

HERITAGE CONSERVATION ACT **TRANSFORMATION PROJECT**

PHASE 3 SESSION PRIMER FOR ENGAGEMENT WITH LOCAL GOVERNMENTS AND STAKEHOLDERS

This document provides details on the proposed changes to the Heritage Conservation Act. This session primer is designed to prepare registrants for engagement sessions. The consultation and cooperation process with First Nations and engagement with local governments and stakeholders in earlier phases of the HCATP identified priority areas for change (Phase 1) and defined the scope of reform (Phase 2). Feedback from these earlier phases has informed the proposed changes, categorized into four core outcomes, that are detailed below.

Phase 3 of engagement will focus on determining how these proposals can be implemented through legislation, regulations, or policy. Questions are posed throughout the document to guide feedback and discussion at the upcoming sessions and each session will cover the proposed changes under each of the four core outcomes identified below. Feedback will be used to translate proposals into a Request for Legislation.

Written feedback is also welcome until October 1, 2025.

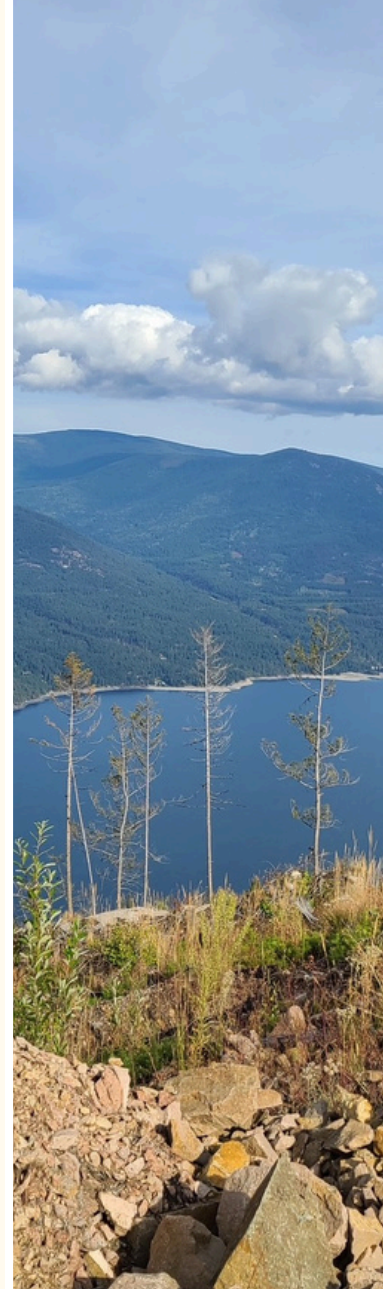


Photo: Kootenay Region, BC.
(Kevin Floyd 2023)

KEY ENGAGEMENT QUESTIONS

The following questions will be asked during this phase of engagement:

- How does the policy direction support or impact your local government's/organization's/sector's/interests?
- Are there possible unintended consequences of the proposals? How can these be addressed?
- What kinds of guidance, education, or outreach would be needed to support implementation?
- Are there any alternatives we should consider to achieve these outcomes? Is there anyone else we should talk to?

In addition to these broad questions, specific questions and considerations are posed in the right-hand column of the detailed policy proposal table.

MAKING PERMITTING FASTER AND EASIER

The current HCA permitting regime is administratively burdensome and complex—projects require up to three different permits, resulting in long wait-times. These issues have created difficulties for all British Columbians in navigating the permitting process. The objectives of the policy proposals under this core outcome are to make permitting more transparent and efficient for all parties, including enhancing and clarifying First Nations’ role in permitting decisions.

Detailed Policy Direction/Mechanisms	Specific Questions and Considerations
<p>What is intended to be achieved: Reduce administrative burden and complexity of permit process</p>	
<p>How this can be achieved:</p> <ul style="list-style-type: none"> • Replace the HCA’s current three permit structure with a single project-based permit model • New permitting processes will not compromise or reduce opportunities for meaningful consultation with First Nations at key project junctures. • Create several fit-for-use permit types: <ul style="list-style-type: none"> ◦ A conservation and research permit ◦ A multi-assessment permit framework with enhanced notice of intent process ◦ A disaster response and recovery permit (this proposed change also supports a core outcome “Helping people and communities rebuild quicker after disasters” described below) 	<p><i>What benefits and/or risks can you identify with a single project-based permit model?</i></p> <p><i>The conservation and research permit is primarily intended to advance First Nations’ interests to investigate and conserve their own sites. Are there other activities that this permit type could support?</i></p> <p><i>How should the permitting process for these types of permits be different?</i></p> <p><i>What steps can be taken to improve the use of multi-assessment permits (e.g., notice of intent process)?</i></p>

How this can be achieved:

Create a regulation-making authority to allow for modified permitting requirements for specific or specified circumstances (e.g., low impact activities such as small footprint developments or rebuilding within the same footprint, where First Nations are seeking modified permitting requirements, etc.)

* This proposed change also supports a core outcome “Helping people and communities rebuild quicker after disasters” described below.

What circumstances could you imagine needing modified permitting requirements?

What is intended to be achieved: Enhance First Nations’ influence in permitting decisions and enhance transparency about how permit decisions are made

How this can be achieved:

Bolster HCA permit decision-making criteria:

- Include a process for seeking consent on statutory decisions
- Decision-making criteria could include consideration of:
 - First Nations information, knowledge, policies and/or laws
 - Statements of site significance and heritage value
Whether principles of site avoidance/non-disturbance/minimizing disturbance of cultural heritage have been followed
 - Cumulative impacts to affected sites
 - Whether or not affected First Nations have provided their consent
 - Negotiated mitigations/accommodations
 - Any existing agreements and/or heritage management plans
 - Public interest
 - Proponent performance history

Decision-making criteria would be considered by decision-makers when deciding whether or not to issue a permit.

What items would you like to see included as criteria?

How this can be achieved:

Create a legislative requirement to submit a record of engagement conducted by proponents as part of a permit application

*This process will not replace existing consultation requirements.

How have you seen early engagement with First Nations support timely permitting decisions?

Do you already create a record of engagement for some projects?

Should a record of engagement be required for all projects or only certain types of projects?

What items/considerations should be included in a record of engagement?

How this can be achieved:

Where impacts to sites are unavoidable, bolster the provincial government's ability to issue permits that include terms and conditions surrounding compensatory conservation work (e.g., enhanced site recording, sampling and analyses, monitoring, other measures to address loss of heritage).

What compensatory conservation work is already being negotiated between your local government/organization/sector and First Nations?

How would a legislative provision support those negotiations?

What is intended to be achieved: Ensure greater regulation of the archaeology profession

How this can be achieved:

- Clarify authorities in the HCA to regulate the archaeology sector.
- Enable the charging of fees for registered archaeologists.

Further engagement on regulation of the archaeology profession will take place in early 2026.

What should be considered regarding the regulation of the archaeology profession in B.C.?

HELPING PEOPLE AND COMMUNITIES REBUILD QUICKER AFTER DISASTERS

HCA requirements have created challenges during disaster response and recovery. In the current state, when a homeowner needs to rebuild their home (located on a known or potential heritage site) after a disaster, they often have to get multiple HCA permits and hire an archaeologist, even when rebuilding occurs within existing footprints and/or is considered to minimally impact a heritage site. The objective of the policy proposals under this core outcome is to support disaster-impacted communities by providing greater flexibility to respond and recover from disasters such as wildfires and floods and allow people impacted by disasters to return home faster.

Detailed Policy Direction/Mechanisms	Specific Questions and Considerations
What is intended to be achieved: Allow for flexibility in the permitting structure in disaster situations	
How this can be achieved: Create an authority allowing the minister to make exemptions to the permitting regime (e.g., where there is an imminent threat to life or public health) to support urgent emergency/disaster response and recovery activities, with circumstances to be prescribed	<i>What types of situations do you think warrant an exception from permitting?</i> <i>What mechanisms should be put in place to ensure this authority is used appropriately?</i>
How this can be achieved: Create a disaster response and recovery permit For more information see “Making Permitting Faster and Easier” above.	
How this can be achieved: Create a regulation-making authority to allow for modified permitting requirements for specific or specified circumstances For more information see “Making Permitting Faster and Easier” above.	

STRENGTHENING THE ROLE OF FIRST NATIONS IN MANAGEMENT OF THEIR CULTURAL HERITAGE

The current HCA does not expressly acknowledge or respect First Nations’ rights to maintain, control, protect, and develop their heritage, traditional knowledge, and traditional cultural expressions. Recognition and affirmation of First Nations’ values and rights in the transformed HCA is a key objective of the HCATP to support consistency with the UN Declaration.

Additionally, the current HCA has limited mechanisms to recognize First Nations’ authority and jurisdiction as decision-makers regarding the care and management of their heritage. The HCA currently includes the ability to enter into s. 4 agreements for the purposes of shared decision-making and the protection of sites not otherwise automatically protected. These agreement types have been underutilized and do not sufficiently address the broader interests of First Nations.

The objectives of the policy proposals under this core outcome are:

- To recognize and affirm First Nations’ rights regarding their heritage in the HCA, which will guide how the HCA should be interpreted and administered.
- To create a framework that acknowledges multiple legal orders and is grounded in respect for the authority of First Nations to self-determine and self-govern.
- Ensure First Nations values are embedded throughout the Act, including how heritage is defined and the various pathways to protect and conserve it.
- Affirm First Nations as decision-makers regarding the care and management of their heritage and to formalize and address First Nations’ unique and distinct interests under the HCA.

Detailed Policy Direction/Mechanisms	Specific Questions and Considerations
<p>What is intended to be achieved: Affirm First Nations’ rights in relation to their cultural heritage. The interpretation and administration of the HCA is guided by statements affirming First Nations’ rights.</p> <p>Embed additional principles related to First Nations data sovereignty, use of First Nations place names, repatriation/rematriation, and conservation of cultural heritage through avoidance and non-disturbance.</p>	

<p>How this can be achieved: Amend the HCA to affirm First Nations’ inherent right to self-determination, including self-government, recognized and affirmed by section 35 of the Constitution Act, 1982 and the UN Declaration, which include jurisdiction/law-making authority/responsibility in relation to the protection, management, and development of their heritage</p> <p>Include in the HCA principles related to First Nations’ data sovereignty, place names, repatriation/rematriation, avoidance/non-disturbance/minimizing disturbance of cultural heritage</p>	
<p>What is intended to be achieved: Expand the definition of heritage to include a broader spectrum of First Nations values, including intangible heritage values</p>	
<p>Examples are included within the “Protecting Heritage More Effectively” core outcome.</p>	<p>This item is discussed in more detail within the “Protecting Heritage More Effectively” core outcome.</p>
<p>What is intended to be achieved: Affirm First Nations as decision-makers regarding where ancestors and heritage belongings that are collected under permits are held and cared for</p>	
<p>How this can be achieved:</p> <p>Create an opt-in process for First Nations to be the decision-makers regarding where ancestors and belongings collected under permits are held and cared for</p>	<p><i>What should be considered to support successful implementation of this opt-in process?</i></p>

What is intended to be achieved: Protect confidentiality of Indigenous knowledge and heritage data that is provided in confidence by ensuring that it is only used for the purposes for which it was shared and identifying a limited suite of circumstances in which it may be disclosed

How this can be achieved: The suite of circumstances could include:

- Information that is already publicly available
- With written consent of the First Nation
- Exercise of a power or duty under the HCA if the information is required
- To support investigation of a contravention
- To legal counsel to support obtaining legal advice
- If required by court order
- Circumstances to be prescribed in regulation

What should be considered regarding the circumstances where the Province may need to disclose First Nations' heritage data?

What is intended to be achieved: Remove barriers for First Nations when maintaining and accessing heritage sites on Crown land in certain circumstances (e.g., clam garden use, trail maintenance) and to collect objects at imminent risk of loss or destruction

How this can be achieved: In legislation, clarify that certain heritage-related activities conducted by First Nations on Crown land do not constitute an offence or require a permit:

- Clam garden maintenance
- Heritage trail maintenance
- Collection of objects at imminent risk of loss or destruction

What should be considered in the implementation of this proposed change?

WHAT is intended to be achieved:

Enable a suite of agreement types in the HCA:

- Joint or consent-based decision-making agreements for Crown land
- Jurisdictional agreements for Crown land
- Operational agreements that expand the scope of s. 4 agreements on Crown/private land

*Joint or consent-based decision-making agreements and jurisdictional agreements are not being considered for private land.

How this can be achieved:

Joint or consent-based decision-making (Declaration Act) Agreements:

- Enable the implementation of Declaration Act agreements to ensure that First Nations are involved in a range of cultural heritage decisions made under the HCA
 - Broadly enabled, could include delegation of certain compliance and enforcement powers, permitting decisions, etc.
 - Negotiating a Declaration Act agreement will require a mandate from Cabinet.

Jurisdictional Agreements:

- Enable agreements recognizing jurisdictional authority of First Nations, where a First Nation's cultural heritage law would vary application of the HCA in certain circumstances.
 - Negotiating a jurisdictional agreement will require a mandate from Cabinet.
 - Through regulation, the circumstances in which a jurisdictional agreement can be negotiated will be laid out.

Operational Agreements:

- Expand the scope of the existing HCA s.4 agreements to cover more operational matters related to a First Nations' heritage
- Apply to Crown and/or private lands
- Seeking to change provincial approval level from Cabinet to Minister (depending on scope)

- Items that could be included in operational agreements:
 - Heritage sites and objects to receive protections (current s. 4(a) and (b))
 - Additional/alternative permitting requirements for protected heritage sites and objects (current s. 4(d))
 - Actions that would damage or take away from the value of those sites and objects (current s. 4(5))
 - Decision-making criteria
 - Information sharing protocols
 - Cultural protocols
 - Provisions around the collection, care, and management of heritage objects and ancestral remains
 - Archaeological methods for identifying and recording sites
 - Continued use of sites
 - Certain aspects of heritage management plans
 - Public engagement agreements

What should be considered regarding implementation of this agreements framework?

What is intended to be achieved: Reduce procedural barriers to access and enter into agreements

How this can be achieved:

- Operational agreements will not require a Cabinet mandate and can be approved more easily.
- Simplify procedural requirements for agreement extensions (to be approved by the minister instead of Cabinet)
- Explore what potential pre-conditions, such as mutual readiness, could be for entering into s.6 and s.7 agreements

PROTECTING HERITAGE MORE EFFECTIVELY

There are three key themes under this core outcome: modernizing the protection framework, due diligence and greater awareness of HCA requirements early in the process, and enhancing the compliance and enforcement toolkit.

Modernizing the Protection Framework

The HCA currently contains several pathways toward recognition and protection of heritage values, including automatic protections, Order-in-Council designations, and agreements with First Nations. However, these pathways are not always clearly understood and have been underutilized. The objective is to provide greater protection of First Nations’ values, rather than just scientific values, and enhance the clarity on the range of heritage values protected under the HCA and the pathways for seeking protections, including for intangible heritage.

Detailed Policy Direction/Mechanisms	Specific Questions and Considerations
<p>What is intended to be achieved: Ensure greater protection of First Nations’ values, rather than just scientific values.</p> <p>Create greater clarity on the range of heritage values under the HCA and the pathways for seeking protections, including for intangible heritage.</p>	
<p>How this can be achieved:</p> <ul style="list-style-type: none">• Enhance the definition of heritage (and related definitions) to include a broader suite of First Nations values (tangible and intangible).• Examples include: cultural landscapes, mortuary landscapes, intangible cultural heritage including oral histories, place names, language, knowledge, objects and places within Indigenous worldview. Include recognition of fossils.• Reorganize the Act to clarify what is recognized and/or protected, what the pathways are, and what actions are prohibited without authorizations.	<p><i>What should be considered regarding how heritage-related definitions are worded in the HCA?</i></p> <p><i>Which heritage-related definitions need refinement?</i></p>

What is intended to be achieved: Maintain automatic protection for ancestral remains, burial places, and rock art, regardless of age, and clarify automatic protection criteria for certain site types.

How this can be achieved:

- Ancestral remains, burial places, and rock art are automatically protected, regardless of their age.
- Retain 1846 as a baseline for age-based automatic protections for other site types
- Clarify the automatic protection criteria for certain site types:
 - Culturally modified trees
 - Heritage wrecks that have identified heritage value or may contain human remains

Culturally modified trees are critically important, yet the current protection framework does not align well with their distinct characteristics. How should automatic protection apply to culturally modified trees?

Are there other heritage sites or objects for which the current protection framework doesn't align well?

Protections for heritage wrecks are currently overly broad. What criteria for protecting heritage wrecks is appropriate?

What is intended to be achieved: Recognizing that First Nations have called for extending the protection of heritage sites which post-date 1846, create clearer and easier pathways for protecting sites that do not receive automatic protection, including sites of intangible heritage.

How this can be achieved:

- Clarify criteria, process, and procedures for designation of sites identified by First Nations (including intangible heritage) or other groups with post-1846 heritage in the province, including procedural requirements.
- Reduce administrative barriers to seeking protections via designations (reduce Provincial approval levels).

What kind of process could support seeking protection designations for post-1846, intangible, or other non-automatically protected sites?

What is intended to be achieved: Clarify and broaden processes for the recognition and promotion of diverse cultural heritage in B.C.

How this can be achieved:

Currently, s.18 of the HCA “Promotion of heritage value” is done through certificates and plaques. It is proposed to modernize this provision to create more opportunities for communities to celebrate, commemorate, or mark heritage in an impactful way.

- When signs related to heritage recognitions are erected, clarify that this must be done in consultation and cooperation with First Nations
- Clarify that heritage recognition and promotion goes beyond physical sites, but could include intangible cultural heritage practices (e.g., songs, ceremonies, food, traditions)

What should the Province consider regarding the recognition and promotion of the diversity of cultural heritage in B.C.?

What is intended to be achieved: Explore mechanisms for distinct protections based on heritage value

How this can be achieved:

Explore, via regulation, the ability to vary protection criteria and permitting requirements based on heritage value and conservation goals, in consultation and cooperation with First Nations.

Protection criteria and permitting requirements could include:

- Site criteria (e.g., Indigenous cemeteries) which receive greater protection (enhanced avoidance and mitigation measures)
- Site criteria for sites to be preserved by record (e.g., culturally modified trees impacted by wildfire or pine beetle)

These variations to protections would take place through a regulation. Engagement on this regulation would take place at a future date.

What is intended to be achieved: Clarify how the presence of sites and site boundaries are determined, including how Indigenous knowledge and other reported information is considered.

How this can be achieved:

In legislation, clarify administrative site boundary criteria for entry into the Provincial Heritage Register. These will continue to be based on recorded presence of heritage sites and objects.

To reflect that the presence of heritage sites likely extend beyond areas of recorded evidence, establish “heritage management zones” within the Provincial Heritage Register. These could include areas that are reported to contain heritage value but are not verified.

In regulation, prescribe any additional requirements associated with heritage management zones. This could include the ability to require archaeological data checks, or to compel additional archaeological work within a heritage management zone.

How do you see heritage management zones supporting the conservation of heritage sites?

What else should be considered in the implementation of heritage management zones and potential associated requirements?

What is intended to be achieved: Clarify the scope of tools to support reporting and conservation of fossil finds.

How this can be achieved: Clarify that fossils are included in the definition of heritage object.

Clarify that fossils and fossil sites can be designated as a protected site and can be included in the duty to report.

Is there anything you would like to share about including fossils within the Heritage Conservation Act?

More engagement will take place when the Duty to Report Regulation is being drafted.

Due Diligence and Greater Awareness of HCA Requirements Early in the Process

There is a lack of awareness about the HCA and potential risks to heritage from development activities. Heritage considerations are often identified late in the project planning process, leading to: project delays; cost increases; contraventions of the HCA; and/or damage to, or desecration of, First Nations heritage.

The objective of these policy proposals is to ensure greater awareness of risks to heritage in advance of land use decisions.

Detailed Policy Direction/Mechanisms	Specific Questions and Considerations
What is intended to be achieved: Ensure early awareness about heritage site potential and responsibilities under the HCA for people making land use decisions and project investments.	
How this can be achieved: <ul style="list-style-type: none">• In legislation, require local governments to see proof of an archaeological data check prior to issuing development and building-related permits and authorizations.• Require subdivision approval authorities to see proof of an archaeological data check prior to subdivision approvals.• Create a regulation-making authority to require mandatory archaeological data checks for prescribed circumstances (e.g., sale of property) and/or entities (e.g., Crown corporations, critical infrastructure operators).	<i>What challenges have you experienced regarding lack of awareness of risks to heritage sites prior to applying for development or building-related permits, or if a local government, issuing a development or building-related permit?</i> <i>What additional circumstances should require people to conduct an archaeological data check?</i> <i>What other ideas do you have to enhance due diligence about heritage sites?</i>

What is intended to be achieved: Explore opportunities to enhance access to some archaeological data to a broader set of user groups, without compromising data confidentiality requirements

How this can be achieved:

Explore the creation of a specific data layer (that only shares limited details such as presence/absence of recorded sites) that can be checked on a plot-by-plot basis in advance of property sales and ground disturbance.

How could increasing access to some archaeological information for property owners/realtors/ developers reduce the risk of unintended damage to heritage sites?

What is intended to be achieved: Clarify tools that enable requiring additional archaeological work.

How this can be achieved:

Clarify and prescribe circumstances in which existing authority to compel archaeological work may be exercised (e.g., heritage management plans, agreements, sites at risk from development activities).

What is intended to be achieved: Enable in legislation a framework for “heritage management plans” to proactively manage heritage.

How this can be achieved:

Heritage management plans could be developed with multiple parties (e.g., First Nations, local governments, the Province, proponents).

Further details to be prescribed in regulation.

How could heritage management plans support consideration of heritage in land use planning and decisions?

How could heritage management plans support your community’s/sector’s interests and processes?

What would you like to see incorporated into, or considered with respect to heritage management plans?

Enhancing the Compliance and Enforcement Toolkit

All parties have identified the need for a more comprehensive compliance and enforcement toolkit in the HCA. The existing toolkit is limited to stop work orders, civil remedies, voluntary restorative justice processes, and prosecuting major offences through the courts. This leaves gaps in enforcement options, resulting in less effective enforcement of contraventions.

Detailed Policy Direction/Mechanisms	Specific Questions and Considerations
What is intended to be achieved: Enhance the role of First Nations in compliance and enforcement activities	
How this can be achieved: Enable First Nations to exercise HCA compliance and enforcement by entering into agreements with the Province	
What is intended to be achieved: Expand the compliance and enforcement toolkit	
How this can be achieved: <ul style="list-style-type: none"> • Create the ability to issue violation tickets for minor contraventions of the HCA (by amending the Violation Tickets and Fine Administration Regulation under the Offence Act). Fines are proposed to be set at a range of up to \$1,000 but could be issued daily if a contravention continues. • In the HCA, create the ability to issue administrative monetary penalties (AMPs) for more severe contraventions to the HCA, with specific amounts and additional details outlined in a future regulation. These fines could be substantial and are proposed to be up to a maximum of \$100,000 for an individual and to a maximum of \$1,000,000 for a corporation. 	<i>Based on severity, are there HCA contraventions that should have higher or lower violation ticket and administrative monetary penalty fines than others?</i>

What is intended to be achieved: Divert revenue from fines and penalties to a fund to support remediation of heritage sites

How this can be achieved:

Explore opportunities to direct fine and penalty revenue to support remediation of impacted heritage sites, including through First Nations

What is intended to be achieved: Implement a duty to report heritage finds

How this can be achieved:

Through regulation, implement a legal “duty to report” for archaeological and significant heritage finds and clarify the circumstances and entities to whom it applies

Further engagement will follow when regulation is developed

What is intended to be achieved: Deter commodification and unauthorized private ownership of heritage objects

How this can be achieved:

Prohibit possession, sale, and trade of heritage objects

What belongings should be prohibited from possession, sale, and trade?

What unintended consequences can you foresee that should influence how this is drafted?

Who should be exempt from these rules and under what circumstances?

What is intended to be achieved: Clarify and enhance the compliance and enforcement regime under the HCA

How this can be achieved:

- Amend and enhance the HCA to address and guide the collection, treatment, care and disposition of collected, seized and forfeited heritage objects to a repository and/or descendent communities
- Enhance permit enforcement and auditing measures, including enabling the minister, in consultation and cooperation with First Nations, to order compensatory conservation work for loss of heritage value and harms to affected First Nations
- Clarify rules for issuance and extension of stop work orders
- Enhance civil remedy orders to include requirements to consult and cooperate with First Nations, without interfering with prosecutorial independence
- Clarify authority to publicly disclose specific information related to contraveners and offenders of the HCA

What should be considered with respect to the implementation of these proposed changes?