible RA. ● We strongly encourage the Agency to ensure all parties - whether government, Working Group or First Nation Partner - act transparently and ensure resourcing is in place to <i>ensure</i> the awareness and participation of community members. ● As it stands, Section 5 lacks clarity and specificity and it must be expanded to expressly state how Indigenous rights, claims, traditions, laws, customs, and ways of life will be preserved. Stating this as a purpose of the Regional Assessment lacks meaning <i>unless</i> specific commitments are made (i.e. obtaining the free, prior and informed consent of all Indigenous people of Treaty 9) and accountability mechanisms put in place. The Regional Assessment process is an administrative measure that may affect Indigenous peoples, which obligates Canada to obtain the free, prior and informed consent of the Indigenous people of Treaty 9 (Article 19 of <i>UNDRIP</i>) before any future proposed development activities can move forward. 	
<p>Section 5: “[...] The purpose of the Regional Assessment is to:</p> <ul style="list-style-type: none"> ● Gather Indigenous knowledge and other information about the assessment area; ● Provide current conditions (current snapshot in time), information, and knowledge of the assessment area; and ● Provide analysis of the potential 	<p><i>Amend to read:</i> “The purpose of the Regional Assessment is to:</p> <ul style="list-style-type: none"> ● Strengthen understandings of the region’s cumulative impacts and the threats it poses to Indigenous lands, water and future generations; ● Facilitate the full and fair participation of all community members including through early planning, education and awareness building such that community members are informed, provided financial resourcing and knowledge in order to know how and when to participate; ● Gather Indigenous knowledge and other information

<p>effects (positive and negative), including cumulative effects, because of development activities occurring in the development area, and any associated infrastructure and related development that may occur in the assessment area.”</p> <p>The Regional Assessment will aim to inform and improve future impact assessments and other decision-making processes in a way that helps to:</p> <ul style="list-style-type: none"> ● Preserve Indigenous ways of life, traditions, laws, customs and oral history; ● Protect and improve the environmental, health, social and economic conditions of the communities; ● Protect and advance Indigenous Rights, claims and interests within the assessment area; and ● Create opportunities for community and regional sustainable economic equity and development. 	<p>about the Area of Focus in keeping with Indigenous knowledge protection protocols of the individual and/or their community;</p> <ul style="list-style-type: none"> ● Assess legacy, current and future conditions, information, and knowledge of the Area of Focus; ● Provide analysis of the effects (positive and negative), including cumulative effects, on the environment and the rights of Indigenous peoples, because of proposed development activities (including induced development and ancillary projects) that may occur in the Area of Focus; ● Provide analysis of the effects proposed development may have on Canada’s capacity to meet its domestic and international obligations under the Global Biodiversity Framework, the Paris Agreement, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and ● Provide analysis of the effects proposed developments may have on Canada’s responsibility to advance environmental justice and to assess, prevent and address environmental racism under the National Strategy Respecting Environmental Racism and Environmental Justice Act. <p>The Regional Assessment will not be relied on to replace or substitute project-specific impact assessments. The Regional Assessment will aim to inform and improve future impact assessments and other decision-making processes in a way that will:</p> <ul style="list-style-type: none"> ● [...]; ● [...]; ● [..]; and ● Advance opportunities for alternate economic development opportunities, based on conservation and not resource extraction.
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6. What are the objectives of the Regional Assessment?

General comments

- Given that the objectives are intended to support the Regional Assessment process in reaching its stated purposes, it is imperative that the objectives are met in a manner that complies with Treaty 9 and shared Indigenous-Crown promises to be kind, act with honesty and to share the land in keeping with Natural Law.
- The objectives, as well as the deliverables stated therein, must be developed with the active involvement of community members. Awareness of the Ring of Fire within communities is low and ensuring Indigenous voices are heard means the Agency must enable the active involvement of community members within the Regional Assessment. When little to no dialogue has occurred in the remote Indigenous communities that stand to be directly affected by the Ring of Fire, we do request the Terms of Reference comment period be extended and in-community engagement sessions held in order to reflect the communities’ voice on what ought to be the objectives of the Regional Assessment.

<p>Section 6.1(a): “Gathering and providing information and knowledge related to environmental, health, cultural, social and economic conditions and their interconnections, as well as Indigenous Rights, claims and interests, at the regional scale.</p> <ul style="list-style-type: none"> ● Provide an inventory of existing Indigenous knowledge and technical and scientific data; ● Provide a description of existing conditions, including existing community socio-economic conditions and community-identified values, interests and priorities; ● Identify key information gaps and research needs that could be undertaken to support the Regional Assessment, either concurrently or as part of follow-up and monitoring work; and” 	<p><i>Amend to read:</i> “Gathering ... scale, in a manner consistent with the Agency’s Indigenous Knowledge Policy Framework (which focuses on respect, confidentiality, capacity-building, meaningful consideration and accountability, and must be considered in Regional Assessments).</p> <ul style="list-style-type: none"> ● [...]; ● Provide ... priorities, including access to clean water and sanitation, access to healthcare services, housing conditions; and ● Commence early engagement and education on the Ring of Fire and Regional Assessment, including by Identifying key educational, information and research needs with the active involvement of community members and ensuring such in-community outreach occurs prior to commencing the Regional Assessment.”
<p>Section 6.1(b): “Providing an understanding of potential effects (both positive and negative), including cumulative effects and potential impacts on Indigenous peoples.</p> <ul style="list-style-type: none"> ● Identify and describe existing and potential future development activities and potential development scenarios in the development area and associated infrastructure and induced development within the assessment area; ● Identify and describe components, values and concerns with respect to potential effects of development on the Assessment Priorities; and ● Describe potential positive or negative effects, including cumulative effects, on Assessment Priorities resulting from existing and potential future development activities considered in this assessment.” 	<p><i>Amend to read:</i> “Providing an understanding of potential effects (both positive and negative), including cumulative effects and impacts on Indigenous peoples’ inherent and Treaty rights.</p> <ul style="list-style-type: none"> ● Identify and describe existing and potential future proposed development activities and potential development scenarios in the Area of Focus; ● [...]; and ● [...].”
<p>Section 6.1(c): “Identifying innovative ways to avoid, reduce or eliminate negative effects and enhance positive</p>	<p><i>Amend to read:</i> “Identifying innovative ways to avoid, reduce or eliminate negative effects and enhance positive effects of proposed development in a way that fosters sustainability.</p>

<p>effects of development in a way that fosters sustainability.</p> <ul style="list-style-type: none"> ● Identify ways to avoid, reduce, or eliminate negative effects or maximize the positive effects of development, and to inform planning and decision-making for future development activities, in a manner that contributes positively towards sustainability and protects sensitive areas, vulnerable populations and Indigenous Rights, claims and interests.” 	<ul style="list-style-type: none"> ● Identify ways to avoid, reduce, or eliminate negative effects or maximize the positive effects of proposed development, and to inform planning and decision-making for future proposed development activities, in a manner that contributes positively towards sustainability and protects sensitive areas, vulnerable populations and Indigenous Rights, claims and interests; ● Identify and compare future proposed development scenarios in terms of their contributions to sustainability, including worst-case scenarios and scenarios of no further development; and ● Identify proposed development activities that should be prohibited due to negative effects that cause irreparable harm and cannot be mitigated.” <p><i>Please see Annex 3 for our comments regarding the definition of sustainability.</i></p>
<p>Section 6.1(d): “Providing regional context for future developments and their assessments.</p> <ul style="list-style-type: none"> ● Provide a description of the ecological and cultural significance of the region and its people; ● Provide a description of areas of sensitivity or value-rich geographical /ecological zones; ● Describe the existing regulatory framework and identify areas for enhanced decision making for Indigenous Peoples; ● Identify potential regional and community development objectives, outline and evaluate development scenarios and potential management regimes to achieve positive development outcomes; and ● Develop and recommend a framework for considering and evaluating the effects of future development activities and scenarios (especially with respect to cumulative effects), including criteria or indicators that may be used to evaluate the immediate and long-term effects of development.” 	<p><i>Amend to read:</i> “Providing regional context for future proposed developments and their assessments.</p> <ul style="list-style-type: none"> ● Provide a description of the ecological and cultural significance of the region to its community members; ● [...]; ● [...]; ● With the active involvement of community members, identify potential regional and community development objectives which align with Indigenous values and rights and federal/provincial commitments to protect biodiversity and combat climate change, outline and evaluate proposed development scenarios and potential management regimes to achieve positive development outcomes; and ● [...].”
<p>Section 6.1(e): “Describing how the findings of the Regional Assessment could</p>	<p><i>Amend to read:</i> “Describing how the findings of the Regional Assessment could be considered and implemented to enhance the</p>

<p>be considered and implemented to enhance the effectiveness and efficiency of future decision-making processes.”</p>	<p>effectiveness and efficiency of future decision-making processes, recognizing that the Regional Assessment will not replace project-specific assessments and future proposed development activities cannot proceed absent the free, prior and informed consent of community members.</p> <p><i>Add under Section 6.1(e) to read:</i></p> <ul style="list-style-type: none"> • “Identify, with the active involvement of community members, requirements that future proponents and the Agency must meet to show how the outcomes of the Regional Assessment were considered, with supporting transparency, information sharing and accountability mechanisms.”
<p>Section 6.1(f)</p>	<p><i>Add a new section to read:</i> “Position the Regional Assessment within Canada’s broader commitments, including but not limited to:</p> <ul style="list-style-type: none"> • Biodiversity conservation under the Global Biodiversity Framework, specifically Target 3 (conserve 30% of land, waters and seas) and Target 22 (active involvement of Indigenous peoples in decision-making) • Climate change mitigation under the Paris Agreement, specifically Canada’s 2030 Emissions Reduction Plan, • Advancement of Indigenous rights under <i>UNDRIP</i>, <i>UNDRIP Act</i>, and <i>UNDRIP Act 2023-2028 Action Plan</i> • Addressing environmental racism under the <i>National Strategy Respecting Environmental Racism and Environmental Justice Act</i>. <p>The Regional Assessment cannot proceed or operate external to these considerations:”</p>
<p>Section 6.1(g)</p>	<p><i>Add a new section to read:</i> “Set out mechanisms to ensure accountability in decision-making, information sharing and transparency throughout the development of and carrying out of the Regional Assessment to ensure commitments made in these co-developed Terms of Reference are applied equitably to all community members, recognizing that Indigenous collaboration cannot be limited to the Indigenous delegates in the Working Group.”</p>
<p>7. What are the Assessment Priorities?</p>	
<p>General comments</p> <ul style="list-style-type: none"> • Assessment Priorities must be specific, monitorable, and aligned with Canada’s domestic and international commitments regarding Indigenous rights, climate change, biodiversity conservation and environmental justice. • Section 7 must clarify how the Assessment Priorities will be co-developed, and clarify that the Working Group, Chiefs and Minister do not have unilateral power to determine or amend the Assessment Priorities as the full, prior and informed consent of all community members is required. 	

<p>Section 7: “Assessment priorities represent key environmental, health, social, cultural and economic components that may be affected due to changes in the environment from potential development and reflect the priorities and values of First Nation Partner communities and the jurisdictions of the federal government.”</p>	<p><i>Amend to read:</i> “Assessment Priorities represent key environmental, health, social, cultural and economic components that may be affected due to changes in the environment from potential development; and reflect the priorities and values of community members, First Nation Partners and the federal government.</p> <p>The Assessment Priorities also include a commitment to advance and secure access to clean water, healthy housing, and community health services, recognizing that these are fundamental human rights.”</p>
<p>Section 7.2: “The spatial and temporal boundaries used in the Assessment may vary as appropriate, depending on the Assessment Priority. (For example, with respect to woodland caribou, the spatial and temporal boundaries should be broad enough to assess the impacts of development activities on woodland caribou habitat, migration, and populations.)”</p>	<p><i>Amend to read:</i> “The spatial and temporal boundaries used in the Assessment may vary as appropriate, depending on the Assessment Priority, and will be determined with the active involvement of community members. The spatial and temporal boundaries will account for the intersection of Assessment Priorities, recognizing that impacts to the environment, health, Indigenous rights and biodiversity cannot be assessed in isolation.”</p>
<p>Section 7.3: “The list of Assessment Priorities may be modified as appropriate by the Working Group, following dialogue with community members, Indigenous organizations, the public, federal and provincial government departments and non-government organizations.”</p>	<p><i>Amend to read:</i> “The list of Assessment Priorities will be co-developed with the active involvement of community members before the Regional Assessment begins. The Assessment Priorities may be modified as appropriate by the Working Group, following active participation and two-way dialogue with community members, Indigenous organizations, the public, federal and provincial government departments and non-government organizations.</p> <p>In determining the Assessment Priorities, the First Nation Partner’s Chiefs and/or delegates of the Working Group will consult with all members of their community to ensure their active involvement, in order to meet the First Nation’s fiduciary duty to its members.</p> <p>The Assessment Priorities include and extend to downstream communities including those on the James Bay coast, in keeping with the Regional Assessment’s ‘Area of Focus’, as defined in Annex 3.”</p> <p><i>This is consistent with Article 32 of UNDRIP, which provides for the right to determine and develop priorities and strategies for exercising their right to development.</i></p> <p><i>Please see our comments under Section 16 regarding amendments to the agreement.</i></p>
<p>Section 7.4: “The Assessment Priorities will include: a) Mamaaow’minoosewin To be well all</p>	<p><i>The current Assessment Priorities under Section 7.4 are broad and lack specificity, which makes it difficult to track progress and hold decision-makers accountable. The Regional Assessment must</i></p>

<p>together (Community Wellbeing)</p> <ul style="list-style-type: none"> ● Community safety and health ● Housing and Infrastructure ● Education ● Food Security ● Economic development and livelihoods ● Mental and physical well being <p>b) Inakaanesiwin'minoosewin To be well traditionally and culturally (Cultural and Spiritual Well-being)</p> <ul style="list-style-type: none"> ● Cultural vitality and traditional practices, including traditional food and medicine ● Continued way of life and exercising Aboriginal and treaty rights ● Community-based teachings, including oral history ● Language maintenance and revival ● Traditional community processes for deliberation and decisions o Exercise of natural law <p>c) Pimaatisiwin'minoosewin To be well in life (Social and Economic Equity)</p> <ul style="list-style-type: none"> ● Intra- and inter-generational values ● Immediate and long-term social and economic benefits ● Diverse economies and livelihoods ● Indigenous Women, girls and two-spirit individuals ● Access to land and resources ● Access to skill development and economic opportunities <p>d) Miisiwe'minoo'aakiiwin All lands and environment are at it's best (Healthy Environment Relationships)</p> <ul style="list-style-type: none"> ● Water and river systems, including flows ● Wildlife and wildlife habitat, including species at risk, migratory birds, and fish and fish habitat ● Peatlands and other unique environments ● Plants ● Climate change and adaptation ● Biodiversity ● Air quality" 	<p><i>identify baseline information for all Assessment Priorities (i.e. assess current conditions) and information gaps that must be filled before future proposed development activities can be considered. Baseline information is required in order to assess how the Assessment Priorities will be affected by future proposed development. This is consistent with the Indigenous Advisory Committee's Report on Indigenous Collaboration in Impact Assessments, which states that accurate conceptualizing of cumulative impacts is impossible without baseline data. If the Regional Assessment reveals that current conditions are unacceptable (ex. community members do not have access to safe drinking water and sanitation), these issues must be solved before future proposed development activities can be considered.</i></p> <p><i>Amend to read:</i></p> <p><i>"a) Mamaaow'minoosewin To be well all together (Community Wellbeing)</i></p> <ul style="list-style-type: none"> ● Community safety and health: <ul style="list-style-type: none"> ○ Assessment of the health inequities currently being faced by community members that will be exacerbated by development activities ○ Assessment of the gendered impacts of resource development on the safety and security of Indigenous women, girls and 2SLGBTQQIA+ people, in alignment with the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (calls for justice 13.1-13.4) and the UNDRIP Action Plan (measure 12). ● Housing and infrastructure (assessment of living conditions, recognizing that safe, affordable housing and reliable infrastructure (including for safe drinking water and sanitation) must be in place for community members before future proposed development activities can be considered ● Education ● Food and Water Security for communities within and downstream from the Area of Focus (assessment of how future proposed development activities will impact community members' Treaty rights to hunt, fish and trap and the health of their source water) ● Economic development and livelihoods (assessment of how future development activities will provide economic benefits and employment opportunities to community members) ● Mental and physical well being (assessment of current physical and mental health issues, access to physical and mental healthcare, and how these may be affected by future proposed development activities) <p><i>b) No suggested changes.</i></p>
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	<p>c) Pimaatisiwin'minoosewin To be well in life (Social and Economic Equity)</p> <ul style="list-style-type: none"> ● Intra- and inter-generational values ● Immediate and long-term social and economic benefits ● Diverse economies and livelihoods ● Indigenous Women, girls and two-spirit individuals ● Access to land and resources ● Access to skill development and economic opportunities <p>d) Miisiwe'minoo'aakiwin All lands and environment are at it's best (Healthy Environment Relationships)</p> <ul style="list-style-type: none"> ● Water and river systems, including flows, downstream areas and watersheds of the Attawapiskat, Albany, Ekwana and Winisk ● Wildlife and wildlife habitat, including species at risk, migratory birds, fish and fish habitat, and species of significance to community members ● Peatlands and other unique environments (assessment of the irreplaceable ecosystem services and positive externalities provided by the Peatland complex) ● Plants ● Climate change and adaptation (assessment of how future proposed development activities will impact greenhouse gas emissions and Canada's ability to meet its 2030 Emissions Reduction Target and other commitments under the <i>Canadian Net-Zero Emissions Accountability Act</i> and the Paris Agreement) ● Biodiversity (assessment of how future proposed development activities will impact Canada's ability to meet its commitments under the Convention on Biological Diversity's Global Biodiversity Framework and the future <i>Nature Accountability Act</i> (Bill C-73)) ● Air quality ● Cumulative impacts, recognizing that the aforementioned components are all interconnected
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Section 7.4(e)

Add a new section to read: “Assessment of whether, and to what extent, future proposed development activities will inhibit Canada’s ability to meet its obligations under:

- *The National Strategy Respecting Environmental Racism and Environmental Justice Act, recognizing that the establishment of environmentally hazardous sites in areas primarily inhabited by Indigenous people could be considered a form of racial discrimination and that mining will:*
 - *Increase health inequities faced by Indigenous people due to exposure to harmful emissions;*
 - *Increase Indigenous people’s vulnerability to environmental risk due to the intersection of health inequities from environmental exposures with structural inequities including poor housing conditions and infrastructure, water insecurity, reduced access to healthcare services, unemployment, gender-based violence and other ongoing impacts of colonization; and*
 - *Capitalize on the lack of political power held by Indigenous people to resist the establishment of environmentally hazardous sites.*
- *UNDRIP, UNDRIP Act and the corresponding 2023-2028 Action Plan, recognizing that complicity with UNDRIP requires that the Agency:*
 - *Respect Indigenous people’s right to determine and develop priorities and strategies for the proposed development or use of their lands or territories and other resources (Article 32(1) of UNDRIP)*
 - *Obtain the Free, prior and informed consent of community members would be sought before:*
 - *Implementing federal legislative or administrative measures that may affect Treaty rights (Article 19 of UNDRIP);*
 - *Approving any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (Article 32(2) of UNDRIP).”*

We submit this is a missed opportunity for what could have been Canada’s first ever Indigenous-led Regional Assessment. While we recognize the efforts made to advance a truly Instituting a “co”-led Regional Assessment process, we remain concerned that Crown legal systems will remain dominant and recognition of the need to engage with all Treaty rights holders secondary to the role of Indian Act recognized Chief and Council.

8. Operational structure

General comments

- The discretion granted to the Working Group in the Regional Assessment development and implementation processes must respect that community members also have a voice, with rights needing to be upheld and respected. Time and resourcing must be provided so that engagement with community members can occur.
- **We are concerned about the lack of transparency regarding how the First Nation Partners' delegates are being selected. We submit that the delegate-selection process must include the active involvement of community members, rather than granting full discretion to the Chief.**
- Relying on one community member delegated by their Chief does not suffice in representing community members' voices. The Regional Assessment must require each First Nation Partner to have a process in place to ensure that the delegated community member is able to receive, hear from and bring forward the perspectives of community members to Chief and Council and the Working Group. A disposition of comments and concerns received should be accessible to the community. This is consistent with the Indigenous Advisory Committee's Report on Indigenous Collaboration in Impact Assessments, which highlights community disunity and contested leadership structures as challenges to designing fair collaboration approaches.
- Section 8 must expand on the distribution of decision-making power within the Working Group and between the Working Group and the Minister and Chiefs to ensure that the RA process is truly co-led and ensure the active involvement of community members. Decision-making and governance of the Regional Assessment process must be equally informed by the Agency and Indigenous people. We are concerned that the hierarchical structure - which places the Minister and Chiefs at the top, followed by the Working Group, then Knowledge Holders and Expert Supports, and Indigenous and public participation at the bottom - will result in the exclusion of community members' voices.

<p>Section 8.2: "The Working Group will: a) Collect information and knowledge and create an accessible platform that will store information and knowledge to ensure information is available and accessible to the communities and the public. b) Conduct a review and generate a Report for Chiefs and the Minister that shares findings and recommendations and will include a preliminary (interim) report within one year from the approval of these terms of reference."</p>	<p><i>Amend Section 8.2(b) to read: "Conduct a review and generate a Report for Chiefs and the Minister that shares findings and recommendations and will include a preliminary (interim) report. To ensure the active involvement of community members, the date by which the interim report is due must be flexible."</i></p> <p><i>Section 8.2(b) must also provide details as to what must be included in the interim report. Currently, this is unclear and it must be remedied with the active involvement of community members prior to finalizing the Terms of Reference.</i></p>
<p>Section 8.3: "The Working Group may conduct additional studies as it deems necessary to carry out its duties within the overall timeframe of the Regional Assessment."</p>	<p><i>Amend to read: "The Working Group will conduct additional studies deemed necessary by community members. Timelines of the Regional Assessment will be flexible to accommodate for the completion of these studies."</i></p>
<p>Section 8.4: "Information gathering and research methodology by communities will use Indigenous ways of knowing and being."</p>	<p><i>A definition of "Indigenous ways of knowing and being" must be identified with the active involvement of community members and added to Annex 3 (glossary). The definition must clarify exactly how it will be used, protected and safeguarded from misuse and misappropriation.</i></p>

<p>Section 8.5: “The Working Group will submit regular updates to the Chiefs and the Agency during the conduct of the Regional Assessment and post to the Canadian Impact Assessment Registry (“the Registry”).”</p>	<p><i>Amend to read: “The Working Group will submit regular updates to community members, the Chiefs, and the Agency during the conduct of the Regional Assessment and post to the Canadian Impact Assessment Registry”.</i></p> <p><i>Posting to the registry may be sufficient communication for the general public, but not for community members who have unique and specific rights.</i></p>
<p>Section 8.8: “The Regional Assessment must be community-focused and include meaningful involvement of individual First Nation communities. The Regional Assessment will be reflective of the different potential positive and negative effects that development activities may have on each First Nation Partner community.”</p>	<p><i>Amend to read: “The Regional Assessment will be community-focused and include the active involvement of community members. To meet this objective, the First Nation Partners (Chiefs and delegates) will specify what actions they will be taking to ensure their fiduciary obligations to community members are met, including obtaining their free, prior and informed consent to speak on their behalf. Each First Nation Partner must establish mechanisms to hear and address feedback from community members and assist in overcoming within-community disagreements.”</i></p>
<p>Section 8.10: “Chiefs of First Nation Partners and the Minister will ensure that upon receiving the final Report it is made available to their respective communities and the public.”</p>	<p><i>Amend to read: “Chiefs of First Nation Partners and the Minister will ensure that upon receiving the final Report it is made available to community members, and the public, in an accessible manner that accounts for language barriers and access to the internet.”</i></p>
<p>Section 8.11: “The Minister will provide a written response to the findings and recommendations in the Report, which will be posted on the Registry.”</p>	<p><i>This Section must clarify the purpose of the Minister’s written response, and specifically whether this means that the acceptance and use of the Report is subject to the Minister’s discretion.</i></p>
<p>9. Knowledge Holders and Expert Supports 10. Indigenous and Public Participation</p>	
<p>General comments</p> <ul style="list-style-type: none"> ● We urge the Working Group to restructure Sections 9 and 10: <ul style="list-style-type: none"> ○ Section 9 (suggested title: Collaboration with Indigenous people of Treaty 9) is dedicated to collaboration with community members (as defined in Annex 3). ○ Section 10 (suggested title: Public Participation) is dedicated to the participation of the public, governments, industry, non-governmental organizations, Indigenous organizations and Indigenous peoples outside of Treaty 9. ○ This is to recognize the inherent and Treaty rights held by community members and the government’s commitment to a co-led process, which requires the active involvement of community members rather than simply providing information sharing opportunities. ○ This will require two separate Participation Plans and Communications Strategies. ● Section 9 currently grants significant discretion to the Working Group to decide what information, knowledge, perspectives and other matters are “relevant to the Regional Assessment” and what people have knowledge or experience that is “relevant to the Regional Assessment”. We are concerned that the Working Group’s discretion when it comes to consulting with Knowledge Holders and Expert Supports will allow the Working Group to cherry pick people and perspectives that may not represent the diverse views of community members. ● We are concerned that the division between Indigenous people, Knowledge Holders, and Expert 	

	<p>Supports implies that the Indigenous knowledge held by certain community members is more important and will carry more weight in the Regional Assessment.</p> <ul style="list-style-type: none"> • A public application process for Expert Supports which requires people to provide information on their relevant expertise, qualifications and affiliations may be appropriate for members of the public, governments, non-governmental organizations, industry, and Indigenous organizations, and can be set out in the Public Participation Plan. However, this application process not not appropriate for community members who possess Indigenous knowledge, are directly affected by the Regional Assessment process, intended to co-develop and co-lead the Regional Assessment process, and have inherent and Treaty rights that must be upheld, because it imposes administrative burdens and colonial beliefs of how knowledge is quantified.
<p>Section 9: Collaboration with Indigenous people of Treaty 9</p>	<p>9.1 “The Working Group recognizes the importance of Indigenous collaboration in a co-led process and commits to facilitating the active involvement of community members. The Working Group acknowledges their right to participate in decisions affecting their way of life, customs and resources.” <i>This is aligned with the federal government’s commitment to address environmental racism, which is perpetuated by the exclusion of Indigenous people from decision-making, and with the Convention on Biological Diversity Secretariat’s guidance for Target 22 of the Global Biodiversity Framework.</i></p> <p>9.2 “To meet Canada’s obligations under the Global Biodiversity Framework (Target 22), the Working Group will ensure the full, equitable, inclusive, effective and gender-responsive representation and participation in decision-making, and access to justice and information related to biodiversity by community members, respecting their cultures and their rights over lands, territories, resources, and Indigenous knowledge, and ensure the full protection of environmental human rights defenders.”</p> <p>9.3 “The Working Group will seek knowledge and perspectives from all interested community members in a manner consistent with the Indigenous Knowledge Policy Framework. The Working Group, in their Report, will outline how this knowledge was sought and used.”</p> <p>9.4 “The Working Group will promote, facilitate and fund participation of community members to seek their knowledge, perspectives, and information. The Working Group, in their Report, will outline exactly how their knowledge is being used, in accordance with Section 5.3 of the Agency’s Indigenous Knowledge Policy Framework. The timing, format (e.g. Sharing circle, Gathering) and how outcomes will be documented and provided to the Working Group, will be determined by the Working Group with the active involvement of community members, and will accommodate community needs and barriers to participation, including pre-existing crises. ”</p> <p>9.5 “Community members will be given the opportunity and funding to participate in one or more Expert Supports established by the Working Group.”</p>

	<p>9.6 “To ensure that community members can be actively involved in the Regional Assessment, the Working Group (with the active involvement of community members) will develop and implement an Indigenous Participation Plan for community members. This Plan will outline information sharing and transparency requirements, accountability mechanisms where community members can enforce their right to participate, and mechanisms by which the Working Group will facilitate Indigenous participation (including funding, capacity support, in-community meetings, flexible timelines, etc.). This Plan will also include specific actions each First Nation Partner delegate will take to ensure the equitable participation of community members.” <i>This is aligned with Measure 66 of the UNDRIP Action Plan, which calls for measures to address barriers to full and effective participation by Indigenous peoples.</i></p> <p>9.7 “The Indigenous Participation Plan will be completed and posted to the Registry before the Regional Assessment process commences. The Indigenous Participation Plan will be presented to Indigenous communities in in-community meetings to ensure that community members are aware of the Working Group’s participation approach. Updates to the Indigenous Participation Plan will be posted to the Registry and shared directly with the Indigenous people of Treaty 9.”</p> <p>9.8 “The Indigenous Participation Plan will include clear guidance, processes and policies for the meaningful consideration of Indigenous Knowledge. There is no way that the Crown can uphold its duty to consult, respect Treaty rights, or implement UNDRIP without real, effective, and respectful utilization of Indigenous Knowledge in project assessment and project decision-making. In short, utilization of Indigenous Knowledge is a practical, ethical, and legal imperative (Mikisew Cree First Nation). This is aligned with the Indigenous Advisory Committee’s Indigenous Knowledge Policy Framework.”</p> <p><i>The Working Group, with the active involvement of community members, must add a definition of Indigenous Knowledge to Annex 3.</i></p> <p>9.9 “Indigenous people of Treaty 9 will be engaged in the language of their choice, and the Indigenous Participation Plan will be available in English, French, Cree, Ojibwe, and Oji-Cree and posted to the Registry on the same date.”</p>
Section 10: Participation of the public, governments and non-government organizations, industry	10.1 “To ensure that members of the public, governments, and non-governmental organizations and industry can meaningfully participate in the Regional Assessment, the Working Group will develop and implement a Public Participation Plan.”

	<p>10.2 “The Public Participation Plan will specify participation opportunities, emphasize that this is a transparent and open process and include mechanisms for public participation to guide the conduct of the Regional Assessment.”</p> <p>10.3 “The Public Participation Plan will be completed and posted to the Registry before the Regional Assessment process commences, and updated regularly.”</p> <p>10.4 “An individual or organization may participate in one or more Expert Supports by applying through a public call and providing information on their relevant expertise, qualifications and affiliations.”</p> <p>10.5 “Communication material that is posted to the Registry will be provided in English, French, Cree, Ojibwe and Oji-Cree.”</p>
11. Schedule	
<p>General comments</p> <ul style="list-style-type: none"> • The Working Group must collect and consider comments from community members and the public before deciding on timelines, recognizing that in-community engagement is a lengthy process and flexible timelines are required to facilitate the active involvement of community members. • We are concerned that the Agency’s commitment in Section 11 (“Timelines will be determined through Community and public engagement”) is superficial in nature. This is because despite multiple Indigenous community members and organizations requesting an extension to provide comments on the Terms of Reference, the Agency has remained firm on their October 14th deadline. Given the importance of the Terms of Reference document to the development and conduct of the alleged “co-led” Regional Assessment, providing an extension based on community requests falls squarely within the Agency’s stated commitments regarding Indigenous participation. Failure to provide this extension has impeded community members’ capacity to participate. The Agency has stated that they will accept comments after the deadline has passed, but since consideration of these comments is subject to the Working Group’s discretion, there is no requirement for the comments to be taken into account. • The timeline for the final Report must account for the time necessary to complete a comprehensive cumulative effects assessment, including information gathering, conducting additional studies to fill information gaps, and in-community engagement. We suggest a minimum of two years, during which time no development activities will move forward in the Area of Focus. 	
12. Report	
<p>General comments</p> <ul style="list-style-type: none"> • Section 12 must clarify the role of the Ministers and Chiefs in approving the Report and must state that the Minister and Chiefs cannot unilaterally amend the Report without first obtaining the free, prior and informed consent of community members. 	
<p>Section 12.1: “The Report will contain a description of the conduct of the Regional Assessment, a summary of public and community engagement activities and</p>	<p><i>Add a sentence to read:</i> “The Report will describe how Indigenous knowledge, including the vision and priorities set out by Indigenous communities, were taken into account in the Report’s analysis of the impacts of future proposed development activities</p>

<p>input, and the results of the Regional Assessment that address the objectives listed in Section 6 of this Terms of Reference.”</p>	<p>in the Area of Focus.”</p>
<p>Section 12.4: “[...]”</p> <p>a. Each First Nation Partner, with assistance from the Working Group, administrative and Expert Supports, of their choosing will have the opportunity to draft a chapter on its community / traditional territory, including collecting required information and conducting studies.</p> <p>b. The Working Group is responsible for reviewing these chapters and compiling them into the Report.</p> <p>c. The information and studies in these chapters will inform the Report’s analysis of potential positive and negative effects of future development activities that may occur in the development area, as well as any associated infrastructure and development that may occur in the assessment area.”</p>	<p><i>Amend to read:</i> “[...]”</p> <p>a. Each First Nation Partner, with the participation of community members and assistance from the Working Group, administrative and Expert Supports, of their choosing will have the opportunity to draft a chapter on its community / traditional territory, including collecting required information and conducting studies. In order to meet its fiduciary duty to community members, each First Nation Partner will collect and compile feedback from community members and include this feedback in their chapter.</p> <p>b. The Working Group is responsible for reviewing these chapters, compiling them into the Report, and outlining exactly how they will be considered when analyzing the effects of future proposed development activities in the Area of Focus, including what accountability mechanisms will be in place.</p> <p>c. The information and studies in these chapters will inform the Report’s analysis of potential positive and negative effects of future proposed development activities that may occur in the Area of Focus.”</p> <p><i>Add the following:</i> “d. If the chapters cannot be completed within the scheduled timelines, the timelines will be amended accordingly, with the active involvement of community members.</p> <p>e. The Report will state that the outcomes of the Regional Assessment are not a replacement nor substitute for future project-specific impact assessment and cumulative effects assessments undertaken therein.</p> <p>f. To ensure that the vision and priorities of community members are upheld, the Minister when assessing whether a Project in the Area of Focus is in the public interest ought to consider the factors set out in Section 63 of the Impact Assessment Act as a guide and explain how the factors are upheld in this circumstance (i.e. impacts on Indigenous peoples, climate change and sustainability). The Report will state, however, that this requirement is in addition to the requirement of obtaining the free, prior and informed consent of community members before any development activities can move forward.”</p>

13. Communications Strategy

General comments

- Thus far in the development of the Regional Assessment process, there have been several procedural deficiencies that have prevented the full and informed participation of community members. Many resources posted to the Registry since the co-led Regional Assessment process was announced have only been posted in English and French. The active involvement of community members is integral to the Regional Assessment, including its development and outcomes. We submit upholding their rights to participate and procedural fairness more generally requires that all documents posted to the Registry be available in Cree, Oji-Cree and Ojibwe and be posted at the same time as the English and French versions.
- The draft Terms of Reference are yet to be available in Cree, Oji-Cree and Ojibwe, which raises accessibility concerns. The Community brochures were posted in English, Cree and Ojibwe on June 6, 2024 but are not available in Oji-Cree. Another version of the brochures was posted in Cree on October 4, 2024, with no explanation on why it was re-posted and why it wasn't also re-posted in Ojibwe, Oji-Cree and English. Given that these are public education resources, limiting access due to language barriers is problematic and inequitable. Additionally, the Public Notice regarding the comment period was released in Ojibwe, English and Oji-Cree on September 4, 2024 but was not released in Cree until October 4, 2024, despite the upcoming deadline for comments (October 14, 2024). This significantly impedes Cree-speaking community members' ability to understand the consultation opportunity and capacity to provide comments, which calls into question whether the process is indeed co-led.
- Legal Advocates of Nature's Defence, on behalf of our client the Friends of the Attawapiskat River, attended both information sessions held by the Agency on September 24, 2024 and October 3, 2024, and observed that the sessions had less than 10 participants, none of whom were from Indigenous organizations or communities. The hosts consisted only of representatives from the Agency; no Indigenous members of the Working Group were present. The presentation materials were only available in English and French. We are deeply concerned by the lack of inclusion of community members and any indication, to date, that they have been actively involved. These issues raise accessibility concerns and highlight the lack of public outreach being conducted. There must be accountability mechanisms that require the facilitation of Indigenous participation, for example, by requiring a minimum number of Indigenous registrants before an information session can be held and the process proceed, to ensure meetings, emails or online info-sessions are not simply 'check box' exercises.
- Moving forward, the Regional Assessment process must prioritize accessibility and equity when it comes to communication and participation. The Indigenous Participation Plan and corresponding Communication Strategy must recognize community members as unique with specific rights, and not equate their standing with the public, governments, non-government organizations and industry. Community members have Aboriginal and Treaty rights that must be respected, which sets them apart from the public.
- We urge the Working Group to plan and launch a public education campaign to ensure public participation and the active involvement of community members.

Section 13.1: "To govern overall communications, the Working Group will develop a Communications Strategy which will outline both internal and external communications. The strategy will include procedures for handling confidential information, protocols specific to liaising with Expert Supports, media and leadership, and procedures for developing

Amend to read: "To govern overall communications, the Working Group will develop two Communications Strategies - one for Indigenous Participation and one for Public Participation - which will outline both internal and external communications. The strategies will include procedures for public outreach and education, handling confidential information, protocols specific to liaising with Expert Supports, media and leadership, procedures for developing and communicating timely and consistent key messages to community members and the public about the

and communicating timely and consistent key messages to Indigenous communities and the public about the Regional Assessment.”	Regional Assessment.”
Section 13.1: “The Communications Strategy will consider that First Nation Partners and the Agency have their own community protocols and obligations that need to be respected. As appropriate, the Agency will provide support to First Nation Partners in leading community communications.”	<i>Amend to read:</i> “The Communications Strategy for Indigenous Participation will account for the fact that First Nation Partners have their own community protocols and obligations that need to be respected. The Agency will provide financial and capacity support to First Nation Partners in leading community communications. The Communications Strategy will include a mechanism by which community members can confirm that they have received the information.”
Section 13.3: “The Communications Strategy will be posted to the Registry.”	<i>Amend to read:</i> “The Communications Strategies will be updated regularly and posted to the Registry in English, French, Cree, Ojibwe and Oji-Cree on the same date.”
15. Costs	
Section 15.1: “The Agency will provide adequate funding to facilitate the partnership of Indigenous communities for the conduct of the Regional Assessment.”	<i>Amend to read:</i> “The Agency will provide adequate funding, as specified by First Nation Partners, to facilitate the active involvement of community members for the development and conduct of the Regional Assessment. The First Nation Chiefs and delegates will be required to disclose to their communities how the funds were used, in keeping with their fiduciary duty to community members. Equal funding will also be made available to community members, including grassroots groups, who wish to participate in their own capacity.”
Section 15.2: “Funding will also be made available by the Agency to ensure meaningful participation of Indigenous peoples and organizations, non-government organizations and individuals in the Regional Assessment through the Agency’s Participant Funding Program.”	<i>Amend to read:</i> “Funding will also be made available by the Agency to ensure meaningful participation of Indigenous peoples and organizations, non-government organizations and individuals in the Regional Assessment through the Agency’s Participant Funding Program.”
Section 15.3	<i>Add an additional Section to read:</i> “Funding will not be relied on as evidence of the consent or active involvement of First Nation Partners of community members in reference to the Regional Assessment or future proposed development activities.”
16. Amending the Agreement	
General comments:	
<ul style="list-style-type: none"> This section must set out an explicit mechanism to deal with requests for amendments (ex. requests for more time) and how decision-making regarding requested amendments will occur (i.e. voting, unanimous agreement, etc.). 	
Section 16.1: “The terms and provisions of	<i>Amend to read:</i> “The terms ... Partners. Any amendments will be

<p>the Agreement may be amended by written memorandum executed by and in agreeance with the Minister and the Chiefs of the First Nations Partners.”</p>	<p>posted to the Registry and directly sent to community members.”</p>
<p>Annex 2: Regional Assessment Report</p>	
<p>“The Working Group will include in the Report:</p> <ul style="list-style-type: none"> ● An inventory and compilation of existing and publicly accessible scientific, technical, Indigenous and cultural information and knowledge for the assessment area; ● A description of current environmental, health, cultural, social and economic conditions and trends of the assessment area, including identification of key reasons for and contributions to particularly adverse or positive conditions; ● An identification and analysis of key information gaps and recommendations to address such information and knowledge gaps as appropriate; ● An identification and analysis of potential changes to the environment, health, cultural, social and economic conditions, and potential impacts to Aboriginal and treaty rights that may result from potential development activities, and the potential positive or negative consequences of these changes on the assessment priorities, including a scenario analysis of potential development; ● Identify and recommend mitigation and enhancement measures and other approaches for addressing the potential negative effects or maximizing the potential positive effects of future development activities on the assessment priorities; ● Provide an understanding of the regional context that can be used 	<p><i>Amend to read:</i> “The Working Group will include in the Report:</p> <ul style="list-style-type: none"> ● An inventory and compilation of existing and publicly accessible scientific, technical, Indigenous and cultural information and knowledge for the Area of Focus; ● A description of current environmental, health, cultural, social and economic conditions and trends of the Area of Focus, including identification of key reasons for and contributions to particularly adverse or positive conditions and what solutions must be in place before future proposed development activities can occur, including reliable access to safe drinking water and sanitation, protection plans for watersheds, and measures to ensure the safety and security of Indigenous women, girls and 2SLGBTQQA+ people; ● An identification and analysis of key information gaps and requirements to address such information and knowledge gaps before future proposed development activities can occur; ● An identification and analysis of potential changes to the environment, health, cultural, social and economic conditions, and potential impacts to Aboriginal and treaty rights that may result from potential development activities, and the potential positive or negative consequences of these changes on the assessment priorities, including a comparison of future proposed development scenarios, including worst-case scenarios and scenarios of no further development; ● A description of whether, and to what extent, future development activities in the Area of Focus will inhibit Canada’s ability to meet its domestic and international commitments, including but not limited to the Global Biodiversity Framework and Bill C-73, the Paris Agreement and <i>Net-Zero Climate Change Accountability Act</i>, the <i>National Strategy Respecting Environmental Racism and Environmental Justice Act</i>, UNDRIP, <i>UNDRIP Act</i> and 2023-2028 Action Plan, ● Identify and recommend mitigation and enhancement measures and other approaches for addressing the potential negative effects (including by prohibiting activities that may cause irreparable harm that cannot be mitigated) or maximizing the potential positive effects of future proposed development activities on the assessment priorities; ● Provide an understanding of the regional context that will

<p>in considering and evaluating the effects of future development activities in the assessment area to inform future impact assessments and the planning and management of cumulative effects in a manner that fosters sustainability;</p> <ul style="list-style-type: none"> ● An identification and analysis of key environmental, health, cultural, social or economic components, values and issues with respect to potential effects on the Assessment Priorities, that should be considered in impact assessments for future mine development activities and other development activities in the Assessment Area. ● Description of how the findings or recommendations of the Regional Assessment could be used to inform, and enhance the effectiveness and efficiency of, future impact assessments as well as other initiatives as applicable. ● Recommendations on how to consider, implement or otherwise address the Regional Assessment findings in a clear, effective and efficient manner in future impact assessments for future development activities in the Assessment Area, and/or through other initiatives as appropriate. ● Provide guidance around best practices and processes for shared/joint decision-making with Indigenous communities related to future developments in the region; and ● Identifying opportunities to implement UNDRIP in existing impact assessment processes and assessing whether the existing impact assessment decision-making framework complies with UNDRIP. ● Recommendations for a Regional Assessment follow-up program to consider and incorporate any 	<p>be used in considering and evaluating the effects of future proposed development activities in the Area of Focus to inform future impact assessments and the planning and management of cumulative effects in a manner that fosters sustainability, noting that the Regional Assessment will not replace project-specific assessments;</p> <ul style="list-style-type: none"> ● An identification and analysis of key environmental, health, cultural, social or economic components, values and issues with respect to potential effects on the Assessment Priorities, that will be considered in impact assessments for future proposed mine development activities and other development activities in the Area of Focus; ● Description of how the findings or recommendations of the Regional Assessment could be used to inform, and enhance the effectiveness and efficiency of, future impact assessments as well as other initiatives as applicable, noting that the Regional Assessment will not replace project-specific assessment; ● Requirements on how to consider, implement or otherwise address the Regional Assessment findings in a clear, effective and efficient manner in future impact assessments for future proposed development activities in the Area of Focus, noting that the Regional Assessment will not replace project-specific assessment; ● Provide guidance around best practices and processes for shared/joint decision-making with Indigenous communities related to future proposed developments in the region, recognizing that future proposed development activities are subject to the free, prior and informed consent of community members; ● Description of how the Regional Assessment process implemented UNDRIP; ● Identifying opportunities to implement UNDRIP in existing impact assessment processes, assessing whether the existing impact assessment decision-making framework complies with UNDRIP, and setting out enforceable requirements regarding the implementation of UNDRIP when considering future proposed development activities in the Area of Focus; ● Recommendations for a Regional Assessment follow-up program to consider and incorporate any new or updated information that becomes available after submission of the Report and ensure that the values and priorities of community members are being met, in order to help ensure that the Regional Assessment remains current and useful into the future and continues to fulfill the goal and objectives of the Regional Assessment.”
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<p>new or updated information that becomes available after submission of the Report, in order to help ensure that the Regional Assessment remains current and useful into the future and continues to fulfill the goal and objectives of the Regional Assessment.”</p>	
Annex 3: Glossary of terms found in Terms of Reference	
<p>Active involvement</p>	<p><i>Add the following definition: “Active involvement of community members requires interactive participation and a two-way dialogue. This goes beyond passive participation (unilateral transfer of information from decision-makers to stakeholders) and consultation (mutual exchange of information between decision-makers and stakeholders where decision-making power largely rests outside of the stakeholders’ hands), and can include multidirectional in-community workshops, negotiation, mediation, and co-management. Active involvement requires the Agency to provide regular feedback to Indigenous people of Treaty 9 throughout all stages of the Regional Assessment process. Active involvement includes the full, equitable, inclusive, effective and gender-responsive representation and participation of community members in decision-making, provision of access to justice and information, and protection of environmental human rights defenders. Active involvement is centered around respect for Indigenous cultures and rights over lands, territories, resources, and knowledge.”</i></p> <p><i>This is aligned with Target 22 of the Global Biodiversity Framework and associated guidance documents.</i></p>
<p>Area of Focus</p>	<p><i>Add the following definition: “Area of Focus includes the Attawapiskat, Kapiskau, Albany, Ekwan, Opinnagau and Winisk Rivers watersheds and the thousands of streams that flow into Hudson Bay and James Bay, and areas where proposed induced development, associated infrastructure (ex. roads) and ancillary projects (ex. Ferrochrome smelter) may occur.”</i></p>
<p>Community members</p>	<p><i>Add the following definition: “Community members refers to the Indigenous peoples of Treaty 9, as collectives or as individuals, including Elders, Knowledge Holders, youth, Indigenous women and girls, 2SLGBTQQIA+ people, persons with disabilities and grassroots groups.”</i></p>
<p>Elder</p>	<p><i>Identify, with the involvement of community members, a definition of Elder to be included in Annex 3, or specify that the definition of</i></p>

	<i>Elder is subsumed under the definition of Knowledge Holder.</i>
Indigenous knowledge	<i>Identify, with the active involvement of community members, a definition of Indigenous Knowledge that replaces or expands on the existing definition of Traditional and Local Knowledge.</i>
Indigenous ways of knowing and being	<i>Identify, with the active involvement of community members, a definition of “Indigenous ways of knowing and being” to be included in Annex 3. The definition must clarify exactly how they will be used, protected and safeguarded from misuse and misappropriation.</i>
Knowledge Holder and Elder	<p><i>Identify, with the involvement of community members, a revised definition of Knowledge Holders to be included in Annex 3.</i></p> <p><i>The current definition is much too narrow and fails to recognize the many individuals and community members who have Indigenous knowledge but are not Elders. Being an Elder is a not a ‘condition’ of having or being able to exercise Indigenous Knowledge.</i></p>
Sustainability	<p><i>Identify, with the active involvement of community members, a revised definition of sustainability in the Regional Assessment process to be included in Annex 3.</i></p> <p><i>The current definition is vague, does not include any specific or measurable indicators of sustainability and does not specify what is necessary to ‘foster sustainability’, which is mentioned multiple times in the Terms of Reference.</i></p>